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**DISTRICT II**

October 13, 2021

*To:*

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Circuit Court Judge  
Electronic Notice

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Electronic Notice

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County  
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Peter J. Ludwig  
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Sarah A. Zylstra  
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You are hereby notified that the Court has entered the following opinion and order:

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2021AP649-FT

Billy Burchett v. State Farm Fire and Casualty Company  
(L.C. #2020CV157)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Billy Burchett, Michelle Burchett, and Career Sources Unlimited, Inc., appeal from an order granting summary judgment to State Farm Fire and Casualty Company. Pursuant to a presubmission conference and this court's order of May 12, 2021, the parties submitted memorandum briefs. *See* WIS. STAT. RULE 809.17(1) (2019-20).<sup>1</sup> Upon review of those memoranda and the record, we summarily affirm the order.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Billy and Michelle Burchett are the owners of a residential property in Trevor, Wisconsin. They utilize the lower level of the property for their business, Career Sources Unlimited, Inc. The Burchetts purchased policies of insurance from State Farm Fire and Casualty Company for their home and business.

On July 12, 2017, Trevor was hit by massive flooding. The flooding caused a loss of power, which, in turn, caused the Burchetts' sump pump to stop working. The failure of the sump pump led to flooding and damage to the Burchetts' home and business.

The Burchetts submitted their claims to State Farm, which paid a total of \$20,100 for their losses. The Burchetts believed that they were due additional payment under the policies.

On February 7, 2020, the Burchetts and Career Sources filed suit against State Farm, accusing it of breach of contract and bad faith. After discovery, State Farm moved for summary judgment, arguing that the contract claim was barred by the one-year statute of limitations found in WIS. STAT. § 631.83(1)(a)<sup>2</sup> and that it had paid the full amount under the policies. Following a hearing on the matter, the circuit court granted State Farm's motion. This appeal follows.

We review a grant of summary judgment de novo, using the same methodology as the circuit court. *Estate of Sheppard ex rel. McMorrow v. Schleis*, 2010 WI 32, ¶15, 324 Wis. 2d 41, 782 N.W.2d 85. Summary judgment is proper if there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. *Id.*; WIS. STAT. § 802.08(2).

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<sup>2</sup> WISCONSIN STAT. § 631.83(1)(a) requires any "action on a fire insurance policy [to] be commenced within 12 months after the inception of the loss."

On appeal, the Burchetts and Career Sources contend that the circuit court erred in granting summary judgment to State Farm. They assert that their contract claim is not barred by WIS. STAT. § 631.83(1)(a) because their policies with State Farm, which insured against numerous risks, are not “fire insurance” policies as referenced in that statute. They further assert that, in paying out the policies, State Farm ignored the loss of income and extra expense coverage purchased by them.

The problem with the first assertion is the case law interpreting the term “fire insurance.” Wisconsin courts have long recognized the term to mean more than just insurance against loss from fire. Rather, the term applies broadly to property indemnity insurance covering a spectrum of perils. *See, e.g., Villa Clement, Inc. v. National Union Fire Ins. Co. of Pittsburg, Pa.*, 120 Wis. 2d 140, 147, 353 N.W.2d 369 (Ct. App. 1984); *Riteway Builders, Inc. v. First Nat’l Ins. Co. of Am.*, 22 Wis. 2d 418, 422-24, 126 N.W.2d 24 (1964).<sup>3</sup> Thus, we are satisfied that WIS. STAT. § 631.83(1)(a) applies to the policies at issue.

The problem with the second assertion is the language in the policies. It is true that the Burchetts acquired a loss of income and extra expense endorsement to its businessowners policy. However, that endorsement provides that “[t]he loss must be caused by a Covered Cause of Loss.” The policy explicitly excludes from Covered Causes of Loss any claim arising from “[w]ater or sewage that backs up or overflows from a sewer, drain or sump.” Therefore, the water damage at issue is not covered by the endorsement.

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<sup>3</sup> The Burchetts and Career Sources do not discuss this case law or offer authority in support of their position. Indeed, they waived their right to file a reply brief.

Accordingly, the circuit court properly granted summary judgment to State Farm and we affirm.<sup>4</sup>

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>4</sup> To the extent we have not addressed an argument raised by the Burchetts and Career Sources on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).