COURT OF APPEALS
DECISION
DATED AND FILED

November 29, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP866 **Cir. Ct. No. 2005CV35**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

PHILOMENA WILLEMS AND ERNEST KRAMER,

PLAINTIFFS-APPELLANTS,

WAUSAU UNDERWRITERS INSURANCE COMPANY,

INVOLUNTARY-PLAINTIFF,

V.

RURAL MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Philomena Willems and her husband, Ernest Kramer, appeal an order dismissing their complaint against their auto insurer, Rural Mutual Insurance Company. They sued for the policy limit under their policy's underinsured motorist (UIM) coverage. The issue is whether the court properly determined that the UIM limit was subject to a valid and enforceable reducing clause that reduced Rural's UIM liability by $195,102.30. We affirm.

¶2 Willems suffered injuries in an automobile accident caused by an underinsured driver. Willems was insured under Kramer's policy with Rural, and the policy included UIM coverage for bodily injury up to $300,000 per person. The declarations section of the policy informed the policy holder that: "THE LIMITS OF LIABILITY FOR [UIM] … SHALL BE REDUCED AS A RESULT OF YOUR RECEIVING AMOUNTS FROM OTHER SOURCES BECAUSE OF YOUR 'BODILY INJURY.'"

¶3 An endorsement to the policy carried the title "UNDERINSURED MOTORISTS COVERAGE-WISCONSIN," under a warning that "THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY." The endorsement included a section subtitled "limit of liability" that provided:

> B. The limit of liability shall be reduced by all sums:
>
> 1. Paid because of the "bodily injury" by or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A; and
>
> 2. Paid or payable because of the "bodily injury" under any of the following or similar law:
>
> a. Workers' compensation law; or
>
> b. Disability benefits law.

¶4 As noted, Willems and Kramer sued Rural and alleged a claim for the policy limits. Rural tendered $69,897.70, representing its policy limits less the amounts Willems recovered from other sources, including $195,102.30 she received in worker's compensation benefits.[1] Rural then moved for a judgment declaring that the reducing clause quoted above limited Rural's liability to the amount tendered. Willems and Kramer responded with affidavits asserting that the worker's compensation reducing clause was not part of the policy when Kramer originally purchased it, that they were not aware of the provision, and that their local insurance agent was also not aware the provision existed and had never discussed it with them. In arguments, Willems and Kramer contended that, because neither they nor the agent knew of the reducing clause, the court should reform the contract to exclude that language. They also contended that the policy language was not enforceable because it was too ambiguous and obscure. The circuit court rejected those contentions, declared the reducing clause enforceable, and, since Rural had tendered the full amount payable under the policy, dismissed Willems' and Kramer's complaint.

¶5 Willems and Kramer first contend that the policy's reducing clause is subject to reformation because their agent was not only unaware of the clause's existence, but he also considered it contrary to company policy. Consequently, Willems and Kramer contend that we must treat the reducing clause as contrary to the parties' intent. However, Willems and Kramer provide no authority for imputing to a company its agent's intent or understanding regarding the terms of a

[1] Willems and Kramer do not contest the reductions in the UIM limit attributable to sources other than worker's compensation.

policy where, as here, the agent never communicated that intent or understanding to the insureds.

¶6 Willems and Kramer next contend that while the reducing clause is admittedly not ambiguous when read in isolation, in context it is too obscure, ambiguous, or deceptive to be valid. In support, they note that the reducing clause did not exist when they purchased the policy and was unknown to their agent. They also assert it was "buried" in a "long and cumbersome policy." They further note that Rural has no evidence that Rural provided a cover letter or other warning other than the language in the policy itself when it sent Kramer a copy of the amended policy.

¶7 We interpret an insurance policy as a reasonable person in the position of the insured would understand it. ***Danbeck v. American Family Mut. Ins. Co.***, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150. Where the language of the policy is plain and unambiguous, we enforce the policy as written. ***Id.*** A reducing clause may be unambiguous when considered alone, yet ambiguous in context. *See* ***Marotz v. Hallman***, 2007 WI 89, ¶21, __Wis. 2d __, 734 N.W.2d 411. Contextual ambiguity exists when a provision is reasonably susceptible to more than one construction when read in the context of the policy's other language. ***Folkman v. Quamme***, 2003 WI 116, ¶29, 264 Wis. 2d 617, 665 N.W.2d 857. Whether an insurance policy is plain or ambiguous is a question of law, which we review *de novo*. *See* ***Kernz v. J.L. French Corp.***, 2003 WI App 140, ¶8, 266 Wis. 2d 124, 667 N.W.2d 751.

¶8 Rural's policy plainly and unambiguously informs the policy holder of the worker's compensation reducing clause and how it applies to the UIM limit. The declarations page plainly informed the appellants in large type that the UIM

limit was subject to reduction from amounts the insureds received from outside sources. The endorsement to the policy plainly and prominently warned the insured to read its provisions carefully, and that the endorsement contained changes in the policy. The endorsement then explained the worker's compensation reducing clause in plain and unambiguous language, as Willems and Kramer concede. Consequently, we conclude that the policy provided notice sufficient to alert a reasonable person that the UIM coverage under the policy had changed, and a reasonable insured who heeded the warnings and read the policy would have clearly understood the change that pertained to worker's compensation benefits. No cover letter or notice from an agent or some other source was necessary to either locate or understand the relevant change to the policy.[2] The policy plainly and unambiguously spoke for itself in that regard.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

[2] Rural was statutorily obligated to provide timely notice of the reducing clause, by mail, once Rural added it to the policy. *See* WIS. STAT. § 631.36(5) (2005-06). Willems and Kramer do not argue that Rural failed to give proper notice under that section.