COURT OF APPEALS
DECISION
DATED AND FILED

November 6, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP2419 **Cir. Ct. No. 2012CV1296**

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

SUSAN L. SCHAEFER,

PLAINTIFF-APPELLANT,

PHYSICIANS PLUS INSURANCE CORPORATION AND UNITY HEALTH PLANS INSURANCE CORPORATION,

SUBROGATED-PLAINTIFFS,

V.

STEPHEN TAYLOR,

DEFENDANT,

AMICA MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: RICHARD G. NIESS, Judge. *Affirmed*.

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

¶1 PER CURIAM. Susan Schaefer appeals a circuit court order granting declaratory judgment and summary judgment in favor of Amica Mutual Insurance Company ("Amica") in this personal injury case. Schaefer argues on appeal that the circuit court erred when it concluded that Stephen Taylor, who injured Schaefer by running into her on a ski hill, was not covered as an insured under the homeowner's insurance policy issued by Amica to Taylor's parents. For the reasons set forth below, we affirm the order of the circuit court.

BACKGROUND

¶2 Schaefer was injured on December 11, 2011 at Cascade Ski Resort in Portage, Wisconsin, when Taylor ran into her on his snowboard. At the time of the accident, Taylor was twenty-one years old and a full-time student at the University of Wisconsin-Madison. Taylor's parents held a homeowner's insurance policy issued by Amica.

¶3 At the time of the accident, Taylor was not living with his parents, and had not lived at his parents' residence since graduating from high school in 2008. The summer after he graduated from high school, Taylor moved out of his parents' residence to join the Air Force. Taylor was honorably discharged from the Air Force in June 2011 and enrolled at UW-Madison in the fall of 2011. Since August of 2011, he has lived in and paid for his own apartment.

¶4 Under Taylor's parents' homeowner's insurance policy issued by Amica, one of the definitions of an "insured" stated, in relevant part, "A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the

age … 24 and your relative." The circuit court concluded that this policy language was not ambiguous as applied to the facts of this case. The court also concluded that Taylor did not qualify as an insured under the policy because it was undisputed that he did not move out of his parents' home to attend school but, rather, to join the Air Force. The court, therefore, entered an order granting declaratory judgment and summary judgment in favor of Amica and dismissed Amica from the case. Schaefer now appeals.

STANDARD OF REVIEW

¶5 Our review of a circuit court's summary judgment decision is a question of law that we consider de novo. ***Hofflander v. St. Catherine's Hospital, Inc.***, 2003 WI 77, ¶26, 262 Wis. 2d 539, 664 N.W.2d 545.

DISCUSSION

¶6 Schaefer argues on appeal that the insurance policy is ambiguous as to its definition of an "insured" and that, therefore, the policy should be construed in favor of coverage. *See* ***Vandenberg v. The Cont'l Ins. Co.***, 2001 WI 85, ¶40, 244 Wis. 2d 802, 628 N.W.2d 876 (ambiguity in an insurance policy is resolved against the insurer). We disagree and conclude, as did the circuit court, that the policy definition of an "insured" is unambiguous as applied to the undisputed facts of this case.

¶7 The key policy language at issue is the phrase "moving out to attend school." There is no dispute that in August 2008 Taylor moved out of his parents' home and reported for Air Force boot camp, and that Taylor has not lived at his parents' residence since he moved out in August 2008. When asked during his deposition whether, at the time he moved out of his parents' home, he had the

intention to go into the service and then go to college after that, Taylor answered, "No." He further stated that his intention was to "[j]oin the service and then figure it out from there." Under these facts, it is clear that, when Taylor moved out of his parents' residence in 2008, he was not "moving out to attend school," as required for coverage as an insured under the Amica insurance policy. We affirm the circuit court on that basis.

¶8 Schaefer raises an additional issue with respect to whether the term "school" under the policy can be applied to service in the military. We question the merit of this argument, but need not address it. The issue was not raised in the circuit court and, therefore, Schaefer has forfeited the argument on appeal. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (issues that are not preserved at the circuit court generally will not be considered on appeal).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2011-12).