COURT OF APPEALS
DECISION
DATED AND RELEASED

March 27, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1984

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

MILWAUKEE INSURANCE COMPANY,

Plaintiff-Respondent,

v.

RICHARD HURD, d/b/a TRI-STATE ENTERPRISES,

Defendant,

DAVID T. MOORE, a/k/a DAVID MOORE YARROW,

Defendant-Third Party Plaintiff-Appellant,

STATE OF WISCONSIN (and its Department of Health and Social Services and its Division of Health),

Defendant-Third Party Plaintiff,

NATIONAL INDEMNITY CO.,

Third Party Defendant.

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

Before Eich, C.J., Dykman, P.J., and Deininger, J.

PER CURIAM. David Moore appeals from a summary judgment dismissing his personal injury claim against Milwaukee Insurance Company (MIC) and granting declaratory relief to MIC. The issue is whether MIC provided liability insurance to Moore's alleged tort feasor, Richard Hurd, at the time of Moore's injury. We conclude that no liability coverage was then in effect, and therefore affirm.

David Hurd operates a house moving business. MIC insured his operation from December 1989 until April 1990, when it canceled his policy for nonpayment of the premium. In May 1990, MIC gave the Department of Transportation (DOT) notice of the cancellation, as MIC believed was required by ch. 194, STATS. Later that month MIC issued him a new policy under a new policy number. MIC then notified DOT that the second policy was in effect, but mistakenly identified the new policy under the policy number of the original, already canceled, policy. In September 1990, MIC canceled Hurd's new policy. MIC sent a notice to DOT certifying the cancellation of the second policy under the second policy number. However, because DOT had no record of the second policy number, it returned the notice to MIC. MIC took no action on that information.

In August 1992, Moore was injured while helping Hurd move a house. In September 1994, MIC finally sent DOT a notice of cancellation under the first policy number. MIC then commenced this action in November 1994, seeking a declaratory judgment that its policy with Hurd did not cover Moore's injury. Moore cross-claimed against Hurd and counter-claimed against MIC on his personal injury cause of action. The trial court granted MIC's summary judgment motion based on its conclusion, from

undisputed facts, that no coverage existed under MIC's policies when Moore was injured. Moore appeals from that ruling.

A "common motor carrier" or a "contract motor carrier" must carry insurance as provided under § 194.41, STATS. A "common motor carrier" is defined as "any person who holds himself or herself out to the public as willing to undertake for hire to transport … property … upon the public highways." Section 194.01(1), STATS. A "contract motor carrier" means "any person engaged in the transportation by motor vehicle … upon the public highways of property for hire." Section 194.01(2). "For hire" means for compensation, but the definition of "for hire" "does not apply to motor vehicle operations which are conducted merely as an incident to or in furtherance of any business or industrial activity." Section 194.01(4). Once the insurance required under § 194.41 is provided to a common or contract motor carrier, it remains in effect until thirty days after the insurer files a cancellation notice with the DOT. Section 194.41(2). Here, Moore based his claim on his contention that the insurance MIC provided to Hurd in 1990 remained in effect until after MIC sent DOT the September 1994 cancellation notice that correctly identified the canceled policy. In advancing that contention, he makes the same assumption that MIC did: that Hurd, as a house mover, is a common or contract motor carrier under ch. 194, and must therefore carry insurance under § 194.41.

If the material facts are undisputed, as they are here, summary judgment is appropriate if only one reasonable inference is available from the facts and that inference requires dismissal as a matter of law. *See* ***Wagner v. Dissing***, 141 Wis.2d 931, 939-40, 416 N.W.2d 655, 658 (Ct. App. 1987). We independently decide this issue without deference to the trial court. *See* ***Schaller v. Marine Nat'l Bank***, 131 Wis.2d 389, 394, 388 N.W.2d 645, 648 (Ct. App. 1986).

MIC's coverage of Hurd did not extend past the date MIC canceled his second policy in September 1990. We could accept the proposition that MIC was bound until September 1994 if, in fact, Hurd was a common or contract motor carrier under ch. 194, STATS. However, DOT has an established policy that exempts house movers from the requirements of ch. 194, because actually transporting the house is incidental to the entire relocation project. Where an agency has the primary responsibility for administering a law, and the agency's interpretation and application of it is longstanding, we defer to that interpretation if it is reasonable, even if another conclusion would be equally reasonable. ***UFE, Inc. v. LIRC***, 201 Wis.2d 274, 287 n.3, 548 N.W.2d 57, 63 (1996). We extend that deference here and therefore conclude that Hurd was not subject to ch. 194. As a result, § 194.41, STATS., did not extend MIC's coverage of Hurd past the cancellation date in September 1990.

Moore advances alternative grounds for MIC's liability that we also reject. He contends that ch. 194, STATS., applied to Hurd because he moved property for hire besides houses. There is no evidence, however, that he moved other property for hire during the period MIC covered his operation in 1990. He next contends that estoppel and waiver prevent MIC from denying coverage. MIC made gratuitous filings with DOT on its mistaken belief that ch. 194 applied. There is no evidence that Hurd, Moore, the State, or anyone else relied on MIC's mistake. Moore cites no authority for the proposition that MIC's mistaken interpretation of ch. 194 nullified its otherwise proper cancellation of Hurd's policy, without evidence of someone's reliance on that mistake. Finally, Moore contends that Hurd was subject to ch. 194 because he owns and uses semi-trailers in his business. The insurance provisions of ch. 194 plainly require coverage based on the nature of the business, and not the equipment used in it.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.