COURT OF APPEALS
DECISION
DATED AND FILED

September 1, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3651

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

JEFFREY RUEDEN AND JOAN RUEDEN,

PLAINTIFFS-APPELLANTS,

V.

WISCONSIN AMERICAN MUTUAL INSURANCE COMPANY, A DOMESTIC INSURANCE CORPORATION, CITY OF KAUKAUNA, EMPLOYERS INSURANCE OF WAUSAU, A MUTUAL COMPANY, AND UTICA MUTUAL INSURANCE COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Outagamie County: JAMES T. BAYORGEON, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Jeffrey and Joan Rueden appeal a summary judgment that dismissed their 1996 stray voltage lawsuit against their indemnity

insurer, Wisconsin American Mutual Insurance Company, the City of Kaukauna, and the City's liability insurer, Employers Insurance of Wausau. The Ruedens claim that stray voltage from the City, their electricity provider, continuously harmed their dairy farm operations since 1986. The trial court dismissed the Ruedens' claims against Wisconsin American under the twelve-month statute of limitations for certain indemnity claims against insurers. *See* § 631.83(1)(a), STATS. The trial court dismissed their claims against the City and Employers Insurance under the 120-day municipal notice of claim statute. *See* § 893.80(1)(a), STATS.

On appeal, the Ruedens argue that the trial court misapplied these limitations. They argue that the twelve-month indemnity limitation applies differently to ongoing stray voltage losses than it does to a one-time loss. They also seek to apply the discovery rule to both statutes. *See* ***Hansen v. A. H. Robins, Inc.***, 113 Wis.2d 550, 560, 335 N.W.2d 578, 583 (1983). The trial court correctly granted summary judgment if there was no dispute of material fact and the defendants were entitled to judgment as a matter of law. *See* ***Powalka v. State Life Mut. Assur. Co.***, 53 Wis.2d 513, 5118, 192 N.W.2d 852, 854, (1972). We reject the Ruedens' arguments and therefore affirm the summary judgment.

First, § 631.83(1)(a), STATS., barred the Ruedens' indemnity suit against Wisconsin American. They needed to commence their suit within twelve months of the "inception of the loss." *See* ***id.*** The Ruedens argue that the term "inception" means "resolution" or "completion" of the loss for ongoing losses such as ten years of continuous stray voltage. Their argument misapplies the ordinary meaning of that term. Courts must apply the common, ordinary meaning of statutory terms. *See* ***Town of Seymour v. City of Eau Claire***, 112 Wis.2d 313, 319, 332 N.W.2d 821, 823-24 (Ct. App. 1983). The Ruedens are effectively

defining "inception" to mean "end," not "start," in an ongoing stray voltage setting. We have no reason to believe the legislature intended such an incongruous use of the term "inception." *See* ***Borgen v. Economy Preferred Ins. Co.***, 176 Wis.2d 498, 504-05, 500 N.W.2d 419, 421-22 (Ct. App. 1993) ("inception" means "start").

We also reject the Ruedens' claim that the discovery rule controls § 631.83(1)(a). We have already held that the use of the term "inception" in § 631.83(1)(a) made the discovery rule inapplicable. *See* ***Borgen***, 176 Wis.2d at 504-05, 500 N.W.2d at 421-22. The ***Borgen*** decision is binding on this court. *See* § 752.41(2), STATS. In short, the trial court properly applied § 631.83(1)(a). The Ruedens' losses began in 1986, and they first secured Wisconsin American coverage in 1992. They filed their suit in 1996, beyond the § 631.83(1)(a) twelve-month limitation.

Second, the municipal notice of claim statute, § 893.80(1)(a), STATS., barred the Ruedens' lawsuit against the City. The Ruedens needed to give the City notice of claim within 120 days of the event giving rise to the claim. *See* § 893.80(1)(a), STATS. The event giving rise to the claim first occurred in 1986. The Ruedens, however, gave notice of claim in 1996, missing the deadline by nine years. In the same vein, we reject the Ruedens' claim that the discovery rule governs § 893.80(1)(a). We have rejected the same discovery rule argument as to the state's notice of claim statute, holding that similar language in § 893.82(3), STATS., meant 120 days from the damage-causing event, not 120 days from the discovery of the event. *See* ***Oney v. Schrauth***, 197 Wis.2d 891, 901-02, 541 N.W.2d 229, 232 (Ct. App. 1995). We see no reason why the ***Oney*** analysis should not apply to the parallel, similarly worded municipal notice of claim statute, § 893.80(1)(a). Further, the Ruedens discovered the damage in 1991, and

their notice of claim, even if measured from the 1991 discovery date, would still be untimely. Moreover, the Ruedens may not invoke the actual notice exception to § 893.80(1)(a); the Ruedens furnished no evidence that the City had actual notice ten years earlier or that it would suffer no prejudice from a delay of that size. In sum, the trial court correctly granted Wisconsin American, the City, and Employers Insurance summary judgment.

By the Court.—Judgment affirmed.

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