

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 98-0956-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

PAUL HAMMOCK AND MARY HAMMOCK,

PLAINTIFFS-APPELLANTS,

v.

DANIEL L. KODERL,

DEFENDANT,

INTEGRITY MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT,

MIDWEST SECURITY INSURANCE COMPANY,

DEFENDANT.

APPEAL from a judgment of the circuit court for Wood County:
EDWARD F. ZAPPEN, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

PER CURIAM. Paul Hammock and Mary Hammock appeal from a summary judgment dismissing their personal injury action against Integrity Mutual Insurance Company.¹ Integrity provided liability insurance to the alleged tortfeasor, Daniel Koderl. The trial court held on summary judgment that Koderl's policy with Integrity excluded coverage for the accident in which Paul Hammock sustained injuries. The issues on appeal are whether the insurance policy is ambiguous on the coverage issue and, if not, whether it should be reformed to provide coverage. We conclude that the policy plainly excludes coverage for Paul Hammock's injuries, and that the Hammocks lacked standing to assert a reformation claim. We therefore affirm.

The facts are undisputed. Koderl was driving a snowmobile when he struck Paul Hammock. Koderl's liability insurance with Integrity included a recreational motor vehicle endorsement covering the use of certain "described" vehicles. The endorsement described two snowmobiles by year, type and serial number. Koderl was not driving either of the described snowmobiles when he struck Hammock.

Issues involving the construction of an insurance policy are questions of law, properly decided on summary judgment. *Kennedy v. Washington Nat'l Ins. Co.*, 136 Wis.2d 425, 428, 401 N.W.2d 842, 844 (Ct. App. 1987). We review such issues independently and without deference to the trial court's decision. *See id.* If policy terms are plain on their face, we apply them as written. *Schaefer v. General Cas. Co.*, 175 Wis.2d 80, 84, 498 N.W.2d 855, 856 (Ct. App. 1993).

¹ This is an expedited appeal under RULE 809.17, STATS.

Koderl's policy excluded coverage for Hammock's injuries in plain and unambiguous language. The policy's "Recreational Motor Vehicle Endorsement" provides that liability coverage extends to bodily injury arising out of the use of the described recreational motor vehicles. Page 2 of the liability endorsement describes two snowmobiles. The snowmobile Koderl was operating when the accident occurred is not described in the policy. Therefore, no reasonable construction of the policy would extend coverage in this instance.

The Hammocks next argue that even if the policy plainly excludes coverage, the trial court should have reformed it to allow coverage in this case. The Hammocks were neither parties to the contract nor third party beneficiaries. *See Mercado v. Mitchell*, 83 Wis.2d 17, 28, 264 N.W.2d 532, 538 (1978) (a standard liability policy does not make the injured party a third party beneficiary). Accordingly, they have no standing to seek reformation of the contract. *See* RESTATEMENT (SECOND) OF CONTRACTS § 155 cmt. e (1981) (party to the contract, successors in interest and intended beneficiaries may seek reformation). In any event, there is no evidence of a mutual mistake that would allow reformation.

By the Court.—Judgment affirmed.

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

