

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 1, 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. 98-0967

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

FRED EISELE AND MARTHA EISELE,

PLAINTIFFS-APPELLANTS,

v.

ALLSTATE INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Rock County:
RICHARD T. WERNER, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

PER CURIAM. Fred and Martha Eisele appeal a summary judgment order which dismissed their declaratory judgment action for favorable construction of a comprehensive auto insurance policy issued by Allstate Insurance Company. We conclude that the trial court properly determined that the policy at issue did not cover the Eiseles' loss, and we therefore affirm.

Allstate insured the Eiseles' 1981 Corvette under a standard comprehensive coverage policy. In 1996, the Eiseles placed the Corvette with Capitol Corvette for consignment sale. On May 17, 1996, Capitol Corvette sold the vehicle and issued the Eiseles a check in the amount of \$10,194.05. Shortly thereafter, however, Capitol Corvette was placed in bankruptcy by its creditors. The bankruptcy trustee eventually obtained a judgment against the Eiseles for the amount of the payment, which was determined to have been a preference. The Eiseles then submitted a claim to Allstate for the loss of the proceeds of the sale of their vehicle. Allstate denied the claim, and the Eiseles sought a judicial determination that the loss was covered by their policy. The trial court granted summary judgment in Allstate's favor.

We are now asked to determine whether the Eiseles' loss was covered. Where, as here, there are no disputed issues of fact, the interpretation of an insurance policy presents a question of law appropriate for summary judgment and de novo review. See *Smith v. Atlantic Mut. Ins. Co.*, 155 Wis.2d 808, 810, 456 N.W.2d 597, 598 (1990).¹ The relevant clause of the insurance policy guaranteed that:

Allstate will pay for loss to your insured auto or a non-owned auto not caused by collision. Loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, and riot or civil commotion is covered. Glass breakage and collision with a bird or animal is covered.

¹ The summary judgment methodology is well established, and need not be repeated here. See § 802.08, STATS.; *State v. Dunn*, 213 Wis.2d 363, 368, 570 N.W.2d 614, 616-17 (Ct. App. 1997), *review denied*, 217 Wis.2d 520, 580 N.W.2d 690 (1998).

We agree with the trial court that the unambiguous language of the policy limits loss coverage to the automobile itself. We further agree that the undisputed facts show that the Eiseles suffered a loss of money, not a loss to their vehicle. The vehicle had been sold, with the Eiseles' consent, a year before the bankruptcy court ordered the Eiseles to repay the Corvette dealer's estate. Contrary to the Eiseles' contention, we do not believe that a reasonable person in the position of the insured would understand the Corvette to have been an insured automobile under the policy after it was sold to a third party.

Nor are we persuaded by the Eiseles' argument that the term loss should be broadly interpreted to include the loss of proceeds from the sale of a vehicle merely because the list of included losses may have been non-exhaustive. The doctrine of *ejusdem generis* limits non-enumerated losses to those of the "same kind, class, character or nature" as the given examples. *See State v. Ambrose*, 196 Wis.2d 768, 777, 540 N.W.2d 208, 212 (Ct. App. 1995); 73 AM. JUR. 2D *Statutes* § 214 (1974). Each of the enumerated types of loss in the Allstate policy deals with some variety of damage to the actual vehicle. The loss of proceeds from the vehicle's sale do not fall within the same category. The trial court properly granted summary judgment in Allstate's favor.

By the Court.—Order affirmed.

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

