COURT OF APPEALS
DECISION
DATED AND FILED

October 29, 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. 98-2060-FT

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

MATTHEW S. PETERSON, A MINOR, BY HIS GUARDIAN AD LITEM, C. M. BYE, LINDA PETERSON,

PLAINTIFFS-APPELLANTS,

RELIASTAR LIFE INSURANCE COMPANY,

INVOLUNTARY-PLAINTIFF,

V.

HERITAGE MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT.

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

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Matthew Peterson, by his guardian ad litem, appeals from a judgment dismissing his personal injury complaint against Heritage Mutual Insurance Company. Peterson was bitten by a dog owned by Heritage's insured, Walter Hemmersbach. The issue is whether the trial court properly construed Hemmersbach's auto insurance policy to exclude liability coverage for that injury. We conclude, as did the trial court, that there was no coverage for Peterson's injury. We therefore affirm.[1]

Hemmersbach took his dog while running an errand in his pickup truck on June 14, 1996. When he stopped for lunch at a cafe, the dog accompanied him at first, but Hemmersbach later ordered him to return to the open bed of the pickup truck. Later, however, the dog was observed lying on the ground or loitering near the front of the restaurant. A short time later, the dog attacked and bit Peterson.

After the bench trial on the coverage issue, the trial court found that the dog was close to, but not in, the truck when it attacked and bit Peterson. That finding is not challenged on appeal. What is challenged is the resulting conclusion that Heritage had no liability under Hemmersbach's auto insurance policy.

At issue is the policy provision that extends liability to injury resulting from "use" of the insured's vehicle. Liability under this provision results when the accident causing the injury bears a causal relationship to the inherent or reasonably contemplated use of the vehicle. ***Trampf v. Prudential Property and Cas. Co.***, 199 Wis.2d 380, 389, 544 N.W.2d 596, 600 (Ct. App. 1996). This issue, involving the construction of the policy, is a question of law. ***Kennedy v.***

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

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. ***Id.***

According to Peterson, the causal relationship test was satisfied under the facts in this case. In support, he cites two decisions of this court, ***Trampf*** and ***Tasker v. Larson***, 149 Wis.2d 756, 439 N.W.2d 159 (Ct. App. 1989). In ***Trampf***, a dog tied in the back of a pickup leaned over the side and bit a passerby in the face, and we held the insurer liable because "transporting dogs in the bed of a vehicle is a use which may reasonably be contemplated by an insurer." ***Trampf***, 199 Wis.2d at 389, 544 N.W.2d at 600. In ***Tasker***, the insured left his two-year-old child in a vehicle while running an errand, and the child was struck by another vehicle just after stepping or falling out onto the highway. We held that briefly leaving one's child in a vehicle is a reasonably contemplated use, and that liability existed because the injury arose out of that use. ***Tasker***, 149 Wis.2d at 761, 439 N.W.2d at 161.

Neither ***Trampf*** nor ***Tasker*** supports liability in this case. In both cases the vehicle and its use at the time of the injury had some integral involvement with the injury. The same holds true in other cases finding liability under the "use" clause as well. *See* ***Thompson v. State Farm Mut. Auto. Ins. Co.***, 161 Wis.2d 450, 463, 468 N.W.2d 432, 437 (1991) (accidental shooting by one seated in a vehicle); ***Allstate Insurance Co. v. Truck Ins. Exchange***, 63 Wis.2d 148, 157, 216 N.W.2d 205, 209 (1974) (unloading a gun from a vehicle); ***Garcia v. Regent Ins. Co.***, 167 Wis.2d 287, 295-96, 481 N.W.2d 660, 664 (Ct. App. 1992) (driver sitting in car induced a child to cross a street to the car).

Here, in contrast, the vehicle in question merely transported the dog to the scene, and played no part in what occurred some time later. The bite occurred only after the dog had left the vehicle and roamed freely for awhile.

> The use of an automobile may result in a condition which is an essential part of the factual setting which later results in harm. Such antecedent "use" of the automobile is distinct from the harm which thereafter arises from the condition created by the use of the automobile and such later harm does not arise from the "use" of the automobile and is not covered; the mere fact that the use of the vehicle preceded the harm which was later sustained is not sufficient to bring such harm within the coverage of the policy.

12 COUCH ON INSURANCE 2d § 45.57 (rev. ed. 1981), *quoted with approval* in ***Snouffer v. Williams***, 106 Wis.2d 225, 228, 316 N.W.2d 141, 142 (Ct. App. 1982). The quoted principle applies here and excludes coverage.

By the Court.—Judgment affirmed.

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