COURT OF APPEALS
DECISION
DATED AND FILED

December 22, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-0170 **Cir. Ct. No. 03CV001076**

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

VAN H. WANGGAARD,

PLAINTIFF-APPELLANT,

V.

SAFECO INSURANCE COMPANY OF AMERICA,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Racine County: WILBUR W. WARREN, Judge. *Affirmed*.

Before Anderson, P.J., Brown and Nettesheim, JJ.

¶1 PER CURIAM. Van H. Wanggaard appeals from the declaratory judgment entered in favor of Safeco Insurance Company of America. He argues on appeal that the trial court incorrectly determined that a reducing clause in an insurance policy issued to him by Safeco was valid. Because we also conclude that the reducing clause was valid, we affirm.

¶2 Wanggaard was injured in an automobile accident in March 2000. As a result of this accident, he received more than $50,000 in workers' compensation payments. Safeco had provided automobile insurance that included uninsured motorist (UM) coverage to Wanggaard since 1990. In 1995, Safeco notified Wanggaard in writing of an "Amendatory Endorsement" that contained a reducing clause. The reducing clause states:

> The limit of liability shall be reduced by all sums:
>
> 1. Paid because of bodily injury or on behalf of persons or organizations who may be legally responsible. This includes all sums paid under Part A; and
>
> 2. Paid or payable because of the bodily injury under any of the following or similar law:
>
> a. workers' compensation; or
>
> b. disability benefits law.

¶3 Safeco applied the reducing clause and denied Wanggaard's claim for UM coverage because Wanggaard had received more than $50,000 in workers' compensation benefits. In 2003, Wanggaard sued Safeco alleging that the reducing clause could not be enforced against him. Safeco, in turn, sought a declaratory judgment asking the court to find that the reducing clause was valid. The circuit court found that the clause was valid and entered judgment for Safeco. Wanggaard appeals.

¶4 Wanggaard argues that the reducing clause does not comply with the requirements of WIS. STAT. § 632.32(5)(i) (2001-02),[1] and that it is ambiguous when considered in the context of the entire policy. We disagree.

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶5 The interpretation of an insurance contract is a matter that we review on a de novo basis. ***Folkman v. Quamme***, 2003 WI 116, ¶12, 264 Wis. 2d 617, 665 N.W.2d 857. WISCONSIN STAT. § 632.32(5)(i) provides that:

> A policy may provide that the limits under the policy for uninsured or underinsured motorist coverage for bodily injury or death resulting from any one accident shall be reduced by any of the following that apply:
>
> 1. Amounts paid by or on behalf of any person or organization that may be legally responsible for the bodily injury or death for which the payment is made.
>
> 2. Amounts paid or payable under any worker's compensation law.
>
> 3. Amounts paid or payable under any disability benefits laws.

Wanggaard first argues that Safeco's reducing clause does not comply with this statute. Insurance companies are expressly allowed by statute to use reducing clauses to limit UM or UIM motorist coverage for bodily injury. *See* ***Dowhower v. West Bend Mut. Ins. Co.***, 2000 WI 73, ¶17, 236 Wis. 2d 113, 613 N.W.2d 557 (***Dowhower I***). There is no "magic language" required by the statute and the reducing clause does not have to mirror the language of the statute. ***Hanson v. Prudential Prop. & Cas. Ins. Co.***, 224 Wis. 2d 356, 370, 591 N.W.2d 619 (Ct. App. 1999).

¶6 Wanggaard argues that reducing clauses are valid only if the policy "clearly sets forth that the insured is purchasing a fixed level of UIM recovery that will be arrived at by combining payments made from all sources." ***Badger Mut. Ins. Co. v. Schmitz***, 2002 WI 98, ¶38, 255 Wis. 2d 61, 647 N.W.2d 223. He further argues that the clause in Safeco's policy does not comply with the statute because it attempts to reduce payments by sources other than those specifically allowed by the statute. Specifically, he asserts that the clause is invalid because

paragraph one of the clause allows benefits to be reduced by benefits paid "by or on behalf of any person or organization that may be legally responsible for the bodily injury" and that paragraph two allows benefits to be reduced by any disability benefits.

¶7 The reducing clause in Wanggaard's policy specifically provides that the amount of benefits the insured receives may be reduced by the amount of benefits received from workers' compensation. This reduction is specifically allowed under the statute. *See* WIS. STAT. § 632.32(5)(i)2. Because this is the basis on which Safeco denied benefits, we need not consider the other portions of the clause. We are not required to "ferret" through a policy to dig up ambiguity. ***Folkman***, 264 Wis. 2d 617, ¶32. The statute allows Safeco to reduce benefits paid by the amount of workers' compensation benefits the insured received and that is exactly what it did.

¶8 Wanggaard also argues that the reducing clause in his policy is contextually ambiguous. A reducing clause may be invalid if it is ambiguous within the context of the insurance policy. ***Schmitz***, 255 Wis. 2d 61, ¶37. To enforce a reducing clause, an insurance company must make the insured aware of the clause and keep the policy free of contradictions. *See* ***id.***, ¶¶28, 72. "[A]ny contextual ambiguity in an insurance policy must be genuine and apparent on the face of the policy." ***Folkman***, 264 Wis. 2d 617, ¶29.

¶9 We do not agree that the reducing clause issued was ambiguous in the context of the policy. We reject Wanggaard's arguments that the clause conflicted with other parts of the policy. Further, we reject Wanggaard's claim that the policy does not set forth a clear and understandable description of the UM coverage provided by Safeco.

¶10 The parties do not dispute that the policy did not contain a reducing clause when it was issued. Safeco, however, sent Wanggaard specific notice of the reducing clause in 1995. This notice informed Wanggaard that it was an amendatory endorsement, instructed him to keep the endorsement with his policy, and stated that the policy had been revised in response to change in law for UM and UIM coverage. The notice also summarized the changes made to the policy, including the change that allowed the company to reduce uninsured motorist coverage limits by payments the insured received from workers' compensation. By notifying Wanggaard of this specific change in his policy, Safeco complied with the supreme court's admonition that insurers make reducing clauses clear to their insureds. Consequently, we conclude that the clause was valid and enforceable and we affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

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