132 Wis.2d 479
Unpublished Disposition
See Rules of Appellate Procedure, Rule 809.23(3), regarding citation of unpublished opinions. Unpublished opinions issued before July 1, 2009, are of no precedential value and may not be cited except in limited instances. Unpublished opinions issued on or after July 1, 2009 may be cited for persuasive value.
NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER TABLE.
Court of Appeals of Wisconsin.

DEREK LARSON, JR., a minor under the age of 14 years, by his duly-appointed Guardian ad Litem, DANNY L. COWSER, and DEREK LARSON, SR., and MARLENE LARSON, his wife, Plaintiffs-Appellants,
v.
HERITAGE MUTUAL INSURANCE COMPANY, a domestic insurance corporation, Defendant-Co-Appellant, ALLEN L. FOX and ELEANOR FOX, his wife, ASSOCIATION LIFE INSURANCE COMPANY, INC., a domestic insurance corporation and REPUBLIC NATIONAL LIFE INSURANCE COMPANY, a foreign insurance corporation, Defendants, HARTLAND CICERO MUTUAL INSURANCE COMPANY, a domestic insurance corporation, Defendant-Respondent.

85-2041.
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July 22, 1986.

Synopsis
Circuit Court, Price County

Affirmed

Appeal from a judgment of the circuit court for Price county: Douglas T. Fox, Judge.

Before CANE, P.J., DEAN and LaROCQUE, JJ.

Opinion

PER CURIAM.

***1** The Larsons and Heritage Mutual Insurance Company appeal a summary judgment denying the Larsons' claim against Hartland Cicero Mutual Insurance Company. A dog bit Derek Larson, Jr., at Allen Fox's business premises in 1981. The Larsons sued Fox in 1983 and amended their complaint in 1984 to add Hartland when it learned that Fox and his mother held policies with that company. Hartland moved for summary judgment under its notice provision, averring that Scott and his mother did not timely inform it of the incident. The trial court granted judgment because the Larsons and Haritage did not oppose Hartland's averment that it did not receive timely notice, and also failed to aver that the untimely notice did not prejudice Hartland.

The issues on appeal are whether there are factual disputes concerning the timeliness of the notice, the prejudice Hartland suffered from the late notice, and the insureds' duty to give the notice. Because we conclude that there are no disputed material facts concerning these issues, we affirm.

There is no dispute over Hartland's lack of timely notice. Hartland's policy required notice of the incident giving rise to the claim within sixty days. According to Hartland's affidavits, it did not receive notice until it received a summons and complaint two and one-half years after the incident. The Larsons and Heritage did not put any facts before the court disputing that averment. Fox's statement that he did not know when Hartland learned of the accident does not create an inference that Hartland may have received notice in 1981.

The trial court properly resolved the issue of prejudice in Hartland's favor. If the notice comes as soon as reasonably possible within a year of the policy deadline, the insurer must show prejudice to defeat the claim on notice grounds. Section 631.81, Stats. If the notice arrives more than a year late, as occurred here, prejudice to the insurer is presumed. Gerrard Realty Corp. v. American States Insurance Co., 89 Wis.2d 130, 146-47, 277 N.W.2d 863, 872 (1979). In their submissions opposing Hartland's summary judgment motion, the Larsons and Heritage presented no facts to rebut that presumption and summary judgment was therefore appropriate on this issue. Section 802.08(3); see Spivey v. Great Atlantic & Pacific Tea Co., 79 Wis.2d 58, 61, 255 N.W.2d 469, 471 (1977). We do not distinguish Gerrard, as Heritage suggests we should, because this case involves the claim of injured third persons.

The notice requirements set forth in sec. 631.81 and Garrard applied to Fox and his mother. Heritage contends that the

one year limit set forth in sec. 631.81 should not apply because a fact question exists whether Fox and his mother could reasonably have been aware of their liability. The plain language of sec. 631.81 does not permit this argument. We cannot read an exception into an unambiguous statute. Stoll v. Adriansen, 122 Wis.2d 503, 510, 362 N.W.2d 182, 186 (Ct. App. 1984). Even if the statute permitted an exception, the Larsons and Heritage failed to address this issue in their submissions opposing summary judgment, and failed to explain how Fox could be said to have informed Hartland as soon as reasonably possible when notice was delayed until seven months after he received his summons and complaint.

***2** By the Court.-Judgment affirmed.

Publication in the official reports is not recommended.

All Citations

132 Wis.2d 479, 392 N.W.2d 848 (Table), 1986 WL 217510