

**IN THE COURT OF APPEALS OF IOWA**

No. 9-822 / 09-0799  
Filed December 17, 2009

**SHELLANE WILLIAMS,**  
Plaintiff-Appellant,

**vs.**

**PEKIN INSURANCE COMPANY,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Polk County, Eliza J. Ovrorn,  
Judge.

Plaintiff appeals the district court's order granting summary judgment to  
the defendant insurance company in this declaratory judgment action on whether  
there was coverage under her insurance policy. **AFFIRMED.**

Thomas J. Duff of Duff Law Firm, P.L.C., Des Moines, for appellant.

Kevin M. Reynolds and Karin J. Derry of Whitfield & Eddy, P.L.C., Des  
Moines, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MAHAN, S.J.****I. Background Facts & Proceedings**

Shellane Williams has a homeowner's insurance policy with Pekin Insurance Company for her home in Dakota City, Iowa. On June 26, 2005, Williams made a claim on her policy for flooding in her basement caused by a backed-up sewer. She had coverage under an endorsement for "Water Back-up of Sewers or Drains," which provided, "The Limit of Liability for any one loss is \$5000." Pekin paid Williams \$5000 under this endorsement.

Williams pumped the water and sewage out of the basement and used fans to dry the area. She cleaned the floor and walls with bleach and water. In late 2006, Williams noticed mold on the walls of the basement.

On July 26, 2007, Williams filed a claim with Pekin for mold damage in her home. David Wolter, a claims adjuster, personally inspected Williams's home. Pekin denied the claim under the language of the endorsement for "Limited Fungi, Wet or Dry Rot, or Bacteria Coverage." This endorsement denies coverage for loss:

Caused by constant or repeated seepage or leakage of water or the presence of condensation of humidity, moisture or vapor, over a period of weeks, months or years *unless* such seepage or leakage of water or the presence or condensation of humidity, moisture or vapor and the resulting damage is unknown to all "insureds" and is hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure.

(Emphasis added). Pekin claimed the presence of water in Williams's basement was not unknown to her because she had made a claim for the flooding of her basement in 2005.

On January 7, 2008, Williams had her home inspected by Lowell Leemkuil of Sherlock Home Inspectors, Inc.<sup>1</sup> Leemkuil found Williams's problems were caused by "[w]ater backup into the house from the sewage system." He found "[m]old was located on the walls, hidden inside the basement wall, on the ceiling, and on the framing, joists, and sub floor." Leemkuil recommended the home should be treated by professional mold remediators and that the "whole house including the main floor and basement should be considered contaminated."

Williams filed a petition for a declaratory judgment against Pekin seeking coverage for the mold damage to her home. Pekin filed a motion for summary judgment, asserting there was no coverage under the policy for Williams's damages. The district court granted the motion for summary judgment. The court determined the policy required "that both the source *and* the resulting damage be unknown to the insured." (Emphasis added). The court concluded:

It is undisputed that plaintiff was aware of the flooding in her basement in June 2005. This was the cause of mold in her basement in late 2006. While the mold may have been hidden, the source was known to plaintiff. Therefore, the damage to plaintiff's home from the hidden mold is not covered under the Endorsement HO-504 concerning Limited Fungi, Wet or Dry Rot, or Bacterial Coverage.

Williams appeals the district court's decision granting summary judgment to Pekin.

## **II. Standard of Review**

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<sup>1</sup> In the meantime, on August 21, 2007, the basement had again flooded due to a back-up of the sewer line. Williams received \$5000 under the "Water Back-up of Sewers or Drains" endorsement in her policy with Pekin. After this second incident, the walls in the basement were removed except for the load-bearing wall.

We review the district court's ruling on a motion for summary judgment for the correction of errors at law. See Iowa R. App. P. 6.907. Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the non-moving party. *Kern v. Palmer Coll. of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008). In determining whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference the record will bear. *Id.*

### **III. Merits**

The construction and interpretation of an insurance policy is a question of law for the court to determine. *Essex Ins. Co. v. Fieldhouse, Inc.*, 506 N.W.2d 772, 775 (Iowa 1993). If there is no fact question, and the only conflict concerns the legal consequences flowing from the undisputed facts, such as in the construction and interpretation of an insurance policy, summary judgment is appropriate. *Grinnell Mut. Reins. Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002).

We interpret an insurance policy by looking at the meaning of the words used in the policy, and we construe the policy to determine its legal effect. *American Family Life Ins. Co. v. Corrigan*, 697 N.W.2d 108, 111 (Iowa 2005). If a policy is susceptible to more than one interpretation it is ambiguous, and we must construe the meaning of the terms. *First Newton Nat'l Bank v. Gen. Cas. Co.*, 426 N.W.2d 618, 628 (Iowa 1988). Our construction of ambiguous terms is

in the light most favorable to the insured, because insurance policies are contracts of adhesion. *Id.* “[W]hen an insurer has affirmatively expressed coverage through broad promises, it assumes a duty to define any limitations or exclusionary clauses in clear and explicit terms.” *Grinnell Mut. Reins.*, 654 N.W.2d at 536.

Williams contends the district court improperly required her to show the seepage or leakage of water, *and* the presence of humidity, moisture or vapor, *and* the resulting damage was unknown to her. Williams argues that although she was aware of the seepage or leakage of water into her basement, she is still entitled to coverage because she was unaware of the presence of humidity, moisture, or vapor in her home, and was unaware of the resulting mold damage.

We determine the district court did not err in its interpretation of the homeowner’s policy. The court determined the policy required a homeowner to show: (1) water seepage or leakage or the presence of humidity, moisture or vapor is unknown to the homeowner; and (2) the resulting damage is unknown and the damage is hidden within the walls, ceiling, or floors. As the district court found, the language of the policy “clearly requires that both the source and the resulting damage be unknown to the insured.”

Williams does not dispute she was aware of the flooding in her basement in June 2005 caused by a backed-up sewer pipe. Furthermore, it is clear the mold damage was caused by the flooding from this event. The report by Leemkuil states Williams’s problems were caused by “[w]ater backup into the house from the sewage system.” Thus, the “resulting damage,” the mold in the

home, was the result of an event not unknown to Williams. She is not claiming the humidity, moisture, or vapor in the home was caused by an unknown event; she concedes the humidity, moisture, or vapor was caused by the flooding.

We conclude the district court did not err in concluding the policy requires the “resulting damage” and the cause of the damage be unknown to the homeowner. In this case, the cause of the damage was not unknown to Williams.

Because of our decision on this issue, we do not address a separate issue concerning whether there could be any recovery beyond the limit of liability of \$5000 in the “Water Back-up of Sewers or Drains” endorsement.

We affirm the decision of the district court.

**AFFIRMED.**