# IN THE COURT OF APPEALS OF IOWA

No. 5-102 / 94-755

**PHILLISA A. COX,**

Appellant,

**vs.**

**CONTINENTAL WESTERN INSURANCE COMPANY,**

Appellee.

FILED
AUG 17 1995
CLERK SUPREME COURT

---

Appeal from the Iowa District Court for Polk County, David L. Christensen, Judge.

The plaintiff appeals the district court decision, in a declaratory judgment action, that defendant was not required to defend a co-employee against her gross negligence action. **AFFIRMED.**

Roger J. Hudson, of Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney, Shindler & Scalise, P.C., Des Moines, and Mark S. Pennington, Des Moines, for appellant.

Theodore T. Duffield of Patterson, Lorentzen, Duffield, Timmons, Irish, Becker & Ordway, Des Moines, for appellee.

Considered by Hayden, P.J., and Habhab and Cady, JJ.

**CADY, J.**

This is an appeal from a declaratory judgment finding a corporation's liability policy which included coverage for "executive officers, managers, supervisors or foremen" did not extend coverage to an assembly line worker who had asked plaintiff to assist him in his work. The district court granted the insurer's motion for directed verdict. We affirm on appeal.

Phillisa Cox was employed in the electrical department at Shivvers Manufacturing, Inc. in Corydon. Her direct supervisor or "lead" was Dixie Belin. The building supervisor was Bobby Wasson. On occasion, Belin would direct Cox to help out in other departments.

James Adams was employed in the lawn mower area at Shivvers. On August 15, 1990, the lawn mower assembly line was not running and the lead for that area, Rick Rhodes, was not at work. In fact, Adams was the only employee working in the lawn mower area on that day. Wasson, the building supervisor, directed Adams to repair some lawn mowers. Wasson told Adams that if he needed help he should ask someone from another department to help him.

Adams decided he needed help from someone from the electrical department and asked Cox to come to the lawn mower area. Cox informed Belin she was going to help Adams. While Cox was in the lawn mower area, a riding lawn mower fell from its hoist and struck her, causing severe injuries.

Cox filed suit against Adams and Wasson alleging they had been grossly negligent. She later dismissed her action against Wasson.

During the suit against Adams, a question arose as to whether he was covered by Shivvers' commercial general liability insurance policy with Continental Western Insurance Company. The named insureds were Shivvers, Inc., Charles and Anita Lois Shivvers, Charles Shivvers d/b/a Shivvers Farm, and Shivvers Seed Farm. The policy also covered the positions of "executive officers, managers, supervisors or foremen."

Cox filed a declaratory judgment action against Continental in which she asked the court to declare that Adams was an insured employee under the terms of the policy. The parties agreed Shivvers had no position called "foreman." The supervisor of each department was called a "lead," and Cox argued this position was analogous to that of a foreman. Cox testified that generally only a "lead" would go to a different department and ask for help. Cox alleged that because Adams came to the electrical department and asked for her help, he was acting as a "lead" at that time and so should be considered an insured employee under the terms of the policy.

After Cox testified, she called Adams as an adverse witness. Adams agreed with Cox's testimony that generally only a "lead" would go to a different department and ask for help. He testified, however, he had never acted as the "lead" for his department and had never supervised any other employees. He stated he had only been acting as directed by Wasson, who had told him to get the help of another employee if he needed it.

At the close of Adams' testimony, Cox rested. The insurance company moved for a directed verdict. The court granted the motion. The court found Adams was not an executive officer, manager, supervisor, or foreman of Shivvers. The court concluded Continental was not required to indemnify Adams or provide him with a defense. Cox has appealed.

When considering a motion for directed verdict or motion for judgment notwithstanding the verdict, the district court must view the evidence in the light most favorable to the party against whom the motion is directed. *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990). In reviewing the propriety of the district court's ruling on such a motion, we also view the evidence in the same manner. *Id.* If there is substantial evidence to support the claim, the motion for directed verdict should be denied. *Id.* Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *Id.*

Cox contends the insurance policy is ambiguous because it does not define the terms "manager," "supervisor," or "foreman." She states that because the policy is ambiguous, it should be construed against the company, who drafted the policy. She claims that Wasson left Adams in charge of the lawn mower area on the day in question. She believes Adams was acting as a manager, supervisor, or foreman when he asked her to leave her department and then directed her activities in the lawn mower area.

We apply rules of construction to an insurance policy only when the terms are ambiguous or unclear. *Farm & City Ins. Co. v. Anderson*, 509 N.W.2d 487, 490-491 (Iowa 1993). When a contract is not ambiguous, it will be enforced as written. *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 862-863 (Iowa 1991).

Ambiguity exists in a policy only if the terms of the policy create a genuine uncertainty as to which one of two or more meanings is the proper one. *Motor Club of Iowa Ins. Co. v. Iowa Mut. Ins. Co.*, 508 N.W.2d 634, 636 (Iowa 1993). The test for ambiguity in an insurance policy is whether a reasonable person would read more than one meaning into the words. *Farm & City*, 509 N.W.2d at 491. A mere disagreement on the part of the parties as to the meaning of the policy does not automatically establish an ambiguity. *Motor Club*, 508 N.W.2d at 636.

When words are left undefined in a policy, they will not be given a technical meaning. *West Bend Mut. Ins. Co. v. Iowa Iron Works, Inc.*, 503 N.W.2d 596, 599 (Iowa 1993). Rather, they will be given their ordinary meaning, one which a reasonable person would understand them to mean. *Id.* An insurance policy should be interpreted from a viewpoint of an ordinary person, not a specialist or expert. *Id.*

We find the words "manager," "supervisor", and "foreman," given their ordinary meaning, all denote the idea of an employee who supervises other employees. We find these words are not ambiguous within the context of this case.

We recognize there may be instances where an ambiguity may exist whether a particular employee is a foreman under the policy. In this case, however, no evidence was presented to show Adams had any authority to supervise other employees. Adams testified he had never been the "lead" in his area. Furthermore, he was simply following a directive from his supervisor when he asked Cox to assist him. Also, on the day in question, Adams was the only employee working in his area and there were no other employees for him to supervise and no reason to consider him the "lead" for his area. Moreover, we reject the argument that when two employees work together, as Adams and Cox did, one of the employees must be considered the supervisor of the other. We conclude plaintiff has not presented substantial evidence to show Adams was a "manager," "supervisor," or "foreman" under the terms of the employer's insurance policy.

We affirm the decision of the district court in granting a directed verdict for the defendant. Costs of this appeal are assessed to plaintiff.

**AFFIRMED.**