

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 16, 2009**

David R. Schanker  
Clerk of Court of Appeals

**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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2008AP312**

**Cir. Ct. No. 2007CV2060**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**DEBRA W. RING,**

**PLAINTIFF,**

**PHYSICIANS PLUS INSURANCE CORPORATION,**

**INVOLUNTARY-PLAINTIFF,**

**v.**

**THOMAS C. COYLE,**

**DEFENDANT-APPELLANT,**

**AMERICAN FAMILY MUTUAL INSURANCE COMPANY,**

**INTERVENOR-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Dane County:  
ANGELA B. BARTELL, Judge. *Affirmed.*

Before Higginbotham, P.J., Dykman and Bridge, JJ.

¶1 PER CURIAM. Thomas C. Coyle appeals a circuit court order granting summary judgment to American Family Mutual Insurance Company. Coyle argues that the circuit court erred because it applied the four corners rule to determine that American Family did not have a duty to defend him in this action. Because we conclude that the four corners rule is the law in Wisconsin for determining the duty to defend, we also conclude that American Family was entitled to summary judgment. We affirm the judgment of the circuit court.

¶2 Michael Ring, by his guardian Debra Ring, brought the underlying action against Coyle in June 2007, alleging that Coyle punched him, and seeking damages for his injuries. Coyle tendered the defense to American Family, and American Family moved for summary judgment, arguing that Coyle's policy did not provide coverage for intentional injuries caused by the insured. Coyle responded with evidence that he had been criminally charged, and that his defense both in that case and in the civil case was that he acted in self-defense. The circuit court concluded that the facts Coyle used to support his argument were not within the four corners of the complaint, and that under our decision in *Sustache v. American Family Mut. Ins. Co.*, 2007 WI App 144, ¶19, 303 Wis. 2d 714, 735 N.W.2d 186 (*Sustache I*), would not be considered. The circuit court granted the motion. [R.26]

¶3 Coyle raises four issues on this appeal: (1) whether the insurance policy should be liberally construed in favor of insurance coverage for Coyle; (2) whether Coyle should have been allowed to introduce extrinsic evidence to support his claim that coverage exists; (3) whether the trial court should have waited until the supreme court decided *Sustache v. American Family Mut. Ins.*

*Co.*, 2008 WI 87, 311 Wis. 2d 548, 751 N.W.2d 845 (*Sustache II*), before ruling on American Family’s motion for summary judgment; and (4) whether American Family has a conflict of interest that would require American Family to reimburse Coyle for the reasonable attorney’s fees of his independent counsel.

¶4 We review summary judgment *de novo* applying the same methodology as the circuit court. *Id.*, ¶17. “Summary judgment is proper where the record demonstrates that no genuine issue as to any material fact exists and that the moving party is entitled to judgment as a matter of law.” *Id.* (citation omitted). Interpreting an insurance contract involves a question of law that we review *de novo*. *Id.*, ¶18. We determine the insurer’s duty to defend by comparing the allegations of the complaint to the terms of the insurance policy. *Id.*, ¶20. “The duty to defend is triggered by the allegations contained in the four corners of the complaint. It is the nature of the claim that is controlling, even though the suit may be groundless, false, or fraudulent.” *Id.* (citations omitted).

¶5 American Family argues that it does not have a duty to defend because the allegations in the complaint were for intentional conduct, citing *Sustache I*. Coyle argues that we should consider extrinsic evidence that he was acting in self-defense, and therefore, American Family has a duty to defend him, citing *Berg v. Fall*, 138 Wis. 2d 115, 405 N.W.2d 701 (Ct. App. 1987). Coyle further argues that *Berg* is controlling, and that *Sustache I* was wrongly decided. We disagree.

¶6 In *Berg*, we held that an insurance company had a duty to defend when the policy did not exclude bodily injuries cause by “privileged acts of self-defense.” *Id.* at 122. We stated there that an insurer “cannot safely assume that the limits of its duty to defend are fixed by the allegations a third party chooses to

put into his complaint.” *Id.* In our decision in *Sustache I*, we concluded that *Berg* had been tacitly overruled, and that “the four-corners rule is the law in Wisconsin when measuring an insurer’s duty to defend.” *Sustache I*, 303 Wis. 2d 714, ¶19.

¶7 Coyle also argues that the Supreme Court’s decision in *Sustache II* supports his argument that he is entitled to present extrinsic evidence to support his claim. We again disagree. Although the supreme court did not address the issue directly in *Sustache II*, it did hold, as we stated above, that the duty to defend is determined by comparing the allegations of the complaint to the terms of the insurance policy. *Sustache II*, 311 Wis. 2d 548, ¶20. In other words, the four-corners rule for determining whether there is a duty to defend still applies. We conclude that the circuit court correctly determined that American Family did not have a duty to defend Coyle against a claim of intentional conduct.

¶8 Coyle raises three additional issues, all of which are intertwined with the issue of whether the four corners rule applies. Because we have concluded that the four corners rule is still the law in Wisconsin for determining the duty to defend, we also conclude that the language of the insurance policy is not ambiguous. Coyle also argues that the circuit court erred in not delaying its decision until after the supreme court ruled on *Sustache*. While we allowed Coyle and American Family to file supplemental briefs on the effect of *Sustache II* on this case, we nonetheless conclude that the circuit court did not err in declining to

hold the decision until after the supreme court issued its decision.<sup>1</sup> And finally, because we have decided against Coyle in this appeal, his last argument is also moot. For the reasons stated, 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.

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<sup>1</sup> The supreme court issued the decision while we were considering this appeal. We ordered the parties to file supplemental briefs on the effect of the supreme court's decision on this appeal. Both parties filed briefs. American Family argued that Coyle's brief was not timely, and moved to strike the brief. Because we ordered the supplemental briefing, we considered both parties' briefs. The motion to strike Coyle's supplemental brief as untimely is, therefore, denied.

