

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 17, 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. 2008AP1705**

**Cir. Ct. No. 2007CV45**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**TAYLOR EHNLE, KELSEY EHNLE AND JARMILA A. EHNLE,**

**PLAINTIFFS-CO-APPELLANTS,**

**V.**

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,  
ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY AND  
JOSEPH K. WESTART,**

**DEFENDANTS,**

**NATIONWIDE INSURANCE COMPANY OF AMERICAN AND NICHOLAS D.  
HERTING,**

**DEFENDANTS-APPELLANTS,**

**COUNTRY MUTUAL INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Vilas County:  
NEAL A. NIELSEN, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jarmila Ehnle, her children Kelsey and Taylor, Nicholas Herting and Nationwide Insurance Company of America (collectively the Ehnles) appeal a summary judgment dismissing the Ehnles’ wrongful death action against Country Mutual Insurance Company. Country Mutual’s liability policy issued to Joseph Westart excluded coverage for a motor vehicle operated in a prearranged or organized race. The trial court concluded that the term “prearranged” is not ambiguous and, on the undisputed facts, Westart was engaged in a prearranged snowmobile race at the time of the accident that caused Douglas Ehnle’s death. The Ehnles argue that “prearranged” is ambiguous and must be construed in favor of coverage, and in the context of the entire exclusion, more planning or formal rules would be required to constitute a prearranged race. We affirm the summary judgment.

## BACKGROUND

¶2 Douglas Ehnle died in an accident on Little St. Germain Lake, a site well known for snowmobile drag racing. Races took place day and night and Ehnle, Westart and Herting had participated in races on prior occasions. The races were not sanctioned or sponsored. Snowmobilers would gather at Elbert’s, a bar approximately two hundred feet from the lake. Racers would organize themselves at a starting line by lining up the fronts of their skis. A starter would signal the start of the race. In some races, lights from snowmobiles marked a finish line. In other races, the race ended when one of the snowmobiles took a clear lead.

¶3 On the night of the accident, Ehnle, Westart and Herting were in Elbert's talking about their snowmobiles and modifications they had made to enhance speed. Westart had installed special pipes and a clutch for racing. The snowmobiles reached speeds of 100 miles per hour. At least two races had occurred before the race that resulted in Ehnle's death. When a call went out for a race, there was a "mass exodus" from the bar to the lake. Initially, Tony Ehnle, Douglas's brother, was going to drive Westart's snowmobile, but he was told by one of the other participants that he had to race his own sled. Westart then drove his own snowmobile in the race. The person who acted as a starter for the first two races decided to race in the third race, and a replacement starter was found. Westart's deposition testimony states when he got down to the lake, a large group of sleds was already lined up, consistent with what Westart had seen in the past. A witness estimated fifteen to twenty-five racers were involved.

¶4 Westart's liability policy with Countrywide Mutual contains the following exclusion:

**A. Motor Vehicle Liability**

- 1. Liability, Coverage A and Medical Payments, Coverage B** do not apply to any "motor vehicle liability" if, at the time and place of an "occurrence", the involved "motor vehicle"

...

c. Is being:

- (1) Operated in, or practicing for, any prearranged or organized race, speed contest or other competition;

....

His umbrella policy contains a similar exclusion. The trial court concluded the term “organized” was ambiguous, but “prearranged” was not ambiguous and defeated coverage on the undisputed facts of this case.

## DISCUSSION

¶5 “Prearranged” is not ambiguous. A word is ambiguous if it is susceptible to more than one reasonable construction. *Laho v. Century 21 Baltes – Selsberg*, 204 Wis. 2d 483, 489, 555 N.W.2d 149 (Ct. App. 1996). A term is not ambiguous merely because one can conjure up a remotely possible alternative interpretation. See *U.S. Fire Ins. Co. v. Ace Baking Co.*, 164 Wis. 2d 499, 503, 476 N.W.2d 280 (Ct. App. 1991). Because the term is not defined in the policy, it is given its plain and ordinary meaning, which can be found in a dictionary. See *Just v. Land Reclamation, Ltd.*, 155 Wis. 2d 737, 745, 456 N.W.2d 570 (1990). “Prearranged” merely means arranged before hand. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1783 (unabr. ed. 1993). The term does not suggest a formal structure or sponsorship. Because the policy excludes coverage for “prearranged or organized” races, the term “prearranged” should not have the same meaning as the term “organized.” The words are used in the disjunctive, suggesting separate meanings. *Hull v. State Farm Mut. Auto. Ins. Co.*, 222 Wis. 2d 627, 639, 586 N.W.2d 863 (1998).

¶6 We agree that a spontaneous race is not “prearranged,” but the race in question was not spontaneous. The issue is not whether Westart’s decision to race was impulsive, but whether the race came into existence on the spur of the moment, with no opportunity for the participants to reflect on the decision to race. No particular amount of time is necessary to obtain the knowledge that a race will ensue and to form the intent to join in the race. The participants in this race had

ample time to reflect on the decision to race. Several of the participants traveled from Illinois to participate in the races that they knew occurred on a regular basis. While the precise timing and structure of the races was not known in advance, the fact that races would occur was anticipated long in advance. The numerous participants did not spontaneously begin to race each other. They discussed the race in advance and started their snowmobiles knowing they would race. Under these circumstances, the race cannot be viewed as “spontaneous.” Under any reasonable definition, the race in question was “prearranged.”

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2007-08).

