

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CINDY WALDEN

APPELLANT,

v.

**KENNETH SMITH AND AMERICAN
FAMILY MUTUAL INSURANCE COMPANY**

RESPONDENTS.

DOCKET NUMBER WD75982

DATE: April 15, 2014

Appeal From:

Clay County Circuit Court
The Honorable Anthony Rex Gabbert, Judge

Appellate Judges:

Division One: Cynthia L. Martin, Presiding Judge, Mark D. Pfeiffer, Judge and Karen King Mitchell, Judge

Attorneys:

Nicholas J. Zevenbergen, Kansas City, MO, for appellant.

Michael P. Waddell, Kansas City, MO, for respondent American Family.

MISSOURI APPELLATE COURT OPINION SUMMARY

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CINDY WALDEN,

APPELLANT,

v.

**KENNETH SMITH AND AMERICAN
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RESPONDENTS.

No. WD75982

Clay County

Before Division One: Cynthia L. Martin, Presiding Judge, Mark D. Pfeiffer, Judge and Karen King Mitchell, Judge

Cindy Walden appeals from the trial court's entry of summary judgment in favor of American Family Mutual Insurance Company. The trial court found that Walden's American Family automobile policies did not afford uninsured motorist coverage for injuries Walden sustained when a dog bit her through an open window of a vehicle because her injuries did not "arise out of the use" of the vehicle.

AFFIRM

1. In granting summary judgment, the trial court interpreted the phrase "arising out of the use" in American Family's policies. The interpretation of an insurance policy is a question of law that we review *de novo*.

2. Missouri courts consistently define the phrase "arising out of" to require a causal relationship, described as "originating from" or "having its origins in" or "growing out of" or "flowing from" the object or circumstance referenced in the policy or statute. Here, the referenced object or circumstance is the "use" of a vehicle.

3. Unless the facts of a case implicate a specific policy definition of "use," "use" is a broad term which includes within its scope any means by which a vehicle may be employed or put into service consistent with its nature as a vehicle including, but not limited to, the operation of, driving of, or riding in a vehicle.

4. The application of the judicial definitions of "arising out of" and "use" in tandem to determine whether the requisite causal relationship exists between an accident causing injury and the use of a vehicle turns on the factual circumstances in each case. Clearly established legal principles nonetheless assist in defining the outer parameters of the required causal relationship. First, an accident causing injury does not "arise out of the use of a vehicle" when the vehicle is merely the "situs" or "locus" of an injury. Second, an injury may arise out of a covered use even if the vehicle did not itself cause the injury or the injury did not occur while the plaintiff or another was driving the vehicle.

6. For an accident causing injury to "arise out of the use" of a vehicle, the purpose for which the vehicle is being employed must be consistent with the vehicle's inherent nature as a vehicle, and must create a condition which contributes to cause the accident.

7. If the uncontroverted facts establish only that an injury occurred *while* a vehicle was being used, then the injury does not arise out of the use of the vehicle as a matter of law.

8. Here, the uncontroverted facts establish only that Smith's vehicle was the "situs" of Walden's injuries, and that Walden was injured while Smith was using a vehicle.

Opinion by Cynthia L. Martin, Judge

April 15, 2014

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