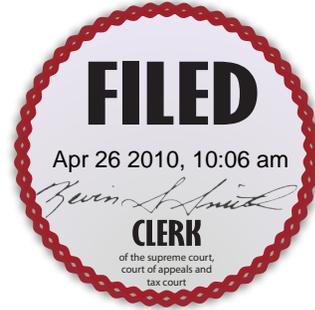


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JASON CURTIS, BRAD CURTIS, and)
RHONDA CURTIS,)
)
Appellants-Defendants,)
Cross-Claimants,)
)
vs.)
)
THE NATIONAL MUTUAL INSURANCE)
COMPANY and CELINA INSURANCE)
GROUP,)
)
Appellees-Cross-Defendants.)

No. 01A04-0910-CV-593

APPEAL FROM THE ADAMS CIRCUIT COURT
The Honorable Frederick A. Schurger, Judge
Cause No. 01C01-0206-CT-8

April 26, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellants-defendants-cross-claimants Jason, Brad, and Rhonda Curtis appeal the trial court's order denying their motion to amend their declaratory counterclaim against appellees-cross-defendants The National Mutual Insurance Company and Celina Insurance Group (collectively, National). Finding that there was no claim left to amend, inasmuch as the counterclaim had already been adjudicated to completion in the Curtises' favor, we affirm.

FACTS

During the relevant period of time, the Curtises were insured under a homeowner's insurance policy (the Policy) issued by National.¹ On June 6, 2000, Justin Beaulieu attended a party hosted by the Curtises. While at the party, Beaulieu sustained a compound fracture to his left leg while jumping on a trampoline in the Curtises' backyard.

On June 3, 2002, Beaulieu filed a complaint against the Curtises, seeking damages for his injury. On May 25, 2005, Beaulieu amended his complaint, adding National as a defendant and seeking a declaration that the Policy provided liability coverage for his injuries.

On August 11, 2005, National answered the complaint and filed a counterclaim against Beaulieu and a cross-claim against the Curtises, each seeking a declaration that coverage was excluded under the Policy for injuries arising out of the ownership, maintenance, or use of a trampoline. On September 6, 2006, the Curtises answered the

¹ National was owned by Celina Insurance Group.

amended complaint and filed a cross-claim against National, seeking a declaration of coverage under the Policy.

All parties filed motions for summary judgment regarding their respective coverage positions. Following a hearing, on September 26, 2006, the trial court denied National's summary judgment motion and granted the Curtises' cross-motion for summary judgment, declaring that coverage under the Policy existed and that National owed the Curtises a duty to defend against the complaint.

National appealed and this court affirmed, observing that there was no "straightforward and unconditional statement that the [P]olicy was not intended to protect the homeowners" in the use of a trampoline. National Mut. Ins. Co. v. Curtis, 867 N.E.2d 631, 636 (Ind. Ct. App. 2007). This court ultimately found that there was a "structural ambiguity" such that "the disputed clause is obscured and a reasonable person would not realize its existence and application, regardless of his duty to read the policy." Id. at 637. As soon as this court's opinion was issued, National assumed the duty to defend the Curtises.

On June 6, 2008, the Curtises filed a "Motion for Leave to File 2nd Amend [sic] Counterclaim" against National. Appellants' App. p. 366. The Curtises sought damages for breach of contract, violation of insurance statutes, and bad faith in denying coverage, also seeking attorney fees incurred as a result of the coverage dispute. National objected to the motion to amend, and, following a hearing, the trial court denied the motion on November 7, 2008. The Curtises now appeal.

DISCUSSION AND DECISION

The Curtises argue that the trial court erroneously denied their motion to amend their declaratory counterclaim against National. A trial court has broad discretion to grant or deny amendments to pleadings, and we will reverse only upon an abuse of that discretion. Kuehl v. Hoyle, 746 N.E.2d 104, 107 (Ind. Ct. App. 2001).

The only claim asserted by the Curtises against National Mutual herein was their counterclaim for a declaratory judgment that they were entitled to coverage under the Policy. The trial court ruled in their favor. This court affirmed, finding that the Policy provided coverage against Beaulieu's claim for injuries. Subsequently, National Mutual assumed the duty to defend against Beaulieu's claim.

One year later, the Curtises sought to amend their counterclaim. It is evident, however, that there was no longer a counterclaim before the trial court that could be amended. Their counterclaim had already been adjudicated—they won. Therefore, the trial court did not err by denying the motion to amend the counterclaim. See Leeper Elec. Servs., Inc. v. City of Carmel, 847 N.E.2d 227, 231 (Ind. Ct. App. 2006) (“[T]here isn't anything left to amend. The judgment was entered. You lost. So, if that was incorrect, then you have to change that but there is nothing left to amend.”) (quoting Johnson v. Levy Organization Dev. Co., Inc., 789 F.2d 601, 611 (7th Cir. 1986)); Jackson v. Russell, 491 N.E.2d 1017, 1020 (Ind. Ct. App. 1986) (holding that “a plaintiff may not seek to amend his complaint after judgment unless he first has that judgment vacated or set aside”).

The judgment of the trial court is affirmed.

DARDEN, J., and CRONE, J., concur.