

DEREK JONES

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NO. 2000-CA-0719

VERSUS

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COURT OF APPEAL

**GAIL C. COLE, GENDARME
SECURITY AGENCY, INC.,
ABC INSURANCE COMPANY
AND XYZ INSURANCE
COMPANY**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 93-13461, DIVISION "K-14"
HONORABLE RICHARD J. GANUCHEAU, JUDGE**

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Michael E. Kirby, Judge Terri F. Love, Judge
David S. Gorbaty)

**CLAUDE A. SCHLESINGER
GUSTE, BARNETT & SHUSHAN, L.L.P.
639 LOYOLA AVENUE
SUITE 2500
NEW ORLEANS, LA 701137103
COUNSEL FOR PLAINTIFF/APPELLANT**

**MATTHEW J. UNGARINO
DAVID I. BORDELON
LAW OFFICES OF UNGARINO & ECKERT
3850 NORTH CAUSEWAY BOULEVARD**

SUITE 1280 LAKEWAY TWO
METAIRIE, LA 70002
COUNSEL FOR DEFENDANT/APPELLEE

Plaintiffs, Derek Jones, individually and on behalf of his minor children, and his wife, Lisa Marie Jones, appeal the judgment of the trial court granting summary judgment in favor of Scottsdale Insurance Company, and dismissing plaintiffs' claims against Scottsdale.

Plaintiffs filed a petition for damages against his former employer, Gendarme Security Agency ("Gendarme"), its President, Gail C. Cole and the alleged insurer of Cole and Gendarme, Scottsdale Insurance Company ("Scottsdale"), for damages arising from an incident that occurred on December 21, 1992. According to the allegations in the petition, Derek Jones was at his home on that date with his wife and children when police officers knocked open the door to the house and with guns drawn, arrested and handcuffed Jones, seized guns found in the home and transported Jones to Central Lockup in New Orleans where he was booked with theft and possession of stolen property. Jones allegedly remained in jail for four days until he was released on bond.

On March 16, 1993, a preliminary hearing and a hearing on a motion to suppress evidence were held in Criminal District Court. At that hearing, Avery Gardner, a co-worker of Derek Jones at Gendarme, testified that he told the police that plaintiff was stealing uniforms, beepers and guns from Gendarme and that plaintiff was giving him a payoff of uniforms and other stolen goods. Gardner stated that he was bribed and blackmailed by Gail Cole to incriminate Jones and others for the theft of uniforms and other property. According to Gardner, Cole gave him \$100.00 to file the fraudulent charges against plaintiff. Gardner testified that he never saw Jones stealing anything and that Cole told him, "Look, I'm going to take care of you. You ain't got nothing to worry about. Here's the money. Just be quiet."

Although the charges against Jones were ultimately dismissed, he claims in his petition that he sustained damage to his reputation, humiliation, embarrassment, mental anguish, and other psychological damages as a result of his arrest, booking and incarceration. He also claims that the dismissal of the charges was not enough to erase the effects of this incident. Other items of damages alleged include loss of income and property damage to his home

and furnishings.

Scottsdale filed a motion for summary judgment, seeking dismissal of plaintiffs' claim on the grounds that the type of tortious conduct alleged in plaintiffs' petition was intentional in nature and does not meet the definition of "occurrence" as defined in Scottsdale's policy of insurance. In support of this motion, Scottsdale filed a memorandum and a copy of the Scottsdale policy, which provided coverage to Gendarme.

In opposition to the motion, plaintiffs filed a memorandum, which alleged that the Scottsdale policy provides coverage for "Completed Operations and Products Liability Insurance" and "Manufacturers and Contractors Liability Insurance" only. Plaintiffs argue that the coverage afforded in this policy is in violation of La. R.S. 37:3276(E) that requires private contract security companies to carry general liability insurance. Plaintiffs argue that Scottsdale should be liable for negligently or intentionally providing the wrong type of coverage and for not including coverage for personal injuries as requested by the insured and as required by law. Plaintiffs also filed portions of the Scottsdale policy in question.

Plaintiffs subsequently filed another memorandum arguing that the

Scottsdale policy language is ambiguous and that Scottsdale has not determined whether the acts in question were those of the corporation or of an individual employee. They also filed copies of two Louisiana cases, which allegedly support their position.

After the hearing on the motion for summary judgment, plaintiffs filed a third memorandum in opposition to the motion. In that memorandum, they challenged Scottsdale's assertion that its policy is a general liability policy. Plaintiffs reiterated their earlier arguments that Scottsdale was required by state statute to provide personal injury coverage in its policy that insured Gendarme, but failed to do so. Scottsdale filed a supplemental memorandum in which it refuted plaintiffs' arguments.

The trial court rendered judgment, granting Scottsdale's motion for summary judgment and dismissing it from these proceedings. The trial court did not issue written reasons for judgment. Plaintiffs now appeal.

On appeal, plaintiffs argue that the trial court erred in granting summary judgment in favor of Scottsdale and dismissing it from this lawsuit. Plaintiffs make several arguments alleging errors in determinations allegedly made by the trial court. However, because the trial court did not

issue reasons for judgment, we do not know the specific determinations made by the trial court in arriving at his decision to grant summary judgment to Scottsdale. We will review the evidence presented in favor of and in opposition to the motion for summary judgment and the applicable case law in order to determine if summary judgment was appropriately granted in this matter.

In Jackson v. America's Favorite Chicken Co., 2000-0681, pp. 2-3 (La.App. 4 Cir. 1/31/01), 778 So.2d 1257, 1260, writ denied, 2001-0596 (La. 4/27/01), ___ So.2d ___, this Court summarized the current law regarding the standard of appellate review of summary judgments as follows:

Appellate courts review summary judgments de novo, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. Guy v. McKnight, 99-2284 (La.App. 4 Cir. 2/16/00), 753 So.2d 955, 957, writ denied, 2000-0841 (La.6/16/00), 764 So.2d 963; Reynolds v. Select Properties, Ltd., 93-1480 (La.4/11/94), 634 So.2d 1180, 1182.

Summary judgment is properly granted only if the pleadings and evidence show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. Art. 966(C). Article 966 has recently been amended; the burden of proof remains with the mover to show that no genuine issue of material fact exists. Now, however, once the mover has made a prima facie showing that the motion should

be granted, the burden shifts to the non-moving party to present evidence demonstrating that material factual issues remain. Once the motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to present evidence of a material factual dispute mandates the granting of the motion. See Hayes v. Autin, 96-287 (La.App. 3 Cir. 12/26/96), 685 So.2d 691, writ denied, 97-0281 (La.3/14/97), 690 So.2d 41.

La. R.S. 37:3276(E) requires private contract security companies “to have in effect general liability insurance.” Plaintiffs argue that the Scottsdale policy issued to Gendarme was a completed operations and products’ liability insurance policy and not a general liability insurance policy. Plaintiffs cite several cases that have held that an insurance policy must be written either in conformity with the statute or in a way that it exceeds the coverage provided by statute. In Block v. Reliance Insurance Co., 433 So.2d 1040, 1044 (La. 1983), our Supreme Court held that “an insurer is not at liberty to limit its liability and impose conditions upon its obligations that conflict with statutory law or public policy.”

Scottsdale argues that its policy to Gendarme was in conformity with La. R.S. 37:3276(E), in that it provided coverage for bodily injury and property damage. Scottsdale cites the portion of the policy dealing with bodily injury and property damage, which states:

The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of

A. bodily injury or

B. property damage

to which this insurance applies, caused by an occurrence, if the bodily injury or property damage is included within the completed operations hazard or the products hazard, . . .

An endorsement to the policy includes the same language stated above, but does not include the condition that the bodily injury or property damage has to be within the completed operations hazard or the products hazard. The term “bodily injury” has been construed to include mental injury, such as some of the types of damages allegedly suffered by Derek Jones in this case. See, Crabtree v. State Farm Insurance Company, 93-0509 (La. 2/28/94), 632 So.2d 736.

In Hickey v. Centenary Oyster House, 97-1074, p. 8 (La. 10/20/98), 719 So.2d 421, 424, the Supreme Court noted that neither R.S. 37:3276(E) nor the Louisiana Insurance Code required any particular form of general liability insurance policy. The Hickey court also pointed out that R.S. 37:3276(E) does not require that the insurer issue, or that the insured obtain, a policy with unrestricted or “all-risk” coverage. Id.

After considering all portions of the policy in question that were

submitted in support of and in opposition to the motion for summary judgment, especially the language in the endorsement, we conclude that the issuance of this policy satisfied the requirements of La. R.S. 37:3296(E).

In the portions of the Scottsdale policy that provide coverage for bodily injury and property damage, the policy specifies that the bodily injury and/or property damage must have been caused by an occurrence. The policy's definitions section, which bears the title "General Liability Policy," defines occurrence as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured."

The allegations of plaintiffs' petition do not include actions that could be construed as accidental in nature. Plaintiffs allege that an employee of the insured bribed and blackmailed another employee to make false accusations against Derek Jones that resulted in Jones' arrest and imprisonment. These alleged acts are intentional in nature and, therefore, do not fit within the definition of the term "occurrence" as defined in the Scottsdale policy.

Because the alleged acts were not accidental in nature, the commission of these acts is not an action covered under the Scottsdale policy. For this reason, we find that summary judgment was appropriately

granted in favor of Scottsdale in this matter.

Accordingly, the trial court judgment is affirmed.

AFFIRMED