STATE OF MICHIGAN

COURT OF APPEALS

ALMA COLLEGE,

Plaintiff-Appellant,

v

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Defendant/Counter-Plaintiff/
Cross-Defendant-Appellee,

and

CITIZENS INSURANCE COMPANY,

Defendant/Counter-Plaintiff/
Cross-Plaintiff-Appellee,

and

UNITED EDUCATORS RISK RETENTION GROUP,

Defendant/Cross-Defendant-Appellee,

and

LAURIE A. SMELTZER and JOSEPH COWDRY,

Third-Party Defendants.

UNPUBLISHED
October 14, 1997

No. 196490
Gratiot Circuit Court
LC No. 94-003060-CK

ALMA COLLEGE,

Plaintiff/Counter-Defendant-Appellee,

v

No. 197162
Gratiot Circuit Court
LC No. 94-003060-CK

ST. PAUL FIRE AND MARINE INSURANCE COMPANY,

Defendant/Counter-Plaintiff/
Cross-Defendant-Appellant,

and

CITIZENS INSURANCE COMPANY,

Defendant/Counter-Plaintiff/
Cross-Plaintiff/Third-Party Plaintiff

and

UNITED EDUCATORS RISK RETENTION GROUP,

Defendant/Cross-Defendant,

and

LAURIE A. SMELTZER and JOSEPH COWDRY,

Third-Party Defendants.

Before: Cavanagh, P.J., and Holbrook, Jr. and Jansen, JJ.

PER CURIAM.

In No. 196490, plaintiff Alma College appeals as of right the trial court orders granting defendants United Educators Risk Retention Group's (hereafter United Educators), and Citizens Insurance Company's (hereafter Citizens) motions for summary disposition pursuant to MCR 2.116(C)(10). In No. 197162, defendant St. Paul Fire and Marine Insurance Company (hereafter St.

Paul) appeals as of right from the trial court order granting plaintiff Alma College's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm in No. 196490 and reverse in No. 197162.

Plaintiff brought this action for declaratory relief claiming that at least one of the three defendant insurers was responsible to defend and indemnify it in an underlying action. The underlying action arose from the January 3, 1993, rape of a part-time employee by Joseph Cowdrey, a campus security guard. The victim filed suit against plaintiff, alleging that it had violated the Civil Rights Act, MCL 37.2102 *et seq*.; MSA 3.548(101) *et seq*., by engaging in sexual harassment. The victim also claimed that plaintiff was liable for negligence and assault and battery.

All three defendants moved for summary disposition. At a hearing on June 5, 1995, the trial court dismissed the victim's claims of negligence and assault and battery, holding that they were preempted by the Worker's Disability Compensation Act, MCL § 418.101 *et seq*.; MSA § 17.237(101) *et seq*. The trial court found that United Educators and Citizens were not responsible for defending or indemnifying plaintiff for the victim's claim and granted their motions for summary disposition. The trial court then ruled that St. Paul was responsible for defending and indemnifying plaintiff in the underlying lawsuit and therefore denied St. Paul's motion for summary disposition.

Subsequently, plaintiff settled with the victim for $175,000. Plaintiff then filed a motion for summary disposition. St. Paul filed a motion for rehearing of the denial of its motion for summary disposition. In an order dated October 12, 1995, the trial court granted plaintiff's motion for summary disposition and denied St. Paul's motion for rehearing.

I

On appeal, St. Paul argues that the trial court erred in finding that plaintiff was entitled to coverage under St. Paul's policy. An insurance policy is an agreement between parties that a court interprets the same as any other contract to best effectuate the intent of the parties and the clear, unambiguous language of the policy. *Auto Owners Ins Co v Harrington*, 455 Mich 377, 381; 565 NW2d 839 (1997). Where contractual language is clear, its construction is a question of law and is therefore reviewed de novo. *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995).

In interpreting an insurance policy, the court looks to the contract as a whole and gives meaning to all its terms. *Auto Owners Ins Co, supra*. Interpretation of an insurance policy ultimately requires a two-step inquiry: first, a determination of coverage according to the general insurance agreement and, second, a decision regarding whether an exclusion applies to negate coverage. An insurance policy provision is valid as long as it is clear, unambiguous, and not in contravention of public policy. *Id*. at 382.

The central focus of the dispute between the parties is the interpretation of two different exclusions in St. Paul's policy. The relevant exclusions provide:

> **Workers' compensation.** We won't cover any obligation that the protected person had under workers' compensation, disability benefits or unemployment law, or any similar law.
>
> **Employer's liability.** We won't cover bodily injury to an employee arising out of and in the course of his or her employment by a protected person.

The trial court found that because the victim's claimed injury did not affect her ability to work, the phrase "bodily injury to an employee arising out of and in the course of his or her employment by a protected person" was not applicable. The court explained,

> I think that the important thing is that the remaining claim in the principle [sic] case for *Radtke* [*v Everett*, 442 Mich 368; 501 NW2d 155 (1993)] type single act gender-based discrimination is not a claim for bodily injury arising out of and during the course of employment as that term is used and understood in the policy. The policy refers to bodily injury arising out of and during the course of employment for purposes, I think, of the Worker's Comp Act. And I think that leaves St. Paul liable in a situation such as this where there's no claim in essence that this injury is of the kind or character addressed solely by the Worker's Disability Compensation Act.

A standard rule of contractual interpretation is that no word in a contract should be rejected as surplusage if it serves some reasonable purpose. See *Allstate Ins Co v Freeman*, 432 Mich 656, 673-674; 443 NW2d 734 (1989). In the present case, the trial court found that the employer's liability exclusion was intended to bar coverage for claims that would be covered by worker's compensation. However, the trial court's interpretation of the employer's liability exclusion renders the workers' compensation exclusion mere surplusage. Reading the insurance policy as a whole, we conclude that the worker's compensation exclusion precludes coverage for worker's compensation claims, and the employer's liability exclusion precludes coverage for claims such as that made by the victim. Cf. *National Ben Franklin Ins Co v Harris*, 161 Mich App 86, 90-91; 409 NW2d 783 (1987) (holding that the defendants' civil rights violation claim was barred by exclusions in the insurer's policy similar to those in the present case).

II

St. Paul also argues that the trial court erred in granting plaintiff's motion for summary disposition because the complaint in the underlying case did not allege an "event" as defined by the policy.[1] St. Paul's policy limits coverage to damages caused by an "event." The policy defines an "event" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The term "accident" is not defined in the policy; however, in Michigan, an accident is "an undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected." *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 404; 531 NW2d 168 (1995).

The trial court ruled that the alleged sexual harassment constituted an "event" because "[i]t was accidental in the sense that the school had notice of conditions and failed to address them." However, in her complaint, the victim alleged in the count of sexual harassment that plaintiff responded with "deliberate indifference" to a continued pattern of sexual harassment perpetrated by Cowdrey.[2] Thus, the victim alleged an intentional, rather than a negligent, failure to act. Because the claimed injuries arose from intentional conduct rather than an accident, there was no "event" under St. Paul's policy. Cf. *Greenman v Michigan Mutual Ins Co*, 173 Mich App 88, 92-93; 433 NW2d 346 (1988).

III

In its appeal, plaintiff argues that it was entitled to coverage from one of the three defendant insurers under a theory of "reasonable expectations." Although plaintiff raised this issue below, the trial court did not address it and therefore it is not preserved for appellate review. However, because it is an issue of law, and all the necessary facts are before this Court, we will briefly address it. See *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997).

Under the rule of reasonable expectation, a reviewing court will examine whether the policy holder, upon reading the contract language, is led to a reasonable expectation of coverage. *Vanguard Ins Co v Clarke*, 438 Mich 463, 472; 475 NW2d 48 (1991). In the present case, plaintiff merely states that it believed, at the time that the three policies were purchased, that one of them would cover a claim such as that made in the underlying case. However, a claim of reasonable expectation must be based on the language of the policy. See *id.* Plaintiff points to no language in any of the three policies that would lead a reasonable policyholder to expect that the victim's claim in the underlying case would be covered. Accordingly, plaintiff's reliance on the doctrine of reasonable expectations must fail.

We affirm in No. 196490 and reverse in No. 197162. Defendants being the prevailing parties, they may tax costs pursuant to MCR 7.219.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen

[1] In addition, St. Paul asserts that its policy exclusion for "intentional bodily injury" applies. However, because the trial court does not appear to have addressed this issue, it is not preserved for appellate review. See *McCready v Hoffius*, 222 Mich App 210, 218; 564 NW2d 493 (1997).

[2] In its brief on appeal, plaintiff contends that the victim's complaint "alleges nothing more than negligence against the College." However, the paragraph cited by plaintiff in support of its argument was part of the negligence claim that was dismissed by the trial court and not part of the civil rights claim that is presently at issue.