STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellant,

v

MATTHEW SREDZINSKI, a minor, by his next friends, RONALD SREDZINSKI and CHERYL SREDZINSKI, and JAY NEFF,

Defendants-Appellees.

UNPUBLISHED
March 26, 1999

No. 208746
Livingston Circuit Court
LC No. 96-015210 CK

Before: O'Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's judgment for defendants in this declaratory action for determination of insurance coverage. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff contends that the trial court clearly erred in concluding that an exclusion in defendant Neff's homeowner's insurance policy for bodily injury or property damage arising out of or in connection with a business engaged in by an insured does not apply to injuries sustained by minor Matthew Sredzinski while sparring with Neff, his marital arts instructor. The incident occurred in a middle school gymnasium, a few minutes prior to start of the minor's scheduled Tae Kwon Do class at that location, which Neff was teaching, for pay, pursuant to a contract with the City of Howell Parks and Recreation Department.

Among other things, the trial court opined that even if Neff's Tae Kwon Do instructor duties for the city constituted a "business" within the meaning of the policy exclusion, the exclusion still would not apply because the sparring before class was something done for recreation only, outside Neff's capacity as a teacher or instructor. Whether the pre-class sparring incident arose out of or was connected with Neff's duties as an instructor for the city is a question of fact, and we review the trial court's findings on the issue for dear error, reversing those findings only if the facts clearly preponderate in the opposite

direction. *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 410; 531 NW2d 168 (1995); *Witt v American Family Ins Co*, 219 Mich App 602, 605; 557 NW2d 163 (1996).

Here, the trial court's findings are supported by Neff's deposition and affidavit testimony. Specifically, Neff testified that the sparring activity was not part of his class instruction, but was something he did for "enjoyment," without doing any actual instructing at the time (as he usually does when sparring takes place during his classes). He explained that that he voluntarily participates in many activities with his students outside the scope of his marital arts classes for the city, without reimbursement, such as hosting parties for his students and coaching them during tournaments. With regard to sparring with Matthew Sredrinski in particular, Neff testified that he had previously sparred with Matthew outside of the classroom setting, again on a voluntary basis and without pay.

Because we are not persuaded that the facts clearly preponderate against the trial court's conclusion that the sparring incident arise out of or in connection with Neff's martial arts instructor duties for the city, we affirm the trial court's judgment on that basis alone.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Jeffrey G. Collins