STATE OF MICHIGAN

COURT OF APPEALS

DYRAL DUVON ORR,

Plaintiff-Appellant/Cross-Appellee,

v

CHRISTOPHER L. JURIK and ARTHUR ANDREW DIETRICH II,

Defendants,

and

FARM BUREAU INSURANCE COMPANY,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
June 18, 1999

No. 205107
Saginaw Circuit Court
LC No. 95-006206 NI

Before: Fitzgerald, P.J., and Holbrook, Jr. and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right the order denying his motion for summary disposition and granting defendant Farm Bureau Insurance Company's cross-motion for summary disposition based on a determination that a criminal acts exclusion in a homeowner's insurance policy covering Arthur Dietrich II applied to bar coverage. Defendant cross-appeals, asserting that the insurance policy also precludes coverage because the incident was not an "occurrence" and also because the intentional acts exclusion, as well as the criminal acts exclusion, applied. We affirm the order of the trial court, albeit on different grounds.

We review a summary disposition ruling under MCR 2.116(C)(10) de novo to determine whether the movant was entitled to judgment as a matter of law. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Interpretation of contractual language is an issue of law that is also given de novo review. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

Defendant argues on cross-appeal that the shooting was not an "occurrence" for purposes of providing coverage. The policy defines an occurrence as an accident resulting in bodily injury "neither expected nor intended from the standpoint of the insured." However, the policy does not explicitly define the term "accident." Therefore, we refer to the commonly used meaning of "accident" as defined in recent case law. In *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 404-405; 531 NW2d 168 (1995), the Court adopted the definition set forth in *Auto Club Group Ins Co v Marzonie*, 447 Mich 624, 631-632; 627 NW2d 760 (1994), that "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."

In *Arco*, the Court found identical language clear and unambiguous and held that whether something constitutes an accident is evaluated from the standpoint of the insured. *Id.* at 407; see also *Marzonie*, *supra* at 648. Where the policy provides that the injury must be both intended and expected, we evaluate the insured's "intent to cause some type of injury to a third party or his awareness that harm was likely to follow from the performance of his intentional act." *Frankenmuth Mutual Ins Co v Piccard*, 440 Mich 539, 550; 489 NW2d 422 (1992). "[I]n order for an insurer to avoid liability for an 'expected' injury, it must be shown that the injury suffered by the victim is the natural, foreseeable, expected, and anticipatory result of an intentional act by the insured." *Id*. at 550-551. Here, we find that plaintiff's injury was the foreseeable result of the insured's intentional act of bringing a loaded weapon into a confrontational, tense atmosphere. Accordingly, we conclude that the shooting was not an accident and, therefore, not an occurrence warranting coverage under the policy.

We are not dissuaded from our holding by the fact it was the insured's companion, and not the insured, who actually did the shooting. In *Allstate Ins Co v Cannon*, 644 F Supp 31 (ED Mich, 1986), the insured, who was aware of what was happening, provided a loaded rifle to someone who had been involved in a verbal street fight. This person returned to the scene and fired "warning shots" at the person with whom he had been arguing earlier, injuring him. In determining that the policy did not cover the insured, the Court held that in handing over the loaded rifle, the insured had committed the "operative act" that warranted the plaintiff's refusal to provide coverage for the incident. *Id*. at 33.

In light of our holding that the incident did not constitute an accident, we need not address defendant's argument that coverage would be precluded under the policy's intentional acts exclusion. It is also not necessary to address plaintiff's argument that the trial court erred in granting defendant's motion for summary disposition because a question of fact existed regarding whether the policy's criminal acts exclusion applied to the conduct of the insured. Although it reached its decision for the wrong reasons, the trial court's ruling that there was no coverage under the policy as a matter of law was ultimately correct.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell