

STATE OF MICHIGAN
COURT OF APPEALS

PIONEER STATE MUTUAL INSURANCE
COMPANY,

UNPUBLISHED
October 22, 1999

Plaintiff-Appellee,

v

No. 209107
Ingham Circuit Court
LC No. 97-086193 CK

RICHARD HANKINS FRANCIS,

Defendant,

and

VICTOR MARTIN PURCHASE,

Defendant-Appellant.

Before: O'Connell, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

In this declaratory judgment action, the trial court granted plaintiff insurer's motion for summary disposition under MCR 2.116(C)(10), finding that there was no genuine issue of material fact over whether it was obligated to defend or indemnify its insured, Richard Francis, for an incident in which Francis shot defendant Victor M. Purchase. Defendant Purchase now appeals as of right. We affirm.

This Court reviews a trial court's decision on summary disposition de novo. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 202; 544 NW2d 727 (1996). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must review the evidence and all reasonable inferences drawn from the evidence to decide whether a genuine issue of material fact exists to allow the case to proceed to trial. *Baker, supra* at 202. Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

At issue in this case is the interpretation and application of plaintiff's insurance policy. An insurance company will not be held liable for a risk that it did not agree to assume. *Allstate Ins Co v*

Fick, 226 Mich App 197, 201; 572 NW2d 265 (1997). Where the insurance policy is unambiguous, it will be enforced as written.

The intentional acts exclusion of plaintiff's insurance policy is clear and unambiguous. Plaintiff's policy excludes from coverage any act or omission that is expected or intended by the insured to cause any harm so long as the resulting injury or damage was a natural consequence of the intended act or omission. The phrase "natural consequence of the intended act or omission" applies a standard of reasonableness, or an objective standard, not the insurer's subjective intent. *Buczowski v Allstate Ins Co*, 447 Mich 669, 673 (Brickley, J.), 682-684 (Boyle, J.); 526 NW2d 589 (1994), following *Allstate Ins Co v Freeman*, 432 Mich 656, 688; 443 NW2d 734 (1989), reh den and modified on other grounds in *Metropolitan Property & Liability Ins Co v DiCicco*, 433 Mich 1202 (1989). See also *Fire Ins Exchange v Diehl*, 450 Mich 678, 684-685; 545 NW2d 602 (1996).

It is undisputed that Francis was criminally charged in connection with the underlying incident and pleaded guilty, but mentally ill, of assault with intent to do great bodily harm less than murder, a specific intent offense. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). This Court has long recognized that a criminal conviction is admissible in a declaratory action to determine whether an insurer has a duty to defend or indemnify its insured. *State Farm Fire & Casualty Co v Moss*, 182 Mich App 559, 562; 452 NW2d 816 (1989).

In *State Farm Fire & Casualty Co v Fisher*, 192 Mich App 371; 481 NW2d 743 (1991), this Court held that an insured's criminal conviction foreclosed coverage under an insurance policy nearly identical to the policy at issue in this case. In that case, the insured was convicted of voluntary manslaughter, of which an essential element is the intent to kill or commit serious bodily harm. *Id.* at 373, 375-378. This Court held that the criminal conviction constituted conclusive evidence of an intent to kill the victim. *Id.* at 376.

An insured's denial of an intent to injure the victim is insufficient to overcome the conclusiveness of a conviction, even when the conviction is the result of a plea. See *State Farm Fire & Casualty Co v Johnson*, 187 Mich App 264, 266; 466 NW2d 287 (1991); *Aetna Casualty & Surety Co v Sprague*, 163 Mich App 650; 415 NW2d 230 (1987); *Yother v McCrimmon*, 147 Mich App 130, 134; 383 NW2d 126 (1985); *State Farm Fire & Casualty Co v Jenkins*, 147 Mich App 462, 468; 382 NW2d 796 (1985).

In light of the above authority, we conclude that the trial court did not err in finding that Francis' guilty plea foreclosed any material issue of fact regarding the application of the intentional acts exclusion in plaintiff's policy. Moreover, the exclusionary clause applies even though Francis pleaded guilty but mentally ill, because that is the same as an adjudication of guilt. *Sprague, supra* at 655.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Brian K. Zahra