

STATE OF MICHIGAN
COURT OF APPEALS

AUTO CLUB GROUP INSURANCE
COMPANY,

UNPUBLISHED
June 8, 2001

Plaintiff-Appellee,

v

No. 219082
Wayne Circuit Court
LC No. 97-729397-NF

SHELLY M. CHINCAK, Individually, and as Next
Friend of STEVEN J. CHINCAK, and DANIEL
W. CHINCAK,

DefendantsAppellants,

and

ROBERT MACVICAR, II, CHARMAINE
MACVICAR, and PATRICIA L.B. CADE, as
Guardian Ad Litem for ROBERT MACVICAR,
III.

Defendants.

Before: Hood, P.J., and Doctoroff and K. F. Kelly, JJ.

MEMORANDUM.

Defendants appeal as of right from an order granting plaintiff's motion for summary disposition. We affirm.

Defendants argue that the trial court erred in concluding that there was no insurance coverage available for a claim based on negligent supervision when the policy was later amended to expressly contain a negligent supervision exclusion. We disagree. Interpretation of the language of a contract presents an issue of law that we review de novo on appeal. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). An insurance contract must be enforced in accordance with its terms, as written, where there is no ambiguity. *Id.* at 354. An insurance company will not be held liable for a risk that it did not assume. *Id.* Review of the plain language of the policy in effect at the time the sexual molestation occurred reveals that there was no coverage for bodily injury or property damage as a result of negligent

entrustment or derivative parental liability involving various types of *chattels*. Defendants argue that this exclusion of coverage regarding chattels leads to the inclusion of all other allegations of negligent parental supervision including allegations of sexual molestation. However, in determining coverage, we do not examine the theory of liability alleged. *Gorzen v Westfield Ins Co*, 207 Mich App 575, 578; 526 NW2d 43 (1994); *Allstate Ins Co v Johnson*, 205 Mich App 495, 500; 517 NW2d 799 (1994). Rather, the determination of coverage is based on the underlying cause of the injury. *Id.* The underlying cause of the injury was sexual molestation of neighborhood children by the policy holder's minor, an insured person. Review of the policy reveals that it expressly excludes from coverage bodily injury due to sexual molestation and bodily injury that arises from a criminal act, irrespective of the insured person's mental capacity to form an intent. Based on the express language of the policy at issue, insurance coverage is not available for the acts alleged to have caused the bodily injury. *Henderson, supra*.

Affirmed.

/s/ Harold Hood
/s/ Martin M. Doctoroff
/s/ Kirsten Frank Kelly