

STATE OF MICHIGAN  
COURT OF APPEALS

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PIONEER STATE MUTUAL INSURANCE  
COMPANY,

Plaintiff-Appellant,

v

LARRY WAGNER,

Defendant,

and

DUANE WOODWYK, Individually and as  
Personal Representative of the Estate of TRAVIS  
SCOTT WOODWYK, Deceased,

Defendant-Appellee

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UNPUBLISHED  
March 22, 2007

No. 273080  
Barry Circuit Court  
LC No. 05-000485-CK

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiff appeals as of right from a circuit court order denying plaintiff's motion for summary disposition, granting defendant Woodwyk's motion for summary disposition, and entering judgment in favor of defendant Woodwyk.<sup>1</sup> The court determined that plaintiff had a duty to defend and indemnify its insureds (Larry and Cory Wagner) with respect to the shooting death of Travis Woodwyk at the Wagner residence. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The parties submitted stipulated facts, which included a lengthy excerpt of Wagner's testimony in a criminal matter that arose from the events. Sixteen-year-olds Cory Wagner ("Wagner") and Travis Woodwyk ("Woodwyk") were playing video games and eating snacks before the shooting. Wagner testified that after he and Woodwyk ate a snack, Wagner went to

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<sup>1</sup> Defendant Larry Wagner is not participating in this appeal. The term "defendant" is used to refer to defendant Woodwyk only.

his father's bedroom, found the key for a shotgun case, and unlocked it. He removed the shotgun and loaded a bullet in front of Woodwyk to scare him. Wagner closed the gun and pulled back the hammer. He pointed the gun at Woodwyk. During this time, Wagner was talking on the telephone. He held the phone between his head and shoulder. Wagner explained that while the gun was pointed at Woodwyk, "the phone kind of slipped on me and I went to go catch it and that's when I hit the trigger." "[W]hen I went to go and try to catch it and it fell on me, fell to the ground and that's when the gun went off and I went to the ground too." Wagner picked up the phone and told the person he was speaking to that he needed to call 911 and that Woodwyk was dead. Wagner reported the shooting, but initially claimed that Woodwyk shot himself and moved the weapon to make it appear so. Wagner later pleaded guilty of manslaughter caused by a weapon aimed with intent, but without malice, MCL 750.329, and tampering with evidence, MCL 750.483a(6)(b).

Plaintiff's homeowner's policy included the following exclusion:

**Coverage E – Personal Liability and Coverage F- Medical Payments to Others** do not apply to **bodily injury or property damage:**

a. resulting from any intentional or criminal act or omission which is expected or intended by any **insured** to cause any harm. This exclusion applies whether or not any **insured**:

(1) intended or expected the result of his or her act or omission so long as the resulting injury or damage was a natural consequence of the intended act or omission;

\* \* \*

This exclusion applies whether or not such **insured** is actually charged with, or convicted of a crime.

The trial court, relying on *Allstate Ins Co v McCarn, (After Remand)*, 471 Mich 283; 683 NW2d 656 (2004), concluded that the exclusion did not apply because there was no evidence that Wagner intended to pull the trigger.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The proper interpretation of an insurance contract is also reviewed de novo. *McCarn, supra*, p 288.

We agree with plaintiff that *McCarn* is not controlling because of the differences in the language of the exclusion. Nevertheless, the result reached by the trial court was correct.

The exclusion applies to bodily injury "resulting from any intentional or criminal act or omission *which is expected or intended by an insured to cause harm.*" (Emphasis added.) If the insured committed an intentional or criminal act, but the insured did *not* expect or intend to cause harm, then the exclusion does not apply. The proviso in subparagraph (1) coordinates with the

language of the body of the exclusion and addresses instances in which the insured intended or expected to cause harm, but not the specific result that followed his acts. Thus, under the exclusion, if the insured expected or intended that his criminal or intentional act or omission would cause “any harm” and if the injury that resulted was a natural consequence of the intended act or omission, then the exclusion applies, regardless of whether the insured expected or intended the actual “result” of the act or omission.

In this case, there was no evidence that Wagner intended or expected any harm to result from his intentional act of pointing the shotgun; he only intended or expected to scare Woodwyk. Because the exclusion applies only where the injury resulted from a criminal or intentional act or omission that the insured expected or intended to cause harm, the exclusion does not apply in this case. The trial court correctly granted summary disposition in favor of defendant.

Affirmed.

/s/ Michael J. Talbot

/s/ Bill Schuette