

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001764-MR

KENTUCKY FARM BUREAU
MUTUAL INSURANCE COMPANY

APPELLANT

v. APPEAL FROM KNOTT CIRCUIT COURT
HONORABLE KIMBERLY CHILDERS, JUDGE
ACTION NO. 05-CI-00377

KEITH JUSTIN CONLEY;
GREGORY NEWSOME, AS
ADMINISTRATOR FOR THE
ESTATE OF JESSICA NEWSOME;
GREGORY NEWSOME,
INDIVIDUALLY; AND LORETTA
NEWSOME, INDIVIDUALLY

APPELLEES

OPINION
REVERSING

** ** * * * * *

BEFORE: KRAMER, J. LAMBERT, AND MAZE, JUDGES.

KRAMER, JUDGE: This appeal arises from a homeowner's insurance coverage dispute filed in Knott Circuit Court between Kentucky Farm Bureau Mutual

Insurance Company (Farm Bureau) and the above-captioned appellees.

Essentially, the circuit court determined that Farm Bureau was obligated under the policy to provide a legal defense for Keith Justin Conley (“Conley”), and coverage for any judgment that might be entered against Conley, resulting from a wrongful death action filed against him based upon his shooting and killing of Jessica Newsome. For the reasons discussed below, we reverse.

The relevant background of this appeal has been summarized as follows:

In 2006, Keith Justin Conley (“Conley”) was convicted of murdering his girlfriend, Jessica Newsome, who he fatally shot in the home of his father, Keith E. Conley. [Footnote omitted.] Conley and Jessica were living in Keith E. Conley’s home at the time of the shooting. Gregory and Loretta Newsome (“the Newsomes”) brought a wrongful death cause of action against Conley for damages arising from their daughter’s death. At the time of the shooting, Keith E. Conley’s home was insured through a homeowner’s insurance policy issued by Kentucky Farm Bureau. Subject to a reservation of rights, Kentucky Farm Bureau provided a defense to Conley for the Newsomes’ claims against him. Kentucky Farm Bureau also intervened in the action for the purpose of seeking a declaration that the homeowner’s insurance policy issued to Conley’s father did not provide coverage to Conley for the claims arising from Jessica Newsome’s murder.

After Conley’s conviction became final in 2007, [FN] Kentucky Farm Bureau moved the trial court for a ruling on its petition for a declaratory judgment. On June 23, 2011, the trial court ruled that the homeowner’s insurance policy provided coverage for Conley’s acts, and ordered Kentucky Farm Bureau to satisfy the judgment or provide a defense in the claim against Conley. On June 29, Kentucky Farm Bureau filed a

motion under CR 59.05 asking the court to alter or amend its June 23 order.

...

In the supporting memorandum, Kentucky Farm Bureau argued that Conley's intentional act of shooting Jessica Newsome did not meet the definition of "occurrence" as defined (and covered) by the policy.

[FN] *See Conley v. Commonwealth*, 2006–SC–000427–MR, 2007 WL 2404510 (Ky. Aug. 23, 2007).

...

The trial court entered an order on August 30 denying Kentucky Farm Bureau's CR 59.05 motion. The order did not address the reasons for denying the motion[.]

Kentucky Farm Bureau Mutual Insurance Company v. Conley, 456 S.W.3d 814, 816-817 (Ky. 2015).

Thereafter, Farm Bureau appealed.¹

The overarching issue presented in this matter is the interpretation of an insurance policy, a type of contract. Generally speaking, the interpretation of a contract is a matter of law and is reviewed by the Court *de novo*. *McMullin v. McMullin*, 338 S.W.3d 315, 320 (Ky. App. 2011). The argument that Farm Bureau raised before the circuit court regarding the insurance policy at issue (as stated most succinctly in its above-referenced motion for a ruling on its petition for

¹ As further discussed in *Conley*, 456 S.W.3d 814, this Court initially dismissed Farm Bureau's appeal on procedural grounds, but the Kentucky Supreme Court reversed and directed this Court to consider Farm Bureau's appeal on the merits.

declaratory relief) accurately summarized the relevant provisions of the insurance policy. Its argument was, in pertinent part:

The policy of insurance issued to Keith E. Conley clearly provides that the personal liability coverage under that policy is limited to coverage or damages because of a “bodily injury” or “property damage” caused by a “covered occurrence”². Excluded from coverage is “bodily injury” which is expected or intended by one of its insured’s [sic]. This exclusion is found in the policy booklet on page 22, Section II Exclusions, Item I (a). That section indicates that:

“Coverage E, Personal Liability and Coverage F-Medical Payments to Others **do not** apply to BODILY INJURY or PROPERTY DAMAGE: a. which is expected or intended by one or more INSUREDS.”

The circumstances alleged against Keith Justin Conley in the Complaint filed by the Estate of Jessica Newsome and the damages claimed do not fall under the coverage which is provided in the Farm Bureau policy. The

² Before the circuit court and on appeal, the Newsomes have asserted that because Farm Bureau did not specifically argue in any pre-judgment pleading or motion that murder (as defined in KRS 507.020(1)(a), quoted below) does not constitute an “occurrence” under the policy definitions, Farm Bureau is consequently prohibited from denying that murder qualifies for coverage as an “occurrence.”

This point has no merit. We acknowledge that a circuit court’s review in a declaratory action regarding the interpretation of a contract “is limited to the question of interpretation presented. It does not also include the whole universe of unraised questions of law that might touch on the contract.” *Fischer v. Fischer*, 348 S.W.3d 582, 590 (Ky. 2011).

However, Farm Bureau’s argument, noted above, clearly indicated and put the circuit court on notice that an “occurrence” was a defined term under the policy and that its definition does not include what Kentucky has statutorily defined as murder. Indeed, the policy specifies that an “**Occurrence**” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in: a. **‘Bodily injury’**; or b. **‘Property damage’**.”

Furthermore, we see no significant difference between contending on the one hand that only “accidents” are covered by the policy (an argument that the Newsomes contend Farm Bureau did not raise), and, on the other hand, contending that acts resulting in property damage and bodily injury that were “expected or intended by one of the insureds” are *not* covered (an argument that the Newsomes concede Farm Bureau did raise).

circumstances alleged against Keith Justin Conley are included in the “intentional acts exclusion.” Under the KRS³] penal code a person is guilty of murder when:

(a) With intent to cause the death of another person, he causes the death of such person or of a third person; except that in any prosecution a person shall not be guilty under this subsection if he acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant’s situation under the circumstances as the defendant believed them to be. . . .

The case of Edwards v. Commonwealth, 554 S.W.2d 380, 383 (Ky. 1977) indicates,

that the introduction of proof of insanity by a defendant does not place a burden on the Commonwealth to prove him sane; rather, it entitles the defendant to an instruction to the jury that they may find him not guilty by reason of insanity, and thus properly makes the issue of insanity a matter for the jury’s determination.

Keith Justin Conley was charged with and convicted of the murder of Jessica Newsome. At his trial, Mr. Conley introduced evidence pertaining to emotional disturbance and insanity. The jury in the criminal trial found that regardless of the testimony relating to insanity the actions of the defendant in killing Ms. Newsome were not the result of a mental disease or defect and that he was guilty of murder.

Keith Justin Conley has been found guilty of murder and as defined by Kentucky law murder is an intentional act

³ Kentucky Revised Statutes. The provision quoted in Farm Bureau’s argument is KRS 507.020(1)(a).

and as such those actions are not covered under the homeowner's policy of Keith E. Conley.

As to the specifics of why the circuit court ultimately rejected Farm Bureau's argument, the circuit court offered the following explanation in its June 23, 2011 order and judgment:

In the instant matter, [Farm Bureau] desires the definition of 'intent', as used in the Kentucky Penal Code, to apply to the exclusion in the homeowner's policy contract issued by them to Keith E. Conley. The plain reading of the insurance contract does not support the requested construction of the exclusion. In interpreting the contract's terms by assigning language its ordinary meaning, taking into account the drafter's failure to apply a more specific definition of intent *as contained in the Endorsement not applied to the subject policy*, the conviction of Justin Keith Conley for the death of Jessica Newsome does not thereby determine that the fatal injuries suffered by Jessica Newsome were intended or expected by Justin Keith Conley as defined in the homeowner's policy. The policy provides coverage for the insured Keith Justin Conley and [Farm Bureau] is obligated to satisfy judgment and/or provide a defense.

(Emphasis added.)

The words, "as contained in the Endorsement not applied to the subject policy," as italicized above, bear repeating. In its review, the circuit court took notice of—and found dispositive to its review—an endorsement which it acknowledged *was never a part of Keith E. Conley's policy.*⁴ Specifically, the

⁴ In "SECTION III – ENDORSEMENTS," the policy booklet Farm Bureau submitted with Keith E. Conley's Declaration sheet (both of which accompanied Farm Bureau's complaint) states:

When shown in the Declaration, one or more of the endorsements listed in this section will apply to this policy. Some endorsements will not appear in this section and will be attached to the Declaration of this policy. Please consult any endorsement that becomes a part of this policy as they alter the coverage.

The endorsement relied upon by the circuit court, which appeared in the policy booklet, was not listed on Keith E. Conley's declaration sheet. Therefore, by its plain terms, it was not a part of

circuit court determined that the endorsement contained an alternative definition of the word “intent”; and, based upon that alternative definition of intent (which the circuit court apparently believed conflicted with the ordinary meaning of the word “intent”) the circuit court determined that the policy’s use of the word “intent” was ambiguous. As such, it mandated coverage under the circumstances.

In sum, the circuit court manufactured an ambiguity by looking beyond the four corners of the contract. This was impermissible. The rules of contract interpretation dictate that the parties’ intentions are to be discerned only from the four corners of the contract itself. Absent ambiguity, extrinsic evidence should not be considered, and a court is required to interpret the contract terms by assigning language its ordinary meaning. *Baker v. Coombs*, 219 S.W.3d 204, 207 (Ky. App. 2007). Stated differently, because the policy that Keith E. Conley purchased from Farm Bureau did not define the word “intent,” the task before

Keith E. Conley’s policy; no party argued that it was. The endorsement was an option for additional coverage regarding “personal injury” (as opposed to “bodily injury”). In relevant part, it provided:

PERSONAL INJURY

For an additional premium, under Coverage E – Personal Liability, the definition “**bodily injury**” is amended to include personal injury.

“Personal injury” means injury arising out of one or more of the following offenses:

1. False arrest, detention or imprisonment, or malicious prosecution;
2. Libel, slander or defamation of character; or
3. Invasion of privacy, wrongful eviction or wrongful entry.

SECTION II – EXCLUSIONS do not apply to personal injury. Personal injury insurance does not apply to:

- . . .
2. *Injury caused by a violation of a penal law or ordinance committed by or with the knowledge or consent of an “insured.”*

(Emphasis added.) The circuit court apparently seized upon the above-italicized language; understood it to have some bearing upon how “intent” should be defined in Keith E. Conley’s policy; and, based upon that, the circuit court perceived that some form of ambiguity resulted.

circuit court was to (1) define “intent” by its ordinary and plain meaning; and, (2) determine, using that definition, whether the intentional acts exclusion prohibited coverage for Conley’s shooting and killing of Jessica Newsome.

With this in mind, “intent” or “intention” is not ambiguous as used in Keith E. Conley’s policy. It is generally defined as “a determination to act in a certain way.” *See* MERRIAM—WEBSTER’S COLLEGIATE DICTIONARY (11th ed. 2005), page 651. “Intent” is also used in Kentucky’s murder statute, KRS 507.020(1)(a). The statute’s use of “intent” is consistent with the general definition of the word. As described elsewhere in the definitions section of Kentucky’s penal code, a person acts “intentionally” “with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause that result or to engage in that conduct.” KRS 501.020(1). Thus, the drafters of KRS 507.020 commented: “When read with the definition of “intentionally” in KRS 501.020, KRS 507.020(1)(a) designates as murder a homicide that results from conduct of a person whose conscious objective is to cause another’s death.”

Simply put, when the jury in Conley’s criminal trial found him guilty of murder as defined in KRS 507.020(1)(a), it determined beyond a reasonable doubt that Jessica Newsome’s death resulted from Conley’s act of shooting her, and that Conley’s conscious objective in shooting her—his reason for acting in that way—was to cause her death. Therefore, under either the statute or the policy, Jessica Newsome’s death was the result of Conley’s intentional act.

An additional argument the Newsomes⁵ pose in favor of the circuit court's judgment is that Conley's criminal conviction for murder, per KRS 507.020(1)(a), should not preclude a civil jury from reconsidering exactly the same facts and arriving at a different result, namely, that Conley did not intend to kill Jessica. The Newsomes further argue that Farm Bureau's duties to provide coverage should not depend upon Conley's now-final conviction for intentional murder and should instead depend upon the allegations in their complaint and the answer filed below by Conley (*i.e.*, allegations to the effect that Jessica's killing was actually the unintended product of Conley's mental illness).

This argument has already been rejected in prior case law. *See, e.g., Willis v. Hamilton Mut. Ins. Co.*, 614 S.W.2d 251, 252 (Ky. App. 1981) (“[T]he insurer is neither limited nor bound by its insureds’ testimony since the issue [of whether the insured expected or intended to cause bodily injury or property damage] was fully litigated in the assault and battery action and may assert the result of that litigation versus the injured parties and the insured.”); *see also Parsley v. Kentucky Farm Bureau Mut. Ins. Co.*, 32 S.W.3d 103, 105-106 (Ky. App. 2000), holding (in the context of interpreting *precisely the same exclusionary clause at issue in this matter*):

Parsley's argument that Crawford's conduct should be viewed as negligent conduct rather than criminal conduct

⁵ Conley did not file a brief in this matter and the only parties arguing in favor of the circuit court's judgment are the Newsomes, apparently in their capacities as third-party beneficiaries of the insurance policy at issue in this matter. As third-party beneficiaries, the Newsomes have no greater rights under the policy than Conley and they, like Conley, must accept the contract as it was made. *Willis v. Hamilton Mut. Ins. Co.*, 614 S.W.2d 251, 252 (Ky. App. 1981).

overlooks the fact that a jury determined that Crawford was not merely negligent, but that his conduct constituted the crime of complicity to commit assault in the first degree and complicity to commit kidnapping.

. . .

Accordingly, we hold that since the crimes for which Crawford was convicted required a finding of intent, that this finding precludes re-litigation of the issue of Crawford's subjective intent to cause bodily injury within the policy's exclusion.

In light of the foregoing, we REVERSE. The circuit court is directed to enter judgment in favor of Farm Bureau finding that Keith E. Conley's homeowner's insurance policy does not obligate Farm Bureau to either provide a defense for Conley or satisfy any judgment that might be entered against him as a result of the Newsomes' wrongful death action.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marcia L. Wireman
Jackson, Kentucky

BRIEF FOR APPELLEES,
GREGORY NEWSOME, AS
ADMINISTRATOR FOR THE
ESTATE OF JESSICA NEWSOME;
GREGORY NEWSOME,
INDIVIDUALLY, AND LORETTA
NEWSOME, INDIVIDUALLY:

Glenn Martin Hammond
Pikeville, Kentucky