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Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001949-MR

AUTO CLUB PROPERTY-
CASUALTY INSURANCE CO. APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 14-CI-004773

BRENT FOREMAN; KATHLEEN
FOREMAN; LOGAN FOREMAN;
C&M SERVICES OF KENTUCKY
d/b/a PAUL DAVIS RESTORATION;
and AMERICAN FINANCIAL
RESOURCES, INC. APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: COMBS, JONES AND KRAMER, JUDGES.

KRAMER, JUDGE: This appeal concerns the Jefferson Circuit Court's summary determination that an "intentional acts" exclusion in a homeowners' insurance

policy that appellant, Auto Club Property-Casualty Insurance Company (Auto Club), issued to Brent and Kathleen Foreman does not, as a matter of law, preclude coverage for fire damage sustained at the Foremans' home on September 15, 2013. Finding error, we reverse and remand for further proceedings.

FACTUAL AND PROCEDURAL HISTORY

In the early morning hours of September 15, 2013, the home Brent and Kathleen Foreman shared with their minor son, Logan Forman, was damaged by fire. Approximately one month later, investigators with the Louisville Metropolitan Police Department determined that the fire had been intentionally set in the basement; that an accelerant (gasoline) had been used; and that Logan was to blame. Logan was charged with first-degree arson. Brent and Kathleen later submitted an insurance claim to Auto Club for the damages. Auto Club denied their claim, citing the results of the arson investigation and an "intentional acts" exclusion within their policy.[1]

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[1] Brent, Kathleen, and their son, Logan, were at all relevant times considered "insured persons" as the term is defined in the homeowner's policy and as it is used in the policy's "intentional acts" exclusion. The policy also included a "joint obligations" clause, specifically providing:

> The terms of this policy impose joint obligations on all persons defined as ***insured persons***. This means that the responsibilities, acts and failures to act of any person defined as an ***insured person*** will be binding upon any other person defined as an ***insured person***. This does not apply to loss to covered property of an innocent co-insured if the loss arose out of a pattern of domestic violence and abuse, and the perpetrator of the loss is criminally prosecuted for the act causing the loss.

The Foremans do not contest that if the exclusion applies to Logan, it likewise precludes Brent and Kathleen from receiving coverage under the policy. *See also American Hardware Mut. Ins.*

Afterward, Brent and Kathleen filed an action against Auto Club in Jefferson Circuit Court for a declaration of rights under the terms of their policy. Auto Club answered once again denying coverage, but also filed a protective third-party claim against Logan for indemnity in the event it was held liable. Logan then answered Auto Club's third-party complaint, denying the allegations of Auto Club's third-party complaint. He also filed his own action against Auto Club; in relevant part, his petition requested:

> [t]hat the court by declaratory judgment determine the rights and duties of the parties herein with respect to the Homeowner's Policy issued to the Plaintiffs by the Defendants, [Auto Club]. Specifically, that the Court find there to be no operative exclusion contained in the aforementioned Homeowner's Policy as a matter of law.

Additionally, the essential allegations of Logan's petition were as follows:

> 7. Prior to the events on July 15, 2013, the Third Party Defendant was of unsound mind and emotional disturbance as to necessitate hospitalization and mental health treatment for anxiety, paranoia, insane delusions, and suicidal thoughts.
>
> 8. On or about July 15, 2013, the Third Party Defendant was of such unsound mind as to render him incapable of forming an intent to cause a loss as defined under the Homeowner's policy issued by Defendant, Auto Club Property Casualty Insurance Co. ("AAA").

Co. v. Mitchell, 870 S.W.2d 783, 785 (Ky. 1993) (explaining homeowners' insurance policies can be written to negate the collection of insurance by innocent co-insureds.)

> 9. Alternatively and as a matter of fact and law, the Defendant's actions on or about July 15, 2013, could not be reasonably expected to cause the loss complained of by the Plaintiffs in this action.

After a brief period of discovery that included interrogatories and requests for admissions, Brent, Kathleen, and Logan filed a joint motion for summary judgment relating to their respective declaratory actions against Auto Club. The relevant substance of their arguments was as follows:

> [Auto Club] has refused to cover the losses described herein above on the basis of an exclusion found in Part I, Section 9 of the Homeowner's Insurance Policy. The relevant exclusion states:
>
> > We do not insure under Part 1 - Property Insurance Coverages for loss caused directly or indirectly by any of the following, regardless of the cause of the excluded event or damages; other causes of the loss; whether any other cause or event acts concurrently or in any sequence with the excluded event to produce the loss; or whether the loss or event occurs suddenly or gradually, involves isolated or widespread damage or occurs as a result of any combination of these. . . .
> >
> > > 9. An action by or at the direction of an insured person committed with the intent to cause loss or that could reasonably be expected to cause loss. However, this exclusion does not apply to loss to the covered property of an innocent co-insured if the loss (a) arose

> out of a pattern of domestic violence and abuse; and (b) the perpetrator of the loss is criminally prosecuted for the act causing the loss. Payment to the innocent co-insured may be limited to his or her ownership interest in the property as reduced by any payment to a mortgagee or other secured interest. The amount that we pay will not exceed the limit of liability for the covered property.

(Exhibit A, p. 28) (internally referred to as Page 11 of 33). The domestic abuse caveat is inapplicable to this situation and Logan's intent to commit suicide (rather than cause loss) are not in dispute as the Defendant has admitted that "On September 15, 2013, Logan Foreman started a fire in the basement of the residence located at 3504 Coventry Court, Louisville, KY in an attempt to commit suicide." See Plaintiffs' Second Set of Discovery Requests, p. 4, attached as Exhibit D, served on August 25, 2016 and without response as of the date of this Motion.

This case is controlled by James Graham Brown Foundation, Inc. v. St. Paul Fire & Marine Ins. Co., 814 S.W.2d 273 (Ky. 1991), reaffirmed Bituminous Cas. Corp. v. Kenway Contracting, Inc., 240 S.W.3d 633 (Ky. 2007). The rule of law, as provided in Brown Foundation, states "that if injury was not actually and subjectively intended or expected by the insured, coverage is provided even though the action giving rise to the injury itself was intentional and the injury foreseeable. *While the activity which produced the alleged damage may be fully intended, recovery will not be allowed unless the insured intended the resulting damages.*" Id. at 278 (emphasis added).

The record is clear that Logan Foreman was of such unsound mind that he did "not subjectively intend or expect" any resulting loss. In fact, Logan was of such unsound mind that he could not even form such an intent. Logan's statement to the arson investigator illustrates a deeply disturbed young man who was not in control of himself. He states:

> I was asleep and woke up because I think I had a thought of getting pushed around at school. Then I woke up and started thinking of bad things as far as school and x-girlfriend (*sic*). I didn't truly get upset. It was more of pissed and lost of How (*sic*) everything for me is so much different then (*sic*) things use [sic] to be. before (*sic*) I was able to think all I rember (*sic*) were falms (*sic*) coming towards me. Then I finally was able to kinda (*sic*) full (*sic*) wake up and get out of whatever I was in. But it was to (*sic*) late it had been done. The reason I was crying outside was because I finally woke up and everything hit me. I had no Idea (*sic*) what to say nor (*sic*) to think once everything happened.

(Statement of Logan Foreman, Exhibit C, p. 30). He sounds like a young man stuck in a haze. He repeatedly refers to being lost, trying to wake up, and not remembering anything until he saw flames. The statements of Mr. Simms, the arson investigators [sic] report, the juvenile report, and Logan's medical records all reinforce the fact that Logan was simply could [sic] not and did not foresee his actions having any other effect that [sic] to end his life.

. . . .

> And as the record compels a finding that Logan Foreman did not intend harm to anything other than himself, the intentional act exclusion does not apply and the [Foremans] are entitled to coverage under the contract for homeowner's insurance with AAA.

Auto Club responded with several arguments which, for the sake of brevity, we will discuss in the context of our analysis below. Ultimately, the circuit court adopted the reasoning of Brent's, Kathleen's, and Logan's motion and entered summary judgment in their favor. It also concluded that the allegations Logan set forth in his petition for declaratory judgment, as they appear above, further qualified as conclusive evidence (*i.e.*, "judicial admissions"[2]) of Logan's applicable mental state. This appeal followed.

STANDARD OF REVIEW

The standard for reviewing a summary judgment is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Regarding the law applicable to insurance contracts,

[2] A judicial admission "is a formal act by a party in the course of a judicial proceeding which has the effect of waiving or dispensing with the necessity of producing evidence by the opponent and bars a party from disputing a proposition in question." *Nolin Prod. Credit Ass'n v. Canmer Deposit Bank*, 726 S.W.2d 693, 701 (Ky. App. 1986). To be conclusive upon a party, such statements, in the light of all the conditions and circumstances proven, must also not give rise to the probability of error in the party's own testimony. *Moore v. Roberts by and through Roberts*, 684 S.W.2d 276, 277 (Ky. 1982); *see also Nolin Prod.*, 726 S.W.2d at 701.

> [a]s a general rule, interpretation of an insurance contract is a matter of law for the court. While ambiguous terms are to be construed against the drafter and in favor of the insured, we must also give the policy a reasonable interpretation, and there is no requirement that every doubt be resolved against the insurer. Finally, the terms should be interpreted in light of the usage and understanding of the average person.

Stone v. Kentucky Farm Bureau Mut. Ins. Co., 34 S.W.3d 809, 810-11 (Ky. App. 2000) (citations omitted).

ANALYSIS

Auto Club contends the circuit court's summary judgment in favor of the Foremans was entered in error. We agree. What figured prominently into the circuit court's summary judgment analysis was *James Graham Brown Found., Inc. v. St. Paul Fire & Marine Ins. Co.*, 814 S.W.2d 273 (Ky. 1991). The focus of that opinion was upon a uniquely worded *grant of coverage* in an insurance policy, which stated the insured would be indemnified for "all sums which the insured will become legally obligated to pay as damages because of . . . property damage to which this insurance applies, caused by an occurrence." *Id*. at 275. The policy further defined "occurrence" as:

> An accident, including continuous or repeated exposure to conditions, which result in bodily injury or property damage, *neither expected nor intended from the standpoint of the insured*.

Id. (emphasis added).

Interpreting the plain language of the policy's grant of coverage and its definition of "occurrence," the Kentucky Supreme Court determined that the above-italicized language indicated a purely subjective standard. In other words, *absent any express exclusions to the contrary*, *id*. at 278, the insured was entitled to coverage unless the insured specifically and subjectively intended the injury giving rise to the claim "even though the action giving rise to the injury itself was intentional and the injury foreseeable. While the activity which produced the alleged damage may be fully intended, recovery will not be allowed unless the insured intended the resulting damages." *Id*.

Here, the circuit court's understanding of *Brown Foundation* guided its summary disposition of the Foremans' claim. The overarching reason it gave in support of its judgment was its conclusion that because Logan (an *insured*) committed a volitional *action* ("start[ing] a fire in the basement of the residence") but did so with the ultimate intention of ending his own life rather than damaging his home, coverage could not be precluded by the intentional acts exclusion.

However, the circuit court's reasoning would be untenable even if the purely subjective standard at issue in *Brown Foundation* was also the standard of the intentional acts exclusion in this matter. As explained by the highest court of one of our sister states addressing the same logic in the same context:

> While it is true [the insured] acted ultimately with the intent to commit suicide . . . the intent to commit suicide

> by setting fire to property does not negate the existence of the intent to commit intermediate acts necessary to achieve the ultimate objective. The existence of the intent to commit suicide does not negate the existence of the knowledge the property would be damaged or destroyed by the alleged suicide attempt.

Postell v. American Family Mut. Ins. Co., 823 N.W.2d 35, 44 (Iowa 2012) (internal citations, quotation marks and brackets omitted).

That aside, *Brown Foundation* has no application in this matter. Unlike *Brown Foundation*, which dealt with a uniquely-worded *grant of coverage* based entirely upon the *subjective* intentions and expectations of the insured, the issue presented in this matter concerns an *exclusion from coverage* with entirely different language incorporating an *objective* standard. In other words, the circuit court's reliance upon *Brown Foundation* caused it to disregard the plain language of the Foremans' homeowners' insurance policy.

To review, the pertinent language of the "intentional acts" exclusion in this matter is in relevant part as follows:

> ***We*** do not insure under Part I - Property Insurance Coverages for loss caused directly or indirectly by any of the following, regardless of the cause of the excluded event or damage; other causes of the loss; whether any other cause or event acts concurrently or in any sequence with the excluded event to produce the loss; or whether the loss or event occurs suddenly or gradually, involves isolated or widespread damage or occurs as a result of any combination of these.
>
> . . . .

> 9. An action by or at the direction of an ***insured person*** committed with the intent to cause a loss, or that could reasonably be expected to cause loss.

Looking first to the plain meaning of the policy language relating to the intentional acts exclusion, the first clause of the exclusion eliminates policy coverage for an action by or at the direction of an insured person (a) committed with the intent to cause a loss, or (b) that could reasonably be expected to cause a loss. Although the former involves the insured's subjective intent, the latter creates an objective standard.[3] Thus, the latter provision is measured by what an objective, reasonable person would expect to result from an intentional act. Indeed, intentional act exclusions with this type of objective component-- a component based upon *foreseeability*, unlike the grant of coverage discussed in *Brown Foundation*-- are nothing new in Kentucky:

> Although the meaning of the term "intentional act" has not been precisely defined, the exclusion clearly does not require a specific intent to cause the injury suffered. *See Willis* [*v. Hamilton Mut. Ins. Co*., 614 S.W.2d 251, 252 (Ky. App. 1981)] (refusing to follow "third view" that required specific intent); *see also John Hancock Mut. Life Ins. Co. v. Tabb*, 273 Ky. 649, 117 S.W.2d 587 (1938) (provision excluding "homicide" from life

[3] That "what may reasonably be expected" is a phrase denoting an *objective* rather than *subjective* analysis is perhaps best underscored by reference to the so-called "doctrine of reasonable expectations"-- one of the several rules guiding the interpretation of insurance contracts. Under the doctrine of reasonable expectations, courts determine what an insured is entitled to expect from a policy based upon "an objective analysis of separate policy items and the premiums charged for each[,]" rather than the insured's subjective expectations. *See Estate of Swartz v. Metro. Property & Cas. Co.*, 949 S.W.2d 72, 75 (Ky. App. 1997).

> insurance coverage interpreted not to require proof of specific intent to kill). The Kentucky courts have more generally concluded that an intentional act exclusion will be invoked when the injury is a foreseeable or expected consequence of the actor's volitional acts, and not merely fortuitous or accidental. *See, e.g., Woods v. Provident Life & Accident Ins. Co.*, 240 Ky. 398, 42 S.W.2d 499, 501-02 (1931). Consequently, the requisite intention may be proved either by direct evidence of "actual" intent, or it may be "inferred by the nature of the act and the accompanying reasonable foreseeability of harm." *Willis*, 614 S.W.2d at 252 (quoting *Pachucki v. Republic Ins. Co.*, 89 Wis.2d 703, 278 N.W.2d 898, 901 (1979)).

Nationwide Mut. Fire Ins. Co. v. May, 860 F.2d 219, 223 (6th Cir. 1988).

This, in turn, leads to why the circuit court achieved an illogical result. Here, there is actually no dispute that the objective component of the intentional acts exclusion is *satisfied*. As the appellees themselves concede on page thirteen of their collective brief, "It is obvious to this Court and to counsel that lighting a fire in the basement would require some burning the [sic] home in order reach [sic] a second (2nd) floor bedroom. A rational person would, of course, foresee that the fire in the basement would spread to the other parts of the home."

Accordingly, the only way the Foremans could have avoided the application of the intentional acts exclusion as a matter of law (*i.e.*, for purposes of their joint summary judgment motion) would have been through demonstrating that no material evidence of record is inconsistent with the following proposition: *In the morning hours of September 15, 2013, when Logan started the fire in the*

basement of the Foreman residence, Logan was incapable of understanding that throwing a lit match (or whatever fire-starting mechanism he used) on gasoline could start a fire.[4] This is because sanity and soundness of mind are presumed under the law;[5] "lack of capacity" and "insanity" are affirmative defenses;[6] and the limited scope of the insanity defense available in Kentucky, relative to intentional act exclusions, only applies if the actor was unable to understand the physical nature of the consequences of his act. Stated differently, an insured cannot

[4] This was essentially how, in *May*, the Court of Appeals for the Sixth Federal Circuit interpreted and applied the "insanity defense" to the application of a similar intentional acts exclusion found in a homeowners' insurance policy where, as here, an insured burned down the insured premises. The dispositive issue put before the jury was whether Daniel May, a deceased insured with an extensive history of mental illness, knew at the time he burned down the insured premises "that throwing a lit match on gasoline would start a fire," or "whether Daniel would have known the result of igniting gasoline." *May*, 860 F.2d at 226-27. Daniel's estate ultimately prevailed on this issue, and the Court determined the evidence the estate presented was sufficient to *overcome a post-judgment motion from the insurer for judgment notwithstanding the verdict*. It is unnecessary to restate the evidence that the estate produced relating to Daniel's extensive history of mental disturbance (*see id*. at 226-27) because here the issue is merely whether the evidence was sufficient for the *insurer* to overcome a motion for summary judgment from its *insured* in this regard.

[5] *See Revlett v. Revlett*, 274 Ky. 176, 118 S.W.2d 150, 154 (1938).

[6] *See May*, 860 F.2d at 225 (explaining that pleading "insanity" to avoid the application of an intention acts exclusions in a homeowners' insurance policy is a defense) (cited with approval in *Stone v. Kentucky Farm Bureau Mut. Ins. Co.*, 34 S.W.3d 809, 813 (Ky. App. 2000)); *see also* Kentucky Rule of Civil Procedure (CR) 43.01(1) ("The party holding the affirmative of an issue must produce the evidence to prove it."); *see also Edwards v. Commonwealth*, 554 S.W.2d 380, 383 (Ky. 1977), explaining, with respect to the affirmative defense of insanity in the context of criminal proceedings:

> [T]he 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.

> defeat an intentional act exclusion by proof of a mental illness, such as an insane impulse, that merely precluded the actor from controlling his actions or knowing right from wrong . . . [but] an exclusion will be defeated if the actor did not at the time have mind enough to know the nature and quality of his act. . . . [A] person's actions will not be considered intentional if he is unable to comprehend the physical nature of their consequences[.]

May, 860 F.2d at 225 (internal quotes and citations omitted; cited with approval in *Stone v. Kentucky Farm Bureau Mut. Ins. Co.*, 34 S.W.3d 809, 813 (Ky. App. 2000)).

With that said, there is evidence of record capable of supporting that the damage to the Foremans' house, due to the September 15, 2013 fire, resulted from an action by or at the direction of an insured person (a) committed with the intent to cause a loss, or (b) that could reasonably be expected to cause a loss.

Moreover, the nature of Logan's act and other evidence of record could support a reasonable inference that Logan acted with the intent to cause loss, or that loss was a reasonably expected result of his intentional actions. For example, in support of their collective summary judgment motion, Brent, Kathleen and Logan introduced and vouched for the accuracy of two reports from the Louisville Metropolitan Police Department's arson investigation unit relating to the circumstances of the September 15, 2013 fire. The first report, dated October 28, 2013, provides in relevant part:

> On this date, the owner of the involved dwelling, Brent Foreman, along with his son, Logan Foreman, came to the Arson Bureau Offices for follow up interviews. Logan Foreman was advised of his Miranda Rights and elected to speak with the Reporting Investigator. He advised he set fire to the couch in the basement and returned to his bed which is located on the second floor. He stated he is having several problems which have been on-going. Logan provided a written statement which has been added to the investigative file. Refer to the statement for detail. In the statement, Logan eludes to not being fully awake when he set the fire and was thinking about bad things.
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> After the interview, Logan was citation arrested and released to his father.

The second report, dated October 31, 2013, provides in relevant part as follows:

> On this date, the Undersigned Investigator received a phone call from the son of Mr. and Mrs. Foreman, Logan Foreman. Logan advised that he obtained gasoline from the garage earlier in the night and went to the basement. He poured the gasoline on the couch and placed his school books on the couch as well. He then went back to his room which is located on the second floor. Sometime later in the morning he went back to the basement and set the couch on fire. Logan denies setting fire to the office area or pouring gasoline in to the office.

In short, some evidence reflects Logan was *aware* that he *set* a *fire*. He was aware of *how* he set the fire, and *where* he *wanted* to set it. From those circumstances, a jury could reasonably infer: (1) Logan's subjective intent was to end his own life *by* starting a fire in the house which he anticipated would spread

from the basement to his second-floor bedroom; or, at the very least, that (2) from an objective point of view, the ensuing property damage was a reasonably foreseeable consequence of the fire that Logan started; and, that when Logan started the fire, he had enough presence of mind to understand that throwing fire on gasoline would make more fire.

Moreover, what the Foremans adduced in support of their joint summary judgment motion did not compel a judgment in their favor as a matter of law. First, the Foremans produced several records generated from Logan's treatment, for various behavioral issues, at an inpatient and outpatient facility from approximately September 9, 2013, through approximately October 11, 2013. Logan's treatment records, however, do not address whether Logan was incapable of understanding on September 15, 2013, that throwing fire on gasoline could start a larger fire. Indeed, there was apparently no reason for his providers to even address that point during his treatment because, as the record indicates, Logan was not suspected of lighting the fire until October 28, 2013, the date he confessed to authorities that he lit the fire.

Next, the Foremans produced portions of a Jefferson District Court record generated after the Louisville Metropolitan Police cited Logan for first-degree arson due to the September 15, 2013 fire, citing those records as evidence of Logan's mental state at the time that he lit the fire. At most, however, these

records only undermined their summary judgment motion. Due to the posture of this case, we have no reason to delve into whether the act of intentionally lighting an uncontrolled fire in a house and leaving it unattended, in and of itself, qualifies for the application of the inferred intent rule.[7] However, under either the inferred intent rule or equivalent principles of collateral estoppel, an adjudication or conviction for first-degree arson[8]-- a crime that specifically requires the "intent to destroy or damage a building"-- would certainly moot the issue of Logan's subjective intent to destroy or damage his home.[9] *See, e.g., Willis v. Hamilton*

[7] Throughout its brief, Auto Club asks this Court to determine-- and we decline to determine-- whether the so-called "inferred intent rule" should apply under the circumstances. The rule supplies an irrebuttable, legal presumption that an intent to harm accompanies certain intentional and volitional acts, such as sexual molestation, the pointing and shooting of a loaded gun at an individual at point blank range, or the throwing of a punch. *See Nationwide Mut. Fire Ins. Co. v. Pelgen*, 241 S.W.3d 814, 817-18 (Ky. App. 2007) (discussing and applying the rule).

[8] Kentucky Revised Statute (KRS) 513.020 provides in relevant part:

> (1) A person is guilty of arson in the first degree when, with intent to destroy or damage a building, he starts a fire or causes an explosion, and;
>
> (a) The building is inhabited or occupied or the person has reason to believe the building may be inhabited or occupied; or
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> (b) Any other person sustains serious physical injury as a result of the fire or explosion or the firefighting as a result thereof.

[9] There is a privilege of confidentiality afforded to juvenile proceedings, but no rule of law prohibits a juvenile or the juvenile's authorized representatives from waiving that privilege, placing the result of those proceedings at issue in civil litigation, or introducing evidence garnered from those proceedings to prove a claim or affirmative defense. *See, e.g., Jones v. Ernspiker*, No. 2008-CA-001316-MR, 2010 WL 1404420 (Ky. App. April 9, 2010) (former defendant in juvenile proceedings sued others for malicious prosecution, a tort that would have required proof that the juvenile proceedings terminated in his favor) (cited for purposes of illustration, not as persuasive authority). Accordingly, if Logan's charge of first-degree arson culminated in a conviction, adjudication, guilty plea, or admission, the result would be the same for purposes of collateral estoppel or inferred intent. *See, e.g., B.H. v. Commonwealth*, 494 S.W.3d 467, 470 (Ky. 2016) (explaining that while juvenile offenders "do not actually enter

Mut. Ins. Co., 614 S.W.2d 251, 252 (Ky. App. 1981) ("[T]he insurer is neither limited nor bound by its insured's testimony since the issue [of whether the insured expected or intended to cause bodily injury] 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, 106 (Ky. App. 2000), (holding in the context of homeowners' insurance coverage dispute, "that since crimes for which [the insured] was convicted required a finding of intent, that this finding precludes re-litigation of the issue of [the insured's] subjective intent to cause bodily injury within the policy's exclusion.")

We qualify this statement because, despite the circuit court's recital in the preface of its order of summary judgment that Logan was "convicted"[10] for "an arson fire," the disposition of Logan's first-degree arson charge is unclear from the state of the appellate record. Although Brent, Logan, and Kathleen have placed the proceedings in that separate matter at issue by characterizing the result of those proceedings as favorable and introducing substantial portions of the district court's

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guilty pleas . . . they may admit the allegations in the petition, and thereby be bound as an adult would be in entering a guilty plea.")

[10] Absent evidence of the ultimate disposition of that matter, it is equally unclear how the circuit court was able to conclude Logan was "convicted" of "arson fire," as opposed to being adjudicated a status offender. Logan was sixteen years old at the time of the fire; sixteen-year-olds are ordinarily subject to the juvenile justice system (and nothing indicates Logan was tried as an adult); and a juvenile adjudication is an adjudication of a *status*-- not a conviction. *See* KRS 635.040; *see also Manns v. Commonwealth*, 80 S.W.3d 439, 445 (Ky. 2002).

record as evidence of Logan's mental state on September 15, 2013, they have omitted any record or judgment from the district court demonstrating how that matter was ultimately resolved.

Lastly, regarding what the circuit court characterized as Logan's "judicial admissions" regarding his own mental capacity, these had no conclusive effect upon this litigation. They are irrelevant because Logan's mental capacity on *July 15, 2013*, has never been at issue. Moreover, even if Logan's mental capacity on that date was significant, Logan's statements about it, as set forth in his petition, would not qualify as judicial admissions because: (1) A judicial admission is a deliberate, clear, unequivocal statement of a party about a *fact*[11] within that party's peculiar knowledge-- and self-serving statements regarding mental capacity are not *facts*, but *mere legal conclusions*;[12] (2) a judicial admission "is conclusive *against* the party committing it[,]"[13] not dispositive evidence in the admitting party's *favor*;[14] and (3) even if Logan's "admissions" (and the other statements he wrote

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[11] *See Schoenbaechler v. Louisville Taxicab & Transfer Co.*, 328 S.W.2d 514, 515 (Ky. 1959).

[12] *See, e.g.*, BLACK'S LAW DICTIONARY 903 (7th ed. 1999) (defining "legal conclusion" as "[a] statement that expresses a legal duty or result but omits the facts creating or supporting the duty or result.")

[13] *See Moore v. Roberts By and Through Roberts*, 684 S.W.2d 276, 277 (Ky. 1982) (emphasis added; citation omitted).

[14] Logan's declaratory action against Auto Club and his act of joining his parents' motion for summary judgment motion against Auto Club for coverage demonstrate that avoiding the intentional acts exclusion of the homeowners' insurance policy and assisting his parents in securing coverage is *consistent* with his interests.

regarding his mental state at any relevant time) could be elevated to the evidentiary status of *testimony* and were uncontradicted, they would remain less than conclusive of the issue because Logan is an interested party in this litigation.[15]

CONCLUSION

In light of the foregoing, the Jefferson Circuit Court's summary judgment in favor of the Foremans was entered in error. Accordingly, we REVERSE and REMAND this matter for further proceedings not inconsistent with this opinion.

JONES, JUDGE, CONCURS.

COMBS, JUDGE, DISSENTS AND FILES A SEPARATE OPINION.

COMBS, JUDGE DISSENTING: I respectfully dissent from the majority opinion despite the thoroughness of its reasoning. I can find no error in the sound analysis of the circuit court and its reliance on the precedent of *James Graham Brown Foundation, Inc. v. St. Paul Fire and Marine Ins. Co.*, 814 S.W.2d

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[15] *See Grider Hill Dock, Inc. v. Sloan*, 448 S.W.2d 373, 374 (Ky. 1969) (internal quotation marks and citation omitted), explaining:

> The general rule in respect to the weight to be accorded uncontradicted testimony is: If the witness is disinterested, and in no way discredited by other evidence, and the testimony is as to a fact not improbable or in conflict with other evidence, and is within his own knowledge, such fact may be taken as conclusive. But such rule does not necessarily apply, if the uncontradicted evidence is given by interested witnesses. . . . [A] fact finder is not required to accept even the uncontradicted evidence of an interested witness[.]

273 (Ky. 1991). Therefore, I would affirm entry of summary judgment in this case.

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