Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **29th day of June, 2022** are as follows:

BY Griffin, J.:

2021-CC-01820 *ALI KAZAN AND EBONY MEDLIN INDIVIDUALLY AND ON BEHALF OF THEIR DAUGHTER LIA KAZAN, DECEASED VS. RED LION HOTELS CORPORATION, ET AL. (Parish of Rapides)*

REVERSED AND RENDERED. SEE OPINION.

Retired Judge Robert L. Lobrano appointed Justice ad hoc, sitting for Crichton, J., recused in case number 2021-CC-01820 only.

Weimer, C.J., concurs in the result and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2021-CC-01820

ALI KAZAN AND EBONY MEDLIN INDIVIDUALLY AND ON BEHALF OF THEIR DAUGHTER LIA KAZAN, DECEASED

VS.

RED LION HOTELS CORPORATION, ET AL.

On Supervisory Writ to the 9th Judicial District Court, Parish of Rapides

GRIFFIN, J.[*]

We granted this writ to determine whether an insurance policy, by its own terms, excludes coverage for damages arising from a kidnapping resulting in death. Adhering to the provisions of our Civil Code for the interpretation of contracts, we find the clear and unambiguous language of the relevant policy exclusion bars coverage.

FACTS AND PROCEDURAL HISTORY

Lia Kazan ("Lia") visited an Alexandria motel to meet some friends. During the course of her visit, she went went to the motel parking lot to retrieve something from her vehicle. Anthony Murray, another motel guest, exited his room and approached the vehicle with Lia inside. Given the positioning of the motel's video surveillance system, the entirety of subsequent events is not visible on camera. Audio from the camera footage records Lia screaming "stop," "no," and calling for help accompanied by repeated honking of the vehicle's horn. Murray then starts the ignition and, with Lia in the passenger seat, reverses out of the parking lot onto the service road. The vehicle was later found submerged in Lake Dubuisson – the bodies

[*] Retired Judge Robert L. Lobrano, appointed Justice ad hoc, sitting for Justice Scott J. Crichton.

of Murray and Lia were recovered in the water. Lia's death was classified as a homicidal drowning.

Ali Kazan and Ebony Medlin filed suit, individually, and on behalf of their daughter, Lia (collectively "Plaintiffs") against several parties, including the motel's owner, Vitthal, LLC, and its insurer, Great Lakes Insurance Company SE ("Great Lakes"), seeking damages for Lia's kidnapping and death. In response, Great Lakes filed a petition for declaratory judgment averring it has no obligation under the operable commercial general liability policy ("the CGL Policy") to defend or indemnify the other defendants.[1]

Great Lakes moved for summary judgment on its petition arguing the CGL Policy contains an exclusion – specifically defining "assault," "battery," and "physical altercation" – which bars coverage for Lia's kidnapping and death. Plaintiffs opposed arguing Great Lakes failed to meet its evidentiary burden to show that Murray's conduct fell within the definitions of the exclusion. Plaintiffs further argued that, pursuant to this Court's decision in *Ledbetter v. Concord General Corp.*, 95-0809 (La. 1/6/96), 665 So.2d 1166, the language of the CGL Policy exclusion should not bar coverage because it does not unambiguously exclude kidnapping. The trial court denied Great Lakes' motion and the court of appeal denied writs.

Great Lakes' writ application to this Court followed, which we granted. *Kazan v. Red Lion Hotels Corporation*, 21-1820 (La. 2/22/22), 333 So.3d 440.

DISCUSSION

The issue before this Court is whether Great Lakes is entitled to summary judgment based on the language of the CGL Policy exclusion. Appellate courts review the grant or denial of a motion for summary judgment *de novo* using the same criteria as trial courts. *Bernard v. Ellis*, 11-2377, p. 10 (La. 7/2/12), 111 So.3d 995,

[1] Great Lakes also requested reimbursement for previously advanced costs and expenses.

1002. Summary judgment is appropriate when there is no genuine issue of material fact that the provisions of an insurance policy do not afford coverage. *Id*. Whether an insurance policy clearly and unambiguously excludes coverage is a question of law decided from the four corners of the policy. *Baack v. McIntosh*, 20-1054, p. 4 (La. 6/30/21), 333 So.3d 1206, 1211.

An insurance policy is a contract between the parties and should be construed using the general rules for the interpretation of contracts set forth in our Civil Code. *Sims v. Mulhearn Funeral Home, Inc.*, 07-0054, p. 7 (La. 5/22/07), 956 So.2d 583, 590. Interpretation of an insurance policy is the determination of the common intent of the parties – this analysis starts by examining the words of the policy itself. *Id*. (citing La. C.C. arts. 2045 and 2046). Words and phrases in an insurance policy must be given their generally prevailing meaning unless they are words of art or have acquired a technical meaning. *Id*., 07-0554, p. 8, 956 So.2d at 589 (citing La. C.C. art. 2047). When the words of an insurance policy are clear and explicit and do not lead to absurd consequences, courts must enforce the language as written. *Id*., 07-0054, p. 8, 956 So.2d at 589 (citing La. C.C. art. 2046). Courts lack the authority to alter the terms of an insurance policy under the guise of interpretation and should not create an ambiguity where none exists. *Id*., 07-0554, pp. 8-9, 956 So.2d at 589. An insurance policy is construed against an insurer and in favor of coverage only when an ambiguity remains after applying the aforementioned general rules for the interpretation of contracts. *Id*., 07-0054, p. 9, 956 So.2d at 590 (further observing that for strict construction to apply, an ambiguous provision must be susceptible to two or more reasonable alternative interpretations); *Edwards v. Daugherty*, 03-2103, p. 12 (La. 10/1/04), 883 So.2d 932, 941. The language of an insurance policy may be general without being ambiguous. *Ledbetter*, 95-0895, p. 6, 665 So.2d at 1170 (citing *United National Ins. Co. v. Waterfront New York Realty Corp.*, 994 F.2d 105,

108 (2d Cir. 1993)). Against this analytical framework, we turn to the policy at issue.

The CGL Policy exclusion, in relevant part, provides: "This insurance does not apply to 'bodily injury,' property damage,' or 'personal and advertising injury' arising out of an 'assault,' 'battery,' or 'physical altercation.'" These terms are defined as follows:

> "Assault" means any attempt of [sic] threat to inflict injury on another including any conduct that would reasonably place another in apprehension of such injury.
>
> "Battery" means the intentional or reckless physical contact with or any use of force against a person without his or her consent that entails some injury or offensive touching whether or not the actual injury inflicted is intended or expected.
>
> "Physical altercation" means a dispute between individual [sic] in which one or more persons sustain bodily injury arising out of the dispute.

Giving the words of the "physical altercation" definition their plain meaning, we find the CGL Policy exclusion applicable to the facts at hand.

It is undisputed that Lia was taken against her will.[2] Plaintiffs concede this is proven by the audio evidence. A "dispute" is a "verbal controversy" or "quarrel."[3] Similarly, a "quarrel" is "a usually verbal conflict between antagonists." *See* "dispute" and "quarrel," Merriam-Webster Online Dictionary 2022 *available at* http://www.merriam-webster.com. Lia is clearly overheard to be in a "dispute" with Murray wherein she is taken against her will and ultimately "sustain[s] bodily injury" in her death by drowning.[4]

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[2] Despite denying summary judgment, the trial court observed that the kidnapping "was definitely confrontational."

[3] "Dictionaries are a valuable source for determining the common and approved usage of words." *Gregor v. Argenot Great Cent. Ins. Co.*, 02-1138, p. 7 (La. 5/20/03), 851 So.2d 959, 964 (internal quotation omitted); *Henry v. South Louisiana Sugars Co-op., Inc.*, 06-2764, p. 7 (La. 5/22/07), 957 So.2d 1275, 1279 (using dictionary definition for ascertaining the ordinary meaning of words in a commercial general liability policy).

[4] Plaintiffs argue that the descriptive "physical" preceding "altercation" necessarily implies the "dispute" must involve contact with the body, i.e., damages arising from a "physical altercation"

The facts of this case are undoubtedly tragic. Nonetheless, absent a conflict with statutory provisions or public policy, insurers are entitled to limit their liability by imposing reasonable conditions upon the policy obligations they contractually assume. *Bernard*, 11-2377, pp. 9-10, 111 So.3d at 1002. That is what Great Lakes did in the CGL Policy at issue here.

Ledbetter, aside from relying on the well-settled rules for the interpretation of contracts, has no unique application beyond its own facts. The policy at issue therein excluded "claims arising out of Assault and Battery" without further definition of those terms. *Ledbetter*, 95-0809, p. 5, 665 So.2d at 1169. In the absence of specific policy definitions, this Court reviewed the relevant criminal statutes and concluded the policy was ambiguous as applied to damages arising from kidnapping thus coverage was not barred. *Id*., 95-0809, p. 7, 665 So.2d at 1170-71. The result reached in *Ledbetter* does not alter the established jurisprudence that courts must always examine the terms of the insurance policy at issue to determine if coverage exists. *See Sims*, 07-0554, pp. 7-9, 956 So.2d at 589-90. Nor does *Ledbetter* mandate the use of a specific exclusion for kidnapping provided the words of a policy – even if stated in general terms – are otherwise sufficient to unambiguously bar coverage for such conduct. 95-0809, p. 6, 665 So.2d at 1170 (citing *United National Ins. Co.*, 994 F.2d at 108).

DECREE

For the foregoing reasons, we find that Great Lakes is entitled to summary judgment on the basis of the clear and unambiguous language of the CGL Policy exclusion. Accordingly, the judgment of the trial court is reversed and summary judgment is rendered in favor of Great Lakes. Great Lakes has no obligation under the CGL Policy to defend or indemnify the named defendants in this lawsuit; Great

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or "dispute" must arise from some type of physical contact. We find this reading unpersuasive. The definition does not qualify whether the "dispute" must be physical or verbal, merely that an individual "sustain[s] bodily injury arising out of the dispute."

Lakes may withdraw from the defense of Vitthal, LLC; and Great Lakes shall be reimbursed by Vitthal, LLC for all previously advanced costs and expenses in defense of this lawsuit.

REVERSED AND RENDERED

SUPREME COURT OF LOUISIANA

No. 2021-CC-01820

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WEIMER, C.J., concurring.

I agree with the result in this case, finding the assault and battery exclusion in Great Lakes' CGL policy excludes coverage for the kidnapping and death. However, I would overrule this court's opinion in **Ledbetter v. Concord General Corp.**, 95-0809 (La. 1/6/96), 665 So.2d 1166, rather than factually distinguish this case.

I agree with Justice Lemmon's dissent in **Ledbetter** that the insurance policy's assault and battery exclusion should be applied to plaintiff's claims arising out of a kidnapping. As Justice Lemmon aptly explained:

> The "assault & battery exclusion," added by endorsement to this comprehensive general liability policy issued to a motel operator, was clearly intended to exclude claims arising out of an attack on a motel patron by the motel operator or his employees, or by other patrons. Such an attack occurred in this case, and the motel operator was cast in judgment for the damages arising out of the attack because of his negligence in installing or failing to repair a defective lock. That liability would have been covered by the insurance policy but for the exclusion which was intended to exclude claims arising out of such an assaultive attack. **I see no reason to differentiate between the claim for the rape in the assaultive attack and the claim for the kidnapping in the course of the same attack, both of which were accomplished by the intentional placing of the victim in reasonable apprehension of offensive contact and by the non-consensual contact**. [Emphasis added.]

Ledbetter, 665 So.2d at 1172 (Lemmon, J., dissenting).

Because I agree with this reasoning, I believe allowing **Ledbetter** to remain good law serves no useful purpose and continues the risk that courts will apply its holding too restrictively. Consequently, I would over-rule **Ledbetter**. I respectfully concur in the majority opinion.