

STATE OF MICHIGAN
COURT OF APPEALS

AUTO CLUB INSURANCE COMPANY,

Plaintiff-Appellee,

v

JAMES PETZ, Personal Representative
of the ESTATE OF STEPHEN PETZ,

Defendant-Appellant,

and

ROBERT J. MARKJA,

Defendant.

UNPUBLISHED

December 18, 2003

No. 242933

Mecosta Circuit Court

LC No. 02-014962-CZ

Before: Fitzgerald, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant Estate appeals as of right from an order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) in this declaratory judgment action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Stephen Petz died of cardiac arrest brought on by alcohol poisoning after taking part in a drinking game while a pledge at an unauthorized fraternity. The "big brothers" at the fraternity were supposed to be watching out for the pledges. When Petz passed out, defendant Markja and others carried him to an upstairs room and left him unattended. The next morning, they put Petz in the shower and then administered CPR when they could not revive him. Fraternity members argued about whether to call 911 and concocted a story about Petz coming to the fraternity house from a dormitory the previous evening after he was already intoxicated. Ultimately, after other members put Petz' clothes on, Markja took Petz to the hospital in his car. He died at the hospital.

Markja subsequently pleaded guilty to a charge of furnishing alcohol to a minor causing death. The Estate filed a complaint against Markja and others for wrongful death. Plaintiff Auto Club, which provided homeowner's insurance to Markja's parents, brought this declaratory judgment action, seeking a determination that the criminal acts exclusion in the policy exempted

it from having to defend and indemnify. The trial court concluded that the death “resulted from” the furnishing of alcohol to Petz, and that the exclusion, which barred coverage for injuries resulting from a criminal act or omission, therefore applied.

Markja was sued, in part, for placing Petz in additional peril on the morning after Markja illegally provided him with alcohol. Since his actions on the morning after were not criminal, the Estate argues that the allegations in the complaint come within the policy’s coverage. This is, in essence, a claim of dual or concurrent causation. Plaintiff argues that one cause of the decedent’s death was uninsured (the criminal act of furnishing alcohol to a minor), while another cause was insured (the failure to promptly seek medical aid when the decedent’s apparent condition required it). However, in *Vanguard Ins Co v Clarke*, 438 Mich 463, 465; 475 NW2d 48 (1991), the Supreme Court declined to accept the theory of dual or concurrent causation in determining insurance issues where the exclusion, as the one here, was unambiguous. There, it was alleged that death resulted from two causes—first, carbon monoxide poisoning resulting from the operation of a motor vehicle and, second, the negligent closing of the garage door. The homeowner’s policy excluded coverage for injuries arising out of the use or operation of an automobile. Finding that “the fumes produced by the operation of an automobile, and not the garage door, comprised the death-producing instrumentality,” the Court held that the exclusion applied. *Id.*, p 473. See also *United States Fidelity and Guaranty Co v Citizens Ins Co of America*, 201 Mich App 491; 506 NW2d 527 (1993).

Here the alcohol and resulting cardiac arrest were the cause of death. Just as the deadly fumes would not have resulted in death if the garage door had been left open, the alcohol poisoning might not have resulted in death if Petz had received timely medical care. However, the death-producing instrumentality remains the alcohol poisoning. Thus, based on *Vanguard*, plaintiff is entitled to rely on the unambiguous exclusion where the death caused by alcohol poisoning resulted from a criminal act of furnishing alcohol to a minor. Summary disposition was properly granted.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Janet T. Neff
/s/ Helene N. White