

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State Farm Mutual Automobile Insurance Company,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	12AP-200
	:	(C.P.C. No. 10CVH-08-12271)
Rebecca K. Gourley et al.,	:	
	:	(REGULAR CALENDAR)
Defendants-Appellees,	:	
	:	
Nikkie L. Jacobs,	:	
	:	
Defendant-Appellant.	:	
	:	

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D E C I S I O N

Rendered on October 23, 2012

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*Subashi, Wildermuth & Dinkler, Nicholas E. Subashi, and Anne P. Keeton, for plaintiff-appellee.*

*Scott Elliot Smith, LPA, and Scott Elliot Smith, for defendant-appellant.*

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APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Nikkie L. Jacobs ("Jacobs"), appeals the judgment of the Franklin County Court of Common Pleas, which granted summary judgment in favor of State Farm Mutual Automobile Insurance Company ("State Farm") on State Farm's declaratory judgment action. For the following reasons, we affirm the trial court's judgment.

## I. BACKGROUND

{¶ 2} On June 2, 2009, Rebecca K. Gourley ("Gourley") was 19 years old and 28 weeks pregnant with Jarrick Davidson's ("Davidson") child. Gourley went to Davidson's apartment, where she saw him with Jacobs, a woman with whom Davidson had recently begun a relationship. Gourley was upset about the relationship and began arguing with Davidson. The argument culminated in Gourley hitting Davidson. When Jacobs tried to leave the area, Gourley punched her in the face, bruising her left eye. Davidson called the police, but neither he nor Jacobs filed charges against Gourley.

{¶ 3} Two days later, on June 4, 2009, Gourley drove to Davidson's apartment around 7:30 p.m. to return some clothing he had purchased for the baby. When Gourley arrived, she observed Davidson and Jacobs leave together in a car driven by Davidson. According to Gourley, seeing Davidson and Jacobs together angered her, so she followed them in her car as they traveled southbound on Hilliard-Rome Road. Gourley surmised that Davidson saw her following him because he began speeding in an effort to elude her. Gourley accelerated to keep up with him. After catching up to Davidson, she intentionally hit his car from behind. According to Gourley, she then "blacked out" because she was "angry." (Rebecca Gourley Apr. 19, 2011 deposition 28, hereinafter "Gourley Depo. \_\_\_.") Her car again struck Davidson's car, which spun out of control into oncoming traffic. Constance Turner ("Turner"), driving northbound on Hilliard-Rome Road with her passenger, Rahkee Young ("Young"), struck Davidson's car. All three vehicles sustained serious damage; Gourley, Turner, Jacobs, and Young suffered bodily injuries. Following plea negotiations, Gourley pled no contest to four counts of felonious assault. She was subsequently convicted and served a ten and one-half month prison term.

{¶ 4} At the time of the collision, Gourley was insured under an automobile policy with State Farm. As pertinent here, State Farm's policy provides coverage when "an insured becomes legally liable to pay because of: a. bodily injury to others, and b. damage to or destruction of property including loss of its use, *caused by accident* resulting from the ownership, maintenance or use of your car." (Emphasis added and original emphasis deleted).

{¶ 5} State Farm filed a declaratory judgment action seeking a determination of its obligations pursuant to the policy. State Farm named as defendants Gourley,

Davidson, Jacobs, Turner, Young, and Tammy Jones ("Jones"), the owner of the car Davidson was driving. State Farm requested that the court declare that it (1) owed no liability coverage to Gourley, and (2) owed no duty to defend or indemnify Gourley against any claims filed against her.

{¶ 6} On May 26, 2011, State Farm filed a motion for summary judgment, asserting that no genuine issues of material fact remained to be litigated and that it was entitled to judgment as a matter of law. Specifically, State Farm argued that Gourley acted intentionally when she hit Davidson's car and that Gourley's policy only provided coverage for bodily injury and property damage caused by an "accident," not intentional conduct.

{¶ 7} On December 6, 2011, the trial court filed a journal entry granting in part and denying in part State Farm's motion for summary judgment. Specifically, the court granted summary judgment in favor of State Farm and against Gourley, Davidson, Jacobs, and Jones, but denied summary judgment as to Turner. On March 1, 2012, the trial court filed a "Final Judgment" that dismissed a pending cross-claim filed by Jones against Gourley, averred that all other claims filed in the action had previously been dismissed, including State Farm's declaratory judgment claims against Turner and Young, and confirmed its grant of summary judgment in favor of State Farm as to Gourley, Davidson, Jacobs, and Jones.

## **II. ASSIGNMENTS OF ERROR**

{¶ 8} Jacobs subsequently filed this appeal, assigning the following errors:

I. The court erred in Granting Plaintiff's Motion for Summary Judgment against Defendant Jacobs.

II. The court erred in Denying Defendant Jacobs[] Motion for Summary Judgment.

III. The court erred in Granting Plaintiff's Motion for Default Judgment against Defendant Davidson pursuant to Plaintiff's declaratory judgment action.

IV. The court erred in Granting Plaintiff's Motion to Exclude Expert Witnesses.

V. The court erred in Denying Defendant Nikkie Jacobs[] Motion to Exclude Lay and Expert Witnesses of the Plaintiff.

**VI. The court erred in Denying Defendant Jacobs['] Motion to Compel Discovery.**

**VII. The court erred in the interpretation of the State Farm Mutual Automobile Insurance Company policy in support of granting Plaintiff's Motion for Summary Judgment as to coverage.**

**VIII. The court erred in interpreting policy language of the State Farm Mutual Automobile Insurance Company policy in support of the Order Granting Plaintiff's Motion for Summary Judgment.**

**IX. The court erred in denying insurance coverage under the State Farm Mutual Automobile Insurance Company to Defendant Jacobs, as a matter of law.**

**X. The court erred in ruling Defendant Gourley "blacked out" based upon her anger and whatever trauma she experienced after the first contact with Davidson's car in an automobile collision, as a matter of law.**

**XI. The court erred in admitting the Traffic Crash Report in its entirety and concluding same was accurate, as a matter of law.**

**XII. The court erred in admitting/not striking Deputy Sheriff Cox['s] hearsay Affidavit.**

**XIII. The court erred in finding Defendant Gourley "was in possession of her faculties to operate an automobile for some distance after the initial contact with her motor vehicle," as a matter of law.**

**XIV. The court erred in determining Defendant Gourley's anger did not colorably rise to the level of instability required to demonstrate the car crash was an "accident", as a matter of law.**

**XV. The court erred in considering as a factor Granting Plaintiff's Motion for Summary Judgment that two days prior to the automobile collision Defendant Gourley "intentionally punched Defendant Jacobs after seeing her with Defendant Davidson" as a basis in Granting the Motion for Summary Judgment, as a matter of law.**

XVI. The court erred that Defendant Gourley intended to harm any occupant of any vehicle involved in the collision in support of the court's Order Granting Plaintiff's Motion for Summary Judgment, as a matter of law.

XVII. The court erred in finding that even though Defendant Gourley "blacked out" after the initial contact with Defendant Davidson['s] vehicle, she still possessed the requisite intent to cause additional automobile accidents, as a matter of law.

XVIII. The court erred in finding relevant to Granting Plaintiff's Motion for Summary Judgment Defendant Gourley was nineteen (19) years old, twenty[-]eight (28) weeks pregnant with Defendant Davidson's child at the time of the collision on June 2, 2009 [sic], as a matter of law.

XIX. The court erred in finding Defendant Gourley intended injury to the occupants of any Davidson's vehicle involved in the collisions but not Turner, as a matter of law.

XX. The court erred in finding, that Defendant Gourley had the prerequisite intent to cause collisions after it was undisputed Defendant Gourley blacked out after the initial automobile accident "bump" that did not produce injuries to any of the parties, as a matter of law.

XXI. The court erred in Denying Defendant Jacobs['] Civ.R. 56(F) Motion.

XXII. The court erred in Denying Defendant Nikkie Jacobs['] Motion to File Supplemental Memorandum in Support of Defendant Jacobs['] Motion for Summary Judgment.

XXIII. The court erred in Granting "Defendant Nikkie Jacobs Motion for IME" inasmuch as Defendant Jacobs did not move for an IME.

XIV. The court erred in Denying Defendant's Motion to Compel as Moot.

### **III. DISCUSSION**

#### **A. First, Seventh, Eighth, Ninth, Fifteenth, Sixteenth, Eighteenth, Nineteenth, and Twentieth Assignments of Error**

{¶ 9} Jacobs' first, seventh, eighth, ninth, fifteenth, sixteenth, eighteenth, nineteenth, and twentieth assignments of error are interrelated and we will address them

jointly. In these assignments of error, Jacobs contends the trial court erred in granting State Farm's motion for summary judgment. Specifically, Jacobs claims that the injuries she sustained in the collision resulted from an "accident" covered under the provisions of Gourley's State Farm policy. According to Jacobs, State Farm offered no admissible Civ.R. 56 evidence establishing that Gourley intended to harm Jacobs when she intentionally struck Davidson's car. Jacobs further contends that the doctrine of inferred intent does not apply to this case because (1) the State Farm policy does not contain an intentional acts exclusion, and (2) Gourley's intentional act of hitting Davidson's car was not intrinsically tied to Jacobs' injuries. Therefore, Jacobs argues, Gourley was entitled to coverage under her State Farm policy as a matter of law, and the trial court erred in granting summary judgment for State Farm.

{¶ 10} An appellate court reviews a summary judgment disposition independently and without deference to the trial court's determination. *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App.3d 704, 711 (4th Dist.1993). In conducting this review, an appellate court applies the same standard employed by the trial court. *Maust v. Bank One Columbus, N.A.*, 83 Ohio App.3d 103, 107 (10th Dist.1992). Accordingly, an appellate court "review[s] the same evidentiary materials that were properly before the trial court at the time it ruled on the summary judgment motion." *Am. Energy Servs., Inc. v. Lekan*, 75 Ohio App.3d 205, 208 (5th Dist.1992). Proper evidentiary materials include only timely filed "pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact." Civ.R. 56(C).

{¶ 11} Pursuant to Civ.R. 56(C), summary judgment is proper only when the evidence demonstrates that (1) no genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) reviewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that being adverse to the non-moving party. *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997). A court is not permitted to weigh evidence or choose among reasonable inferences; rather, the court must evaluate evidence, taking all permissible inferences and resolving questions of credibility in favor of the non-moving party. *Jacobs v. Racevskis*, 105 Ohio App.3d 1, 7 (2d Dist.1995), citing *Dupler v. Mansfield Journal Co., Inc.*, 64 Ohio St.2d 116, 121 (1980).

{¶ 12} Courts generally interpret insurance policies in accordance with the same rules as other types of contracts. *Hybud Equip. Corp. v. Sphere Drake Ins. Co.*, 64 Ohio St.3d 657, 665 (1992). When provisions of an insurance policy are reasonably susceptible to more than one interpretation, we must construe them strictly against the insurer. *Faruque v. Provident Life & Acc. Ins. Co.*, 31 Ohio St.3d 34, 38 (1987), citing *Buckeye Union Ins. Co. v. Price*, 39 Ohio St.2d 95 (1974), syllabus. Under such circumstances, we must adopt any reasonable construction that results in coverage for the insured. *Emps. Reinsurance Corp. v. Worthington Custom Plastics, Inc.*, 109 Ohio App.3d 550 (10th Dist.1996).

{¶ 13} However, if the policy's terms are clear and unambiguous, the interpretation of the policy is a matter of law. *Spears v. Spears*, 10th Dist. No. 06AP-705, 2006-Ohio-6747, ¶ 10. In determining whether ambiguities or uncertainties exist, we will give words and phrases their plain and ordinary meaning, absent specific contractual definitions. *Hedmond v. Admiral Ins. Co.*, 10th Dist. No. 02AP-910, 2003-Ohio-4138, ¶ 33. We must determine coverage based on a reasonable construction of the document in conformity with the intention of the parties as gathered from the ordinary and commonly understood meaning of the language actually employed. *Cincinnati Ins. Co. v. Am. Line Builders Apprenticeship Training Program*, 93 Ohio App.3d 392, 395 (2d Dist.1994).

{¶ 14} Here, the policy at issue provides, in pertinent part, that State Farm will "pay damages which an insured becomes legally liable to pay because of \* \* \* bodily injury to others \* \* \* caused by accident." (Emphasis deleted.) The policy does not define "accident," nor does it contain an express exclusion for "intentional acts." Accordingly, the issue resolves to whether Jacobs' injuries resulted from an "accident" under Gourley's State Farm policy.

{¶ 15} When an insurance policy does not define a term, we must give the term its ordinary meaning. *Haimbaugh v. Grange Mut. Cas. Co.*, 10th Dist. No. 07AP-676, 2008-Ohio-4001, ¶ 30. "The ordinary meaning of the term "accident" in an insurance policy refers to "unintended" or "unexpected" happenings." *Id.*, quoting *Morner v. Giuliano*, 167 Ohio App.3d 785, 2006-Ohio-2943, ¶ 25 (12th Dist.). Moreover, the Supreme Court of Ohio has stated that the term "'occurrence'" when defined as "'an accident'" is

"intended to mean just that[—]an unexpected, unforeseeable event." *Randolf v. Grange Mut. Cas. Co.*, 57 Ohio St.2d 25, 29 (1979).

{¶ 16} With the foregoing policy language and definition of "accident" in mind, we turn now to the undisputed facts garnered from the Civ.R. 56 evidence contained in the record.

{¶ 17} In April 2010, Gourley submitted to an Examination Under Oath ("EUO"). During the EUO, Gourley admitted that she rear-ended Davidson's car intentionally because she was "upset" and "angry" after seeing Davidson with Jacobs. EUO at 16-17. She acknowledged that intentionally hitting a moving car from behind could cause that car to travel left of center, travel to the right or run off the road. EUO at 21. She further averred that at the time she intentionally struck Davidson's car, she did not consider the possibility of harming other vehicles or persons, as she was "just mad" and "just wanted to get [Davidson's] attention." EUO at 23.

{¶ 18} At her deposition, Gourley averred that she did not know how fast she and Davidson were traveling at the moment she first struck Davidson's car; she admitted, however, that she was speeding and must have been traveling faster than Davidson because she caught up with him. She confirmed her EUO testimony that she intentionally struck Davidson's vehicle from behind. She acknowledged that she told the police she hit Davidson's car "on purpose" because Davidson "had cheated on me, and I was hurt." (Gourley Depo. 24.) Gourley stated that she had no recollection of hitting Davidson's car more than once, having "blacked out" after the initial impact. (Gourley Depo. 27.) When asked why she "black[ed] out," Gourley responded, "[b]ecause I was mad. I don't know." (Gourley Depo. 27.) Gourley testified that although she intended to hit Davidson's car she did not intend to injure anyone. She further stated that she did not think about the potential consequences of intentionally rear-ending another vehicle at a high rate of speed because she "didn't care." (Gourley Depo. 39.)

{¶ 19} In her deposition, Jacobs testified that traffic on Hilliard-Rome Road was "congested" at the time of the incident. (Nikkie Jacobs deposition 21, hereinafter "Jacobs Depo. \_\_\_\_.") She stated that Gourley rear-ended Davidson's car three times, with the third impact causing Davidson to lose control of the car and be "T-boned" by an oncoming vehicle. (Jacobs Depo. 11.)



{¶ 20} Turner testified by deposition that she was driving northbound on Hilliard-Rome Road. When she stopped to make a left turn, she observed Gourley following Davidson's car for a short distance and then twice collide with the back of Davidson's car. According to Turner, only seconds elapsed between the first and second impacts. Turner testified the first impact "wasn't a bad impact" and "[j]ust enough to bump [the car] up a little." (Constance Turner deposition 25, hereinafter "Turner Depo. \_\_\_\_.") She described the second impact as "ramm[ing]" the car into Davidson's. (Turner Depo. 23.) The second impact resulted in Davidson's car spinning out of control and crashing into Turner's vehicle. Although Turner could not estimate the speed of the vehicles, she said Davidson's car was "going fast" when it spun out of control. (Turner Depo. 22.)

{¶ 21} Franklin County Sheriff's Department Detective Charles Miller ("Detective Miller") testified by deposition that he conducted a criminal investigation of the incident based upon a report from a patrol officer at the scene that the collision resulted from an intentional act. As part of that investigation, Detective Miller conducted taped interviews of Gourley, Turner, Jacobs, and Young. In her interview, Gourley admitted that she intentionally struck Davidson's car at a speed of 45 mph, but denied any intention to injure anyone. Rather, she stated she was simply trying to "get [Davidson's] attention." (Detective Charles Miller deposition, exhibit No. 1, at 10, hereinafter "Detective Miller Depo. \_\_\_\_.") In describing the collision, Gourley stated that she "tapped [Davidson's car] the first time and then the car came back and hit mine again and then I blacked out." Detective Miller Depo. exhibit No. 1, at 8. Jacobs indicated in her interview that she believed that Gourley intentionally hit Davidson's car. During his interview, Young stated that from his vantage point, it appeared that Gourley was chasing Davidson's car and hit it on purpose. In her interview, Turner stated that it appeared that Davidson was trying to elude Gourley and that the speed at which Davidson's car was spinning after the second impact suggested that Gourley and Davidson were traveling "kinda fast." Detective Miller Depo. exhibit No. 2, Turner Taped Statement at 2.

{¶ 22} According to the affidavit of Franklin County Sheriff's Department Corporal William Cox ("Corporal Cox"), attached to State Farm's motion for summary judgment, he responded to the scene of the collision and thereafter completed a traffic crash report. Paragraph 11 of the affidavit stated as follows: "It was determined from our investigation

that Rebecca Gourley intentionally struck the rear of Unit #2 [Davidson] causing it to spin. Rebecca Gourley then struck the passenger side of Unit #2. She then went off the road, striking a fence. Unit #3 [Turner] then struck Unit #2 on the driver's side, and both vehicles went off the road to the left side of the roadway." Paragraph 4 of the affidavit authenticated the traffic crash report, which was attached as exhibit No. 1A. The traffic crash report included a narrative that stated as follows: "Unit #2 [Davidson] was traveling southbound on Hilliard-Rome Road when Unit #1 [Gourley] intentionally struck Unit #2 in the rear causing it to spin and Unit #1 then struck the right side of Unit #2. Unit #1 then went off the left side of the road into a fence. Unit #3 also traveling southbound on Hilliard-Rome Road then struck Unit #2 in the left side and both vehicles then went off the left side of the roadway."

{¶ 23} Upon this evidence, the trial court found that Gourley's actions did not constitute an "accident" under the State Farm policy. More particularly, the court determined that no reasonable jury could conclude that the first collision between Gourley and Davidson was an accident. We agree. Gourley admitted in her taped statement to police following the collision, in her EUO, and in her deposition testimony that she intentionally rear-ended Davidson's car because she was angry that he was with Jacobs. Jacobs argues that Gourley's admission that she intended the initial collision is inconsequential because Jacobs was not injured in that collision; rather, she was injured only after Gourley's car struck Davidson's car the second time. Jacobs maintains that Gourley could not have intended the second collision because she "blacked out" prior to it.

{¶ 24} Under the facts of this case, we agree with the trial court that no reasonable person could conclude that Gourley could have reasonably expected anything other than what eventually transpired from the moment she accelerated to catch up with Davidson and intentionally struck his vehicle from behind. Certainly Gourley was aware of the possibility that her striking Davidson's vehicle from behind was dangerous and could result in him losing control of his vehicle. Indeed, Gourley testified that she understood that striking a vehicle from behind could result in that vehicle traveling left of center. Even if Gourley did not strictly intend the second collision, her initial, intended collision with Davidson commenced the chain of events that led to the second collision. Because the collision with Turner's car was the result of intentional acts that led to Davidson losing

control of his vehicle and crossing into oncoming traffic, the injuries to Jacobs, Davidson's passenger, were not unintended, unforeseen or unexpected. Accordingly, Gourley's actions were not an "accident" within the meaning of the State Farm policy.

{¶ 25} Jacobs further claims that even if Gourley intended her actions, she harbored no intent to injure. Jacobs points to Gourley's testimony denying intent to injure as irrefutable evidence precluding summary judgment in favor of State Farm. However, Gourley's self-serving statement carries little weight when presented in opposition to summary judgment. " 'Because it is always in the interest of an insured to establish coverage and avoid policy exclusions, an insured's self-serving statements denying intent to injure are often "of negligible value in demonstrating intent or expectation." ' " *Nationwide Mut. Ins. Co. v. Layfield*, 11th Dist. No. 2002-L-155, 2003-Ohio-6756, ¶ 12, quoting *Aguiar v. Tallman*, 7th Dist. No. 97 C.A. 116 (Mar. 15, 1999), quoting *W. Res. Mut. Ins. Co. v. Campbell*, 111 Ohio App.3d 537, 541 (9th Dist.1996).

{¶ 26} The doctrine of inferred intent is based on the principle that the insured's commission of a particular, deliberate act may, as a matter of law, give rise to an inference of intent, i.e., that the insured intended to cause the resulting harm. *Gearing v. Nationwide Ins. Co.*, 76 Ohio St.3d 34 (1996), paragraph one of the syllabus. Until recently, the Supreme Court of Ohio had only applied the doctrine in cases involving murder and sexual molestation of a minor. However, in *Allstate Ins. Co. v. Campbell*, 128 Ohio St.3d 186, 2010-Ohio-6312, the court held that the doctrine of inferred intent invokes an insurance policy's intentional-act exclusion when the intentional act of an insured and the resulting harm are intrinsically linked. After reviewing its prior jurisprudence on the subject, the court concluded, at ¶ 48:

It is clear that as applied to an insurance policy's intentional-act exclusion, the doctrine of inferred intent applies only in cases in which the insured's intentional act and the harm caused are intrinsically tied so that the act has necessarily resulted in the harm. Limiting the scope of the doctrine is appropriate because the rule is needed only in a narrow range of cases—those in which the insured's testimony on harmful intent is irrelevant because the intentional act could not have been done without causing harm. Thus, an insured's intent to cause injury or damage may be inferred only when that harm is intrinsically tied to the act of the insured—i.e., the action necessitates the harm. The doctrine of inferred intent does not

apply only to cases arising from acts of murder or sexual molestation. \* \* \* [H]owever, courts should be careful to avoid applying the doctrine in cases where the insured's intentional act will not necessarily result in the harm caused by that act.

{¶ 27} In *Campbell*, several teenagers placed a styrofoam target deer on a curvy, hilly, two-lane country road at night, just below the crest of a hill so that motorists would not see it until they were just 15 to 30 yards away. The teenagers then remained in the area, driving back and forth along the roadway in order to observe motorist reaction. Although several cars successfully avoided the target, one motorist lost control of his vehicle while swerving to avoid it. The vehicle overturned, severely injuring the motorist and his passenger. The teenagers denied any intent to harm.

{¶ 28} The teenagers and their parents were covered under various insurance policies that included intentional-acts exclusions. The court determined that it could not find "as a matter of law that the act of placing a target deer in a road in the manner done here necessarily results in harm." *Id.* at ¶ 51. The court therefore held that the doctrine of inferred intent did not apply to the circumstances in the case, where the harm was not intrinsically tied to the act, and remanded the matter to the trial court to conduct a factual inquiry to determine whether harm was intended or expected. *Id.* at ¶ 59. Nonetheless, the court did conclude that when intent may be inferred as a matter of law, i.e., the act necessitates the harm, an insurer's motion for summary judgment may be properly granted. *Id.*

{¶ 29} Although both parties suggest that *Campbell* is inapplicable because the insurance policy at issue here does not include an intentional-act exclusion, we conclude that the principles underlying *Campbell* apply. On the day of the collision, Gourley followed Davidson down a congested, two-lane roadway, accelerated to keep up with him, and intentionally rammed her car into the rear of his vehicle. She admitted that she was speeding and traveling fast enough to overtake Davidson's vehicle. She admitted she did not care about the potential consequences of intentionally rear-ending the vehicle at a high rate of speed. She also admitted that she was aware that when a vehicle is intentionally struck from behind, it can go left of center into oncoming traffic. Under these circumstances, Gourley's intentional act and the resulting harm to Jacobs were intrinsically tied such that the act necessarily resulted in the harm.

{¶ 30} After reviewing the record before us, we agree with the trial court that reasonable minds could only conclude Jacobs' injuries did not result from an "accident," because they were the foreseeable, intended, and expected product of Gourley's intentional collision with Davidson's vehicle. We further conclude that under the doctrine of inferred intent, Gourley's intentional act of rear-ending the car in which Jacobs was a passenger necessarily resulted in the injuries Jacobs suffered as a result of that intentional act. Accordingly, we conclude that there is no genuine issue as to any material fact, that State Farm is entitled to judgment as a matter of law, and that reasonable minds can come to but one conclusion and that conclusion is adverse to Jacobs, the non-moving party. We thus conclude that the trial court did not err in granting summary judgment in favor of State Farm and determining there is no coverage for Jacobs' injuries under the insurance policy at issue. Having so concluded, we overrule Jacobs' first, seventh, eighth, ninth, fifteenth, sixteenth, eighteenth, nineteenth, and twentieth assignments of error.

**B. Fourth, Tenth, Thirteenth, Fourteenth, and Seventeenth Assignments of Error**

{¶ 31} Jacobs' fourth, tenth, thirteenth, fourteenth, and seventeenth assignments of error are interrelated and we will consider them together. In these assignments of error, Jacobs claims that the trial court erred in finding that Gourley had the requisite mental capacity to commit an intentional act. In particular, Jacobs cites Gourley's pregnancy, her prior mental health diagnoses of bipolar disorder, depression, ADHD and anxiety, as well as her claim to have "blacked out," as evidence that she did not have the mental wherewithal to form intent.

{¶ 32} "[W]hether an insured lacked the mental capacity to commit an intentional act is a matter to be determined, in the first instance, by a trial court and such determination is to be made by the trial court on the basis of the evidence. Such a determination will not be disturbed, absent an abuse of discretion." *Nationwide Ins. Co. v. Estate of Kollstedt*, 71 Ohio St.3d 624 (1995), paragraph two of the syllabus. "'[A]buse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable.'" *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), quoting *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

{¶ 33} As noted above, Gourley testified that she "blacked out" after intentionally striking Davidson's vehicle. When questioned why she blacked out, Gourley responded, "Because I was mad. I don't know." (Gourley Depo. 27.) The trial court found that Gourley's "blacking out" did not rise to the level of mental derangement necessary to obviate intent. In so finding, the trial court relied upon *Kollstedt*. There, Kollstedt was charged with murder, but was found incompetent to stand trial because he suffered from a "severely disabling psychotic illness," diagnosed as "'a primary degenerative dementia of the Alzheimer's type, senile onset with delirium.'" *Id.* at 624. At the time of the murder, Kollstedt had an insurance policy that excluded from coverage bodily injury or property damage "'which is expected or intended by the insured.'" (Emphasis sic.) *Id.* at 625, fn. 1. The Supreme Court of Ohio found this policy provision inapplicable because the evidence demonstrated that Kollstedt's mental derangement made it impossible for him to plan or premeditate the murder.

{¶ 34} We agree with the trial court's finding that Gourley's "blacking out" from anger after intentionally colliding with Davidson's vehicle does not rise to the level of mental derangement necessary to negate her initial intent to strike Davidson's vehicle. As the trial court noted, Gourley exhibited sufficient mental faculties to pursue Davidson for some distance, accelerate to overtake him, and intentionally rear-end his vehicle because she was angry that Davidson had begun a relationship with Jacobs. Moreover, Gourley possessed sufficient mental capacity to fabricate a lie after the fact in order to avoid punishment. In her deposition, Gourley admitted that she initially lied to the police in an effort to avoid the consequences of her conduct. Under the circumstances, the trial court did not abuse its discretion in determining that Gourley had the requisite mental capacity to commit an intentional act.

{¶ 35} Jacobs further contends the trial court erred in considering Gourley's testimony as to why she "blacked out." According to Jacobs, Gourley was not qualified to opine on that subject. Evid.R. 701 permits lay witnesses to express opinions that are (1) rationally based on the witness's first-hand perception or knowledge of the subject, and (2) helpful to a clear understanding of the testimony or the determination of a fact in issue. The admission of lay witness opinion testimony rests within the sound discretion of the trial court. *Shoemaker v. Shoemaker*, 4th Dist. No. 468 (Sept. 9, 1992).

{¶ 36} Consistent with Evid.R. 701, a lay witness may testify about another's emotional state or physical condition if the testimony is based upon personal observations and first-hand perception. *State v. Sibert*, 98 Ohio App.3d 412, 426 (4th Dist.1994) (trial court did not abuse its discretion in permitting a mother to testify about the emotional condition of her children following a violent attack); *State v. Griffin*, 1st Dist. No. C-020084, 2003-Ohio-3196 (trial court did not abuse its discretion in permitting lay witness testimony that murder victim was not suicidal). *See also State v. McCoy*, 9th Dist. No. 06CA008908, 2006-Ohio-6333, ¶ 17 ("Lay testimony as to one's mental condition—including testimony from the individual who is purportedly suffering from mental distress—can be sufficient to show the element of mental distress under R.C. 2903.211(A)."). Here, Gourley's testimony that she "blacked out" because she was "mad" is rationally based upon her own first-hand knowledge and is helpful to a clear understanding of her testimony regarding the collision. Accordingly, the trial court did not abuse its discretion in considering the testimony.

{¶ 37} Moreover, Gourley's testimony concerning why she "blacked out" following the initial collision with Davidson is irrelevant to her capacity to form the intent to strike Davidson's vehicle in the first instance. As noted above, Gourley exhibited the mental capacity to pursue Davidson, speed to overtake him, and intentionally rear-end his vehicle.

{¶ 38} Jacobs also argues that the trial court erred in failing to consider Gourley's pregnancy and mental health conditions and their effect, if any, on Gourley's actions. The record reveals that Jacobs never offered any medical evidence in this regard. During Jacobs' June 30, 2011 deposition of Gourley, Jacobs questioned her extensively about her medical and psychological history, including the names of her treating physicians. However, Jacobs neither subpoenaed those physicians for deposition nor offered their affidavits in opposition to State Farm's summary judgment motion. Jacobs thus failed to meet her duty under Civ.R. 56 to present specific evidence demonstrating a genuine issue of material fact regarding the effect of Gourley's pregnancy and mental health status on her actions of June 4, 2009.

{¶ 39} For all these reasons, we overrule Jacobs' fourth, tenth, thirteenth, fourteenth, and seventeenth assignments of error.

### **C. Eleventh and Twelfth Assignments of Error**

{¶ 40} Jacobs' eleventh and twelfth assignments of error are interrelated and we will address them simultaneously. In these assignments of error, Jacobs challenges the admission of Corporal Cox's affidavit and attached traffic crash report. Jacobs first contends the traffic crash report erroneously indicates that Turner was traveling southbound on Hilliard-Rome Road at the time of the collision. Jacobs maintains that the inaccurate traffic crash report renders Corporal Cox's affidavit inaccurate, which, in turn, results in the trial court's decision being based upon erroneous material facts.

{¶ 41} Although the initial traffic crash report mistakenly states that Turner was traveling southbound on Hilliard-Rome Road, Detective Miller testified at his deposition that Corporal Cox subsequently corrected the report to reflect that Turner was traveling northbound. (Detective Miller Depo., exhibit No. 2.) State Farm supplemented its summary judgment motion with Detective Miller's deposition. Thus, the trial court was aware of and had available in the record the corrected traffic crash report.

{¶ 42} Moreover, even if the trial court considered the erroneous initial traffic crash report, Turner's direction of travel is not material to the issue of Gourley's coverage under the State Farm policy. The coverage issue is limited to determining whether Jacobs' physical injuries were caused by an accident and not by intentional conduct. The trial court indicated that it relied on facts gleaned from Gourley's EUO and deposition testimony, which establish Gourley's admission to intentionally rear-ending Davidson's vehicle.

{¶ 43} Jacobs further challenges the admissibility of Corporal Cox's affidavit on grounds that he is unqualified as an accident reconstructionist or engineer to opine as to how the collision occurred and because his opinions are based upon inadmissible hearsay. As pointed out by State Farm, the trial court recognized that "[w]hile [Corporal] Cox's conclusions about how the accident occurred are perhaps not admissible in evidence, his description of the physical events that occurred seems agreed upon by all parties." (Journal Entry at 4, fn. 1.) Thus, the trial court did not rely on Corporal Cox's opinions as to how the collision occurred. Instead, the trial court relied upon Gourley's admission that she intentionally struck Davidson's vehicle out of anger at seeing him with Jacobs.



{¶ 44} For the foregoing reasons, we overrule the eleventh and twelfth assignments of error.

**D. Second, Third, Fifth, Sixth, Twenty-First, Twenty-Second, Twenty-Third, and Twenty-Fourth Assignments of Error**

{¶ 45} Jacobs fails to advance any argument in support of her second, third, fifth, sixth, twenty-first, twenty-second, twenty-third, and twenty-fourth assignments of error. "An appellant must demonstrate each assigned error through an argument supported by citations to legal authority and facts in the record." *Ford Motor Credit Co. v. Ryan*, 189 Ohio App.3d 560, 2010-Ohio-4601, ¶ 23 (10th Dist.), citing App.R. 16(A)(7), and *Cross v. Ohio Adult Parole Auth. Chief*, 10th Dist. No. 09AP-364, 2009-Ohio-5027, ¶ 3. "If an appellant neglects to advance such an argument, a court of appeals may disregard the assignment of error." *Ford Motor* at ¶ 23, citing App.R. 12(A)(2), and *Bond v. Canal Winchester*, 10th Dist. No. 07AP-556, 2008-Ohio-945, ¶ 16-17. Because Jacobs has failed to provide supporting arguments, we disregard and overrule these assignments of error.

**IV. CONCLUSION**

{¶ 46} In conclusion, having overruled each of Jacobs' twenty-four assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

KLATT and DORRIAN, JJ., concur.

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