IN THE SUPREME COURT OF THE STATE OF NEVADA

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, A MISSOURI CORPORATION,

Appellant,

vs.

GARY T. HELLER, AND RICHARD J. CONWAY,

Respondents.

No. 35905

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY, A MISSOURI CORPORATION,

Appellant,

vs.

GARY T. HELLER, AND RICHARD J. CONWAY,

Respondents.

No. 36269

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order granting summary judgment in a dispute over the availability of insurance coverage. We conclude that the district court correctly entered summary judgment for Conway.

American National Property and Casualty Company, a Missouri corporation, ("American") filed a declaratory judgment action against Gary T. Heller, Richard J. Conway, and Vickie R. Comrie.[1] The complaint sought a declaration that American was not responsible for injuries sustained by Conway in an automobile accident caused by American's insured, Heller, who injured Conway while fleeing from a bank robbery. The district court granted Conway's motion for summary

[1]All claims against Comrie have been settled, and she was removed from the case by order of this court dated August 15, 2000.

judgment concerning American's liability. This appeal followed.

Summary judgment should be entered where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.[2] Upon a motion for summary judgment, the non-movant must set forth specific facts that demonstrate a genuine factual issue and may not rest upon general allegations.[3] A genuine issue of material fact exists where the evidence is such that "a reasonable jury could return a verdict for the non-moving party."[4] The proof offered to the lower court must be construed in a light most favorable to the non-moving party.[5] The non-movant's statements must be accepted as true and all reasonable inferences that can be drawn from the evidence must be admitted.[6]

This court conducts a de novo review of an order granting summary judgment.[7] On appeal, this court must determine whether the district court erred in concluding that an absence of genuine issues of material fact justified the granting of summary judgment.[8]

Moreover, "'[w]here the parties do not dispute any material issues of fact, as here, the construction of an

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[2]See NRCP 56; see also Dermody v. City of Reno, 113 Nev. 207, 211, 931 P.2d 1354, 1357 (1997).

[3]See NRCP 56(e); see also Bird v. Casa Royale West, 97 Nev. 67, 70, 624 P.2d 17, 19 (1981).

[4]Dermody, 113 Nev. at 210, 931 P.2d at 1357.

[5]Id.

[6]See Great American Ins. v. General Builders, 113 Nev. 346, 350-51, 934 P.2d 257, 260 (1997).

[7]See Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

[8]See Bird, 97 Nev. at 68, 624 P.2d at 18.

insurance policy raises solely a question of law.'"[9] Questions of law are reviewed de novo.[10]

Both parties agree that the insurance policy is a contract between American and its insured, Heller. In addition, the parties agree that the insurance policy is not ambiguous and should be given its plain meaning.

The relevant language of the policy provides that "[w]e do not cover: . . . (12) **Bodily injury** or **property damage** caused intentionally or at the direction of an insured person."

American argues that the insurance policy excludes coverage for Heller's act because "flight to avoid apprehension is an intentional act that is specifically excluded from coverage under the subject policy." In addition, American argues that Heller's intent can be inferred, as a matter of law, from the inherently dangerous nature of the robbery he had just perpetrated and was attempting to flee from. Therefore, American argues that it is not liable for any damages suffered by Conway.

Conversely, Conway argues that in order for the exclusionary clause to be triggered, the insured must intend to cause the event and the resultant injury. Conway contends that because Heller did not intend for the accident to occur, nor did Heller intend to injure him, the exclusionary clause was not triggered and American is liable.

This court has held that an insurer wishing to restrict insurance coverage should use language that

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[9]Siggelkow v. Phoenix Ins. Co., 109 Nev. 42, 44, 846 P.2d 303, 304 (1993) (quoting Nationwide Mut. Ins. Co. v. Moya, 108 Nev. 578, 582, 837 P.2d 426, 428 (1992)).

[10]See Grand Hotel Gift Shop v. Granite St. Ins., 108 Nev. 811, 815, 839 P.2d 599, 602 (1992).

explicitly communicates to the insured the nature of the limitation.[11] To determine the plain and ordinary meaning of an insurance policy, the court should examine the policy language from the viewpoint of a layperson not trained in law or the insurance business.[12] Moreover, an insurance policy should be construed broadly, affording the greatest possible coverage to the insured by interpreting any ambiguity in a policy in favor of the insured.[13]

We conclude that the policy was intended to exclude coverage for intentional acts and it cannot be fairly said that Heller intended to hit Conway during his escape from the bank robbery. In fact, the accident resulted in Heller's capture, something Heller presumably hoped to avoid. The car accident was just that, an accident, an occurrence clearly covered by American's policy. In addition, if American desired to exclude accidents occurring during the commission of a crime, it should have explicitly stated its desire to do so in the policy.[14]

American next argues that Heller's intent, for purposes of the exclusionary clause, can be inferred from the dangerousness of the robbery he was fleeing. American cites numerous cases, including Rivera and Mallin v. Farmers Ins. Exchange,[15] for support.

In Rivera, a female patient filed a declaratory relief action to determine that a physician's insurer had to

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[11]See National Union Fire Ins. v. Reno's Exec. Air, 100 Nev. 360, 364, 682 P.2d 1380, 1382 (1984).

[12]Id.

[13]See Farmers Insurance Group v. Stonik, 110 Nev. 64, 67, 867 P.2d 389, 391 (1994).

[14]See Rivera v. Nevada Medical Liab. Ins. Co., 107 Nev. 450, 455, 814 P.2d 71, 73 (1991).

[15]108 Nev. 788, 839 P.2d 105 (1992).

provide coverage for the physician's sexual assault on a patient.[16] This court held that the sexual misconduct and intentional injury exclusions in the professional liability policy of the physician barred the patient's claim.[17] This court concluded that forcible rape was an act which the physician knew with substantial certainty would cause harm to the victim, and, therefore, intent to harm could be inferred to trigger the policy provision regarding the exclusion of intentional acts.[18]

In Mallin, the personal representatives of three persons, shot and killed by the insured, sued the insurer under the homeowner's policy.[19] We concluded that the actions of the shooter were intentional and, therefore, not covered by the homeowner's policy excluding coverage for intentional acts.[20]

American, by analogy to Rivera and Mallin, argues that Heller's intent to injure Conway can be inferred from the dangerousness of the bank robbery and, therefore, the exclusionary clause covering intentional acts operates to relieve American of liability.

Rivera and Mallin are distinguishable because of the relationships that the defendants' intentional acts bore to the injured parties. Rape and shooting an individual are clearly intentional actions directed toward the victims. In contrast, a bank robbery does not necessarily implicate an intent to cause automobile accidents. Here, no evidence

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[16]See Rivera, 107 Nev. at 450, 814 P.2d at 71.

[17]Id.

[18]Id. at 454, 814 P.2d at 73.

[19]See Mallin, 108 Nev. at 788, 839 P.2d at 105.

[20]Id.

suggests that Heller intended to injure Conway. Put simply, Heller was in a car accident indistinguishable from countless other car accidents with the exception that Heller was fleeing the scene of a bank robbery.

In addition, we conclude that to avoid liability, the insurer must establish that the insured not only intended the act that caused the injury, but that he/she also intended to cause the bodily injury or property damage which resulted.[21]

Because there is no evidence that Heller intended to collide with Conway's vehicle or to injure him, American cannot deny coverage to Conway under the exclusionary clause of the insurance policy. The district court, therefore, properly entered summary judgment in Conway's favor.[22]

We ORDER the judgment of the district court AFFIRMED.

_____, J.
Young

_____, J.
Leavitt

_____, J.
Becker

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[21]See generally John Dwight Ingram, The "Expected or Intended" Exclusion Clause in Liability Insurance Policies: What Should It Exclude?, 13 Whittier L. Rev. 713, 714 (1992); James L. Rigelhaupt, Annotation, Construction and Application of Provision of Liability Insurance Policy Expressly Excluding Injuries Intended or Expected by Insured, 31 A.L.R. 4th 957 (1984); and Safeco Ins. Co. v. McGrath, 817 P.2d 861 (Wash Ct. App. 1992); but cf. Nationwide Mutual Ins. Co. v. Finkley, 679 N.E.2d 1189 (Ohio Ct. App. 1996); Raby v. Moe, 450 N.W.2d 452 (Wis. 1990).

[22]American also argues that the intentional nature of Heller's action was admitted because Heller failed to respond to American's requests for admissions and, under NRCP 36(a), failure to answer constitutes an admission. In addition, American argues that Heller's guilty plea entered during his criminal trial was an admission that his acts were intentional. We conclude that these arguments are without merit. First, Heller's failure to respond to the requests cannot be binding on Conway. Second, Heller was incarcerated at the time American made the requests. Third, Heller's guilty plea admitted only that he committed the robbery, not that he intended to hit and injure Conway.

cc: Hon. Stephen L. Huffaker, District Judge
Pearson, Patton, Shea, Foley & Kurtz
Patti & Sgro
Gary T. Heller #920196, In Proper Person
Clark County Clerk