FIRST DIVISION
March 3, 2014

Nos. 1-13-0156 and 1-13-0335 (cons.)

STATE FARM FIRE & CASUALTY COMPANY, Plaintiff-Appellee, v. JOSHUA WEBER and BRENDAN FARLEY, Defendants-Appellants.	)))))))))	Appeal from the Circuit Court of Cook County. No. 12 CH 17562 Honorable Sophia H. Hall, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 ***Held:*** The trial court correctly found that the insurer had no duty to defend or indemnify its insured under a homeowners policy, because the underlying lawsuit failed to allege an "occurrence" or accident as defined under the policy. The defendant's injuries were neither unintended nor unexpected, and were the rational and probable consequence of the insured's repeated stabbing of the injured party.

¶ 2 This case involves the legal aftermath of someone bringing a knife to a fist fight. Joshua Weber repeatedly stabbed a fellow bar patron during the course of a raucous brawl, and then sought insurance coverage under his parents' homeowners policy after the severely injured victim sued him. The trial court granted summary judgment in favor of the insurer, State Farm Fire & Casualty Company (State Farm), finding that it did not have a duty to defend or indemnify Weber under the policy. We affirm.

¶ 3 BACKGROUND

¶ 4 Weber and Brendan Farley were patrons at the Irish Eyes tavern on the evening of January 5, 2009 and into the early morning hours on January 6, 2009. Weber arrived at Irish Eyes with several friends to socialize and watch college football on television. His right arm was in a sling. Farley also went to the bar that night. They became involved in a fight in the men's bathroom and subsequently left the premises. During the fight, Weber injured Farley by stabbing him several times with a knife which he had concealed on his person.

¶ 5 Weber was charged with misdemeanor battery but acquitted in August, 2009 based on self-defense. When he acquitted Weber, the criminal trial judge stated:

> "And, according to, now I got someone who has one arm free and he is in a sling. How much could he do to protect himself? He certainly couldn't do it with his hands. Whatever he had to do to protect himself was anything he could reach.
>
> I think there is certainly a defense of self-defense. There is finding of not guilty."

¶ 6 On January 5, 2010, Farley filed a lawsuit seeking damages for injuries he sustained in the fight. The original complaint was directed against Irish Eyes' parent corporation and only named Weber as a respondent in discovery. Weber was later converted to a party defendant in a third amended complaint filed on September 11, 2011. The third amended complaint contained three counts, only the third of which was directed at Weber. Count III alleged that Weber went into the bar, became intoxicated and became involved in a fight with Farley inside the bar. Count III further alleged that Weber was negligent in causing "a knife to enter the body of Brendan Farley", or "[n]egligently caused bodily harm to occur to Brendan Farley"; or

"[e]xceeded the amount of force necessary to defend himself against Brendan Farley." Weber tendered defense of the Farley complaint to State Farm under his parents' homeowners policy. State Farm agreed to fund Weber's defense subject to a reservation of rights.

¶ 7 State Farm later filed a separate complaint for declaratory judgment, seeking a declaration that State Farm had no duty to defend or indemnify Weber in Farley's lawsuit. The two-count complaint alternatively alleged that the Farley complaint did not allege an "occurrence" and that coverage was otherwise excluded by the so-called intentional acts exclusion.

¶ 8 Weber is an insured under a homeowners policy number issued by State Farm to Weber's parents. The policy was in effect on January 6, 2009. The policy includes the following provisions:

> **COVERAGE L – PERSONAL LIABILITY**
>
> If a claim is made or a suit is brought against an **insured** for damages because of **bodily injury** or **property damage** to which this coverage applies, caused by an **occurrence**, we will:
>
> 1. pay up to our limit of liability for damages for which the **insured** is legally liable; and
>
> 2. provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages, to effect settlement or satisfy a judgment resulting from the **occurrence**, equals our limit of liability.

The policy defines "occurrence" as follows:

> 8. **"occurrence"**, when used in Section II of this policy, means an accident, including exposure to conditions, which results in:
>
> a. **bodily injury**; or
>
> b. **property damage**:

> during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one **occurrence**.

The policy, as relevant, contains the following exclusion:

> **SECTION II – EXCLUSIONS**
>
> 1. Coverage L and Coverage M do not apply to:
>
> a. **bodily injury** or **property damage**:
>
> (1) which is either expected or intended by the **insured**; or
>
> (2) any person or property which is the result of willful and malicious acts of the **insured**.

¶ 9 Weber and Farley answered State Farm's complaint, generally denying the material allegations pertaining to coverage. State Farm filed a motion for summary judgment regarding its obligation to indemnify Weber with respect to Farley's fourth amended tort complaint. That complaint asserted the same general fact pattern—a fight in a bar between Farley and Weber that continued outside the bar—but was cast only as a single negligence count against Weber.

¶ 10 In its motion, State Farm argued that the fourth amended complaint did not allege an "occurrence" because Farley's injuries were the natural and ordinary consequences of being repeatedly stabbed with a knife. State Farm also asserted that the allegation that Weber negligently "exceeded the amount of force necessary to defend himself" did not transform the incident into an accident. Furthermore, State Farm alternatively argued that, even if Farley's injuries constituted an "occurrence," coverage was nevertheless excluded by the intentional acts exclusion.

¶ 11 In response, Farley claimed that State Farm's declaratory judgment action was premature because the underlying case should proceed "to see if coverage will be necessary." Farley also

claimed that issues of fact existed concerning Weber's alleged misuse of self-defense that prevented summary judgment for State Farm, relying on several discovery depositions taken in the underlying tort action. Weber also responded, claiming that his misuse of self-defense created an issue of fact precluding summary judgment. Weber relied both on his acquittal of the criminal charges and deposition testimony suggesting that Farley's injuries were accidental.

¶ 12 The trial court granted State Farm's motion for summary judgment, finding that State Farm had no duty under the homeowners policy to defend or indemnify Weber in the Farley action. Farley timely appealed. No copy of Weber's notice of appeal is in the record, but the parties do not dispute that Weber separately appealed. We consolidated the two appeals.

¶ 13 ANALYSIS

¶ 14 On appeal, defendants argue that the trial court's grant of summary judgment in favor of State Farm should be reversed because, among other things, there is a question of fact regarding whether State Farm has a duty to defend Weber. Defendants claim that the homeowners policy covers the underlying Farley action because the extent of his injuries were accidental and constituted an "occurrence" under the policy. Defendants further assert that the exclusionary provision was inapplicable because Weber intended to use reasonable force during the altercation with Farley, and therefore did not expect or anticipate the grievous injuries he caused when he "unintentionally" used excessive force against Farley. Therefore, according to defendants, Weber did not intend to cause Farley the injuries he actually suffered as a result of "protecting himself" from the physical attack that was underway.

¶ 15 However, State Farm contends that it has no duty to defend defendants because the allegations contained in Farley's fourth amended tort complaint do not allege "bodily injury" caused by an accident or "occurrence" on the part of Weber. Instead, the fourth amended

complaint alleges that Weber repeatedly stabbed Farley with a knife. Thus, as a matter of law, State Farm contends that Farley's resultant "bodily injury" was not "accidentally" caused by an "occurrence." Furthermore, State Farm argues that defendants improperly rely on facts adduced in the depositions taken in the tort case and the acquittal in the criminal case to trigger State Farm's duty to defend Weber, even though extrinsic evidence cannot normally be used to determine an insurer's duty to defend.

¶ 16 The construction of an insurance policy and the determination of the parties' rights and obligations thereunder are questions of law appropriate for resolution by summary judgment. *Continental Casualty Co. v. Donald T. Bertucci, Ltd.*, 399 Ill. App. 3d 775, 776 (2010) (citing *Zurich Insurance Co. v. Raymark Industries, Inc.*, 118 Ill. 2d 23, 58 (1987)). "Summary judgment is proper if, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Farmers Automobile Insurance Ass'n v. Danner*, 2012 IL App (4th) 110461, ¶ 29 (citing *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 93 (2010)). We review the trial court's decision to grant or deny a motion for summary judgment *de novo. Id.* (citing *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 309, 349 (2010); see also *Joe Cotton Ford, Inc. v. Illinois Emcasco Insurance Co.*, 389 Ill. App. 3d 718, 720 (2009) (finding review of a grant of summary judgment in an action for declaratory judgment is reviewed *de novo*).

¶ 17 I. Coverage Under the Policy—Duty to Defend

¶ 18 "It is the general rule that the duty of the insurer is determined by the allegations of the underlying complaint." *Lyons v. State Farm Fire & Casualty Co.*, 349 Ill. App. 3d 404, 406 (2004) (citing *Maryland Casualty Co. v. Peppers*, 64 Ill. 2d 187, 193 (1976)). To determine if an

insurer has a duty to defend an insured, "the court must look to the allegations in the underlying complaint and compare these allegations to the relevant provisions of the insurance policy." *Empire Indemnity Insurance Co. v. The Chicago Province of the Society of Jesus*, 2013 IL App (1st) 112346, ¶ 34 (citing *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 107-08 (1992)). An insurer's duty to defend will arise "if the complaint's allegations fall within or potentially within the coverage provisions of the policy." *Lyons*, 349 Ill. App. 3d at 406 (citing *Chandler v. Doherty*, 299 Ill. App. 3d 797, 801 (1998); *Outboard Marine Corp.*, 154 Ill. 2d at 108). This is true even if the allegations are groundless, false, or fraudulent or if only one of several theories advanced is potentially within policy coverage. *Id*. (citing *United States Fidelity & Guaranty Co. v. Wilkin Insulation Co*., 144 Ill.2d 64, 73 (1991); *Maryland Casualty Co. v. Peppers*, 64 Ill. 2d 187, 194 (1976)). In other words, "[t]he threshold requirements that the complaint must satisfy to present a claim of potential coverage is minimal; the complaint need present only a possibility of recovery, not a probability of recovery." *Bituminous Casualty Corp. v. Gust K. Newberg Construction Co*., 218 Ill. App. 3d 956, 960 (1991).

¶ 19 "In a court's determination of the duty to defend, the underlying complaint is to be liberally construed in favor of the insured, and doubts and ambiguities are to be construed in favor of the insured." *Lyons*, 349 Ill. App. 3d at 407 (citing *Wilkin Insulation Co*., 144 Ill. 2d at 74). A court's determination with respect to an exclusionary clause is subject to this same liberal standard. *Id*. (citing *Wilkin Insulation Co*., 144 Ill. 2d at 78). The factual allegations contained in the complaint, rather than the legal theories, determine an insurer's duty to defend. *Id*. (citing *Management Support Associates*, 129 Ill. App. 3d at 1097). "An insurer may not justifiably refuse to defend an action against its insured unless it is *clear* from the face of the underlying complaints that the allegations fail to state facts which bring the case within, or potentially

within, the policy's coverage." (Emphasis in original.) *Id.* (citing *Wilkin Insulation Co*., 144 Ill. 2d at 73).

¶ 20 The homeowners policy at issue in this case only provides coverage for "bodily injury" when such injury is caused by an "occurrence." Here, the policy is not triggered because the underlying Farley action does not allege facts establishing that an "occurrence" led to Farley's injuries.

¶ 21 The homeowners policy defines "occurrence" as an "accident." Illinois courts define the term "accident" to mean "an unforeseen occurrence, usually of an untoward or disastrous character or an undesigned sudden or unexpected event of an inflictive or unfortunate character." *Viking Construction Management, Inc. v. Liberty Mutual Insurance Co.*, 358 Ill. App. 3d 34, 42 (2005) (citing *State Farm Fire & Casualty Co. v. Tillerson*, 344 Ill. App. 3d 404, 409 (2002)). A court then considers whether the insured should have expected his act to cause the resulting injury. Even "if the person performing the act did not intend or expect the result, if the result is the rational and probable consequence of the act, or, stated differently, the natural and ordinary consequence of the act, it is not an accident." *Stoneridge Development Co. v. Essex Insurance Co*., 382 Ill. App. 3d 731, 751 (2008). In other words, "[e]xpected injuries are those that should have been reasonably anticipated by the insured." *Farmers Automobile Insurance Association v. Danner*, 2012 IL App (4th) 110461, ¶ 34 (2012) (citing *Pekin Insurance Co. v. Dial*, 335 Ill. App. 3d 516, 520 (2005)). Accordingly, "[i]njuries are considered 'expected' and excluded from coverage where the insured was consciously aware the injuries were practically certain to be caused by the conduct." *Id.*

¶ 22 The fourth amended complaint does not allege conduct on the part of Weber that can be reasonably construed as being "accidental." While it is styled under the rubric of negligence,

thus implying an innocent accident, it alleges that Weber and Farley "got into an altercation inside the men's bathroom while both persons were on the premises of Irish Eyes." After leaving the bar, Farley attempted to get into an automobile when "Weber and several of his friends surrounded * * * Farley and prevented him from getting into the * * * automobile and leaving." At that point, "Weber and his friends formed a circle around * * * Farley" and "Farley attempted to flee by running through an opening between * * * Weber and another individual." Then "Weber caused injury to * * * Farley by stabbing him numerous times with a pocketknife that * * * Weber had on his person for the purpose of self-defense." As a result of the altercation, the complaint concludes, Farley alleged that Weber "[n]egligently exceeded the amount of force necessary to defend himself against * * * Farley," or "[n]egligently exceeded the amount of force necessary to defend himself against * * * Farley by using a pocketknife." Farley further alleged that Weber's act of stabbing him numerous times with a knife caused him to sustain "severe and permanent injuries" and to become "permanently and significantly disfigured and disabled." It strains credulity to conclude that stabbing an unarmed combatant several times with a knife, even if in self-defense, constitutes behavior of the type the State Farm policy intended to insure against. In sum, Farley's injuries were not the result of any "undesigned sudden or unexpected event of an inflictive or unfortunate character." *Viking Construction Management, Inc.*, 358 Ill. App. 3d at 42.

¶ 23 But even assuming *arguendo* that the tort complaint properly characterizes Weber's conduct as an "occurrence" that caused Farley's injuries, the exclusion for expected or intended bodily injury comes into play. Here, Farley asserts in his brief that "Weber did not expect or anticipate the grievous injuries he actually caused when he unintentionally used excessive force against [Farley]" or that the stab wounds were "unforeseen." In our view, it is illogical for

defendants to suggest that Farley's stab wounds and resulting injuries were unexpected, unanticipated, and unforeseen considering the fact that he expressly alleges in his fourth amended complaint that Weber repeatedly stabbed him. Nor is it our view that Farley's stab wounds were not the rational and probable or natural and ordinary consequence of Weber's repeated stabbing of Farley. *Stoneridge Development Co*., 382 Ill. App. 3d at 751. Therefore, contrary to defendants' assertions, Weber's actions cannot be characterized as accidental constituting an "occurrence" nor do they fall outside the exclusionary provision as the injuries were either intended or expected.

¶ 24 On appeal, defendants argue that *United States Mutual Accident Association v. Barry*, 131 U.S. 100 (1889) supports their contention that Farley's stab wounds were an "unexpected result" of Weber's stabbing. Defendants assert that *Barry* stands for the proposition that "an insured may anticipate or foresee that minor injury may result from his conduct, but if extensive unforeseen injury results, the unforeseen injuries are accidental." But *Barry* neither stands for this proposition nor offers defendants support. *Barry* involved an accidental-death life insurance policy. The insured in *Barry* jumped from a platform that stood four to five feet off the ground after watching two other individuals do so without incident. 131 U.S. at 103. The insured jumped improperly, suffered rare injuries, and later died from those injuries. *Id.* at 104. The insurer argued that its accidental-death policy did not provide coverage because there was no showing of an accident. *Id.* at 121. The Supreme Court disagreed, stating that "[i]t must be presumed, not only that the deceased intended to alight safely, but thought that he would." *Id.* The Supreme Court interpreted the word "accidental" to mean "happening by chance, unexpectedly taking place, not according to the usual course of things, or not as expected." *Id.* Thus, *Barry* stands for the proposition that the injuries resulting from "an apparently harmless

act on the part of the insured" may be deemed accidental for purposes of an accidental-death life insurance policy. *Body v. United States Insurance Company of America,* 72 Ill. App. 3d 594, 598 (1979). Here, we do not find Weber's act of repeatedly stabbing Farley constitutes "an apparently harmless act." Instead, Weber was "consciously aware" that Farley was "practically certain" to sustain injuries as a result of his conduct. *Farmers Automobile Insurance Association,* 2012 IL App (4th) 110461, ¶ 34.

¶ 25 Defendants also attempt to rely on *Lyons*, where the insured built levees that happened to encroach on the plaintiff's land, causing him to file suit alleging trespass and replevin. 349 Ill. App. 3d at 407. The court noted that the complaint did not include factual allegations "that even suggest that [the insured] expected or intended to build the levees so that they extended onto the [plaintiff's] property." *Id.* at 410. As a result, the court held that the complaint alleged an "occurrence" and that the intentional acts exclusion did not apply.

¶ 26 In reaching its decision, the *Lyons* court first analyzed the issue of what constitutes an accident under the terms of an insurance policy. Relying on *Barry* and earlier precedent, the court stated:

> "[I]f an act is performed with the intention of accomplishing a certain result, and if, in the attempt to accomplish that result, another result, unintended and unexpected, and not the rational and probable consequence of the intended act, in fact, occurs, such unintended result is deemed to be caused by accidental means."

349 Ill. App. 3d at 409 (quoting *Yates v. Bankers Life & Casualty Co.*, 415 Ill. 16, 19 (1953)). Thus, unlike the insured in *Lyons*, who unintentionally crossed over a property line and built parts of his levees on the plaintiff's land, Farley's fourth amended complaint does not allege that

Weber unknowingly or unintentionally stabbed Farley. Instead, Farley alleged that Weber stabbed him numerous times with a knife, causing injuries that were the rational and probable consequence of the stabbing.

¶ 27 Defendants next argue that the trial court applied the incorrect definition of "accident" in concluding that Farley's fourth amended complaint did not allege an "occurrence." Here, defendants explain that, in its motion for summary judgment, State Farm focused its argument around demonstrating that Weber's acts were intentional and not whether "the injury is expected or intended by the insured." Defendants assert that the trial court erroneously agreed with State Farm. While we do not have a transcript from the trial court's proceedings below, we agree with State Farm that defendants assertion is "purely academic" because the January 6, 2009 altercation does not constitute an "occurrence" under the homeowners policy.

¶ 28 Furthermore, defendants argue that the trial court erred in finding that the exclusionary provision applied because Farley crafted his complaint with testimony taken from depositions in the underlying case, which described Weber's conduct as being unintentional where "intentional conduct was never testified to or discussed by any party or witness." In this regard, Weber testified that he believed Farley was "bum rushing" him and he sought to defend himself by pulling out a knife because one of his arms was in a sling. In other words, defendants contend that Weber was acting in self-defense when he exceeded the amount of force necessary to defend himself and in doing so, was negligent.

¶ 29 *Farmers Automobile Insurance Association v. Danner*, 2012 IL App (4th) 110461 is instructive here. The *Danner* court considered whether the insurer had a duty to defend its insured in a civil action alleging intentional conduct and negligence. The insured pled an affirmative defense of self-defense in the underlying action and later asserted in the coverage

action that the affirmative defense triggered the insurer's duty to defend. *Id.*, ¶ 24. The insurer argued that the self-defense claim was irrelevant because its insurance policies did not contain a self-defense exception to the intentional acts exclusion. *Id.*, ¶ 42. Acting in self-defense is in and of itself an intentional act. The court reasoned that coverage was unavailable because the "policy does not contain a self-defense exception to its intentional-acts exclusion. Thus, "a determination of whether [the insured's] actions amounted to self-defense is unnecessary." *Id.*, ¶ 51. The court further stated that:

> "Regardless of whether the trier of fact in the underlying lawsuit were to find [the insured] acted in self-defense, [the insurer] would be under no duty to pay on behalf of [the insured] under the language of the policy because the conduct set forth in the pleading was intentional and there is no self-defense exception to the exclusion for intentional acts."

Id.; see also *State Farm Fire & Casualty Co. v. Leverton*, 314 Ill. App. 3d 1080, 1086 (2000) ("When an insured acts in self-defense, he is still acting with 'intent to harm'").

¶ 30 As explained in *Danner*, allegations of self-defense do not bring a complaint within coverage absent an explicit self-defense exception in the insurance policy's expected or intended injury exclusion. Here, like in *Danner*, the homeowners policy does not include a self-defense exception to the expected or intended injury exclusion. Therefore, even if Weber had acted in self-defense, the exclusionary provision would apply to exclude coverage.

¶ 31 Defendants also cite to *Vermont Mutual Insurance Co. v. Walukiewicz*, 290 Conn. 582 (2009), asserting that "[c]ourts in other jurisdictions have found that injury or death resulting

from acts taken in self-defense can constitute an 'accident.'" But defendants offer us no reason why we should abandon established Illinois law to follow a Connecticut decision.

¶ 32 Accordingly, the trial court did not err in granting summary judgment in favor of State Farm on the duty to defend issue because the undisputed material facts establish that the January 6, 2009 altercation does not constitute "bodily injury" resulting from an "occurrence" under the homeowners policy and the expected or intended injury exclusion otherwise applies precluding coverage.

¶ 33 II. Duty to Indemnify

¶ 34 Defendants also argue that the trial court's summary judgment ruling should be reversed because it erred in determining that State Farm has no duty to indemnify its insured. However, "[t]he duty to indemnify arises only if the facts alleged *actually* fall within coverage." *Crum & Forster Managers Corp. v. Resolution Trust Corp*., 156 Ill. 2d 384, 398 (1993) (citing *Outboard Marine Corp*., 154 Ill. 2d at 128). In cases such as this one where no duty to defend exists and the facts alleged do not fall within the scope of insurance coverage, a duty to indemnify does not arise. In other words, where there is no duty to defend, there is no duty to indemnify. *American Family Mutual Insurance Co. v. Enright*, 334 Ill. App. 3d 1026, 1029 (2002) ("[i]f the insurer owes no duty to defend, then it owes no duty to indemnify because the duty to defend is broader than the duty to indemnify."). Accordingly, the trial court did not error in granting summary judgment in favor of State Farm on the duty to indemnify issue.

¶ 35 CONCLUSION

¶ 36 Accordingly, we affirm the judgment of the court below.

¶ 37 Affirmed.