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2018 IL App (3d) 170501-U

Order filed May 7, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

AUTO-OWNERS INSURANCE COMPANY,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellee,	)	Kankakee County, Illinois.
	)	
v.	)	Appeal No. 3-17-0501
	)	Circuit No. 16-MR-678
LARRY CHEFFER and KIRK STANG,	)	
	)	
Defendants	)	The Honorable
	)	Ronald J. Gerts,
(Kirk Stang, Defendant-Appellant).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly entered judgment on the pleadings to insurer in declaratory judgment action where underlying complaint against insured alleged intentional conduct.

¶ 2 Defendant Larry Cheffer was insured by plaintiff Auto-Owners Insurance Company. In August 2014, Cheffer was involved in an altercation with defendant Kirk Stang that resulted in Stang being injured. As a result of that incident, Cheffer was charged with and convicted of criminal battery, and Stang filed a civil complaint against Cheffer. Auto-Owners filed a

declaratory judgment action, alleging that it had no duty to defend or indemnify Cheffer with respect to Stang's civil action. Stang filed a motion for judgment on the pleadings, and Auto-Owners filed a cross-motion for judgment on the pleadings. The trial court granted Auto-Owners' motion for judgment on the pleadings. We affirm.

¶ 3 FACTS

¶ 4 On August 6, 2014, Larry Cheffer and Kirk Stang attended a car show in Kankakee. During the event, Cheffer and Stang were involved in an altercation that ended with Stang on the ground and injured. Cheffer was charged by a criminal complaint with battery against Stang. Cheffer pled not guilty.

¶ 5 In October 2014, Stang filed a two-count civil complaint against Cheffer, alleging negligence and battery. According to the complaint, Cheffer "grabbed [Stang] and forcefully threw him to the ground." In his answer, Cheffer denied the allegations.

¶ 6 At the time of the incident, Cheffer was insured by Auto-Owners through three relevant insurance policies: a homeowner's policy, an executive umbrella policy, and a commercial umbrella policy. Cheffer tendered his defense of Stang's civil complaint to Auto-Owners, which initially accepted the tender subject to a reservation of rights.

¶ 7 Cheffer's homeowner's policy states that it provides coverage for an "occurrence," which the policy defines as "an accident that results in bodily injury or property damage." The policy also contains an exclusion that states "Medical Payments to Others do not apply *** to bodily injury or property damage reasonably expected or intended by the insured." Similarly, Cheffer's executive umbrella policy excludes from coverage "[p]ersonal injury or property damage expected or intended by the insured." The commercial umbrella policy provides coverage for an

"incident" which is defined as "an accident." That policy also contains an exclusion for "[b]odily injury or property damage expected or intended from the standpoint of the insured."

¶ 8 In January 2016, Cheffer's criminal case proceeded to a jury trial. At trial, Cheffer denied pushing Stang or throwing him to the ground. Cheffer testified that he took hold of Stang's hand and that when he let go of it, Stang fell to the ground and injured himself. The jury found Cheffer guilty of battery.

¶ 9 In October 2016, Auto-Owners filed a declaratory judgment action, alleging that it had no obligation to defend or indemnify Cheffer because (1) the altercation and resulting injuries to Stang were "intentional and not 'an accident'", and (2) the policies excluded injuries that are reasonably expected or intended by the insured. Cheffer filed an answer denying that he intentionally injured Stang.

¶ 10 In a discovery deposition in April 2017, Cheffer denied pushing Stang. He testified that Stang stumbled backwards and fell when he let go of Stang's hand. Cheffer denied intending to injure Stang. He admitted that he was found guilty of battery as a result of his altercation with Stang.

¶ 11 In May 2017, Stang filed an amended combined motion for judgment on the pleadings as to Auto-Owners' duty to defend and a motion to stay proceedings as to Auto-Owners' duty to indemnify. In June 2017, Auto-Owners filed a cross-motion for judgment on the pleadings. In July 2017, the trial court issued an order granting Auto-Owners' motion for judgment on the pleadings and denying Stang's motions, finding that Cheffer's criminal conviction absolved Auto-Owners of its duty to defend or indemnify Cheffer.

¶ 12 ANALYSIS

¶ 13 A motion for judgment on the pleadings is limited to the pleadings. *Pekin Insurance Co. v. Wilson*, 237 Ill. 2d 446, 455 (2010). Judgment on the pleadings is properly granted if the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Id.* In a declaratory judgment action where the issue is whether the insurer has a duty to defend, a court ordinarily looks first to the allegations in the underlying complaint and compares those allegations to the relevant provisions of the applicable insurance policy. *Id.* If the facts alleged in the underlying complaint fall within, or potentially within, the policy's coverage, the insured's duty to defend arises. *Id.*

¶ 14 To determine whether a duty to defend exists, the court must not look to the legal theory asserted in the complaint but to the factual allegations. *State Farm Fire and Casualty Co. v. Young*, 2012 IL App (1st) 103736, ¶ 28. Where a complaint is couched in terms of negligence, it may allege a course of conduct that was clearly intentional and not merely negligent or accidental. *Pekin Insurance Co. v. Dial*, 355 Ill. App. 3d 516, 522 (2005); see also *State Farm Fire and Casualty Co. v. Martin*, 186 Ill.2d 367, 377 (1999) (although victim phrased complaint in terms of negligence, it strained credulity to suggest that insured's acts were merely negligent); *State Farm Fire and Casualty Co. v. Watters*, 268 Ill. App. 3d 501, 510 (1994) (allegations of negligence may be transparent attempt to trigger insurance coverage, especially where facts alleged are intentional acts). Where only intentional conduct is alleged, there is no duty to defend. *Young*, 2012 IL App (1st) 103736, ¶ 41.

¶ 15 Illinois courts define the term "accident," "as 'an unforeseen occurrence, usually of an untoward or disastrous character or an undersigned sudden or unexpected event of an inflictive or unfortunate character.' " *Watters*, 268 Ill. App. 3d 501, 506 (1994) (quoting *Aetna Casualty & Surety Co. v. Freyer*, 89 Ill. App. 3d 617, 619 (1980)). 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, it is not an accident. *Stoneridge Development Co. v. Essex Insurance Co.*, 382 Ill. App. 3d 731, 751 (2008). Injuries are not the result of an "accident" where they are the natural and ordinary consequence of an intentional act. *State Farm Fire and Casualty Co. v. Leverton*, 314 Ill. App. 3d 1080, 1087 (2000).

¶ 16 When an insurance policy excludes coverage for bodily injury "expected and intended from the standpoint of the insured," the court must construe the definition of "accident" together with the policy's exclusion for expected or intended injury. *Dial*, 355 Ill. App. 3d at 520. An injury is "expected" and excluded from coverage where the damages are of such a nature that they should have been reasonably anticipated by the insured. *Id.* at 521.

¶ 17 An intentional battery does not fall within the definition of an "accident" and is typically excluded from coverage as an "expected or intended" injury. See *Young*, 2012 IL App (1st) 103736, ¶ 30; *Mid America Fire v. Smith*, 109 Ill. App. 3d 1121, 1123 (1982); *Freyer*, 89 Ill. App. 3d at 620. "The allegations of assault and battery committed by the defendant's own fist can in no way be construed to support a claim of accident." *Young*, 2012 IL App (1st) 103736, ¶ 30. Additionally, damages caused by an assault and battery normally fall under an exclusion of intentional injuries or injuries intended or expected even if the injury was greater than intended. *Freyer*, 89 Ill. App. 3d at 620. A tort defendant who intentionally struck the plaintiff is deemed to have intended the ordinary consequences of his voluntary actions. *Smith*, 109 Ill. App. 3d at 1123.

¶ 18 In *West American Insurance Co. v. Vago*, 197 Ill. App. 3d 131, 137 (1990), the court found it inconceivable that the insured (Vago) would not have reasonably anticipated a waitress' injuries where her complaint alleged that "Vago grabbed the waitress from behind, locked his

arms around her waist, and thrust his pelvis against her buttock several times." While the complaint contained a negligence count that used terminology generally associated with negligence, the court found:

> "Such a course of conduct is clearly intentional and not merely negligent or accidental. Furthermore, if Vago engaged in such conduct, he would have been consciously aware that he was practically certain to cause emotional injuries to the waitress. Since such injuries should have been reasonably anticipated by Vago, they are 'expected' injuries *** and were not covered because of the exclusionary clauses in the two policies." *Id.*

¶ 19 Here, Stang's complaint, like the plaintiff's complaint in *Vago*, contains both negligence and battery counts. However, both counts allege that Cheffer "grabbed" Stang and "forcefully threw him to the ground." Thus, both counts allege intentional conduct, not an "accident," making Cheffer's insurance policies inapplicable and imposing no duty on Auto-Owners to defend Cheffer. See *id.*; *Young*, 2012 IL App (1st) 103736, ¶ 30; *Leverton*, 314 Ill. App. 3d at 1087. Furthermore, if Cheffer engaged in the conduct described in Stang's complaint, he would have been consciously aware that he was practically certain to cause injury to Stang, making Stang's injuries "expected" and excluded from coverage. See *Vago*, 197 Ill. App. 3d at 137.

¶ 20 The allegations contained in Stang's complaint are sufficient to establish that his injuries were not the result of an "accident" and fall within the expected or intended exclusions contained in the applicable insurance policies. Thus, the trial court did not err in finding that Auto-Owners had no duty to defend Cheffer. Because Auto-Owners had no duty to defend Cheffer, it also had no duty to indemnify him. See *id.* at 138. We affirm the trial court's order.

CONCLUSION

¶ 21 The judgment of the circuit court of Kankakee County is affirmed.

¶ 22 Affirmed.