

evident that a verbal confrontation devolved into a physical engagement, and Longphre suffered physical injuries as a result.¹

Plaintiff filed this declaratory action on April 30, 2019, seeking the Court to declare that the claims asserted against Defendant Simpson by Defendant Longphre are excluded under the applicable policy terms and conditions, and further, that there is no duty to defend Simpson under the policy. Plaintiff filed its Motion for Summary Judgment on March 2, 2020, and its Memorandum in Support of Motion for Summary Judgment on April 23, 2020. Defendant Lamphre filed his Memorandum in Opposition on April 29, 2020. Plaintiff filed its Reply on May 4, 2020. This matter is ripe for a decision, and this Court finds as follows.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. S.C.R.C.P. 56. In determining whether any true triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493 (2002). Naturally, a court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed. *David v. McLeod Regional Medical Center*, 367 S.C. 242, 250 (2006).

The plain language of S.C.R.C.P. 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case. *Baughman v. At&T*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991). In such a situation, there can be no genuine

¹ This underlying action involving the Defendants is *Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314.

issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Id.* The moving party is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. *Id.*

ANALYSIS

The primary issue before this court is whether the evidence, both documentary and through sworn testimony, creates an issue of material fact as to the question of coverage and exclusions thereof. On one hand, Plaintiff asserts that Lamphre's injuries were the result of intentional conduct and therefore excluded from coverage. On the other, Lamphre asserts that the deposition testimony provides an issue of fact as to whether the injuries were accidental and subject to coverage.² Since "accident" is not specifically defined in the policies, the term should be defined according to the usual understanding of the term's significance to the ordinary person. *Manufacturers and Merchants Mut. Ins. Co. v. Harvey*, 498 S.E.2d 222, 225, 330 S.C. 152, 158–59 (S.C.App.,1998); *USAA Property and Casualty Ins. Co. v. Rowland*, 312 S.C. 536, 435 S.E.2d 879 (Ct.App.1993). The South Carolina Supreme Court has interpreted the term "accident" to mean "an effect which the actor did not intend to produce and cannot be charged with the design of producing." *Goethe v. New York Life Ins. Co.*, 183 S.C. 199, 190 S.E. 451 (1937). More plainly stated, an intended injury cannot be accidental. *Id.*

² The applicable policy language provides:

SECTION II – EXCLUSIONS, paragraph 1a:

1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to bodily injury or property damage:

a. resulting from intentional acts or directions of you or any insured. The expected or unexpected results or these acts or directions are not covered.

Although South Carolina allows alternative pleading, a party may not invoke coverage by couching intentional acts in negligence terms. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 11, 530 S.E.2d 132, 137 (Ct. App. 2000). In South Carolina, the general rule, for an act to be excluded by the intentional act exclusion of a policy, requires: 1) that the act which produced the loss must be intentional; and 2) that the results of the act must be intended. *See Miller v. Fidelity-Phoenix Ins. Co.*, 268 S.C. 72, 231 S.E.2d 701 (1977). However, “[a]n insurance policy can be written to exclude the application of Miller.” *Auto-Owners Ins. Co. v. Taylor*, 2018 WL 4078579 at *5, C/A 1:17-cv-02632-JMC (D.S.C. August 24, 2018). Plaintiff Farm Bureau’s intentional act exclusion is written specifically to exclude both intended and unintended results of intentional acts, and the Court has applied and upheld this exact exclusion.³ *See S.C. Farm Bureau Mut. Ins. Co. v. Dawsey*, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) (holding that the policy language excludes unexpected results of intentional acts in addition to expected results).

Having reviewed the relevant deposition testimony, it is abundantly clear that the confrontation was the result of intentional acts. While Simpson may not have intended serious injury and Longphre may not have expected to be seriously injured, Simpson’s acts appear to be precisely the type of acts contemplated by his insurance policy. The confrontation between the Defendants was not by accident. Simpson may ultimately be found legally liable in the underlying case for Longphre’s injuries, however his conduct in bringing about the injuries was intentional,

³ Insurance policies are subject to the general rules of contract construction. *South Carolina Farm Bureau Mut. Ins. Co. v. Dawsey*, 638 S.E.2d 103, 104–05, 371 S.C. 353, 356 (S.C.App.,2006); *Century Indem. Co. v. Golden Hills Builders, Inc.*, 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). The court must give policy language its plain, ordinary, and popular meaning. *Id.* Although exclusions in a policy are construed against the insurer, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition. *B.L.G. Enters. v. First Fin. Ins. Co.*, 334 S.C. 529, 535–36, 514 S.E.2d 327, 330 (1999). The court cannot torture the meaning of policy language to extend coverage not intended by the parties. *State Farm Fire & Cas. Co. v. Barrett*, 340 S.C. 1, 8, 530 S.E.2d 132, 135 (Ct.App.2000).

and the harmful results arising from that intentional conduct (“expected or unexpected”) are not covered under Plaintiff’s policy with Simpson.

The Plaintiff’s Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: South Carolina Farm Bureau Ins Co VS Richard K Longphre ,
defendant, et al
Case Number: 2019CP3201671
Type: Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod