THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Walton J. McLeod, IV, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2020-001141

South Carolina Farm Bureau Mutual Insurance Company,
Respondent,

v.

Richard K. Longphre and Travis E. Simpson,
Defendants,

Of whom, Richard K. Longphre is Appellant.

INITIAL BRIEF OF RESPONDENT SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY

Ross B. Plyler
Post Office Box 10529
Greenville, SC 29603
864.349.2600

COUNSEL FOR RESPONDENT
SOUTH CAROLINA FARM BUREAU
MUTUAL INSURANCE COMPANY

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STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURT PROPERLY CONSIDER ALL EVIDENCE AND REASONABLE INFERENCES DRAWN FROM THAT EVIDENCE IN DECIDING THERE WAS NO GENUINE ISSUE OF MATERIAL FACT THAT TRAVIS SIMPSON'S PHYSICAL ATTACK ON RICHARD LONGPHRE WAS NOT ACCIDENTAL AND WAS NOT COVERED BY TRAVIS SIMPSON'S HOMEOWNER'S INSURANCE POLICY?

2. DID THE LOWER COURT PROPERLY CONSIDER ALL EVIDENCE AND REASONABLE INFERENCES DRAWN FROM THAT EVIDENCE IN DECIDING THERE WAS NO GENUINE ISSUE OF MATERIAL FACT THAT TRAVIS SIMPSON'S PHYSICAL ATTACK ON RICHARD LONGPHRE WAS AN INTENTIONAL ACT AND WAS EXCLUDED BY TRAVIS SIMPSON'S HOMEOWNER'S INSURANCE POLICY?

STATEMENT OF THE CASE

South Carolina Farm Bureau Mutual Insurance Company ("Respondent") filed a declaratory judgment action on April 30, 2019, stating the claims made in an Underlying Action[1] by Richard Longphre ("Appellant") against Travis Simpson ("Simpson") were not covered under Simpson's homeowner's insurance policy (HO 0411374) (the "Policy"). (D.J. Compl., p. 7.) Without coverage, Respondent claimed there was no duty to defend or indemnify Simpson in Appellant's claims in the Underlying Action. (Id.) On September 19, 2019, and in response to Appellant's amended complaint in the Underlying Action, Respondent filed a motion to amend its declaratory judgment complaint, but that motion was never decided. (Resp. Mot. to Am., p. 1.)

On March 2, 2020, Respondent filed a motion for summary judgment on the grounds that there was no genuine issue of material fact and that it was entitled to a judgment as a matter of law that there was no insurance coverage available to Simpson in the Underlying Action. (Mot. Summ. Judg., 1-2.) Specifically, Respondent argued there was no genuine issue of material fact that the allegations and claims made by Appellant against Simpson did not meet the insurance policy definition of occurrence and that the Policy's "intentional act" exclusion applied to exclude liability coverage for bodily injury alleged in the Underlying Action. (Id.)

Because of limited court access during the early phase of the coronavirus state of emergency, the parties waived a hearing on Respondent's motion and agreed that the lower court

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[1] On October 8, 2018, Richard Longphre filed a complaint in the South Carolina Court of Common Pleas for Lexington County, captioned as follows: *Richard Longphre v. Travis Simpson and Walter Santos*, Case No. 2018-CP-32-03314. (Resp. Memo in Supp. of Mot. Summ. J., Ex. D, Compl., p. 1.) On June 11, 2019, Richard Longphre filed an amended complaint, captioned as follows: *Richard Longphre v. Travis Simpson*, Case No. 2018-CP-32-03314, (hereinafter referred to as the "Underlying Action"). (Resp. Memo in Supp. of Mot. Summ. J., Ex. E, Am. Compl., p. 1.) Walter Santos ("Santos") was not a party in the amended complaint because he died on December 30, 2018.

could decide the motion on written memoranda alone. Respondent filed a memorandum with exhibits in support of its motion for summary judgment on April 23, 2020. (Resp. Memo in Supp. of Mot. for Summ. J., p. 1.) Appellant filed a memorandum with exhibits in opposition to Respondent's motion for summary judgment on April 29, 2020. (App. Memo in Opp'n to Mot. for Summ. J., p. 1.) Respondent filed a reply memorandum on May 4, 2020. (Resp. Reply Memo in Supp. of Mot. for Summ. J., p. 1.)

On July 17, 2020, the lower court issued an Order granting Respondent's motion for summary judgment, stating "[Simpson's] conduct in bringing about the injuries was intentional, and the harmful results arising from that intentional conduct ("expected or unexpected") are not covered under [Respondent's] policy with Simpson." (Order, 4-5.) Pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*, Appellant filed a motion to alter or amend (to reconsider) on July 24, 2020 (Appellant Mot. to Reconsider, p. 1), and Respondent filed a memorandum in opposition to that motion on July 28, 2020 (Resp. Memo. in Opp'n to Mot. to Alter or Amend, p. 1). On July 30, 2020, the lower court denied Appellant's motion to alter or amend stating that "this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered." (Order Mot. to Reconsider, p. 1.) On August 13, 2020, Appellant served a notice of appeal. (Not. of Appeal, p. 1.)

STANDARD OF REVIEW

"The appellate court 'reviews the grant of a summary judgment motion under the same standard as the trial court pursuant to Rule 56(c), SCRCP.'" Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the

affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c) SCRCP. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." County of Charleston v. S.C. Dept. of Trans., 420 S.C. 405, 408-09, 803 S.E.2d 316, 318 (Ct. App. 2017.) "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Moore v. Barony House Restaurant, LLC, 382 S.C. 35, 40, 674 S.E.2d 500, 503 (Ct. App. 2009) (citing Rife v. Hitachi Constr. Mach. Ltd., 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005)). "[I]t is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citing Evans v. Stewart, 30 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006)). "When a circuit court grants summary judgment on a question of law, this Court will review the ruling de novo." Wright v. PRG Real Estate Mgmt., Inc., 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019).[2]

FACTS

On December 28, 2017, at approximately 6:30 p.m., Santos and Simpson were hitting golf balls on Appellant's property which was part of a grassy area between Appellant's house and Santos' house.[3] (Resp. Memo in Supp. of Mot. Summ. J., Ex. A, Longphre Dep. p. 61, line 9 – p.

[2] "An action to determine coverage under an insurance policy is an action at law." State Farm Fire & Cas. Co. v. Barrett, 340 S.C. 1, 5, 530 S.E.2d 132, 134 (Ct. App. 2000).

[3] According to Appellant, this grassy area is an old farm pond and currently a drainage easement, and he and a neighbor take turns mowing the grass there. (Resp. Memo in Supp. of Mot. Summ. J., Ex. A, Longphre Dep. p. 21, lines 12-20; p. 39, lines 4-9.) Immediate neighbors use the area to let dogs and children play. (Id. p. 42, line 5 – p. 43, line 2.)

62, line 7; p. 65, lines 5-16.) Appellant, aggravated by this activity, shined his flashlight on the men and walked to the field to confront them about hitting golf balls on his property.[4] (Id. p. 62, lines 8-21.) Simpson admitted to drinking "two – one to two, three" beers on the night of the incident. (Resp. Memo in Supp. of Mot. Summ. J., Ex. B, Simpson Dep. p. 23, lines 3-13.) They were hitting "glow balls" which are golf balls that blink for ten minutes after they are struck. (Id. p. 23, lines 20-25.)

According to a voluntary written statement Appellant gave to the Lexington County Sheriff's Department, Appellant went to pick up one of the golf balls and throw it back on Santos' property when Santos pushed him away, and Simpson then attacked Appellant from behind, knocked him to the ground, jumped on top of him and got him in a choke hold. (Resp. Memo in Supp. of Mot. Summ. J., Ex. C, Longphre Statement, p. 1.) Further, Simpson broke Appellant's glasses and yelled "I'm going to kill you you f—king a—hole." (Id. p. 1.) Simpson removed himself from Appellant but then hit him again in his left knee knocking him back to the ground and injuring him to the extent he could not get up off ground. (Id. p. 1-2.) Santos ran back to his house and Simpson jumped into his truck and drove away. (Id. p. 2.)

Appellant's account of the attack gets sanitized in his amended complaint in the Underlying Action. However, Appellant consistently alleges that on December 28, 2017, Appellant observed Simpson and Santos hitting golf balls into his yard and toward his house despite his requests both previously and that evening that they cease this activity. (Resp. Memo in Supp. of Mot. Summ. J., Ex. E, Underlying Am. Compl., p. 1-2.) Appellant alleges that Santos and Simpson ignored his

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[4] Appellant and Santos had a long history of disputes regarding the use of this grassy area. Appellant testified he had to "warn [Santos] about [hitting golf balls] at least a half a dozen times over the years." (Resp. Memo in Support of Mot. Summ. J., Ex. A, Longphre Dep. p. 54, line 25 – p. 55, line 3.)

requests and continued hitting golf balls on his property. (Id. p. 2.) Appellant alleges that as he picked up a golf ball, Santos "came into contact" with him. (Id.) In his amended complaint, Appellant admits that Simpson "tackled [Appellant] to the ground" and a "scuffle ensued." (Id.) [5] Appellant alleges that as he was trying to get up from the ground, "Simpson negligently made contact with [Appellant], injuring him." (Id.) [6]

Simpson's account in his deposition varies slightly, but he admits that after the initial confrontation between Santos and Appellant, he "reacted" and put Appellant in a "headlock," taking Appellant to the ground. (Resp. Memo in Supp. of Mot. Summ. J., Ex. B, Simpson Dep., p. 26, lines 1-7; p. 31, lines 12-18; p. 42, lines 12-15.) Simpson goes on to say that as they were getting up, "I used him to help myself get up, and I pushed him back. And he fell back to the ground." (Id. p. 26, lines 22-24; p. 32, lines 2-7; p. 45, lines 3-7.)

In his own deposition, Appellant confirmed that Simpson tackled him and put him in a choke hold when he testified as follows:

> **When I bent down to pick up the golf ball, [Santos] pushed me away. … When he pushed me away, this guy beside me, off to the side that I didn't see - I had my back half turned to him, he tackled me to the ground and got me in a choke hold, okay?**

(Resp. Memo in Supp. of Mot. Summ. J., Ex. A, Longphre Dep. p. 62, line 22 – p. 63, line 5; p. 68, lines 20-25; p. 72, lines 2-4.) Appellant further described the brutality of the attack, and he explained how his glasses broke in the melee. He testified,

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[5] Appellant's initial complaint tracks his initial voluntary statement to police. Appellant alleges that as he picked up a golf ball, Simpson "violently and unexpectedly tackled or 'speared' [Appellant], brutally throwing him to the ground," "began to strangle" Appellant, and also expressed intent to kill Appellant. (Resp. Memo in Supp. of Mot. Summ. J., Ex. D, Compl., p. 2.)

[6] In the initial complaint, Appellant alleges that as he was trying to get up, Simpson "brutally hit [Appellant] in the side of the left leg." (Resp. Memo in Supp. of Mot. Summ. J., Ex. D, Compl., p. 2.)

Well, when somebody tackles you from behind and grabs you, you know, and smashes your head into the ground, your face into the ground and you're wearing glasses, they tend to break.

(Id. p. 75, lines 1-5.)

Appellant goes on to say that when he was in the process of getting up, we "got entangled somehow…our bodies came in contact with each other and I went back down on the ground like a ton of bricks and I couldn't get up." (Id. p. 63, lines 15-18.) "That's when my quad tendon was torn." (Id. p. 63, lines 18-19.)

Relevant Policy Provisions

There is no dispute that Respondent issued Policy HO 411374 to Travis E. Simpson and Kristin W. Simpson for the policy period effective August 11, 2017 to August 11, 2018 (the "Policy") and that the Policy states the following in **SECTION- II LIABILITY COVERAGES, COVERAGE E – PERSONAL LIABILITY:**

If a claim is made or a suit is brought against an ***insured*** *for damages because of* ***bodily injury*** *or* ***property damage*** *caused by an* ***occurrence*** *to which this coverage applies,* ***we*** *will:*

1. *pay up to* ***our*** *limit of liability for the damages for which the* ***insured*** *is legally liable; and*
2. *have the right and duty to provide a defense at* ***our*** *expense by counsel of* ***our*** *choice, even if the suit is groundless, false or fraudulent.* ***We*** *may investigate, settle, deny, or defend any claim or suit that* ***we*** *decide is appropriate. However,* ***we*** *will have no duty to defend any suit seeking damages for* ***bodily injury*** *or* ***property damage*** *to which this insurance does not apply.* ***Our*** *duty to settle or defend ends when the amount* ***we*** *pay for damages resulting from the* ***occurrence*** *equals* ***our*** *limit of liability.*

…

This insurance applies to ***bodily injury*** *and* ***property damage*** *only if:*

a. *the* ***bodily injury*** *or* ***property damage*** *is caused by an* ***occurrence*** *which takes place in the* ***coverage territory****; and*

b. the ***bodily injury*** *or* ***property damage*** *occurs during the policy period of this policy.*

The amount ***we*** *will pay for damages is limited as described in SECTION II – LIMITS OF LIABILITY.*

The Policy states the following in the section entitled "Definitions", paragraph 11:

DEFINITIONS

Certain words and phrases in this policy have specific meanings.

11. ***"Occurrence"*** *means an accident, but does not include exposure to conditions, which results during the policy period in:*

a. ***bodily injury****; or*

b. ***property damage****.*

The Policy states the following in **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 (sic) these acts or directions are not covered.*

ARGUMENTS

1. THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT THE CONDUCT ALLEGEDLY CAUSING APPELLANT'S INJURY WAS NOT AN "OCCURRENCE" AND WAS NOT COVERED UNDER THE INSURANCE POLICY ISSUED BY RESPONDENT.

<u>This Physical Attack is not an "Occurrence"</u>

There is no genuine issue of material fact that the attack alleged by Appellant and described in Appellant and Simpson's testimony is not an "occurrence" and therefore is not covered under Simpson's homeowner's insurance policy. An "occurrence" is defined by the Policy as an "accident" but 'accident' is not defined in the Policy. "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.’” Manufacturers & Merchants Mut. Ins. Co. v. Harvey, 330 S.C. 152, 159, 498 S.E.2d 222, 225 (Ct. App. 1998) (citing 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. “[A]n insured’s act is not an accidental contributing cause of injury when the insured actually intended to cause the injury that results.” Id., 330 S.C. at 161, 498 S.E.2d at 227. “An accident is never present when a deliberate act is performed unless some additional unexpected, independent and unforeseen [circumstance exists or] happening occurs which produces or brings about the result of injury or death.” Id. “*Nor can an insured’s intentional act be an accidental cause of injury when it is so inherently injurious that it cannot be performed without causing the resulting injury*.” Id. (emphasis in original). “Injuries are regarded as accidental unless it can be said that they are a natural or probable result of the insured’s action, reasonably foreseeable by the insured or by a reasonably prudent person in the same position.” Gulledge v. Atl. Coast Life Ins. Co., 255 S.C. 472, 476, 179 S.E.2d 605, 606 (1971).

Simpson admitted tackling Appellant, putting him in a headlock, and pushing him to the ground. (Resp. Memo in Supp. of Mot. Summ. J., Ex. B, Simpson Dep., p. 26, lines 1-7; p. 26, lines 22-24; p. 31, lines 12-18; p. 32, lines 2-7; p. 42, lines 12-15; p. 45, lines 3-7.) These acts were intentional, deliberate, and inherently injurious. Appellant confirms in his deposition that Simpson tackled him from behind, took him to the ground, put him in a choke hold. (Resp. Memo in Supp. of Mot. Summ. J., Ex. A, Longphre Dep. p. 62, line 22 – p. 63, line 5.) Further, Appellant said that Simpson smashed his head into the ground, breaking Appellant’s glasses. (Id. p. 75, lines 1-5.) Both Appellant and Simpson vividly describe intentional and deliberate acts that Simpson (and any reasonable person) would reasonably believe were capable of and would naturally produce

and cause injury to Appellant. As the lower court stated, "[t]he confrontation between [Appellant and Simpson] was not by accident." (Order, 4.)

Appellant's Labels of 'Negligence' Cannot Evoke Coverage

In the Underlying Action amended complaint, Appellant characterizes the attack causing injury as unintentional or negligent. Appellant's attempt to characterize this attack in terms of negligence cannot change the fact that he is actually alleging and describing intentional acts. The gravamen of Appellant's Underlying Action is an intentional act, and Appellant's amended complaint truly cannot be read any other way. "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). "[I]n the context of a cause of action alleging an intentional tort, which by definition cannot be committed in a negligent manner, the allegation of negligence is surplusage." Id.

Despite the labels of negligence and the attempt in an amended complaint to re-fashion the allegations to speak in terms of negligence, this Court should look beyond these labels and affirm the lower court to find no coverage, no duty to defend, and no duty to indemnify. See Manufacturers & Merchants Mut. Ins. Co. v. Harvey, 330 S.C. 152, 163, 498 S.E.2d 222, 228 (Ct. App. 1998) (holding that characterizing intentional conduct as negligence is not a basis for coverage). Because there is no genuine issue of material fact that Simpson's acts were not accidental and therefore not an "occurrence" under the Policy, this Court should affirm summary judgment for Respondent.

2. THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT THE CONDUCT ALLEGEDLY CAUSING APPELLANT'S INJURY WAS EXCLUDED FROM COVERAGE BECAUSE IT WAS AN INTENTIONAL ACT.

Intentional Act Exclusion Bars Coverage

Next, there is no genuine issue of material fact that Simpson's acts were intentional and the "intentional act" exclusion of the Policy acts to bar coverage for Appellant's claims. In South Carolina, the general rule is for an act to be excluded by the intentional act exclusion of an insurance policy, 1) the act which produces the loss must be intentional, and 2) 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, "an 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). Respondent's intentional act exclusion is written specifically to exclude both intended and unintended results of intentional acts, so Miller is not applicable. This Court has applied and upheld this exact exclusion.[7] 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).

There is no genuine issue of material fact that the acts causing the injury were intentional. Simpson's actions were so inherently injurious that they cannot be performed without causing injury. Simpson admitted in his deposition that he "ended up putting [Appellant] …in a headlock." (Resp. Memo in Supp. of Summ. J., Ex. B, Simpson Dep. p. 26, lines 1-7.) During this "headlock,"

[7] Respondent's intentional act exclusion in Dawsey is identical to the one in this case and excludes coverage for injury "resulting from intentional acts or directions of you or any insured. The expected or unexpected results or (sic) these acts or directions are not covered." S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 355, 638 S.E.2d 103, 104 (Ct. App. 2006).

Simpson admits he took Appellant to the ground. (Id. p. 26, lines 1-13; p. 42, lines 12-15.) Simpson goes on to say that as they were getting up, "I used him to help myself get up, and I pushed him back. And he fell back to the ground." (Id. p. 26, lines 18-24; p. 44, line 20 - p. 45, line 7.)

In his deposition, Appellant acknowledged that Simpson tackled him from behind, put him in a choke hold, and smashed his face into the ground. (Resp. Memo in Supp. of Summ. J., Ex. A, Longphre Dep. p. 62, line 22 – p. 63, line 5; p. 68, lines 20-25; p. 72, lines 2-4; p. 75, lines 1-5.) Appellant goes on to say that when he was in the process of getting up, "we got entangled somehow…our bodies came in contact with each other and I went back down on the ground like a ton of bricks and I couldn't get up" and that his quad tendon was torn. (Id. p. 63, lines 13-24.)

Appellant now attempts to defeat summary judgment by arguing that even while physical contact was intended, Simpson never intended to injure Appellant or that Appellant's injury was a "freak accident." (Id. p. 73, line 22 – p. 74, line 9.) Because of the express language of the Policy's exclusion, it does not matter whether Simpson intended the injurious result. 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). The testimony is uncontroverted that Simpson tackled Appellant to the ground, put him in a headlock, and pushed him to the ground. Simpson intended those acts, and the intentional act exclusion applies. Even if the court believes there is some fact issue that the injury only occurred when Simpson was getting up and separating from Appellant, it is still undisputed that being "entangled" is an intentional act and an unintentional result is not covered under Respondent's policy. In fact, Simpson's intentional conduct is so outrageous and inherently injurious that even if the Miller test was operative, this Court should hold that Simpson intended both the act and some injurious result.

Appellant's Two Event Theory Does Not Create a Genuine Issue of Material Fact

Appellant also argues that the lower court did not acknowledge conflicting evidence and made an improper factual determination. However, the lower court did not make a factual determination. It held there were no competing factual accounts and no genuine issue of material fact because both Appellant and Simpson testified to Simpson's intentional acts causing injury. In his motion to alter or amend, Appellant set forth a creative theory that the physical altercation between Appellant and Simpson was actually two separate and distinct events—one intentional physical engagement without resulting injury followed by separate accidental event which did result in injury. In now arguing there were two distinct events, Appellant says his actual injury occurred when Simpson "accidently and negligently made contact" with him as Simpson was getting up from the ground or removing himself from "unintentional contact" with Appellant. (App. Mot. to Reconsider, p. 5-6.)

This "two event" theory flies in the face of common sense and denies the reality of a single continuous physical altercation that took place in a matter of seconds. As Appellant testified, "it all happened so fast." (Resp. Memo in Supp. of Mot. Summ. J., Ex A. Longphre Dep. at p. 63, lines 14-15.) Appellant now asks this Court to believe that there is a genuine issue of material fact that between the time Simpson tackled Appellant to the ground and when he separated himself to get up, his conduct turned from intentional to negligent. The testimony is uncontroverted that Simpson tackled Appellant to the ground, put him in a headlock, and pushed him to the ground (breaking Appellant's glasses), and pushed Appellant back to the ground as he rose. Simpson intended each of those acts, and the intentional act exclusion applies. Even if the injury occurred at the end of the confrontation when the parties were separating, Appellant admits he went to the ground because he and Simpson were "entangled." (Resp. Reply Memo, Ex. A Longphre Dep. p.

98, lines 8-18.) Appellant admits, "I wouldn't have fallen unless he had got entangled with me." (Resp. Memo in Supp. Mot. Summ. J., Ex. A Longphre Dep. p. 73, lines 2-5.) The lower court characterized the incident as a "verbal confrontation [that] devolved into a physical engagement." (Order, p. 2.) The lower court correctly viewed this confrontation as a single event and concluded that "[h]aving reviewed the relevant deposition testimony, it is abundantly clear that the confrontation was the result of intentional acts." (Order, p. 4.)

Appellant also now argues that S.C. Farm Bureau Mut. Ins. Co. v. Dawsey, 371 S.C. 353, 357, 638 S.E.2d 103, 105 (Ct. App. 2006) does not apply because the Dawsey facts do not contain the "two event" theory that Appellant now posits. While true that Dawsey does not speak to the "two event" theory, the lower court was still correct to apply Dawsey because that case looked at an identical intentional act exclusion and found it properly "excludes both intended and unintended results of intentional acts." (Order, p. 4.) Because of the language of the exclusion, it does not matter that Simpson may not have intended the injurious result. 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). The only important question is whether Simpson intended the injurious act, a question the lower court answered in the affirmative based on the clear and uncontroverted deposition testimony of Appellant and Simpson. Because there is no genuine issue of material fact that Simpson's acts were intentional and the intentional act exclusion applies, this Court should affirm summary judgment for Respondent.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court.

Respectfully submitted,
ROE CASSIDY COATES & PRICE PA

By: s/Ross B. Plyler________________________________
Ross B. Plyler, SC Bar No. 71688
rplyler@roecassidy.com
Post Office Box 10529
Greenville, SC 29603
T: 864.349.2600
F: 864.349.0303

COUNSEL FOR RESPONDENT
SOUTH CAROLINA FARM BUREAU MUTUAL
INSURANCE COMPANY

Greenville, South Carolina
December 9, 2020

THE STATE OF SOUTH CAROLINA
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APPEAL FROM LEXINGTON COUNTY
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Of whom, Richard K. Longphre is Appellant.

PROOF OF SERVICE

I, the undersigned attorney with Roe Cassidy Coates & Price, hereby certify that Initial Brief of Respondent South Carolina Farm Bureau Insurance Company and Designation of Matter to be Included in Record on Appeal have been served on all counsel of record via electronic mail to the addresses indicated below:

Neal D. Truslow
Truslow & Truslow Law Firm
nealtruslow@truslawlaw.com

s/Ross B. Plyler________________
Ross B. Plyler

Greenville, South Carolina
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