STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU INSURANCE COMPANY,

Plaintiff-Appellant,

v

MORGAN L. SCAFE, JUDITH A. SCAFE, LYNN L. SCAFE, and CLAIRE MINARIK,

Defendants-Appellees.

UNPUBLISHED
September 12, 1997

No. 190297
Genesee Circuit Court
LC No. 93-020087 CZ

Before: Neff, P.J., and Wahls and Taylor, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiff appeals by leave granted an order denying its motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse.

Plaintiff issued a homeowner's insurance policy to Thomas Minarik in 1979. The policy was renewed on an annual basis through 1992. Thomas Minarik's wife, defendant Claire Minarik, was living in the household, and was also insured under the policy. As a child, Morgan Scafe, who was a friend of the Minariks' daughter, was a frequent guest in the Minarik household. Scafe alleged that Thomas Minarik physically and sexually abused her during her visits to the Minarik household over a three-year period. Thomas Minarik was found guilty of first-degree criminal sexual conduct against Morgan after a jury trial. Morgan Scafe and her parents, Lynn and Judith, thereafter commenced a civil action in Genesee Circuit Court alleging that Thomas Minarik was liable for acts of assault, battery, false imprisonment, and intentional infliction of emotional distress against Morgan, and that Claire Minarik was negligent by failing to take reasonable action to prevent the abuse. Claire Minarik demanded that, pursuant to the homeowner's insurance policy, plaintiff provide her with a defense and indemnify her for any liability incurred as a result of the claims brought against her by the Scafes. On March 4, 1993, plaintiff filed the instant declaratory judgment action seeking a declaration that it has no duty to defend or indemnify Claire Minarik. Plaintiff asserted that the abuse of Morgan did not qualify as an "occurrence" under the policy and that, if it did qualify as an occurrence, the intentional acts exclusion applied to preclude coverage. Plaintiff thereafter filed a motion for summary disposition pursuant to MCR 2.116(C)(10), which the trial court denied.

Plaintiff argues that the trial court erred by determining that there was an "occurrence" such that it was obligated to defend and indemnify Claire Minarik. We agree.

The homeowner's insurance policy in the instant case provided personal liability coverage for injuries "caused by an occurrence." The policy defined an occurrence as "an accident, including injurious exposure to conditions, which results, during the policy term, in bodily injury or property damage." The policy did not define the term "accident" and, therefore, we give the term its commonly used meaning. *Group Ins Co v Czopek*, 440 Mich 590, 596; 489 NW2d 444 (1992). An accident is defined as "an undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected." *Id*.

To determine whether an incident qualifies as an "occurrence," it must first be determined from whose standpoint the incident will be viewed. The trial court found that there was an "occurrence" in the instant case regardless of whether Morgan's injuries were viewed from the perspective of the insured party, or from the perspective of the injured party. There are two insureds in this case. Thus, we must determine whether we should view the matter from Morgan Scafe's standpoint or Thomas Minarik's standpoint or from Claire Minarik's standpoint. This Court recently held, in a legally indistinguishable case, that, if a husband engages in intentional conduct and the coinsured wife is sued for negligence, we are to view the matter from the standpoint of the intentional actor, the husband, as he was the insured actor who caused the injury in question. See *Michigan Basic Property Insurance Association v Wasarovich*, 214 Mich App 319, 325-327; 542 NW2d 367 (1995). Therefore, in the present case, the sexual abuse must be viewed from the standpoint of Thomas Minarik, the insured party who caused the injury. *Wasarovich, supra*. When viewed from Thomas Minarik's perspective, his sexual abuse of Morgan cannot be characterized as an accident. The intent to injure is inferred as a matter of law when an adult sexually assaults a child. *Fire Ins Exchange v Diehl*, 450 Mich 678, 689; 545 NW2d 602 (1996). Accordingly, the sexual abuse of Morgan does not qualify as an "occurrence" under the policy and plaintiff is not required to defend or indemnify Claire Minarik in the underlying lawsuit.

Although the trial court stated that factual issues existed with respect to whether Claire Minarik breached a duty to Morgan, and with respect to whether Claire Minarik's conduct was negligent or intentional, such issues were not material to the instant declaratory judgment action. We therefore reverse the trial court's denial of plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10).

Reversed and remanded for entry of an order stating that plaintiff has no duty to defend or indemnify Claire Minarik in the underlying action. We do not retain jurisdiction.

/s/ Clifford W. Taylor
/s/ Myron H. Wahls