

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GAIL E. ALDRICH and JEFFREY S. ALDRICH, as  
Next Friend for TROY ALDRICH, a Minor, SCOTT  
THOMAS BARCHESKI and SARAJO  
ELIZABETH BARCHESKI,

UNPUBLISHED  
August 13, 1999

Plaintiffs/Third Party  
Defendants-Appellants,

v

AUTO CLUB GROUP INSURANCE COMPANY  
("AAA MICHIGAN"),

No. 206375  
Kent Circuit Court  
LC No. 96-002395-CZ

Defendant/Third Party  
Plaintiff-Appellee.

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Before: McDonald, P.J., and Kelly and Cavanagh, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10).<sup>1</sup> The trial court held that defendant had no duty to provide coverage for Scott Barcheski and Sarajo Barcheski. We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. *Lown v JJ Eaton Place*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 205937, issued 6/4/99), slip op p 3. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 110065, issued 7/13/99), slip op pp 8-9.

Defendant's policy provides:

Under Part II, we will not cover

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bodily injury or property damage resulting from:

a criminal act or omission; or

an act or omission, criminal in nature, committed by an **insured person** even if the **insured person** lacked the mental capacity to:

(a) appreciate the criminal nature or wrongfulness of the act or omission; or

(b) conform his or her conduct to the requirements of the law; or

(c) form the necessary intent under the law.

This exclusion will apply whether or not the **insured person**:

is charged with a crime;

is convicted of a crime whether by a court, jury or plea of nolo contendere; or

enters a plea of guilty whether or not accepted by the court.

An insurance policy is much the same as any other contract. It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties. *Century Surety Co v Charron*, 230 Mich App 79, 82; 583 NW2d 486 (1998). When determining what the parties' agreement is, the court should read the contract as a whole and give meaning to all the terms contained in the policy. The court must give the language contained in the policy its plain and ordinary meaning so that technical and strained constructions are avoided. If an insurance contract sets forth definitions, the policy language must be interpreted according to those definitions. Where the language of an insurance policy is clear and unambiguous, it must be enforced as written. Courts must be careful not to read an ambiguity into a policy where none exists. *Id.* at 82-83.

Plaintiffs assert that summary disposition should not have been granted with regards to Scott Barcheski because the criminal act exclusion in the insurance policy is ambiguous.<sup>2</sup> We disagree. The criminal acts exclusion clearly precludes coverage for bodily injury resulting from a criminal act. Cf. *Allstate Ins Co v Fick*, 226 Mich App 197, 202-203; 572 NW2d 265 (1997). Scott Barcheski pleaded guilty of second-degree child abuse, MCL 750.136b(3); MSA 28.331(2). Thus, there is no dispute that Scott Barcheski's actions constituted a criminal act, and the policy clearly and unambiguously exempts from coverage the injuries incurred as a result of those actions.

Plaintiffs argue that the criminal acts exclusion should not apply because Scott Barcheski did not intend to injure Troy Aldrich. However, “a broad criminal acts exclusion like the one in this case ‘eliminates from coverage more than just intentional crimes or injuries intended or reasonably expected.’” *Fick, supra* at 203-204, quoting *Allstate Ins Co v Juniel*, 931 P2d 511, 515 (Colo App, 1996).

Plaintiffs also contend that the criminal acts exclusion should not be applied to Sarajo Barcheski because she did not participate in her husband’s criminal acts. However, where coverage of a particular claim is excluded by virtue of a specific exclusionary clause, derivative claims against co-insureds are also excluded.<sup>3</sup> *Allstate Ins Co v Johnson*, 205 Mich App 495, 501; 517 NW2d 799 (1994). Accordingly, the criminal acts of Scott Barcheski resulting in bodily injury to Troy Aldrich precluded coverage under the policy as to all insureds, including Sarajo Barcheski.<sup>4</sup> Thus, defendant had no duty to defend or indemnify Scott and Sarajo Barcheski in the underlying action.

Because the trial court correctly found that coverage was precluded under the criminal acts exclusion, we do not address whether the business pursuits exclusion in defendant’s policy also applies to preclude coverage.

Affirmed.

/s/ Gary R. McDonald

/s/ Michael J. Kelly

/s/ Mark J. Cavanagh

<sup>1</sup> The trial court order states that the motion for summary disposition was granted pursuant to MCR 2.116(C)(8). However, it is clear from the record that the trial court considered evidence outside the pleadings, and the parties agree that the motion was decided under MCR 2.116(C)(10).

<sup>2</sup> Plaintiffs complain that “the policy expressly states that bodily injuries resulting from an accident are covered, and yet” the exclusionary provision bars coverage for injuries resulting from criminal acts. However, the policy clearly states that defendant will pay damages for bodily injury “*caused by an occurrence covered by this Policy*” (emphasis added). The policy does not imply that coverage is provided for injuries resulting from any and all accidents.

Plaintiffs also assert that the policy is ambiguous because the term “accident” is not defined. However, Michigan courts have repeatedly stated that “an accident is 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.” See, e.g., *Frankenmuth Mutual Ins Co v Masters*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (Docket Nos. 110452, 110881, issued 6/15/99), slip op p 11; *Arco Industries v American Motorists Ins Co*, 448 Mich 395, 404-405; 531 NW2d 168 (1995).

<sup>3</sup> Plaintiffs attempt to argue that the claim against Sarajo Barcheski is not derivative because a separate allegation of negligence has been made against her, namely, that she was negligent for leaving Troy Aldrich in Scott Barcheski’s care. However, exclusionary language referring to conduct by “an

insured” excludes coverage to all insureds on the basis of the conduct of any insured. *Vanguard Ins Co v McKinney*, 184 Mich App 799, 809; 459 NW2d 316 (1990). Thus, because coverage for Scott Barcheski was precluded by the application of the criminal acts exclusion, coverage for Sarajo Barcheski was also precluded.

<sup>4</sup> Plaintiffs argue that they are entitled to coverage under the doctrine of reasonable expectations. However, given Scott Barcheski’s admission that he engaged in a criminal act and the all-encompassing criminal acts exclusion in defendant’s policy, we believe that the Barcheskis could not reasonably have expected coverage under these circumstances. Cf. *Fick, supra* at 204.