

STATE OF MICHIGAN
COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

TERRI ANN MOORE, a/k/a TERRY LYNN
MOORE, as Next Friend of HEATHER
BREANNA MOORE, a Minor, and HEATHER
BREANNA MOORE, a Minor,

Defendants-Appellants.

UNPUBLISHED

April 6, 2006

No. 266721

St. Clair Circuit Court

LC No. 05-001519-CK

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting summary disposition in favor of plaintiff in this declaratory action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In June 2004, defendant Heather Moore, non-participating defendant Crystal Leverenz, and Alexander Hawkins, all of whom were 13 years old at the time, spent time burning "fuzzies" off their socks with cigarette lighters and gasoline. At some point, Heather spilled gasoline on her pants. Crystal placed a lighter close to Heather's pants and lit it. Heather's pants caught fire, and she sustained serious burns on her leg.¹

Plaintiff filed the instant declaratory action seeking a judgment that it had no duty to defend or indemnify the Leverenz family in an underlying suit filed on Heather's behalf. Plaintiff relied on language in its policy that coverage for bodily injury was excluded if the injury was "expected or intended" by the insured.

¹ Crystal was charged as a juvenile with assault with intent to do great bodily harm less than murder, MCL 750.84, but pleaded nolo contendere to a reduced charge of aggravated assault, MCL 750.81a.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10). Defendants argued that because plaintiff's policy excluded coverage for bodily injury that was "expected" by the insured, the application of a subjective standard was required to evaluate the intention of the insured; absent actual expectation of or intent to cause injury, coverage was available. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 567-568; 489 NW2d 431 (1992). Defendants asserted that whether Crystal should have expected that injury would occur as a result of her actions was irrelevant in the absence of policy language that required that the insured's expectations be reasonable.

Plaintiff responded that summary disposition should be granted in its favor because Heather's injuries fell within the "expected or intended" policy exclusion. Plaintiff contended that an injury was "expected" if it was the natural, foreseeable, and anticipated result of the intentional act of the insured. *Auto Club Ins Co v Burchell*, 249 Mich App 468, 482-483; 642 NW2d 406 (2001). Coverage was precluded for damages that reasonably should have been expected due to the direct risk of harm created by the insured's intentional actions. *Id.* at 483. In addition, plaintiff maintained that coverage was precluded if the insured's claim that she did not intend or expect the injury defied reason, common sense, and experience. *Auto-Owners Ins Co v Harrington*, 455 Mich 377, 383-384; 565 NW2d 839 (1997). Plaintiff argued that because Crystal admitted that she intentionally held the lighter close to Heather's pants and lit it, knowing that the gasoline-soaked fabric could ignite even if not touched by the flame, she intentionally created a direct risk of harm, and her assertion that she did not expect injury to result defied reason.

The trial court denied defendants' motion for summary disposition and granted summary disposition in favor of plaintiff. The trial court found that no evidence showed that Crystal intended to injure Heather, but noted that an injury was considered to be expected if it was the natural, foreseeable, and anticipated result of an intentional act which created a direct risk of harm. The trial court noted that Crystal admitted that she intentionally lit the lighter near Heather's pants after learning that gasoline-soaked fabric would ignite even if not directly touched by flame, and concluded that under either a subjective or an objective standard, Crystal had sufficient knowledge and experience to understand the potential consequences of her actions.

We review a trial court's decision on a motion for summary disposition de novo. *Burchell*, *supra* at 479. An insurance contract should be read as a whole and meaning given to all terms. *Churchman*, *supra* at 566. An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). If the language of an insurance contract is clear, its construction is a question of law for the court. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 353; 596 NW2d 190 (1999). Ambiguities are to be construed against the insurer. *State Farm Mutual Auto Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996). Exclusions are strictly construed in favor of the insured. *Churchman*, *supra* at 567.

Defendants argue that the trial court erred by denying their motion for summary disposition and granting summary disposition in favor of plaintiff. Defendants assert that the trial court's application of a direct risk of harm analysis was error because such an analysis is relevant only if the policy at issue requires an "occurrence," i.e., an accident, in order for coverage to be available. See, e.g., *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105; 595 NW2d 832 (1999). Defendants contend that because plaintiff's policy excluded coverage if the

bodily injury was “expected or intended” by the insured, the application of a subjective standard was required to evaluate Crystal’s intention. *Id.* at 115-116.

In *Harrington* the Supreme Court interpreted and applied the same policy exclusion at issue in this case. The *Harrington* Court held that the language of the exclusion was unambiguous, and required “a subjective inquiry into the intent *or expectation* of the insured.” *Harrington, supra* at 383 (emphasis in original). The *Harrington* Court noted that previous authority held that the exclusion precluded coverage for injuries caused by an insured “who acted intentionally despite his awareness that harm was likely to follow from his conduct.” *Id.* at 384. That is, coverage was precluded if the insured’s claim that he did not expect or intend the injury that flowed from his intentional act defied reason, common sense, and experience. *Id.*

We affirm. Crystal admitted that she intentionally placed a lighter close to Heather’s gasoline-soaked pants and lit the lighter. The trial court found that no evidence showed that Crystal intended to harm Heather, but that plaintiff’s policy precluded coverage because the injuries Heather sustained were expected. The trial court observed that a person with Crystal’s knowledge and experience would appreciate the potential consequences of her action. The trial court noted that Crystal admitted that she intentionally placed the lighter close to Heather’s pants and lit it after learning that gasoline-soaked fabric would ignite even if not directly touched by flame. Thus, although the trial court did not expressly so state, it found that Crystal’s assertion that she did not expect the injury that flowed from her intentional act defied reason, common sense, and experience. Contrary to defendants’ assertions, the trial court’s analysis was not strictly objective, and comported with *Harrington, supra*. The trial court correctly found that the “expected or intended” exclusion in plaintiff’s policy precluded coverage for Heather’s injuries because those injuries were expected.

The trial court did not rely on Crystal’s plea as a basis for its decision. For that reason, we decline to address the issue of the admissibility of the plea under MRE 410 or other authority. *Preston v Dep’t of Treasury*, 190 Mich App 491, 498; 476 NW2d 455 (1991).

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio