

STATE OF MICHIGAN
COURT OF APPEALS

PIONEER STATE MUTUAL INSURANCE
COMPANY,

Plaintiff-Appellee,

v

KENNETH G. ORT and JASON MATTHEW
AMY,

Defendants-Appellants.

UNPUBLISHED
May 9, 2006

No. 267544
Genesee Circuit Court
LC No. 05-080752-CK

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant Jason Matthew Amy¹ claims an appeal from the trial court's order granting summary disposition in favor of plaintiff. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On June 26, 2004, defendant Kenneth G. Ort was a guest at a party hosted by Amy. During the party, Ort placed a launching device consisting of tubes on a boat dock, placed two three-inch round fireworks devices, commonly known as mortars, in the tubes, and lit the devices. The devices were designed to launch and explode while in the air. The first device launched, causing the device to tip. The second device launched and struck Amy. Amy suffered severe injuries to his left leg, and underwent the amputation of his lower left leg.

Amy filed suit against Ort in circuit court, alleging that Ort acted negligently in igniting the fireworks. Pioneer, Ort's insurer, filed a declaratory action naming Ort and Amy as defendants and seeking a judgment that it had no duty to defend or indemnify Ort in the underlying suit. Pioneer relied on language in its homeowner's policy, which provides that coverage does not apply to bodily injury or property damage:

¹ Defendant Kenneth G. Ort has not filed a brief on appeal.

- a. resulting from an intentional or criminal act or omission which is expected or intended by any **insured** to cause harm. This exclusion applies whether or not any **insured**:
 - (1) intended or expected the result of his or her act or omission so long as the resulting injury or damage was a natural consequence of the intended act or omission;

...

This exclusion applies whether or not such insured is actually charged with, or convicted of a crime.

Pioneer moved for summary disposition pursuant to MCR 2.116(C)(7), (9), and (10), arguing, inter alia, that its policy excluded coverage for the injury suffered by Amy because the injury was the natural or foreseeable consequence of Ort's act of igniting the fireworks. The trial court granted the motion, finding that the evidence showed that Ort's act of igniting the fireworks was intentional, and that personal injury was a natural consequence of the explosion of a firework device.

We review the trial court's decision on a motion for summary disposition de novo. *Trepanier v Nat'l Amusements, Inc*, 250 Mich App 578, 582; 649 NW2d 754 (2002).²

An insurance contract should be read as a whole and meaning given to all terms. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance contract is clear and unambiguous if it fairly admits of but one interpretation. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998). 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). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably be understood in different ways. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566-567; 596 NW2d 915 (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. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001).

Looking to the policy, the first sentence of liability exclusion 1(a) excludes coverage for injuries that result from any intentional or criminal act "*which is expected or intended by any insured to cause harm.*" Pioneer produced no evidence at the trial court to suggest that Ort either

² The trial court did not specify the court rule under which it granted Pioneer's motion for summary disposition. However, the motion was supported by deposition testimony, and the trial court impliedly referred to that testimony when ruling on the motion. We, therefore, assume that the trial court granted summary disposition pursuant to MCR 2.116(C)(10). See *Detroit News, Inc v Policemen & Firemen Retirement System*, 252 Mich App 59, 66; 651 NW2d 127 (2002).

intended or expected that his act would result in injury to Amy. Thus, the first sentence of exclusion 1(a) does not negate coverage under the policy.

Turning to the second sentence of liability exclusion 1(a) and subsection 1(a)(1), Ort's intent and expectations were irrelevant "so long as the resulting injury or damage was a *natural consequence* of the intended act or omission." Because the policy does not define the phrase "natural consequence," we are to interpret the phrase in accordance with its commonly used meaning and in accordance with the reasonable expectations of the parties. *Nabozny v Pioneer State Mut Ins Co*, 461 Mich 471, 477 n 8; 606 NW2d 639 (2000). "Natural," in this context, is defined as "to be expected; happening in the usual course of things, without the intervention of accident, violence, etc." Random House Webster's College Dictionary, p 872. "Consequence" is defined as "the effect, result, or outcome of something occurring earlier." *Id.* at 281. Thus, an injury is a "natural consequence" of an act if it is the expected result of the act, which happens in the usual course of things, without the intervention of accident.

Here, Ort's act of igniting the fireworks was clearly intentional; however "'an insured need not act unintentionally' in order for the act to constitute an 'accident.'" *Frankenmuth Mutual Ins Co v Masters*, 460 Mich 105, 115; 595 NW2d 832 (1999)(citation omitted). Although Ort admitted that the launching tubes should have been braced or otherwise secured to the dock, he also testified that he had used the device on previous occasions and that it did not tip over. That the tubes fell over and fired a mortar back at Amy, who was at least 40 yards away, was the accidental result of Ort's negligence in igniting the fireworks. Even assuming, without deciding, that Ort's intentional act of igniting the fireworks was a crime, there is nothing in the record to suggest that the "natural consequence" of this act was to cause injury.³ To the contrary, the expected result, which according to Ort's testimony had actually occurred on previous occasions, was to launch the mortars high into the air where they would explode without causing injury to anyone.

The trial court, in its order denying Amy's motion for reconsideration, concluded that "reasonable minds could not differ in concluding that bodily injury *could* result from the haphazard ignition of fireworks (mortars) from and unstable, unsecured stand on a dock in the vicinity or 'maybe ten people.'" (Emphasis added.) In so holding, however, the trial court misapplied the policy language, which excludes coverage for an injury that is a "natural

³ Our Supreme Court has stated,

[T]he notion that insurance policies should not cover the acts of foolish, reckless, or even lawless people. . . is a peculiar view because these are among the very people that society wishes to be insured and, in some circumstances, such as motor vehicle insurance, even requires to be insured. . . . [S]ociet[y] benefit[s] [when] insurance provides [for] those injured or damaged by the acts of insured but otherwise uncollectible individuals. The true beneficiary of liability insurance is not the insured, but his injured victim. [*Allstate Ins Co v McCarn*, 471 Mich 283, 291-292; 683 NW2d 656 (2004).]

consequence” of an intentional act, rather than merely a foreseeable consequence. As the term “natural consequence” means “to be expected,” it implies something more than a mere possibility; it implies a “substantial probability.”⁴ While it is certainly a foreseeable possibility that igniting the fireworks in the manner that Ort did could cause injury to someone, we believe that reasonable minds could differ with regard to whether Ort’s actions in this case created a substantial probability of injury. A jury, therefore, must decide this question.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

⁴ The word “expected” in an exclusionary clause of an insurance policy means that the insured knew or should have known that there was a substantial probability that certain consequences would result from his actions. *Allstate Ins Co v Freeman*, 432 Mich 656, 675; 443 NW2d 734 (1989). In order for the result to be reasonably expected, it is not enough that it was reasonably foreseeable. *Id.*

The difference between “reasonably foreseeable” and “substantial probability” is the degree of expectability. A result is reasonably foreseeable if there are indications which would lead a reasonably prudent man to know that the particular results could follow from his acts. Substantial probability is more than this. The indications must be strong enough to alert a reasonably prudent man not only to the possibility of the results occurring but the indications also must be sufficient to forewarn him that the results are highly likely to occur. [*Id.* (citation omitted).]