



IN THE SUPREME COURT OF THE STATE OF DELAWARE

USAA CASUALTY INSURANCE)	No: 273, 2019
COMPANY,)	
)	Court Below:
Plaintiff below/Appellant,)	Superior Court of the State
)	of Delaware, Kent County
v.)	
)	C.A. No. K18C-05-050 NEP
TRINITY CARR,)	
)	
Defendant below/Appellee.)	

APPELLEE'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

Defendant Trinity Carr (“Carr”) and Amy Joyner Francis (“Francis”), high school students, were involved in a brief altercation in the school bathroom. Shortly thereafter, Francis died from cardiac arrest caused by an undiagnosed, extremely rare medical condition. As a result of Francis’s death, Carr, then a juvenile, was charged with criminally negligent homicide and adjudicated delinquent by the Family Court. This delinquency finding was reversed by the Delaware Supreme Court in Cannon v. State.¹

Carr, among others, has been sued for wrongful death and survivorship damages. She sought coverage and a defense in those actions through her mother’s homeowner’s insurance carrier, plaintiff USAA Casualty Insurance Company (“USAA”). USAA filed a declaratory judgment action seeking a ruling that it was not required to provide coverage to Carr. On June 12, 2019, the Superior Court entered an order denying USAA’s motion for summary judgment and granting Carr’s cross-motion for summary judgment, requiring USAA to provide coverage, on the grounds that the altercation met the definition of an occurrence, and that no policy exclusions were applicable. USAA has appealed the Superior Court’s decision. This is defendant’s answering brief on appeal.

¹Cannon v. State, 181 A.3d 615 (Del. 2018).

SUMMARY OF ARGUMENT

- I. DENIED. THE COURT BELOW CORRECTLY VIEWED THE ACCIDENT FROM THE PERSPECTIVE OF THE VICTIM WHEN DETERMINING THAT CARR IS ENTITLED TO COVERAGE.

- II. DENIED. THE COURT BELOW CORRECTLY DETERMINED THAT THE POLICY LANGUAGE EXCLUSION WAS AMBIGUOUS AND THAT USAA FAILED TO MEET ITS BURDEN DEMONSTRATING APPLICABILITY.

COUNTERSTATEMENT OF FACTS

This Court has already analyzed the underlying facts and video evidence relevant to this declaratory judgment action when considering and ultimately reversing Carr's juvenile adjudication for criminally negligent homicide. In reversing the Family Court's decision, the Supreme Court stated:

[N]o reasonable factfinder could conclude that [Carr's] attack – which inflicted only minor physical injuries – posed a risk of death so great that [Carr] was grossly deviant for not recognizing it. And even if – as the Family Court saw it – [Carr] should have realized that her attack might have deadly consequences because she carried it out in the close confines of the bathroom (near its tile floor and fixtures), [Francis's] death had nothing to do with those risks, and they were too far removed from the way she died to blame [Carr] for her death.²

[W]hat is evident from that recording is that **this was not a severely violent attack**. [Carr] pulled [Francis] to the ground, threw a quick succession of awkward punches, pulled her by her hair and then jumped on top of her. By the end, the two of them were on the floor, grappling and kicking at each other until other students pulled them apart. In under a minute, it was over. **The impression the video imparts is that this was not an attack that posed a readily apparent risk of death – an impression that is reinforced by the results of [Francis's] autopsy, which revealed little evidence of physical harm.**³

² Cannon, 181 A.2d at 617. The Cannon opinion contained pseudonyms; however, the parties' names have been substituted here.

³ Cannon, 181 A.2d at 625 (emphasis added).

Contrary to USAA's depiction, the Cannon Court described Carr as striking Francis "by and large ineffectually – with loosely balled fists" and with "feebleness."⁴ A rare cardiac defect was the cause of Francis's death:

[Francis's] autopsy revealed that none of the blows [Carr] inflicted were sufficient to cause her death or, for that matter, serious physical injury. The medical examiner found no outward evidence of trauma, other than some 'minor soft tissue injuries,' which included contusions under her eyes, broken fingernails, and abrasions on her arms and one of her knuckles. The cause of her death was found to be 'sudden cardiac death due to [a] large atrial septal defect and pulmonary hypertension,' with the emotional and physical stress from the assault acting as a "contributing" cause.⁵

It is 'extraordinarily rare'...for emotional and physical stress to trigger the death of a 16-year old with no prior indication of cardiac disease.⁶

In this case, the Court below stated, "Indeed, this Court concurs with the Supreme Court's assessment that the video does not show a 'severely violent' attack, but rather a physical altercation during which Ms. Carr rather ineffectually struck at Ms. Francis and pulled her hair, and the two ended up on the floor pushing against each other with their feet."⁷

⁴ Cannon 181 A.3d at 618-19.

⁵ Cannon, 181 A.3d at 619.

⁶ Id.

⁷ USAA Cas. Ins. Co. v. Carr, Del. Super., C.A. No. K18C-05-050, Primos, J. (June 12, 2019) at 14-15 (citing Cannon, 181 A.3d at 618-19, 25).

ARGUMENT

I. THE COURT BELOW CORRECTLY VIEWED THE ACCIDENT FROM THE PERSPECTIVE OF THE VICTIM WHEN DETERMINING THAT CARR IS ENTITLED TO COVERAGE

1. Questions Presented

Whether the term “accident” is to be analyzed from the perspective of the victim or the insured where the insurance policy is silent.

2. Scope of Review

A trial court's interpretation of an insurance policy is a determination of law subject to *de novo* review.⁸ This Court must determine whether the court below “erred in formulating or applying legal precepts.”⁹

3. Merits of Argument

Carr qualifies for coverage under the USAA policy. The Court must consider the following factors in determining the existence of coverage:

(1) when there exists some doubt as to whether the complaint against the insured alleges a risk insured against, that doubt should be resolved in favor of the insured;

(2) any ambiguity in the pleadings should be resolved in favor of the insured;

(3) if even one count or theory of plaintiff's complaint lies within the coverage of the policy, the duty to defend arises.¹⁰

⁸ Hudson v. State Farm Mut. Ins. Co., 569 A.2d 1168, 1170 (Del. 1990).

⁹ Id.

¹⁰ Brosnahan Builders, Inc. v. Harleysville Mut. Ins. Co., 137 F. Supp. 2d 517, 525 (D. Del. 2001) (citing Continental Cas. Co. v. Alexis I. DuPont Sch. Dist., 317 A.2d 101, 105 (Del. 1974)).

The USAA policy provides for Personal Liability Coverage for a claim or suit brought against an insured for bodily injury caused by an occurrence.¹¹ The USAA policy defines occurrence as an “accident.”¹² Accident is not defined by the policy. The court has defined an accident as “an event not anticipated or foreseen by the victim, or an outcome not intended by the insured.”¹³ Accident in the context of an insurance agreement is defined by Black's Law Dictionary as “an event happening without any human agency, or, if happening through such agency, an event which, under circumstances, is unusual and not expected by the person to whom it happens.”¹⁴ “[W]hether an event is considered an accident is determined by ‘(1) taking the point of view of the injured person *and/or* (2) looking at the insured’s conduct.’”¹⁵

In Hackendorn, a beauty salon customer was injured after Hackendorn entered the salon and shot and killed his wife. He sought coverage under his homeowner’s policy in a civil action brought by the customer. The court found ambiguity within the policy language because accident was not defined.¹⁶ It then decided that an accident was to be determined from the perspective of the victim,

¹¹ A111

¹² A88

¹³ Camac v. Hall, 698 A.2d 394, 396 (Del. Super. 1996) (citing State Farm Fire & Cas. Co. v. Hackendorn, 605 A.2d 3, 7-9 (Del. Super. 1991)).

¹⁴ Camac, 698 A.2d at 396 (citing Black's Law Dictionary 15 (6th ed. 1990)).

¹⁵ Hackendorn, 605 A.2d at 8 (emphasis in original).

¹⁶ Hackendorn, 605 A.2d at 8.

and that as to the customer, being shot in the salon was an accident.”¹⁷ In Camac, an individual was punched while using the men’s bathroom in a bar. In accordance with Hackendorn, the court deemed the assault to be an accident from the victim’s perspective, because it was “not usual or expected to be struck at such a time.”¹⁸

In this case, the Court below, following Camac and Hackendorn, found the USAA policy at issue to be ambiguous because it similarly does not state whether an accident is to be analyzed from the victim’s perspective or the insured’s perspective. Accordingly, the court below correctly construed the policy from the perspective of the victim.¹⁹

Viewing the incident from Francis’s perspective, her death – caused by a rare and undiagnosed medical condition – meets the definition of an accident and therefore qualifies as an occurrence under the USAA policy. Neither Francis nor her family was aware of her heart defect. The minor soft tissue injuries that actually occurred during the altercation were the only type of injury that would be expected or intended in this circumstance. Further, there is no evidence that Francis expected, upon entering the school bathroom, that she was about to get into a physical altercation. Therefore, the Court must find that from Francis’s perspective, her death was an accident.

¹⁷ Id.

¹⁸ Camac, 698 A.2d at 396.

¹⁹ USAA Cas. Ins. Co. v. Carr at 9-10

Consistently throughout its brief, USAA relies heavily on its description of the fight shown in the video, trying to paint the picture of a vicious and violent attack; however, its argument is based on a description of the brief altercation in a manner contrary to what has already been decided by this Court in Cannon, which found that the blows struck were feeble and ineffectual. This Court has already determined it was not a “violently executed assault” as USAA claims, and the court below agreed.

In its analysis, the court below compared the facts of this case with the facts in Hackendorn, and correctly stated “[i]n this case, by contrast, neither the tortfeasor nor her victim could have reasonably foreseen that the pulling and pushing recorded on the video would result in Ms. Francis’s death. Accordingly, this Court must conclude, based upon the record before it, that while Ms. Carr’s physical attack upon Ms. Francis was intentional, the result that “actually followed” – Ms. Francis’s death – was neither intended nor reasonably foreseeable by Ms. Carr.”²⁰

The USAA policy is ambiguous in that it does not define accident; consequently, the decision of the court below in viewing an accident from the perspective of the victim and concluding that the incident in this case was an accident must be affirmed.

²⁰ USAA Cas. Ins. Co. v. Carr at 15.

II. THE COURT BELOW CORRECTLY DETERMINED THAT THE POLICY LANGUAGE EXCLUSION WAS AMBIGUOUS AND THAT USAA FAILED TO MEET ITS BURDEN DEMONSTRATING APPLICABILITY

1. Question Presented

Whether the court below correctly determined that the policy exclusion was inapplicable.

2. Scope of Review

A trial court's interpretation of an insurance policy is a determination of law subject to *de novo* review.²¹ This Court must determine whether the court below “erred in formulating or applying legal precepts.”²²

3. Merits of Argument

The court below correctly determined that the intentional act policy exclusion did not apply. “Insurance contracts are strongly construed against an insurer.”²³ When the language of an insurance policy is “clear and unequivocal,” the parties are bound by that clear meaning.²⁴ “An insurance contract is ambiguous when the provisions in controversy are reasonably or fairly susceptible to two

²¹ Hudson v. State Farm Mut. Ins. Co., 569 A.2d 1168, 1170 (Del. 1990).

²² Id.

²³ Steigler v. Insurance Co. of North America, 384 A.2d 398, 400 (Del. 1978).

²⁴ Cont'l Ins. Co. v. Dooley, 2003 Del. Super LEXIS 482, *7 (Del. Super. 2003) (citing Emmons v. Hartford Underwriters Ins. Co., 697 A.2d 742, 745 (Del. 1997)).

different interpretations or may have two or more different meanings.”²⁵

Ambiguous policy language is to be construed against the insurer and in favor of the insured.²⁶

The exclusionary language at issue in the USAA policy states:

Exclusions

1. Personal liability...do[es] not apply to “bodily injury” or “property damage”:

a. Which is reasonably expected or intended by any “insured” even if the resulting “bodily injury” or “property damage”:

(1) is of a different kind, quality or degree than initially expected or intended

This Court has previously held that application of this type of exclusion is permitted:

upon the showing of an intentional act coupled with an intent to cause some injury or damage **so long as it is reasonably foreseeable that the damage which actually followed would in fact occur.** . . . This standard simply applies the accepted principle of tort law that where there is intentionally tortious conduct; ordinary consequences as well as specifically intended consequences of that conduct are deemed intended.²⁷

²⁵ Id. (citing O’Brien v. Progressive N. Ins. Co., 785 A.2d 281, 288 (Del. 2001))

²⁶ Brosnahan Builders, Inc., 137 F. Supp.2d at 525.

²⁷ Camac v. Hall, 698 A.2d 394, 398 (citing Farmer in the Dell Enterprises v. Farmers Mut. Ins. Co., 514 A.2d 1097, 1099-1100 (Del. 1986)) (emphasis added). Camac is factually distinguishable from the present case. In Camac, the plaintiff was punched by Camac and later filed a tort claim against him for damages arising from that assault. In the civil actions underlying this case, plaintiffs are not suing

In analyzing this case in accordance with Farmer in the Dell, Hackendorn, and Camac, the exclusion is inapplicable because Ms. Francis's death was neither expected nor intended. Carr did not start a fire next to a building that subsequently caught fire, or fire a shotgun into a beauty salon with others inside. Coverage was excluded in those cases because the conduct of the insured, while perhaps not the *intended* result, did cause a *foreseeable* result. To the contrary, Carr's conduct "was not an attack that posed a readily apparent risk of death – an impression that is reinforced by the results of [Francis's] autopsy, which revealed little evidence of physical harm."²⁸ The court below stated, "there is no indication in the record that the injury that actually resulted from Ms. Carr's conduct – Ms. Francis's death – was either intended by Ms. Carr or reasonably foreseeable to her."²⁹ With respect to the video evidence, the court below found that "no review of the video recording could lead to a credible contention that Ms. Carr intended to cause Ms. Francis's death, or that she could reasonably have foreseen that her actions would result in Ms. Francis's death."³⁰

However, the analysis cannot end here because the USAA policy contains additional language, found in subpart (1), which the court found to be "both

for the soft tissue injuries arising from the assault, but rather for wrongful death, despite the fact that Francis' death was caused by an undiagnosed heart condition.

²⁸ Cannon at 18-19 (emphasis added).

²⁹ USAA Cas. Ins. Co. v. Carr at 13.

³⁰ USAA Cas. Ins. Co. v. Carr at 14.

confusing and internally contradictory. Specifically, the policy language provides no explanation of how the bodily injury or property damage from which the exclusion purports to exclude coverage differs from the “resulting ‘bodily injury’ or ‘property damage.’” The court below went on to state that the “language of this exclusion is ambiguous at best, and utterly confusing at worst.”³¹

A plain reading of the provision essentially states that the exclusion applies to injury or damage that *is* expected or intended, even if the injury or damage is *not* expected or intended. This provision is too confusing and must be construed against the drafter. Absent this ambiguous provision, an analysis of the cited cases reveals that personal liability coverage is applicable where the bodily injury sustained is not reasonably foreseeable. This Court in Cannon has already found that Francis’s death was not a reasonably foreseeable outcome. Carr is not “profiting” as USAA has suggested, by receiving the insurance benefit that her mother bargained and paid for, which provides coverage for unforeseeable bodily injury.

Consequently, the court below’s finding that USAA failed to carry its burden of showing that the intentional tort exclusion applies must be affirmed, and coverage must be afforded to Carr in the underlying civil actions.

³¹ USAA Cas. Ins. Co. v. Carr at 16-17.

III. CONCLUSION

For the foregoing reasons, Carr respectfully requests that the Court affirm the decision of the Superior Court finding that Carr is entitled to personal liability coverage under the USAA policy.

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