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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 11-162

DANNY HURST and MARK DAVID HURST APPELLANTS V. SOUTHERN FARM BUREAU CASUALTY INSURANCE COMPANY APPELLEE	**Opinion Delivered** NOVEMBER 2, 2011 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT, [NO. CV-10-529-2] HONORABLE KIM M. SMITH, JUDGE AFFIRMED

JOHN B. ROBBINS, Judge

This appeal arises out of the grant of summary judgment to an insurance company (Southern Farm Bureau Casualty Insurance Company, hereinafter "Farm Bureau") regarding an automobile policy issued to appellant Danny Hurst covering a 2003 Land Rover. Danny is the father of appellant Mark David Hurst, who was driving the covered automobile when it struck a pedestrian, John Short. Farm Bureau resisted defending or covering the claim, asserting that because Mark intentionally drove the automobile toward the pedestrian and struck him, this was an excluded event. The Hursts filed suit against Farm Bureau for breach of contract. Farm Bureau moved for summary judgment. The Hursts filed their own motion for summary judgment, agreeing that there were no remaining issues of material fact. The Hursts contended that the exclusionary clause did not apply on the undisputed facts, was void as against public policy, or was ambiguous and therefore should be interpreted in favor of the insured. After a hearing, the trial judge found the exclusionary clause unambiguous, not in

violation of public policy, and applicable to the undisputed facts. An order was entered in Farm Bureau's favor, and this appeal resulted.

Summary judgment should only be granted when it is clear that there are no genuine issues of material fact to be litigated, and the moving party is entitled to judgment as a matter of law. *Castaneda v. Progressive Classic Ins. Co.*, 357 Ark. 345, 166 S.W.3d 556 (2004); *Norris v. State Farm Fire & Cas. Co.*, 341 Ark. 360, 16 S.W.3d 242 (2000); *Youngman v. State Farm Mut. Auto. Ins. Co.*, 334 Ark. 73, 971 S.W.2d 248 (1998). Where there are no disputed material facts, our review must focus on the trial court's application of the law to those undisputed facts. *See Flentje v. First Nat'l Bank of Wynne*, 340 Ark. 563, 11 S.W.3d 531 (2000).

The law regarding construction of an insurance contract is well settled. Once it is determined that coverage exists, it then must be determined whether the exclusionary language within the policy eliminates the coverage. *Norris*, *supra*. Exclusionary endorsements must adhere to the general requirements that the insurance terms be expressed in clear and unambiguous language. *Id.* If the language of the policy is unambiguous, we will give effect to the plain language of the policy without resorting to the rules of construction. *Elam v. First Unum Life Ins. Co.*, 346 Ark. 291, 57 S.W.3d 165 (2001). On the other hand, if the language is ambiguous, we will construe the policy liberally in favor of the insured and strictly against the insurer. *Id.* Language is ambiguous if there is doubt or uncertainty as to its meaning and it is fairly susceptible to more than one reasonable interpretation. *Harasyn v. St. Paul Guardian*

Ins. Co., 349 Ark. 9, 75 S.W.3d 205 (2002). Whether the language of the policy is ambiguous is a question of law to be resolved by the court. *Id.*

In this case, the trial court was called to examine the "Coverage Exclusions" listed in the automobile insurance policy, which recited the following:

> We will not pay for:
> 1. bodily injury or property damage caused by intentional acts committed by or carried out at the direction of you or any other covered person. The expected or unexpected results of these acts or directions are not covered[.]

We hold that the trial court did not err in entering summary judgment for Farm Bureau. When construing insurance policies, where terms of the policy are clear and unambiguous, the policy language controls, and absent statutory strictures to the contrary, exclusionary clauses are generally enforced according to their terms. *Smith v. Shelter Mut. Ins. Co.*, 327 Ark. 208, 937 S.W.2d 180 (1997). An insurer may contract with its insured upon whatever terms the parties may agree upon, which are not contrary to statute or public policy. *Shelter Gen. Ins. Co. v. Williams*, 315 Ark. 409, 412, 867 S.W.2d 457, 458 (1993). Contracts of insurance should receive a practical, reasonable, and fair interpretation consonant with the apparent object and intent of the parties in light of their general object and purpose. *Parker v. S. Farm Bureau Cas. Ins.*, 104 Ark. App. 301, 292 S.W.3d 311 (2009); *Sweeden v. Farmers Ins. Group*, 71 Ark. App. 381, 30 S.W.3d 783 (2000).

Relevant to the competing motions for summary judgment, Mark agreed to the following undisputed facts. At approximately 11:30 p.m. on September 17, 2007, Mark (age 22) drove himself and his three roommates to Grub's Bar & Grille in Fayetteville to have drinks. They departed Grub's some time after 1:00 a.m. on September 18. As they walked

toward the Walton Arts Center parking lot where Mark's Land Rover was located, one of his friends exchanged unfriendly words with John Short. Short was handicapped, having lost part of one leg; he was using crutches that night. Mark believed Short to be extremely intoxicated. Mark and his roommates then entered the Land Rover, and Mark drove toward the exit of the lot. Short moved directly in front of the Land Rover and stood there, blocking the exit. Mark and one of his passengers told Short to move out of the way, but Short would not. Short was touching the hood of the Land Rover. Expecting that Short would move, Mark "slowly rolled forward," admittedly in control of the vehicle, and knocked Short down with the Land Rover. In a sworn statement to an insurance adjuster, Mark agreed that he "intentionally bump[ed] him" but "it was nothing." Mark stated that any sober person could and would have moved. Mark saw that Short was able to get back up, so he drove away. Short suffered a fractured arm and contusions to his head.

We first dispose of the void-as-against-public–policy argument. The legislature has set forth our public policy on mandatory motor-vehicle insurance. In Arkansas Code Annotated section 27-22-101(a) (Repl. 2008), the legislative intent explicitly states that the chapter on motor-vehicle liability insurance "is not intended in any way to alter or affect the validity of any policy provisions, exclusions, exceptions, or limitations contained in a motor vehicle policy required by this chapter." The legislature has not retreated from this stated policy since the statute's enactment in 1987. Public policy is established by the legislature, and motor-vehicle insurance policy exclusions do not violate public policy. *See S. Farm Bureau Cas. Ins.*

Co. v. Easter, 374 Ark. 238, 287 S.W.3d 537 (2008); *McSparrin v. Direct Ins.*, 373 Ark. 270, 283 S.W.3d 572 (2008); *Jordan v. Atlantic Cas. Ins. Co.*, 344 Ark. 81, 40 S.W.3d 254 (2001).

Appellants argue that, although Mark intentionally moved his vehicle forward, he expected Short to move and did not intend to hurt him. The lack of a definition in the policy of "intentional acts" does not render it ambiguous. *Essex Ins. Co. v. Holder*, 370 Ark. 465, 261 S.W.3d 456 (2007). Construing the exclusion in its plain and ordinary terms, the "intent" is directed solely at the intentional act, not the expected or unexpected bodily harm that resulted. Mark's testimony was that he intentionally drove forward, knowing that an extremely intoxicated and uncooperative pedestrian was directly in front of the vehicle and refusing to move. Mark's intentional acts caused the pedestrian bodily harm. These facts fit squarely within the terms of the policy exclusion.

This situation is distinguishable from that in *Nationwide Assurance Co. v. Lobov*, 2009 Ark. App. 385, 309 S.W.3d 227. There, Nationwide asserted that its exclusionary clause effectively excluded coverage for Lobov's personal injuries resulting from the driver acting "willfully" or "maliciously" by speeding and crashing. We stated:

> Nationwide seeks a literal construction of the policy in which, as it confirmed at oral argument before this court, it would exclude coverage for any willful act committed by the insured party that precipitates an injury, regardless of whether the willful act was the one that actually caused the injury or whether intended by the insured to cause such harm.

Id. at 6, 309 S.W.3d at 230. We agreed with the trial court's assessment that the willful-act exclusion would not apply to the facts presented–a driver who intentionally sped and then lost control of the vehicle. We offered other examples of typical willful acts that would be

excluded from coverage based upon Nationwide's point of view (driving in the rain, turning on the radio) that would effectively nullify the coverage. *Id.* at 7, 309 S.W.3d at 231. In those instances, it would be contrary to the intent of the automobile policy's purpose to apply the exclusionary clause. *Id.* at 7, 309 S.W.3d at 231.

In contrast, the undisputed facts in the present case are not contrary to the general purposes of motor-vehicle liability insurance. Compulsory motor-vehicle insurance law does not require the policy to insure against all types of risk. *S. Farm Bureau Cas. Ins. Co. v. Easter*, *supra*. Appellants urge us to apply only those exclusionary-clause cases that involve automobile-insurance policies. In doing so, we note that a driver's statement to the insurance adjuster admitting intent to hit another's vehicle was viable evidence to invoke a similar exclusionary clause. *McSparrin v. Direct Ins.*, *supra*. Here, Mark intentionally drove forward, knowing that an impaired, uncooperative pedestrian was in front of the Land Rover. We agree with the trial judge that this is the type of "intentional act" contemplated by the insurance policy exclusion.

We affirm the entry of summary judgment in favor of Farm Bureau.

WYNNE and GLOVER, JJ., agree.

Taylor Law Partners, LLP, by: *Timothy J. Myers*, for appellants.

Davis, Clark, Butt, Carithers & Taylor, PLC, by: *Sidney P. Davis, Jr.* and *Constance G. Clark*, for appellee.