

Cite as 2022 Ark. App. 393

# ARKANSAS COURT OF APPEALS

DIVISION II  
No. CV-21-396

NORMA HUDSON AND HUDSON  
REVOCABLE TRUST

APPELLANTS

V.

FARM BUREAU MUTUAL  
INSURANCE COMPANY OF  
ARKANSAS, INC.

APPELLEE

Opinion Delivered October 5, 2022

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. 04CV-17-972]

HONORABLE THOMAS SMITH,  
JUDGE

AFFIRMED

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**KENNETH S. HIXSON, Judge**

Appellants Norma Hudson and Hudson Revocable Trust (the Trust) appeal from a summary judgment entered in favor of appellee Farm Bureau Mutual Insurance Company of Arkansas, Inc. (Farm Bureau). In the summary-judgment order, the trial court found as a matter of law that Farm Bureau had no duty of defense or indemnification to the appellants arising from a lawsuit filed against the Trust by Dewayne Evans, Mark White, and Billy Taylor. We hold that the trial court did not err in awarding summary judgment to Farm Bureau, and we affirm.

The law is well settled that summary judgment is to be granted by a trial court only when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. See *City of Farmington v. Smith*, 366 Ark. 473, 237

S.W.3d 1 (2006). Once the moving party has established a prima facie entitlement to summary judgment, the opposing party must meet proof with proof and demonstrate the existence of a material issue of fact. *Id.* On appellate review, we determine if summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of the motion leave a material fact unanswered. *Id.* We view the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.* Our review focuses not only on the pleadings but also on the affidavits and other documents filed by the parties. *Id.*

This case arose from an incident on December 1, 2015, when Benjamin Hudson (Norma's adult grandson) shot and killed two coon dogs and allegedly traumatized a third on property owned by the Trust. The dog owners, Dewayne Evans, Mark White, and Billy Taylor, subsequently filed a complaint against Benjamin Hudson (Benjamin) and the Trust, raising claims for destruction of property, negligence, and tort of outrage and seeking compensatory and punitive damages.<sup>1</sup> The allegations in the complaint against the Trust were that Benjamin was employed to oversee the Trust property, that he was acting in a scope of that authority, and that his outrageous conduct was ratified by the Trust.

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<sup>1</sup>In *Hudson Revocable Trust v. Evans*, 2022 Ark. App. 394, which is a companion case to the present case, the trial court denied the Trust's motion for summary judgment against the dog owners in the underlying tort action. Today, we issued an opinion dismissing the appeal in *Evans* because an order denying summary judgment is not an appealable order.

Norma is the trustee of the Trust, and she has two insurance policies with Farm Bureau.<sup>2</sup> One policy is a homeowner's policy that insures the property where the shootings occurred, and the other is a property owner's policy. After the dog owners' complaint was filed against the Trust, Norma and the Trust made a claim with Farm Bureau for coverage under the insurance policies. Farm Bureau subsequently filed a complaint for declaratory judgment, asserting that it owed no duty to defend or indemnify Benjamin,<sup>3</sup> Norma, or the Trust based on exclusionary language in the policies relating to bodily injury or property damage arising out of intentional acts.

Farm Bureau moved for summary judgment against Norma and the Trust.<sup>4</sup> In support of its argument that it was entitled to summary judgment, Farm Bureau relied on virtually identical provisions contained in each of the insurance policies. The policies provided that Farm Bureau "will pay all sums, except punitive damages, arising out of any loss which *you* become legally obligated to pay as damages because of bodily injury or property damage covered by this policy." (Emphasis added.) The policies further provided that "if a

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<sup>2</sup>Pursuant to Ark. Code Ann. § 28-73-816(11) (Repl. 2012), a trustee has a fiduciary duty to insure property of the trust.

<sup>3</sup>We note that Benjamin made no claim against Farm Bureau, nor is he a party to this appeal. Benjamin pleaded guilty in a criminal proceeding to one count of criminal mischief and two counts of cruelty to animals.

<sup>4</sup>Farm Bureau actually filed a motion for summary judgment and a renewed motion for summary judgment. The trial court initially denied Farm Bureau's summary-judgment motion, but it later granted summary judgment, giving rise to this appeal.

claim is made or suit is brought against *you* for damages because of bodily injury and or property damage covered by this policy, we will defend *you* at our expense[.]” (Emphasis added.) The policies define “you” as the named insured, the named insured’s spouse, and dependent relatives if living in the same household.<sup>5</sup>

Finally, the policies provided that there is no coverage for “bodily injury or property damage caused intentionally by you or any covered person *or at the direction of you or any covered person*” and that “[t]he expected or unexpected results of such acts are not covered.” (Emphasis added.) Farm Bureau asserted that the dog owners’ complaint alleged that Benjamin was acting as an agent of the Trust when he shot the dogs. Farm Bureau argued that because the insurance policies expressly excluded liability coverage for damage arising out of an intentional act, it had no duty to defend or indemnify Norma or the Trust and that it should be granted summary judgment.

Norma and the Trust filed a response to Farm Bureau’s summary-judgment motion as well as a cross-motion for summary judgment. Attached to their response were excerpts from depositions of Norma and Benjamin, wherein they both stated that Norma did not direct or encourage Benjamin to shoot the dogs, nor did she know he was going to shoot them prior to the event. Further, Norma stated that Benjamin had never been authorized to conduct business for the Trust and that Benjamin had no authority to control, manage, or oversee the property in a representative capacity. However, Norma and the Trust alleged

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<sup>5</sup>It is undisputed that Benjamin is not Norma’s dependent.

that the exclusion in the policies on which Farm Bureau relied was inapplicable and that Farm Bureau had a duty to defend them against the lawsuit.

The trial court entered an order granting Farm Bureau's summary-judgment motion and denying Norma and the Trust's cross-motion for summary judgment. The trial court found that Farm Bureau was entitled to the relief requested in its complaint for declaratory judgment as a matter of law. Specifically, the trial court found:

5. . . .Liability insurance coverage is expressly and unambiguously excluded under both the Homeowner Policy and the Property Owners Policy for bodily injury or property damage arising out of the *intentional conduct of an insured*.

6. That it is alleged in the underlying lawsuit Benjamin C. Hudson was acting on behalf of Hudson Revocable Trust at the time of the subject incident, and it is undisputed in this matter that Benjamin C. Hudson acted intentionally in shooting the dogs in the course of the subject incident.

7. That, as a matter of Arkansas law, liability insurance coverage is excluded under the Homeowner Policy and Property Owners Policy from covering Dewayne Evans, Mark White, and Billy Taylor's alleged damages in the Underlying Lawsuit and relating to the dog-shooting event.

(Emphasis added.) Norma and the Trust now appeal from the order of summary judgment, arguing that the trial court erred by applying a policy exclusion to avoid coverage when the plain language of the policy exclusion cannot possibly apply to the undisputed facts.

Our law regarding the construction of insurance contracts is well settled. *Elam v. First Unum Life Ins. Co.*, 346 Ark. 291, 57 S.W.3d 165 (2001). The language in an insurance policy is to be construed in its plain, ordinary, and popular sense. *Norris v. State Farm Fire & Cas. Co.*, 341 Ark. 360, 16 S.W.3d 242 (2000). 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, supra*. Once it is determined that coverage exists, it then must be determined whether the exclusionary language within the policy eliminates coverage. *Norris, supra*. Exclusionary endorsements must adhere to the general requirements that the insurance terms must be expressed in clear and unambiguous language. *Id.* If a provision is unambiguous, and only one reasonable interpretation is possible, this court will give effect to the plain language of the policy without resorting to the rules of construction. *Id.* If, however, the policy language is ambiguous, and thus susceptible to more than one reasonable interpretation, we will construe the policy liberally in favor of the insured and strictly against the insurer. *Id.*

The appellants herein argue on appeal that the trial court's error is relatively simple. They claim that the trial court erred in applying a policy exclusion to someone other than the policy holder. The appellants state that the undisputed facts show that the insured, Norma, did not shoot the dogs, nor did she direct or encourage Benjamin to shoot the dogs. The appellants state it is implicit in the trial court's ruling that Benjamin was acting on behalf of the Trust when the unrebutted evidence—the affidavits submitted by Norma and Benjamin—proved otherwise. Norma and the Trust thus contend that there is no exception to coverage under the intentional-acts exclusion and that Farm Bureau must provide a defense in the underlying lawsuit.

We disagree with the appellants' argument and hold that Farm Bureau was properly granted summary judgment. The general rule is that pleadings against the insured determine the insurer's duty to defend. *Ison v. S. Farm Bureau Cas. Co.*, 93 Ark. App. 502, 221 S.W.3d

373 (2006). Under Arkansas law, “it is well settled the allegations in a complaint, *whether groundless or false*, determine the obligation of the insurer to defend its insured within the coverage of the policy.” *Fisher v. Travelers Indem. Co.*, 240 Ark. 273, 274, 398 S.W.3d 892, 893 (1966); *State Volunteer Mut. Ins. Co. v. Rosenschein*, 552 F. Supp. 3d 828, 832 (W.D. Ark. 2021) (emphasis added). The insurance policies provide that Farm Bureau “will pay all sums, except punitive damages, arising out of any loss which you become legally obligated to pay as damages because of bodily injury or property damage *covered by this policy*.” (Emphasis added.) In the dog owners’ complaint against Benjamin and the Trust, they alleged that Benjamin intentionally shot the dogs while acting in a scope of authority to oversee Trust property and that his outrageous conduct was ratified by the Trust.<sup>6</sup> In reviewing the actual allegations in the complaint, the insurance policies unambiguously exclude coverage for “bodily injury or property damage *caused intentionally* by you or any covered person *or at the direction of you or any covered person*.” (Emphasis added.) Assuming arguendo that the shooter was an agent for the landowner and policy holder, the policy excludes intentional conduct, and therefore, there is no coverage.

Norma and the Trust also contend that the undisputed proof shows that Benjamin *was not* acting on behalf of or at the direction of Norma or the Trust but yet that Farm Bureau should provide a defense and indemnification. However, based on our caselaw, our focus is

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<sup>6</sup>Norma and the Trust make no argument that Benjamin’s conduct was not intentional. In fact, they state in their brief that “it is undisputed in this matter that Benjamin C. Hudson acted intentionally in shooting the dogs in the course of the subject incident.”

on the allegations in the complaint, *whether groundless or false*. *Fisher, supra*. The duty to defend arises when there is a possibility that the damage falls within the policy coverage. *Ison, supra*. Where there is no possibility that the damage alleged in the complaint may fall within the policy coverage, there would be no duty to defend. *Murphy Oil U.S. v. Unigard Sec. Ins. Co.*, 347 Ark. 167, 61 S.W.3d 807 (2001). Here, there is no possibility that the damage alleged in the complaint falls within the policy coverage because if Benjamin acted at the direction of the Trust, as alleged in the dog owners' complaint, the policy exclusion for committing an intentional act would apply and defeat coverage. Conversely, if Benjamin acted unilaterally and not on behalf of the Trust, the Farm Bureau policy would not provide coverage because Benjamin was not a named insured as defined in the policies. Therefore, we affirm the trial court's order of summary judgment wherein it determined, as a matter of law, that Farm Bureau has no duty to defend or indemnify in the dog owners' lawsuit against the Trust.

Affirmed.

HARRISON, C.J., and ABRAMSON, J., agree.

*Cullen & Co., PLLC*, by: *Tim Cullen*, for appellants.

*Barber Law Firm, PLLC*, by: *J. Cotton Cunningham, M. Evan Stallings, and Reece Owens*,  
for appellee.