

NOTICE
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2011 IL App (4th) 110189-U

Filed 10/18/11

NO. 4-11-0189

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

AMERICAN FAMILY MUTUAL INSURANCE)	Appeal from
COMPANY,)	Circuit Court of
Plaintiff-Appellee,)	Champaign County
v.)	No. 09MR533
JILL CORBIN and CHAD CORBIN,)	
Individually and as Parents and Natural)	
Guardians of S. C., a Minor,)	
Defendants-Appellants,)	
and)	
ROBERT FENDER; MELISSA FENDER; and)	Honorable
C. F., a Minor,)	Charles McRae Leonhard,
Defendants.)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices McCullough and Cook concurred in the judgment.

ORDER

¶ 1 *Held:* In insurer's declaratory judgment action, the trial court granted insurer summary judgment, holding a juvenile adjudication of guilty resulting in a seven-year sentence to the juvenile department of corrections constituted a "conviction" for which the insureds were barred from coverage by express clause of the homeowner's insurance policy. Defendants, plaintiffs in the underlying action against insurer's insureds, appeal. This court affirmed the trial court's judgment.

¶ 2 In November 2010, plaintiff, American Family Mutual Insurance Company (American Family), filed a motion for summary judgment in its declaratory judgment action, arguing it had no duty to indemnify or defend Robert and Melissa Fender (Fenders) under the terms of the homeowner's insurance policy (policy) issued to Mary A. Pease. The policy afforded the Fenders and their minor son C.F. (born May 24, 1991) coverage. American

Family's motion arose out of a lawsuit filed by Jill and Chad Corbin (Corbins) on behalf of their daughter S.C., a minor, which sought damages against the Fenders for actions committed by C.F. In January 2011, the trial court granted American Family's motion for summary judgment. The Corbins appeal, arguing the court erroneously found a juvenile delinquency adjudication against C.F. constituted a conviction under the exclusionary terms of the Fenders' policy. We affirm.

¶ 3

I. BACKGROUND

¶ 4 In September 2007, C.F. was charged by petition for adjudication of delinquency and wardship with one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(2)(i) (West 2006)). The petition alleged on or about June 20, 2007, C.F., who was under 17 years of age at the time, committed an act of sexual conduct with S.C., who was under 9 years of age at the time, when C.F. had S.C. touch his penis. In October 2007, the trial court accepted C.F.'s guilty plea. In January 2008, the court adjudicated C.F. a delinquent minor and sentenced him to be committed to the Illinois Department of Juvenile Justice (IDJ) for a term of seven years or until he turned 21 years of age, whichever came first.

¶ 5

In May 2009, the Corbins filed suit against the Fenders on S.C.'s behalf, Champaign County case No. 09-L-119. In the suit, the Corbins alleged the Fenders were aware C.F. had a history of sexual aggression toward other children, yet allowed, and even encouraged, C.F. to babysit S.C., at which time C.F. sexually assaulted S.C. The Corbins sought damages in connection with emotional trauma the sexual assault caused S.C.

¶ 6

In July 2009, American Family filed this declaratory judgment action, Champaign County case No. 09-MR-533, seeking a judgment declaring it had no duty to indemnify or defend the Fenders in case No. 09-L-119 or any other potential lawsuits arising out of C.F.'s

sexual assault on S.C.

¶ 7 At the time the sexual assault occurred, the Fenders were insured under a policy with American Family. The Corbins claimed the policy covered C.F.'s actions, and American Family was therefore required to indemnify the Fenders for any damages arising out of C.F.'s actions. The Fenders also claimed the policy covered any damages arising out of C.F.'s actions and further argued American Family had a duty to defend them in the suit brought by the Corbins. American Family argued C.F.'s actions barred any recovery under the policy, and it did not owe any duty to indemnify or defend the Fenders.

¶ 8 The Fenders' policy with American Family contained several exclusions to coverage. Section II of the policy, entitled "Exclusions," contained several instances where the policy did not extend coverage for damages arising out of specific circumstances. Paragraph 17 of section II of the policy stated the following:

"Violation of law. We do not cover bodily injury or property damage arising out of:

a. violation of any criminal law for which any insured is convicted."

¶ 9 In November 2010, American Family filed a motion for summary judgment, arguing it had no duty to indemnify or defend the Fenders based on C.F.'s sexual assault of S.C. because the policy (1) excluded damages arising out of C.F.'s violation of a criminal law for which he was convicted; (2) only covered "occurrences," and there was no "occurrence" under the language of the policy; (3) excluded coverage for intentional acts; and (4) excluded coverage for sexual abuse and derivative claims arising from any sexual abuse. In response, counsel for

the Corbins and Fenders argued (1) C.F.'s juvenile adjudication of delinquency was not a "conviction" for purposes of exclusion under the language of the policy; (2) there was an "occurrence" as defined in the policy; (3) the Fenders' actions were not intentional; and (4) this was not a derivative suit. The trial court reviewed the arguments by all parties but stated it did not need to rule on all the issues raised as the issue regarding a conviction for violation of the criminal law was dispositive. The court ruled in favor of American Family, stating the "distinction between a juvenile adjudication and a criminal conviction in the context of this case, and most importantly in the context of this insurance contract, is really a distinction without a difference." The court went on to find the plain meaning of "conviction" under the terms of the contract clearly encompassed juvenile adjudications.

¶ 10 This appeal followed. The Fenders are not parties to the appeal.

¶ 11 II. ANALYSIS

¶ 12 On appeal, the Corbins argue the trial court erred in finding a juvenile adjudication constituted a "conviction" for purposes of the exclusionary clause of the policy and granting American Family's motion for summary judgment. Specifically, the Corbins argue "both Illinois case law and Illinois statutory law clearly differentiate a violation of a criminal law, and a juvenile adjudication."

¶ 13 A. Summary Judgment

¶ 14 Summary judgment is proper where the evidence in the record reveals no question of material fact and the moving party is entitled to judgment as a matter of law. *Thompson v. Gordon*, 241 Ill. 2d 428, 438, 948 N.E.2d 39, 45 (2011). "The construction of an insurance policy and a determination of the rights and obligations of the parties thereunder are questions of

law for the court to decide and are appropriate subjects for disposition by way of summary judgment." *First Chicago Insurance Co. v. Molda*, 408 Ill. App. 3d 839, 845, 948 N.E.2d 206, 212 (2011). As this case presented no material facts, the question of contract interpretation was the proper subject for summary judgment. "We review a trial court's decision to grant summary judgment *de novo*." *Garcia v. Young*, 408 Ill. App. 3d 614, 616, 948 N.E.2d 1050, 1052 (2011).

¶ 15 B. Principles of Contract Interpretation

¶ 16 An insurance policy is a contract, and the general rules of contract interpretation apply to insurance policies as well. *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17, 823 N.E.2d 561, 564 (2005). "In construing an insurance policy, we must ascertain and give effect to the intentions of the parties, as expressed in the policy language." *West American Insurance Co. v. Yorkville National Bank*, 238 Ill. 2d 177, 184, 939 N.E.2d 288, 293 (2010). The policy is construed as a whole, and "[u]nambiguous words in the policy are *** given their plain, ordinary, and popular meaning." *Id.* An unambiguous policy will be applied as written, unless it goes against public policy. *Hobbs*, 214 Ill. 2d at 17, 823 N.E.2d at 564.

¶ 17 The Fenders' policy with American Family contains an exclusion for damages arising out of "violation of any criminal law for which any insured is convicted." Though the policy does not include a definition of the word convicted, we conclude it is subject to the definition of "conviction" contained in section 2-5 of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/2-5 (West 2006)). See *Dubey v. Public Storage, Inc.*, 395 Ill. App. 3d 342, 351, 918 N.E.2d 265, 275 (2009) (laws and statutes in existence at the time the contract is executed are considered part of the contract unless expressly excluded by language of the contract). Section 2-5 states:

" 'Conviction' means a judgment of conviction or sentencing entered upon a plea of guilty *** rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury." 720 ILCS 5/2-5 (West 2006).

The only issue raised on appeal by the Corbins involves whether a "juvenile adjudication" under the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/1-1 through 7-1 (West 2006)) constitutes a "conviction" as it is defined by section 2-5. For the following reasons, we agree with the trial court's judgment.

¶ 18 The exclusion to the Fenders' policy in question required a violation of a criminal law and a conviction for the criminal-law violation. Under section 2-5 of the Criminal Code, the definition of "conviction" has two basic parts, which require (1) a judgment or sentence entered upon a plea of guilty, and (2) the sentence or verdict be rendered by a jury or court of competent jurisdiction authorized to try the case without a jury. *People v. Taylor*, 221 Ill. 2d 157, 164, 850 N.E.2d 134, 138 (2006). C.F.'s juvenile adjudication contained all of the required elements to constitute a conviction for a violation of a criminal law under the terms of the policy. C.F. pleaded guilty to aggravated criminal sexual abuse, which was a violation of section 12-16(c)(2)(i) of the Criminal Code (720 ILCS 5/12-16(c)(2)(i) (West 2006)). The guilty plea was accepted by the trial court, which constituted a court of competent jurisdiction. Finally, the court sentenced C.F. to a seven-year term of commitment to IDOJJ, or until he turns 21, whichever comes first. Thus, we conclude C.F. was convicted of violating a criminal law under the plain meaning of the contract.

¶ 19 The Corbins argue juvenile adjudications are treated differently than criminal

convictions under Illinois case law and claim the reasoning applied by the supreme court in *People v. Taylor*, 221 Ill. 2d 157, 850 N.E.2d 134 (2006), applies to the present case. The decision in *Taylor* is inapposite to the issue raised in the case at bar.

¶ 20 The court in *Taylor*, 221 Ill. 2d at 164, 850 N.E.2d at 137, was faced with whether a juvenile adjudication met the definition of conviction under section 2-5 of the Criminal Code in the context of the escape statute, which "require[d] a prior *felony* conviction, not merely a conviction." (Emphasis in original.) The court in *Taylor*, 221 Ill. 2d at 165, 850 N.E.2d at 138, concluded a juvenile adjudication did not meet the statutory definition of "conviction" based on the language of the Juvenile Act as of 1998. However, as the court in *Taylor*, 221 Ill. 2d at 165-68, 850 N.E.2d at 138-40, acknowledged, the Juvenile Act was "radically altered" in 1999. The new version represents a "fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and holding juvenile offenders accountable for violations of the law." *Taylor*, 221 Ill. 2d at 167, 850 N.E.2d at 139. In contrast to the pre-1998 version "the [Juvenile] Act now provides for pleas of guilty, findings of guilty and sentencing-language which effectively tracks with the first clause of the term 'conviction' as defined in [section 2-5 of] the [Criminal] Code." *Id.* Though the court went on to express doubt as to whether a juvenile adjudication met the requirements of the second prong of the statutory definition of "conviction," the issue was not before the court and its analysis was based on the requirement of a felony conviction under the escape statute. *Taylor*, 221 Ill. 2d at 168-69, 850 N.E.2d at 140.

¶ 21 The context of this case is distinguishable from *Taylor*. The court in *Taylor* decided the issue of whether a juvenile adjudication under the pre-1999 language of the Juvenile

Act constituted a felony conviction under the escape statute. In other words, the issues before the court in *Taylor* involved enhanced punishment based on a felony conviction and statutory interpretation. The current case involves issues of contract interpretation and the definition of conviction under the amended version of the Juvenile Act. Under the terms of the policy, keeping in mind the purpose of a homeowner's insurance policy and the intentions of the parties when they entered into the contract, we conclude C.F.'s juvenile adjudication and sentence to IDOJJ fall within the definition of conviction. The trial court properly found American Family had no duty to indemnify or defend the Fenders where the Corbins' suit arose out of damages caused by C.F. as the result of a violation of the criminal law for which he was convicted.

¶ 22 C. American Family's Other Arguments

¶ 23 In its brief, American Family raises independent grounds for upholding the trial court's judgment. We conclude the court's grant of summary judgment on the issue of the definition of "conviction" was proper, so we need not reach American Family's additional arguments. However, the motion for summary judgment and appellate brief both contain other meritorious grounds for summary judgment based on exclusions to coverage contained in the policy.

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, we affirm the trial court's judgment.

¶ 26 Affirmed.