SIXTH DIVISION
September 4, 2015

Nos. 1-14-2814, 1-14-2920, and 1-14-3210; consolidated

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMICA MUTUAL INSURANCE COMPANY, Plaintiff-Appellee, v. BOY SCOUTS OF AMERICA and THREE FIRES COUNCIL, INC., BOY SCOUTS OF AMERICA, Defendants-Appellants. (William R. Pugh, Jean Pugh, Individually and as Mother and Next Friend of William Christopher Pugh, a Minor, and Alexander Pugh, a Minor, Defendants).	)	Appeal from the Circuit Court of Cook County. No. 12 CH 27931 Honorable Kathleen G. Kennedy, Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held*: In this consolidated appeal, we: affirmed the order granting summary judgment to plaintiff on count I of its declaratory judgment action, finding plaintiff owes no duty to defend the Boy Scouts of America and Three Fires Council, Inc. under an automobile liability insurance policy; affirmed the order granting plaintiff judgment on the pleadings on the BSA defendants' counterclaim for costs pursuant to section 155 of the Illinois Insurance Code (215 ILCS 5/155(West 2012)); and dismissed for lack of appellate jurisdiction William Pugh, Sr.'s appeal from the order granting plaintiff summary judgment against him on its declaratory judgment action and finding plaintiff owes no duty to defend him in the underlying litigation.

¶ 2 Plaintiff, Amica Mutual Insurance Company, filed a two-count declaratory judgment action against defendants William Pugh, Sr. (Pugh, Sr.), Jean Pugh, Boy Scouts of America (BSA) and Three Fires Council, Inc. (Three Fires). Count I alleged plaintiff has no duty to defend Pugh, Sr., BSA and Three Fires under an automobile liability insurance policy (automobile policy) in relation to an underlying personal injury action filed against those parties by Jean Pugh. Count II alleged plaintiff has no duty to defend Pugh, Sr., BSA and Three Fires under an umbrella liability insurance policy (umbrella policy) in relation to the same underlying personal injury action. BSA and Three Fires (collectively referred to as the BSA defendants) filed a three-count counterclaim against plaintiff. Counts I and II sought, respectively, a declaration that they are entitled to coverage under the umbrella policy and that plaintiff is in breach of the umbrella policy by failing to defend them. Count III alleged that plaintiff's denial of coverage under the umbrella policy amounts to vexatious and unreasonable conduct in violation of section 155 of the Illinois Insurance Code (215 ILCS 5/155 (West 2012)).

¶ 3 The circuit court entered a series of orders regarding plaintiff's declaratory judgment action and the BSA defendants' counterclaim. Specifically, on July 19, 2013, the circuit court granted plaintiff's motion for judgment on the pleadings as to count III of the BSA defendants' counterclaim seeking section 155 costs and fees. Also on July 19, 2013, the circuit court denied plaintiff's motion for summary judgment, and denied the BSA defendants' cross-motion for judgment on the pleadings, on count II of plaintiff's declaratory judgment action and on count I of the BSA defendants' counterclaim relating to plaintiff's coverage duties under the umbrella policy; the circuit court found it had insufficient evidence to determine as a matter of law whether coverage exists under the umbrella policy. No final order was ever entered on count II

of plaintiff's declaratory judgment action or on counts I and II of the BSA defendants' counterclaim.

¶ 4 On September 5, 2014, the circuit court granted plaintiff's motion for summary judgment on count I of its declaratory judgment action and denied the BSA defendants' cross-motion for summary judgment, finding that plaintiff owes the BSA defendants no duty to defend under the automobile policy. The September 5 order contained Supreme Court Rule 304(a) (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)), language (the only order to do so).

¶ 5 On October 3, 2014, the circuit court entered an order granting summary judgment in favor of plaintiff and against Pugh, Sr. finding plaintiff has no duty to defend or indemnify Pugh, Sr. The record is unclear as to whether this summary judgment order was entered on count I, count II, or both counts of the declaratory judgment action; thus, it is equally unclear as to whether this order related to plaintiff's duty under the automobile policy, the umbrella policy, or both policies.

¶ 6 In this consolidated appeal, the BSA defendants and Jean Pugh appeal the circuit court's September 5, 2014, order granting plaintiff's motion for summary judgment on count I of its declaratory judgment action with respect to finding no coverage for BSA and Three Fires under the automobile policy. The BSA defendants also appeal: the circuit court's July 19, 2013, order granting plaintiff's motion for judgment on the pleadings on their section 155 claim asserted in count III of their counterclaim; and the July 19, 2013, order denying them judgment on the pleadings on count II of plaintiff's declaratory judgment action and count I of their counterclaim relating to plaintiff's coverage duties under the umbrella policy. Pugh, Sr. appeals from the October 3, 2014, order granting plaintiff's motion for summary judgment against him.

¶ 7 We affirm the September 5, 2014, order granting summary judgment in favor of plaintiff on count I of its declaratory judgment action and denying the BSA defendants' cross-motion for summary judgment; affirm the July 19, 2013, order granting plaintiff's motion for judgment on the pleadings on count III of the BSA defendants' counterclaim; dismiss the BSA defendants' appeal from the July 19, 2013, order denying their motion for judgment on the pleadings on count II of plaintiff's declaratory judgment action and on count I of their counterclaim for lack of jurisdiction; and dismiss Pugh, Sr.'s appeal from the October 3, 2014, order for lack of jurisdiction.

¶ 8 I. BACKGROUND

¶ 9 On March 2, 2012, Jean Pugh (Jean), individually and as mother and next friend of her children, William C. Pugh (William), a minor, and Alexander Pugh (Alexander), a minor, filed suit against Pugh, Sr., her husband, based on his alleged negligent operation of a motor vehicle that resulted in injuries to the two sons. Specifically, Jean alleged that on June 6, 2010, Pugh, Sr. was transporting William and Alexander from an overnight BSA camping trip sponsored by Three Fires when he became involved in a car accident. Both BSA and Three Fires also were named as defendants. Jean alleged that Pugh, Sr. was a "camping chairman" such that he was an agent and/or employee of BSA and/or Three Fires when the accident occurred, and that both BSA and Three Fires are liable for Pugh, Sr.'s negligence.

¶ 10 The BSA defendants tendered their defense to plaintiff pursuant to the automobile policy and the umbrella policy plaintiff issued to Pugh, Sr. and to Jean as named insureds for the period of September 7, 2009, to September 7, 2010. Both policies define an "insured" to also include any organization legally responsible for the named insureds' negligence using a covered automobile.

¶ 11 Plaintiff refused to defend the BSA defendants under either policy. Instead, on July 20, 2012, plaintiff filed a complaint for a declaratory judgment against the BSA defendants and Pugh, Sr. Jean Pugh was added as a necessary party. In count I of its complaint, plaintiff sought a declaration that no coverage exists for the BSA defendants or Pugh, Sr. under the automobile policy in relation to the *Pugh* suit in light of the "household" exclusionary endorsement to the policy. The household exclusionary endorsement precludes liability coverage for "any insured for bodily injury to you[1] or any family member."

¶ 12 In count II of its complaint, plaintiff sought a declaration that no coverage exists for the BSA defendants or Pugh, Sr. under the umbrella policy in relation to the *Pugh* suit in light of a similar household exclusionary endorsement to the policy. The household exclusionary endorsement to the umbrella policy states that it does not provide liability coverage for " 'Bodily injury' or 'personal injury' to you[2] or any 'family member.' "

¶ 13 On September 14, 2012, the BSA defendants filed a counterclaim seeking contribution against Pugh, Sr. in the underlying tort action filed by Jean Pugh, which is currently pending in the circuit court.

¶ 14 On September 20, 2012, the BSA defendants filed their answer and counterclaim against plaintiff in its declaratory judgment action. In count I of their counterclaim, the BSA defendants sought a declaration that they are entitled to a defense from plaintiff under the umbrella policy in relation to the underlying *Pugh* suit. In count II, they asserted that plaintiff has breached its umbrella policy by its wrongful failure to defend them in the underlying *Pugh* suit. In count III, they contended that plaintiff's failure and refusal to defend them under the umbrella policy in the

[1] "You" is defined in the automobile policy as: "the named insureds."
[2] "You" is defined in the umbrella policy as: "the named insureds."

underlying *Pugh* suit amounts to vexatious and unreasonable conduct in violation of section 155 of the Illinois Insurance Code (215 ILCS 5/155 (West 2012)). The BSA defendants made no counterclaims regarding the automobile policy.

¶ 15 On November 13, 2012, plaintiff filed a motion for judgment on the pleadings as to count III of the BSA defendants' counterclaim seeking section 155 costs and fees. Plaintiff cited case law holding that a section 155 claim is precluded where there is a *bona fide* dispute as to whether an insurance policy was in effect at the time of the loss. See *Peerless Enterprise, Inc. v. Kruse*, 317 Ill. App. 3d 133, 145 (2000). Plaintiff argued that such a *bona fide* dispute exists here regarding whether there was underlying insurance available to the BSA defendants precluding applicability of the umbrella policy and, also, whether the BSA defendants are excluded from coverage under the household exclusion.

¶ 16 On July 19, 2013, the circuit court granted plaintiff's motion for judgment on the pleadings as to count III of the BSA defendants' counterclaim.

¶ 17 The BSA defendants subsequently filed a motion for summary judgment in their favor on count I of plaintiff's declaratory judgment action, regarding plaintiff's duty to defend them in the underlying *Pugh* suit under the automobile policy. They noted that the household exclusion in the policy excludes coverage for any bodily injury to the named insureds and their family members which, on its face, would appear to preclude coverage here as the underlying suit seeks recovery for bodily injury to family members (the children) of the named insureds. However, the BSA defendants further noted that the household exclusion contains an exception stating that "this exclusion does not apply *** [w]hen a third party acquires a right of contribution against [the named insureds] or any family member." The BSA defendants argued that they have

acquired a right of contribution against Pugh, Sr. (one of the named insureds) in the underlying litigation and, therefore, that the exclusion does not apply to preclude coverage.

¶ 18 Plaintiff filed a cross-motion for summary judgment, arguing that the exception to the exclusion only applies, by its terms, when a "third party" acquires a right of contribution against the named insureds or any family member. Plaintiff argued that since the BSA defendants qualify as "insureds" under the policy by virtue of their being organizations legally responsible for the named insured's negligence, they cannot also be considered "third parties" to the insurance contract for purposes of triggering the exception to the exclusion. Therefore, the exclusion applies to bar coverage.

¶ 19 On September 5, 2014, the circuit court granted plaintiff's motion for summary judgment on count I of its declaratory judgment action and denied the BSA defendants' cross-motion for summary judgment, finding that plaintiff does not owe the BSA defendants a duty to defend under the automobile policy. The circuit court entered Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010) language that there was no reason to delay enforcement or appeal of the order. On September 12, 2014, the BSA defendants filed a notice of appeal from the September 5 order and from the orders leading to that judgment. On September 19, 2014, Jean also filed her notice of appeal from the September 5 order.

¶ 20 The BSA defendants also filed a motion for judgment on the pleadings with respect to count II of plaintiff's declaratory judgment action and count I of their counterclaim[3], regarding plaintiff's duty to defend them in the underlying *Pugh* suit under the umbrella policy. Plaintiff filed a cross-motion for summary judgment.

[3] The BSA defendants did not seek judgment on the pleadings with respect to count II of their counterclaim.

¶ 21 The circuit court found it could not determine as a matter of law whether coverage exists under the umbrella policy without pleading and proof as to whether the BSA defendants have any underlying insurance available to them. The circuit court noted it had reviewed the submissions of the parties, and found no pleading or proof on this issue. Finding the issue of underlying insurance to be a dispositive point that must be presented for the circuit court to decide the duty to defend under the umbrella policy, the circuit court on July 19, 2013, denied the cross-motions for judgment on the pleadings and for summary judgment on that basis.

¶ 22 The BSA defendants filed a motion for reconsideration, which the circuit court denied on December 11, 2013.

¶ 23 On October 1, 2014, plaintiff filed a motion for summary judgment against Pugh, Sr. The record is unclear as to whether this summary judgment motion was directed at count I, count II, or both counts of the declaratory judgment action. Only the first page of the summary judgment motion is contained in the record on appeal. That page notes the circuit court's prior finding that no duty is owed to the BSA defendants under the household exclusion of the automobile policy, and that their contribution claims do not fall within the exception to the household exclusion; and that the circuit court's determination that the contribution claims filed by the BSA defendants do not fall within the exception to the exclusion is the law of the case.

¶ 24 On October 3, 2014, the circuit court entered an order granting plaintiff's motion for summary judgment against Pugh, Sr. The circuit court made a specific finding that plaintiff does not owe a duty to defend and/or indemnify Pugh, Sr. It is unclear from the appellate record whether this order related to plaintiff's duty to defend and/or indemnify under the automobile policy, the umbrella policy, or both policies.

¶ 25 On October 20, 2014, Pugh, Sr. filed a notice of appeal from the October 3, 2014, order.

¶ 26 On December 2, 2014, we consolidated the BSA defendants' appeal from the September 5, 2014, order, Jean Pugh's appeal from the September 5, 2014, order, and Pugh, Sr.'s appeal from the October 3, 2014, order.

¶ 27 II. ANALYSIS

¶ 28 A. The BSA Defendants' Appeal from the September 5, 2014, Summary Judgment Order

¶ 29 First, we address the BSA defendants' appeal from the circuit court's September 5, 2014, order granting summary judgment in favor of plaintiff and against them on count I of its declaratory judgment action, finding plaintiff has no duty to defend the BSA defendants under the automobile policy in the underlying *Pugh* litigation. We have jurisdiction to consider the appeal from the September 5, 2014, order because it contained Rule 304(a) language that there was no reason to delay enforcement or appeal, and the BSA defendants timely filed their notice of appeal within 30 days of the order.

¶ 30 "The construction of an insurance policy and a determination of the rights and obligations thereunder are questions of law for the circuit court and appropriate subjects for disposition by summary judgment." *Konami (America) Inc. v. Hartford Insurance Co. of Illinois*, 326 Ill. App. 3d 874, 877 (2002). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). When parties file cross-motions for summary judgment, they agree no factual issues exist and that the disposition of the case only turns on the circuit court's resolution of purely legal issues. *Maryland Casualty Co. v. Dough Management Co.*, 2015 IL App (1st) 141520, ¶ 45. Review is *de novo*. *American Zurich Insurance Co. v. Wilcox and Christopoulos, L.L.C.*, 2013 IL App (1st) 120402, ¶ 27.

¶ 31 When a declaratory judgment action is brought to determine an insurer's duty to defend, the court looks to the allegations in the underlying complaint and compares those allegations to the relevant provisions of the insurance policy. *American States Insurance Co. v. Koloms*, 177 Ill. 2d 473, 479 (1997). If the facts alleged in the complaint fall within, or potentially within, the language of the policy, the insurer's duty to defend arises. *Id*.

¶ 32 When construing an insurance policy, the court's role is to ascertain and give effect to the parties' intent as expressed in the agreement. *American Alliance Insurance Co. v. 1212 Restaurant Group, L.L.C.*, 342 Ill. App. 3d 500, 505 (2003). "To ascertain the intent of the parties and the meaning of the words used in the insurance policy, the court must construe the policy as a whole, taking into account the type of insurance for which the parties have contracted, the risks undertaken and purchased, the subject matter that is insured and the purposes of the entire contract." *Crum and Forster Managers Corp. v. Resolution Trust Corp*., 156 Ill. 2d 384, 391 (1993). If the terms of the policy are clear and unambiguous, they must be given their plain and ordinary meaning. *Koloms*, 177 Ill. 2d at 479. If the terms of the policy are susceptible to more than one meaning, they are considered ambiguous and will be construed strictly against the insurance company which drafted the policy. *Id*.

¶ 33 The burden is on the insurer to show that a claim falls within a provision that limits or excludes coverage. *American Alliance Insurance Co*., 342 Ill. App. 3d at 505. Provisions limiting or excluding coverage are construed liberally in favor of the insured and against the insurer. *Koloms*, 177 Ill. 2d at 479. Where the insurer relies on a provision that it contends excludes coverage, the applicability of the exclusionary provision must be clear and free from doubt. *American Zurich Insurance Co.*, 2013 IL App (1st) 120402, ¶ 34.

¶ 34 In the present case, there is no dispute that Pugh, Sr. is a named insured in the automobile policy, that he was driving a covered automobile at the time of the accident, and that the BSA defendants also qualify as insureds under the policy by virtue of their being organizations legally responsible for Pugh, Sr.'s negligence using a covered automobile. The issue is whether the automobile policy's household exclusionary endorsement applies to preclude coverage to the BSA defendants.

¶ 35 The household exclusionary endorsement states:

> "The following exclusion is added:
>
> We do not provide Liability Coverage for *any* insured for bodily injury to you [the named insureds] or any family member. However, this exclusion does not apply:
>
> * * *
>
> b. When a third party acquires a right of contribution against you [the named insureds] or any family member." (Emphasis added.)

¶ 36 Plaintiff argues that as the underlying litigation here seeks recovery for bodily injury to family members (the two children) of the named insureds allegedly caused by Pugh, Sr.'s car accident, the exclusion, on its face, precludes liability coverage for "any" of the insureds, including the BSA defendants.

¶ 37 The BSA defendants counter that they acquired a right of contribution against Pugh, Sr. in the underlying *Pugh* litigation and in fact filed a counterclaim against Pugh, Sr. in that litigation seeking such contribution; accordingly, they argue they fall within the exception set forth in part b. of the exclusion (sometimes referred to herein as the contribution exception), which provides that the exclusion does not apply where a third party acquires a right of contribution against the named insureds.

¶ 38 The pertinent issue is whether the BSA defendants qualify as "third parties" under the contribution exception. The BSA defendants argue that neither the exclusionary endorsements nor the remainder of the automobile policy define "third party" and, as such, that the term is ambiguous. They contend that the ambiguity should be resolved against plaintiff as the insurer, and that we should find that the BSA defendants are "third parties" under the contribution exception, as they are neither the named insureds nor family members of the named insureds. The BSA defendants argue such an interpretation comports with the dictionary definition of "third party" as "someone other than the principal parties." See Black's Law Dictionary 1489 (7th ed. 1999). They contend that Pugh, Sr. and Jean Pugh, as the named insureds who entered into the insurance contract with plaintiff, are the principals to the contract along with plaintiff, whereas the BSA defendants, who never contracted with plaintiff and only fall within the terms of the policy by virtue of Jean Pugh's lawsuit against them, are more like third-party beneficiaries who may benefit from plaintiff's performance under the contract. The BSA defendants argue that as third-party beneficiaries who acquired a right of contribution against the named insured, they fall within the contribution exception and are afforded coverage.

¶ 39 The BSA defendants argue that their interpretation of the automobile policy, in which they are considered third parties who fall within the contribution exception such that they are covered under the policy, is reasonable, although they acknowledge one could also reasonably interpret the policy in a contrary manner such that they would be excluded from coverage. The BSA defendants contend that these competing, reasonable interpretations of the automobile policy render it ambiguous, and that in such a situation the court must construe the policy in favor of the insureds and against the insurer so as to afford them coverage. See *Employers Insurance of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 141 (1999) ("Where competing

reasonable interpretations of a policy exist, a court is not permitted to choose which interpretation it will follow. [Citation.] Rather, in such circumstances, the court must construe the policy in favor of the insured and against the insurer that drafted the policy.").

¶ 40 The BSA defendants' contention that the policy term "third party" is ambiguous, and that a reasonable interpretation of the term includes them within its ambit, is without merit. "A policy term is not ambiguous because the term is not defined within the policy or because the parties can suggest creative possibilities for its meaning. [Citations.] In addition, a court cannot read an ambiguity into a policy just to find in favor of the insured. A policy provision is ambiguous only if it is subject to more than one *reasonable* interpretation." (Emphasis added.) *Lapham-Hickey Steel Corp. v. Protection Mut. Ins. Co*., 166 Ill. 2d 520, 529-30 (1995).

¶ 41 In the present case, the household exclusionary endorsement to the automobile policy excludes liability coverage for "any insured" for bodily injury to the named insureds or their family members, with the pertinent exception being when a "third party" acquires a right of contribution against the named insureds or a family member. Thus, the endorsement clearly differentiates between "any insured" and a "third party" such that the terms cannot be construed as meaning the same thing or even as having any overlaps in their respective meanings; if one is "any insured" under the endorsement than he is not also a "third party" falling within the exception to the endorsement. The BSA defendant's contrary interpretation of the endorsement, pursuant to which an insured can be considered a "third party," is unreasonable.

¶ 42 An analysis of *Lapham-Hickey Steel Corp*. is informative. In that case, the Environmental Protection Agency began investigating possible environmental contamination at a facility owned by Lapham-Hickey. *Id*. at 523. The Minnesota Pollution Control Agency (MPCA) took over the investigation and eventually sent Lapham-Hickey a proposed consent

order stating the facility was contaminated and that Lapham-Hickey was strictly liable for clean up and damages caused by hazardous substances. *Id*. at 523-24. Lapham-Hickey did not agree or sign the proposed consent order. *Id*. at 524.

¶ 43 Following negotiations, the MPCA issued Lapham-Hickey a "no-action" letter, stating that it did not believe Lapham-Hickey was a responsible person within the meaning of the Minnesota environmental regulations and that it did not intend to recommend any enforcement action against Lapham-Hickey as a responsible person. *Id*. In the letter, the MPCA approved a plan Lapham-Hickey had submitted to voluntarily conduct an investigation of the facility. *Id*.

¶ 44 Later, upon discovering contamination at its facility, Lapham-Hickey filed its own declaratory judgment action against its insurer seeking reimbursement of costs expended in the investigation (hereinafter defense costs). *Id*. at 524-25. The insurance policy at issue provided that the insurer would "defend any suit against the Insured" and would make an "investigation, negotiation and settlement of any claim or suit as the Company deems expedient." *Id*. at 528.

¶ 45 The insurance company argued it did not owe a duty to defend or reimburse Lapham-Hickey for its defense costs because the policy required that the insurer defend against only "suits" and there has not been a suit filed against Lapham-Hickey. *Id*. at 529. The appellate court agreed, noting in pertinent part:

> "If all of the policy's language is to be given effect, then the words 'suit' and 'claim' as used [in the policy] must have different meanings. [Citation.] While [the insurer] has the power to investigate any claim, it has the duty to defend only suits [*i.e*., actual court proceedings]. If the word 'suit' was broadened to include claims, in the face of policy language which distinguishes between the two, any distinction between these two words

> would become superfluous. [Citation.] The distinction the policy draws between suits and claims must be respected." *Id*. at 532-33.

¶ 46 Similarly, in the present case, the household exclusionary endorsement to the automobile policy draws a clear distinction between "any insured" and "third party," as it specifically excludes liability coverage for "any insured" for bodily injury to the named insureds or a family member, while providing a limited exception to this exclusion when a "third party" acquires a right of contribution against the named insureds or a family member thereof. Had the policy exclusion intended to allow contribution claims between "any insured[s]" to trigger the exception, it would have so provided. Instead, the policy exclusion only allows contribution claims from a "third party" (*not* the insureds) to trigger the exception. We give effect to all of the policy's language (*id*.), and, in doing so, we respect the distinction the policy exclusion draws between "any insured" and "third party"; as the BSA defendants are "insureds" under the exclusion they cannot be considered "third parties" under the contribution exception. No other interpretation of the policy exclusion is reasonable and, thus, no ambiguity exists. Accordingly, we hold that the exclusion applies to bar coverage for the BSA defendants.

¶ 47 The BSA defendants contend that section 143.01(a) of the Illinois Insurance Code (215 ILCS 5/143.01(a) (West 2012)) compels a different result. Section 143.01(a) states: "A provision in a policy of vehicle insurance *** excluding coverage for bodily injury to members of the family of the insured shall not be applicable when a third party acquires a right of contribution against a member of the injured person's family." *Id*.

¶ 48 In effect, section 143.01(a) provides that the household exclusionary endorsement to an automobile policy is subject to an exception when a "third party" *(i.e*., some one other than the insureds and family members covered under the policy) acquires a right of contribution against

the injured person's family member. Plaintiff copied section 143.01(a) almost word for word in its household exclusionary endorsement to the automobile policy at issue here. As we discussed earlier in this order, the BSA defendants are insureds under the policy exclusion and, thus, they are not third parties subject to the section 143.01(a) exception to the exclusion.

¶ 49 In conclusion, we affirm the circuit court's September 5, 2014, order granting summary judgment in favor of plaintiff and against the BSA defendants on count I of the declaratory judgment action, finding that plaintiff owes no duty to the BSA defendants to defend them under the automobile policy.

¶ 50 B. Jean Pugh's Appeal from the September 5, 2014, Summary Judgment Order

¶ 51 Jean also appealed from the September 5, 2014, order entering summary judgment in favor of plaintiff and against the BSA defendants on count I of the declaratory judgment action. On appeal, she has adopted the BSA defendants' arguments for reversal. For the reasons stated earlier in this order, we affirm the September 5, 2014 order.

¶ 52 C. The BSA Defendants' Argument for Coverage Under the Umbrella Policy

¶ 53 Next, the BSA defendants argue that plaintiff owes them a duty to defend under the umbrella policy, which, unlike the automobile policy, does *not* state that the household exclusion is intended to bar coverage to "any insured" for bodily injury to the named insureds or their family members. The BSA defendants contend that in the absence of the "any insured" language, they fall within the contribution exception and, thus, are covered under the policy. The BSA defendants also argue that, unlike the automobile policy, the umbrella policy contains a severability clause mandating consideration of each insured separately for purposes of construing the exclusion. They contend that the exclusion has no application to them as separately insured parties under the umbrella policy.

¶ 54 We lack jurisdiction to consider these arguments. While the parties did not raise the issue of our appellate jurisdiction, we have a duty to *sua sponte* determine whether we have jurisdiction to decide the issues presented. *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 453 (2006).

¶ 55 This court's jurisdiction extends only to appeals from final judgments, orders, or decrees, unless the appeal is within the scope of an exception established by our supreme court allowing appeals from interlocutory orders. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). "A judgment or order is final for purposes of appeal if it disposes of the rights of the parties, either on the entire case or on some definite and separate part of the controversy, and, if affirmed, the only task remaining for the trial court is to proceed with execution of the judgment." *Brentine v. DaimlerChrysler Corp.*, 356 Ill. App. 3d 760, 765 (2005). Where an action involves multiple parties or multiple claims, an order disposing of fewer than all of the claims is not appealable unless the circuit court makes "an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 56 Count II of plaintiff's declaratory judgment action sought a declaration that plaintiff owes the BSA defendants no duty to defend under the umbrella policy. The BSA defendants filed a counterclaim, alleging in count I that they are entitled to a defense under the umbrella policy, and alleging in count II that plaintiff has breached the umbrella policy by failing to defend them in the underlying litigation. The BSA defendants subsequently filed a motion for judgment on the pleadings with respect to count II of plaintiff's declaratory judgment action and count I of their counterclaim. Plaintiff filed a cross-motion for summary judgment. The circuit court found it could not determine as a matter of law whether the BSA defendants are entitled to coverage

under the umbrella policy without pleading and proof as to whether they have any underlying insurance available to them. In the absence of such pleading and proof, the circuit court denied plaintiff's motion for summary judgment and the BSA defendants' motion for judgment on the pleadings. Neither the denial of the summary judgment motion nor the denial of the motion for judgment on the pleadings is final and appealable. See *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp*., 341 Ill. App. 3d 438, 441 (2003); *Progressive Premier Insurance Co. of Illinois v. Emiljanowicz*, 2013 IL App (1st) 113664, ¶ 27. The circuit court never subsequently entered any final ruling either on count II of plaintiff's declaratory judgment action or on counts I and II of the BSA defendants' counterclaim and, thus, never made any final, appealable judgment regarding the BSA defendants' entitlement to coverage under the umbrella policy.

¶ 57 In the absence of a final, appealable judgment on count II of plaintiff's declaratory judgment action, and on counts I and II of the BSA defendants' counterclaim, regarding their entitlement to coverage under the umbrella policy, we lack jurisdiction to address the BSA defendants' arguments on this issue.

¶ 58 D. Pugh, Sr.'s Appeal from the October 3, 2014, Order

¶ 59 On October 3, 2014, the circuit court entered an order granting plaintiff's motion for summary judgment against Pugh, Sr. and making a specific finding that plaintiff owes no duty to defend and/or indemnify Pugh, Sr. in the underlying litigation. Pugh, Sr. appealed this order on October 20, 2014. The record is unclear as to whether the summary judgment motion was directed at count I, count II, or both counts of the declaratory judgment action, and whether the circuit court's October 3, 2014, order related to plaintiff's duty to defend Pugh, Sr. under the automobile policy, the umbrella policy, or both policies. Regardless, we lack jurisdiction to consider Pugh, Sr.'s appeal from the October 3, 2014, order as it is not final and appealable

because count II of plaintiff's declaratory judgment action against the BSA defendants and counts I and II of the BSA defendants' counterclaim against plaintiff remain outstanding and the order contained no Rule 304(a) language allowing for an immediate appeal.

¶ 60 E. The BSA Defendants' Appeal from the July 19, 2013, Order

¶ 61 Finally, the BSA defendants appeal the July 19, 2013, order granting plaintiff's motion for judgment on the pleadings as to count III of their counterclaim seeking section 155 costs and fees. The BSA defendants appeal the July 19, 2013, order as a step in the procedural progression leading to the September 5, 2014, order. See *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 435 (1979). As the September 5, 2014, order contains Rule 304(a) language, and the BSA defendants timely filed their appeal within 30 days of the order, we have jurisdiction to consider the BSA defendants' appeal from the July 19 order granting plaintiff's motion for judgment on the pleadings.

¶ 62 Judgment on the pleadings is appropriate where an examination of the pleadings discloses the absence of any material issue of fact, and the moving party is entitled to judgment as a matter of law. *M.A.K. v. Rush-Presbyterian-St Luke's Medical Center*, 198 Ill. 2d 249, 255 (2001). Review is *de novo*. *Id.*

¶ 63 Section 155 of the Illinois Insurance Code states:

> "(1) In any action by or against a company wherein there is in issue the liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts:

(a) 60% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs;

(b) $60,000;

(c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action." 215 ILCS 5/155(1) (West 2012).

¶ 64 Where a *bona fide* dispute over coverage exists, costs and sanctions pursuant to section 155 are inappropriate. *Illinois Founders Insurance Co. v. Williams*, 2015 IL App (1st) 122481, ¶ 32. A *bona fide* dispute is one that is real, actual, genuine and not feigned. *Id*.

¶ 65 In the present case, review of the pleadings and arguments on appeal reveal the existence of a *bona fide* dispute over the applicability of the household exclusion in the umbrella policy and the contribution exception, as well as whether the severability clause affects the BSA defendants' coverage under the policy. Each side cites case law and makes cogent arguments in support of their respective contentions; see *e.g.*, *United States Fidelity & Guaranty Co. v. Globe Indemnity Co.*, 60 Ill. 2d 295 (1975) and *State Farm Fire and Casualty Co. v. Hooks*, 366 Ill. App. 3d 819 (2006), cited by the BSA defendants in support of their argument for coverage under the umbrella policy; and see *State Farm Fire and Casualty Co. v. Guccione*, 171 Ill. App. 3d 404 (1988), *Prudential Property and Casualty Co. v. Scott*, 161 Ill. App. 3d 372 (1987) and *Prudential Property and Casualty Co. v. Piotrowski*, 149 Ill. App. 3d 833 (1986) (cited by plaintiff in support of their argument that the umbrella policy provides no coverage for the BSA defendants). Further, the umbrella clause provides that plaintiff is not obligated to defend the BSA defendants if there is other underlying insurance available to them, and a *bona fide* dispute

exists regarding the existence of such underlying insurance. Given the existence of these *bona fide* disputes (which we lack jurisdiction to resolve because the circuit court has not yet entered a final judgment thereon), the circuit court did not err in granting plaintiff's motion for judgment on the pleadings on count III of the BSA defendants' counterclaim for section 155 costs and fees.

¶ 66 III. CONCLUSION

¶ 67 For the foregoing reasons, we: affirm the July 19, 2013, order granting judgment on the pleadings in favor of plaintiff on count III of the BSA defendants' counterclaim; affirm the September 5, 2014, order granting summary judgment in favor of plaintiff on count I of its declaratory judgment action and denying the BSA defendant's cross-motion for summary judgment thereon; dismiss Pugh, Sr.'s appeal from the October 3, 2014, order for lack of jurisdiction; and dismiss the BSA defendants' appeal from the July 19, 2013, order denying their motion for judgment on the pleadings on count II of the declaratory judgment action and count I of their counterclaim for lack of jurisdiction.

¶ 68 Affirmed in part; dismissed in part.