THIRD DIVISION
December 28, 2018

No. 1-17-3154

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

COUNTRY MUTUAL INSURANCE COMPANY, Plaintiff-Appellee, v. JASMINE JONES, as Special Administrator of the Estate of Jayla Smith, deceased, Defendant-Appellant (JEM Properties and Associates, Inc., Defendant).	)))))))))))))	Appeal from the Circuit Court of Cook County. No. 15 CH 11550 Honorable Michael T. Mullen, Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Ellis and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County is affirmed; plaintiff is entitled to summary judgment on its claim for a declaratory judgment that it has no duty to defend or indemnify its insured against the underlying complaint because the loss claimed in the underlying complaint is subject to an exclusion. We would also enter judgment for plaintiff because the underlying complaint does not allege an "occurrence" causing bodily injury within the meaning of the policy.

¶ 2 Plaintiff, Country Mutual Insurance Company (Country Mutual), filed a complaint for a declaratory judgment against defendant, Jasmine Jones, as special administrator of the estate of

Jayla Smith. Country Mutual's complaint sought a declaration that it did not have a duty to defend or indemnify JEM Properties and Associates, Inc. (JEM), against Jones' complaint against JEM for the wrongful death of Jayla Smith. Country Mutual and Joseph Malia entered into a contract for homeowner's insurance on property JEM leased to Jones. The circuit court of Cook County granted summary judgment in favor of Country Mutual on its complaint for a declaratory judgment. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Jayla Smith, a newborn infant, resided with Jones, her mother, from January 18, 2014, until approximately April 23, 2014, in a single-family residence leased to Jones by JEM. Jones' complaint against JEM[1] alleges that on April 23, 2014, Jayla was found unresponsive by her mother in a bedroom of the residence and that "the presence of mold within the home, including the high rate of mold spores with [*sic*] the air, proximately caused" Jayla's death. The complaint also alleges that the "acts and omissions" of JEM proximately caused Jayla's death. Jones' complaint against JEM alleges that when JEM handed over possession of the home to Jones, JEM knew of hazards located in the home. Jones alleges that JEM "painted over mold located on the surface of walls within the home instead of fixing the source of the mold." Jones alleges the home had a hazardous mold problem that included "heavy growth of cladosporium, penicillium, and ulocladium" in the room where Jayla slept. The mold problem in the bedroom allegedly "included high rates of spores in the air within the bedroom." Jones alleges that JEM

[1] Only Count I of Jones' complaint against JEM is at issue in this appeal. Count I is stated against JEM for wrongful death. Jones' complaint also purports to state claims for wrongful death in Counts II and III against two defendants who are not parties to this appeal. The claims in Counts II and III are based on inspections of the property those defendants performed while Jones and Jayla resided in the home.

knew of the mold problem and "knew of structural problems (leaks within the roof and walls) that could cause, create, or worsen the mold problem within the home."

¶ 5 Jones' complaint against JEM alleges that despite its knowledge of the mold problem, JEM did not inform Jones of the mold or structural problems but instead "concealed the mold or structural problems in part by painting over sections of walls that had mold." Jones alleges that the presence of mold and/or structural problems that could cause growth of mold constitutes an unreasonable risk to tenants, and JEM knew "that this condition of disrepair" and "the mold within the home" posed an unreasonable risk to tenants, including Jayla. The underlying complaint alleges JEM "knew of a latent defect on the property—specifically the mold and conditions giving rise to the mold" which neither Jones nor Jayla could have discovered through "a lay person's inspection of the property." Jones alleges JEM owed Jayla a duty to remedy or warn of the hazardous condition because, in part, it knew "a) that a structural defect in the home caused water leaks that led to mold; b) knew of mold growth within the home but painted over it;" and neither defendant nor Jayla would know of the mold. Jones alleges JEM was negligent for several reasons, including that it "[f]ailed to remedy hazards that posed an unreasonable risk of harm to tenant;" "[f]ailed to fix structural issues—in particular portions of the home that water and moisture could enter—to reduce or inhibit the growth of mold;" and "[c]oncealed hazards—including structural defects that promoted the growth of mold—from [Jones,] tenants and inspectors that inspected the home."

¶ 6 Country Mutual filed its complaint for a declaratory judgment that any bodily injury alleged in Jones' lawsuit against JEM arises out of fungus or bacteria as defined in the insurance policy and that Country Mutual has no obligation to defend or indemnify JEM in connection with Jones' lawsuit against JEM. The complaint for declaratory judgment alleged that Country Mutual and Joseph Malia entered into a contract for homeowner's insurance covering the

residence JEM leased to Jones. Country Mutual's complaint sets forth pertinent terms of the insurance policy.

¶ 7 The policy contains two sections that are pertinent to the issues and arguments on appeal. Section 1 of the policy provides coverage if "a claim is made or a suit is brought against an 'insured' for damages because of 'bodily injury' *** caused by an 'occurrence' to which this coverage applies." This coverage is labeled "Coverage A."

¶ 8 Section 1 contains a list of exclusions from Coverage A. The policy excludes coverage for " 'bodily injury' *** caused by, consisting of, or arising out of, either directly or indirectly, 'fungus' or bacteria."[2]

¶ 9 Sections 2 through 6 of the policy provide coverage for "physical damage to covered property which is a direct result of a peril that the property is insured against." The policy lists exclusions applicable to sections 2 through 6. The exclusions applicable to sections 2 through 6 include an exclusion for fungus, wet or dry rot, or bacteria. The policy states that the exclusions applicable to sections 2 through 6 of the policy apply "regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area or the loss arises from natural, man-made, or external forces, or occurs as a result of any combination of these."

¶ 10 Country Mutual's complaint for declaratory judgment asserted that "there is a specific exclusion for bodily injury caused by, or arising out of, directly or indirectly, fungus or bacteria, and since all claims arise out of, directly or indirectly, fungus or bacteria, any potential coverage for the Lawsuit under the [policy] is specifically excluded."

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[2] Mold is a fungus. See https://www.cdc.gov/mold/faqs.htm (last visited November 10, 2018). The policy also defines "fungus" as "any type or form of fungus, including but not limited to, mold, mildew, mycotoxins, spores, scents or by-products produced or released by fungi."

¶ 11 Country Mutual filed a motion for summary judgment on its complaint for declaratory judgment. On March 16, 2017, the trial court denied Country Mutual's motion for summary judgment and continued the matter for further status. Country Mutual filed an amended complaint for declaratory judgment to address Jones' amended complaint against JEM. Country Mutual then filed a combined motion to reconsider the denial of its motion for summary judgment on the initial complaint for declaratory judgment and a motion for summary judgment on the amended complaint for declaratory judgment. On September 21, 2017, following a hearing, the trial court granted Country Mutual's motion to reconsider and motion for summary judgment on Country Mutual's amended complaint for declaratory judgment. On October 20, 2017, Jones filed a motion to reconsider the order granting summary judgment in favor of Country Mutual. On October 24, 2017, Country Mutual filed a response to Jones' motion to reconsider. On November 20, 2017, the trial court denied Jones' motion to reconsider the order granting summary judgment in favor of Country Mutual. On December 18, 2017, Jones filed her notice of appeal.

¶ 12 ANALYSIS

¶ 13 The trial court granted summary judgment in favor of Country Mutual on its complaint for a declaratory judgment it had no duty to defend or indemnify JEM in the underlying lawsuit based on an exclusion in an insurance contract.

> "It is well established that, in a declaratory judgment action such as the case at bar, where the issue is whether the insurer has a contractual duty to defend pursuant to an insurance policy, a court ordinarily looks first to the allegations in the underlying complaint and compares those allegations to the relevant provisions of the insurance policy. [Citation.] An insurer may not justifiably refuse to defend an action against its insured unless it is clear from the face of the

> underlying complaint that the allegations fail to state facts which bring the case within, or potentially within, the policy's coverage. [Citation.] Therefore, if the facts alleged in the underlying complaint fall within, or potentially within, the policy's coverage, the insurer's duty to defend arises. [Citation.] The insurer's duty to defend is much broader than its duty to indemnify its insured. [Citations.] The threshold for pleading a duty to defend is low, and any doubt with regard to such duty is to be resolved in favor of the insured. [Citation.] [I]nsurance policies are to be liberally construed in favor of coverage, and where an ambiguity exists in the insurance contract, it will be resolved in favor of the insured and against the insurer. [Citation.] Provisions in an insurance policy that limit or exclude coverage are also construed liberally in favor of the insured and against the insurer. [Citation.]" (Internal quotation marks omitted.) *Pekin Insurance Co. v. AAA-1 Masonry & Tuckpointing, Inc.*, 2017 IL App (1st) 160200, ¶ 23.

"The duty to defend extends to cases in which the complaint contains several theories or causes of action against the insured and only one of the theories is within the policy's coverage limits. [Citation.]" *Country Mutual Insurance Co. v. Bible Pork, Inc.*, 2015 IL App (5th) 140211, ¶ 16. "We review cases involving summary judgment *de novo*." *Id.* ¶ 21. "A trial court is permitted to grant summary judgment only 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. [Citation.] The trial court must view these documents and exhibits in the light most favorable to the nonmoving party. [Citation.]" *Nunez v. Diaz*, 2017 IL App (1st) 170607, ¶ 28.

¶ 14 On appeal, Jones asserts the fundamental question is whether "a mold exclusion within the policy at issue precludes coverage for certain negligent conduct on the part of the insured."

Jones argues the exclusion in the liability section does not apply to the conduct alleged in the complaint because the mold exclusion in the liability section is narrow and does not encompass the conduct that caused the bodily injury in this case—that is, Jones argues that the "conduct" alleged in the complaint—negligently allowing the home to fall into disrepair resulting in water infiltration contributing to the presence of mold—is "not described within the exclusions nor can any of the exclusions be read to exclude that conduct from coverage." Jones argues the mold exclusion in the liability section of the policy is narrow because it does not exclude causes, such as the conduct in this case, that occur and contribute concurrently to the presence of mold. Jones further argues that because the two exclusions in the policy are inconsistent, the exclusion in the liability section of the policy is ambiguous, therefore this court "should hold that it is a question of fact as to whether the *conduct* of the insured falls within the coverage or *** within the mold exclusion." (Emphasis added.)

¶ 15 Country Mutual argues the "fungus exclusion in the third-party liability section squarely applies to preclude any coverage." In response to Jones' argument the policy provides coverage because Jones' complaint against JEM alleges it was JEM's conduct in allowing the home to fall into disrepair and/or water infiltration that caused Jayla's death, not just mold, Country Mutual argues that Jones' complaint against JEM alleges mold was the cause of Jayla's death and not some other cause. Country Mutual further responds the fact the exclusions are different does not make the exclusion in the liability section of the policy ambiguous, and the exclusion is not ambiguous either on its face or in the context of the policy as a whole. The resolution of this dispute requires an analysis of plaintiff's complaint. *Westfield Insurance Co. v. W. Van Buren, LLC*, 2016 IL App (1st) 140862, ¶ 13 ("in order to address this matter, we turn to both the underlying complaint and the language of the insurance policy itself"). We have carefully reviewed the allegations in the complaint and the relevant provisions of the policy, and we find

the allegations fail to state facts which bring the case within, or potentially within, the policy's coverage for two distinct reasons. First, in response to the parties' arguments, we find that the complaint alleges Jayla's death was caused by mold, and the exclusion for mold in the liability section of the policy applies to the loss at issue. Second, if we were to find the complaint alleges JEM's conduct caused Jayla's death, we would also find that regardless of the exclusion, the allegations fail to trigger coverage because they do not allege an "occurrence" within the meaning of the policy.

¶ 16 Turning to Jones' argument the mold exclusion in the liability section of the policy does not apply, we begin with Jones' complaint against JEM, which contains the following allegations:

> "15. JEM PROPERTIES AND ASSOCATES, INC. knew of structural problems (leaks within the roof and walls) that could cause, create, or worsen the mold problem within the home.
>
> * * *
>
> 18. The presence of mold and/or structural problems that could cause growth of mold constitutes an unreasonable risk to tenants—particularly those tenants with young children living in the home.
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> * * *
>
> 32. At all times relevant to this Second Amended Complaint, through and including April 23, 2014, Defendant JEM PROPERTIES AND ASSOCIATES, INC. was negligent and breached the duty it owed to all of its tenants, including JAYLA SMITH, for one or more of the following reasons:
>
> * * *

d. Failed to remedy hazards that posed an unreasonable risk of harm to tenants;

e. Failed to eliminate mold from the home;

f. Failed to treat the extensive mold problem to reduce the amount of mold and promote air quality;

g. Failed to fix structural issues—in particular portions of the home that water and moisture could enter—to reduce or inhibit the growth of mold;

* * *

34. On April 23, 2014, the presence of mold within the home, including the high rate of mold spores with [*sic*] the air, proximately caused Decedent JAYLA SMITH's death.

35. The acts and omissions of Defendant JEM PROPERTIES AND ASSOCIATES, INC. proximately caused JAYLA SMITH's death."

¶ 17 In support of her argument that the exclusion does not apply to these allegations, Jones relies on the differing language in the mold exclusion in the liability section of the policy and the mold exclusion in the property damage section of the policy. In particular, Jones points to the language prefacing the exclusions applicable to sections 2 through 6 of the policy, which states: the "loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss." Jones argues that had such language been included in the liability section of the policy, that language "would, in fact exclude coverage in this case." Jones argues that the narrower exclusion in the liability section of the policy does not encompass the conduct alleged in the complaint or, at minimum, there is a question of fact as to whether the exclusion in the liability section of the policy is applicable due to an ambiguity in the contract created by the different language of the two mold exclusions.

¶ 18 We reject defendant's argument the policy is ambiguous. "Whether an ambiguity exists turns on whether the policy language is subject to more than one reasonable interpretation." *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). "Where the words in the policy are clear and unambiguous, 'a court must afford them their plain, ordinary, and popular meaning.' (Emphasis omitted.) [Citation.] *** Nonetheless, courts will not strain to find an ambiguity where none exists." *Southwest Disabilities Services & Support v. ProAssurance Specialty Insurance Co., Inc.*, 2018 IL App (1st) 171670, ¶ 21. Jones' reference to language in a separate, divisible part of the policy does not create an ambiguity in the exclusion in the liability section of the policy at issue. See *Bednarz v. Castle Key Indemnity Co.*, No. 812-CV-2827-T-35EAJ, 2014 WL 4635707, at *5 (M.D. Fla. Sept. 15, 2014) ("That Castle Key chose to clarify an exclusion in one section of its policy does not permit this Court to rewrite an exclusion in another section of the policy."). The mold exclusion in the liability section of the policy is clear and unambiguous. The fact plaintiff employed different language in a separate part of the contract does not make the language in the liability section unclear or ambiguous. Therefore, we will give that language is plain, ordinary, and popularly understood meaning. The plain language of the policy excludes coverage for bodily injury caused directly or indirectly by mold. The underlying complaint against JEM alleges the death in this case was caused by mold. Jones' attempt to characterize the cause of Jayla's death in terms of JEM's alleged negligence is merely "a transparent attempt to trigger insurance coverage." See *Farmers Automobile Insurance Ass'n v. Danner*, 2012 IL App (4th) 110461, ¶ 39. Accordingly, under the plain language of the policy, the harm alleged is excluded from coverage, and the trial court's judgment granting summary judgment in favor of Country Mutual on its complaint for declaratory judgment must be affirmed.

¶ 19 We would also affirm the trial court on an alternative ground. We also find that Jones' complaint, which alleges JEM negligently failed to repair structural issues, failed to warn her of the presence of mold, and concealed the presence of mold, fails to allege an "occurrence" within the meaning of the policy as is required to trigger Country Mutual's duty to defend or indemnify. *Pekin Insurance Co.*, 2017 IL App (1st) 160200, ¶ 23. The policy states that Country Mutual will defend and indemnify the insured if "a claim is made or a suit is brought against an 'insured' for damages because of 'bodily injury' *** caused by an 'occurrence' to which this coverage applies." The "definitions" section of the policy states as follows with regard to an occurrence:

> " 'Occurrence' means:
>
> a. Under Section 1, an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period in:
>
> (1) 'Bodily injury'; or
>
> (2) 'Property damage'.
>
> b. Under Sections 2 through 6, the happening of an event, or series of events closely related in time and nature that give rise to a loss."

The policy does not define "accident." The same section of the policy that excludes coverage for bodily injury caused by or arising out of, either directly or indirectly, fungus, contains the following exclusion:

> "Liability, Coverage A *** [does] not apply to the following:
>
> 1. Expected Or Intended Injury
>
> 'Bodily injury' *** that may reasonably be expected or intended to result from the intentional acts of an 'insured' even if the resulting 'bodily injury' ***:

a. Is of a different kind, quality or degree than initially expected or intended; or

b. Is sustained by a different person, entity *** initially expected or intended.

This exclusion applies regardless of whether any 'insured' personally participated in or committed the alleged act and regardless of whether any 'insured' subjectively intended the 'bodily injury' *** for which a claim is made."

¶ 20 In construing the precise policy language at issue here, this court has held: "An 'accident' is 'an unforeseen occurrence, usually of an untoward or disastrous character or an undesigned sudden or unexpected event of an inflictive or unfortunate character. [Citation.]' [Citation.] In determining whether an occurrence is an 'accident,' Illinois courts have focused on whether the injury is expected or intended from the standpoint of the insured. [Citation.] If an injury is not expected or intended by the insured, it is considered an accident. [Citation.]" *Country Mutual Insurance Co. v. Dahms*, 2016 IL App (1st) 141392, ¶ 45. "Expected injuries are those that should have been reasonably anticipated by the insured. [Citation.] Injuries are considered 'expected' and excluded from coverage where the insured was consciously aware the injuries were practically certain to be caused by the conduct. [Citation.]" *Danner*, 2012 IL App (4th) 110461, ¶ 34. "Our supreme court has cautioned against deciding the ultimate fact of the insured's intent in an underlying lawsuit during a declaratory-judgment action over the duty to defend that lawsuit." *Dahms*, 2016 IL App (1st) 141392, ¶ 46. "[I]t should be the 'rare' case that we are so confident that the allegations could not possibly be considered to describe 'negligent' conduct, and can only be credibly characterized as intentional conduct, that we can

say that the allegations in an underlying complaint could not even *potentially* fall within the coverage of a policy." (Emphasis in original.) *Id*. ¶ 54.

¶ 21 We find *Allstate Insurance Co. v. Lane*, 345 Ill. App. 3d 547 (2003), instructive. In *Lane*, the purchasers of a home sued the sellers after the purchasers discovered several defects in the property. *Lane*, 345 Ill. App. 3d at 548. The purchasers sued the sellers for, *inter alia*, negligent misrepresentation. *Id*. The complaint alleged that beginning 15 years before the sale and over a period of approximately 10 years, the sellers replaced most of the windows in the house but the windows were installed improperly, causing leakage. *Id*. at 548-49. The complaint alleged the sellers knew of water infiltration into the home several years before the sale and concealed the defects caused by the water infiltration. *Id*. at 549. The sellers never mentioned leaking or water damage to the purchasers. *Id*. The sellers tendered defense of the claim to their insurer. The insurer refused to defend the sellers and filed a complaint for a declaratory judgment against the sellers. *Id*. The insurer argued in part that the complaint failed to allege damage caused by an "occurrence." *Id*. The trial court "concluded that there was no 'occurrence' resulting in 'bodily injury' or 'property damage' as defined in the policy" and granted the insurer's motion for summary judgment. *Id*. at 550. On appeal, the sellers argued the negligent misrepresentation complaint sufficiently alleged an occurrence as defined in the policy. *Id*.

¶ 22 The policy defined an "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in bodily injury or property damage." (Internal quotation marks omitted.) *Id*. The policy excluded "damage intended by, or which reasonably may be expected to result from the intentional *** acts or omissions of[,] any injured [*sic*] person." (Internal quotation marks omitted.) *Id*. at 550-51. In the appeal, the *Lane* court held, in part, that the complaint did not allege an "occurrence" in the form of an "accident." *Id*. at 551. "To the contrary, the

[complaint] alleged that the *** failure to mention the leaks or water damage was deliberate, not careless or negligent." *Id.* The *Lane* court distinguished a decision by the Seventh Circuit Court of Appeals, which itself relied on an earlier decision by this court, on the grounds that in the Seventh Circuit case and in the earlier decision by this court, it was not alleged that the conduct at issue was intentional or that the insured intended or expected the outcome. *Id.* at 551-52 (distinguishing *Prisco Serena Sturm Architects, Ltd. v. Liberty Mutual Insurance Co.*, 126 F.3d 886, 890-91 (7th Cir. 1997); *Posing v. Merit Insurance Co.*, 258 Ill. App. 3d 827, 834 (1994)). The *Lane* court found that the complaint alleged that the sellers knew of the defects and concealed the information. *Id.* at 552. The court held that "[e]ven if *** [the sellers] did not realize the full extent of the damage, they are alleged to have known of and concealed the defects." *Id.*

¶ 23 The *Lane* court found that the allegation against the sellers in *Lane* was that they "knew for a fact that the home was damaged and they deliberately failed to tell the prospective buyers." *Id.* Moreover, the court found that the complaint could not be read to concede that the sellers may have been unaware of the water infiltration damage because the complaint alleged the sellers made repairs to conceal the damage before the sale. *Id.* at 553. Finally, the *Lane* court found a decision from Ohio instructive. *Id.* In that case, the court answered the question: "whether insurance policies covering personal injuries arising out of property damages provide coverage to homeowners who are sued for their negligent failure to disclose to purchasers damage to the property that occurred during the sellers' occupancy." (Internal quotation marks omitted.) *Id.* (quoting *Cincinnati Insurance Co. v. Anders*, 99 Ohio St. 3d 156, 157 (2003)). The *Lane* court found:

> "The court answered the question, as have we, in the negative, concluding: 'The actual accident was the faulty installation of the insulation, leading to the

> structural deterioration of the house. The underlying claims of the [buyers] against the [sellers] pertain to the nondisclosure of the damage, not the damage itself. Therefore, the underlying claims are outside the scope of the [insurance] policy.' [Citation.]
>
> We believe the reasoning in *Cincinnati Insurance* is relevant to our decision here. The actual accident or occurrence here was the faulty installation of windows, leading to the structural deterioration of the house. The *** claim pertained to the nondisclosure of the damage, not to the damage itself. The underlying claims, then, are outside the scope of the *** policy." *Id*. at 553.

¶ 24 Here, as in *Lane*, the complaint alleges that the failure to repair the structural defects, the concealment of the defects and the mold, and the failure to inform defendant of either, were "deliberate, not careless or negligent." See *id*. at 551. The complaint alleges JEM "knew of hazards located within the home." The complaint alleges JEM knew of and took steps to conceal the hazard when it "painted over mold located on the surface of walls within the home instead of fixing the source of the mold." The complaint expressly alleges JEM "concealed the existence of mold within the home from [defendant.]" The complaint describes the painted walls as "infested with mold." The complaint also alleges JEM "knew of structural problems (leaks within the roof and walls) that could cause, create, or worsen the mold problem within the home" and "[d]espite this knowledge *** did not inform [Jones] of the mold or structural problems." The complaint alleges JEM knew the structural issues and mold posed an unreasonable risk to tenants, including Jayla.

¶ 25 We recognize that the complaint alleges that JEM was "negligent and breached the duty it owed to all of its tenants" by failing to remedy the hazards, failing to fix structural issues, failing to warn defendant, and concealing the hazards. This court has held that "[e]ven where a

complaint alleges an act is 'negligent,' if the allegations show that what is truly alleged can only be characterized as an intentional act, the substance will control over the moniker placed on it by a plaintiff." *Dahms*, 2016 IL App (1st) 141329, ¶ 47. Although "it should be the 'rare' case that we are so confident that the allegations could not possibly be considered to describe 'negligent' conduct, and can only be credibly characterized as intentional conduct, that we can say that the allegations in an underlying complaint could not even *potentially* fall within the coverage of a policy" ((emphasis in original) *id*. ¶ 54), this *is* such a case. Here, unlike in *Dahms*, we can see no potential that these allegations describe less than intentional behavior by JEM. *Id*. ¶¶ 55-56. The underlying complaint alleges JEM had actual knowledge of and acted to conceal the structural defects that could lead to or worsen mold and the presence of mold by its silence and by painting over a wall "infested" with mold and, therefore, the underlying complaint does not allege an "occurrence" within the meaning of the policy. See *Lane*, 345 Ill. App. 3d at 552-53 (finding complaint could not be read as conceding insureds may have been unaware of water infiltration damage where the complaint alleged the insureds "made repairs to conceal the damage"). Finally, we note that if there was an "accident," it was the infiltration of water due to the structural damages leading to mold. But, as noted above, the complaint does not allege that the structural damage or water itself caused Jayla's death. In this case, any underlying claims *not* based solely on the presence of mold pertain to the failure to repair and nondisclosure of the "accident," not the "accident" itself. See *id*. at 553 (citing *Cincinnati Insurance Co.*, 99 Ohio St. 3d at 157). Those claims are outside the scope of the policy. *Id*.

¶ 26 We find that the complaint fails to allege bodily injury "caused by an 'occurrence' " within the meaning of the policy as is required to trigger the insurer's duty to defend or indemnify. Thus, it is " 'clear' from the face of the underlying complaint that the allegations could not potentially fall within the policy's coverage." *Dahms*, 2016 IL App (1st) 141392, ¶ 59.

The trial court properly granted summary judgment in favor of plaintiff for this reason as well. *Illinois State Bar Ass'n Mutual Insurance Co. v. Coregis Insurance Co.*, 355 Ill. App. 3d 156, 163 (2004) ("Because we review the grant of summary judgment *de novo*, we may affirm the circuit court's decision on any ground in the record, regardless of whether the court relied on that ground or whether the court's reasoning was correct.").

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the circuit court of Cook County is affirmed.

¶ 29 Affirmed.