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2012 IL App (3d) 110653-U

Order filed September 19, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

|                        |                                 |
|------------------------|---------------------------------|
| AMERICAN FAMILY MUTUAL | ) Appeal from the Circuit Court |
| INSURANCE COMPANY,     | ) of the 13th Judicial Circuit, |
|                        | ) LaSalle County, Illinois,     |
| Plaintiff-Appellee,    | )                               |
|                        | )                               |
| v.                     | )                               |
|                        | )                               |
| DANIEL J. HARCAR,      | ) Appeal No. 3-11-0653          |
|                        | ) Circuit No. 08-CH-736         |
| Defendant,             | )                               |
|                        | )                               |
| and                    | )                               |
|                        | )                               |
| JEFFREY M. HARCAR,     | ) Honorable                     |
|                        | ) Eugene P. Daugherty,          |
| Defendant-Appellant.   | ) Judge, Presiding.             |

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Lytton and McDade concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Summary judgment in favor of an insurer that it had no duty to defend or indemnify its insured in a negligence action brought against the insured was upheld on appeal because violation of law exclusion in the insured's homeowner's insurance policy barred coverage for injuries sustained when the insured shot another man and for which the insured pled guilty to reckless discharge of a

firearm.

¶ 2 The plaintiff, American Family Insurance Company (the insurer), brought a declaratory judgment action against the defendants, Daniel Harcar (the insured) and Jeffrey Harcar, seeking a judgment that it had no duty to defend nor indemnify its insured in a negligence action brought by Jeffrey Harcar against the insured. The trial court granted the insurer's motion for summary judgment, and Jeffrey Harcar appealed.

¶ 3 FACTS

¶ 4 Jeffrey Harcar was shot with a shotgun fired by the insured in the insured's home. At the time, the insured had a homeowner's insurance policy with the insurer. As a result of the incident, the insured pled guilty to reckless discharge of a firearm (720 ILCS 5/24-1.5 (West 2004)). Thereafter, Jeffrey brought a negligence action against the insured for injuries sustained in the shooting. The insurer filed this action, seeking a declaratory judgment that it owed no duty to defend or indemnify the insured under the homeowner's insurance policy in the action by Jeffrey against the insured. The insurer then sought summary judgment, alleging that the policy's violation of law exclusion barred coverage for the injuries claimed by Jeffrey. That exclusion provided that the insurer would not cover bodily injury or property damage arising out of a violation of any criminal law for which the insured was convicted. The trial court granted summary judgment, and Jeffrey appealed.

¶ 5 ANALYSIS

¶ 6 Jeffrey argues that there are genuine issues of material fact that made summary judgment improper. Specifically, Jeffrey argues that the violation of law exclusion was ambiguous, that the insured's guilty plea to the charge of reckless discharge of a firearm did not mirror the

conduct alleged in the complaint against the insured, and the bodily injury alleged in the negligence complaint did not arise out of the crime of reckless discharge. The insurer argues that the terms “arising out of” and “any insured” were not ambiguous, and the policy language as a whole was clear and unambiguous. The insurer contends that the insured’s guilty plea was based on the same conduct as that alleged in the negligence complaint.

¶ 7 Summary judgment is appropriate when the pleadings, depositions, affidavits, and admissions show that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008); *Metro. Prop. & Cas. Ins. Co. v. Pittington*, 362 Ill. App. 3d 220 (2005). We review an order of summary judgment *de novo*. *Pittington*, 362 Ill. App. 3d at 223.

¶ 8 The construction of the language in an insurance policy is a matter of contract interpretation. *Hobbs v. Hartford Ins. Co.*, 214 Ill. 2d 11 (2005). Thus, our primary goal is to determine and give effect to the intention of the parties, as expressed in the policy language. *Hobbs*, 214 Ill. 2d at 17. If the language of the insurance policy is clear and unambiguous, the words of the policy must be given their plain and ordinary meaning. *Pittington*, 362 Ill. App. 3d at 224. In determining whether the language is ambiguous, the language in question must be read in context and not in isolation. *Id.* Exclusion provisions which limit or exclude coverage must be construed liberally in favor of the insured and against the insurer. *Std. Mutual Ins. Co. v. Mudron*, 358 Ill. App. 3d 535 (2005). While courts must liberally construe exclusion provisions that limit or exclude coverage in favor of the insured and against the insurer, “courts will not strain to find an ambiguity where none exists.” *Am. Family Mut. Ins. Co. v. Niebuhr*, 369 Ill. App. 3d 517, 522 (2006).

¶ 9 In this case, the policy exclusion provided that the insurer would not cover bodily injury or property damage arising out of a violation of any criminal law for which the insured was convicted. The insured shot a man, and for that action, was convicted of reckless discharge of a firearm. We do not find that the term “arising out of” was ambiguous. See *Westfield Nat'l Ins. Co. v. Long*, 348 Ill. App. 3d 987 (2004) (the phrase "arising out of," when used in an exclusionary clause of an insurance policy, was not ambiguous and meant "to spring up" or "come into being"). Also, it was undisputed that the insured was the policyholder, so the use of the term “any insured” does not render the clause ambiguous. We find that the insurer was entitled to judgment as a matter of law that it had no duty to defend or indemnify the insured because coverage was barred by the violation of law exclusion.

¶ 10 CONCLUSION

¶ 11 The judgment of the circuit court of LaSalle County is affirmed.

¶ 12 Affirmed.