STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

FRANK KOTSONIS,

Defendant,

and

MICHAEL SARZYNSKI, MARK SARZYNSKI, and DIANE SARZYNSKI,

Defendants-Appellants.

UNPUBLISHED
May 28, 2002

No. 228366
Macomb Circuit Court
LC No. 99-000597-CK

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

FRANK KOTSONIS,

Defendant-Appellant,

and

MICHAEL SARZYNSKI, MARK SARZYNSKI, and DIANE SARZYNSKI,

Defendants.

No. 228422
Macomb Circuit Court
LC No. 99-000597-CK

Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

In these consolidated appeals, defendants appeal by right from a judgment for plaintiff entered after a bench trial. Defendant Frank Kotsonis, whom plaintiff insured under a homeowner's policy, intentionally fouled defendant Mark Sarzynski while Sarzynski was in the air making a lay-up during a high school basketball game. Sarzynski sustained injuries as a result, and plaintiff sought a declaratory judgment that it owed no coverage to Kotsonis with regard to these injuries. The trial court agreed with plaintiff, and we affirm.

Defendants contend that the trial court erred by concluding that Sarzynski's injuries resulted from an intentional act and were thereby precluded from coverage under the insurance policy. We disagree.

This Court reviews a trial court's findings of fact in a bench trial for clear error and reviews its conclusions of law de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Moreover, the interpretation of an insurance contract is a question of law that this Court reviews de novo. *Morley v Automobile Club of Michigan*, 458 Mich 459, 465; 581 NW2d 237 (1998).

The insurance policy at issue here states that plaintiff "will pay damages which an insured person becomes legally obligated to pay because of bodily injury . . . arising from an occurrence. . . ." An "occurrence" is defined in the policy as an "accident. . . ." The policy does not specifically define the term "accident," but our Supreme Court has provided substantial guidance with regard to the meaning of the term. In *Nabozny v Burkhardt*, 461 Mich 471, 478; 606 NW2d 639 (2000), quoting *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 115-116; 595 NW2d 832 (1999), quoting *Auto Club Group Ins Co v Marzonie*, 447 Mich 624, 648-649 (Griffin, J.); 527 NW2d 760 (1994),[1] the Court noted that whether an insured's intentional act[2] is deemed an "accident" under an insurance policy turns on whether the consequences of the act "'"either were intended by the insured or reasonably should have been expected because of the direct risk of harm intentionally created by the insured's actions."'" Applying this standard in *Nabozny*, the Court concluded that an incident in which the defendant intentionally tripped the plaintiff and inadvertently broke the plaintiff's ankle was not an "accident." *Nabozny*, *supra* at 480-481. Although the Court recognized that the defendant did not intend to break the plaintiff's ankle, the Court explained, "[I]t is plain that in tripping someone to the ground in the course of a fight, [the defendant] reasonably should have expected the consequences of his acts because of the direct risk of harm created. This precludes a finding of liability coverage under the terms of this policy. In other words, the injury did not result from an 'accident.'" *Id.*

In the instant case, Kotsonis intentionally created a direct risk of harm by pushing Sarzynski while Sarzynski was in the air making a lay-up.[3] Although Kotsonis testified that he did not intend to hurt Sarzynski, Kotsonis reasonably should have expected the consequences of his acts because of the direct risk of harm he created. *Id.* Accordingly, following the principles

[1] *Frankenmuth*, *supra* at 117 n 8, adopted Judge Griffin's reasoning and repudiated that part of the *Marzonie* plurality opinion that conflicted with *Frankenmuth*.

[2] There is no dispute in the instant case that Kotsonis intentionally fouled Sarzynski.

[3] A photograph received as an exhibit graphically demonstrates the circumstances surrounding the foul.

set forth in *Nabozny*, plaintiff owed no liability coverage for Sarzynski's injuries. *Id.* at 478, 480-481. The incident did not constitute an "occurrence" under the policy.[4]

Moreover, even assuming, arguendo, that the incident constituted an "occurrence" under the policy, coverage was nonetheless precluded by the policy exclusions. The policy excludes coverage for bodily injury "intended by, or which may reasonably be expected to result from the intentional . . . acts . . . of . . . any insured person." The policy notes that this exclusion applies even if "such bodily injury . . . is of a different kind or degree than that intended or reasonably expected. . . ." Here, given the factual circumstances surrounding the foul, we conclude that some type of injury was the "natural, foreseeable, expected, and anticipated" result of the foul. See *Allstate Ins Co v Miller (After Remand)*, 226 Mich App 574, 582-583; 575 NW2d 11 (1997). That the ultimate injuries may have been more severe than those reasonably expected does not trigger coverage under the plain language of the policy.

We affirm the judgment for plaintiff. We note that in its factual findings and conclusions of law, the trial court used the term "foreseeable" instead of the term "expected" when referring to Sarzynski's injuries. These terms are not necessarily interchangeable. However, in this case, as in *Nabozny*, the essential facts are undisputed and the question whether the insured "reasonably should have expected the consequences of his acts because of the direct risk of harm created" may be decided as a matter of law. See generally *Nabozny, supra* at 480-482. Moreover, the interpretation of an insurance contract is a question of law that this Court reviews de novo, *Morley, supra* at 465, and appellate review would not be facilitated by requiring further explanation of the trial court's findings. See *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). Therefore, despite the somewhat ambiguous nature of the trial court's findings, a remand is unnecessary.

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael R. Smolenski
/s/ Patrick M. Meter

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[4] We note that the appellants devote some time discussing cases involving the availability of damages for injuries occurring during sporting activities. However, the *Nabozny* analysis regarding insurance coverage creates no exception or different standard for injuries occurring in an athletic game or competition, thereby rendering the appellants' discussions irrelevant for our purposes. Comments made by the Court in *Ritchie-Gamester v Berkley*, 461 Mich 73; 597 NW2d 517 (1999), for example, speak to the standard for finding liability in the context of a sporting event but do not speak to the availability of insurance coverage under a policy such as that at issue in the instant case.