

STATE OF MICHIGAN
COURT OF APPEALS

AUTO CLUB GROUP INSURANCE
COMPANY,

Plaintiff-Appellee,

v

LEONARD WEITZEL,

Defendant-Appellant,

and

MARGARET EDMISTON, Personal
Representative of the Estate of LEE EDMISTON,
Deceased,

Defendant.

UNPUBLISHED
February 1, 2005

No. 250819
Otsego Circuit Court
LC No. 02-009850-CZ

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Defendant Leonard Weitzel appeals as of right the trial court's order granting plaintiff Auto Club Insurance Co.'s motion for summary disposition and declaring that plaintiff had no duty to defend or indemnify him in the underlying wrongful death suit. We affirm.

Defendant fatally shot decedent during a hunting trip on defendant's property. Defendant maintained that he believed he was shooting a deer that he had just observed. He pleaded nolo contendere to hunting while intoxicated, MCL 750.167a, in exchange for dismissal of a charge of careless, reckless, or negligent discharge of a firearm causing injury or death, MCL 752.861.

Decedent's personal representative filed a wrongful death suit. Defendant's homeowner's insurance policy, issued by plaintiff, provided that benefits were payable for an "accident." The policy defined "accident" as "a fortuitous event or chance happening which is neither reasonably anticipated nor reasonably foreseen . . ." The policy excluded coverage for bodily injury resulting from a criminal act committed by an insured person, regardless of whether the person intended to commit a criminal act or was charged with or convicted of a crime.

Plaintiff filed suit seeking a declaration that it had no duty to defend or indemnify defendant in the wrongful death suit. In addition, plaintiff sought summary disposition pursuant to MCR 2.116(C)(10), arguing that it had no duty to defend or indemnify defendant in the wrongful death suit because decedent's death resulted from a criminal act committed by defendant. The trial court granted the motion, concluding that the criminal acts exclusion worked to relieve plaintiff of any obligation to pay benefits.

We review a trial court's decision on a motion for summary disposition *de novo*. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). We also review a trial court's interpretation of a contract *de novo* as a question of law. *Auto Club Group Ins Co v Daniel*, 254 Mich App 1, 3; 658 NW2d 193 (2002).

Where there is no ambiguity of language, an insurance contract must be enforced as written. *Henderson v State Farm Fire & Casualty Co*, 460 Mich 348, 354; 596 NW2d 190 (1999). An insurance contract is ambiguous if, after reading the entire contract, its language can reasonably be understood in different ways. *Farm Bureau Mutual Ins Co v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999). Exclusions are strictly construed in favor of the insured. *McKusick v Travelers Indemnity Co*, 246 Mich App 329, 333; 632 NW2d 525 (2001), but an insurer "will not be held responsible for a risk that it did not assume." *Allstate Ins Co v Fick*, 226 Mich App 197, 201; 572 NW2d 265 (1997).

This Court has already found that the language of plaintiff's criminal conduct exclusion is clear and unambiguous. *Auto Club Group Ins Co v Daniel*, 254 Mich App 1, 4; 658 NW2d 193 (2002). Defendant consumed alcohol and thereafter discharged his gun, killing decedent. No evidence contradicts defendant's assertion that his shooting of decedent was completely unintentional; however, an intent to cause injury is not an element of the offense of careless, reckless, or negligent discharge of a firearm. CJI2d 11.20. In considering whether a policy exclusion for criminal conduct bars coverage, the relevant inquiry is whether criminal conduct occurred, not whether it was charged. See *Allstate Ins Co v Keillor (On Remand)*, 203 Mich App 36; 511 NW2d 702 (1993) (the insured committed a criminal act for which she was not prosecuted—furnishing alcohol to a minor). Plaintiff's policy excluded coverage for bodily injury resulting from a criminal act by an insured person even if the insured person lacked the mental capacity to form the requisite intent under the law, and also provided that the exclusion applied regardless of whether the insured person was convicted of a crime. This language is clear and unambiguous, *Daniel, supra*, and, therefore, must be enforced as written. *Henderson, supra* at 354. Defendant was convicted of a crime in connection with the incident, and was charged with a second crime directly related to decedent's death for which sufficient evidence existed. The trial court correctly concluded that the policy's criminal conduct exclusion applied and relieved plaintiff of the duty to defend or indemnify defendant in the wrongful death suit. *Id.*; *Fick, supra* at 201.

Defendant's emphasis on the accidental nature of the incident is misplaced. Unlike the criminal act exclusion at issue in *Allstate Ins Co v McCarn (After Remand)*, 471 Mich 283; 683 NW2d 656, where the exclusion only applied if the insured acted criminally *and* the resulting injury was reasonably expected to result from the insured's conduct, the criminal act exclusion at

issue here is far more broad and excludes all criminal acts, regardless of whether the resulting injury was accidental or unintended. An insured could not expect coverage under the circumstances. *Fick, supra* at 203-204.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Jessica R. Cooper