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Court of Appeals of Michigan.
CENTURY MUTUAL INSURANCE COMPANY,
Plaintiff–Appellee, Cross–Appellee,
v.
Waldo Ted PADDOCK and Waldo Ted Paddock, Jr.,
Defendants–Appellants, Cross–Appellees,
and
David Imbrunone and Frank Imbrunone, Defendants–Appellees, Cross–Appellants.

Docket No. 89781.
Submitted March 4, 1987.
Decided June 6, 1988.
Released for Publication July 7, 1988.

Homeowner's insurer brought action for declaratory judgment that policy did not cover actions by insured and his son who kicked victims outside of bar. The Circuit Court, Eaton County, Hudson E. Deming, J., entered judgment in favor of insurer. Insured and his son appealed, and victims filed cross appeal. The Court of Appeals, Stempien, J., held that kicking by insured and his son who injured victims after they had fallen was not covered under policy.

Affirmed.

West Headnotes

[1] Insurance 217 2275

217 Insurance
217XVII Coverage—Liability Insurance
217XVII(A) In General
217k2273 Risks and Losses
217k2275 k. Accident, occurrence or event. Most Cited Cases
(Formerly 217k435.36(6))

Kicking by insured and his son who injured victims after they had fallen and presumably were no longer a threat was not "undesigned contingency" and was not "accident" covered under homeowner's policy, even though insured and his son claimed that they acted involuntarily in defending themselves.

[2] Insurance 217 2278(3)

217 Insurance
217XVII Coverage—Liability Insurance
217XVII(A) In General
217k2273 Risks and Losses
217k2278 Common Exclusions
217k2278(2) Intentional Acts or Injuries; Crimes and Abuse
217k2278(3) k. In general. Most Cited Cases
(Formerly 217k146.1(2))

Exclusion from coverage under homeowner's policy for liability caused intentionally by or at direction of insured was not ambiguous in action to determine whether policy covered kicking of victims by insured and his son.

[3] Insurance 217 2278(3)

217 Insurance
217XVII Coverage—Liability Insurance
217XVII(A) In General
217k2273 Risks and Losses
217k2278 Common Exclusions
217k2278(2) Intentional Acts or Injuries; Crimes and Abuse
217k2278(3) k. In general. Most Cited Cases

(Formerly 217k435.36(6))

Exclusion in homeowner's policy of liability caused intentionally by or at direction of insured encompassed far more than instances of insured's collusion with third party to create liability on part of insurer and barred coverage if there was intentional act causing injury by insured.

[4] Insurance 217 2278(3)

217 Insurance
217XVII Coverage—Liability Insurance
217XVII(A) In General
217k2273 Risks and Losses
217k2278 Common Exclusions
217k2278(2) Intentional Acts or Injuries; Crimes and Abuse
217k2278(3) k. In general. Most Cited Cases
(Formerly 217k435.36(6))

Actions of insured and his son in kicking victims for two or minutes after they had fallen to ground were unnecessary for self-defense, were intentional, and were excluded under homeowner's policy.

[5] Insurance 217 2278(3)

217 Insurance
217XVII Coverage—Liability Insurance
217XVII(A) In General
217k2273 Risks and Losses
217k2278 Common Exclusions
217k2278(2) Intentional Acts or Injuries; Crimes and Abuse
217k2278(3) k. In general. Most Cited Cases
(Formerly 217k435.36(6))

Homeowner's policy excluded coverage for liability of insured and his son for kicking victims in alleged self-defense, even if insured and his son were given benefit of doubt as to necessity for kicking victims.

[6] Insurance 217 2262

217 Insurance
217XVII Coverage—Liability Insurance
217XVII(A) In General
217k2262 k. Mandatory coverage. Most Cited Cases
(Formerly 217k435.36(6))

Public policy did not require homeowner's insurer to cover liability of insured and his son for kicking victims outside of bar.

****215 *748** Willingham, Cote', Hanslovsky, Griffith & Foresman, P.C. by John A. Yeager and Curtis R. Hadley, East Lansing, for plaintiff-appellee, cross-appellee.

Rapaport, Pollok & Farrell, P.C. by Allen Schlossberg, Lansing, for defendants-appellants, cross-appellees Paddock.

O'Bryan Law Center, P.C. by D. Michael O'Bryan and Michael H. McCormick, Birmingham, for defendants-appellee, cross-appellees Imbrunone.

Before HOOD, P.J., and HOLBROOK and STEMPIEN,[FN*] JJ.

FN* Marvin R. Stempien, 3rd Judicial Circuit Judge, sitting on Court of Appeals by assignment pursuant to Const.1963, Art. 6, Sec. 23, as amended 1968.

***749** STEMPIEN, Judge.

Defendants Waldo Ted Paddock and Waldo Ted Paddock, Jr., and defendants Frank and David Im-

brunone respectively appeal and cross-appeal as of right from a judgment of the Eaton Circuit Court granting summary disposition to plaintiff Century Mutual Insurance Company pursuant to MCR 2.116(A). We affirm the ruling of the circuit court that plaintiff is not required to defend or indemnify its insureds, the Paddocks, in an underlying civil action filed by the Imbrunones.

On March 6, 1985, Frank Imbrunone and his son, David, filed a complaint against Waldo Ted Paddock and his son, Waldo Ted Paddock, Jr., in Genesee Circuit Court, alleging that the Paddocks "did wantonly and viciously attack, assault, and otherwise injure Plaintiffs without provocation." The complaint arose from a fight at the Avalon Bar in Hillman, Michigan, on the night of New Year's Eve, 1982, during which Frank Imbrunone allegedly suffered a broken leg, fractured ribs and a blowout fracture of the right eye socket. David Imbrunone allegedly sustained a fractured ankle in the fight.

The Imbrunones testified at their depositions that, after drinking and playing pool inside the bar, they were confronted outside by a group of seven or eight men. One of these men, later identified as Waldo Paddock, Jr., instigated a fight by throwing punches at David Imbrunone. When David tried to protect himself, Waldo Paddock, Sr., also began punching him. David slipped to the ground and the younger Paddock continued punching and kicking him. When Frank Imbrunone tried to protect his son by crawling on top of him, he was kicked as well.

The Paddocks testified at their depositions that David Imbrunone started the fight inside the bar ***750** when he told them to leave after serving them a round of drinks. They asserted that David punched Waldo Paddock, Sr., inside the bar after Waldo stated that he and his son would not leave ****216** until they had finished their drinks. The fight moved outside the bar and, once outdoors, the Imbrunones were knocked to the ground. Both Paddocks testified that they kicked the Imbrunones for two or three minutes as the Imbrunones lay on the ground, until the Imbrunones "had had enough."

The Paddocks sought coverage under a homeowner's policy issued to them by Century Mutual for their defense of the Imbrunone lawsuit. Century Mutual provided a defense under a reservation of rights and commenced this action seeking a declaration that coverage is not provided under the policy. The circuit court determined that there was no duty to defend or indemnify the Paddocks under the policy because the Imbrunones were injured by the intentional acts of the Paddocks. The circuit court held that intentional acts are not included in the policy's coverage provisions, and are encompassed by its exclusion provisions. We agree with the ruling of the circuit court.

The personal liability coverage portion of the policy provides as follows:

> "We pay up to our limit of liability, all sums for which any insured is legally liable because of bodily injury or property damage caused by an occurrence to which this coverage applies. We will defend any suit seeking damages, provided the suit resulted from bodily injury or property damage not excluded under this coverage."

"Occurrence" is defined as an "accident." Excluded from coverage is "liability ... caused intentionally by or at the direction of any insured."

The Paddocks assert on appeal that, in order for ***751** their conduct to fall within the policy exclusion, they must have committed a voluntary, avoidable act with intent to injure the Imbrunones. They claim that because they acted purely in self-defense on the night of the fight, their actions must be characterized as involuntary, and so are not encompassed by the language of the exclusion. Moreover, the Paddocks assert that coverage should be afforded to them as a matter of

public policy; they fear that the ruling of the circuit court will deter people from defending themselves from attack out of fear of losing liability coverage.

The Imbrunones argue on cross-appeal that the language of the policy exclusion is ambiguous. They would construe the exclusion to encompass only situations where the insured colludes with a third party to create liability on the part of the insurer.

[1] Initially, we hold that the circuit court was correct in its ruling that the Imbrunones' injuries were not brought about by an accident as required by the coverage provisions of the Century Mutual policy. "Accident" has been defined by the Michigan Supreme Court as follows:

> " 'An "accident", within the meaning of policies of accident insurance, may be anything that begins to be, that happens, or that is a result which is not anticipated and is unforeseen and unexpected by the person injured or affected thereby—that is, takes place without the insured's foresight or expectation and without design or intentional causation on his part. In other words, an accident is an undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected.' " *Guerdon Industries, Inc v. Fidelity & Casualty Co. of New York*, 371 Mich. 12, 18–19, 123 N.W.2d 143 (1963), quoting 10 Couch, Insurance (2d ed), § 41:6, p 27.

***752** We find no accident in the instant case because the Imbrunones' injuries were the foreseeable result of the Paddocks' kicking. Despite the Paddocks' contention that they acted involuntarily in defending themselves, they both testified that they kicked the Imbrunones for two or three minutes after the Imbrunones had fallen to the ground and presumably were no longer a threat. The Paddocks' kicking was not an "undesigned contingency," and so falls outside the policy coverage provisions.

[2] With respect to the policy exclusion, we disagree with the Imbrunones that its language is ambiguous. This Court has been called upon several times to construe ****217** language identical to that at issue in the instant case, and has done so without finding it ambiguous. See, e.g., *Transamerica Ins. Co. v. Anderson*, 159 Mich.App. 441, 407 N.W.2d 27 (1987); *Frankenmuth Mutual Ins. Co. v. Beyer*, 153 Mich.App. 118, 395 N.W.2d 36 (1986); *Farm Bureau Mutual Ins. Co. v. Rademacher*, 135 Mich.App. 200, 351 N.W.2d 914 (1984).

[3] Further, we find that the Imbrunones' interpretation of the exclusion is wholly inconsistent with this Court's previous construction of identical language. The exclusion for intentional acts encompasses far more than the rare instances of collusion described by the Imbrunones. The exclusion bars coverage where there has been (1) an intentional act and (2) an intentionally caused injury by the insured. *Transamerica Ins. Co., supra*, 159 Mich.App. at p. 444, 407 N.W.2d 27, citing *Linebaugh v. Berdish*, 144 Mich.App. 750, 755, 376 N.W.2d 400 (1985).

[4] The Paddocks seek to escape the policy exclusion by asserting that their acts were involuntary. We note that the deposition testimony given by the Paddocks and the Imbrunones presents two completely different versions of the New Year's Eve ***753** incident, particularly with respect to the issue of self-defense. However, even if we accept the Paddocks' version that they were forced into a fight as a matter of self-defense, we would still reach the conclusion that their actions were precisely the type which the Century Mutual policy excluded from coverage. Both Paddocks testified that they kicked the Imbrunones after the latter had fallen to the ground, until the Imbrunones "had had enough." As this behavior was unnecessary to the Paddocks' self-defense, we can only conclude that it was intentional.

The element of intentionally caused injury was addressed in *Transamerica Ins. Co., supra*. This Court stated: "Where the injury ... is the natural, anticipated and expected result of an intentional act, courts may presume that both act and result are intended." Accordingly, we conclude that the injury to the Imbrunones was intentional because it was the natural, expected result of the Paddocks' kicking.

[5] Even giving the Paddocks the benefit of the doubt as to the necessity of kicking the Imbrunones in self-defense, we find that the policy exclusion bars coverage. In *Frankenmuth Mutual Ins. Co., supra*, this Court held that exclusionary language identical to that in the Century Mutual policy did not obligate the insurer to defend an insured who committed a battery in alleged self-defense. This Court reasoned that regardless of the jury's finding on the self-defense issue, the insurer was under no duty to pay on behalf of the insured. Where the jury accepted the insured's version of the incident, there would be no liability on the part of the insured. If the jury rejected the insured's defense, the insured would have committed an intentional act not covered by the policy. Where neither outcome led to a duty of the insurer***754** to pay on behalf of the insured, this Court refused to impose on the insurer a duty to defend. In the instant case, Century Mutual's situation is identical to that of the insurer in *Frankenmuth Mutual Ins. Co.* Regardless of whether a trier of fact accepts the Paddocks' contention that they entered the fight in self-defense, Century Mutual will have no obligation to pay damages on their behalf. Accordingly, we can impose on Century Mutual no duty to defend.

[6] The Paddocks' argument that coverage should be afforded as a matter of public policy is disingenuous. Requiring Century Mutual to provide insurance coverage in the instant case would encourage barroom brawlers everywhere to cry "He hit me first!" and run for insurance cover to defray the expenses of their actions. This is surely not in the interest of public policy in a world where it is rarely clear who threw the first punch.

Affirmed.

Mich.App.,1988.
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168 Mich.App. 747, 425 N.W.2d 214

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