| | |
|---|---|
| NATIONWIDE MUTUAL INSURANCE COMPANY, | : IN THE COURT OF COMMON PLEAS OF : LYCOMING COUNTY, PENNSYLVANIA |
| vs. | : NO. 98-00,103 |
| BENJAMIN KULP, GEORGE K. and KAREN J. KULP, his wife, and STEPHANIE THOMPSON, Defendants | : SUMMARY JUDGMENT/MOTION FOR : RECONSIDERATION |

***OPINION AND ORDER IN SUPPORT OF ORDER OF DECEMBER 16, 1998 and RESPECTING PLAINTIFF'S MOTION FOR RECONSIDERATION***

This matter was before the Court on the Plaintiff, National Mutual Insurance Company's Motion for Summary Judgment filed October 30, 1998.[1] An Order denying the Summary Judgment motion was filed December 16, 1998, before the pre-trial conference was held. This Opinion is issued in explanation of that Order.

This declaratory judgment action was initiated by the Plaintiff, Nationwide Mutual Insurance Company seeking a determination that as an insurer of Defendant Benjamin Kulp (and George K. and Karen J. Kulp) under a homeowner's insurance policy, it is not obligated to provide coverage to Benjamin Kulp nor benefits to Defendant Stephanie Thompson who has sustained personal injury caused by Benjamin Kulp. The injuries sustained by Stephanie Thompson, a student at the Williamsport Area High School, occurred when fellow student Benjamin Kulp and a friend pulled a class room chair out from under her causing her to fall to the floor. After the completion of discovery (including the taking of depositions of all parties and witnesses) Nationwide moved for summary judgment based on Benjamin Kulp's admission in the deposition of April 28, 1998 that he, in concert with his friend, intentionally caused the chair to be pulled out from under Stephanie Thompson; Kulp

[1]Plaintiff's Brief in Support of the Motion was filed on October 30, 1998; Defendant Benjamin Kulp's Brief in Opposition was filed on November 16, 1998 and Defendant Stephanie Thompson's Brief was filed on November 30, 1998. Additionally, the Court conducted oral argument on the Motion, held December 8, 1998.

also conceded he was aware that as a result of his action the girl would fall to the floor. It is Nationwide's position there has been no "accident" for which its homeowner's policy covering Benjamin Kulp would be obligated to provide coverage, inasmuch as his act, it argues, was "intentional and willful."

Although the Nationwide policy does not define the term "accident," it does define the term "occurrence" in the amendatory endorsement, as "bodily injury resulting from an accident." Additionally, Nationwide argues the endorsement in Section II provides a policy exclusion denying coverage when injury results from an insured's "willful acts." Lastly, Nationwide argues that it would be contrary to public policy to require an insurer to provide coverage for such willful acts which result in injury, even if there were no specific contractual language covering such.

Defendant Benjamin Kulp argues that this incident represents a "school-boy prank" and that regardless of the statements made in the deposition, there nonetheless exists a jury issue as to whether or not the Defendant intended to cause injury to the girl, as distinguished from an admitted intent to commit the act of yanking the chair from beneath her. The Court agrees with the Defendant's position.

The Court has thoroughly reviewed the deposition testimony proffered in support of the Motion. Summary judgment is improper in the present case because there is a genuine issue of material fact as to whether Thompson's injuries were the result of an "accident" as that term is employed within the definition of "occurrence" in the policy. Quite simply, in the case at bar, the actor's state of mind cannot be discerned from the materials submitted in support of the Motion with the requisite degree of certainty and clarity sufficient in law to permit the entry of judgment in summary fashion by the Court. The entry of summary judgment is appropriate only in the "clearest of cases" and cannot be granted where the pleadings and discovery indicate that there are factual issues that, if resolved in favor of the non-movant at trial, can justify recovery under any theory of law. *See*, ***Kelly by Kelly v. Ickes***, 629 A.2d 1002, 1004 (Pa. Super. 1993).

Moreover, Plaintiff may not have summary judgment based upon the oral testimony of Defendant Benjamin Kulp alone, even though an adverse party, where that testimony does not constitute an admission on Kulp's part, if that testimony admits of two, equally reasonable interpretations, for it is the jury's role to determine which view of the evidence as to intention is correct. *See*, ***Nanty-Glo v. American Surety Co.***, 309 Pa. 236, 163 A.2d 523 (1932); ***Penn Center House, Inc. v. Hoffman***, 520 pa. 171, 553 A.2d 900 (1989).

In this case, the Plaintiff asserts that the "undisputed" significance of the testimony is that Defendant Kulp's admission to doing the act equates with an intent that the natural and probable consequences of his act will follow and that those consequences must, as a matter of law, include that harm will occur. Plaintiff's interpretation of the natural consequences of the act of yanking a chair out from under another person is therefore that specifically physical bodily injury will necessarily follow. Defendant Kulp's interpretation of his intention, however, which a jury could find is an equally reasonable inference to be drawn from the evidence, is that Kulp intended as a "prank" that the girl fall to the ground but not be injured in any way. It is a jury question whether Kulp's interpretation of intent as supported by the evidence is reasonable, and his demeanor, presentation and general credibility are significant matters for assessment by the trier of fact. In summary, we cannot say as a matter of law that the doing of an act, a possible consequence of which, however unlikely, *may* result in physical harm to another person does or does not meet the definition of "occurrence" contained in this policy.

The Court has thoroughly considered the recent case of ***Blackman v. Wright***, 1998 WL 469830, (August 13, 1998) in which the Pennsylvania Superior Court cited Webster's College Dictionary for the definition of the word "accident" as "an undesirable or unfortunate happening that occurs unintentionally and usually results in injury, damage or loss." The Court finds that reasonable jurors could conclude that the injuries alleged to have been sustained by Ms. Thompson are "undesirable" and/or constitute an "unfortunate happening." This Court also finds the evidence could support a conclusion that Defendant Benjamin Kulp did not intend to cause

any injury to Stephanie Thompson. Such a finding by the jury would be consistent with the ***Blackman*** court's definition of "accident." Moreover, while the Court finds the ***Blackman*** court's definition of "accident" hereinabove cited to be useful in the present analysis, we are constrained to observe that ***Blackman*** is not particularly on point, insofar as that case involved an intentional striking of an uninsured pedestrian by an uninsured driver and the precise issue at hand was whether such an act constituted a "motor vehicle accident" under 75 Pa. C.S. §1751, *et seq*. (Pennsylvania Financial Responsibility Assigned Claims Plan). Thus, ***Blackman*** is distinguishable because it was there *stipulated* that the operative acts were intended to cause injury. Here, by contrast, the issue is what does "intentional" mean, i.e., is it the intent to do an act from which an injury is within the realm of possibilities but it is not intended nor particularly likely or foreseeable to injure, or more particularly, must it be an intent to injure?

As noted in Defendant Thompson's brief in opposition to the motion, Black's Law Dictionary has defined a "willful" act as "one done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently." Brief, at page 3, footnote 1. Therefore, we must similarly conclude that the factual discrepancy regarding Kulp's intent also precludes summary judgment at this juncture in favor of Nationwide based upon the exclusion of the endorsement, Section II, which denies coverage for "willful acts."

For the aforementioned reasons this Court entered an Order on December 16, 1998 denying Plaintiff National Mutual Insurance Company's Motion for Summary Judgment, and must also now deny the latter's Motion for Reconsideration of that order.

***O R D E R***

***AND NOW***, this 20th day of January 1999 it is ORDERED and DIRECTED that Plaintiff's Motion for Reconsideration of the December 16, 1998 Order, which Motion was filed December 24, 1998, is hereby DENIED.

BY THE COURT,

WILLIAM S. KIESER, JUDGE

cc: Eileen A. Grimes, Court Scheduling Technician
David F. Wilk, Esquire
Douglas N. Engelman, Esquire
Judith W. Daley, Esquire
Cardoni & Associates; 340 Market Street; Kingston, PA 18704-5498
Judges
Leo F. Klementovich, Esquire
Gary L. Weber, Esquire, Lycoming Reporter

h:\AOpinions\Nationwide v. Kulp.opn