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Summary of Fire Ins. Exch. v. Cornell, 120 Nev. Adv. Op. 35

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Fire Ins. Exch. v. Cornell, 120 Nev. Adv. Op. 35, 90 P.3d 978 (June 7, 2004)[1]

INSURANCE LAW – COVERAGE

Summary

Fire Insurance Exchange ("FIE") appealed an order granting the respondents summary judgment that concluded FIE's homeowner's liability coverage extended to negligent supervision resulting in intentional acts and child molestation.

Outcome/Disposition

Reversed and remanded with instructions. The court reversed the Eighth Judicial District Court's decision by determining that FIE's policy did not cover an "insured's alleged negligent supervision of an adult son who commits statutory sexual seduction."[2] Thus, the court remanded the matter and instructed the district court to enter summary judgment in favor of FIE.

Factual and Procedural History

While living with his parents, nineteen-year-old Milton Hernandez had sexual intercourse with the twelve-year-old daughter of the respondents Ron and Dawn Cornell. Subsequently, the state prosecuted Hernandez and he pleaded guilty to four counts of statutory sexual seduction. At the time of the incident, a homeowner's liability policy issued by FIE insured Hernandez' parents, Gonzalo and Maria Villalobos. The Cornells filed a civil suit against Hernandez and the Villalobos.

The portion of the suit relating to the Villalobos alleged they had negligently supervised Hernandez. The Villalobos turned the defense of the suit over to FIE because they believed their homeowner's policy covered the claim. FIE filed a declaratory relief action against the Cornells, Villalobos and Hernandez. The declaration sought judicial recognition that the policy issued by FIE to the Villalobos did not cover statutory sexual seduction. Hernandez and the Villalobos failed to respond to FIE's complaint and the district court entered a default judgment in favor of FIE.[3] However, the court ruled that

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[1] By Angela Morrison.

[2] 120 Nev. Adv. Op. 35, 4 (June 7, 2004).

[3] The liability policy at issue in the case contained clauses excluding both intentional acts and child molestation. The court pointed out that the policy:

> does not cover "bodily injury or property damage . . . is either . . . caused intentionally by or at the direction of an insured; or . . . results from any occurrence caused by an intentional act of any insured where the results are reasonable foreseeable." Second, and more specifically, the policy excludes:
>
> > [A]ctual or alleged injury or medical expenses caused by or arising out of the actual, alleged, or threatened molestation of a child by

the judgment did not bar the Cornells from seeking any other proceeds available to them under the policy.

After FIE and the Cornells both filed motions for summary judgment, the court granted summary judgment to the Cornells. The court held that the insurance policy covered the Villalobos as negligent coinsureds. It further determined the policy did not cover Hernandez. FIE appealed.

Discussion

The Nevada Supreme Court held that the insurance policy did not cover the Villalobos as negligent coinsureds. Although the policy required FIE to indemnify and defend the Villalobos for damages caused by an "occurrence," the court reasoned that a homeowner's negligent supervision which results in sexual molestation is not an "occurrence."[4] The court pointed out that the policy defined "'occurrence' as an accident resulting in bodily injury."[5] As previously stated by the court, an accident is "'a happening that is not expected, foreseen, or intended.'"[6] Because the damages to the victim arose from an intentional act, the court reasoned the damages could not be an occurrence.[7] Additionally, the court stated the Villalobos' "failure to prevent the sexual seduction [was] not an 'accident' . . . "[8]

Finally, the court found the child molestation exclusion clause in the policy applied to actions on the part of the insured that result in child molestation. Thus, the Cornells' argument that the policy only excluded damages caused by the actor and not those caused by the negligence of the insured failed. As a result, the court reversed the district court and instructed the district court to enter summary judgment in favor of FIE.

Conclusion

This decision has implications beyond an insurer's liability in suits arising out of child molestation. For instance, the court's narrow characterization of "occurrence" as an accident resulting in bodily injury could prevent insureds from seeking indemnification for damages resulting in mental distress. Moreover, in cases where an insurance policy includes an exclusion clause for any intentional act, the court's finding regarding the child molestation clause could bar recovery under the policy for any negligent supervision claims. Hence, the court's decision will result in less insureds receiving indemnification from their insurance companies.

> . . . any insured . . . . Molestation includes but is not limited to any act of sexual misconduct, sexual molestation, or physical or mental abuse of a minor.

Id. at 2-3.
[4] *Id.* at 4.
[5] *Id.*
[6] *Id.* (quoting Beckwith v. State Farm Fire & Cas. Co., 83 P.3d 275, 276 (2004)).
[7] *Id.*
[8] *Id.* at 5.