IN THE SUPREME COURT OF WEST VIRGINIA

January 1994 Term

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No. 21763

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MUNICIPAL MUTUAL INSURANCE COMPANY OF WEST VIRGINIA,
Plaintiff-Appellee

v.

DENVER L. MANGUS and LUCILLE MANGUS,
Defendants-Appellants

and

RICKEY LEE FIELDS, SR.
Intervenor-Appellant

Appeal from the Circuit Court of Kanawha County
Honorable Patrick Casey, Judge
Civil Action No. 88-C-1293

AFFIRMED

Submitted: 8 March 1994
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JUSTICE NEELY delivered the Opinion of the Court.

JUSTICE MILLER and JUSTICE McHUGH dissent and reserve the right to file dissenting opinions.

SYLLABUS

Coverage under an intentional injury exclusion clause in a homeowners' insurance policy may be denied when one who commits a criminal act has a minimal awareness of the nature of his act. The test for criminal insanity in West Virginia is appropriate only in a criminal trial and has no applicability to the interpretation of plain language in an insurance contract.

Neely, J.:

This appeal, arising out of a 1987 shooting in Kanawha County, raises a question of first impression in this jurisdiction: whether the intentional acts exclusion clause of an insured's homeowners' policy, which excludes coverage for acts "expected or intended by the insured," defeats coverage when the insured is mentally ill at the time he injures another.

For many years, a fence divided the properties of Rickey Lee Fields, Sr. and Denver Mangus. The fence is located on Mr. Fields' lot, Mr. Fields' property line standing several inches on Mr. Mangus' side of the fence. During the winter of 1987, Mr. Mangus attached a fencepost to the fence without the permission of Mr. Fields. Despite several requests from Mr. Fields to remove the fencepost, Mr. Mangus took no action.

On 26 July 1987, Mr. Fields walked across his yard to the fencepost and began shaking it. From his back porch, approximately twenty feet away, Mr. Mangus yelled "You get out of here or I'm going to shoot you." Mr. Fields continued to shake the post. Mr. Mangus disappeared into his house and returned moments later wielding a 12-gauge shotgun. As Mr. Fields looked up into the shotgun barrel,

a blast hit him in his face, arm and shoulder. As a result of the shooting, Mr. Fields suffered extensive and permanent damage to his eyes, teeth, hand, shoulder and chest.

It is undisputed that Mr. Mangus shot Mr. Fields on the day in question. It is also undisputed that on the day of the shooting Mr. Mangus was an insured in a homeowners policy issued by Municipal Mutual Company of West Virginia ("Municipal Mutual"). The insurance policy in question contains the following language:

> Section II - Exclusions
> Coverage E - Personal Liability and
> Coverage F - Medical Payments to Others do not apply to bodily injury or property damage:
>
> a. Which is expected or intended by the insured.

What is disputed is the applicability of liability coverage to Mr. Mangus' criminal acts.

After Mr. Fields filed a tort suit against Mr. Mangus in the Circuit Court of Kanawha County seeking damages for the personal injuries he sustained as a result of the shotgun blast on 3 September 1987, Municipal Mutual brought a declaratory judgment action asking the Circuit Court of Kanawha County to declare that the insurance company had no responsibility under the policy because the liability

insurance coverage had an expressed exclusionary clause relieving it from coverage in the event of an insured's intentional act. Meanwhile, Mr. Mangus served a term in prison for the shooting. Further proceedings in the tort action were stayed pending the outcome of the declaratory judgment action.

Both the insurer and the insured filed motions for summary judgment in the declaratory judgment action. In denying the motions, Judge A. Andrew MacQueen held that although the exclusionary clause does not operate to foreclose coverage in the underlying tort claim, as a general matter mental illness does not prevent an insured from expecting or intending his actions. The best rule, according to Judge MacQueen, would track the criminal insanity standard in West Virginia: first, whether the insured was suffering from a mental disease or defect; and second, whether, as a result of the insured's disease or defect, the insured was unable to appreciate the wrongfulness of his act or to conform his actions to the requirements of the law.

[1]Much moment is made of the fact that Mr. Mangus' plea of nolo contendere to the criminal charge of maliciously wounding Mr. Fields could not be used to estop collaterally his position that he was criminally insane. Although for our purposes in this case we need not address this issue, the facts appear obvious from the record below that for the purposes of interpreting the insurance policy language, Mr. Mangus' act of shooting Mr. Fields was intentional.

At trial, however, the Honorable Patrick Casey instructed the jury to consider not only the criminal test for insanity in West Virginia, but also to consider whether the insured, at the time of the act, had a "sufficient" degree of awareness of his actions to intend to shoot the victim and to expect that such action might cause injury. The court propounded three special interrogatories to the jury:

> A. Did Denver Mangus possess sufficient degree of awareness of reality to intend to shoot Rickey Fields?
>
> B. Did Mr. Mangus possess sufficient degree of rational mental ability or sufficient degree of mental ability to reasonably expect that his action might injure Mr. Fields?
>
> C. At the time he shot Rickey Fields did Denver Mangus, as the result of a mental disease or defect, lack substantial capacity either to appreciate the wrongfulness of his act or to conform his act to the requirements of the law?

The jury answered "yes" to all these questions.

All parties moved the court for judgment on the verdict. On 31 January 1992, Judge Casey entered judgment for the insurance company. Mr. and Mrs. Mangus and Mr. Fields now appeal.

I.

The issue of the effect of the purported insanity of an insured upon the "intentional acts" exclusionary provision of an insurance policy has yet to be addressed in West Virginia. Elsewhere, two distinct positions on the issue of the relationship between an actor's mental capacity and "intent" for purposes of insurance coverage have developed. One line of cases, embraced by the insured in this case, holds that if an injury results from an insane act, the intentional injury exclusion clause is inoperative and the insurer is liable. See Globe American Casualty Co. v. Lyons, 131 Ariz. 337, 641 P.2d 251 (1981); Congregation of Rodef Sholom of Marin v. American Motorists Ins. Co., 91 Cal.App.3d 690, 154 Cal.Rptr. 348 (1979); Arkwright-Boston Mfrs. Mut. Ins. Co. v. Dunkel, 363 So.2d 190 (Fla. 1978); Mangus v. Western Cas. and Surety Co., 41 Colo.App. 217, 585 P.2d 304 (1978); Von Dameck v. St. Paul Fire & Marine Ins. Co., 361 So.2d 283 (La.App. 1978); George v. Stone, 260 So.2d 259 (Fla.App. 1972); Ruvolo v. American Cas. Co., 39 N.J. 490, 189 A.2d 204 (1963). The opposing line of authority, espoused by the insurer, holds that an injury inflicted by a mentally ill person is "intentional" where the actor understands the physical nature of the consequences of the act and intends to cause the injury, even though he is incapable of distinguishing between right from wrong. See Johnson v. Insurance Co. of North American, 232 Va. 340,

350 S.E.2d 616 (1986); Colonial Life & Accident Ins. Co. v. Wagner, 380 S.W.2d 224 (Ky. 1964); Kipnis v. Antoine, 472 F.Supp. 215 (N.D.Miss. 1979); Rider v. Preferred Acc. Ins. Co., 183 A.D. 42, 170 N.Y.S. 974 (1918); aff'd 230 N.Y. 530, 130 N.E. 881 (1920); DeLoache v. Carolina Life Ins. Co., 233 S.C. 396, 189 S.E. 649 (1937); Rajspic v. Nationwide Mut. Ins. Co., 110 Idaho 729, 718 P.2d 1167 (1986); Rajspic v. Nationwide Mut. Ins. Co., 104 Idaho 662, 662 P.2d 534 (1983). See generally 10 Couch on Insurance 2d § 41:676 (rev.ed. 1982); Annot. 33 A.L.R.4th 983.

To accept the insured's argument that insanity or mental illness precludes one from expecting or intending the results of his actions ignores the continuum on which degrees of mental illness clinically exist. In Johnson, supra, the court recognized that one mind may simultaneously be partly normal and substantially abnormal. Thus, one crushing the skull of a human being with an iron bar may believe he is smashing a glass jar. Another engaging in the same act may know that he is crushing the skull of a human being with an iron bar but because of mental disease, not know that what he is doing is wrong. He may believe, for example, that he is carrying out a command from God.

In the case before us, psychiatric testimony revealed that Mr. Mangus suffered from clinical depression with psychotic features and that at the time of the shooting Mr. Mangus was on drugs designed to lower his anxiety, affect his mood and relieve his breathing. Additionally, he suffered from insomnia, loss of appetite and weight, crying spells and heart and lung disease. Mr. Magnus testified to his belief that: (1) his neighbors were conspiring to drive him off his land because his wife, a former schoolteacher, knew the family secrets of the neighbors; (2) his phone was tapped; and (3) the traffic along his driveway in common with others was caused by the neighbors' involvement in drug dealing.

Nevertheless, Dr. Neilan, the psychiatrist who offered expert testimony in support of the contention that Mr. Magnus was insane, admitted that when Mr. Mangus went into his house, he knew he was picking up a gun and not a banana; that when he went outside with that gun, he knew he was pointing the gun at a man and knew that man was Rickey Fields. Mr. Mangus himself admitted that he knew that it was wrong to shoot a man. In short, there is no question that although Mr. Mangus suffered from clinical depression or delusions in certain aspects of his life, he fully understood what he was doing at the time he shot Mr. Fields. That is sufficient.

The shooting was not accidental, a risk insured against, but intentional.

It appears blatantly inconsistent that we might determine that a person can be suffering from such a severe mental illness when shooting another that he may avoid full criminal sanctions, yet conclude in a different context that the same person can be denied insurance coverage because he "intended" to shoot his victim. As the Court of Appeals of Kentucky in Colonial Life, supra, explains, however, there is no such inconsistency:

> In law, there are many conditions under which a person may intentionally kill and not be subject to criminal punishment. A man may kill in self-defense. A soldier may kill under liberal rules. The executioner may kill with the sanction of the State. All of this destruction is intentional, but excusable. Similarly, a person may be excused from penalty if he is insane at the time he commits a criminal act. He may do the act with every intention of consummating it, but if it is shown that he was mentally insufficient, he is excused from the imposition of the usual sanctions. The absence of punishment, however, does not expunge the original intention.

This distinction, between intentional but excusable actions, is analogous to the main question in the case before us in that it illustrates that the rules governing insurance law are

based upon different principles and produce entirely different results from the law governing criminal matters. The fact that an excuse is provided for an insane person who commits an intentional act in our criminal system does not mean that a reasonable person would think that the drafters of an insurance contract intended such acts not to be covered by an "intentional acts" exclusion.

Indeed, if a person is so delusional that he shoots another human believing him to be a charging elephant, or shoves a knife in another's throat thinking that he is handing him an ice cream cone, then for insurance contract purposes the act is not "intentional." Rational purchasers of insurance, fully appreciating that the human body is an electro-chemical machine capable of breaking down entirely, would want to insure themselves against such unlikely occurrences as a period of total delusion. At the same time, however, the rational purchaser of insurance who

[2]In a similiar vein, we held in State v. Brant, 162 W. Va. 762, 252 S.E.2d 901 (1979), that intoxication can only be used as a defense when it is shown that the intoxicated person had such a total lack of capacity that his bodily machine completely fails. We reached this holding on the rationale that a rule which permits a defendant to plead that because of his intoxication his capacity to control himself or to form a specific intent was diminished would provide every would-be malefactor with a convenient excuse which would appear sufficiently reasonable to confuse any jury. Allowing insurance coverage under an "intentional acts" exclusion clause for any insured who claims he lacked capacity to control his actions presents the same problem.

does not plan to commit intentional torts does not want to pay premiums to provide a fund that will guard the property of those entirely devoid of self-control, regardless of the reasons for that lack of control.

II.

Mr. Magnus urges us to embrace the test for criminal insanity in West Virginia in cases where an insured who is mentally ill at the time he injures another, seeks coverage under a homeowners policy with an intentional acts exclusion clause. Specifically, he argues that if an insured lacks substantial capacity to appreciate the wrongfulness of his act and does not possess a substantial ability to conform his acts to the requirements of law due to mental illness and in that state causes harm -- the test for criminal insanity in West Virginia -- the act may not be said to be truly intentional and thus should be insured.

We reject this argument and instead adopt the standard enunciated by the Johnson, supra court, which held that coverage under an intentional injury exclusion clause in a homeowners insurance policy may be denied when one who commits a criminal act has a minimal awareness of the nature of his act. The test for

criminal insanity in West Virginia is appropriate only in a criminal trial and has no applicability to the interpretation of plain language in an insurance contract.

III.

For this court to allow a blanket legal excuse for a mentally ill person's actions which society has deemed unacceptable, as Mr. Mangus urges, would seriously interfere with the ability of an insurance company to rate risks based upon the policy language and consequently achieve an equitable insurance premium. "If a single insured is allowed, through intentional acts, to consciously control risks covered by the policy, the central concept of insurance is violated." 7A Appleman Insurance Law and Practice (Berdal ed.) § 4492.01.

Accordingly, for the foregoing reasons, we follow the Johnson standard denying coverage under a homeowners policy when a mentally ill insured has a minimal degree of understanding of the nature of his act. We will not apply our criminal standard. Therefore, the judgment of the Circuit Court of Kanawha County is affirmed.

Affirmed.