No. 21763 - MUNICIPAL MUTUAL INSURANCE COMPANY OF WEST VIRGINIA V. DENVER L. MANGUS AND LUCILLE MANGUS AND RICKY LEE FIELDS, SR.

Miller, Justice, dissenting:

The majority, in its zeal to protect the insurance carrier, adopted a position that is without precedent. It is anchored only in its idiosyncratic view of insanity.

By far the overwhelming majority of courts that have considered the question of whether an exclusion in a liability policy for acts "expected or intended by the insured" hold that it does not apply if the insured lacks the mental capacity to intentionally commit the act.[1] Reinking v. Philadelphia Am. Life Ins. Co., 910

[1]We have recognized the general rule that ordinarily an intentional tort will be excluded under a liability policy that has language confining coverage to acts of the insured that are neither expected or intended. As we stated in Syllabus Point 2 of Dotts v. Taressa J.A., 182 W. Va. 586, 390 S.E.2d 568 (1990):

> "Language in a motor vehicle liability insurance policy defining 'accident' to include 'bodily injury or property damage the insured neither expected or intended' is designed to exclude coverage for an intentional tort such as sexual assault."

See also Horace Mann Ins. Co. v. Leeber, 180 W. Va. 375, 376 S.E.2d

F.2d 1210 (4th Cir. 1990) (construing Maryland law), overruled on other grounds, Quesinberry v. Life Ins. Co. of N. Am., 987 F.2d 1017 (4th Cir. 1993); Nationwide Mut. Fire Ins. Co. v. May, 860 F.2d 219 (6th Cir. 1988) (applying Kentucky law); Rosa v. Liberty Mut. Ins. Co., 243 F. Supp. 407 (D. Conn. 1965); Globe Am. Cas. Co. v. Lyons, 131 Ariz. 337, 641 P.2d 251 (1981); Clemmer v. Hartford Ins. Co., 22 Cal. 3d 865, 151 Cal. Rptr. 285, 587 P.2d 1098 (1978); Mangus v. Western Cas. & Sur. Co., 41 Colo. App. 217, 585 P.2d 304 (1978); Arkwright-Boston Mfrs. Mut. Ins. Co. v. Dunkel, 363 So. 2d 190 (Fla. Dist. Ct. App. 1978); Aetna Cas. & Sur. Co. v. Dichtl, 78 Ill. App. 3d 970, 398 N.E.2d 582 (1979); West Am. Ins. Co. of the Ohio Cas. Group of Ins. Cos. v. McGhee, 530 N.E.2d 110 (Ind. Ct. App. 1988); von Dameck v. St. Paul Fire & Marine Ins. Co., 361 So. 2d 283 (La. Ct. App.), cert. denied, 362 So. 2d 794 (La. 1978); Allstate Ins. Co. v. Miller, 175 Mich. App. 515, 438 N.W.2d 638 (1989); State Farm Fire & Cas. Co. v. Wicka, 474 N.W.2d 324 (Minn. 1991); Ruvolo v. American Cas. Co., 39 N.J. 490, 189 A.2d 204 (1963); Nationwide Mut. Fire Ins. Co. v. Turner, 29 Ohio App. 3d 73, 503 N.E.2d 212 (1986).

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581 (1988).

The majority claims that there is an "opposing line of authority . . . hold[ing] 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

In 10 George J. Couch, Cyclopedia of Insurance Law § 41:676 (2d ed. 1982), this summary of the majority rule is given:

> "In order for an act to be 'intentional' so as to relieve the insurer of liability under a clause so providing in case of intentionally inflicted injuries, it is necessary that the actor inflicting the injury have the mental capacity for the doing of the act 'intentionally.' That is, under policies relieving the insurer from liability for injuries intentionally inflicted, whether fatal or nonfatal, the insurer is liable, and the exception clause is inoperative, where the person who perpetrated the injury on the insured was insane to such a degree . . . as to be incapable of forming an intention." (Emphasis added).

See also Annot., 33 A.L.R.4th 983 (1984).

As earlier noted, most courts have required a showing that an insured lacked the mental capacity to intentionally have committed the act. The fact that a defendant was found not guilty by reason of insanity of criminal charges for committing the act does not automatically determine whether there is coverage under the insurance policy. In many instances, the discussion of mental

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though he is incapable of distinguishing between right from wrong." ___ W. Va. at ___, ___ S.E.2d at ___. (Slip op. at 5). We do not believe the cases cited can be characterized in this fashion. Most of the cases are shaped by their particular criminal law test for insanity, as we point out infra.

incompetency is shaped by the jurisdiction's criminal definition of insanity. Thus, where the M'Naghten rule or some variation of it is used, the court may utilize some of its language to fashion its civil rule with regard to an intentional act exclusion under a liability insurance policy.

Typical of this approach is the rather recent opinion of the Minnesota Supreme Court in State Farm Fire & Casualty Co. v. Wicka, supra. There, an insured wounded the plaintiff and then killed himself. State Farm sought to defeat coverage under its policy exclusion for intentional torts. At the trial on the policy exclusion issue, the trial court granted summary judgment for State Farm. On appeal, the court noted that its statutory criminal insanity test was analogous to the M'Naghten rule. It then decided that the criminal standard should be modified for insurance law purposes by adding loss of ability to control conduct. It then made this summary of its civil insurance rule:

> "We hold, therefore, that for the purposes of applying an intentional act exclusion contained in a homeowner's insurance policy, an insured's acts are deemed unintentional where, because of mental illness or defect, the insured does

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See note 10, infra, for a definition of the M'Naghten rule.

The court in Wicka summarized the statutory rule: "Criminal responsibility is excused where the actor, because of mental illness, does not understand the nature of his actions or does not understand that those actions are wrong." 474 N.W.2d at 330. (Citation omitted).

> not know the nature or wrongfulness of an act, or where, because of mental illness or defect, the insured is deprived of the ability to control his conduct regardless of any understanding of the nature of the act or its wrongfulness." 474 N.W.2d at 331.

The majority's attempted classification of Rajspic v. Nationwide Mutual Insurance Co. (Rajspic II), 110 Idaho 729, 718 P.2d 1167 (1986), and its earlier counterpart, Rajspic v. Nationwide Mutual Insurance Co. (Rajspic I), 104 Idaho 662, 662 P.2d 534 (1983), is misplaced. Rather, Rajspic II begins with the recognition "that, as a matter of fact, an intentional tort and an intentional injury exclusion clause cannot be treated synonymously." 110 Idaho at 732, 718 P.2d at 1170. (Emphasis in original). The Idaho Supreme Court went on to observe that when an individual "lacks the mental capacity to conform his behavior to acceptable standards [he] will not be deterred by the existence or nonexistence of insurance coverage for

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The facts and underlying procedure in the two Rajspic cases were as follows. Mrs. Rajspic shot and wounded a Mr. Brownson. She was tried for assault with a deadly weapon and was found not guilty by reason of mental disease or defect. Subsequently, Mr. Brownson brought a civil action against Mrs. Rajspic for assault and battery and was awarded damages. Nationwide defended the civil suit on behalf of Mrs. Rajspic under a policy purchased by the Rajspics. However, it declined to pay the judgment claiming its intentional act exclusion barred coverage. The trial court in Rajspic I granted a partial summary judgment against Nationwide. On appeal, the court reversed saying that the capacity of a person with a mental defect to commit an intentional act is a jury question. On remand, the trial court granted summary judgment for Nationwide. This ruling was appealed in Rajspic II.

injuries that result as a consequence of his acts." 110 Idaho at 732, 718 P.2d at 1170. (Citations omitted). Finally, the court in Rajspic II, on remand, set this rule: "Nationwide must be required to establish that despite Mrs. Rajspic's mental condition, she was still capable of forming the intent to cause injury to Brownson." 110 Idaho at 734, 718 P.2d at 1171.

The New Jersey Supreme Court in Ruvolo v. American Casualty Co., 39 N.J. at 497, 189 A.2d at 208, after referring to what was basically a M'Naghten rule test, quoted from Life Insurance Co. v. Terry, 82 U.S. (15 Wall.) 580, 21 L. Ed. 236 (1872), where the United States Supreme Court adopted a similar approach with regard to a life insurance policy which excluded coverage if the insured killed himself. Ruvolo involved a liability policy rather than a suicide

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Ruvolo, 39 N.J. at 497, 189 A.2d at 208, quoted this portion from Terry and cited additional authorities:

> "'If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist, such death is not within the contemplation

exclusion under a life insurance policy. The insurance carrier declined to afford coverage when Dr. Ruvolo shot and killed his colleague, whose widow then sued for wrongful death. After the killing, Dr. Ruvolo was found to be insane and was committed to a state mental institution. The New Jersey court adopted this rule for insurance liability for an intentional tort:

> "We hold that if the insured was suffering from a derangement of his intellect which deprived him of the capacity to govern his conduct in accordance with reason, and while in that condition acting on an irrational impulse he shot and killed Dr. La Face, his act cannot be treated as 'intentional' within the connotation of defendant's insurance contract." 39 N.J. at 498, 189 A.2d at 209.

The rationale behind the majority view is to attempt some conformity with general concepts of insanity under its criminal law.

> of the parties to the contract, and the insurer is liable.' Mutual Life Ins. Co. v. Terry, [82 U.S. (15 Wall.) 580, 591], 21 L. Ed. 236, 242 (1873).
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> And, see Connecticut Mutual Life Ins. Co. v. Akens, 150 U.S. 468, [14 S. Ct. 155,] 37 L. Ed. 1148 (1893); Charter Oak Life Ins. Co. v. Rodel, 95 U.S. [(5 Otto)] 232, 24 L. Ed. 433 (1877)."

In our jurisdiction, the insanity test is stated in Syllabus Point 5 of State v. Massey, 178 W. Va. 427, 359 S.E.2d 865 (1987):

> "'When a defendant in a criminal case

As in this case, where the individual is found to be criminally insane, he does not possess the requisite criminal intent to kill or to maliciously wound. Viewed from the civil side, under an insurance policy excluding "intentional acts," the insured cannot be said to have acted intentionally, that is, with the requisite mental intent.

Instead of making some rational analysis of this issue, the majority proceeds to embark on its own notions of the meaning of insanity. It seizes on a Kentucky Court of Appeals decision, Colonial Life & Accident Insurance Co. v. Wagner, 380 S.W.2d 224, 226 (1964), where the court explains that an intentional killing can be justified if the killing is "in self-defense. A soldier may kill under liberal rules. The executioner may kill with the sanction of the State." However, these justifications have nothing to do with insanity where the lack of mental intent is the critical issue.

> raises the issue of insanity, the test of his responsibility for his act is whether, at the time of the commission of the act, it was the result of a mental disease or defect causing the accused to lack the capacity either to appreciate the wrongfulness of his act or to conform his act to the requirements of the law. . . .' Syllabus Point 2, in part, State v. Myers, 159 W. Va. 353, 222 S.E.2d 300 (1976)."

The majority then pronounces that at some point under its own insanity view, the killing may not have been intentional:

> "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.'" ___ W. Va. at ___, ___ S.E.2d at ___. (Slip op. at 8). (Footnote omitted).

The majority then in its single Syllabus utilizes a "minimal awareness" test, which has no reference to mental condition, intention, or any other component of an insanity test. It announces that it embraces the standard set in Johnson v. Insurance Co. of North America, 232 Va. 340, 350 S.E.2d 616 (1986). However, the majority fails to recognize, as plainly indicated in Johnson, that

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The majority in its note 2, ___ W. Va. at ___, ___ S.E.2d at ___ (Slip op. at 8-9), cites State v. Brant, 162 W. Va. 762, 252 S.E.2d 901 (1979), written by the author of today's majority, dealing with the defense of intoxication. His ruminations about the defense of intoxication never found their way into a syllabus point in Brant.

The majority's Syllabus states:

> "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."

Virginia follows the M'Naghten test for insanity in its criminal cases. It is, therefore, understandable that Virginia would use the same test in determining the insanity issue under an insurance liability exclusion that exempts intentional acts. This difference in the criminal insanity test also explains Pruitt v. Life Insurance Co. of Virginia, 182 S.C. 396, 189 S.E. 649 (1937), cited by the majority, where the South Carolina Supreme Court applied its criminal insanity test derived from the M'Naghten rule to reject a claim under

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The M'Naghten rule was quoted in Price v. Commonwealth, 228 Va. 452, 457, 323 S.E.2d 106, 109 (1984), and states, in part:

> "'[T]o establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.' 10 Cl. and F. [200,] 210, 8 Eng. Rep. [718,] 722-23 [(1843)]."

Under the M'Naghten rule, the court in Price said that all acts of physical violence are deemed intentional and not relieved by insanity unless this test is met: "'The defendant was insane if he did not understand the nature, character and consequences of his act, or he was unable to distinguish right from wrong.'" 222 Va. at 455, 323 S.E.2d at 107. (Quoting the jury instruction offered by the defendant; emphasis in original). In Price, the defendant's conviction was reversed because the State's instruction used the conjunction "and." The court in Price concluded: "[W]e hold that the actual M'Naghten test for insanity, stated in the disjunctive, is the rule in Virginia." 222 Va. at 459, 323 S.E.2d at 110.

The majority has styled this case Deloache v. Carolina Life Insurance Co.. Deloache is found in 233 S.C. 341, 104 S.E.2d 875 (1958), and follows the Pruitt principles.

an insurance policy which excluded coverage for death resulting from violence.

However, the majority's Syllabus adopts none of the foregoing tests, but drifts into a nether world where liability is rejected if the insured had a "minimal awareness of the nature of his act." This concept is completely unrooted in either the law of criminal responsibility or psychiatry.

In consequence, I dissent. I am authorized to state that Justice McHugh joins me in this dissent.