

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**AMANDA R. SHREWSBURY AND  
ROGER SHREWSBURY,  
Plaintiffs Below, Appellees**

**vs.) No. 35653 (Mercer County 07-C-478)**

**SURINDER MOHAN, INDIVIDUALLY AND AS  
AN EMPLOYEE OF SMP ENTERPRISES, LLC  
D/B/A THE COLONY CENTER, SMP ENTERPRISES,  
LLC AND ERIE INSURANCE PROPERTY AND  
CASUALTY COMPANY, Defendants Below, Appellants**

**FILED**

**April 1, 2011**

released at 3:00 p.m.

RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Appellant SMP Enterprises, LLC d/b/a The Colony Center (“SMP”) appeals the circuit court’s order granting summary judgment in favor of Appellee Erie Insurance Property and Casualty Co. (“Erie”), in which the circuit court found that Erie has no obligation to indemnify SMP under a commercial general liability policy (“CGL”) issued by Erie. Upon careful review, this Court finds no substantial question of law and we do not disagree with the decision of the circuit court as to the question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

SMP operates a convenience store and gas station known as The Colony Center. Defendant below, Surinder Mohan (“Mr. Mohan”), is one of only two members of SMP. SMP employed Mr. Mohan as a manager at The Colony Center.

Plaintiff below, Amanda Shrewsbury (“Ms. Shrewsbury”), was employed as a clerk at The Colony Center for a short period of time in May 2007. Ms. Shrewsbury and her husband, Roger Shrewsbury, subsequently sued Mr. Mohan and SMP alleging that Mr. Mohan assaulted and battered Ms. Shrewsbury during her employment at The Colony Center. Mr. Mohan was convicted of three felony counts of first degree sexual abuse against Ms. Shrewsbury.

During the events in question, SMP was covered by a CGL policy issued by Erie. Both SMP and Mr. Mohan sought coverage under the policy for the defense of and

indemnification for the Shrewsburys' civil action. Erie provided a defense to both defendants under a reservation of right.

After a trial on the tort claims, the jury found that Mr. Mohan proximately caused injury to Ms. Shrewsbury and awarded to Ms. Shrewsbury \$250,000 for emotional distress and \$100,000 for loss of ability to enjoy life. The jury awarded \$75,000 to Roger Shrewsbury for loss of consortium. The jury also found that SMP failed to take reasonable steps to protect Amanda Shrewsbury, as its employee, from the conduct of Mr. Mohan.

Erie thereafter moved for summary judgment on the issue of policy coverage and indemnification of the tort claims in the Shrewsburys' case.<sup>1</sup> By order of October 23, 2009, the Circuit Court of Mercer County granted summary judgment on behalf of Erie. In its order, the circuit court first found that the injuries to Ms. Shrewsbury did not constitute a "bodily injury" under the policy. The policy defines "bodily injury" as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." In so finding, the circuit court relied on this Court's holding in *Smith v. Animal Urgent Care, Inc.*, 208 W. Va. 664, 542 S.E.2d 827 (2000). The circuit court also determined that Ms. Shrewsbury's injuries were not covered under the "Personal Injury" coverage of the policy because of the exclusions for "Knowing Violation of Rights of Another"<sup>2</sup> and "Criminal Acts."<sup>3</sup>

On appeal to this Court, SMP argues that the circuit court erred in finding no coverage for "bodily injury." According to SMP, the circuit court improperly focused solely on the verdict form in determining the type of injury to Ms. Shrewsbury. SMP notes that the plaintiff's complaint alleged injuries in both "mind and body." Also, Mr. Mohan was convicted of sexual abuse which requires physical touching of a sexual nature. In addition, SMP avers that *Animal Urgent Care* should not control in this case. Instead, this Court should follow the numerous courts that have included mental pain and suffering within the

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<sup>1</sup>The Shrewsburys had amended their complaint to obtain a declaration of coverage under the insurance policy issued by Erie for the defense and indemnification of their case against Mr. Mohan and SMP.

<sup>2</sup>The CGL policy defines "Knowing Violation of Rights of Another" as "'Personal and advertising injury' caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict 'personal and advertising injury' . . ."

<sup>3</sup>The CGL policy defines "Criminal Acts" as "'Personal and advertising injury' arising out of a criminal act committed by or at the direction of the insured."

definition of “bodily injury.” Further, SMP contends that the physical violation of a person’s body reasonably should be considered a “bodily injury.” Finally, SMP alleges that Ms. Shrewsbury suffered bruising as a result of Mr. Mohan’s actions.

This Court finds that the circuit court’s reliance on *Animal Urgent Care* was proper. In Syllabus Point 1 of *Animal Urgent Care*, this Court held that “[i]n an insurance liability policy, purely mental or emotional harm that arises from a claim of sexual harassment and lacks physical manifestation does not fall within a definition of ‘bodily injury’ which is limited to ‘bodily injury, sickness, or disease.’” In its verdict, the jury below awarded damages to Ms. Shrewsbury only for emotional or mental injuries. Therefore, while Ms. Shrewsbury’s injuries doubtless arose from physical contact, these injuries lacked physical manifestation. As such, Ms. Shrewsbury’s injuries do not fall within the definition of “bodily injury” contained in the CGL policy issued by Erie.

Second, SMP avers that the plaintiff’s injuries should be covered under the policy as a “personal injury” because the exclusions for knowing violation of rights of another and criminal acts do not apply here. SMP explains that the coverage issues do not relate to Mr. Mohan, who committed the knowing and criminal acts, but to SMP whose tort liability arises from negligence. We reject this argument based on *Animal Urgent Care*. Ms. Shrewsbury’s complaint alleged, *inter alia*, that SMP “should have known” that Mr. Mohan created a hostile work environment and that he had a pattern and practice of sexually harassing female employees and failed to take appropriate remedial action. We held in *Animal Urgent Care*, however, that the inclusion in a complaint of such negligence-type claims will not defeat an intentional acts exclusion in a CGL policy. Specifically, in Syllabus Point 4 of *Animal Urgent Care*, this Court held that “The inclusion of negligence-type allegations in a complaint that is at its essence a sexual harassment claim will not prevent the operation of an ‘intentional acts’ exclusion contained in an insurance liability policy which is defined as excluding ‘bodily injury’ ‘expected or intended from the standpoint of the insured.’” Therefore, we find that the negligence-type language in Ms. Shrewsbury’s complaint will not defeat the knowing violation of rights of another exclusion in the CGL policy at issue.

Further, the unique facts of the instant case provide an additional reason for rejecting SMP’s argument. Specifically, as one of only two members of SMP, Surinder Mohan essentially *is* SMP. As such, this Court declines to accept the proposition that Mr. Mohan could negligently hire himself to manage The Colony Center based on the fact that Mr. Mohan should have known that he had a pattern and practice of harassing female employees.

For the foregoing reasons, we find no error in the decision of the circuit court and the October 23, 2009 order of the circuit court is hereby affirmed.

Affirmed.

**ISSUED: April 1, 2011**

**CONCURRED IN BY:**

**Chief Justice Margaret L. Workman**

**Justice Robin Jean Davis**

**Justice Brent D. Benjamin**

**Justice Menis E. Ketchum**

**Justice Thomas E. McHugh**