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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PAUL McANDREWS,

Plaintiff-Appellee,

vs.

FARM BUREAU MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

Filed November 30, 1983

3-350
83-121

Appeal from Polk District Court - James P. Denato, Judge.

Defendant appeals from a judgment in favor of plaintiff based on the insurer's breach of its duty to defend the insured in a prior action. AFFIRMED.

James A. Pugh of Morain, Burlingame & Pugh, West Des Moines, Iowa, for defendant-appellant.

Michael J. Green of Carney, Hudson, Williams & Green, Des Moines, for plaintiff-appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Defendant appeals from a judgment in favor of plaintiff based on the insurer's breach of its duty to defend the insured in a prior action. We affirm.

Plaintiff was sued for assault and battery after becoming involved in a dispute at a county fair. He claimed that he acted in self-defense and tendered defense to the defendant as required by the insurance policy defendant had issued to plaintiff. Defendant refused to defend on the grounds that the injury caused by the plaintiff was done intentionally and was, therefore, not covered under the insurance contract. Plaintiff conducted his own defense through private counsel and suffered a judgment of $2,000. Plaintiff then filed the present suit alleging that defendant's refusal to defend him was a breach of the insurance policy. The trial court entered a judgment for plaintiff for $3,032.46 as the reasonable cost of plaintiff's defense in the earlier action.

The insurance policy involved in this case is a "Country Squire IV" farm policy. It provides for personal liability protection and includes the following provision:

> This Company shall have the right and duty, at its own expense, to defend any suit against the insured seeking damages on account of such bodily injury or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, but may make such investigations and settlement of any claim or suit as it deems expedient.

Excluded from coverage under the policy is "bodily injury or property damage which is either expected or intended from the standpoint of the insured."

The insurer claims that any suit for assault and battery against the insured necessarily involves injury which the insured intended to inflict. The insured argues, however, that an action taken in self-defense does not necessarily cause intended results.

Our review of this action at law is on assigned error. Iowa R. App. P. 4.

The insurer has no duty to defend the insured if the loss is not covered by the insurance contract. In determining whether coverage exists, the insurer cannot rely solely upon the language of the policy and the allegations of the complaint filed against the insured. New Hampshire Insurance Co. v. Christy, 200 N.W.2d 834, 838-39 (Iowa 1972). All of the pleadings, as well as extraneous facts and circumstances known to the insurer, must be considered. If there is a possibility that the claim is covered under the policy, then the duty to defend exists. All doubt should be resolved in favor of the insured. Central Bearings Co. v. Wolverine Insurance Co., 179 N.W.2d 443, 445-46 (Iowa 1970).

In this case the plaintiff-insured was sued for assault and battery. In his answer, plaintiff raised self-defense as an affirmative defense. Plaintiff, therefore, called into question the element of his intent. Courts of other states have decided that an act done in self-defense does not necessarily produce an intended or expected result within the meaning of this type of insurance policy. Allstate Insurance Co. v. Novak, 210 Neb. 184, 313 N.W.2d 636, 640-41 (1981); Farmers Insurance Exchange v. Sipple, 255 N.W.2d 373, 375-77 (Minn. 1977). The Iowa Supreme Court has not specifically addressed this issue. However, the Iowa court in construing another type of insurance contract has stated that intended acts can produce unintended and unexpected results. Farm & City Insurance Co. v. Potter, 330 N.W.2d 263, 266-67 (Iowa 1983).

Therefore, it is quite possible that the trier of fact in this case could have found that the injury caused by the plaintiff was unintended either because an action taken in self-defense is in the nature of a reflex and is not an intentional act, or because, although the act was intentional, the resulting injury was unforeseeable. Since there was a possibility that the "intentional acts" exclusion of the policy did not apply, the insurer was obligated to defend the insured.

At oral argument defendant called our attention to the case of Aid Insurance Co. v. Chrest, 336 N.W.2d 437 (Iowa 1983). In Chrest the insured had pled guilty to

a charge of assault with intent to commit murder. The victim then brought a civil suit against the insured for damages resulting from the same incident. The insurer filed a declaratory judgment action to obtain an adjudication concerning its duty to defend and indemnify the insured. The supreme court held that due to the guilty plea, the insured was precluded under the doctrine of issue preclusion from asserting that the injury was unintended and thus, covered under the policy.

The defendant in this case argues that plaintiff is precluded from asserting a duty to defend based on his self-defense claim since in the prior action the trier of fact rejected this defense and found the insured liable for assault and battery.

Assuming that this issue is properly before us and was not raised for the first time on appeal, we find this case distinguishable from Chrest. The guilty plea had been entered in Chrest prior to any civil litigation arising from the incident. Here, defendant is claiming that the outcome of the very suit in which it had a duty to defend plaintiff should preclude plaintiff from recovering for breach of that duty. Chrest should not be extended to this situation.

The insurer is obligated to provide the insured with a defense if there is a possibility of coverage under the policy. The insurer should not be able to deprive the insured of that defense and then be relieved of all liability for breach of its duty because the suit was resolved in such a way that no coverage in fact exists. The questions of whether the insurance company is liable and whether the company has a duty to defend, although interrelated, are separate. The insurer has a duty to defend, even though ultimately it is determined no coverage actually exists, as long as at the time the insured tendered defense to the insurer there was a possibility that coverage existed.

Since plaintiff's self-defense claim raised a possibility that the "intentional acts" exclusion from coverage was inapplicable, defendant insuror had a duty to defend plaintiff insured. The fact that the self-defense argument was ultimately rejected did not relieve defendant of its duty.

AFFIRMED.