STATE OF MICHIGAN

COURT OF APPEALS

LINDA SUE CROUCH, Conservator of the ESTATE OF CHAD CROUCH,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF AMERICA,

Defendant-Appellant.

UNPUBLISHED
March 26, 2002

No. 227418
Genesee Circuit Court
LC No. 98-062295-CK

Before: Neff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

This case is before us on remand from our Supreme Court for consideration as on leave granted. Defendant appeals from the denial of its motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand.

I

Chad Crouch had a history of mental illness and alcohol abuse. After his wife left for work on August 11, 1997, he telephoned a friend, weeping and in a very agitated condition. He repeatedly asked his friend to "take care" of his wife, plaintiff herein. His friend, a lawyer, clearly understood that Crouch was threatening suicide and he also concluded that Chad had been drinking. The lawyer talked to plaintiff, and while both were concerned about Chad, they did not return to the Crouch home until a number of hours later. When they arrived, Chad was dressed only in his underwear and was talking on the phone with his sister; the conversation was apparently one-sided, with Chad shouting and swearing and ended when Chad threw the phone across the room. The two tried to calm Chad, but he was hostile, distraught and agitated; at some point he went into the bedroom, lay down on the bed, and covered his head with a blanket.

Believing that Chad needed to be hospitalized, plaintiff called 911 and a sheriff's deputy responded. Chad continued to act erratically, but eventually was persuaded to get dressed and allowed himself to be handcuffed and placed into a cruiser. An ambulance was called to take Chad to a hospital for a mental health evaluation. After promising to cooperate, he was transferred from the cruiser to the ambulance, the handcuffs were removed, and he was seated on a bench seat in the back of the ambulance. He was wearing a seatbelt, but was not otherwise restrained.

During all of this time, Chad was coherent in the sense that his conversation could be understood; he continued to threaten suicide and indicated that he had a plan to carry it out.

During the ride to the hospital, Chad sustained serious closed-head and other injuries when he stepped out of the back door of the ambulance, which was traveling between seventy and seventy-five miles an hour on the expressway. He has no memory of the events leading up to his actions of stepping out of the ambulance and incurring injuries as a result.

Plaintiff sued defendant seeking first-party no-fault benefits when defendant denied plaintiff's claims for medical expenses under MCL 500.3105(4), which excludes benefits for injuries "suffered intentionally by the injured person or caused intentionally by the claimant." Defendant moved for summary disposition under MCR 2.116(C)(10), arguing there was no genuine issue of material fact that Chad's injuries were intentionally suffered or caused. Plaintiff responded with the affidavit of Chad's treating psychiatrist, which opined that Chad's untreated depression in combination with consumption of alcohol and lack of medication "caused an impairment of his judgment and his ability to understand the consequences of his actions" on August 11, 1997. The doctor's affidavit also concluded that Chad could not have anticipated the consequences of his actions.

After a hearing on defendant's motion, the trial court ruled from the bench that Chad's mental illness could have rendered his actions unintentional, and he concluded that a factual issue existed with regard to whether "if at the time he stepped out the door of that ambulance at 70 miles an hour, he knew what he was doing, or intended to kill himself." Defendant's motion for summary disposition was denied.

II

This Court reviews a trial court's grant of summary disposition de novo to determine whether the moving party was entitled to judgment as a matter of law. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994). A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying the plaintiff's claim. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). In reviewing a C(10) motion, a court considers pleadings, affidavits, depositions, admissions, and any evidence in favor of the nonmoving party, granting that party the benefit of any reasonable doubt. *Id.* Summary disposition is appropriate when there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Id.* *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 233-234; 553 NW2d 371 (1996).

Section 3105 of the no-fault act, MCL 500.3105, provides in relevant part:

> (1) Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, subject to the provisions of this chapter.

* * *

> (4) Bodily injury is accidental as to a person claiming personal protection insurance benefits ***unless suffered intentionally by the injured person or caused intentionally by the claimant***. Even though a person knows that bodily injury is substantially certain to be caused by his act or omission, he does not cause or suffer injury intentionally if he acts or refrains from acting for the purpose of averting injury to property or to any person including himself. [(Emphasis added.)]

Plaintiff argues that Chad's actions on the day of his injury and the affidavit of his treating physician combine to create a genuine issue of material fact whether he intended his injuries when he stepped out of the ambulance. Defendant, on the other hand, argues that plaintiff's actions, his mental illness, his alcohol consumption, and the fact that he was not taking his medication are insufficient, even in light of the psychiatrist's affidavit, to create an issue of fact under MCL 500.3105(4). We agree with defendant that current Michigan law supports its position.

Michigan case law since at least the early 1990's has held that a person who is mentally ill or insane can intend or expect the results of his actions for purposes of applying an exclusionary clause of an insurance policy. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 569-570; 489 NW2d 431 (1992); *Miller, supra* at 234; *Mirza v Maccabees Life and Annuity Co*, 187 Mich App 76, 86-89; 466 NW2d 340 (1991). *Churchman* involved a homeowner's policy; *Miller* a no-fault auto policy; and *Mirza* a life insurance policy. All three reached the same conclusion; suicidal intent does not negate the intent to injure even where there is proof of mental illness. See also *Schultz v Auto-Owners Ins Co*, 212 Mich App 199, 202; 536 NW2d 784 (1995).

The notable exception to this line of cases is *Mattson v Farmers Ins Exchange*, 181 Mich App 419; 450 NW2d 54 (1989), decided prior to the Supreme Court's decision in *Churchman*. The *Mattson* panel held that evidence of insanity created a genuine issue of material fact with regard to whether the insured acted "intentionally". However, the fact that *Mattson* was decided before our Supreme Court decided *Churchman* renders it of questionable validity, particularly in light of later authority. *Miller, supra* at 230-232. In addition, the facts in *Mattson* were, as the panel in *Miller* noted, "extraordinary." *Id.* at 232. On the day he was injured, Mattson could not remember his own name or age, he had been staring into space, talking to furniture, remarking that he saw birds in the house and mumbling nonsensically. *Mattson, supra* at 421. He said he wanted to commit suicide, and while waiting to be admitted to the hospital, he wandered away from supervision and ran into the street where he was struck by a car. *Id.* at 421-422. His treating psychiatrist described him as "psychotic, hallucinating, [and] delusional." *Id.* at 425. There are no such extraordinary facts in this case.

By all accounts, Chad was coherent at all times. While he was obviously agitated when his wife and friend arrived at the house, he calmed down when the sheriff's deputy arrived and he voluntarily got dressed and allowed himself to be handcuffed before he was placed into the cruiser. He promised to be cooperative before he was placed into the ambulance. He repeatedly

and clearly indicated his desire to commit suicide, and he carried out an attempt to do just that when he stepped from the moving ambulance. Under current Michigan law, nothing in the facts vitiates the conclusion that he acted intentionally as that term has been interpreted in the context of insurance policy exclusionary clauses.

Accordingly, we reverse the denial of defendant's motion for summary disposition and remand this case to the circuit court for entry of an order granting the motion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot