COURT OF APPEALS
DECISION
DATED AND FILED

July 21, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2493 **Cir. Ct. No. 2013CV541**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

AMY SZERBOWSKI,

PLAINTIFF-APPELLANT,

V.

GEORGE TRINKA,

DEFENDANT,

STATE AUTO INSURANCE COMPANY OF WISCONSIN,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Washington County: JAMES K. MUEHLBAUER, Judge. *Affirmed*.

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Amy Szerbowski appeals a judgment concerning an insurance coverage dispute arising out of the shooting death of her husband.

We conclude the circuit court properly determined the homeowner's insurance policy at issue provided no coverage and therefore affirm.

¶2 The shooting in this case happened at the home of Szerbowski's mother, Connie Puerling. George Trinka resided at Puerling's residence. Puerling was aware that Trinka was a felon with a history of problems with drinking, anger and violence, but she entrusted to Trinka a handgun previously owned by her deceased husband. Trinka produced the weapon during a family dispute some time later and fatally shot Szerbowksi's husband, Steven.[1] At the time of the shooting, Puerling's homeowner's insurance policy issued by State Auto Insurance Company indemnified Puerling for bodily injury arising out of an "occurrence," defined in the policy as an "accident."

¶3 Szerbowski commenced a lawsuit against Trinka and State Auto, alleging negligence on the part of Trinka, and negligent entrustment of the weapon on the part of Puerling.[2] State Auto disputed coverage. The circuit court concluded Trinka was not an insured under Puerling's policy. The court further determined that Puerling's act did not qualify as an accidental "occurrence" under State Auto's policy because Puerling gave the gun to Trinka deliberately, not by accident. The court therefore granted State Auto's motion for summary and declaratory judgment and this appeal follows.

¶4 The construction or interpretation of an insurance policy and the grant of summary judgment present questions of law that we review de novo. *See*

[1] Trinka was convicted of first-degree reckless homicide and felon in possession of a handgun. The jury rejected Trinka's self-defense argument.

[2] Puerling was not named as a defendant.

Hull v. State Farm Mut. Auto. Ins. Co., 222 Wis. 2d 627, 636, 586 N.W.2d 863 (1998); *see also* ***Spring Green Farms v. Kersten***, 136 Wis. 2d 304, 315-17, 401 N.W.2d 816 (1987). The words in an insurance policy are to be given their common and ordinary meaning. ***Danbeck v. American Family Mut. Ins. Co.***, 2001 WI 91, ¶10, 245 Wis. 2d 186, 629 N.W.2d 150. When the language of the policy is plain and unambiguous, it is enforced as written, without resort to rules of construction. ***Hull***, 222 Wis. 2d at 637. Summary judgment is properly granted on an insurance coverage question if no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2); ***Jones v. Sears Roebuck & Co.***, 80 Wis. 2d 321, 325, 259 N.W.2d 70 (1977).

¶5 Szerbowski concedes there was no coverage for Trinka because he was not an "insured" under State Auto's policy. Szerbowski nevertheless insists the death of Steven was the result of an "occurrence" within the meaning of State Auto's policy because Puerling negligently entrusted the gun to Trinka. We disagree.

¶6 Our supreme court recently reviewed the law concerning coverage for an "occurrence," defined in the standard policy as an "accident." *See* ***Schinner v. Gundrum***, 2013 WI 71, 349 Wis. 2d 529, 833 N.W.2d 685. When analyzing whether there was an "accident" for the purposes of a liability policy, Wisconsin courts take an approach that "consider[s] whether the *insured* acted with lack of intent in a particular incident." ***Id.***, ¶51. To assess the existence of an accident, courts must focus on the "means or cause" of harm to determine whether it was accidental, even if the result was unexpected. ***Id.***, ¶¶69, 74.

¶7 In ***Schinner***, the court determined the personal liability provision of the homeowner policy provided no coverage because "the means or cause" of the bodily injury was not accidental. Procuring and serving alcohol to minors, including a minor known to act aggressively when intoxicated, exposed the plaintiff to harm. ***Id.***, ¶¶69, 81. As the court stated, "bodily injury was hardly unforeseeable. All the conditions for a tragic injury had been put in place, and they were put in place intentionally." ***Id.***, ¶70.

¶8 The same principle applies in the present case. Here, Puerling's act of entrusting a handgun to a volatile felon with a known history of drinking problems and a tendency to become belligerent when intoxicated created the means or cause of harm. Szerbowski testified at her deposition that Trinka "pretty much" "drank every day." Trinka testified that on the day of the shooting, "my blood alcohol was, I think, .143, Steve's was .200, Connie's was .095 …." Trinka's anger management issues were also uncontroverted, and the record reveals a strained, aggravated relationship between Trinka and Steven. Trinka testified the two were "no stranger[s] to arguments prior to this incident," and that they were like "oil and water" from "day one when I first met him."

¶9 Under these circumstances, giving a handgun to Trinka put in place the conditions for a tragic accident, and bodily injury was hardly unforeseeable. *See* ***id.***, ¶70. The circuit court correctly determined that Puerling's act of entrusting the gun to Trinka did not qualify as an accidental occurrence under State Auto's policy.

¶10 Because we conclude there is no coverage under Puerling's homeowner's policy, we need not consider other issues raised by Szerbowski, including the concurrent cause doctrine or the doctrine of fortuity. *See* ***Gross v.***

Hoffman, 227 Wis. 296, 300, 277 N.W.2d 663 (1938) (only dispositive issues need be reached).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.