**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

November 11, 1997

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**

## NOTICE

**This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.**

**A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.**

**No. 96-2296**

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

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**MARK R. VOSS, KATHLEEN VOSS AND WALTER O'HAVER,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**SENTRY INSURANCE, A MUTUAL COMPANY,**

**DEFENDANT-RESPONDENT,**

**ABC INSURANCE CO., CHRISTOPHER MACACHOR, JOSEPH C. MEDVED AND MASSACHUSETTS MUTUAL LIFE INSURANCE CO.,**

**DEFENDANTS,**

**SIEMENS POWER CORPORATION, F/K/A A-C EQUIPMENT SERVICES CORPORATION,**

**INTERVENOR-DEFENDANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JOHN E. McCORMICK, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Mark R. Voss, Kathleen Voss and Walter O'Haver appeal from a judgment granting Sentry Insurance's motion for summary judgment. Voss and O'Haver claim the trial court erred as a matter of law in dismissing the claim against Sentry because the language of Sentry's policy clearly provides coverage for the injuries sustained. Because the trial court did not err in declaring that Sentry's policy does not provide coverage, we affirm.

## I. BACKGROUND

On April 13, 1991, Voss and O'Haver were injured during a fight with Joseph C. Medved and Christopher Macachor. The fight erupted in a parking lot across from a tavern. All four men had just left the tavern. It is undisputed that Voss and O'Haver had never met Medved and Macachor before the encounter in the parking lot.

Various versions of what occurred have been told via depositions. The end result was that Voss sustained significant injuries. O'Haver was also injured, but not as severely as Voss. In October 1992, Voss and O'Haver filed this suit against Medved and Macachor, alleging claims of assault and battery, punitive damages, and in the alternative, negligence. The complaint was amended to add Sentry and Allstate Insurance Companies. Sentry provided a homeowner's insurance policy to Medved's parents and Allstate provided a homeowner's insurance policy to Macachor's parents.

In April 1995, upon a motion from Allstate, the trial court declared that Allstate had no duty to indemnify or defend Macachor and dismissed Allstate from this action. In February 1996, Sentry filed a motion for declaratory summary judgment, seeking a ruling that Sentry had no duty to indemnify Medved for the injuries he allegedly caused. On April 1, 1996, the trial court held a hearing to consider the coverage motion. On May 17, 1996, it issued a written decision ruling that Sentry had no duty to indemnify Medved under the terms of the policy at issue. Judgment was entered dismissing Sentry from the action. Voss and O'Haver now appeal.

## II. DISCUSSION

The issue in this case is whether the Sentry homeowner's policy issued to Medved's parents obligates Sentry to indemnify Medved for the injuries he allegedly caused Voss and O'Haver during the fight outside the tavern. Because resolution of this issue involves construction of an insurance policy, we review the trial court's decision *de novo* as this is a question of law. *See* ***Hartland Cicero Mut. Ins. Co. v. Elmer***, 122 Wis.2d 481, 484, 363 N.W.2d 252, 253-54 (Ct. App. 1984). In addition, this appeal arises from a grant of summary judgment that also involves independent review of the trial court's decision. *See* ***Thompson v. Threshermen's Mut. Ins. Co.***, 172 Wis.2d 275, 280, 493 N.W.2d 734, 736 (Ct. App. 1992).

The policy at issue provides liability coverage for its insureds as follows:[1]

[1] Medved was alleged to be living with his parents at the time of the incident, and therefore covered under the "resident of the household" provision of his parents' policy.

> We promise to pay **damages** for bodily injury or property damage for which the law holds **you** responsible because of a **personal accident** covered by this insurance. This protection covers bodily injury, including loss of services, sickness, disease, or death which results from the injury suffered by any person other than **you** or any resident of **your** household.

The policy defines personal accident as:

> an unexpected and unintended event that causes bodily injury or property damage and arises out of **your** activities, other than **business** activities, or out of the ownership, maintenance or use of **your premises**.

The trial court ruled:

> In interpreting this policy and applying it to this case, the Court notes that no personal accident was involved. Although Medved and the plaintiffs insist that the event in this case was not intentional because the parties did not expect to get involved in a physical altercation, the Court disagrees. In this case, the intentional event was that in which Medved either hit or kicked the plaintiffs. In essence, hitting and kicking constitute intentional actions that can be controlled. As such, they are not unexpected or unintended. Therefore, the policy does not provide coverage ….

After conducting an independent review, we are in agreement with the trial court's analysis and conclusion. The policy does not provide coverage for Medved's actions and, therefore, the trial court did not err in dismissing Sentry from the case.

Voss and O'Haver argue that the policy language should be interpreted to provide coverage because the "event" was the fight that occurred and that was unexpected and unintended. No one planned it, it just happened. We reject such an interpretation based both on a commonsense reading of the policy language coupled with public policy considerations announced in cases such as ***Hagen v. Gulrud***, 151 Wis.2d 1, 7, 442 N.W.2d 570, 573 (Ct. App. 1989)

(interpreting insurance contract to provide coverage for sexual assaults would undermine public policy to deter sexual assaults), and the holding of cases such as ***Ramharter v. Secura Ins.***, 159 Wis.2d 352, 357, 463 N.W.2d 877, 879 (Ct. App. 1990) (no reasonable insured would expect coverage for their intentional commission of a murder-suicide).

Based on the policy language, Medved's conduct would be covered only if the injuries he allegedly caused were the result of a personal accident. A personal accident is an unexpected and unintended event and arises out of the insured's activities. As noted by the trial court, the event here was Medved hitting or kicking Voss and O'Haver. This conduct was not unexpected or unintended because hitting and kicking are intentional acts which can be controlled. Therefore, under the plain language of the policy, *see* ***Kremers-Urban Co. v. American Employers Ins. Co.***, 119 Wis.2d 722, 735, 351 N.W.2d 156, 163 (1984), Sentry is not obligated to indemnify Medved.

Our decision is further supported by the public policy announced in ***Hagen*** and ***Ramharter***, which prohibits insuring a person for intentional criminal acts. In ***Hagen***, this court concluded, as a matter of public policy, that "a person purchasing homeowner's insurance would not expect that he or she was insuring his or her children against liability for their sexual assaults." ***Id.*** at 7, 442 N.W.2d at 573. In ***Ramharter***, we concluded that "no reasonable person would expect an automobile or homeowner's insurance policy to provide coverage for damages resulting from the insured's intentional commission of a murder-suicide." ***Id.*** at 357, 463 N.W.2d at 879.

Similarly, in the instant case, we conclude that no reasonable person would expect a homeowner's insurance policy to provide coverage for damages

that result when an insured intentionally hits and kicks another person during a tavern brawl. Thus, even though the language of the Sentry policy, which was a "Plain Talk" policy, differs from the policy language at issue in ***Hagen*** and ***Ramharter***, the public policy issues are the same. It would be unreasonable for Medved's parents to expect that when they purchased homeowner's insurance, they would be provided coverage for injuries their son caused when he physically assaulted others.[2]

*By the Court.*—Judgment affirmed.

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

[2] Although a dispute may remain as to whether Medved acted intentionally or in self-defense, as he alleges, such a dispute is immaterial to resolution of this appeal. Regardless of whether Medved's conduct was intentional or self-defense, Sentry is not obligated to indemnify Medved. *See* ***Berg v. Fall***, 138 Wis.2d 115, 121-22, 405 N.W.2d 701, 704 (Ct. App. 1987) (insurance policy language excluded bodily injury resulting from unreasonable acts intended in self-defense).