IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

ST. PAUL GUARDIAN INSURANCE COMPANY, a foreign corporation, Respondent, v. HEIDI SCHULTZ, a single person; RONALD G. SCHULTZ and KATHRYN R. SCHULTZ, husband and wife; BRANDON BICKFORD, a single person, DAVID BICKFORD and SHARON BICKFORD, husband and wife, Appellants.	NO. 54956-1-I (Consolidated with
DAVID BICKFORD AND SHARON BICKFORD, husband and wife, and the marital community composed thereof; and BRANDON BICKFORD, a single person, Appellants, v. RONALD SCHULTZ and JANE DOE SCHULTZ, husband and wife, and the marital community comprised thereof, HEIDI DAWN SCHULTZ and JOHN DOE SCHULTZ, wife and husband and	NO. 55698-3-I) UNPUBLISHED OPINION

the marital community composed thereof,	)	
	)	
Respondents.	)	FILED: JULY 31, 2006

BECKER, J. -- Heidi Schultz hit Brandon Bickford with her car on purpose. One trial court dismissed Bickford's suit against Heidi's parents on summary judgment. Another trial court ruled the injury was not covered by the liability insurance policy held by Heidi's parents. The central issue in these consolidated appeals is whether Heidi's parents or their insurer are liable for Heidi's intentional act. We conclude they are not. Though the family car doctrine made Heidi an agent of her parents, hitting Bickford was outside the scope of that agency. We affirm both judgments.

FACTS

Near noon on March 9, 2000, 16 year old Heidi Schultz and two friends were getting ready to leave their Arlington high school for lunch. Before they left, Brandon Bickford poured soda on Heidi and her Volkswagen Jetta. Heidi threw soda back at Bickford, who walked away toward an alley. Angry, Heidi drove around the block looking for Bickford and telling her friends she was going to hit Bickford with her car. She then found him in the alley, and proceeded to hit him with her car.

Bickford and his parents sued Heidi and her parents for injuries Bickford suffered as a result of the incident. Bickford alleged Heidi had negligently hit

him, and that Heidi's parents were vicariously liable under the family car doctrine. Heidi and her parents owned an insurance policy from St. Paul Guardian Insurance Company that covered personal liability. St. Paul began to defend all three Schultzes, but reserved its right to deny coverage.

In June 2003, St. Paul filed a separate action seeking a declaratory judgment that the incident was not covered because the policy did not cover liability arising from intentional acts. St. Paul named all three Schultzes and the Bickfords as defendants in the declaratory judgment action.

The discovery in both cases showed similar facts. Heidi's passengers both testified in depositions that they heard Heidi say she planned to hit Bickford just before she did hit him. Bickford testified in his deposition that he did not believe Heidi hit him on purpose. He believed Heidi had been joking. Heidi denied hitting Bickford with the Jetta at all.

In August 2004, St. Paul moved for summary judgment in the coverage action. Before the court decided the summary judgment motion, Heidi filed another declaration in both lawsuits. This declaration conceded that she had hit Bickford with her car, and admitted that she did so intentionally. But, she said, she had not intended to injure him:

> At the exact moment of impact, if Brandon was in fact injured, it was probably from a combination of both me hitting him with my car and him jumping up onto the hood of my car.[1]

[1] Clerk's Papers at 56.

The court in the coverage action entered a declaratory judgment that the policy covered neither Heidi's liability nor that of her parents.

Meanwhile, in the tort case, Heidi's parents moved to have Bickford's claim against them dismissed on summary judgment. At issue was whether the family car doctrine made the parents liable for the injury caused by the Jetta. The court dismissed Bickford's tort claim against Heidi's parents with prejudice.

Both Bickford and the Schultzes appeal the denial of coverage. Bickford appeals the dismissal of his claim against Heidi's parents.

The liability policy covering the Jetta had an exclusion for intentional acts. Bickford contends Heidi's actions were merely "a joke that went too far" and a jury could find that Heidi acted negligently rather than intentionally when she hit him.

When reviewing an order granting summary judgment, this court undertakes the same inquiry as the trial court, considering all facts and reasonable inferences in the light most favorable to the nonmoving party. Once the moving party shows there is no dispute as to any issue of material fact, the burden shifts to the nonmoving party to establish the existence of an element material to its case and on which that party will bear the burden of proof at trial. Summary judgment is proper if the nonmoving party fails to meet this burden. CR 56; Kaynor v. Farline, 117 Wn. App. 575, 583, 72 P.3d 262 (2003).

There is no evidence that Heidi hit Bickford with her car negligently, as

opposed to intentionally. Heidi's declaration set out that she "intentionally" wanted to scare Bickford "by hitting him".[2] Bickford's testimony that Heidi hit him in a "joking"[3] manner does not create an issue of fact. Heidi's manner does not render her conduct unintentional.

Bickford contends that the policy exclusion for intentional acts does not apply to intentional acts committed using a covered automobile.

We review a trial court's interpretation of an insurance contract de novo. Interpreting courts consider the policy as a whole, and give it a fair, reasonable, and sensible construction, i.e., that of the average person buying insurance. If policy language is unambiguous, we enforce it as written. Quadrant Corp. v. Am. States Ins. Co., 154 Wn.2d 165, 171, 110 P.3d 733 (2005).

At the time of the incident, the Schultzes owned a St. Paul insurance policy referred to as "PAK II". The policy covered Heidi as a driver of the Jetta, and protected against legal liability "resulting from an occurrence in which there is actual accidental property damage, personal injury or death, subject to the limitations and exclusions in PAK II."[4]

The policy's "Major Exclusions" section listed exclusions that "apply to all sections of the policy." One exclusion concerned intentional acts:

> 6. PAK II doesn't cover the liability of any person who intentionally causes personal injury or property damage . . . .

[2] Clerk's Papers at 56.
[3] See Clerk's Papers at 91.
[4] Clerk's Papers at 166.

> Even if the specific property damage or personal injury resulting from your intentional act was not intended, we don't cover it because it is the result of an intentional act. If the act leading to the injury or damage is intentional, we don't cover any resulting injury or damage.

The policy then illustrates this principle with this example:

> You become angry with another person and hit him or her in the face. As a result of the blow, the other person suffers permanent blindness in one eye. Even though you did not mean to cause the blindness, PAK II will not cover the other person's injury because it is the result of your intentional act – you did intend to hit him.

Other portions of the policy further explain this limitation. In the portion of the policy explaining liability coverage, the policy states: "The only intentional injury that is covered is assault and battery committed to save a life or property." In defining personal injury, the policy explains: "Remember: you are not covered for liability for physical bodily injury if it results from an intentional act."

In the face of this considerable language, Bickford turns to the motor vehicle liability section of the policy, which explains that "PAK II covers you and your family for any liability caused through the use of any motor vehicle you or they own or lease that is listed on the Coverage Summary." Bickford says that the phrase "any liability" means the policy covers intentional torts committed using motor vehicles.

But the motor vehicle liability provision is subject to the Major Exclusions, which exclude liability coverage for intentional acts. That exclusion is not limited

to non-motor vehicle intentional acts. The policy does not cover Heidi's liability.

Bickford contends it is absurd to read the policy as excluding coverage for intentional acts done with a car because "every single act associated with driving a motor vehicle is arguably intentional." He cites the example of traveling above the speed limit as intentional behavior that will be covered if it causes harm. But a speeder who loses control of her vehicle and hits someone does not intend to hit that person. Heidi intended to hit Bickford.

Bickford contends that even if there is no issue as to whether Heidi hit Bickford intentionally, a factfinder could decide she did not mean to injure him. But the policy makes clear: "If the act leading to the injury or damage is intentional, we don't cover any resulting injury or damage."[5] Because Heidi intended to hit Bickford, whether she also intended to injure him is immaterial. St. Paul was not bound to cover Heidi's liability for her intentional act.

Bickford contends that even if the policy does not cover intentional acts, it covers the liability of Heidi's parents for Heidi's intentional act. He argues Heidi's parents are vicariously liable under the family car doctrine, even if Heidi acted intentionally.

The family car doctrine does not impose liability; it recognizes an agency relationship. Members of the family who are permitted to drive a family car are viewed as agents of the owners "if it is established that they were using the

[5] Clerk's Papers at 192.

vehicle in furtherance of a family purpose for which it was maintained." Kaynor, 117 Wn. App. at 584. Liability is determined by resorting to the rules of agency. See Cameron v. Downs, 32 Wn. App. 875, 880, 650 P.2d 260 (1982).

A master is liable for physical harm caused by the negligent conduct of servants within the scope of their agency. Cameron, 32 Wn. App. at 881. An act can be within that scope even though it is forbidden:

> To be within the scope of one's agency, conduct must be of the same general nature as that authorized, or incidental to the conduct authorized. Among the matters of fact to be considered in determining if an agent's conduct, although not authorized, is nevertheless within the scope of her agency are the time, place and purpose of the act, and whether or not the master had reason to expect that such an act would be done.

Cameron, 32 Wn. App. at 881 (citations omitted).

Though the family car doctrine renders Heidi an agent of her parents, it does not render Heidi's parents liable to Bickford because Heidi was outside the scope of the agency. Heidi's parents bought the Jetta for Heidi to use in traveling to school, work, and other activities. Hitting Bickford was not related to those purposes. Nothing in the record suggests Heidi's parents should have expected Heidi's act.

This conclusion is consistent with Thompson v. Everett Clinic, 71 Wn. App. 548, 553, 860 P.2d 1054 (1993). In Thompson, a doctor sexually assaulted patients under the guise that his actions were medically required. A victim sued the doctor's clinic. We affirmed dismissal of the clinic on summary judgment

even though the employment situation provided the opportunity for the doctor's wrongful acts and the means for carrying them out:

> a tort committed by an agent, even if committed while engaged in the employment of the principal, is not attributable to the principal if it emanated from a wholly personal motive of the agent and was done to gratify solely personal objectives or desires of the agent.

Thompson, 71 Wn. App. at 553. Similarly, even though Heidi's parents arguably provided her the opportunity and means to carry out her tortious act, that act was done to gratify solely personal objectives. Heidi's parents are not vicariously liable under the family car doctrine.

Because there is no genuine issue as to whether Heidi intentionally hit Bickford, and because Heidi's parents are not liable under the family car doctrine, the coverage action correctly ended with a declaration of no coverage. For the same reasons, the court properly dismissed Heidi's parents from the tort action.

Affirmed.

Becker, J.

WE CONCUR:

Appelwick, C.J.

Cox, J.