

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

THOMAS HORN, DIANNE HORN, NATHAN HORN and CASANDRA HORN, Plaintiffs	: NO. 08 – 00,315 : : : CIVIL ACTION - LAW
vs.	: : :
ERIE INSURANCE EXCHANGE, Defendant	: : : Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Defendant’s Motion for Summary Judgment, filed August 31, 2009. Argument on the motion was heard September 24, 2009.

Plaintiff’s brought the instant breach of contract and declaratory judgment action after a fire, started by their son/grandson¹, destroyed their residence and Defendant denied coverage. That denial was based on an exclusion in the contract for “intentional loss, mean[ing] any loss rising from an act committed by or at the direction of anyone we protect with the intent to cause the loss.” Plaintiffs oppose the motion on two bases: that the loss was not “intentional” and that the son/grandson was not “anyone we protect”.

Initially, Plaintiffs argue that the “irrational impulse test”, and not the M’Naughten Rule should be applied and that Dustin’s mental condition, while not meeting the M’Naughten standard, does meet the test for an “irrational impulse”. As it is clear that the M’Naughten Rule applies in this Commonwealth, however,² this argument is without merit.

Plaintiffs also argue that to find an action “intentional” under the contract, it must be found that the actor intended to cause a loss to the insurance company, not merely that he intended to start a fire in the residence. The Court does not believe, however, that “intent to cause the loss” refers to the claim after the event, but, rather, to the event itself. In this case, it

¹ The fire was started by Dustin Jenkins, son of Cassandra Horn and grandson of Thomas and Dianne Horn. Hereinafter, for ease of reference, Dustin Jenkins will be referred to as “Dustin”.

² Germantown Insurance Co. v. Martin, 595 A.2d 1172 (Pa. Super. 1991).

is clear that Dustin intended to set the fire.³ Therefore, the Court finds the loss was “intentional.”

With respect to the second issue, that Dustin was not “anyone we protect”, the contract defines “anyone we protect” as “you and the following residents of your household: ... relatives and wards ...” Plaintiffs argue that Cassandra and Dustin lived in a separate apartment in the residence, separate from Thomas and Dianne Horn, and thus that Dustin was not a resident of the household of his grandparents and that at least their claim should not be denied. This argument fails to consider the definition of “you”, however. “You” includes all named insureds. Cassandra is a named insured. Since Dustin was a resident relative of *her* household, he is included in the definition of “anyone we protect.”

While the Court sympathizes with the grievous losses experienced by Plaintiffs, the language of the insurance contract clearly precludes the claim in this case. Accordingly, the Court will enter the following:

ORDER

AND NOW, this 2nd day of October 2009, for the foregoing reasons, Defendant’s Motion for Summary Judgment is hereby GRANTED. Judgment is hereby entered in favor of Defendant and against Plaintiffs.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Matthew Zeigler, Esq.
Jefferson Shipman, Esq., Johnson, Duffie, Stewart & Weidner
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Gary Weber, Esq.
Hon. Dudley Anderson

³ Plaintiffs also try to steer the Court toward placing undue emphasis on Dustin’s intent to kill his family, arguing that he did not intend to destroy the house. Inasmuch as Dustin intended to kill his family by burning the house down, however, the Court does not see how one can argue that he did not intend to destroy the house.