IN THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION
AT JACKSON

SHELBY COUNTY HEALTH CARE CORPORATION d/b/a REGIONAL MEDICAL CENTER,	)	
Plaintiff,	)	
VS.	)	Circuit Court of Shelby County No. 58097 T.D.
JIMMIE D. WHITTEN and DELL B. WHITTEN	)	
Defendant.	)	C. A. NO. 02A01-9508-CV-00168
JIMMIE B. WHITTEN and DELL B. WHITTEN,	)	
Third-Party Plaintiffs/Appellants.	)	
VS.	)	
GOLDEN RULE INSURANCE COMPANY,	)	
Third-Party Defendant/Appellee.	)	

From the Circuit Court of Shelby County at Memphis.
Honorable Wyeth Chandler, Judge

Stanley J. Kline, Memphis, Tennessee
Marshall Gerber, Memphis, Tennessee
Attorneys for Third-Party Plaintiffs/Appellants, Jimmie D. Whitten and Dell B. Whitten.

David A. Anderson,
ANDERSON & ASSOCIATES, P.C., Indianapolis, IN
Martin Zummach,
NEELY, GREENE, FARGARSON & BROOKE, Memphis, Tennessee
Attorneys for Third-Party Defendant/Appellee, Golden Rule Insurance Company.

OPINION FILED:

REVERSED AND REMANDED

FARMER, J.

CRAWFORD, P.J., W.S. : (Concurs)
LILLARD, J. : (Concurs)

Jimmie D. Whitten was injured as the result of a self-inflicted gun shot wound to the mouth in a failed suicide attempt. Golden Rule Insurance Company, which insured Whitten under a major medical insurance policy, denied coverage for her injuries on the grounds that the policy contained an exclusion for "self-inflicted injury." After Shelby County Health Care Corporation, d/b/a Regional Medical Center, filed suit against Jimmie D. Whitten and her husband Dell B. Whitten ("appellants" or by name) for unpaid medical services incurred during the treatment of Whitten's injuries,[1] appellants filed a third party complaint against Golden Rule Insurance Company ("appellee") seeking payment of benefits under the policy. Both parties to the third party suit filed motions for summary judgment. The trial court granted appellee's motion on the grounds that there was no genuine issue of material fact that Whitten's injuries were "self-inflicted," and therefore excluded from coverage under the policy. The sole issue on appeal is whether the trial court erred in granting appellee's motion for summary judgment. For the foregoing reasons, we reverse the judgment of the trial court.

The policy provides benefits as a result of "injury," which is defined as "an accidental bodily injury." The policy also contained an exclusion whereby expenses and benefits would not be paid as a result of a "self-inflicted injury."[2] The exclusionary clause does not state whether the "self-inflicted injury" must be intentional or whether coverage is excluded whether the act is committed "while sane or insane."

Jimmie Whitten, age 51 at the time of the suicide attempt, had a history of depression. Dr. Kenneth McCown, a physician specializing in internal medicine, began treating Whitten for depression in April 1992. Dr. McCown gave Whitten a prescription tranquilizer and antidepressant, which helped her condition. In September 1992, Whitten was involved in a minor car accident that

---

[1]Shelby County Health Care Corporation, d/b/a Regional Medical center, entered a voluntary nonsuit in this case and is not a party to this appeal.

[2]The policy provides:

Exclusions and Limitations

> Covered expenses will not include, and no benefits will be paid for any charges which are incurred:
>
> (2) as a result from: (a) a self-inflicted injury.

allegedly exacerbated her condition. On December 1, 1992, Dr. McCown again noted that Whitten was suffering from anxiety and depression. Whitten was eventually hospitalized for inpatient psychiatric treatment for 19 days that month with a diagnosis of major depression with psychotic features. Dr. Karen Berry, Whitten's treating psychiatrist, stated that Whitten denied any thoughts of suicide at that time.

On the morning of May 5, 1993, Jimmie Whitten discharged a .38 caliber revolver into her mouth in a failed suicide attempt. The record reflects that Whitten awoke at 7:00 a.m. and retrieved the gun from a downstairs bedroom nightstand and took it upstairs to another bedroom. At 8:05 a.m., Whitten discharged one round into her mouth. Whitten suffered spinal injuries and injuries to the internal structures of her mouth due to the gun shot wound. The police report indicates that when officers arrived at the scene at approximately 8:35 a.m., they found Whitten lying on her bed and trying to talk. The police report indicated that Whitten said several times, "Why did I do this, I wish I hadn't have done it, I'm sorry." Whitten testified that she does not remember pulling the trigger or having the intent to kill or injure herself at the time of the suicide attempt.

Appellants filed a claim for benefits under the health insurance policy. Based on the police report and Whitten's medical records, appellee denied appellants' claim on the grounds that the policy excluded coverage for "self-inflicted injury."

Appellants third-party complaint against appellee to recover benefits was based on the grounds that the policy did not define the term "self-inflicted injury, and as a result the language was overly broad and ambiguous. Moreover, appellants contended that the policy did not specifically exclude attempted suicide while sane or insane. In support of its motion for summary judgment, appellees relied on the express language of the "self-inflicted injury" exclusion and a portion of Whitten's deposition in which she admitted that her injuries were "self-inflicted." Appellants contended that at the time of the suicide attempt, Whitten was suffering from severe mental illness caused by the September 1992 car accident, and could not form the intent to injure herself. In support of this contention, appellants submitted the affidavits of Dell Whitten and Dr. John Kington, a psychiatrist who first treated Whitten on May 17, 1993, twelve days after the suicide attempt. Dr. Kington stated in pertinent part as follows:

> (a) It is my opinion Mrs. Whitten does suffer from Bipolar Illness, primarily Depressed type.
>
> (b) It is my opinion, Mrs. Whitten experienced a significant exacerbation of her depression as a result of a rear end collision in which she was struck by another car and following this there was a progression of her depression over the coming year, culminating in the gun shot wound to her mouth. It is my opinion that the automobile accident and the eventual gun shot wound are causely [sic] related with the motor vehicle accident exacerbating her depression which, at that point of time was pre-existing.
>
> (c) It is my opinion that Mrs. Whitten was insane at the time of the self inflicted gun shot wound of May 5, 1993. It is my opinion that she did not have the requisite self control to manage her impulsive act at that moment. It is further my opinion that she could not appreciate the consequences of her actions at that instant wherein she shot herself due to the illness from which she was suffering. It is my opinion that this lady could not and did not appreciate the gravity or severity of the actions which she was taking nor did she have control over those actions which she was taking nor did she have control over those actions due to her mental illness.

The trial court granted appellee's motion on the grounds that there was no genuine issue material fact that appellant put a gun in her mouth, shot herself and that the injury was self-inflicted, thereby excluding coverage. The court also held that the policy language was clear, unambiguous, and applicable to the facts of the case.

A trial court should grant a motion for summary judgment when the movant demonstrates there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. T.R.C.P. 56.03. The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. ***Byrd v. Hall***, 847 S.W.2d 208, 210 (Tenn. 1993). On a motion for summary judgment, the trial court and this court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. ***Id***. at 210-11. In ***Byrd***, our supreme court stated as follows:

> Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery materials, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth ***specific facts*** showing that there is a genuine issue of material fact for trial. "If he does not so respond, summary judgment . . . shall be entered against him."

Id. at 211 (citations omitted). Summary judgment is only appropriate when the case can be decided on the legal issues alone. ***Id.*** at 210. Because only questions of law are involved, there is no presumption of correctness regarding a trial court's granting of summary judgment. ***Johnson v. EMPE, Inc.***, 837 S.W.2d 62, 68 (Tenn. App. 1992). Review of the entry of summary judgment is, therefore, de novo, on the record before this court.

Appellant's first contention on appeal is that the term "self-inflicted injury" is vague, over broad, and ambiguous, and therefore unenforceable. In particular, appellant contends that omitting the phrase "whether sane or insane," modifying the term "self-inflicted injury," results in ambiguity.

As a general rule, a policy or contract of insurance is to be considered liberally and any ambiguity in the contract is to be construed in favor of the insured and strictly construed against the insurer. ***E.g., Alvis v. Mutual Benefit Health & Acc. Ass'n.***, 201 Tenn. 198, 297 S.W.2d 643, 646. However, in the absence of any ambiguity in the policy, the terms expressed within the four corners of the insurance policy must be construed so as to give effect to the intention and express language of the parties. ***Tata v. Nichols***, 848 S.W.2d 649, 650 (Tenn. 1993).

Appellant contends that the term "self-inflicted injury" is so broad that the term might be interpreted such that any injury that results from any intentional act, such as skydiving, maybe considered a self-inflicted injury. We disagree. The term "self-inflicted injury" is not defined in the policy. However, "self-inflicted" is defined as "inflicted or imposed on oneself." ***The American Heritage Dictionary***, 1637 (3d ed. 1992). The policy in question provides coverage for accidental injuries. The term "accident" is defined as "an unexpected, undesirable event." ***Id***. at 11. From the ordinary definitions of these terms, it is evident that the term "self-inflicted" does not subsume the policy coverage for injury by "accident" and does not require strict construction of the term against the insurer.

Although Whitten's injuries were literally "self-inflicted" from the standpoint that there is no evidence that anyone except Whitten was responsible for the gun discharging, the

remaining issue is whether Whitten's injuries were the result of an "accident," which would be a covered loss under the insurance policy. The fact that Whitten's injuries were self-inflicted does not preclude the harm from being deemed accidental, provided that at the time of the accident, she could not expect or foresee the possibility of injury. ***See*** 10 ***Couch on Insurance 2d*** § 41:23, at 32 (Rev. ed. 1982) As a general rule, one who voluntarily and intentionally does a thing from which, as a reasonable person, she foresaw or should have foreseen that her death or injury might result, such death or injury is not an accident. ***Jones v. Fireman's Fund American Life Ins. Co.***, 731 S.W.2d 532, 534 (Tenn. App. 1986) (citing ***Mutual Life Ins. Co. v. Distretti***, 159 Tenn. 138, 17 S.W.2d 11 (1929)).

In ***Jones***, this Court held that neither the ex-wife nor present wife could recover under a life insurance policy based on accidental death where husband was shot in the chest as the result of a struggle with his wife. Husband, who was in the car with his wife and two children, pulled out a gun from under his seat and pointed it at his wife. With his left hand, husband placed wife's right hand over his right hand which held the pistol. Wife pushed the pistol away from her. During the ensuing struggle, the gun discharged, and husband received a fatal gun shot wound to the chest.

This court, applying the ***Distretti*** rule, upheld the trial court's award of summary judgment for the insurer on the grounds that husband's death was not accidental. This court held that it was reasonable for a person who did what husband did to assume, under all the attending circumstances, that it was reasonably foreseeable that his wife would resist having the pistol pointed at her, would resist his efforts, and that his injury or death might result therefrom. ***Id***. at 533-35.

This case differs from ***Jones*** because the allegation that Whitten's injuries were the result of her mental illness bears on the issue of whether her injuries were foreseeable at the time of the suicide attempt. From the record it is apparent that in ruling on the parties' motions for summary judgment, the trial court did not consider the possibility that Whitten's injuries were the result of an accident. Although her injuries were "self-inflicted," appellants contend that Whitten was suffering from severe mental illness as a result of her September 1992 car accident, and as a result could not form the requisite intent to injure herself. Appellants, as the nonmoving party, set forth specific facts in the form of Dr. Kington's affidavit filed in opposition to appellee's motion for summary

judgment. Dr. Kington's allegation that Whitten was insane at the time of the suicide attempt, if taken as true, creates a genuine issue of material fact as to whether Whitten foresaw or should have foreseen that her death or injury might result from her suicide attempt, and whether her injury was by accident, and therefore a covered loss under the policy. The parties' basic disagreement as to Whitten's mental state at the time of the suicide attempt raises a genuine issue of material fact that the trier of fact must legitimately resolve. Therefore, we hold that the grant of summary judgment to appellee was improper.

For the foregoing reasons, the judgment of the trial court is reversed, and this cause is remanded to the trial court for proceedings not inconsistent with this opinion. Costs in this cause on appeal are taxed to appellee, for which execution may issue if necessary.

_____
FARMER, J.

_____
CRAWFORD, P.J., W.S. (Concurs)

_____
LILLARD, J. (Concurs)