

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

PENNSYLVANIA INTEGRATED RISK	:	IN THE SUPERIOR COURT
MANAGEMENT ASSOCIATION	:	OF PENNSYLVANIA
	:	
v.	:	
	:	
STEVEN HOMANKO, BOROUGH OF	:	
NESQUEHONING, SEAN SMITH AND	:	
MICHAEL SAUERS, INDIVIDUALLY	:	
AND AS ADMINISTRATOR OF THE	:	
ESTATE OF CAROLA R. SAUERS	:	
	:	
APPEAL OF: STEVEN HOMANKO	:	No. 337 EDA 2019

Appeal from the Order Entered December 31, 2018
in the Court of Common Pleas of Carbon County
Civil Division at No(s): 17-2151

BEFORE: MURRAY, J., STRASSBURGER, J.* and PELLEGRINI, J.*

MEMORANDUM BY STRASSBURGER, J.: **FILED OCTOBER 15, 2019**

Steven Homanko appeals from the order entered December 31, 2018, which granted judgment on the pleadings in favor of Pennsylvania Integrated Risk Management Association (PIRMA), concluding PIRMA had no duty to defend or indemnify Homanko in an underlying civil action in which Homanko is a defendant. We affirm.

The trial court provided the relevant factual and procedural history of this matter.

In the underlying action, Michael Sauers, individually and as the administrator of the Estate of Carola R. Sauers, brought suit against [] Homanko, Sean Smith, and the Borough of Nesquehoning [(the Borough)] [in the United States District Court for the Middle District of Pennsylvania.] That action arises out of a motor vehicle collision wherein [] Homanko, while acting within

* Retired Senior Judge assigned to the Superior Court.

the scope of his employment as a police officer for the Borough [], was traveling in excess of one hundred (100) miles per hour in pursuit of a vehicle which [] Homanko had observed committing a summary traffic offense. [] Homanko's collision with the Sauers[es'] vehicle resulted in the death of Carola Sauers and multiple personal injuries to Michael Sauers. Based upon his actions which resulted in the collision, [] Homanko was charged criminally and subsequently pleaded guilty to homicide by vehicle, recklessly endangering another person [(REAP)], failure to keep right, and careless driving.

Prior to the collision, the Borough [] entered into a "Legal Defense and Claim Payment Agreement" with [PIRMA]. This agreement provide[d] that [PIRMA] [would] defend and indemnify the Borough, including employees acting within the scope of their employment, against any suit seeking damages, unless an act is not covered by the agreement. The agreement explicitly excludes criminal acts, which are defined as injury arising out of any criminal act or violation of a penal statute. This exclusion does not apply until it has been judicially determined that the employee did commit such criminal act or violation.

Trial Court Opinion, 3/27/2019, at 2-3 (capitalization altered, citations omitted).

On September 21, 2017, PIRMA filed the instant action against, *inter alia*, Homanko, asserting it was entitled to declaratory judgment pursuant to 42 Pa.C.S. §§ 7531-41 (Declaratory Judgments Act). According to PIRMA, the claims set forth in the underlying action are not covered under the agreement between PIRMA and the Borough. Thus, PIRMA requested a declaration that it owed no duty to defend or indemnify Homanko in the underlying action.

After the close of pleadings, on January 8, 2018, PIRMA filed a motion for judgment on the pleadings. Argument was held on April 26, 2018, and on December 31, 2018, the trial court granted judgment on the pleadings in favor

of PIRMA and against Homanko. Homanko timely filed a notice of appeal, and both Homanko and the trial court complied with Pa.R.A.P. 1925.

On appeal, Homanko sets forth two issues for our review.

I. Whether the trial judge erred in granting [PIRMA's] motion for judgment on the pleadings where the policy itself states that the exclusion shall not apply until it has been judicially determined that the member did commit such criminal act or violation, the words "judicially determined" are not defined in the policy, and the policy does not define if the exclusion applies to a plea agreement or whether the member must be adjudicated as guilty[.]

II. Whether the trial judge erred in granting [PIRMA's] motion for judgment on the pleadings where the facts alleged in the underlying complaint, that the acts to be committed by [] Homanko sound in negligence and not any criminal act, as defined under the policy, would trigger an exclusion[.]

Homanko's Brief at 4 (capitalization altered).

"Our scope and standard of review of the granting of a motion for judgment on the pleadings is well-settled." ***Rubin v. CBS Broad. Inc.***, 170 A.3d 560, 564 (Pa. Super. 2017).

Our scope of review on an appeal from the grant of judgment on the pleadings is plenary. Entry of judgment on the pleadings is permitted under Pennsylvania Rule of Civil Procedure 1034, which provides that "after the pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for judgment on the pleadings." Pa.R.C.P. 1034(a). A motion for judgment on the pleadings is similar to a demurrer. It may be entered when there are no disputed issues of fact and the moving party is entitled to judgment as a matter of law. In determining if there is a dispute as to facts, the court must confine its consideration to the pleadings and relevant documents. On appeal, we accept as true all well-pleaded allegations in the complaint.

On appeal, our task is to determine whether the trial court's ruling was based on a clear error of law or whether there were facts disclosed by the pleadings which should properly be tried before a jury or by a judge sitting without a jury.

Neither party can be deemed to have admitted either conclusions of law or unjustified inferences. Moreover, in conducting its inquiry, the court should confine itself to the pleadings themselves and any documents or exhibits properly attached to them. It may not consider inadmissible evidence in determining a motion for judgment on the pleadings. Only when the moving party's case is clear and free from doubt such that a trial would prove fruitless will an appellate court affirm a motion for judgment on the pleadings.

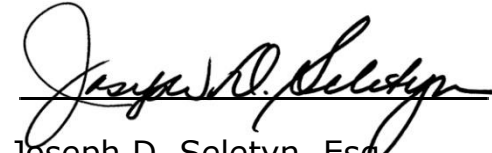
Id. (internal citations omitted).

Following a review of the record and the briefs for the parties, we conclude that the opinion of the Honorable Steven R. Serfass thoroughly addresses Homanko's issues. Specifically, we adopt the portions of the trial court opinion setting forth the rule of law regarding contract interpretation, **see** Trial Court Opinion, 3/27/2019, at 6-7, and the two issues set forth by Homanko, **see id.** at 12 (concluding that judicially determined criminal acts apply to both jury convictions and guilty pleas), and **id.** at 15-16 (concluding that the criminal acts exclusion applies even where the underlying action asserts a negligence claim). We discern no error of law on those issues. Nor do we conclude that there are facts disclosed by the pleadings which should be tried by a judge or jury. Therefore, we adopt the aforementioned portions

of the trial court's opinion of March 27, 2019, as our own, and affirm the order of the trial court.¹

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/15/19

¹ The parties shall attach a copy of the trial court's March 27, 2019 opinion to this memorandum in the event of further proceedings.