

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-780

NORTH CAROLINA COURT OF APPEALS

Filed: 22 December 2009

MICHAEL A. DEL-RIO,
Plaintiff,

v.

Pitt County
No. 08 CVS 179

CLARENDON AMERICAN INSURANCE
COMPANY,
Defendant.

Appeal by plaintiff from judgment entered 2 April 2009 by Judge J. Richard Parker in Pitt County Superior Court. Heard in the Court of Appeals 18 November 2009.

Robert D. Rouse, III, for plaintiff-appellant.

Bennett & Guthrie, P.L.L.C., by Rodney A. Guthrie and Roberta B. King, for defendant-appellee.

BRYANT, Judge.

On 16 January 2008, plaintiff Michael A. Del-Rio filed a declaratory judgment action seeking to recover money from defendant Clarendon American Insurance Company pursuant to a policy issued by defendant to McCrury and White Services, Inc. Defendant and plaintiff each moved for summary judgment, and following a hearing, the trial court granted summary judgment in favor of defendant. Plaintiff appeals. For the reasons discussed herein, we affirm.

Facts

On 17 October 2004, plaintiff drove into the parking lot of a Denny's restaurant in Greenville where Crystal Sheppard Lewis, the mother of two of plaintiff's children, worked. At that time, a domestic violence order prohibited plaintiff from Lewis's workplace and residence. Troy Antonio Staton, a security guard employed by McCrury and White Services, Inc., was on duty and ordered plaintiff to leave the premises. Staton sprayed plaintiff in the face with mace and fired a semi-automatic handgun at him, striking plaintiff in the back. Plaintiff subsequently filed an action against Staton and McCrury and White Services seeking compensatory and punitive damages. The jury awarded plaintiff \$100,000 in compensatory damages and \$30,000 in punitive damages. Defendant is the insurance carrier for McCrury and White Services and has refused to defend its insured in the underlying personal injury lawsuit or to pay damages on behalf of its insured, arguing that the relevant policy excludes such coverage.

Plaintiff raises a single argument on appeal: the trial court erred in granting summary judgment to defendant. As discussed below, we affirm.

Analysis

Plaintiff argues that the trial court erred in granting summary judgment in favor of defendant. We disagree.

The applicable standard of review is well-established:

[s]ummary judgment may be granted in a declaratory judgment action . . . and the scope of appellate review from allowance of a summary judgment motion therein is the same as

for other actions. Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, admissions and affidavits show no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law.

North Carolina Farm Bureau Mut. Ins. Co. v. Briley, 127 N.C. App. 442, 444, 491 S.E.2d 656, 657 (1997) (citations omitted), *disc. review denied*, 347 N.C. 577, 500 S.E.2d 82 (1998).

The courts of this State have frequently considered questions requiring interpretation of insurance policy provisions. "The meaning of specific language used in an insurance policy is a question of law." *Id.* at 445, 491 S.E.2d at 658 (citation omitted). "When the language is clear and unambiguous, a policy provision will be accorded its plain meaning." *Id.* (citation omitted).

Here, the policy at issue provides that defendant "will have no duty to defend the insured against any 'suit' seeking damages for 'bodily injury' or 'property damage' to which this insurance does not apply". One of the policy's endorsements lists as excluded operations: "*Any and all operations at bars, nightclubs, restaurants, banquet facilities, sports events and package liquor stores.*" (Emphasis added).

Plaintiff contends that this language is ambiguous and requires judicial construction, while defendant asserts that because the language is clear and unambiguous its plain meaning must apply. We see no ambiguity in the above quoted policy and endorsement language; rather, it clearly excludes coverage for operations at restaurants such as the Denny's where plaintiff's

injury occurred. Thus, the trial court did not err in granting summary judgment to defendant and denying same to plaintiff.

AFFIRMED.

Judges HUNTER, Robert C., and JACKSON concur.

Report per Rule 30(e).