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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0295**

State Farm Fire and Casualty Company,
Respondent,

vs.

Jonathan Sipola,
Appellant,

Mary Netzer,
Defendant.

**Filed September 10, 2018
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CV-17-3447

C. Todd Koebele, William L. Moran, Lehoan T. Pham, HKM, P.A., St. Paul, Minnesota
(for respondent)

Jenneane L. Jansen, Kris E. Palmer, Jansen & Palmer, LLC, Minneapolis, Minnesota (for
appellant)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Klaphake,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by granting summary judgment in favor of respondent and abused its discretion by denying his motion to stay proceedings. We affirm.

FACTS

In March 2017, A.H., her husband, and her mother filed a petition for damages (complaint) against appellant Jonathan Sipola in Louisiana state court (underlying action). The complaint alleged that in March 2016, A.H. and her mother visited New Orleans. One night while A.H. dined alone, she began conversing with Sipola. Sipola bought A.H. a glass of wine. “Within a few minutes of sipping the wine, [A.H.] lost all memory of the night.” A.H. woke up naked with Sipola there. A.H. had “a faint memory of being showered off, given some water, and hearing two different men’s voices.” The complaint alleged that as a result of being sexually assaulted, A.H. suffered “a large bloody gash on her head . . . and . . . was bruised and extremely sore all over her body.”

The complaint asserted that “Sipola’s wrongful and criminal acts, including drugging, brutally physically and sexually assaulting, raping, and kidnapping [A.H.], caused [her, her husband, and her mother] extreme emotional distress.” The complaint asserted that “Sipola is liable . . . for mental anguish and intentional and negligent infliction of emotional distress” and is “further liable . . . pursuant to Louisiana Civil Code article 2315, . . . and any other applicable Louisiana Civil Code article, law, or statute.”

At the time of the alleged assault, Sipola was insured under a renters policy issued by respondent State Farm Fire and Casualty Company. The policy covered claims against Sipola “for damages because of bodily injury . . . caused by an occurrence.” The policy excluded coverage for bodily injury “expected or intended by the insured” or “which is the result of willful and malicious acts of the insured.”

Sipola tendered the underlying action to State Farm seeking defense and indemnification under his renters policy. State Farm defended under a reservation of rights and filed a declaratory-judgment action in Ramsey County (coverage action) seeking a determination that it had no further duty to defend and no duty to indemnify Sipola against the claims in the underlying action.

State Farm moved for summary judgment, arguing that the renters policy excluded coverage because the underlying action alleged intentional acts resulting in bodily injury. Sipola moved to stay the coverage action until discovery was completed in the underlying action. The district court granted State Farm’s motion for summary judgment and denied Sipola’s motion to stay proceedings, reasoning that the underlying action “asserts causes of action which are unmistakably intentional acts for which . . . State Farm would have no duty to defend or indemnify . . . Sipola under the terms of the insurance policy issued to him.” This appeal followed.

D E C I S I O N

Summary judgment

Sipola argues that the district court erred by granting summary judgment in favor of State Farm based on its conclusion that State Farm had no duty to defend or indemnify

Sipola in the underlying action. This court reviews a district court's summary-judgment decision de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). This court reviews the record "to determine whether there is any genuine issue of material fact and whether the district court erred in its application of the law." *Dahlin v. Kroening*, 796 N.W.2d 503, 504 (Minn. 2011). "Interpretation of an insurance policy, and whether a policy provides coverage in a particular situation, are questions of law that we review de novo." *Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co.*, 825 N.W.2d 695, 704 (Minn. 2013).

"An insurer assumes two duties to its insured: the duty to defend and the duty to indemnify." *Reins. Ass'n of Minn. v. Timmer*, 641 N.W.2d 302, 307 (Minn. App. 2002) (quotation omitted), review denied (Minn. May 14, 2002). A duty to defend arises "when any part of the claim is arguably within the scope of the policy's coverage, and an insurer who wishes to escape that duty has the burden of showing that all parts of the cause of action fall clearly outside the scope of coverage." *Jostens, Inc. v. Mission Ins. Co.*, 387 N.W.2d 161, 165–66 (Minn. 1986) (quotation omitted). "[T]o establish a duty to indemnify, the insured must prove that *all* claims alleged in the complaint fall within the policy coverage." *Timmer*, 641 N.W.2d at 308. "The duty to defend is broader in scope than the duty to indemnify." *Auto-Owners Ins. Co. v. Todd*, 547 N.W.2d 696, 698 (Minn. 1996). In determining the existence of a duty to defend, courts compare the allegations in the complaint in the underlying action with the relevant policy language. *Meadowbrook, Inc. v. Tower Ins. Co.*, 559 N.W.2d 411, 415 (Minn. 1997). This court may also consider "extrinsic facts that could bring th[e] allegations within the scope of coverage." *Farm*

Bureau Mut. Ins. Co. v. Earthsoils, Inc., 812 N.W.2d 873, 875 (Minn. App. 2012), *review denied* (Minn. June 27, 2012).

Here, the insurance policy covers claims against Sipola for bodily injury caused by an occurrence. However, the policy does not cover bodily injury “which is either expected or intended by the insured” or “which is the result of willful and malicious acts of the insured[.]” The complaint in the underlying action asserted that “Sipola drugged [A.H.], and later that night brutally physically and sexually assaulted her, raped her, and kidnapped her.” According to the complaint, A.H. suffered “a large bloody gash on her head” and “was bruised and extremely sore all over her body.”

“[C]laims of nonconsensual sexual assault and battery invoke the intentional injury exclusion as a matter of law.” *R.W. v. T.F.*, 528 N.W.2d 869, 873 (Minn. 1995) (quotation omitted). Therefore, to the extent the complaint alleged sexual assault and battery against Sipola, those claims are not covered by the insurance policy. Sipola argues, however, that because the complaint alleged damages as a result of Sipola’s negligence, State Farm owes a duty to defend.

The complaint alleged that “Sipola is liable . . . for mental anguish and intentional and negligent infliction of emotional distress.” The complaint also alleged that Sipola is liable “pursuant to Louisiana Civil Code article 2315, et seq.” Article 2315 states that “[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.” La. Civ. Code Ann. art. 2315A (2018). Louisiana courts apply the “duty/risk analysis” for negligence under article 2315. *Rando v. Anco Insulations Inc.*, 16 So. 3d 1065, 1085 (La. 2009).

Although the complaint alleged negligence claims against Sipola as well as claims for intentional conduct, the Minnesota Supreme Court has held that an “[i]nsurer does not have a duty to defend or indemnify its insured for a negligence claim arising out of an alleged sexual assault by the insured.” *Allstate Ins. Co. v. S.F.*, 518 N.W.2d 37, 38 (Minn. 1994). In *S.F.*, the complainant asserted claims for “assault, battery, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation and sexual battery” against three alleged assailants. *Id.* at 39. The insured, one of the assailants, tendered defense of the claims to Allstate, and Allstate denied it had a duty to defend or indemnify any of the claims. *Id.*

The supreme court considered whether the “complaint alleges a claim of negligence for which there would be coverage under Allstate’s policy.” *Id.* at 40. The court determined that there was no coverage for the negligent-infliction-of-emotional-distress claim because that allegation “is just a variation of the intentional assault claims, which are barred by the intentional act exclusion.” *Id.* And, although the victim asserted that the insured “negligently abandoned her” when he left her alone with the other two men who assaulted her, the supreme court rejected this reasoning on the grounds that “it attempts to isolate one aspect of the insured’s conduct from his whole conduct that evening and then label it negligence.” *Id.* at 40-41.

Similarly, in *Todd*, the supreme court considered whether an insurer owed a duty to defend its insured when the complainant alleged claims for sexual abuse, battery, intentional infliction of emotional distress, and false imprisonment. 547 N.W.2d at 698. The court addressed whether the false-imprisonment claim was “inextricably linked” with

the intentional sexual-assault claims such that the insurer owed no duty to defend. *Id.* at 699. The supreme court, relying on its holding in *S.F.*, stated that “courts should look to the overall intentional plan of the insured” to determine whether the insurer owes a duty to defend. *Id.* (quotation omitted). The supreme court concluded that “Todd’s overall intentional plan was to sexually assault his daughter, not to falsely imprison her.” *Id.* Therefore, the false-imprisonment claim was “inextricably linked” with the sexual-assault claims and “excluded from coverage under the intentional bodily harm provision of the homeowner’s policy.” *Id.* at 700.

Here, the complaint asserted claims arising out of an alleged sexual assault. Applying relevant precedent, we conclude that State Farm does not owe Sipola a duty to defend a negligence claim arising out of an alleged sexual assault. *See S.F.*, 518 N.W.2d at 38 (holding that an “[i]nsurer does not have a duty to defend or indemnify its insured for a negligence claim arising out of an alleged sexual assault by the insured”). Furthermore, to the extent Sipola argues that A.H.’s alleged head injury was the result of negligence rather than intentional conduct, the complaint indicated that the head injury was inextricably linked with the sexual-assault claims. To conclude otherwise would be to “isolate one aspect of the insured’s conduct from his whole conduct . . . and then label it negligence.” *See id.* at 41. Therefore, the district court did not err by granting summary judgment in favor of State Farm.

Motion to stay proceedings

Sipola argues that the district court erroneously denied his motion to stay proceedings pending the completion of discovery in the underlying action. “One court, in

its discretion, may stay the proceedings before it to allow the proceedings before . . . [an]other court to continue.” *St. Paul Surplus Lines Ins. Co. v. Mentor Corp.*, 503 N.W.2d 511, 515 (Minn. App. 1993). We review the district court’s decision whether to stay proceedings for an abuse of discretion. *Id.*

Here, the district court denied Sipola’s motion to stay proceedings in the same order in which it granted summary judgment in favor of State Farm. Sipola appears to argue that the district court’s denial of his motion to stay proceedings rendered it impossible to defend against State Farm’s summary-judgment motion because Sipola could not use materials obtained in discovery in the underlying action to oppose State Farm’s motion. But, to determine whether an insurer owes its insured a duty to defend, courts “compare the allegations in the *complaint* in the underlying action with the relevant language in the *insurance policy*.” *Meadowbrook, Inc.*, 559 N.W.2d at 415. Therefore, it does not appear that discovery in the underlying action was necessary for the district court to rule on State Farm’s motion for summary judgment. Furthermore, Sipola chose to invoke his Fifth Amendment rights during his deposition in the coverage action and refused to answer questions about the alleged sexual assault rather than offer exculpatory testimony. The district court did not abuse its discretion by denying Sipola’s motion to stay proceedings pending the completion of discovery in the underlying action.

Affirmed.