This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1387

Minnesota Sporting Clays Association,
a Minnesota Nonprofit Corporation,
Respondent,

vs.

National Casualty Company, et al.,
Appellants.

Filed April 10, 2023
Reversed; motion denied
Larkin, Judge

Hennepin County District Court
File No. 27-CV-20-8871

Corie J. Anderson, Peters, Revnew, Kappenman & Anderson, P.A., Minneapolis, Minnesota (for respondent)

Theodore J. Waldeck, Daniel C. Leitermann, Waldeck & Woodrow, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and Cleary, Judge.*

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this insurance-coverage dispute, appellant-insurer argues that the district court erred by granting summary judgment for respondent-insured based on the court's conclusion that appellant had a duty to defend respondent in a separate action. Appellant also challenges the district court's award of attorney fees to respondent. By notice of related appeal, respondent argues that the district court erred in declining to award certain attorney fees, as well as prejudgment interest. We conclude that appellant had no duty to defend respondent and that no genuine issue of material fact remains on that issue. We therefore reverse the district court's grant of summary judgment and its award of attorney fees, direct the district court to enter judgment for appellant, and deny as unnecessary appellant's motion to strike respondent's reply brief to this court.

FACTS

In August 2017, Caribou Gun Club (Caribou), a club that hosts target-shooting competitions, hosted the National Sporting Clays Association (NSCA) regional championship. Following the event, respondent Minnesota Sporting Clays Association (Sporting Clays), a Minnesota nonprofit that promotes sporting-clay events, attempted to recover "target fees" from Caribou. Caribou refused to pay the fees, asserting that Sporting Clays was not recognized by the NSCA as a "state association" and therefore not entitled to those fees.

In August 2018, Sporting Clays sued Caribou to recover the fees. Caribou, in turn, filed counterclaims, alleging that Sporting Clays intentionally interfered with contractual relations, intentionally interfered with prospective economic advantage, and violated the Minnesota Deceptive Trade Practices Act (MDTPA), Minn. Stat. §§ 325D.43-.48 (2022).[1]

Sporting Clays tendered defense of Caribou's counterclaims to appellants National Casualty Company, et al. (Insurer). Sporting Clays was insured under a commercial general-liability policy against "personal and advertising injury." The relevant portion of the policy provides:

> **1. Insuring Agreement**
>
> **a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result.

The policy defines "personal and advertising injury," in part, as injury arising out of an oral or written publication "that slanders or libels a person or organization or disparages a person's or organization's goods, products or services."

The policy lists exclusions from coverage, including an exclusion for "Material Published With Knowledge of Falsity." The exclusion states that the policy does not apply to personal and advertising injury arising out of oral or written "publication of material, if done by or at the direction of the insured with knowledge of its falsity."

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[1] Caribou also alleged breach of contract, but that claim is not at issue here.

Insurer refused to defend Sporting Clays. Sporting Clays retained counsel to defend against Caribou's counterclaims, and that case ultimately settled in January 2020. In June 2020, Sporting Clays sued Insurer for breach of contract, seeking $57,430.93 for reimbursement of costs incurred defending against Caribou's counterclaims. Both parties moved for summary judgment.

The district court granted summary judgment for Insurer. The court applied *Polaris Industries, L.P. v. Continental Insurance Co.*, 539 N.W.2d 619 (Minn. App. 1995) and determined that Sporting Clays's acts, as alleged by Caribou, did not constitute "advertising activity" and were therefore not covered by the policy.

Sporting Clays appealed, and in July 2021, this court issued a nonprecedential opinion reversing and remanding. *Minn. Sporting Clays Ass'n v. Nat'l Cas. Co.*, No. A20-1556, 2021 WL 3027193, at *1 (Minn. App. July 19, 2021). This court determined that the district court misapplied *Polaris* because that case provides "no authority that would justify deviating from standard principles of contract construction" in construing insurance coverage provisions. *Id.* at *3. We held that the district court was "thus required to analyze the actual coverage provisions in [Sporting Clays's] insurance contract instead of simply applying the *Polaris* test and then seeking to force the [Sporting Clays] policy language into that framework." *Id.*

On remand, both parties again moved for summary judgment. The district court granted summary judgment for Sporting Clays and ordered Insurer to pay Sporting Clays $57,430.93. In doing so, the district court reasoned that Insurer had a duty to defend Sporting Clays under the policy and that no policy exclusion applied.

Following the grant of summary judgment in its favor, Sporting Clays moved for attorney fees, costs, and interest. The district court granted Sporting Clays $124,246.50 in attorney fees.

This direct appeal and related appeal followed. Insurer moved to strike Sporting Clays's reply brief, and this court deferred a decision on that motion.

DECISION

Summary judgment is appropriate if the moving party shows that "there is no genuine issue as to any material fact" and that the moving party is "entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "We review a grant of summary judgment de novo." *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). In doing so, we determine whether there are genuine issues of material fact and whether the district court correctly applied the law. *Thommes v. Milwaukee Ins. Co.*, 641 N.W.2d 877, 879 (Minn. 2002).

We review de novo whether an insurer had a duty to defend. *Id.* "[A] duty to defend generally covers those claims that arguably fall within the scope of the policy." *Meadowbrook, Inc. v. Tower Ins. Co.*, 559 N.W.2d 411, 415 (Minn. 1997). "Generally, the insurer's obligation to defend is determined by comparing the allegations of the complaint with the relevant policy language." *Garvis v. Emps. Mut. Cas. Co.*, 497 N.W.2d 254, 256 (Minn. 1993). The Minnesota Supreme Court "has consistently stated that where the insurer has no knowledge to the contrary, it may make an initial determination of whether or not it is obligated to defend from the facts alleged in the complaint against its insured." *Id*. at 258.

If a duty to defend exists as to one of the claims at issue, the insurer must defend against all asserted claims. *Wooddale Builders, Inc. v. Md. Cas. Co.*, 722 N.W.2d 283, 302 (Minn. 2006); *see Reinsurance Ass'n of Minn. v. Timmer*, 641 N.W.2d 302, 307 (Minn. App. 2002) ("If a complaint alleges several claims, and *any one* of them would require the insurer to indemnify, the insurer must provide a defense against all claims."), *rev. denied* (Minn. May 14, 2002); *but see Meadowbrook, Inc.*, 559 N.W.2d at 416 ("[I]nsurers can withdraw from a defense once all arguably covered claims have been dismissed.").

The insured bears the initial burden to demonstrate that part of the claim at issue is arguably within the scope of coverage. *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 894 (Minn. 2006); *Jostens, Inc. v. Mission Ins. Co.*, 387 N.W.2d 161, 165 (Minn. 1986). If the insured satisfies that burden, then the insurer "bears the burden of establishing that all parts of a cause of action clearly fall outside the scope of coverage." *Franklin v. W. Nat'l Mut. Ins. Co.*, 574 N.W.2d 405, 407 (Minn. 1998). "[W]here there is no coverage by reason of an exclusionary clause, there is no obligation to defend." *Wakefield Pork, Inc. v. Ram Mut. Ins. Co.*, 731 N.W.2d 154, 161 (Minn. App. 2007) (quotation omitted), *rev. denied* (Minn. Aug. 7, 2007).

The insurer has the burden to show that a policy exclusion applies. *Midwest Family Mut. Ins. Co. v. Wolters*, 831 N.W.2d 628, 636 (Minn. 2013). "Insurance contract exclusions are construed narrowly and strictly against the insurer, and, like coverage, in accordance with the expectations of the insured." *Travelers Indem. Co.*, 718 N.W.2d at 894 (citation omitted). We review de novo the interpretation of an insurance policy. *Metro. Prop. & Cas. Ins. Co. v. Miller*, 589 N.W.2d 297, 299 (Minn. 1999).

For the purposes of our analysis, we assume without deciding that Caribou's claims arguably fell within the scope of coverage, and we focus on the issue of policy exclusions. Specifically, we focus our analysis on the "Material Published With Knowledge of Falsity" exclusion. Under that exclusion, the policy does not apply to personal and advertising injury arising out of oral or written "publication of material, if done by or at the direction of the insured with knowledge of its falsity." Under this clause, an insurer is clearly and unambiguously relieved of the duty to defend if the insured makes a false, public statement, and the insured knows that the statement is untrue at the time the insured makes the statement. *See Hyman v. Nationwide Mut. Fire Ins. Co.*, 304 F.3d 1179, 1196 (11th Cir. 2002) (concluding that acts did not fall under a knowledge-of-falsity exclusion because the acts "did not amount to direct assertions of untrue facts").

We therefore ask if there is a genuine issue of material fact regarding whether Caribou's claims, as set forth in its pleading, clearly fall within the knowledge-of-falsity exclusion. *See Prahm v. Rupp Constr. Co.*, 277 N.W.2d 389, 389 (Minn. 1979) ("An insurer is required to defend a suit brought against its insured when the suit is not clearly within an exclusionary clause of the policy."); *Meadowbrook, Inc.*, 559 N.W.2d at 418 (stating that an insurer must show that the asserted claims clearly fall outside the policy); *Wakefield Pork, Inc.*, 731 N.W.2d at 161 (concluding that the "complaint fell squarely within the insurance policy's pollution exclusion").

Again, we generally determine an insurer's obligation to defend by "comparing the allegations of the complaint with the relevant policy language." *Garvis*, 497 N.W.2d at 256. However, our analysis is not limited to the stated causes of action. We may examine the pleading to determine the nature of the claims alleged and whether the claims fall within a policy exclusion. *See Ross v. Briggs & Morgan*, 540 N.W.2d 843, 848 (Minn. 1995) (concluding that claims of deceptive trade practices and unfair competition were "framed in terms of a breach of contract" and therefore "excluded from coverage" under a breach-of-contract exclusion).

We first address Caribou's intentional-tort claims. A claim of tortious interference with a contract has five elements: "(1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages." *Sysdyne Corp. v. Rousslang*, 860 N.W.2d 347, 351 (Minn. 2015). A claim for intentional interference with economic advantage also has five elements: (1) the existence of a reasonable expectation of economic advantage; (2) defendant's knowledge of that expectation; (3) defendant's intentional interference with that expectation, either through an independently tortious act or violation of a state or federal statute or regulation; (4) in the absence of the wrongful act, the reasonable probability that plaintiff would have realized an economic advantage or benefit; and (5) damages. *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 219 (Minn. 2014).

A statement made with knowledge of falsity is not a specific element of the torts at issue. Nonetheless, Caribou's pleading alleged that Sporting Clays made public statements with knowledge of their falsity, and those statements were the basis for Caribou's tort claims. As insurer notes, Caribou's "pleading chronicled a timeline of allegations," which described Sporting Clays's "knowledge of events before, during, and after" Sporting Clays's public statements. The timeline described in Caribou's pleading is as follows:

- January 2017: The NSCA unanimously voted to not recognize Sporting Clays as the official sporting clays association in Minnesota and sent Sporting Clays a letter informing it of that decision.

- May 2017: The NSCA informed Sporting Clays that it "will be recognizing" Sporting Clays "once again as the official state association." But the NSCA also informed Sporting Clays that "[t]he one caveat to being recognized once more is that you supply us with the updated and checked bylaws by the end of the year."

- August 2017: The event occurred at which the contested fees were generated. At that time, Sporting Clays had not yet submitted its bylaws to the NSCA for approval.

- September 2017: Sporting Clays made statement that Caribou owed Sporting Clays fees from the August 2017 event.

- December 2017: Sporting Clays adopted its bylaws and indicated that it would send the bylaws to the NSCA for approval. Sporting Clays made additional statements that Caribou owed Sporting Clays fees from the August 2017 event.

- January 2018: Sporting Clays acknowledged that in December 2017, the NSCA responded to its bylaws with questions regarding the bylaws. Thus, Caribou's pleading alleged that Sporting Clays "[c]learly, . . . did not have NSCA 'approval' before the end of 2017." Yet, Sporting Clays made additional statements that Caribou owed Sporting Clays fees from the August 2017 event.

- March 2018: A post on Sporting Clays's Facebook page stated that Sporting Clays "is happy to inform all that *as of several weeks ago* the NSCA has reinstated . . . [its] Charter as the approved association for [s]porting [c]lays in Minnesota." (Emphasis added.)

Consistent with that timeline, Caribou's pleading alleged that Caribou was wrongfully suspended by the NSCA and that the NSCA breached its contract with Caribou because Sporting Clays falsely and publicly claimed that Caribou owed and failed to pay target fees to Sporting Clays. Caribou alleged that Sporting Clays was not entitled to those fees because it was not a "state association" at the time of the fee-generating event. Specifically, Caribou alleged that Sporting Clays's status as a "state association" had been revoked by the NSCA and that Sporting Clays had failed to comply with the "requirements and preconditions for reinstatement and recognition" as a "state association" at the time of the shooting event in question. Thus, Caribou alleged that Sporting Clays "knew" that it had failed to comply with the NSCA's requirements and preconditions for reinstatement and recognition as a state association. Caribou therefore alleged that Sporting Clays "intentionally, knowingly[,] and willfully solicited and procured the breach of the existing contractual relationship" between Caribou and the NSCA and that Sporting Clays did so "without justification." Caribou further alleged that Sporting Clays "intentionally, knowingly[,] and tort[ious]ly" interfered with Caribou's reasonable expectation of economic advantage.

In concluding that Insurer had a duty to defend, the district court reasoned that the knowledge-of-falsity exclusion did not apply because it was "undisputed" that Sporting Clays had been "reinstated as the NSCA association for Minnesota on May 11, 2017," which was prior to the fee-generating event. The district court therefore concluded that Sporting Clays's statements regarding the contested target fees were not "knowingly false statements" but rather statements with which Caribou disagreed "because of perceived procedural faults committed by the NSCA." Sporting Clays similarly argues that it had been reinstated by the NSCA prior to the Caribou event for which it sought fees.

Both the district court's reasoning and Sporting Clays's argument seemingly refer to an allegation in Caribou's pleading that the NSCA's director publicly reinstated Sporting

Clays as Minnesota's "state association" prior to the shooting event in question. However, Caribou's pleading also alleged that the reinstatement was a unilateral and unauthorized action, that Sporting Clays had not satisfied the procedural requirements for reinstatement, and that Sporting Clays knew that it had not done so. In addition, Caribou's pleading alleged that in March 2018, Sporting Clays posted on its Facebook page that it was "happy to inform all that *as of several weeks* ago" the NSCA had reinstated Sporting Clays's "Charter as the approved association for [s]porting [c]lays in Minnesota." (Emphasis added.)

In sum, Caribou's pleading alleged that Sporting Clays was not reinstated as the recognized association by the NSCA until early 2018, which was long after the contested fees were generated and after Sporting Clays had made several public statements that Caribou owed Sporting Clays those fees. It is undisputed that Sporting Clays's claim to the fees was based on its recognition as the official sporting clays association in Minnesota. And Caribou's pleading alleged that Sporting Clays did not hold that position when the fees were generated in August 2017 or when Sporting Clays made the statements underlying Caribou's counterclaims. Thus, Caribou's pleading alleged that Sporting Clays knowingly made false statements that Caribou owed Sporting Clays fees from the August 2017 event.

Even construing the knowledge-of-falsity exclusion narrowly against Insurer and in accordance with the expectations of Sporting Clays, there is no genuine issue of material fact that Sporting Clays's public statements were made with knowledge of falsity and that, therefore, the knowledge-of-falsity exclusion clearly applies to the conduct at issue. *See*

Travelers Indem. Co., 718 N.W.2d at 894. Thus, the allegations supporting the intentional-tort claims in Caribou's pleading clearly fell within the "Material Published With Knowledge of Falsity" exclusion and did not trigger Insurer's duty to defend. *See Garvis*, 497 N.W.2d at 256-58 (concluding that allegations in a complaint did not trigger insurer's duty to defend).

Caribou also raised a MDTPA claim pursuant to Minn. Stat. § 325D.44, which defines numerous acts constituting a deceptive-trade practice, including disparagement of goods, services, or business by "false or misleading representation of fact." Caribou alleged that Sporting Clays "made public statements, Facebook and website posts, and committed multiple tortious acts and omissions in the course of its/their business which were intentionally and/or negligently committed and were in direct violation" of section 325D.44. The acts in question were Sporting Clays's public statements that Caribou owed Sporting Clays target fees. As this court stated in its prior opinion, Caribou alleged that Sporting Clays violated the MDTPA "by making false statements that [Caribou] failed to pay fees to [Sporting Clays]." *Minn. Sporting Clays Ass'n*, 2021 WL 3027193, at *2. Once again, Caribou's allegations that Sporting Clays knowingly made false statements regarding the fees clearly fell within the "Material Published With Knowledge of Falsity" exclusion and did not trigger Insurer's duty to defend.

Because there is no genuine issue of material fact that the knowledge-of-falsity policy exclusion clearly applies, Insurer had no duty to defend, and Insurer is entitled to judgment as a matter of law. *See Wakefield Pork, Inc.*, 731 N.W.2d at 159 ("[W]here there is no coverage by reason of an exclusionary clause, there is no obligation to defend."

(quotation omitted)). We therefore direct the district court to enter judgment for Insurer, without addressing Insurer's additional arguments regarding the potential application of other policy exclusions or Insurer's assertion that the duty to defend extends only to cases seeking money damages.

As to the district court's award of attorney fees, the court relied on *Morrison v. Swenson*, 142 N.W.2d 640 (Minn. 1966), which authorizes the recovery of attorney fees if an insurer breaches its duty to defend. *See In re Silicone Implant Ins. Coverage Litig.*, 667 N.W.2d 405, 422 (Minn. 2003) ("[A]ttorney fees are recoverable when an insurer breaches its duty to defend."). Because the attorney fees were awarded based on the erroneous determination that Insurer breached its duty to defend, we reverse the award of attorney fees. Thus, we need not address Insurer's argument that the fees were excessive or Sporting Clays's argument that the district court erred by failing to award additional attorney fees and prejudgment interest. *See* Minn. Stat. § 60A.0811, subd. 2(a) (2022) (permitting prejudgment interest for an insured who "prevails").

Finally, Insurer moved to strike Sporting Clays's January 12 reply brief, arguing that it impermissibly addressed issues beyond those presented in Sporting Clays's cross-appeal regarding attorney fees and interest. Given our decision to reverse, Insurer's motion is denied as unnecessary.

Reversed; motion denied.