

STATE OF MICHIGAN
COURT OF APPEALS

HASTINGS MUTUAL INSURANCE COMPANY,
Plaintiff-Appellant.

v

No. 111127

JOHN RAYMOND ROBBINS and LAWRENCE
FLOYD SUNDAY,

Defendants-Appellees.

Before: Reilly, P.J., and Griffin, and T. G. Kavanagh*, JJ.
PER CURIAM.

Plaintiff appeals as of right from a lower court order dismissing with prejudice its declaratory action against defendants. We reverse and remand.

On April 20, 1985, plaintiff's insured, Lawrence Sunday, was driving his car when he struck and injured defendant John Robbins, a pedestrian. Certain evidence suggested that the accident was intentional, as it occurred immediately following an argument between the two men and several witnesses characterized defendant Sunday's behavior as intentional. After an investigation, Warren police charged defendant Sunday with assault with intent to do great bodily harm less than murder. Mr. Sunday pled guilty to the reduced charge of attempted felonious driving on June 21, 1985.

On August 7, 1986, defendant Robbins filed a civil suit against defendant Sunday to recover for injuries he sustained as a result of the incident. Defendant Sunday forwarded the summons and complaint to his automobile insurer, plaintiff Hastings Mutual, seeking coverage and representation. Plaintiff retained counsel to represent defendant Sunday in the tort action and then filed the instant declaratory action to determine whether it has a duty to defend or indemnify under the policy, which excluded coverage for intentional acts.

*Former Supreme Court Justice sitting on the Court of Appeals by assignment.

On February 16, 1988, plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(10), alleging that defendant's guilty plea proved intent as a matter of law, thus, leaving no genuine issue of material fact. The lower court denied plaintiff's motion ruling that the crime to which defendant had pled guilty--attempted felonious driving--was not a specific intent crime and therefore defendant's plea did not establish intent as a matter of law. The court further stated that the question of intent was "an issue for the trier of fact."

Defendant Sunday then filed a "motion for dismissal," which argued that the court's ruling on plaintiff's motion for summary disposition was dispositive as to the merits of plaintiff's complaint. The lower court agreed and dismissed plaintiff's complaint with prejudice stating, "the court has entertained the plaintiff's motion for summary disposition and believe [sic], as counsel points out, that this disposes of the claim put forward by the plaintiff."

On appeal, plaintiff argues that the trial court erred by granting summary disposition in favor of defendants, since it had earlier ruled that a genuine issue of fact existed. We agree.

Although actions for declaratory relief were once disfavored, their purpose is now expressly recognized in our court rules. MCR 2.605. Complaints for declaratory judgments are commonplace when questions arise concerning coverage under insurance policies.

In the instant case, the lower court denied plaintiff's motion for summary disposition, ruling that genuine issues of material fact existed and defendant Sunday's guilty plea to the charge of attempted felonious driving did not as a matter of law preclude coverage under the insurance policy. However, the court then granted defendant's motion to dismiss¹ on the grounds that its earlier ruling was dispositive as to the merits

of plaintiff's complaint. The fallacy of this reasoning is readily apparent. The genuine issues of material fact which the court found in regard to plaintiff's motion for summary disposition did not disappear on defendant's motion.

We therefore reverse and remand this matter for further proceedings to determine whether the duties to defend and indemnify are precluded by the exclusionary language of plaintiff's automobile insurance policy. See generally Allstate Ins Co v Freeman, ___ Mich ___ (Docket Nos. 81239, 81433, decided July 18, 1989).

Reversed and remanded. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly
/s/ Richard Allen Griffin
/s/ Thomas Giles Kavanagh

¹ In view of our disposition, we need not address plaintiff's arguments concerning the mislabeled "motion to dismiss."