

Allstate v. Hunter

Related Professionals

Cheryl D. Shoun
843.720.1762
cshoun@nexsenpruet.com

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Following years of alleged sexual abuse of a minor child at the hands of Joseph Hunter, the mother of the child filed suit in state court against Hunter's wife, Rose Hunter, asserting causes of action for negligence, defamation and breach of fiduciary duty premised upon Rose Hunter's unintentional inaction in the face of the abuse. Allstate Vehicle and Property Insurance Company (Allstate) issued a homeowner's policy to the Hunters with an effective date of June 16, 2015. Allstate filed a declaratory judgment action before the United States District Court seeking an order of the court that it was not obligated to defend Rose Hunter in the action against her. Allstate's motion for summary judgment recently came before the court. *Allstate Vehicle and Property Insurance Company v. Rose Wadford Hunter*, et al, 2019 WL 251500 (January 17, 2019).

In assessing Allstate's motion, the court examined the joint obligations provision of the Allstate policy that provided that the responsibilities, acts and failures to act of an insured will be binding upon another insured. Allstate argued that provision requires where coverage for damages resulting from intentional or criminal acts of one insured is excluded, coverage is excluded for all insureds. Finding no state court interpretation of a policy with a joint obligations provision, the court turned to *Allstate Indem. Co. v. Tilmon*, 2014 WL 1154666 (D.S.C. March 21, 2014). Tilmon interpreted a joint obligations clause identical to the one at hand, and concluded the language thereof extends the criminal acts exclusion to negligence claims against other insureds. The court specifically adopted the reasoning of Tilmon, thus barring coverage for Rose Hunter.

Next, the court turned to substantive issues of coverage under the Allstate policy. Allstate argued the sexual abuse at issue was not an occurrence, as anticipated under its policy, as it was not an accident. Allstate further argued that even if the sexual abuse could be considered an occurrence, coverage would be barred, as bodily injury resulting from intentional and criminal acts was expressly excluded under the policy. The court looked to *Mfrs. & Merchs. Mut. Ins. Co. v. Harvey*, 498 S.E.2d 222 (S.C. Ct. App. 1998), for guidance. The Harvey court concluded the sexual abuse of a child is so inherently injurious that the intent to harm is inferred as a matter of law. Further, an intentional injury cannot be accidental. Relying on the analysis in *Harvey*, the court concluded coverage for Joseph Hunter barred, as his

sexual abuse was not accidental and thus, there was no occurrence under the policy.

The conclusion as to coverage for Joseph Hunter precipitated further analysis as to coverage for Rose Hunter. While *Harvey* held abuse of a child cannot be an accident, it also found a claim of negligence against a non-abusing party is separate from the sexual abuse giving rise thereto. It was that holding in *Harvey* upon which the Defendants relied in arguing that Rose Hunter's alleged negligent supervision of the allegedly abused minor, despite that she knew, or should have known, of Joseph Hunter's proclivity for inappropriate sexual contact with underage girls, constituted an occurrence.

Recognizing the significance of the joint obligations provision of the policy at issue and the absence of such a provision in *Harvey*, along with the conclusion that an abuser's acts cannot constitute an occurrence, the court certified a question to the South Carolina Supreme Court before ruling on Allstate's motion for summary judgment.

The question submitted to the South Carolina Supreme Court sought a determination of how the intentional or criminal act exclusion and joint obligations provision of Allstate's policy interacts with the earlier holding in *Harvey* that negligence claims against a non-abusing party constitute "occurrences" and are not barred by the intentional act exclusion of an insurance policy. Specifically, the question sought a determination of South Carolina law as to whether Allstate's intentional or criminal act exclusion and the joint obligations provision barred coverage for claims such as negligent supervision and breach of fiduciary duty made against the non-abusing party who is the other named insured in the policy.^[i]

The South Carolina Supreme Court found the holding in *Harvey* specific to the policy at issue in that case; *Harvey* does not represent a general rule that negligence claims, or other claims of unintentional conduct against a non-abusing named insured always constitute an occurrence. The *Harvey* policy contained an intentional acts exclusion different than the one before the court in *Hunter* and did not include a joint obligations provision. Further, the South Carolina Supreme Court further held there is no public policy adversely affecting a bar to coverage as to Rose Hunter. Consequently, the court's determination that there is no coverage for the claims against Rose Hunter for negligent supervision of the minor child, or breach of fiduciary duty, subsumed into the negligence claim, remained undisturbed.^[ii]

[i] See *Allstate Vehicle and Property Insurance Company v. Hunter*, 521 S.E.2d 493 (2018).

[ii] The court previously determined there was no coverage for the defamation claim against Rose Hunter.