

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2005 CA 2068

THERESA SEAL & ROBERT SEAL,
AND HOPE EFFERSON ON BEHALF OF COREY EFFERSON

VERSUS

LIBERTY MUTUAL INSURANCE CO.
AND SHAWN EDWARDS, ET AL.

Judgment rendered September 15, 2006

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Appealed from the
23rd Judicial District Court
in and for the Parish of Ascension, Louisiana
Trial Court No. 73,848
The Honorable Pegram J. Mire, Jr., Judge

* * * * *

SONYA HALL
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ATTORNEYS FOR
PLAINTIFFS/APPELLANTS
THERESA SEAL, ROBERT SEAL AND
HOPE EFFERSON ON BEHALF OF HER
MINOR SON COREY EFFERSON

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LIBERTY MUTUAL INSURANCE
COMPANY

* * * * *

BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.



PETTIGREW, J.

Plaintiffs appeal a summary judgment rendered in favor of defendant, Liberty Mutual Insurance Company (Liberty Mutual). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This matter involves a shooting that arose from a domestic dispute between Shawn Edwards (Shawn) and his estranged wife, Tammy Edwards (Tammy). At the time of the incident, Shawn and Tammy had been separated for several months, and Tammy had remained in the marital home with the couple's two-year-old son, Hunter. Divorce proceedings had been filed, and Tammy had obtained a restraining order against Shawn, prohibiting him from returning to the marital home.

On November 17, 2001, Shawn came to the home in violation of the restraining order. When Tammy refused to let him in the house, Shawn removed an air-conditioning window unit and climbed into the house through the window. Shawn then found Tammy in the bedroom and began to beat her while she held Hunter in her arms.

Meanwhile, Tammy's mother, Theresa Seal (Theresa), was outside the house with several of her grandchildren. Theresa had seen Shawn go into the house, and she heard Tammy scream. Theresa then entered the house and found Shawn pointing a gun at Tammy's head. As Theresa screamed for him to stop, Shawn pulled the trigger. Fortunately, the gun misfired; however, Shawn then walked over to Theresa and punched her, knocking her to the floor. In the ensuing confrontation, Shawn fired the gun several times, striking Tammy in the arm and Theresa in the face. Shawn then fled the scene in Theresa's car. He was later apprehended

and charged with two counts of attempted first-degree murder, as well as various other offenses.

On November 18, 2002, Theresa filed suit against Shawn Edwards¹ and Liberty Mutual, Tammy's homeowner's insurer. Theresa's husband, Robert Seal, joined in the petition, seeking damages for loss of consortium. In addition, Hope Efferson has joined the petition on behalf of her son, Corey, one of the children present outside the home during the incident. Liberty Mutual filed a motion for summary judgment seeking to have the suit against it dismissed pursuant to the intentional act exclusion contained in the homeowner's policy.² The trial court initially denied the motion; however, no judgment was ever signed. Liberty Mutual subsequently filed a motion to reconsider the summary judgment. After a hearing, the trial court granted the motion and dismissed the plaintiffs' suit against Liberty Mutual with prejudice.³ It is from this judgment that the plaintiffs have appealed.

SUMMARY JUDGMENT

Summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. LSA-C.C.P. art 966(A)(2). Appellate courts review summary judgments *de novo* under the same criteria that govern the trial court's determination of whether a summary judgment is appropriate. **Duplantis v. Dillard's Dept. Store**, 2002-

¹ Shawn died in prison while awaiting trial on the criminal charges.

² The policy provided, in pertinent part:

SECTION II – EXCLUSIONS:

- 1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others** do not apply to “bodily injury” or “property damage”:

a. Which is expected or intended by one or more “insureds”[.]

³ The original judgment did not contain language dismissing the suit against Liberty Mutual. Nevertheless, the plaintiffs filed an appeal of the judgment to this court. This court then issued an interim order requiring the trial court sign a valid written judgment including language required by La. C.C.P. art. 1918. **Seal v. Edwards**, 2005-2068 (La. App. 1 Cir. 1/26/06) (unpublished order). The trial court signed an amended judgment containing the appropriate language on January 28, 2006.

0852, p. 5 (La. App. 1 Cir. 5/9/03), 849 So.2d 675, 679, writ denied, 2003-1620 (La. 10/10/03), 855 So.2d 350.

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B). Although summary judgment is seldom appropriate for determinations based on subjective facts of motive, intent, good faith, knowledge, or malice, summary judgment may be granted on subjective intent issues when no issue of material fact exists concerning the pertinent intent. **Jones v. Estate of Santiago**, 2003-1424, p. 6 (La. 4/14/04), 870 So.2d 1002, 1006.

DISCUSSION

Plaintiffs contend that there were genuine issues of material fact as to whether Shawn intended or expected to injure the plaintiffs. They argue that the evidence demonstrates that Theresa was injured when the gun discharged accidentally while Shawn and Theresa struggled for control of the gun. This argument is without merit.

In support of its motion for summary judgment, Liberty Mutual introduced various exhibits, including Tammy's deposition. In recounting the sequence of events that took place after Theresa entered the house and the gun misfired, Tammy testified as follows:

Well, he jumped up away from me and punched her [Theresa], and she fell. And then he went walk over toward her, and she was laying down, and when he went – he went and kneeled down too, but to get to her level, like he was fixing to shoot her in the head. And I just tripped him, and I pulled his leg, actually, and when he rolled over, he shot. So he shot one outside....

According to Tammy's testimony, no one was injured with that shot; however, the altercation continued as Shawn and Tammy struggled for the gun. In the course of this struggle, Tammy was shot in the arm. Apparently, Shawn then began to walk toward the bedroom door where Theresa was just starting to stand up after having been knocked down. Specifically, Tammy testified as follows:

And my mama had stood up and she was in the doorway this time.... He got up at the end of the bed and started to turn around and like he was going to walk off. And he had the gun in his hand, and it was pointed at Mama. And he was going to shoot her. I mean I know he was going to shoot her.

Tammy testified that Shawn had the gun pointed directly at her mother's face as he walked toward the door of the bedroom. She further testified that she jumped on Shawn to try to pull the gun away so that it would not be pointing at Theresa; however, Shawn pulled the trigger and shot Theresa in the face.

The evidence clearly demonstrates that the trial court's grant of summary judgment in favor of Liberty Mutual was correct. Shawn went to the marital home with a gun to confront Tammy. He gained entry into the locked house, in violation of a restraining order, by removing an air-conditioning window unit and climbing in through the window. Upon entering the house, he proceeded to beat his estranged wife in the presence of their two-year-old son. He put the gun to Tammy's head and pulled the trigger, only to have the gun misfire. He then hit his mother-in-law, pointed the gun at her head on two separate occasions, and pulled the trigger. While we are sympathetic to the injuries sustained by the plaintiffs in this case, their losses are clearly the result of an intentional act of violence and not the accidental discharge of the weapon during a

struggle. Therefore, coverage is excluded under the terms of the liability policy at issue.

DECREE

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are assessed to the plaintiffs, Theresa Seal, Robert Seal, and Hope Efferson on behalf of her minor son, Corey Efferson.

AFFIRMED.