IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

SCOTTSDALE INSURANCE COMPANY,

Respondent,

v.

MARIA OLIVARES,

Appellant.

DOCKET NUMBER WD83178

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: September 29, 2020

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Kevin D. Harrell, Judge

JUDGES

Division Two: Mitchell, P.J., and Gabbert and Thomson, JJ. CONCURRING.

ATTORNEYS

Danny L. Worker and Kendall Canfield, Edwardsville, IL, Attorneys for Respondent.

John E. Turner and Christopher P. Sweeny, Kansas City, MO, and Michael Fleming, Lee's Summit, MO, Attorneys for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SCOTTSDALE INSURANCE COMPANY, Respondent,
v.
MARIA OLIVARES, Appellant.

WD83178 **Jackson County**

Before Division Two Judges: Karen King Mitchell, Presiding Judge, Anthony Rex Gabbert and W. Douglas Thomson, Judges

Maria Olivares appeals the award of summary judgment to Scottsdale Insurance Company in its declaratory judgment action to determine insurance coverage for the death of Olivares's son. Olivares raises two points on appeal. She claims that the motion court erred in granting summary judgment because Scottsdale failed to establish that its assault and/or battery coverage form applied as a matter of law to limit coverage to $25,000.00 in that (1) the terms "assault," "battery," and "assault and/or battery" as used in the policy were ambiguous and thus should be interpreted in favor of coverage; and (2) the uncontroverted facts failed to establish that Son's death arose out of an "assault," "battery," or "assault and/or battery" as those terms were defined by the court. Finding no error, we affirm.

AFFIRMED.

Division Two holds:

1. Our review of a motion court's grant of summary judgment is *de novo*.

2. Summary judgment is appropriate when the moving party establishes (a) the absence of a genuine issue as to any material fact and (b) the legal right to judgment.

3. The interpretation of an insurance policy is a question of law, which we review *de novo*.

4. We give the words of an insurance policy their plain and ordinary meaning consistent with the reasonable expectations of the parties, unless it is clear that the parties intended a technical meaning.

5. We give undefined terms their ordinary meaning, which is the meaning that the average layperson would reasonably understand and, to determine that meaning, we consult standard English language dictionaries.

6. The terms of an insurance policy are ambiguous if they are duplicitous or difficult to understand; the terms are not ambiguous simply because they have more than one definition or because the parties disagree about their meaning.

7. There is nothing duplicitous or difficult to understand about the term battery in Scottsdale's assault/battery coverage form. The average layperson would reasonably understand the term battery to include a shooting. Thus, the plain and ordinary meaning of battery includes injuries such as those suffered by Son.

8. The insurer bears the burden of showing that an exclusion to coverage applies.

9. Where Scottsdale made a prima facie showing that Son's death arose out of unlawful conduct that constituted an assault and/or battery and Scottsdale was otherwise entitled to judgment as a matter of law, the burden shifted to Olivares to identify specific facts showing that there was a genuine issue for trial.

10. Olivares did not identify facts showing that Son's shooting was accidental, but instead, she merely speculated that perhaps the shooting was accidental; mere speculation and conjecture are not enough to create a genuine issue.

Opinion by: Karen King Mitchell, Presiding Judge September 29, 2020

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