KREWINA, APPELLEE, *v.* UNITED SPECIALTY INSURANCE COMPANY, APPELLANT.

[Cite as *Krewina v. United Specialty Ins. Co.*, 172 Ohio St.3d 29, 2023-Ohio-2343.]

Contracts—Insurance-policy claims—Policy exclusions—Because insurance policy at issue is a commercial general-liability contract, civil-law definitions of "assault" and "battery" pertaining to exclusions from coverage apply—Civil assault caused the injuries for which coverage sought—When a commercial general-liability insurance policy excludes coverage for injuries arising out of "assault or battery," subjective intent of person who committed the assault or battery is irrelevant—Court of appeals' judgment reversed and trial court's judgment reinstated.

(No. 2022-0322—Submitted February 28, 2023—Decided July 12, 2023.)

APPEAL from the Court of Appeals for Hamilton County,
No. C-210163, 2021-Ohio-4425.

KENNEDY, C.J.

{¶ 1} In this discretionary appeal from a judgment of the First District Court of Appeals, we consider whether a provision in a commercial general-liability insurance policy excluding coverage for bodily injury arising from assault or battery can be nullified based on the mental state of the person who committed the assault or battery.

{¶ 2} In this case, Brown County Care Center ("the Center"), an adult-care facility, contracted with appellant, United Specialty Insurance Company ("United"), for commercial general-liability insurance. The insurance policy

specifically excluded coverage for bodily injury arising from "any actual, threatened or alleged assault or battery." The policy did not define the terms "assault" or "battery."

{¶ 3} Appellee, Austin Krewina, lived at the Center when fellow resident Colin Doherty attacked him with a knife. The Center's insurance policy with United was in effect at that time. Among other alleged offenses, the state of Ohio charged Doherty with felonious assault, but the trial court found him not guilty by reason of insanity.

{¶ 4} Krewina sued the Center in the Hamilton County Court of Common Pleas, and the parties settled the matter. As part of the settlement agreement, Krewina and the Center entered into a stipulation for entry of final judgment in which the Center consented and stipulated to a final judgment in favor of Krewina. Krewina then brought a declaratory-judgment action against United in the trial court to collect the judgment.

{¶ 5} In the trial court, Krewina argued that United's insurance policy covered his injuries because the assault-or-battery exclusion did not apply. Krewina reasoned that Doherty did not have the mental state necessary under the law to commit an "assault" or a "battery" at the time of the attack. The trial court disagreed with Krewina, determining that he could not recover under the policy. On appeal, the First District reversed the trial court's judgment. 2021-Ohio-4425, ¶ 47.

{¶ 6} Because the insurance policy at issue is a commercial general-liability contract, we conclude that the civil-law definitions of "assault" and "battery" apply. And because Doherty committed civil assault under the policy, we need not determine whether he committed civil battery. We hold that when a commercial general-liability insurance policy excludes coverage for injuries arising out of an "assault or battery," the subjective intent of the person who committed the assault or battery is irrelevant.

{¶ 7} Therefore, we reverse the judgment of the First District and reinstate the judgment of the trial court.

I. Facts and Procedural Background

{¶ 8} From March 18, 2014, to March 8, 2015, the Center had a commercial general-liability insurance policy with United. Among other exclusions, the policy contained an exclusion for bodily injury arising from "assault or battery," which stated:

> 1. This insurance does not apply to "bodily injury," * * * arising out of or resulting from:
>
> (a) any actual, threatened or alleged assault or battery * * *.

{¶ 9} During the time the policy was in place, Krewina and Doherty were living at the Center. One day, Doherty obtained a knife and attacked Krewina in the Center's kitchen, causing severe injuries to Krewina's neck and back.

{¶ 10} The state indicted Doherty for attempted aggravated murder, attempted murder, and felonious assault. Doherty pled not guilty by reason of insanity to the charges, and the trial court found him not guilty by reason of insanity.

{¶ 11} Krewina filed a civil suit against Doherty and the Center for the injuries he sustained in the attack. The Center asked United to defend and indemnify it. United denied the Center's request, explaining that under the policy, bodily injuries arising out of any actual assault or battery were specifically excluded from coverage. Krewina dismissed his claims against Doherty and settled his claims against the Center. As part of the settlement agreement, Krewina and the Center entered into a stipulation for entry of final judgment awarding final judgment to Krewina and Krewina agreed not to pursue the judgment against the Center.

{¶ 12} Krewina, seeking to collect his judgment, filed a declaratory-judgment action against United in the trial court. He asked the court to declare that United's commercial general-liability policy with the Center covered the judgment he had obtained against the Center. Krewina and United conducted numerous depositions and submitted a joint stipulation of facts to the court.

{¶ 13} The joint stipulation of facts referred to the settlement judgment between Krewina and the Center. The stipulation specifically stated that Krewina and the Center had entered into a settlement agreement, consent judgment, and covenant not to execute. Krewina and the Center stipulated in the settlement agreement that "[a]t the time Doherty inflicted serious bodily injury on Krewina, Doherty suffered from a derangement of his intellect which deprived him of the capacity to govern his conduct in accordance with reason."

{¶ 14} Krewina moved for summary judgment, which the trial court denied. The case proceeded to a bench trial, after which the court entered judgment for United. The court found that United had no duty to indemnify the Center or to satisfy the almost $1 million settlement agreement between Krewina and the Center, because the assault-or-battery-exclusion provision in the policy barred coverage for Krewina's injuries resulting from Doherty's attack. The trial court specifically found:

> Here, Krewina was injured by an assault and battery inflicted upon him by another resident of [the Center]. The fact that Doherty was found to lack the requisite mental state for a criminal conviction does not change that his conduct fits that plain and unambiguous language of the insurance contract Assault and Battery Exclusion.

{¶ 15} On appeal, the First District reversed the trial court's judgment. 2021-Ohio-4425 at ¶ 47. Relying on *Nationwide Ins. Co. v. Estate of Kollstedt*, 71

Ohio St.3d 624, 646 N.E.2d 816 (1995), and quoting the parties' settlement agreement, the court of appeals held that "[b]ecause Doherty 'suffered from a derangement of his intellect which deprived him of his capacity to govern his conduct in accordance with reason,' Doherty did not act intentionally, knowingly, or recklessly," 2021-Ohio-4425 at ¶ 36. The court of appeals then concluded that "Krewina's bodily injury did not arise out of an actual assault or battery." *Id.*

{¶ 16} United appealed to this court, and we accepted jurisdiction to review its sole proposition of law:

> Liability insurance exclusions and limitations for harm arising from assault and battery or abuse are subject-matter provisions that are triggered when an ordinary person would believe that assault and battery or abuse had taken place rather than by the subjective intent of the assailant.

See 166 Ohio St.3d 1533, 2022-Ohio-1922, 188 N.E.3d 206.

II. Law and Analysis

A. Standard of Review

{¶ 17} "An insurance policy is a contract whose interpretation is a matter of law." *Sharonville v. Am. Emps. Ins. Co.*, 109 Ohio St.3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶ 6, citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph one of the syllabus. Therefore, we apply the de novo standard of review when we interpret insurance contracts. *See Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 652 N.E.2d 684 (1995).

B. Nationwide Ins. Co. v. Estate of Kollstedt *Is Distinguishable*

{¶ 18} Krewina argues that the court of appeals' judgment should be affirmed on the authority of *Kollstedt*, 71 Ohio St.3d 624, 646 N.E.2d 816. We disagree.

{¶ 19} The language of the homeowner's liability-insurance policy in *Kollstedt* is distinguishable from the language of the policy at issue here. The policy in *Kollstedt* excluded coverage for bodily injuries "expected or intended" by the insured. *Id.* at 625. Paul Kollstedt, the insured, shot and killed Robert Hatmaker. *Id.* at 624. The state charged Kollstedt with murder but dismissed the charge because Kollstedt was determined to be suffering from a "psychotic illness," *id.*, and was found incompetent to stand trial with no substantial probability of becoming competent, *id.* at 624-625. Kollstedt died shortly thereafter. *Id.* at 625.

{¶ 20} Nationwide Insurance Company, the insurer in *Kollstedt*, brought a declaratory-judgment action against the executor of Hatmaker's estate and the administrator of Kollstedt's estate. *Id.* Nationwide sought a determination that no coverage was available under the policy based on its "expected or intended [acts]" exclusion. *Id.* The trial court disagreed, finding that coverage was available because Kollstedt was "insane" at the time of the shooting and therefore could not have intended that act. *Id.* at 626. The appellate court affirmed. *Id.*

{¶ 21} This court affirmed the court of appeals' judgment, holding that "a provision in a liability insurance policy which excludes coverage to an insured where the insured expected or intended to cause bodily injury * * * does not apply under circumstances where the insured was mentally incapable of committing an intentional act." *Kollstedt*, 71 Ohio St.3d at 627, 646 N.E.2d 816. We further held that because "Kollstedt [had] suffered from a derangement of intellect that deprived him of the capacity to govern his conduct in accordance with reason," he could not have intended his act and therefore the "expected or intended [acts]" exclusion did not apply. *Id.*

{¶ 22} The major difference between *Kollstedt* and this case is the exclusionary language in the policies. In *Kollstedt*, this court gave effect to the language in the policy that excluded coverage for "expected or intended" bodily injuries. *Id.* at 625. We therefore focused our analysis on whether Kollstedt had *intended* to inflict bodily injury. And as we did in *Kollstedt*, we should focus here on the specific language of the policy at issue.

C. Contract Interpretation

{¶ 23} "If we must interpret a provision in [a] policy, we look to the policy language and rely on the plain and ordinary meaning of the words used." *Ward v. United Foundries, Inc.*, 129 Ohio St.3d 292, 2011-Ohio-3176, 951 N.E.2d 770, ¶ 18. "When the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties." *Sunoco, Inc. (R & M) v. Toledo Edison Co.*, 129 Ohio St.3d 397, 2011-Ohio-2720, 953 N.E.2d 285, ¶ 37; *see also Dealers Dairy Prods. Co. v. Royal Ins. Co.*, 170 Ohio St. 336, 164 N.E.2d 745 (1960) (the parties' intent is to be "gathered from the ordinary and commonly understood meaning" of the contract language). While we read insurance-policy exclusions narrowly, "that rule of strict construction does not permit [us] to ignore the obvious intent of an exclusionary provision." *AKC, Inc. v. United Specialty Ins. Co.*, 166 Ohio St.3d 460, 2021-Ohio-3540, 187 N.E.3d 501, ¶ 11.

D. The Assault-or-Battery Exclusion

{¶ 24} To resolve this case, we look to the language of the policy's assault-or-battery exclusion. The exclusion states:

> 1. This insurance does not apply to "bodily injury," * * * arising out of or resulting from:
>
> (a) any actual, threatened or alleged assault or battery * * *.

The policy does not define the terms "assault" or "battery."

{¶ 25} When words in an insurance contract are undefined, we must give them their plain and ordinary meaning. *Guman Bros. Farm*, 73 Ohio St.3d at 108, 652 N.E.2d 684. The contract between the Center and United is a commercial general-liability insurance contract. Therefore, we apply the plain and ordinary civil-law definitions of the terms "assault" and "battery."

{¶ 26} Numerous courts have defined "assault" under Ohio civil and common law as "the willful threat or attempt to harm or touch another offensively, which threat or attempt reasonably places the other in fear of such contact." *See, e.g., Badders v. Century Ins. Co.*, 2d Dist. Montgomery No. 28170, 2019-Ohio-1900, ¶ 14; *Stafford v. Columbus Bonding Ctr.*, 177 Ohio App.3d 799, 2008-Ohio-3948, 896 N.E.2d 191, ¶ 15 (10th Dist.); *Vandiver v. Morgan Adhesive Co.*, 126 Ohio App.3d 634, 638, 710 N.E.2d 1219 (9th Dist.1998); *Stokes v. Meimaris*, 111 Ohio App.3d 176, 186-187, 675 N.E.2d 1289 (8th Dist.1996); *Harris v. United States*, 422 F.3d 322, 330 (6th Cir.2005). *Black's Law Dictionary* defines "assault" in similar terms as "[t]he threat or use of force on another that causes that person to have a reasonable apprehension of imminent harmful or offensive contact." *Id.* at 141 (11th Ed.2019).

{¶ 27} Based on the facts of this case and the applicable definition of "assault," we agree with the trial court and United and conclude that Doherty's attack on Krewina was an "assault" under the policy's assault-or-battery exclusion. There is no doubt that Doherty picked up a knife and attacked Krewina. The act of attacking someone with a knife not only amounts to a willful attempt to harm or a use of force, but it would also cause a reasonable person to be in fear or apprehension of such harm or force. To conclude that Doherty's attack was not an assault under the policy would rewrite the policy to create an exception where one does not exist. Such an exception would be contrary to the policy's assault-or-battery exclusion. Because Doherty's conduct fits the plain and ordinary language

of the policy's assault-or-battery-exclusion provision, Krewina may not recover his judgment from United.

III. Conclusion

{¶ 28} When it comes to contracts, the intent of the parties, as embodied in the plain and ordinary language of the contract, is paramount. If parties enter into an insurance contract that explicitly excludes coverage for injuries arising from assault or battery, courts should not interpret the contract so as to provide such coverage. Courts must refrain from inserting exceptions into contracts where they do not exist.

{¶ 29} What happened to Krewina is unfortunate, but it is the language of the commercial general-liability insurance policy, not our sympathy, that carries the weight in this case. Doherty's attack on Krewina qualified as a civil assault, plain and simple. And the policy excluded coverage for bodily injuries arising from civil assaults. Therefore, we reverse the judgment of the First District Court of Appeals and reinstate the judgment of the trial court.

Judgment reversed
and trial court's judgment reinstated.

DEWINE, DONNELLY, STEWART, BRUNNER, and DETERS, JJ., concur.

FISCHER, J., concurs in judgment only.

Mezibov Butler and Brian J. Butler; and Goodson & Company and Brett Goodson, for appellee.

Collins, Roche, Utley & Garner and Richard M. Garner, for appellant.

Rittgers & Rittgers and Konrad Kircher, urging affirmance for amicus curiae Ohio Association for Justice.

Koehler Fitzgerald, L.L.C., and Timothy J. Fitzgerald, urging reversal for amicus curiae Ohio Association of Civil Trial Attorneys.

Vorys, Sater, Seymour & Pease, L.L.P., Natalia Steele, and Anthony Spina, urging reversal for amicus curiae Ohio Insurance Institute.