

STATE OF MICHIGAN
IN THE 14TH CIRCUIT COURT FOR THE COUNTY OF MUSKEGON
BUSINESS COURT DIVISION

BROTHERHOOD MUTUAL INSURANCE
COMPANY, an Indiana Mutual Ins.
Company

File No. 12-48758-CZ

Plaintiff,

HON. NEIL G. MULLALLY

v

THE ESTATE OF JOHN DEVRIES,
Deceased, DAVID GUNNAR CARLSON
And NORMA JEAN CARLSON, Co-
Trustees of THE JOHN DEVRIES TRUST,
and Co-Personal Representatives of the
THE ESTATE OF JOHN DEVRIES, Deceased,
CALVARY BAPTIST CHURCH OF MUSKEGON
MICHIGAN, a/k/a CALVARY CHURCH, DAVID S.
SANDISON, Registered Agent, CALVARY
CHRISTIAN CHURCH AND SCHOOL, a/k/a/
CALVARY BAPTIST ACADEMY, DR. JEFF
ZERH, Board President, WILLIAM J. RUDD,
Individually and as Senior Pastor/President,
CALVARY CHURCH of MUSKEGON, MICHIGAN
a/k/a CALVARY CHURCH, and CALVARY
CHRISTIAN SCHOOLS, a Michigan not for
Profit corporation.

Defendants.

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Church, David G. Sandison and
William J. Rudd, Individually and as
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OPINION

In this case, the Plaintiff insurance company has filed a Motion for Summary Disposition requesting that the Court rule that it has no obligation to provide insurance coverage, defense, or indemnification to Co-Defendants Calvary Baptist Church of Muskegon, a/k/a Calvary Church and Christian School, and William J. Rudd, in a separate case being litigated in Muskegon County Circuit Court Docket Number 12-88744-CZ. For the sake of brevity, the Court will hereinafter refer to that case as the "DeVries Case." Up to this point, the Plaintiff has been providing, under a reservation of rights, defense services in the DeVries case to the above defendants in this case. Discovery has now expired in this case.

The Plaintiff has based the Motion for Summary Disposition upon MCR 2.116(C)(10):

"Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10).

In essence, the DeVries case is a dispute over who should have ownership of an advised scholarship fund of approximately \$150,000 and an advised endowment fund of approximately \$15,000. Following are the essential facts relevant to this Motion for Summary Disposition.

In 1999 John DeVries donated \$150,000 to Calvary Christian Schools for scholarships and \$15,000 for Calvary Christian Schools' endowment fund. At that time, Defendant William Rudd was and continues to be pastor of Calvary Baptist Church, which owned and operated Calvary Christian Schools. Those funds were then transferred by Calvary Christian Schools as donor on May 10, 2009, to the Community Foundation for Muskegon County, hereinafter referred to as the "Foundation." The Foundation agreed to act as the Agent for Calvary Christian Schools in managing and disbursing as advised funds the \$150,000 scholarship fund and the \$15,000 endowment fund.

Both the Endowment Fund Agreement and the Calvary Christian Schools Scholarship Fund Agreement with the Foundation contained this language concerning dissolution:

"2.4 Dissolution. In the event that Donor ceases to exist as an organization, it is recommended that the assets of the Fund be used to continue the mission of Calvary Baptist Church of Muskegon, Michigan."

In May of 2012, Calvary Baptist Church decided to close the Calvary Christian Schools in June of 2012. A number of supporters of Calvary Christian Schools had already incorporated Calvary Christian Schools as Calvary Christian Schools, Inc., in order to continue operation of the schools independent of Calvary Baptist Church. In

August of 2012, Calvary Baptist Church and Calvary Christian Schools, Inc., entered into a lease, whereby Calvary Christian Schools, Inc., is leasing the school facilities for \$12,000 per month. Calvary Christian Schools, Inc., has continued to operate since that time.

In June or July of 2012, Pastor William J. Rudd of the Calvary Baptist Church informed the Foundation that the Calvary Baptist Church had closed the Calvary Christian Schools, and requested that the Foundation dissolve the endowment and scholarship funds pursuant to the Dissolution paragraph cited above. The Foundation did so, and transferred the assets of the funds to the Calvary Baptist Church. The DeVries case Plaintiffs then filed the DeVries case lawsuit requesting that the Defendants be ordered to return the funds to the Foundation Endowment and Scholarship funds because the Calvary Christian Schools still exists as an organization. When the DeVries case was filed, by ex parte order the two funds were transferred back to the Foundation. On March 15, 2013, in the DeVries case, this Court granted Summary Disposition in favor of the Plaintiffs. Subsequently, the Court has granted a partial Motion for Reconsideration as to the issue of whether Calvary Christian Schools, Inc., is following the Baptist faith tradition as a Christian School.

There are two insurance contracts from the Plaintiff that are at issue in this Motion for Summary Disposition.

One of those insurance contracts is policy #21MPA0414971, which insured the Defendant Calvary Christian School for the period of August 22, 2012, to August 2, 2015. The transfer of funds that is at the center of the DeVries case occurred on July 21, 2012, one month before the inception of the insurance coverage on August 22,

2012. For that reason the Court grants the Plaintiff's Motion for Summary Disposition as to the Defendant Calvary Christian School under policy #21MPA0414971.

The second insurance policy is #12MRA0638109, which covered Calvary Church of Muskegon, with a related insured entity named as Calvary Church and Christian School. This policy has a coverage period of November 25, 2010, until November 25, 2013, and includes the time frame of the acts at issue in the DeVries case.

The crux of this Motion for Summary Disposition is the question of whether that policy provides coverage to any of the defendants in this case vis-à-vis their act complained of in the DeVries case, i.e., the transfer of the two funds from the Foundation to the Calvary Baptist Church.

The three areas of coverage provided by the insurance contract are Commercial Liability Coverage, Broad Form Directors and Officers Liability Coverage, and Liability and Medical Coverage.

Each of those coverage areas require that an "occurrence" must take place for coverage to be provided. Paragraph 15 of the definitions section of the Commercial Liability Coverage defines "occurrence":

"Occurrence means an accident and includes repeated exposure to similar conditions."

The Court finds that the Defendants' act in the DeVries case was not an accident and so did not constitute an "occurrence." Therefore, the Court finds that the Defendants are not entitled to coverage under policy #12MRA0638109. The Court further finds that the Defendants herein did not suffer financial damage as defined in that policy, nor did they experience bodily injury, personal injury, or property damage.

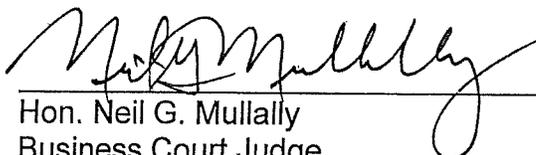
Finally, the Court finds that the Defendants are excluded from coverage because their act in the DeVries case was willful and self-serving.

As already mentioned, the DeVries case is essentially an action to determine ownership of the two Foundation funds. In analyzing this Motion for Summary Disposition, the Court found it helpful to ask this question: If before the funds had been transferred by William Rudd to his church, the DeVries Plaintiffs had filed a declaratory action to determine ownership of the funds, would Brotherhood Mutual Insurance Company have been obligated to provide defense services to the Defendants, who would have been claiming ownership of the two funds pursuant to the dissolution clause in the Foundation agreement? Clearly the answer to that question is "No." The mere fact that the Defendant William Rudd actually transferred possession of the two funds under the dissolution clause does not change the fundamental core issue of ownership in the DeVries case, especially with the funds having already been ordered returned to the Foundation by ex parte order when the DeVries case was filed.

For all the above reasons, and in addition based upon the legal authority cited by both Counsel in their excellent pleadings and briefs, the Court also grants the Plaintiff's Motion for Summary Disposition related to policy 12MRA0638109 as to the Co-Defendants Calvary Baptist Church of Muskegon, a/k/a Calvary Church and Christian School, and William J. Rudd.

Plaintiff's counsel shall submit an order in accordance with this Opinion and Michigan Court Rules.

October 7, 2013



Hon. Neil G. Mullally
Business Court Judge
14th Circuit Court