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**IN THE
COURT OF APPEALS OF INDIANA**

JASON CURTIS, BRAD CURTIS and)
RHONDA CURTIS,)

Appellants,)

vs.)

No. 01A02-0812-CV-1179

THE NATIONAL MUTUAL INSURANCE)
COMPANY and CELINA INSURANCE GROUP,)

Appellees.)

APPEAL FROM THE ADAMS CIRCUIT COURT
The Honorable Frederick A. Schurger, Judge
Cause No. 01C01-0206-CT-8

May 12, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Jason Curtis, Brad Curtis, and Rhonda Curtis (collectively “the Curtises”) appeal from the trial court’s denial of their Motion for Leave to File Second Amended Counterclaim¹ against The National Mutual Insurance Company and Celina Insurance Group (collectively “National”). However, because we hold that we do not have jurisdiction, we do not reach the merits of the appeal.

We dismiss.

FACTS AND PROCEDURAL HISTORY

We set out the facts and procedural history of this case in National Mutual Insurance Co. v. Curtis, 867 N.E.2d 631, 632-34 (Ind. Ct. App. 2007) (“Curtis I”):

In June of 1998, National Mutual Insurance Co., owned by Celina Insurance Group, issued a homeowner’s insurance policy to the Curtises, with an initial coverage period from June 30, 1998 to June 30, 1999. The main policy form of the homeowner’s policy encompassed eighteen pages, containing, among others, the definitional section, the liability coverage, and exclusions thereto. In addition, the Curtises received fourteen pages of supplemental information, described as forms and endorsements and which included a section entitled “Supplemental Extensions.”

Specifically, with regard to liability coverage, the main policy form stated:

SECTION II-LIABILITY COVERAGES

COVERAGE E-Personal Liability

If a claim is made or a suit is brought against an “insured” for damages because of “bodily injury” or “property damage” caused by an “occurrence” to which this coverage applies, we will:

¹ The Curtises “counterclaim” against National is actually a counterclaim to National’s cross-claim. For ease of discussion, we will refer to it merely as a counterclaim.

1. Pay up to our limit of liability for the damages for which the “insured” is legally liable. Damages include prejudgment interest awarded against the “insured;” and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when the amount we pay for damages resulting from the “occurrence” equals our limit of liability.

Under the subsequent section, Exclusions, National Mutual excluded the following item from coverage:

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. . . .

An additional exclusion to this section is included in the Supplemental Extensions part of the fourteen-page supplemental information, and states:

Under this section [i.e., exclusions from liability coverage], Exclusion m. is added:

m. Arising out of the ownership, maintenance or use of a trampoline.

At the time the policy was entered into, the Curtises acknowledge receiving a complete copy of the insurance policy, including the Supplemental Extensions form.

In October 1998, National Mutual issued a new edition of the Supplemental Extensions form. At the anniversary date of the policy in June 1999, the Curtises received a renewal declaration sheet that designated this new edition as applicable to their renewed policy and extended the policy’s term to June 30, 2000. Again, the trampoline exclusion was included at the bottom of this form. However, this new edition of the Supplemental Extensions form was never sent to the Curtises.

On June 6, 2000, Beaulieu attended a party hosted by the Curtises to celebrate Jason's graduation from high school. During the party, Beaulieu jumped on the trampoline in the Curtises' backyard, sustaining a compound fracture to his left leg.

On June 3, 2002, Beaulieu filed a Complaint against the Curtises, seeking damages for his personal injury. On May 25, 2005, Beaulieu amended his Complaint, adding National Mutual as a party and seeking a declaration that the Curtises' homeowner's insurance policy provided liability coverage for his injuries. Thereafter, on August 11, 2005, National Mutual answered Beaulieu's Complaint and, at the same time, filed a counterclaim together with a cross-claim against the Curtises, each requesting a declaration that coverage was excluded under the Curtises' policy for injuries arising out of the ownership, maintenance or use of a trampoline. Subsequently, on September 6, 2006, the Curtises filed an answer to Beaulieu's amended Complaint and a [counter]-claim against National Mutual, seeking coverage under the policy. All parties filed motions for summary judgment regarding their respective coverage positions. On August 29, 2006, a hearing on the motions was held. The following month, on September 26, 2006, the trial court entered its Order, denying National Mutual's motion for summary judgment and granting the Curtises' cross-motion for summary judgment, declaring that National Mutual owes a duty to defend against Beaulieu's Complaint.

(Citations omitted).

We affirmed the trial court's grant of summary judgment in favor of the Curtises, and several months later the Curtises filed their motion for leave to file second amended counterclaim. In particular, the Curtises sought to amend their counterclaim to add claims of breach of contract and bad faith against National. Following a hearing, the trial court denied that motion. This appeal ensued.

DISCUSSION AND DECISION

In their Appellants' Case Summary, the Curtises state that they are appealing from the trial court's November 7, 2008, Order denying their motion to amend their

counterclaim. They also state that that Order is not a final judgment as to all claims and all parties, but that it is appealable under Trial Rule 54(B). We cannot agree.

The November 7 Order is an interlocutory order. The Curtises did not seek certification of that Order for appeal under Appellate Rule 14, but filed their notice of appeal on December 5 under Appellate Rule 54(B), which was improper. And while the trial court issued an Order on December 10 designating the November 7 Order as a final, appealable order under Appellate Rule 54(B), we hold that we have no jurisdiction to hear this appeal.

In Hoesman v. Sheffler, 886 N.E.2d 622, 634 (Ind. Ct. App. 2008), we held that a trial court's order denying a plaintiff's motion to amend a complaint is "not the type of order[] contemplated under Trial Rule 54, as [it] do[es] not 'possess the requisite degree of finality [or] dispose of at least a single substantive claim.'" (Quoting Cardiology Assocs. of Nw. Ind., P.C. v. Collins, 804 N.E.2d 151, 154 (Ind. Ct. App. 2004)). Instead, we held that an order denying a motion to amend a complaint is "of the type that 'places the parties' rights in abeyance pending ultimate determination by the trier of fact.'" Id. at 634-35 (quoting Collins, 804 N.E.2d at 155). As such, we held that the sole method by which a party can appeal such an order is through an interlocutory appeal pursuant to Appellate Rule 14. Id. at 635. Here, because the Curtises did not seek certification of this interlocutory appeal under Appellate Rule 14, we do not have jurisdiction to hear it.

This is so even though the trial court declared that the November 7 Order was a "final[,] appealable judgment" in a subsequent Order dated December 10. In Ramco Industries, Inc. v. C & E Corp., 773 N.E.2d 284, 288 (Ind. Ct. App. 2002), we observed

that under Trial Rule 54(B) a trial court can “certify” an interlocutory appeal as a final, appealable order if the trial court includes the “magic language,” namely, that there is no just reason for delay, and directs entry of judgment. But “[t]o be properly certifiable under [Trial Rule 54(B)], a trial court order must ‘possess the requisite degree of finality, and must dispose of at least a single substantive claim.’” Id. (quoting Legg v. O’Connor, 557 N.E.2d 675, 676 (Ind. Ct. App. 1990)). Here, as in Hoesman, the Order denying the Curtises’ motion for leave to amend their counterclaim does not possess the requisite degree of finality required under Trial Rule 54(B). Moreover, the trial court did not declare that there is no just reason for delay with respect to the November 7 Order. Regardless, we are not bound by a trial court’s Trial Rule 54(B) designation. See Ramco, 773 N.E.2d at 289 (dismissing appeal for lack of jurisdiction; disagreed with trial court’s certification of interim attorney’s fee award as final, appealable order). We agree with National that the denial of the Curtises motion to amend their counterclaim is interlocutory and has not been properly certified for appeal under Appellate Rule 14(B).

Dismissed.

FRIEDLANDER, J., and VAIDIK, J., concur.