STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. YOR-23-413

METROPOLITAN PROPERTY & CASUALTY INSURANCE COMPANY,
Appellee,

v.

SUSAN MCCARTHY, et al.,
Appellant.

On Appeal from the Superior Court, York County
Docket No. CV-15-263

BRIEF OF APPELLEE METROPOLITAN PROPERTY & CASUALTY INSURANCE COMPANY

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I. INTRODUCTION

This case involves a straightforward issue of contract interpretation. The trial court (*Mulhern, J.*) correctly applied the insurance policy's plain language to determine that coverage for the injuries at issue was excluded by the policy, and therefore Appellee Metropolitan Property and Casualty Insurance Company ("Metropolitan") had no duty to indemnify. On appeal, Appellant Susan McCarthy asserts a strained interpretation of the policy—that the term "you" should sometimes mean something other than what the policy explicitly defines it to mean—in hopes that this Court will reach the opposite conclusion. This Court should reject McCarthy's attempts to rewrite the parties' agreement and uphold the trial court's decision.

II. BACKGROUND

A. Factual background.

The trial court's findings of fact are supported by evidence in the record and are largely undisputed. McCarthy has a son, referred to in these proceedings as MCM. During the relevant time period, MCM was frail and thin and had some medical issues. (A. 26.) Beginning in 2007, McCarthy's friend, Glynis Dixon McCormack, would babysit MCM. (A. 27.)[1] McCormack has a

[1] Metropolitan notes that paragraph 6 erroneously states that McCormack would babysit for "ZC" rather than "MCM."

nephew, referred to in these proceedings as ZC. (A. 26.) ZC lived in McCormack's home, and she was his legal guardian. (*Id.*) ZC was three years older than MCM, was strong, and had no physical issues. (*Id.*) It is undisputed that MCM suffered sexual, physical, and emotional abuse at the hands of ZC. (A. 27.) It is also undisputed that ZC intended to cause the abuse. *See* A. 38.

At all times relevant to the abuse suffered by MCM, McCormack had an insurance policy with Metropolitan. (A. 29.) The named insured is Glynis Dixon, who the parties stipulated is the same person as Glynis Dixon McCormack. (A. 136.) The parties have also stipulated that ZC meets the definition of "you" under the Metropolitan insurance policy. (*Id.*)

B. Procedural background.

In February 2012, McCarthy brought a tort action against McCormack (individually and as guardian of ZC) alleging sexual and physical abuse, negligence, breach of fiduciary duty, and premises liability. (A. 27-28.) Metropolitan brought a separate lawsuit seeking a declaratory judgment that it had no duty to defend or indemnify McCormack in the tort action. As a result of the declaratory judgment action, Metropolitan had a duty to defend McCormack, but the indemnification question was left for another day. (A. 28.)

In November 2013, McCarthy and McCormack reached a settlement agreement, which was formalized by a $300,000 consent judgment on

December 11, 2013. (A. 28-29.) Under the consent judgment, McCormack was not personally liable for the settlement amount, and McCarthy released and discharged all claims against her. (A. 29.)

Metropolitan then filed this lawsuit, seeking to determine its obligation to provide coverage for the consent judgment. (*Id.*) McCarthy counterclaimed to recover the full amount of the consent judgment pursuant to 24-A M.R.S. § 2904. (*Id.*)

A bench trial was held on July 7, 2022 (A. 26), and the trial court issued its decision on September 19, 2022 (A. 42). The court held that ZC's abuse of MCM constituted bodily injury under the insurance policy, and so it would be covered so long as it was not subject to an exclusion. (A. 36.) The court further concluded that both the intentional loss exclusion and the abuse exclusion barred coverage. (A. 38-40.) Because Metropolitan therefore had no duty to indemnify, the Court granted judgment in favor of Metropolitan on its claims and against McCarthy on Counts I and II of her counterclaim. Count III of her counterclaim (unfair claims settlement practices) remained pending. (A. 41-42.) Shortly after, the trial court likewise dismissed Count III based upon its decision that there is no coverage under the insurance policy for the consent judgment. (A. 45.)

On October 3, 2022, McCarthy filed a motion for amended and/or additional findings of fact and a motion to alter or amend the judgment, which Metropolitan opposed. (A. 43.) The trial court concluded that the September 19, 2022 judgment was correctly decided and denied McCarthy's motions. (A. 43-44.) McCarthy appeals.

C. Relevant policy provisions.

The Metropolitan insurance policy provides certain coverage, as follows:

> **We** will pay all sums for **bodily injury** and **property damage** to others for which the law holds **you** responsible because of an **occurrence** to which this coverage applies. This includes prejudgment interest awarded against **you**.

(A. 115.)

The policy also contains exclusions. Two are at issue here. First, the "intentional loss" exclusion provides:

> 1. **Intentional Loss**. **We** do not cover **bodily injury** or **property damage** which is reasonably expected or intended by **you** or which is the result of **your** intentional and criminal acts or omissions. This exclusion is applicable even if:
> A. **you** lack the mental capacity to govern **your** conduct;
> B. such **bodily injury** or **property damage** is of a different kind or degree than reasonably expected or intended by **you**; or
> C. such **bodily injury** or **property damage** is sustained by different person than expected or intended by **you**.
> This exclusion applies regardless of whether **you** are actually charged with or convicted of a crime. However this exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force by **you** to protect persons or property.

(A. 115.)

Second, the "abuse" exclusion provides:

> 18. **Abuse. We** do not cover **bodily injury** caused by or resulting from the actual, alleged or threatened sexual molestation or contact, corporal punishment, physical abuse, mental abuse or emotional abuse of a person. This exclusion applies whether the **bodily injury** is inflicted by **you** or directed by **you** for another person to inflict sexual molestation or contact, corporal punishment, physical abuse, mental abuse or emotional abuse upon a person.

(A. 119.)

The policy contains certain defined terms in bold. In particular, it provides:

> The following words and phrases appear repeatedly throughout this policy. They have a special meaning and are to be given that meaning whenever used in this policy or any endorsement which is part of this policy. . .
> **"You"** and **"your"** mean:
> 1. the person or persons named in the Declarations and if a resident of the same household:
>
> A. the spouse of such person or persons;
> B. the relatives of either; or
> C. any other person under the age of twenty-one in the care of any of the above . . . .

(A. 94, 95.)

III. ISSUES PRESENTED FOR REVIEW

1. Did the trial court correctly determine that coverage for the injuries alleged here was barred by the applicable policy exclusions?

2. Was it appropriate for the trial court to make reference to public policy concerns that are directly applicable to the coverage issues in this case?

3. Where coverage for the injuries alleged here is barred, did the trial court correctly dismiss Count III of McCarthy's counterclaim?

4. Did the trial court abuse its discretion in declining to make additional findings of fact related to undisputed provisions of the policy?

IV. ARGUMENT

This appeal boils down to one question: are the relevant policy exclusions applicable here? *See* Blue Br. 13 (agreeing that "the primary issue on appeal for this Court is whether the claims are subject to any of the relevant policy exclusions"). If this Court agrees with the trial court that the exclusions apply to bar coverage, McCarthy's appeal fails. For the reasons that follow, this Court should affirm.

A. The trial court correctly determined that the exclusions barred coverage.

1. Legal standard.

Whether the insurance policy exclusions are applicable here is a matter of contract interpretation. "The interpretation of an insurance contract is a matter of law that [this Court] review[s] de novo." *Sarah G. v. Maine Bonding & Cas. Co.*, 2005 ME 13, ¶ 10, 866 A.2d 835. "Under Maine law, . . . the paramount

principle in the construction of contracts is to give effect to the intention of the parties as gathered from the language of the agreement viewed in the light of all the circumstances under which it was made." *Wright-Ryan Const., Inc. v. AIG Ins. Co. of Canada*, 647 F.3d 411, 414 (1st Cir. 2011) (quotation marks omitted).

"Exclusions in an insurance contract are interpreted consistently with their obvious contractual purpose." *Sarah G.* , 2005 ME 13, ¶ 10, 866 A.2d 835. "Unambiguous provisions in insurance contracts, as with any other contract, must be interpreted as written, giving force to their plain meaning." *Wright-Ryan Const., Inc.*, 647 F.3d at 414 (quotation marks omitted); *see also Med. Mut. Ins. Co. of Maine v. Indian Harbor Ins. Co.*, 583 F.3d 57, 60 (1st Cir. 2009) (where policy language is unambiguous, it "must be given its plain and ordinary meaning").

"Although ambiguities in standard insurance policies drafted by the insurer are interpreted against the insurer, exclusionary language is not ambiguous if an ordinary person in the shoes of the plaintiff would understand that the policy does not cover [his or her] claims." *Sarah G.*, 2005 ME 13, ¶ 10, 866 A.2d 835 (quotation marks omitted). "Policy language is ambiguous if it is reasonably susceptible of different interpretations . . . ." *Metro. Prop. & Cas. Ins. Co. v. McCarthy*, 754 F.3d 47, 50 (1st Cir. 2014)

(quotation marks omitted). "The mere fact of a dispute over the meaning of a particular provision does not render that provision ambiguous; it will be so deemed only when an ordinary person would not understand that the provision has a single accepted meaning." *Wright-Ryan Const., Inc.*, 647 F.3d at 414.

2. Application of the unambiguous policy language.

At issue here are two exclusions in the insurance policy—the intentional loss exclusion (excluding from coverage bodily injury "which is reasonably expected or intended by **you** or which is the result of **your** intentional and criminal acts"), and the abuse exclusion (excluding from coverage bodily injury cause by, inter alia, sexual or physical abuse, whether the injury "is inflicted by **you** or directed by **you**"). McCarthy admits that ZC qualifies as a "you" (A. 136) and says that if McCormack also falls under the term "you," then the policy's exclusions apply. *See* Blue Br. at 17 (conceding this with regard to intentional loss exclusion); Blue Br. at 28 (conceding this with regard to the abuse exclusion). Because both McCormack and ZC fall within the definition of "you" and that definition applies in every instance where that term is used in the policy, including the exclusions, McCarthy's appeal fails.

McCarthy agrees that, for purposes of determining who qualifies as "you" under the policy, the specific language of the policy at issue is important. *See* Blue Br. at 18. The insurance policy in this case provides:

> The following words and phrases appear repeatedly throughout this policy. *They have a special meaning and are to be given that meaning whenever used in this policy* or any endorsement which is part of this policy. . .
> **"You"** and **"your"** mean:
> 1. the person or persons named in the Declarations and if a resident of the same household:
>
> A. the spouse of such person or persons;
> B. the relatives of either; or
> C. any other person under the age of twenty-one in the care of any of the above . . . .

(A. 94, 95 (italics added).)

"When a term is expressly defined within the four corners of an insurance policy, an inquiring court must defer to that definition and thereby give effect to the intent of the parties." *Med. Mut. Ins. Co. of Maine*, 583 F.3d at 60; *see also id.* ("Where the parties to a contract take pains to define a key term specifically, their dealings under the contract are governed by that definition.") (quoting *In re Blinds to Go Share Purchase Litig.*, 443 F.3d 1, 7 (1st Cir. 2006)). Given this clear definition and the policy's mandate to apply this definition whenever the terms "you" and "your" are used, any ordinary person would reasonably expect that "you" and "your," as used in the intentional loss and abuse exclusions, means what the policy says they mean. The Court must

defer to this unambiguous definition. *See Wright-Ryan Const., Inc.*, 647 F.3d at 415–16 (applying the plain language of the insurance policy and finding that the definition of "you" is unambiguous and so the court must defer to that definition).

There is no dispute that ZC qualifies as "you" under the policy. *See* Blue Br. at 29 (stating that "the parties stipulate that ZC is a 'you,' i.e., an insured under the Policy"); A. 136 (parties' stipulations of fact for trial). It is also not disputed that the person named in the Declarations is McCormack. *See* A. 90 (naming Glynis Dixon on the insurance policy); *see also* A. 136 (parties' stipulating that Glynis Dixon is Glynis Dixon McCormack). It is her insurance policy. *See, e.g.*, Blue Br. at 9 (stating that "[a]t all relevant times, the McCormacks were insured by Metropolitan"). Because ZC and McCormack both qualify as "you" under the policy's definition of that term, the term "you" must be given that meaning whenever it is used in the policy, including in the intentional loss and abuse exclusions. *See* A. 94. *Accord Econ. Premier Assur. Co. v. Fairfull*, No. CIV. A. 08-CV-082, 2010 WL 654484, at *13 (W.D. Pa. Feb. 23, 2010) (where policy "unambiguously identifies 'you' and 'your' as the insured named on the declarations page and any resident of the house that is a relative of the named insured or insureds[,] . . . [t]he plain and unambiguous

language of the policy cannot be tortured to preclude the application of the exclusion").

Specifically, the intentional loss exclusion applies because bodily injury was reasonably expected or intended by ZC. That ZC is a person within the definition of term "you" and that he expected or intended to cause the bodily injury to MCM are not disputed. The abuse exclusion likewise applies because the bodily injury included sexual and physical abuse inflicted by ZC. There is no alternative interpretation of the defined term "you" which would make it refer only to the "you" who perpetrated the loss and abuse and not to another person within the definition of "you." "You" is unambiguous. The exclusions apply, and the Court need not go any further.

3. McCarthy's alternative interpretation is wrong.

Although McCarthy appears to rely on the definitions of the bolded terms in the policy for purposes of determining coverage, *see* Blue Br. at 10, her position is that "you"—as that term is used in the policy's exclusions—should not apply to everyone defined as "you" in the policy. *See, e.g.*, Blue Br. 24 ("The word 'you' in Metropolitan's policy refers to the insured. Nothing in the use of the word 'you' demonstrates that it applies to 'all people defined as you.'"). This makes no sense. Her interpretation contradicts the policy's plain language and fails to acknowledge that "you" is a defined term. As discussed

above, "you" means anyone that is defined as "you" under the unambiguous definition. *See* A. 94.

Setting the plain language of the policy aside, McCarthy urges that, at least for purposes of the policy's exclusions, the defined term "you" should be replaced with the words "the insured." After substituting the defined term "you" with the words "the insured" (rather than applying the plain definition of the term), McCarthy insists that the policy can then be interpreted to not bar coverage as to McCormack. According to McCarthy, once the policy language is reformed to substitute the words "the insured" for "you," then the exclusions can be read to only bar coverage as to ZC, not McCormack, because it was ZC who intended and inflicted the bodily injury on MCM.

The Court need not go through this protracted exercise—it need only apply the policy's unambiguous definitions, as the policy requires. *See* A. 94 (the words "you" and "your" "have a special meaning and are to be given that meaning whenever used in this policy"). Because the parties have stipulated that ZC is a "you," his intentional acts and abuse triggers the policy's two exclusions. The analysis should stop there. *See, e.g.*, *Com. Union Ins. Co. v. Alves*, 677 A.2d 70, 72 (Me. 1996) (declining to resolve dispute over what "insured" meant in policy exclusion and instead applying plain language of the policy's definition of "you" to find no duty to indemnify).

Because the policy exclusions at issue use the defined terms "you" and "your" and say nothing about "the insured," the cases McCarthy cites in her brief are unpersuasive. McCarthy relies heavily on *Hanover Ins. Co. v. Crocker*, where a policy excluded coverage for bodily injury "expected or intended from the standpoint of 'the insured.'" 1997 ME 19, ¶ 7, 688 A.2d 928. The Court's analysis in *Crocker* was based on this specific policy language, and in particular the distinction between this quoted language, and the "an insured" exclusion language found in other policies. *Id.* ¶ 8 (reasoning that "the insured" refers to a definite, specific insured, who is directly involved in the occurrence that causes the injury, whereas "an insured" means that the conduct of any insured that is excluded from coverage bars coverage for each insured under the policy). *See also Johnson v. Allstate Ins. Co.*, 1997 ME 3, ¶¶ 6-7, 687 A.2d 642 (interpreting exclusion for damages intentionally caused by "an insured person" by adhering to the plain language and correct usage of the English language in the insurance contract).

Again, the exclusions at issue here do not use the terms "the insured" or "an insured" at all. Rather, they use a defined term—one not used in *Crocker* or *Johnson*—and this Court need only apply the term's unambiguous definition. *Crocker* and other cases grappling with how to interpret other

terms not found in our policy are therefore irrelevant.[2] They are helpful only for the unchallenged proposition that applicability of policy exclusions depends on how the exclusion is drafted.

Indeed, as McCarthy herself maintains, "coverage[] turn[s] on the language of the specific policy at issue in each case." Blue Br. at 20. Thus, it is more instructive to look at how courts have interpreted this same Metropolitan policy language under similar fact patterns. In *Metro. Prop. & Cas. Ins. Co. v. Colmey*, for example, an action was commenced against the parents of a minor (TC), for sexually assaulting another minor (BS), and the court ruled that the policy's intentional act exclusion precluded coverage for the resulting injuries. No. 18 CV 9259 (VB), 2019 WL 6184262, at *1–2 (S.D.N.Y. Nov. 20, 2019). The relevant exclusion language in the Colmeys' policy was identical to the language in this case. *Compare id.* at *3 (excluding "bodily injury 'which is reasonably expected or intended by you or which is the result of your intentional and criminal acts or omissions'"), *with* A. 115 (excluding bodily injury "which is reasonably expected or intended by **you** or

[2] *Crocker* is also distinguishable in that it involved the duty to *defend*, not the duty to *indemnify*. Although the Court determined that there was a duty to defend in that case, the Court declined to rule on whether there was a duty to indemnify, explaining that "[t]he duty to defend is broader than the duty to indemnify, and an insurer may have to defend before it is clear whether a duty to indemnify exists." *Hanover Ins. Co. v. Crocker*, 1997 ME 19 ¶ 1 n.1, 688 A.2d 928. Here, the issue is whether Metropolitan has a duty to indemnify.

which is the result of **your** intentional and criminal acts or omissions"). The Colmeys' policy also contained an identical definition of "you" and "your." *Compare id.* at *2–3 ("The Colmeys' policy defines the terms 'you' and 'your' as: 1. the person or persons named in the Declarations and if a resident of the same household: A. the spouse of such person or persons; B. the relatives of either; or C. any other person under the age of twenty-one in the care of any of the above."), *with* A. 94-95 ("'**You**' and '**your**' mean: 1. the person or persons named in the Declarations and if a resident of the same household: A. the spouse of such person or persons; B. the relatives of either; or C. any other person under the age of twenty-one in the care of any of the above."). In applying this same definition of "you" and "your," the court found that the Colmeys' minor son, TC, was an insured under the policy. *See id.* at *3. The court went on to decide that BS's injuries were the result of TC's intentional conduct, and his conduct would be intentional "even if the Colmeys' indeed were negligent in the supervision of their minor son." *Id.* Because "[t]he 'gravamen' of the . . . action [sought] to hold the Colmeys liable for injuries resulting from T.C.'s intentional acts. . . . the policy's intentional act exclusion preclude[d] coverage for any alleged harm resulting from T.C.'s intentional conduct." *Id.*

Another example is *Metro. Prop. & Cas. Ins. Co. v. Rodick*, No. 121CV1039GTSATB, 2023 WL 6122849 (N.D.N.Y. Sept. 19, 2023). There, a court again considered a similar fact pattern—generally, whether the Metropolitan policy owned by JR's parents excluded coverage for JR's sexual assault of another minor. *Id.* at *1. That policy contained an identical definition of the word "you," *see id.* at *2, as well as an identical intentional loss exclusion and an identical abuse exclusion, *see id.* at *7. The court determined that JR's actions were explicitly excluded from coverage in the policy by the intentional loss and abuse exclusions. *Id.* at *7. Relying on *Colmey*, the *Rodick* court concluded that the intent of the parties to exclude coverage for sexual abuse perpetrated by a child of an insured was clear from the Metropolitan property language. *Id.*

Here, the parties have stipulated that ZC qualifies as "you" under the policy (A. 136), and McCarthy seeks to hold McCormack liable for ZC's intentional bodily injury and abuse. Applying the policy's unambiguous definitions to its exclusion language, there is no coverage for alleged injuries that resulted from ZC's conduct. Like these recent cases interpreting this same policy language under substantially similar facts, Metropolitan has no duty to indemnify.

McCarthy's assertion that reading the policy as a whole demonstrates that "you" does not apply to "all insureds" gets her nowhere. In particular, McCarthy points to a provision related to property loss as an example of Metropolitan making clear that "you" applies to all insureds. *See* Blue Br. at 21 (citing A. 106). While that provision may contain language clarifying that no one defined as "you" is entitled to coverage, even those who do not commit the act causing the loss, there are other provisions that clarify that the exclusion does not apply to an insured not participating in the loss (*see* A. 123), and there are provisions like the intentional loss and abuse exclusions at issue here, which simply rely on the defined terms to explain when coverage is excluded, without exceptions. Nowhere does the policy change the definition of "you" or "your." McCarthy's misreading of the policy does not render its plainly defined terms ambiguous.

Entertaining McCarthy's position at all would involve rejecting the plain language of the policy and instead proceeding to determine whether the defined term "you" is more like words "the insured" or more like "an insured"—two phrases that are not used whatsoever in the policy's exclusions. But the practical application of the defined term to the policy's exclusions demonstrates that coverage for everyone is excluded by intentional harm or abuse perpetrated by any person within the definition of "you." Put

differently, coverage for any insured is barred by intentional abuse committed by any insured. As the trial court found, "[r]eplacing 'an insured' with 'you' does not create any practicable differences to the exclusion whereby 'you' is defined in the policy as 'the person or person named in the Declarations and if a resident of the same household . . . any other person under the age of twenty-one in the care of any of the above.'" (A. 38.)

This is consistent with the First Circuit's prior reasoning in this case. *See Metro. Prop. & Cas. Ins. Co. v. McCarthy*, 754 F.3d 47, 50 (1st Cir. 2014) (concluding that exclusion for abuse "should be applied only to an insured—i.e., anyone who qualifies as 'you' under the policy" and exclusion for intentional acts "also applies only to an insured"). McCarthy says that the First Circuit determined that the abuse exclusion was ambiguous, but she fails to provide the full context. (Blue Br. at 4.) Although McCarthy has now conceded that ZC is a "you" and an insured under the policy (A. 136), the reason for the ambiguity at the First Circuit was that it was not clear from the underlying complaint whether ZC was a person within the policy definition of "you." And under the First Circuit's interpretation of the abuse exclusion, it could "reasonably . . . be read to preclude coverage only for abuse inflicted or directed by an *insured* rather than by *any* individual." *Id.* at 49. The ambiguity lied in parsing whether the exclusion could be read to cover only someone

who qualified as "you" or whether it could in addition include abuse by those who do not qualify as "you." The First Circuit concluded that "the abuse exclusion should be applied only to an insured—i.e., anyone who qualifies as 'you' under the policy." *Id.* at 50. If McCarthy had at that time admitted (as she has now) that ZC qualifies as "you," that could have been the end of it. Now that McCarthy has made that concession, this Court can use the First Circuit's interpretation of the policy to determine that both the intentional loss and abuse exclusions apply to anyone who qualifies as "you." Because ZC is a "you," and he intended to harm MCM and abuse MCM, both exclusions apply to eliminate coverage for McCormack.

B. The trial court's dicta regarding public policy is spot on.

McCarthy devotes a section of her brief to the argument that public policy does not prohibit insurance coverage for an insured whose negligence contributed to an injury from sexual abuse. First of all, as explained above, the trial court correctly determined that Metropolitan had no duty to indemnify based on its conclusion that the bodily injuries sustained by MCM were not covered by the insurance policy under both the intentional loss and abuse exclusions. (A. 42.) The court did not base its decision on any conclusion that the coverage was barred by public policy, it simply noted that this area of the law as it relates to public policy is far from settled. (A. 41.) McCarthy herself

admits that this was merely a "suggestion" on the part of the trial court. Blue Br. at 14.

In challenging this issue on appeal, McCarthy again relies on a nearly-30-year-old case: *Crocker*, 1997 ME 19, 688 A.2d 928. There, the court addressed the argument that providing coverage for injury resulting from sexual abuse contravened public policy. *Id.* ¶ 9. Because the policy in that case provided coverage for negligent conduct, the court held that "[p]ublic policy prohibiting coverage for intentional sexual abuse does not override the language of this insurance contract." *Id.*

In contrast, the policy at issue in this case excludes coverage for McCormack's negligent conduct related to the injuries stemming from ZC's intentional conduct.[3] The trial court rightly pointed out that while there may be no public policy prohibiting coverage for negligence that is distinct from injuries proximately caused by a coinsured's sexual abuse of a child, here the injuries are not distinct from the injuries proximately caused by ZC's sexual abuse of MCM. (A. 41.) Here, as in *Colmey* discussed above, McCarthy seeks to hold McCormack liable for the injuries resulting from ZC's intentional acts. *See Colmey*, 2019 WL 6184262, at *3. In such a case, it would not be erroneous for

[3] And the parties agreed in the policy that the acts of one insured would be binding on any other insured. *See* A. 94.

the trial court to make a finding that coverage was barred by public policy. But in any case, the trial court did not even go so far, so this issue provides no grounds to vacate the trial court's ruling.

C. Count III of McCarthy's counterclaim was properly dismissed.

Count III of McCarthy's counterclaim brought an "unfair claims settlement practices" claim against Metropolitan, alleging that Metropolitan without just case failed to effectuate a prompt, fair and equitable settlement of the claims submitted (i.e., the $300,000 consent judgment). *See* A. 68-69. The trial court dismissed this claim after finding that there is no coverage under the insurance policy. *See* A. 45. McCarthy's only qualm with this ruling on appeal is that the court erred in its decision on coverage. *See* Blue Br. at 36. Because, as discussed above, coverage is barred under the policy's intentional loss and abuse exclusions, the trial court correctly determined that Metropolitan has no duty to indemnify. Because there is no duty to indemnify, there is no obligation to effectuate a prompt settlement of the claim, and Count III was rightly dismissed.

D. The trial court did not abuse its discretion in denying the motion for additional findings of fact.

McCarthy filed a motion for amended and/or additional findings of fact pursuant to M.R. Civ. P. 52(b), which the court denied after considering the

submissions of the parties and their oral arguments. This Court "review[s] the trial court's denial of a motion for findings of fact for an abuse of discretion." *Boyd v. Manter*, 2018 ME 25, ¶ 8, 179 A.3d 906 (quoting *Dalton v. Dalton*, 2014 ME 108, ¶ 21, 99 A.3d 723).

In this case, the trial court issued an 18-page order, with thirty-two findings of fact and additional conclusions of law. (A. 25-42.) The insurance policy was admitted in evidence and the most relevant provisions were quoted directly in the decision. *See* A. 26, 29-30. The court's order provides more than sufficient reasoning for this Court to conduct its appellate review (and it has the additional benefit of the complete appendix, which contains the relevant insurance policy in full). *See, e.g.*, *Boyd*, 2018 ME 25, ¶ 8, 179 A.3d 906 (no abuse of discretion where trial court presented a clear statement of the basis for its judgment sufficient for appellate review); *Sheikh v. Haji*, 2011 ME 117, ¶ 15 n.3, 32 A.3d 1065 (no abuse of discretion where trial court's order "contain[ed] findings of fact and conclusions of law sufficient to apprise Haji of the reasoning underlying its conclusions and to enable this Court to provide effective appellate review.") (quotation marks omitted).

Yet McCarthy now argues that the court should have quoted certain provisions of the insurance policy in full. This is nonsensical. "[T]o be successful on appeal, an appellant must not only demonstrate error, the

appellant must show prejudice caused by the error," and "[w]hen an appellant does not establish a correlation between the court's rulings and a specific outcome in the judgment that is adverse to his interest, we are not presented with the necessary foundation to vacate the decision." *Desmond v. Desmond*, 2012 ME 77, ¶¶ 19-20, 45 A.3d 701 (quotation marks omitted). McCarthy makes no attempt to explain how the trial court declining her invitation to more fully quote the policy caused her any prejudice, particularly where the court did in fact quote the policy language, the policy provisions are undisputed, and all parties have access to the entire policy. It cannot be said that the trial court abused its discretion here.

V. CONCLUSION

Given the foregoing, Appellee Metropolitan respectfully requests that this Court affirm the trial court's decisions.

Dated at Portland, Maine this 22nd day of March, 2024.

/s/ Jeffrey T. Edwards

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CERTIFICATE OF SERVICE

I, Jeffrey T. Edwards, Attorney for Metropolitan Property and Casualty Insurance Company, certify that I have, this date, served by email (by agreement of counsel) the Appellee Brief to the attorneys listed below.

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