

No. 1-25-0465

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MT. HAWLEY INSURANCE COMPANY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
STONE DEVELOPMENT GROUP, INC. and CONEY	)	
ROSAS, as Independent Administrator of the Estate of	)	No. 18 CH 13854
Ramiro Godinez, Deceased,	)	
	)	
Defendants	)	
	)	Honorable
(Coney Rosas, as Independent Administrator of the Estate	)	Neil H. Cohen,
of Ramiro Godinez, Deceased, Defendant-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE QUISH delivered the judgment of the court, with opinion.
Justices Lyle and Ocasio concurred in the judgment and opinion.

OPINION

¶ 1 Defendant Coney Rosas, administrator of the estate of Ramiro Godinez (“the Estate”), appeals from the judgment of the circuit court of Cook County. After a bench trial, the circuit court found in favor of plaintiff Mt. Hawley Insurance Company (“Mt. Hawley”), finding it had no duty to indemnify its insured, defendant Stone Development Group (“SDG”), under a commercial general liability (“CGL”) insurance policy and excess policy for any liability that SDG incurred as

a result of a construction site accident resulting in the death of Ramiro Godinez (“Godinez”). On appeal, the Estate argues that the circuit court’s finding that Godinez was an employee of SDG at the time of his death such that an employee exclusion in the insurance policies applied was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 2 This case relates to an underlying wrongful death suit filed by the Estate in the circuit court of Cook County against SDG and others in case number 2018 L 8625 (hereinafter, “the wrongful death case”). The wrongful death case alleged that Godinez was an “invitee” on a construction site in Waukegan on September 19, 2017 when he was directed to the third floor of the building to perform certain carpentry work. While he was unloading tools and materials from a raised forklift, he fell and suffered “catastrophic injuries,” dying on September 25. The Estate alleged that SDG had a duty to exercise reasonable care and caution in the performance, management, control, supervision and inspection of work at the premises and sought damages from SDG due to its alleged negligence resulting in Godinez’s death.

¶ 3 While the wrongful death case proceeded, Mt. Hawley filed the complaint for declaratory judgment at issue in this appeal, naming both the Estate and SDG as defendants. The complaint alleged that Mt. Hawley issued a CGL insurance policy and a commercial excess liability policy to SDG in effect at the time of Godinez’s death. Relevant to this appeal, the complaint sought a declaration that Mt. Hawley had no duty to defend or indemnify SDG in the wrongful death case. Mt. Hawley asserted that Godinez was an employee of SDG at the time of his accident, and therefore, it was not required to defend or indemnify SDG in the wrongful death case due to the policy exclusion for liability for bodily injury to employees of SDG.

¶ 4 The complaint attached a copy of SDG's CGL policy. Mt. Hawley cited the employee exclusion, which provides that the policy did not apply to "Employer's Liability:" "Bodily injury" to "an 'employee' of the insured arising out of and in the course of: (a) Employment by the insured; or (b) Performing duties related to the conduct of the insured's business." The exclusion also applied "whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury." Mt. Hawley also alleged that its excess policy contained the same exclusion. Mt. Hawley alleged that Godinez was an employee of SDG whose bodily injuries arose out of and in the course of his employment by SDG and thus, the policies provided no coverage to SDG for the wrongful death case.

¶ 5 The term "employee" appears in the "Definitions" section of the CGL policy and provides that "'Employee' includes a 'leased worker,'" but "does not include a 'temporary worker.'" The policy defines a "Leased worker" as "a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business." The policy defines "Temporary worker" as "a person who is furnished to you to substitute for a permanent 'employee' on leave or to meet seasonal or short-term workload conditions."

¶ 6 The court stayed this declaratory judgment action on the Estate's motion while the wrongful death case proceeded. Mt. Hawley provided a defense to SDG in that wrongful death case. That case eventually settled and the Estate, SDG, and Mt. Hawley entered into a memorandum of understanding under which SDG agreed to a \$2.65 million judgment against it and Mt. Hawley agreed to pay \$250,000 of that judgment. The Estate agreed not to attempt to

execute the judgment against SDG other than against Mt. Hawley's policies and only after final judgment in this declaratory judgment action. The parties agreed to continue to litigate the declaratory judgment action to determine whether Mt. Hawley owed a duty to indemnify SDG under the terms of the CGL and excess policies.

¶ 7 In this declaratory judgment action, after discovery, Mt. Hawley and the Estate filed cross-motions for summary judgment. In its motion, Mt. Hawley relied on a report created by the Occupational Safety and Health Administration ("OSHA") after it performed an investigation following Godinez's death. The Estate filed a motion to strike the OSHA report, arguing that the report contained inadmissible hearsay and did not meet the requirements to be admitted as a public record or report under Rule 803(8) of the Illinois Rules of Evidence. Ill. R. Evid. 803(8) (eff. Jan. 25, 2023). The circuit court denied the motion to strike, finding that the factual findings within the OSHA report fell within the hearsay exception of Rule 803(8), and that statements by SDG employees within the report were admissible as statements by employees of a party opponent. See Ill. R. Evid. 801(d)(2)(D) (eff. Oct. 15, 2015). The circuit court denied both cross-motions for summary judgment on the issue relevant to this appeal, finding a disputed issue of material fact as to whether Godinez was an employee of SDG at the time of his death, such that the employee exclusion in the insurance policy applied.

¶ 8 Prior to trial, Mt. Hawley and the Estate filed several motions *in limine*. Relevant to this appeal, the Estate again argued that the OSHA report was not admissible due to hearsay contained within the report and it was not trustworthy. The Estate also argued that a statement taken from Andre Becerra, who worked for SDG and witnessed the accident, was not admissible as a statement by an employee of a party opponent.

¶ 9 After a hearing, the circuit court denied the Estate’s motion *in limine* to bar the OSHA report, finding it was admissible under Rule 803(8). The court observed that OSHA’s opinions and conclusions would not be admitted for their truth, and that any statements by witnesses contained in the report would only be admitted for their truth if a separate basis for admissibility was established. Regarding Becerra’s statement, the court granted the Estate’s motion subject to Mt. Hawley’s laying an adequate foundation during trial that Becerra was an employee of SDG at the time of the statement.

¶ 10 The matter proceeded to a bench trial as to whether Godinez was an employee of SDG at the time of his accident such that the employee exclusion within Mt. Hawley’s CGL and excess policies applied to preclude coverage to SDG in the wrongful death case.¹ Mt. Hawley proceeded through documentary evidence² including answers to discovery, the complaint and the applicable insurance policies and the testimony of John Stone (“Stone”), the vice president and director of construction of SDG in 2017. Stone had worked in the construction industry for 20 years before 2017. SDG was no longer in existence as of the time of trial.

¹ We observe that Mt. Hawley’s brief repeatedly references and relies upon evidence that was not introduced at trial, including transcripts of discovery depositions of witnesses who did not testify at trial. As this evidence was not presented to the circuit court when it made its ruling after trial, we will not consider it.

² On August 11, 2025, Mt. Hawley filed a motion in this court to supplement the record on appeal to include the exhibits admitted at trial. On August 25, 2025, we denied the motion without prejudice, instructing Mt. Hawley to seek relief in the circuit court. With the exception of one body camera video, no supplement was filed, so only one certified trial exhibit is part of the record on appeal. In their briefs, both parties cite to where the apparent trial exhibits appear in the common law record. We remind the parties that they are required to follow the necessary procedures to supplement the record under Supreme Court Rule 321, and this court is not required to accept the representations of the parties regarding what documents were admitted at trial without a certified record containing the trial exhibits. However, because the parties agree on which exhibits were admitted at trial, the transcript from trial confirms that these exhibits were in fact admitted, and these exhibits appear elsewhere in the record, we will consider the exhibits as they appear elsewhere in the record. However, we note that “[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 11 The evidence established that SDG was a subcontractor hired by NCZ Construction, a carpentry subcontractor, to work in the construction of a hotel in Waukegan. To complete SDG's portion of the project, Stone needed to hire 8 to 12 additional carpenters. Stone hired John Grealy to be SDG's foreman. Stone and Grealy reached an agreement through a phone call as to wages and expectations. He also asked Grealy if he knew any carpenters for this project. Grealy brought Jimmy Considine and Stone hired him as an SDG employee for this project.

¶ 12 Stone reached out to Becerra by text message to ask if he was available to work on the hotel. Stone told Becerra that the project would last until November. Stone testified that he had worked with Becerra on previous projects, was familiar with his work, and was comfortable hiring him without an interview. Stone and Becerra negotiated an hourly rate of \$32.50 plus a \$100 weekly stipend for travel. Stone asked Becerra if he knew "any other rough framing guys looking for work," and Becerra responded that he "got the word out to some good framers." After Stone provided additional details about the project, Becerra stated that he would reach out to Stone "with more info on the other recruits." Stone later testified that he was not using Becerra to recruit anyone.

¶ 13 Becerra eventually called Stone and stated that he would bring Godinez, a carpenter who had experience framing garages, to the job site. Stone testified that he knew Becerra was bringing another worker on the first day and had spoken with Becerra about the worker's experience. However, Stone also stated that Becerra never specifically mentioned Godinez's name, and Stone was not familiar with Godinez or his work experience. Stone told the general contractor that he was expecting more carpenters to arrive on September 19, 2017 and asked for the carpenters to be given access to the site. Stone had already hired John Grealy and Jimmy Considine, with Grealy

hired as the foreman for SDG. Stone interviewed both Grealy and Considine before either started on the project, and negotiated wages with each.

¶ 14 On September 18, 2017, the day before the accident, Stone arrived at the site to drop off tools and set up the work area so the framing could begin the next day. Stone testified that he wanted employees of SDG to use the tools he brought, but they could use any smaller hand tools they brought themselves. Stone used a forklift to lift the box of tools to the third floor of the building to prepare for the next day. Stone texted Becerra that he would start at 7:00 a.m. on September 19, 2017, and that he would be working with Grealy and Considine.

¶ 15 On the morning of September 19, 2017, Stone texted Becerra that he was running late and that Becerra would meet with Grealy. Stone did not tell Grealy that he should not allow Becerra or Godinez to start work before he was able to interview them or provide them with orientation and he did not direct Grealy to go over safety rules with Becerra or Godinez. Stone did not give Grealy any other directions beyond telling him that Becerra and Godinez were coming.

¶ 16 According to Becerra's statements to the OSHA investigator and a Waukegan police officer who responded to the scene, Becerra and Godinez arrived at 7:00 a.m. and met with Grealy, who informed them that he was their foreman. Grealy directed them to use a ladder to access the third floor of the hotel. Becerra and Godinez brought tools with them and asked workers from another contractor on the site how they could get their tools to the third floor. The workers provided them with a forklift with a plywood box resting on it. They placed their tools in the box and then used the ladder to access the third floor in a different part of the building. A worker from another contractor used the forklift to raise the plywood box to a third floor window. Once on the third floor, Godinez climbed out the window on to the box on the forklift to retrieve the tools. As

Godinez stepped towards the edge of the box, the box began to tip off the forklift. Godinez fell over 20 feet to the ground below and the box landed on top of him. Godinez later died as a result of his injuries.

¶ 17 Mt. Hawley introduced body camera video from the Waukegan police officer who responded to the site. In the video, which is part of the record on appeal, Becerra described how the accident occurred and stated that it was “our very first day on the job.” Grealy told the officer that Godinez just started that morning. He instructed Becerra and Godinez to go to the third floor when they arrived and to use a different ladder than the one they used. He stated that an employee from a different contractor was operating the forklift when Godinez fell. Grealy stated that it was Becerra’s and Godinez’s first day and that they had not even started work.

¶ 18 Stone testified that after the incident, Stone sent a text message to Becerra asking Becerra to give a statement to OSHA since he witnessed the incident. Stone also had Becerra write a report on an SDG accident report form. Stone acknowledged that Becerra’s accident report referred to Godinez as the “employee injured.” Stone also asked Becerra to fill out employment forms, including a W4 and a workers’ compensation form. Stone admitted that he hired Becerra prior to the accident. Stone stated that SDG had paid Becerra for working on the project, but did not pay Godinez’s estate or widow.

¶ 19 Mt. Hawley admitted portions of the OSHA report. The circuit court acknowledged the Estate’s continuing objection to the admission of the report and allowed the Estate to make further objections to each portion of the report that Mt. Hawley sought to admit. In resolving these objections, the court stated that it would not place undue weight on any reference to Godinez as

an “employee” of SDG in the report, instead the court would make the determination as to whether Godinez was an employee based on the totality of the evidence and Illinois law.

¶ 20 The report documented the OSHA investigator’s interviews of individuals on the construction site, including Stone and Grealy. The portions of the report documenting Stone’s statements repeatedly refer to Godinez as an employee of SDG. Stone stated that Godinez had not filled out any employment paperwork and did not receive any training. When Godinez and Becerra arrived at the construction site, Stone had not provided them any safety training because “he did not have time.” Stone was late getting to the job site and “had them start working before he arrived.” The report also stated that Godinez was “hired by [Stone] to perform work at the site.” Stone also told the investigator that he continued to employ Becerra after the accident occurred “in order to provide him with an income.” In Grealy’s interview with the OSHA investigator, he stated that “employees” unloaded tools on the construction site the day of the accident, but did not specifically identify Godinez. Grealy also stated that when Godinez and Becerra arrived, Grealy introduced himself as their foreman and told them that they should go to the work area on the third floor using a ladder.

¶ 21 The report contains an email from the OSHA investigator to Stone requesting the “names, addresses, telephone numbers and job titles” of SDG employees that were working on the site at the time of the incident. In response, Stone sent a document listing, among other names, Godinez. Stone testified that he listed Godinez in these documents because Stone “invited him to the site and he had the potential to be a -- a worker for SDG.” OSHA issued SDG a citation on January 19, 2018. SDG received a letter on November 30, 2017 from Mt. Hawley stating that there was no coverage under its policies for injuries to employees. On January 24, 2018, Stone called the OSHA

investigator and stated that he did not know if he was going to claim that Godinez was an employee of SDG.

¶ 22 A copy of SDG's insurance policy with Mt. Hawley was admitted into evidence. Stone acknowledged that SDG did not have workers' compensation insurance at the time of the accident.

¶ 23 In his testimony at trial, Stone denied that Godinez was ever an employee of SDG. Stone testified that he went through a process to "vet or investigate" whether he wanted to hire an individual with SDG. He went through that process with Grealy and Considine. Stone testified that he "invited" Godinez to the job site so he could "interview him for this carpentry position." He also stated that he had never hired a carpenter without meeting them and speaking with them about their availability. He stated that he would have discussed a wage with that person directly. Stone testified that his text messages with Becerra only represented a negotiation as to Becerra's employment and wage, not for any other carpenters that Becerra would have brought to the site. He denied ever telling the OSHA investigator that he had hired Godinez. He characterized Godinez as "a prospective employee." He stated that, on the day of the accident, he intended to talk with Godinez about his experience, go through SDG's safety manual, and "negotiate some terms of employment" prior to allowing him to start working.

¶ 24 Stone stated that Godinez did not perform any work for SDG before the accident and that the tools they needed for the project were already on the third floor. He explained that he would not have asked Becerra and Godinez to use the forklift to bring tools up in the manner in which they did, as it was "dangerous." Stone denied directing Becerra and Godinez to start working before he arrived at the job site on September 19, 2017, and stated that he did not tell Grealy that Becerra and Godinez should start working when they arrived.

¶ 25 Mt. Hawley then sought to introduce Becerra's October 27, 2017 statement that was the subject of the Estate's motion *in limine*. In support of its position that Becerra was an SDG employee at the time of the statement, Mt. Hawley presented two separate workers' compensation claim forms completed by Becerra on October 17, 2017 and May 30, 2018, both of which state that SDG was his employer. It also directed the court to portions of the OSHA report where Becerra told the investigator on December 21, 2017 that he was "back to work with Stone," and where Stone told the investigator in January of 2018 that he continued to employ Becerra after the accident. After the hearing arguments, the court admitted the statement, finding that Becerra was an employee of SDG at that time based on Stone's statement to the OSHA investigator that he continued to employ Becerra.

¶ 26 In the statement, which is printed on an OSHA form and was not signed by Becerra, Becerra stated that he "was employed" by SDG for "3 days" at the time of the interview, two days at a different jobsite and one day at the Waukegan location. He stated that the job was supposed to last until November. He told the investigator that he was "told to bring hand tools to the jobsite" and Godinez also brought some tools. Becerra stated that he had "set up [Godinez] to come to the job" after Stone repeatedly asked him to bring another carpenter/framer. Stone texted him on September 13 saying "we were good to go" on September 18, 2017, but they did not start until the next day due to weather conditions. Becerra stated that Stone called him on the morning of September 19 and told him he would be late and "to get everything (our tools) up to the top floor and start on the top floor."

¶ 27 After evidence closed, the parties submitted proposed findings of fact and conclusions of law. Mt. Hawley argued that the text message exchange between Stone and Becerra established

that Stone offered employment not only to Becerra, but also to Godinez through Becerra “as a conduit.” It asserted that this was supported by Becerra and Godinez’s conduct when they arrived at the job site, and the fact that Grealy stated that he introduced himself to them as their foreman and directed them to the third floor. It argued that Godinez’s employment could be implied from his and Stone’s actions suggesting their intent to begin an employment relationship, despite the lack of an express offer and acceptance. Mt. Hawley contended that Stone repeatedly represented Godinez as an SDG employee to the OSHA investigator, but changed his position after the OSHA fine and learning about the potential for a wrongful death suit without any insurance coverage. Since Godinez was an SDG employee, the employee exclusion in the insurance policy applied, and Mt. Hawley was not required to indemnify SDG in the wrongful death case.

¶ 28 The Estate argued that the definition of “employee” in the policy was vague, and that any ambiguity should be construed against Mt. Hawley. It argued that there was no offer or acceptance of any employment terms between Stone and Godinez, and that the text messages between Stone and Becerra negotiating a wage only related to Becerra’s employment. SDG argued that Becerra did not have authority to negotiate terms of employment on behalf of Godinez, and did not do so.

¶ 29 In rebuttal, Mt. Hawley argued that the term “employee” was not specifically defined in the policy besides including “leased workers” and excluding “temporary workers.” Since there was no specific definition, the term “employee” should be given its ordinary meaning.

¶ 30 The circuit court accepted Mt. Hawley’s proposed findings of fact and conclusions of law in full and incorporated them as the court’s own findings of fact and conclusions of law. The court then ruled that Mt. Hawley had no duty to indemnify SDG in the wrongful death case. Those findings included that the text message exchange between Becerra and Stone represented an

agreement as to wages for Becerra and Godinez, Godinez was an employee of SDG on September 19, 2017, Grealy was their foreman with the authority to direct SDG employees on the job site, and he directed them to meet him on the third floor and showed them the ladders to use. In the “conclusions of law” adopted by the circuit court, it states that the term “employee” is not defined in the policy and must be given its plain and ordinary meaning from Black’s Law Dictionary as “someone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.” See Black’s Law Dictionary (11th ed. 2019). The court concluded that Godinez was an employee of SDG for purposes of the employee exclusion in Mt. Hawley’s policies. This appeal follows.

¶ 31 On appeal, the Estate argues that (1) the circuit court erred by using the common meaning of “employee” when the policy defined the term only in terms of “leased workers” and “temporary workers;” (2) the circuit court’s finding that Godinez was an employee of SDG was against the manifest weight of the evidence; and (3) the circuit court abused its discretion by admitting the OSHA report and Becerra’s October 27, 2017 statement into evidence.

¶ 32 First, we address the application of the employee exclusion within Mt. Hawley’s CGL policy. General rules of contract interpretation apply to an insurance policy. *Founders Ins. Co. v. Munoz*, 237 Ill. 2d 424, 433 (2010). This court’s primary function is to ascertain and give effect to the intention of the parties as expressed in the language of the policy. *Id.* “Although policy terms that limit an insurer’s liability will be liberally construed in favor of coverage, this rule of construction only comes into play when the policy is ambiguous.” *Hobbs v. Hartford Ins. Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). “Ambiguity exists in an insurance contract if the language

is subject to more than one reasonable interpretation, but we will not strain to find an ambiguity where none exists.” *Abram v. United Services Automobile Ass’n*, 395 Ill. App. 3d 700, 703 (2009). When terms in a policy are specifically defined, “they will be given the meaning as defined in the policy.” *American National Fire Ins. Co. v. National Union Fire Ins. Co. of Pittsburgh*, 343 Ill. App. 3d 93, 103 (2003).

¶ 33 “Where a term in an insurance policy is not defined, we afford that term its plain, ordinary and popular meaning, *i.e.*, we look to its dictionary definition.” *Founders Ins. Co.*, 237 Ill. 2d at 436. Similarly, when construing an insurance policy, we give the words used their plain, ordinary and popular meaning. *Western Cas. & Sur. Co. v. Brochu*, 105 Ill. 2d 486, 495 (1985). We review the circuit court’s construction of an insurance policy *de novo*. *Guillen v. Potomac Ins. Co. of Illinois*, 203 Ill. 2d 141, 149 (2003).

¶ 34 Mt. Hawley’s CGL policy contains multiple exclusions relevant to this appeal. First is an exclusion that the policy does not apply to “[a]ny obligation of the insured under a workers’ compensation, disability benefits or unemployment compensation law or any similar law.” The policy also does not apply to:

“Employer’s Liability

‘Bodily injury’ to:

(1) An ‘employee’ of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured’s business; ***

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.”

The CGL policy defines the term “employee” as “including a ‘leased worker,’” but “does not include a ‘temporary worker.’” The policy defines a “Leased worker” as “a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business.” The policy defines “Temporary worker” as “a person who is furnished to you to substitute for a permanent ‘employee’ on leave or to meet seasonal or short-term workload conditions.” The excess policy states that “[i]f the underlying insurance does not pay a loss, for reasons other than exhaustion of an aggregate limit of liability, then we shall not pay such loss. This policy, except where provisions to the contrary appear herein, is subject to all of the conditions, agreements, exclusions, definitions and limitations of and shall follow the underlying insurance in all respects.”

¶ 35 The Estate argues that the term “employee” is “poorly defined” in the policy and should have been interpreted in favor of coverage. It argues that “employee” is only defined such that it “includes a ‘leased worker’ and does not include a ‘temporary worker.’” The Estate argues, therefore, that the circuit court erred by expanding the definition in the policy by relying on the dictionary definition. Mt. Hawley responds that the term “employee” is not specifically defined in the policy and the circuit court properly used the dictionary definition of the term.

¶ 36 While the CGL policy does include “employee” in its definition section such that it includes “leased workers,” but not “temporary workers,” we disagree that the term “employee” is ambiguous. A term in an insurance policy is ambiguous “only if the term is susceptible to more

than one reasonable interpretation,” not merely because “the parties can suggest creative possibilities for its meaning.” *Nicor, Inc. v. Associated Elec. & Gas Ins. Services Ltd.*, 223 Ill. 2d 407, 417 (2006). The fact that the term “employee” is only partially defined in the policy to include “leased workers” and not include “temporary workers” does not make the term susceptible to more than one reasonable interpretation. The policy’s use of the word “includes” suggests that the policy only intends to provide examples of what does and does not qualify as an employee, rather than limit the definition to only those two categories. See *People v. Perry*, 224 Ill. 2d 312, 331 (2007) (observing that, in the context of a statute defining the scope of “property” in the Criminal Code, “the word ‘includes’ is used to introduce a list of things of value that illustrate the meaning of the general term.”).

¶ 37 While we must give effect to the meaning of “employee” in the context of the exclusion, but we cannot construe the meaning of that word in a manner that directly conflicts with its commonly understood meaning. We find that the most reasonable reading of the policy is that the ordinary definition of employee applies, subject to the policy’s definition including “leased workers,” but not including “temporary workers.” See *id.*; *Founders Ins. Co.*, 237 Ill. 2d at 437 (coverage exclusion is interpreted in light of the expectations of an average policyholder).

¶ 38 Therefore, the circuit court properly adopted Mt. Hawley’s proposed dictionary definition of the term as “someone who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance.” Black’s Law Dictionary (11th ed. 2019).

¶ 39 This construction is consistent with how the term “employee” used in the employer’s liability exclusion relates to the context of the policy as a whole, considering the type of insurance,

the nature of the risks involved, the subject matter insured and the overall purpose of the policy. This reading is consistent with the general purpose of a CGL policy and the employee exclusions in such CGL policies, such that the policy covers liability that falls outside the scope of worker's compensation insurance. A CGL policy is obtained to cover "damages that the insured becomes legally obligated to pay to a third party because of bodily injury or property damage." *Archer Daniels Midland Co. v. Burlington Ins. Co. Group, Inc.*, 785 F. Supp. 2d 722, 728 (N.D. Ill., Mar. 29, 2011) (quoting Black's Law Dictionary 809 (7th ed. 1999)).

¶ 40 CGL policies typically include employee exclusions which exclude coverage for bodily injury to employees of the insured that arise within the scope of their employment because those losses are covered by worker's compensation insurance. *Brile v. Estate of Brile*, 296 Ill. App. 3d 661, 669 (1998); *Aetna Cas. & Sur. Co. v. Beautiful Signs, Inc.*, 146 Ill. App. 3d 434, 436 (1986). "There is no reason for an insured to secure double coverage." *Aetna Cas. & Sur. Co.*, 146 Ill. App. 3d at 436. In light of the language of the policy as well as the purpose and scope of a CGL policy, we cannot agree with the Estate that the definition of "employee" in Mt. Hawley's policy includes only "leased workers" and not "temporary workers" to the exclusion of regular, wage-earning workers. Rather, no reasonable employer purchasing a CGL policy with an employer's liability exclusion like the one at issue in this case would understand that the policy would cover claims by employees for injuries arising out of and in the course of their employment. Thus, we reject the Estate's argument and find the circuit court correctly used the dictionary definition of "employee."

¶ 41 Before addressing the circuit court's finding that Godinez was an "employee" of SDG, we first address the Estate's evidentiary arguments. The Estate argues that the circuit court abused its

discretion by admitting the OSHA report and Becerra's statement recorded by OSHA investigators on October 27, 2017.

¶ 42 The admission or exclusion of evidence is within the discretion of the circuit court and will not be reversed absent an abuse of that discretion. *Gill v. Foster*, 157 Ill. 2d 304, 312-13 (1993). An abuse of discretion occurs only when no reasonable person would adopt the position taken by the circuit court. *Jones v. Beck*, 2014 IL App (1st) 131124, ¶ 16.

¶ 43 Under Rule of Evidence 803(8), official records maintained by public officials in connection with the performance of their official duties are generally admissible as an exception to the hearsay rule if required by statute or authorized to be maintained by the nature of the office. Ill. R. Evid. 803(8); *Wilson v. Dande*, 2024 IL App (5th) 220552, ¶ 51. The court admitted the OSHA report under the hearsay exception for a public record or report under Rule 803(8)(C), which provides:

“The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * *

(8) Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies setting forth *******(C) in a civil case * * * factual findings from a legally authorized investigation, but not findings containing expressions of opinions or the drawing of conclusions. This rule applies unless the opposing party shows that the sources of information or other circumstances indicate lack of trustworthiness.”

Ill. R. Evid. 803(8)(C) (eff. Jan. 25, 2023). The court also admitted statements by SDG employees within the report, including statements by Stone, Grealy, and Becerra, as statements by agents or employees of a party opponent. Ill. R. Evid. 801(d)(2)(D) (eff. Oct. 15, 2015).

¶ 44 We initially note that the OSHA report meets the requirements of Rule 803(8) and the Estate does not argue otherwise. The report was created by a public agency and set forth factual findings of that agency with regards to its legally authorized investigation into workplace safety as a result of the accident. In admitting the report, the circuit court stated that it would consider the report's factual findings, but not the conclusions drawn by the OSHA investigator including the investigator's characterization of Godinez as an SDG employee, consistent with Rule 803(8). The Estate's main argument is that the report lacked trustworthiness. Rule 803(8) creates a rebuttable presumption of trustworthiness, but allows the party opposing the admission of records to show that the source of information lacks trustworthiness. Ill. R. Evid. 803(8); see *Khan v. Department of Healthcare and Family Services*, 2020 IL App (1st) 191212, ¶ 73. For the following reasons, we find that the Estate failed to meet its burden to show that the report lacks trustworthiness.

¶ 45 The Estate argues that it could not cross-examine the investigator regarding statements in the report and his comments demonstrated bias against Stone and SDG. We reject this argument. First, Rule 803(8) allows for the report's admission regardless of the availability of the declarant or author as a witness at trial, so the fact that the Estate could not cross-examine the investigator does not impact the report's admissibility. See Ill. R. Evid. 803 (eff. Jan. 25, 2023) ("The following are not excluded by the hearsay rule, even though the declarant is available as a witness."). Second, we reject the Estate's assertion that the report demonstrates bias against SDG and Stone that renders the report not trustworthy. The Estate refers to the fact that only SDG was cited and that the investigator went "out of his way to cast [Stone] in a poor light," but does not point to any specific comment that would demonstrate bias such that the entire report should be viewed as untrustworthy. We find no such bias present in the report.

¶ 46 The Estate asks us to follow the decision of the Wisconsin Court of Appeals in *Staskal v. Symons Corp.*, 287 Wis. 2d 511 (Ct. App. 2005). In *Staskal*, the circuit court granted a motion *in limine* to prevent the admission of an OSHA report, finding that there were “uncertainties” in the report, OSHA was not investigating the defendant but a different employer and therefore, there was a danger of unfair prejudice, and the report was cumulative of anticipated expert testimony about causation and negligence. *Id.* at 523-24. The Wisconsin Court of Appeals, relying on federal cases interpreting Federal Rule of Evidence 803(8), found that the circuit court did not abuse its discretion in declining to admit the report as not trustworthy based on factual mistakes the investigator made in the report and the unavailability of the investigator to be cross-examined regarding those mistakes. *Id.* at 525-27.

¶ 47 We initially note that *Staskal*, as a decision from another jurisdiction, is not binding on this court but may be considered as persuasive authority. *Peterson v. Devita*, 2023 IL App (1st) 230356, ¶ 35. Regardless of precedential value, *Staskal* is distinguishable in multiple respects. First, the *Staskal* court reviewed the circuit court’s decision not to admit the OSHA report for an abuse of discretion, while we are reviewing the circuit court’s decision to admit the report for an abuse of discretion. Second, in this case, there is no allegation that the OSHA investigator made any substantive mistakes in the report, besides potentially referring to Godinez as an employee of SDG. Therefore, the only relevant issue on which the investigator could have been cross-examined is the extent to which references to Godinez as an employee came directly from Stone and other SDG employees rather than a characterization by the investigator. In admitting the report, the circuit court clarified that it would only consider its facts and not its conclusions and would determine whether Godinez was an employee based on the facts of his relationship with SDG, not based on

OSHA's characterization of Godinez as an employee. This adequately addresses any concerns that the report may not be trustworthy due to conclusions drawn by the investigator that Godinez was an employee of SDG.

¶ 48 Because the OSHA report meets the requirements of Rule 803(8), and the Estate failed to meet its burden to show that the report lacked trustworthiness, the circuit court did not abuse its discretion by admitting the report.

¶ 49 The Estate next argues that the circuit court abused its discretion in admitting Becerra's October 27, 2017 statement to OSHA as a statement by an employee of a party opponent. See Ill. R. Evid. 801(d)(2)(D) ("a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship" is not hearsay). Becerra's statement was made to the OSHA investigator as part of OSHA's investigation into Godinez's death. The Estate argues only that Mt. Hawley failed to show that Becerra was an employee of SDG at the time of the statement.

¶ 50 The evidence at trial showed that, after the accident, Becerra did not perform work for SDG again until at least December of 2017 due to the resulting trauma from witnessing the accident. Becerra completed worker's compensation forms on October 17, 2017 and May 30, 2018 in which he stated that he was an employee of SDG. In both forms, the "Return-to-work date" is listed as "to be determined." In a statement to OSHA investigators during a "closing conference" in January of 2018, Stone stated that he continued to employ Becerra after the accident "in order to provide him with an income." In his testimony at trial, however, Stone denied that Becerra was employed by SDG on October 27, 2017.

¶ 51 The Estate argues that the statement itself refutes any finding that Becerra was an employee by SDG at the time, as it states that Becerra “was employed” by SDG “for a period of 3 days total.” This apparent inconsistency was addressed by the circuit court when it heard arguments regarding the admissibility of the statement during trial. The court ultimately found that it was difficult to keep the statement out of evidence given Stone’s statement to the OSHA investigator that he continued to employ Becerra with SDG after the accident. Given that the circuit court was tasked with resolving conflicting evidence regarding Becerra’s employment with SDG at the time of the statement, we cannot find that the circuit court’s decision that Becerra was employed by SDG at the time and to admit the statement was an abuse of discretion.

¶ 52 We now address the circuit court’s ultimate finding that Godinez was an employee of SDG such that the employee exclusion in Mt. Hawley’s insurance policies applied to bar coverage. “[T]he issue of whether an individual is excluded under an employee-injury exclusion in an insurance contract is a question of fact and the fact finder’s decision will not be disturbed unless it is against the manifest weight of the evidence.” *Illinois Founders Ins. Co. v. Barnett*, 304 Ill. App. 3d 602, 613 (1999). “To determine whether an individual is an employee as provided in an insurance contract exclusion, the court examines several factors, such as the alleged employer’s control over the individual, the employer’s ability to discharge the individual, and whether the employer furnished materials, tools, or equipment.” *Id.* at 612. After a bench trial, the standard of review is whether the circuit court’s judgment was against the manifest weight of the evidence. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12. The circuit court’s factual findings are against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.

Best v. Best, 223 Ill. 2d 342, 350 (2006). This court “must not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.” *In re D.F.*, 201 Ill. 2d 476, 499 (2002).

¶ 53 The evidence at trial was mixed regarding whether Godinez was employed by SDG. Stone arranged with Becerra for Godinez to arrive at the job site and arranged for Godinez to have access to the site. Stone moved tools to be used for the project to the third floor the day before Becerra and Godinez arrived. Stone instructed Becerra and Godinez to meet with Grealy, who Stone had hired as SDG’s foreman for the project. When they arrived at the site, Grealy directed them to the third floor where SDG was working. Godinez arrived at 7 a.m. as directed and was given access to the site. Stone admitted that he did not tell Grealy not to let Becerra and Godinez enter the work area on the third floor. Stone did not directly speak to Godinez, and there was no evidence that Godinez received any orientation or training from SDG. Stone repeatedly represented to OSHA that Godinez was an employee of SDG, but, at trial, denied that he hired Godinez. In response to an inquiry from OSHA in September 2017 immediately after the incident, Stone included Godinez in a list of SDG employees. However, during a meeting with the OSHA investigator in January 2018, after he learned that Mt. Hawley denied coverage based on the employee exclusion, Stone stated he was not sure if he was going to claim that Godinez was an SDG employee. Based on this evidence, we cannot find that the circuit court’s holding that Godinez was an employee of SDG was “unreasonable, arbitrary, or not based on the evidence presented.” *Best*, 223 Ill. 2d at 350. As such, we cannot find that the court’s finding was against the manifest weight of the evidence.

¶ 54 The circuit court was tasked with resolving conflicts in the evidence, particularly between Stone’s representations to OSHA that Godinez was an SDG employee and his testimony at trial

that he was not. In finding that Godinez was an employee of SDG, the circuit court necessarily gave little or no weight to Stone's trial testimony that he had not hired Godinez and that Godinez was only "a prospective employee." We cannot second-guess the circuit court's assessment of witnesses' credibility. *Id.* For similar reasons, we reject the Estate's argument that the circuit court erred when it "ignored" Stone's testimony.

¶ 55 The Estate next argues that Godinez fell under the definition of a "temporary worker" in the policy and, based on the policy's exclusion of "temporary workers" from the definition of employee, Godinez was not an employee. The CGL policy defined a "Temporary Worker" as "a person who is furnished to you to substitute for a permanent 'employee' on leave or to meet seasonal or short-term workload conditions." The circuit court rejected this argument and granted Mt. Hawley's motion *in limine* to bar argument or evidence on this issue. In doing so, the court found that Becerra did not "furnish" Godinez to SDG, as such a finding "would lead to an absurd result not keeping with Illinois policy" regarding worker protections. The Estate does not argue that this ruling was incorrect, and it did not make an offer of proof as to what additional evidence, if any, it would have presented to demonstrate that Godinez was a temporary worker of SDG. Based on the evidence in the record, we cannot find that the circuit court erred by finding that Godinez was not a "temporary worker" of SDG.

¶ 56 The Estate next argues that Mt. Hawley failed to present any evidence of mutual assent between Godinez and SDG. It cites *Crepps v. Industrial Commission*, 402 Ill. 606, 614 (1949), where our supreme court stated, in the context of a decision by the Industrial Commission, that "[t]he relationship of employer and employee is a contractual relationship, the requisites to the formation of such relationship being determined by an application of the principles governing the

formation of other contracts. The relationship is a product of mutual assent, that is, of a meeting of minds expressed by some offer on the part of one to employ or to work for the other and an acceptance on the part of the other.”

¶ 57 Even if *Crepps* applies here despite the fact that this is not an Industrial Commission case, we find that Mt. Hawley presented sufficient circumstantial evidence at trial to establish mutual assent between SDG and Godinez to enter into an employment relationship. Stone asked Becerra if he knew any additional carpenters to work on the project, and Becerra mentioned Godinez to Stone in a phone conversation. Becerra stated to OSHA that he had “already set up [Godinez] to come to the job” prior to them arriving on the day of the accident. Godinez then accompanied Becerra to the job site and took instruction from Grealy by going to the third floor. From this evidence, it is a reasonable inference that Stone offered Godinez employment on the project, and that Godinez accepted that offer by appearing on the site and preparing to do work for SDG on the day of the accident. We find that the evidence at trial was sufficient to find that there was mutual assent between SDG and Godinez to enter into an employment relationship.

¶ 58 The Estate also argues that Godinez did not actually perform any work for SDG. It points to evidence that, immediately preceding the accident, Godinez was at a different part of the building from where SDG was supposed to work and was lifting tools that, according to Stone, were not needed for the project. However, the evidence shows that Godinez was on the construction site to perform work for SDG and before his death, had begun preparing to start work for SDG. Stone and Becerra arranged for Godinez to start that day, Stone told Becerra what they were supposed to do when they arrived, and Grealy instructed Becerra and Godinez to go to the third floor. Even if Godinez was not following the specific instructions he was given and had not

started performing carpentry work, there was sufficient evidence that Godinez was working for SDG at the time of his death.

¶ 59 The Estate next argues that the circuit court erroneously found that Stone’s text message exchange with Becerra regarding Becerra’s wages was also for Godinez’s wages. We need not decide whether this specific finding was supported by the record because it was not necessary to the circuit court’s ultimate conclusion that Godinez was an employee of SDG. As discussed, the circuit court was presented with evidence that Becerra discussed Godinez with Stone over the phone and had “already set up [Godinez] to come to the job” before they arrived on the date of the accident. Even if the text messages between Stone and Becerra did not represent a negotiation as to Godinez’s wages, there was sufficient evidence for the circuit court to infer that Godinez had reached an agreement with SDG prior to arriving on the job site.

¶ 60 The Estate finally raises a policy argument that, if individuals such as Godinez are viewed as employees, it would drastically expand the scope of employment and have extreme implications for the workers’ compensation system. It asserts that such a holding would allow for a situation where “anyone could walk on a job site and start performing seemingly job-related tasks and claim employment.” The Estate cites no case law in support of this argument, and therefore, it is forfeited. Ill. Sup. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (The argument portion of a brief “shall contain the contentions * * * and the reasons therefor, with citations to authorities * * *."); *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010).

¶ 61 Forfeiture aside, this argument distorts the record and overstates the reach of this decision. Our holding is only that, based on the evidence presented at the bench trial in this case, which included Stone’s repeated representations to OSHA that Godinez was an employee of SDG and

evidence that Stone and Becerra arranged for Godinez to work on the project for SDG, the circuit court's finding that Godinez was an employee of SDG was not against the manifest weight of the evidence. We do not expand the definition of "employee" under Illinois law, nor does our holding mean that anyone could walk into a job site unsolicited, begin working, and immediately become an "employee" under Illinois law, as that is not what occurred in this case.

¶ 62 The circuit court was tasked with resolving conflicting evidence on whether Godinez was an SDG employee at the time of his death and evaluating the credibility of Stone's trial testimony denying that Godinez was employed by SDG, particularly after he learned that SDG's workers' compensation insurance had lapsed. We cannot find that the circuit court's conclusion that Godinez was an SDG employee was unreasonable, arbitrary, or not based on the evidence presented, and therefore, its finding was not against the manifest weight of the evidence.

¶ 63 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 64 Affirmed.

Mt. Hawley Insurance Company v. Stone Development Group, Inc.
2025 IL App (1st) 250465

Appeal from the Circuit Court of Cook County, No. 18 CH 13854,
Honorable Neil H. Cohen, Judge, presiding.

Appellants: Sara M. Davis, John M. Power
Cogan & Power, P.C. One East Wacker Drive, 38th Floor
Chicago, Illinois 60601
Phone: 312.477.2500

Appellees: Todd S. Schenk, Taylor A. Brewer
Tressler LLP
233 S. Wacker Drive, 61st Floor
Chicago, IL 60606-6359
Phone: 312.627.4109