

MAY 26 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES LEE BURNS,

Plaintiff,

and

LACEY M. FILOSA, a single person and
assignee,

Plaintiff - Appellant,

v.

SCOTTSDALE INSURANCE
COMPANY, a foreign company,

Defendant - Appellee.

No. 10-35702

D.C. No. 2:08-cv-01136-RSL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, Chief District Judge, Presiding

Argued and Submitted May 5, 2011
Seattle, Washington

Before: SCHROEDER, McKEOWN, and CALLAHAN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Plaintiff Lacey Filosa appeals the district court's summary judgment in favor of defendant Scottsdale Insurance Company in Filosa's diversity action. Scottsdale issued a commercial general liability policy to Lee Burns to insure a building that he owned in Everett, Washington. Burns was also the owner of Painless Steel, LLC, a piercing and tattoo business located in the building. Burns chose to leave Painless Steel uninsured. Filosa sued Painless Steel in state court for injuries she sustained due to an infection after she had her tongue pierced at Painless Steel, and later added Burns as a defendant. That suit settled with an assignment of Burns' rights under the insurance policy to Filosa.

Filosa, as assignee, then filed this action against Scottsdale. The key issue is whether there is any possibility the insurance policy issued by Scottsdale covers the Painless Steel business or Burns's conduct related to the Painless Steel business. The district court considered this and all related issues, and in a carefully reasoned decision found that there was no possibility of coverage. Because there was no possibility of coverage, Scottsdale had no duty to defend. We agree and affirm for the reasons given by the district court.

AFFIRMED.