

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 04 2008

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

ALLSTATE INSURANCE COMPANY,
an Illinois corporation,

Plaintiff - Appellee,

v.

TIMOTHY GRIFFIN,

Defendant,

and

MELISSA MORELAND, an individual,

Defendant - Appellant.

No. 06-17323

D.C. No. CV-05-00292-PVT

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Patricia V. Trumbull, Magistrate Judge, Presiding

Argued and Submitted August 13, 2008
San Francisco, California

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

Before: SILER, ** McKEOWN, and CALLAHAN, Circuit Judges.

Melissa Moreland appeals the district court's order partially denying her first motion for summary judgment.¹ Moreland's sole argument on appeal is that Timothy Griffin's attack was not an intentional act under California law because Griffin was found to be legally insane pursuant to California Penal Code § 25, and thus the attack qualified as an occurrence not subject to exclusion under the relevant insurance policy. We acknowledge the unfortunate nature of Griffin's attack on Moreland; however, Moreland has not persuaded us that California law compels the conclusion that a finding of legal insanity pursuant to Penal Code § 25, without more, negates an individual's ability to act intentionally. Accordingly, we affirm the district court's decision.

AFFIRMED.

** The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

¹ Moreland properly filed a notice of appeal following the district court's entry of a final judgment. However, Moreland expressly did not challenge on appeal the district court's order on the parties' second set of cross-motions for summary judgment, and we have not considered that order.