RENDERED: MAY 6, 2016; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000898-MR

JACOB EBERLE, BY AND THROUGH
HIS PARENTS, JOHN EBERLE AND
JENNIFER EBERLE — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE OLU A. STEVENS, JUDGE
ACTION NOS. 11-CI-004160 AND 12-CI-000144

NATIONWIDE MUTUAL INSURANCE CO.
AND MICHAEL RAY BISHOP — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: JONES, J. LAMBERT, AND STUMBO, JUDGES.

JONES, JUDGE: This appeal concerns coverage under a homeowner's insurance policy issued by Nationwide Insurance Company ("Nationwide") to Michael Bishop. The circuit court determined that Nationwide was not obligated to provide coverage for injuries Jacob Eberle sustained when Bishop shot him because the injuries were caused by conduct expressly excluded from coverage in Nationwide's

policy. For the reasons more fully explained below, we affirm the Jefferson Circuit Court.

I. BACKGROUND

The events leading up to this appeal occurred on Monday, June 13, 2011, in Jefferson County, Kentucky. On that date, Jacob Eberle, who was twelve years old at the time, was playing in Bishop's neighborhood with a group of friends. Bishop, who was in his fifties, was at his home. The boys had been playing a game where they would ring the doorbells on houses and then run away before the occupants answered their doors.[1]

Eberle was struck with shotgun pellets in his back, neck and right arm while he was on the sidewalk in front of Bishop's home. It is undisputed that the shotgun pellets were fired by Bishop while he was standing on his porch. It is unclear, however, whether Bishop actually intended to fire his gun at Eberle.

Bishop was indicted on charges of assault in the first degree, wanton endangerment, and tampering with physical evidence. On July 26, 2012, Bishop pleaded guilty to class D felonies pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (U.S. 1970). Bishop's plea agreement states:

> Pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), I wish to plead "GUILTY" in reliance on the attached "Commonwealth's Offer on a Plea of Guilty."

[1] It is disputed whether the boys rang Bishop's doorbell on the night in question. The young men with Eberle on the night in question indicated that Bishop did not come out of his house prior to the shooting, but instead was in the area of his front porch. Those young men stated that a friend of theirs rang Bishop's doorbell the night before then ran away. From this, it is theorized that Bishop was waiting on his front porch with his gun for the boys to return.

> In so pleading, I do not admit guilt, but I believe the evidence against me strongly indicates guilt and my interests are best served by a guilty plea.
>
> The facts offered on the plea agreement stated as follows:
>
> On or about June 13, 2011, in Jefferson County, the Defendant, while acting under extreme emotional disturbance, wantonly discharged a shotgun striking Jacob Eberle causing serious physical injury. Jack Riley was also present and placed at risk by the firing. The shell casing discharged from the shotgun was never found. Jacob Eberle and Jack Riley would testify that they never rang the defendant's doorbell nor set foot on his front porch.

The circuit court ultimately accepted Bishop's plea and sentenced him to ten years' imprisonment on the *Alford* plea.[2]

At the time of the June 2011 incident, Bishop held a homeowner's insurance policy through Nationwide. Bishop subsequently sought coverage for the June 2011 incident, under that homeowner's insurance. Consequently, a declaratory rights action was filed by Nationwide to determine the existence, if any, of insurance coverage under Bishop's homeowner's insurance policy, through Nationwide, for the June 2011 incident.

Of relevance, Bishop's homeowner's insurance policy with Nationwide provided in "Section II Liability Coverage," Nationwide agrees to "pay damages an insured is legally obligated to pay due to an 'occurrence'

[2] We take judicial notice of the fact that Bishop was pardoned by former Governor Steven L. Beshear by Executive Order filed December 7, 2015. *See* Executive Order 2015-1049. However, the pardon does not affect the legal issues before us because "while a full pardon has the effect of removing all legal punishment for the offense and restoring one's civil rights, it does not wipe out either guilt or the fact of the conviction." *See Harscher v. Commonwealth*, 327 S.W.3d 519, 522 (Ky. App. 2010).

resulting from negligent personal acts or negligence arising out of ownership, maintenance, or use of real or personal property." An "occurrence" is defined in the policy as "bodily injury."

The policy also provided for certain exclusions for "bodily injury." Specifically, coverage for "bodily injury" is excluded when:

> (a) caused intentionally by or at the direction of an insured, including willful acts the result of which the insured knows or ought to know will follow from the insured's conduct.
>
> (b) caused by or resulting from an act or omission which is criminal in nature and committed by the insured.
>
> This exclusion of 1.b applies regardless of whether the insured is actually charged with or convicted of a crime.

On November 14, 2012, Nationwide filed a motion for summary judgment arguing that Bishop's *Alford* plea constituted a criminal conviction/crime, meaning it owed Bishop no defense or indemnity. By Opinion and Order rendered April 23, 2014, the circuit court concluded no coverage existed under Bishop's homeowner's insurance policy for the June 13, 2011, incident and granted summary judgment in favor of Nationwide. The circuit court reasoned that Bishop "was charged with and convicted of a felony criminal offense in connection with the very actions for which he seeks coverage." The circuit court concluded that no issue of genuine material fact existed and deemed summary judgment appropriate.

This appeal followed.

II. Standard of Review

The standard of review on appeal when a trial court grants a motion for summary judgment is "whether the circuit judge correctly found that there were no issues as to any material fact and that the moving party was entitled to a judgment as a matter of law." *Pearson ex rel. Trent v. Nat'l Feeding Sys., Inc.,* 90 S.W.3d 46, 49 (Ky. 2002). "[T]he trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.,* 807 S.W.2d 476, 480–82 (Ky. 1991).[3]

Here, the question before us is a purely legal one regarding coverage under an insurance policy. Our standard of review, therefore, is *de novo*. *Dowell v. Safe Auto Ins. Co.*, 208 S.W.3d 872, 875 (Ky. 2006). Under *de novo* review, we owe no deference to the trial court's application of the law to the established facts. *Grange Mutual Ins. Co. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004).

III. Analysis

A. Interpretation of Insurance Policies

[3] "While the Court in *Steelvest* used the word 'impossible' in describing the strict standard for summary judgment, the Supreme Court later stated that that word was "used in a practical sense, not in an absolute sense." *Lewis v. B & R Corp.,* 56 S.W.3d 432, 436 (Ky. App. 2001) (citing *Perkins v. Hausladen,* 828 S.W.2d 652, 654 (Ky. 1992)).

An insurance policy is a contract. *See State Farm Mut. Ins. Co. v. Fireman's Fund Am. Ins. Co.*, 550 S.W.2d 554, 557 (Ky. 1977). Generally speaking, two parties of equal bargaining power are free to contract to any terms and conditions they negotiate with one another; with few exceptions, our courts will not endeavor to rewrite such contracts for the benefit of one party or the other. *See Frear v. P.T.A. Ind., Inc.*, 103 S.W.3d 99, 106 (Ky. 2003). Where the contract at issue involves insurance, however, our courts must carefully weigh the right to freely contract against the commercial realities and public policy concerns at issue. "Standard form insurance policies . . . are recognized as contracts of adhesion because they are not negotiated; they are offered to the insurance consumer on essentially a 'take it or leave it' basis without affording the consumer a realistic opportunity to bargain." *Jones v. Bituminous Cas. Corp.*, 821 S.W.2d 798, 801-02 (Ky. 1991).

When interpreting contracts of insurance, we must consider the commercial reality that most such contracts between consumers and insurance companies do not contain negotiated terms. *See Wehr Constr., Inc. v. Assurance Co. of Am.*, 384 S.W.3d 680, 687 (Ky. 2012). Given the disparity in bargaining power between consumer insureds and insurance companies, Kentucky has adopted "four basic principles of insurance policy construction." *Brown v. Indiana Ins. Co.*, 184 S.W.3d 528, 541 (Ky. 2005).

> They are as follows: 1) all exclusions are to be narrowly interpreted and all questions resolved in favor of the insured; 2) exceptions and exclusions are to be strictly

> construed so as to render the insurance effective; 3) any doubt as to the terms of the policy should be resolved in favor of the insured; and, 4) because the policy is drafted in all details by the insurance company, it must be held strictly accountable for the language employed.

Id.

The doctrine of reasonable expectations plays a critical role in how courts apply these rules. Ascertaining the objective and reasonable expectations of the insured guides the court in determining ambiguity from the outset. *Estate of Swartz v. Metro. Prop. & Cas. Co.*, 949 S.W.2d 72, 76 (Ky. App. 1997). "Despite the apparent clarity of the [terms of the insurance] agreement, courts are nevertheless bound to look at an insured's *reasonable expectations* in deciding whether the insurance contract is ambiguous and what the contract means." *Kentucky Employers' Mut. Ins. v. Ellington*, 459 S.W.3d 876, 883 (Ky. 2015) (emphasis added). The gist of the reasonable expectations doctrine is that "the insured is entitled to all the coverage he may reasonably expect to be provided under the policy." *Simon v. Cont'l Ins. Co.*, 724 S.W.2d 210, 212 (Ky. 1986) (quoting *The Law of Liability Insurance*, § 5.10B). Stated in more practical terms, "an insurance company should not be allowed to collect premiums by stimulating a reasonable expectation of risk protection in the mind of the consumer, and then hide behind a technical definition to snatch away the protection which induced the premium payment." *Aetna Cas. & Sur. Co. v. Com.*, 179 S.W.3d 830, 837 (Ky.

2005), *as modified on reh'g* (Jan. 19, 2006)(quoting *Moore v. Commonwealth Life Ins. Co.*, 759 S.W.2d 598, 599 (Ky. App. 1988)).

Kentucky requires exclusions in insurance policies should be narrowly construed as to effectuate insurance coverage. *Id.* This does not mean, however, that "every doubt must be resolved against an insurance company nor does it change the mandate that the policy must receive a reasonable interpretation consistent with the parties' expression in the language of the contract." *Pryor v. Colony Ins.*, 414 S.W.3d 424, 430 (Ky. App. 2013). The reasonable expectations doctrine "requires more than finding the existence of an ambiguity and, without considering the surrounding facts, ruling against the insurer." *Ellington*, 459 S.W.3d at 883. Rather, the court must resolve the ambiguity and then determine whether the facts warrant coverage. *See Kentucky Ass'n of Ctys. All Lines Fund Trust v. McClendon*, 157 S.W.3d 626, 630 (Ky. 2005).

B. Criminal Acts Exclusion

We begin with the criminal acts exclusion at issue. The exclusion provides bodily injury is excluded from coverage if it is "caused by or resulting from an act or omission which is *criminal in nature* and committed by the insured." Eberle argues that the term "criminal in nature" is ambiguous because it excludes unintentional and criminal conduct reasonable persons expect to be covered under homeowner's insurance policies.

The term "criminal" is not defined in Nationwide's policy. In *Healthwise of Kentucky, Ltd. v. Anglin*, 956 S.W.2d 213, 215 (Ky. 1997), our Supreme Court held that a similarly worded exclusion in a medical and health insurance policy was ambiguous where it did not define the word crime. Specifically, the policy at issue in *Healthwise* excluded coverage for "losses suffered . . . while committing or attempting to commit a crime." *Id.* The Supreme Court observed that the definitions of "crime" and "criminal" varied depending on the source. *Id.* The Court observed that "[p]eople often use the words 'crime' and 'criminal' to describe actions which, though perhaps reprehensible, are neither illegal nor unlawful." *Id.* at 216. The Supreme Court was particularly concerned that adopting "a subjective definition of 'crime' would lead to an overly broad reading of the exclusion and inconsistent applications of it." *Id.* In the end, the Court determined that Kentucky's Penal Code provided the most logical, reasonable, and consistent definition of the term "crime." *Id.* Kentucky's Penal

Code, Kentucky Revised Statutes ("KRS") 500.080(2), defines a crime as "a misdemeanor or a felony." *Id.*

We find no reason to depart from *Healthwise's* definition of a crime. Therefore, for the purposes of this appeal, Nationwide's exclusion would apply to an "act or omission which is criminal in nature" such that it constitutes a felony or misdemeanor under Kentucky's Penal Code. Under this definition, "offenses punishable by a fine only," would not be covered by the criminal acts exclusion because such offenses are violations, not misdemeanors or felonies. *See* KRS 500.080; KRS 431.060. "Traffic infractions" are likewise excluded from Kentucky's definition of a misdemeanor. *See* KRS 500.080.

Eberle argues that allowing the criminal act exclusion to apply to all misdemeanors would unjustly deny insureds, like Bishop, coverage because it would exempt conduct most people do not necessarily consider to be criminally reprehensible. He explains:

> Louisville Metro Ordinances prohibit unleashed dogs, uncut grass and bushes, dilapidated structures, and other items that are routinely prosecuted in Jefferson District Court. Taking the trial court's and Nationwide's position to the logical conclusion would leave insureds without coverage if a dog was unrestrained and ran into the road causing an accident, or if one left grass uncut so that it blocked a motorist's view of oncoming traffic or sidewalk pedestrians and an 'occurrence' resulted.

Depending on the circumstances, the situations Eberle articulates in his brief certainly *could* be problematic if the criminal exclusion applied to them. However, we believe those situations are adequately addressed by *Healthwise's*

adoption of a definition that limits application of the criminal acts exclusion to "crimes" or "criminal acts" made felonies or misdemeanors by the Kentucky Penal Code. While the ordinances Eberle cites purport to criminalize conduct at the local level, such offenses under local ordinances, even if labeled as misdemeanors by the locality, are "clearly not designated as crimes or violations under Chapter 500 of the Kentucky Penal Code." *Johnson v. Commonwealth*, 449 S.W.3d 350, 353 (Ky. 2014) (Cunningham, J. concurring).

However, we need not concern ourselves with the violation of a local ordinance. Bishop was accused of and pled guilty to wanton endangerment in the first degree, a Class D felony. Kentucky's Penal Code provides: "(1) A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person." KRS 508.060. In turn, our Penal Code provides that "[a] person acts wantonly . . . when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists." KRS 501.020(3).

While Bishop has denied that he intended to harm Eberle, he admits that he intentionally brandished his shotgun while in striking distance of Eberle and his companion. Additionally, Bishop has admitted (at least implicitly) that he knew the gun was loaded. He explains in his brief to us that the basis for his A*lford* plea "was that he did not realize a round had been *chambered*." This

implies that Bishop knew the gun was loaded, but mistakenly believed that a shell had not been chambered. *See* KRS 237.060 (defining a loaded firearm to include one with ammunition in the magazine).

We have carefully considered the definition of the term "criminal acts" in relation to the facts of this case. Having done so, we do not believe that Bishop could have reasonably expected coverage to apply in this situation. While standing on his porch, Bishop brandished a shotgun he knew or should have known to be loaded and pointed it in the direction of two young, unarmed boys located on the sidewalk. Such conduct is unquestionably unlawful and felonious. *See Key v. Commonwealth*, 840 S.W.2d 827, 829 (Ky. App. 1992) ("We hold that the pointing of a gun, whether loaded or unloaded (provided there is reason to believe the gun may be loaded) at any person constitutes conduct that 'creates a substantial danger of death or serious physical injury to another person' in violation of KRS 508.060. In the instant case, the wanton conduct also included the shooting of the gun near the victims. Either conduct, independent of the other, is sufficient to meet the requirements of KRS 508.060."); *see also Hunt v. Commonwealth*, 304 S.W.3d 15, 38 (Ky. 2009), as corrected (Jan. 6, 2010), as modified on denial of reh'g (Mar. 18, 2010).

In our opinion, intentionally pointing a gun at an unarmed child is the type of conduct every citizen should know is wanton and criminal. We cannot accept that Bishop could have reasonably expected such core criminal conduct to

fall outside of Nationwide's criminal acts exclusion. Accordingly, we believe that the criminal acts exclusion applies in this case.

We pause to note that our decision in no way implies that every felony and misdemeanor in this Commonwealth would fall within a like-worded criminal acts exclusion. As our Supreme Court has pointed out, application of the reasonable expectations doctrine "necessarily relies heavily on the facts." *Ellington*, 459 S.W.3d at 883. Courts have long known how to distinguish crimes from lesser statutory violations for the purpose of determining insurance coverage. *See Auto Club Prop.-Cas. Ins. Co. v. B.T. ex rel. Thomas*, 596 F. App'x 409, 414 (6th Cir. 2015) (applying Kentucky law and holding the insurer could not rely on a criminal acts exclusion to escape liability for injuries suffered from an exploding firework even though the insureds were guilty of possessing and using fireworks without a license in violation of the then-existing Kentucky law). In the future, a case may arise in which a broad criminal acts exclusion like Nationwide's facially applies, yet works an injustice because the prohibited act involves little culpability or seems minor relative to the consequent forfeiture of coverage.[4] This, however, is not such a case.

C. Alford Plea

Next, we must determine whether the circuit court erroneously relied on Bishop's *Alford* plea in granting summary judgment. In granting summary

[4] It is also important to recognize that the reasonable expectations and attendant public policy concerns differ depending on the type of coverage at issue. *See Kentucky Farm Bureau Mut. Ins. Co. v. Thompson*, 1 S.W.3d 475, 477 (Ky. 1999).

judgment, the circuit court found that Bishop entered an *Alford* plea, which resulted in a felony conviction. The circuit court then reasoned that summary judgment was appropriate because it was undisputed that "conviction of a felony is an act that is 'criminal in nature' within the meaning of the insurance policy." On appeal, Eberle argues that the circuit court erred in elevating his *Alford* plea to the position of a regular criminal plea for the purposes of collateral estoppel.

Nationwide drafted the exclusion at issue. By its own action, Nationwide chose to make an actual conviction, or lack thereof, of no consequence. The policy explicitly states that the criminal acts exclusion applies "regardless of whether the insured is actually charged with, or convicted of a crime." Nationwide, by its own terms, has rendered the actual fact of a prior conviction a nullity. Under the policy, the focus is on whether the conduct causing the injury for which recovery is being sought under the policy, is criminal in nature. In other words, the criminal nature of the conduct is the predicate, not the fact of the conviction.

Therefore, we must determine whether the record supports Nationwide's assertion that all necessary elements of the relevant criminal statute have already been admitted or judicially established beyond any possible doubt. *See Wausau v. Martinez*, 54 S.W.3d 142, 143 (Ky. 2001). Had Bishop actually been convicted by a jury of the substantive charge or pled guilty to it as part of a straight plea, this would be an easy question. A jury conviction necessarily requires a substantive determination of factual guilt, and in a straight guilty plea,

the defendant admits the facts required to establish his guilt. The problem here is that Bishop entered an *Alford* plea. Therefore, we must consider the collateral effect, if any, of Bishop's plea.

Kentucky recognizes only three types of pleas "guilty, guilty but mentally ill, or not guilty." *See* Kentucky Rules of Criminal Procedure 8.12. An *Alford* plea is merely a type of guilty plea in which "an individual accused of a crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime." *Alford*, 400 U.S. at 37, 91 S. Ct. at 167. "Upon entry of such a guilty plea, the trial court must observe a number of procedural and substantive safeguards and impose a sentence within the limits prescribed by law." *Commonwealth v. Corey*, 826 S.W.2d 319, 321 (Ky. 1992).

Most important to our analysis, *Alford* cautions "that pleas coupled with claims of innocence should not be accepted unless there is a factual basis for the plea." *Alford*, 400 U.S. at 38, 91 S. Ct. at 167 n.10. Therefore, before accepting an *Alford* plea, a trial court must review the evidence against the defendant to determine whether it is sufficient to support the charges.

In this case, before accepting Bishop's plea, the trial court conducted an extensive colloquy for the purpose of ascertaining whether Bishop's guilty plea was voluntary and intelligent. *See Boykin v. Alabama*, 395 U.S. 238, 241–42, 89 S.Ct. 1709, 1711, 23 L.Ed.2d 274 (1969). The trial court also reviewed the evidence with Bishop. While not admitting guilt, Bishop acknowledged the strong

evidence against him and that pleading guilty was in his best interests. The trial court also reviewed the evidence and determined that a proper factual basis existed for the plea. The fact that Bishop did not admit he was guilty does not mean a factual basis for his plea did not exist. "[A] trial court can satisfy itself that there is a factual basis for a guilty plea in any number of ways, many of which do not involve a defendant personally reciting his involvement in the underlying facts which gave rise to the criminal charges." *Chapman v. Commonwealth*, 265 S.W.3d 156, 183 (Ky. 2007) (footnote omitted). Having reviewed the record, we are confident that a sufficient factual basis was presented to the trial court to authorize the court to accept Bishop's guilty plea. Moreover, at no time since entry of the plea has Bishop ever attempted to withdraw it.

Although Bishop's plea is labeled as an *Alford* plea, the fact remains that it resulted in his conviction. "The entry of a guilty plea under the *Alford* doctrine carries the same consequences as a standard plea of guilty. By entering such a plea, a defendant may be able to avoid formally admitting guilt at the time of sentencing, but he nonetheless consents to being treated as if he were guilty with no assurances to the contrary." *Wilfong v. Commonwealth*, 175 S.W.3d 84, 102 (Ky. App. 2004). "An Alford plea is a 'plea of guilty,' regardless of any denial of underlying facts, and clearly constitutes a criminal conviction." *Pettiway v. Commonwealth*, 860 S.W.2d 766, 767 (Ky. 1993).

In pleading guilty, Bishop acknowledged that the evidence against him was sufficient to support the charges to which he pled guilty. The trial court

then reviewed that evidence and also agreed that it was sufficient to establish Bishop's guilt. The circuit court's determination that Bishop's plea had a factual basis is a judicial determination made with respect to the essential elements of the crime that has preclusive effect in later civil litigation. Bishop acknowledged in the criminal case that the Commonwealth's evidence was strong enough to convict him of the crimes he was charged with committing. It would be inconsistent with that acknowledgment to allow him to take the opposite approach in this civil litigation. *See Ray v. Stone*, 952 S.W.2d 220, 224 (Ky. App. 1997); *James W. Diehm, Pleading Guilty While Claiming Innocence: Reconsidering the Mysterious Alford Plea*, 26 U. Fla. J.L. & Pub. Pol'y 27, 48 (2015) ("Courts have generally held that a defendant who enters an *Alford* plea is collaterally estopped from later denying civil liability."). It, therefore, follows that the conviction establishes Bishop's factual guilt irrespective of the fact that the conviction was obtained through entry of an *Alford* plea.

Moreover, we believe Kentucky Rules of Evidence ("KRE") 410 bolsters our conclusion that the circuit court did not err in considering the *Alford* plea for purposes of summary judgment. Under KRE 410 certain types of pleas are not admissible as evidence. Specifically, the Rule provides:

> (1) A plea of guilty which was later withdrawn;
> (2) A plea of nolo contendere in a jurisdiction accepting such pleas;
> (3) Any statement made in the course of formal plea proceedings, under either state procedures or Rule 11 of the Federal Rules of Criminal Procedure, regarding either of the foregoing pleas; or

> (4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.
>
> However, such a plea or statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

KRE 410. Prior to May 1, 2007, this Rule also prohibited use of "a plea under *North Carolina v. Alford*, 400 U.S. 25, 37-38, 91 S. Ct. 160, 167, 27 L. Ed. 2d 162 (1970)." The removal of this language by our Supreme Court makes it even clearer to us that an *Alford* plea, like any other straight guilty plea, which has not been withdrawn, is admissible against the defendant in a subsequent proceeding.[5]

In conclusion, Bishop's *Alford* plea was admissible in this civil proceeding to prove that Bishop committed the crimes he pleaded guilty to in the criminal case. By way of his guilty plea, Bishop's conviction establishes that the elements necessary to convict Bishop were factually satisfied. The reasons for Bishop's guilty plea cannot undermine or erase the fact of his conviction.

IV. CONCLUSION

[5] To be clear, an *Alford* plea is not the same as a plea of *nolo contendere*. "[N]o authority supports the existence of an inherent discretionary power in the Kentucky courts to accept the plea of *nolo contendere*. The language of RCr 8.12 'construed according to common and approved usage of language,' KRS 446.080(4), excludes all pleas other than guilty or not guilty." *Commonwealth v. Hillhaven Corp.,* 687 S.W.2d 545, 549 (Ky. App. 1984).

For the reasons set forth above, we AFFIRM the Jefferson Circuit Court's April 24, 2013, Opinion and Order granting summary judgment in favor of Nationwide.

ALL CONCUR.

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