UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1768

September Term, 2013

CANOPIUS US INSURANCE, INC.
f/k/a OMEGA US INSURANCE, INC.

v.

RN'G CONSTRUCTION, INC., ET AL.

Woodward,
*Hotten, Michele, D.
Sonner, Andrew L.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: August 1, 2016

* Hotten, Michele D.,J., participated in the hearing of this case while still an active member of this Court but did not participate in either the preparation or adoption of this opinion.

**This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On July 14, 2010, employees of RN'G Construction, Inc.[1] ("RN'G") were using a truck with a permanently mounted power crane ("the subject vehicle") to install a road sign on Interstate 70 in Washington County, Maryland. As the power crane lifted several steel beams, the beams swung into the travel lanes of the interstate and collided with a tractor trailer, causing serious injuries to the occupants of the tractor trailer. RN'G had two insurance policies in effect at the time of the accident: a commercial general liability insurance policy issued by appellant, Canopius US Insurance, Inc. ("Canopius," formerly known as Omega US Insurance, Inc.), and a commercial auto insurance policy issued by appellee, Pennsylvania National Mutual Insurance Company ("Penn National").

RN'G filed a complaint for declaratory judgment in the Circuit Court for Baltimore City, seeking a declaration that both insurers were obligated to defend and indemnify RN'G against the claims resulting from the accident. Canopius and Penn National agreed at trial that one, but not both, of the policies covered the subject vehicle. The trial court found that the subject vehicle was "mobile equipment" as defined in Canopius's policy, and thus Canopius owed coverage to RN'G.

On appeal, Canopius raises four questions for our review, which we have rephrased and condensed into one:[2]

---

[1] RN'G Construction, Inc. is a nominal appellee.

[2] The questions are set forth in Canopius's brief as follows:

(continued...)

> Did the trial court err in holding that Canopius was required to provide insurance coverage to RN'G under its commercial general liability policy based on the finding that the subject vehicle was "mobile equipment" within the meaning of that policy?

Penn National filed a cross-appeal, raising one question for our review, which we also have rephrased:

---

[2](...continued)

1. Was the trial court's determination that the insured vehicle was mobile equipment and not an auto legally correct when the undisputed evidence was that the vehicle was registered as an auto and was subject to State of Maryland Financial Responsibility Laws, the vehicle could not have been mobile equipment under COMAR § 11.15.08.03, which prohibits designation of vehicles as special mobile equipment that are designed to transport more than two people, and the vehicle hauled materials and property in excess of the equipment necessary to operate the mobile equipment?

2. Was the trial court's determination that the Canopius policy's auto exclusion did not apply legally incorrect when the evidence only supports a determination that the vehicle was an auto?

3. Was the trial court's determination that the use of the auto was irrelevant legally incorrect when the Canopius liability policy excludes use of an auto and the unloading of the vehicle was at least an "arising out of" cause of the injury?

4. Was the trial court's determination that the vehicle was maintained primarily to provide mobility to a permanently mounted power crane legally incorrect when the undisputed evidence was that the vehicle was maintained for multiple reasons, including regularly transporting materials and workers?

> Did the trial court err in denying counsel fees and costs to Penn National for the defense of the underlying tort claims and the litigation of the coverage action against Canopius?

For the reasons set forth below, we will affirm the trial court's holding that the subject vehicle was covered by Canopius's policy, reverse the trial court's denial of attorneys' fees and costs to Penn National, and remand for further proceedings.

BACKGROUND

On January 9, 2012, RN'G filed a complaint for declaratory judgment in the circuit court against, among others, Canopius and Penn National, seeking a declaration that both carriers were obligated to defend and indemnify RN'G against claims resulting from the July 14, 2010 accident.[3] On September 26, 2013, the declaratory judgment action proceeded to a bench trial. Penn National and Canopius were the only participants at trial, and they agreed that the only issue before the court was "whether [the subject] vehicle that was insured under both . . . the commercial auto policy and the commercial general liability policy is an auto or is mobile equipment." Although the parties disputed which policy covered the subject vehicle, they agreed that the policies did not overlap.

Penn National and Canopius stipulated to the following relevant facts that were admitted into evidence at trial.

---

[3] The parties also filed a variety of cross-claims, none of which are at issue here.

On July 14, 2010, RN'G employees were using a Simon-Ro Truck Crane mounted on a Ford F800 truck to lift steel beams from the flatbed of the subject vehicle in order to install a road sign on Interstate 70.[4] The subject vehicle "is a flatbed truck that has a power crane permanently attached to and mounted on it." The crane had a rated lifting capacity of over 28,000 pounds and an extended height of over 112 feet. As the crane lifted the beams, the beams swung into the traffic on the interstate and collided with a tractor trailer, injuring the occupants of the tractor trailer, Timothy and Evonne Whalen. At the time of the accident, RN'G had a commercial general liability policy issued by Canopius and a commercial auto policy issued by Penn National. Both policies were in effect at the time of the accident. The Whalens brought suit against RN'G and the RN'G employee operating the crane. The parties in the underlying matter reached a settlement agreement, which was funded in part by both

[4] RN'G was working pursuant to a contract with Long Fence Company, Inc. ("Long Fence"), which had, in turn, a contract with the Maryland State Highway Administration.

Penn National and Canopius.[5] Penn National and Canopius agreed to a bench trial to determine which carrier was ultimately responsible for coverage to RN'G, and that

> to the extent one of them is adjudicated to have had no indemnity coverage obligation under its respective policy or to have contributed more than its fair share under the policy and the law, then it shall be entitled to full or partial reimbursement from the other in accordance with that adjudication.

In addition to the stipulated facts, the parties agreed to admit into evidence the deposition testimonies of certain RN'G employees. Joseph Rebello, the owner of RN'G, was the only live witness at trial.

At the conclusion of the trial, the circuit court found that the subject vehicle was "mobile equipment" within the meaning of Canopius's policy, and thus Canopius was obligated to defend and indemnify RN'G for the claims arising out of the July 14, 2010 accident. In an order filed and entered on October 1, 2013, the court stated

[5] According to the settlement agreement, Penn National paid $375,000 and Canopius paid $625,000 towards the Bodily Injury Settlement Payment of $6,500,000. Canopius and Penn National also agreed

> to pay one third each of the reasonable and necessary costs (100% of which is not to exceed $175,000) incurred by Long Fence in defense of the Litigation within 45 days of receiving from Twin City Fire Insurance Company invoices for such costs. Payment of Long Fence's defense costs [wa]s in addition to the obligations of Twin City Fire Insurance Company, Canopius, and Penn National to contribute to the Bodily Injury Settlement Payment under this Settlement Agreement.

> that the primary purpose of the [subject vehicle] was to provide mobility to a permanently mounted power crane; that the [subject vehicle] is mobile equipment, and that therefore the auto exclusion contained in Canopius' policy does not apply; that the argument over whether the crane on the [subject vehicle] was loading or unloading is irrelevant, as the [subject vehicle] is not an "auto" as defined in Canopius' policy; that Canopius is obliged to defend and indemnify RN'G . . . under the terms of its policy; that Canopius is obligated to compensate and reimburse Penn National for $375,000, and shall be solely responsible for payment of any sums due to Long Fence.[6]

In a motion to alter or amend the judgment filed on October 9, 2013, Penn National requested that the court order Canopius to pay Penn National's attorneys' fees and legal costs in the amount of $164,133.64 for the declaratory judgment action. Canopius opposed the motion to alter or amend, arguing that attorneys' fees are not ordinarily awarded in a declaratory judgment matter. In a second affidavit attached to its reply, Penn National requested additional reimbursement of $80,676.95, or 50% of RN'G's attorneys' fees and expenses incurred in the litigation of the tort claims.

[6] Long Fence, along with Maryland State Highway Administration, claimed additional insured status under RN'G's policies. These claims are not at issue here.

On October 31, 2013, Canopius filed a notice of appeal.[7] In an order dated January 27, 2014, the circuit court denied Penn National's motion to alter or amend without a hearing. On February 4, 2014, Penn National filed a cross appeal challenging that order. Canopius apparently filed a second notice of appeal on February 10, 2014.[8]

STANDARD OF REVIEW

"Our review of a trial court's declaratory judgment regarding the scope of coverage under an automobile insurance policy is governed by Maryland Rule 8-131(c)." *Agency Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 193 Md. App. 666, 671 (2010). In an action tried without a jury, we "review the trial court's decision on both the law and the evidence, upholding factual findings unless clearly erroneous, but subjecting its legal conclusions to *de novo* review." *Nationwide Mut. Ins. Co. v. Regency Furniture, Inc.*, 183 Md. App. 710, 722 (2009); Md. Rule 8-131(c). When reviewing the trial court under the clearly erroneous

---

[7] We note that Canopius filed its notice of appeal prematurely, because the court had not yet ruled on Penn National's motion to alter or amend. *See Green v. Hutchinson*, 158 Md. App. 168, 171 (2004) ("'When a motion to alter or amend an otherwise final judgment is filed within ten days after the judgment's entry, the judgment loses its finality for purposes of appeal.'" (quoting *Nina & Nareg, Inc. v. Movahed*, 369 Md. 187, 199 (2002))). Where a party prematurely files a notice of appeal, the appeal is still effective but the processing of the appeal is delayed until the motion is disposed of. *Waters v. Whiting*, 113 Md. App. 464, 474, *cert. denied*, 345 Md. 237 (1997).

[8] The record extract in the instant appeal shows that another appeal was filed on February 10, 2014. However, the record was forwarded to this Court on January 31, 2014. Therefore, the filing on February 10, 2014 is not in the record, and thus we do not know what it says.

standard, "this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven his case." *Thomas v. Capital Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 453 (2009) (citations and internal quotation marks omitted). Instead, we are "limited to deciding whether the circuit court's factual findings were supported by 'substantial evidence' in the record." *Liberty Mut. Ins. Co. v. Md. Auto. Ins. Fund,* 154 Md. App. 604, 609 (2004). "'If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.'" *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (quoting *Yivo Inst. For Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005)), *cert. denied*, 391 Md. 579 (2006).

DISCUSSION

Canopius's Liability Under its Policy

1.

The pertinent sections of Canopius's commercial general liability policy provide:

> **SECTION I - COVERAGES**
> **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**
> 1. Insuring Agreement
>   a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages.

***

2. Exclusions

This insurance does not apply to:

***

g. **Aircraft, Auto Or Watercraft**
"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, **"auto"** or watercraft owned or operated by, or rented or loaned to any insured. **Use includes operation and "loading or unloading."**

***

h. **Mobile Equipment**
"Bodily injury" or "property damage" arising out of:
(1) **The transportation of "mobile equipment" by an "auto"** . . . .

SECTION V - DEFINITIONS

***

2. "Auto" means a land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment. **But "auto" does not include "mobile equipment."**

***

12. **"Mobile equipment" means any of the following types of land vehicles**, including any attached machinery or equipment:

***

> d. **Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted**:
>
> (1) **Power cranes**, shovels, loaders, diggers or drills . . . .

(Emphasis added).

After a bench trial, the circuit court found that the subject vehicle was "mobile equipment" within the meaning of Canopius' policy. In its oral ruling, the trial court made the following findings of fact and conclusions of law:

> **[The subject vehicle] is mobile equipment**. So, therefore, the loading and unloading argument isn't relevant because that argument obviously applies to an auto. And **the primary purpose of the [subject vehicle] was to provide mobility to a permanently mounted power crane. And so, therefore, it's mobile equipment, and the auto exclusion does not apply.** And I think that that's–well, that's definitely something that distinguishes the Northern Insurance Company case[9] from this situation because they were clearly talking about an auto in that case.
>
> Even if it were an auto, and in part from reading that Northern Insurance Company case, I don't really think that the loading and unloading is what's contemplated with these particular facts. It wasn't like this power crane–this–this truck with the mounted power crane was going somewhere to unload equipment. It was part of the process of installing these signs. So even if it were an auto, again, I don't think that's the type of unloading that's contemplated.

[9] *Northern Assurance Co. v. EDP Floors, Inc.*, 311 Md. 217 (1987).

> The unloading in the case that you cited was unloading tiles at someone's home, I suppose, which is certainly, I think, different than what happened in this situation.
>
> **So, therefore, I do find, and I adjudge, order, and decree that [Canopius] is obligated to defend and indemnify RN'G and Long Fence under the terms of its policy.**
>
> And I also find that [Canopius] is obligated to compensate and reimburse Penn National for the expense–excuse me, for the $375,000, and shall be solely responsibly [sic] for payment of any sums due to Long Fence."

(Emphasis added).

2.

Canopius argues that the trial court's decision lacked sufficient evidence to support its finding that the subject vehicle was "mobile equipment" and not an "auto." As previously indicated, Canopius's policy excludes from coverage damages resulting from the use of an "auto." "'Auto' means a land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery of equipment. But *'auto' does not include 'mobile equipment.'*" (Emphasis added.) "Mobile equipment" is defined in the policy as "land vehicles . . . maintained primarily to provide mobility to permanently mounted: [ ] Power cranes. . . ." The parties stipulated at trial that the subject vehicle is a flatbed truck and that the attached crane is a permanently mounted power crane. The only remaining issue to be determined at trial was whether the subject vehicle was "maintained primarily to

provide mobility" for the crane. The trial court found as a fact that the subject vehicle was maintained primarily to provide mobility for the crane.

In our view, the aforesaid issue is a question of fact that requires us to simply determine whether there is competent and material evidence in the record to support the trial counsel's finding. *Alpine Ins. Co. v. Planchon*, 85 Cal. Rptr. 2d 777 (1999), a case from the Court of Appeal of California, is instructive. In *Alpine*, the vehicle involved was a "standard pick-up truck modified with a hydraulic scissors-lift, a device that raises and lowers a container called a 'bed.'" *Id.* at 778. A roofing company hired to replace a tar and gravel roof drove the truck to the job site and loaded gravel on to the truck bed. *Id.* When the loaded bed was raised, the truck became unstable and the bed tipped over, striking a nearby device being used to melt roofing tar. *Id.* The tar spilled, caught fire, and burned down the house. *Id.* The homeowners sued the roofing company, which had a commercial general liability policy with Alpine Insurance Company ("Alpine"). *Id.* Alpine agreed to defend the action with a reservation of rights and brought an action for declaratory relief "that it had no duty to defend or indemnify" the roofing company. *Id.*

Alpine moved for summary judgment, arguing that the truck was an "auto" and was therefore not covered by its commercial general liability policy. *Id*. at 779. Alpine's policy excluded from coverage "'bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any . . . auto . . . owned or operated by or rented

or loaned to any insured. Use includes operation and loading and unloading.'" *Id.* (alterations in original). "Auto" was defined in Alpine's policy as "a land motor vehicle, trailer, or semi-trailer designed for travel on public roads, including an attached machinery or equipment. *But auto does not include mobile equipment*." *Id.* at 778 (emphasis added). "Mobile equipment" was defined in the policy as "[v]ehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted [ ] [p]ower cranes, shovels, loaders, diggers or drills." *Id.* at 778-79. The trial court denied the motion for summary judgment, concluding that "there is a triable issue of material fact as to whether [the truck] fits within the definition of mobile equipment as set forth in the Commercial General Liability Policy." *Id.* at 779 (internal quotation marks omitted). The case proceeded to a bench trial, where the trial court concluded that the truck was "mobile equipment," and therefore covered by Alpine's policy. *Id.*

Alpine appealed, seeking *de novo* review. *Id.* The intermediate appellate court declined to apply *de novo* review, holding that "whether a vehicle is classified as an automobile or mobile equipment is ordinarily treated as an issue of fact." *Id.* at 781. The court explained:

> This was not an instance where uncontradicted extrinsic evidence was considered to interpret an ambiguous writing, thus permitting independent appellate review. The critical inquiry here was not the interpretation of Alpine's policy but the application of it. The application of the policy had to await the determination of whether defendants' pickup was an auto or mobile equipment. Making that

> inquiry would depend upon several subsidiary determinations, including the primary purpose or purposes for which the pickup was maintained, which would in turn require an evaluation of witness testimony.

Id. at 782 (internal citations and footnote omitted).

In the instant case, where the relevant provisions of Canopius' policy are identical to the provisions in Alpine's policy, the trial court made a factual finding that "the primary purpose of the [subject vehicle] was to provide mobility to a permanently mounted power crane. And so, therefore, it's mobile equipment, and the auto exclusion does not apply." There is ample evidence in the record to support that finding.

Joseph Rebello, the owner of RN'G, testified at trial that he bought the subject vehicle to install large highway signs. The subject vehicle, according to Rebello, was used about ten percent of the time to transport materials without using the crane at all, but that the remaining ninety percent of the vehicle's use involved using the crane to erect large signs. Rebello explained that in order to install the large signs, his employees would drill the post holes, pour concrete footers, and then use the subject vehicle or another crane truck to erect the I-beams, which are too heavy to be lifted by hand. The subject vehicle was similarly used to dismantle large signs. Rebello also testified that three people could fit into the cab of the subject vehicle, and that sometimes it was used to transport workers to a job site, but on other occasions, such as the day of the incident, the workers assigned to the job drove in separate vehicles.

Additionally, Steven Schilling, an employee of RN'G, testified in his deposition, which was admitted at trial, that, although "it's possible" that the subject vehicle could be used to transport materials without using the power crane, Schilling never operated it in that way. According to Schilling, ninety-nine percent of the time that he used the subject vehicle himself or saw the subject vehicle being used, the crane was in use. Additionally, Schilling testified that the subject vehicle's "primary job is for lifting and putting stuff up in the air."

Canopius, however, points to evidence showing that the subject vehicle "was used ten percent of the time to transport materials without using the crane at all." This argument is without merit, because it was unnecessary for the trial court to find that the subject vehicle was used *solely* to transport or operate the crane. Canopius's policy covers "mobile equipment," defined as "[v]ehicles . . . maintained *primarily* to provide mobility to permanently mounted [ ] [p]ower cranes." (Emphasis supplied.) The term "primarily" implies that there may be secondary uses. The facts adduced at trial were sufficient to show that the *primary* purpose of the subject vehicle was to transport the crane, even if the subject vehicle was on occasion used to transport materials or people.

3.

Canopius argues that we should focus our attention on the definition of "auto" in Penn National's policy. Canopius, however, told the trial court that the subject vehicle would be "covered in one policy or the other;" "[i]ts not overlapping." Had the parties argued to the

trial court that the policies overlapped, the trial court would have been required to continue its analysis by reviewing Penn National's policy as well. Because both parties expressly argued that the policies did not overlap, once the trial court determined that Canopius's policy covered the subject vehicle, there was no need to proceed any further. Our review, consequently, is simply whether the trial court erred in holding that Canopius owed coverage under the language of its own policy.

Canopius also argues that the subject vehicle must be an "auto" because it "did not meet the qualifications for mobile equipment under Maryland statutory provisions and regulations." This argument is irrelevant. The question before the trial court was whether the vehicle was "mobile equipment" or an "auto" within the meaning of Canopius's policy. How the State, the Motor Vehicle Administration, or any other entity defines "auto" or "mobile equipment" is immaterial, because Canopius's policy does not incorporate the language of any such provisions into its definitions of "auto" or "mobile equipment." Moreover, Canopius does not argue that the definitions of "auto" or "mobile equipment" in any statute or regulation are binding on its policy covering RN'G.

Finally, Canopius argues that the trial court should have considered the use of the subject vehicle and whether such use included "loading and unloading." This issue is also irrelevant. Canopius's policy excludes from coverage the "use" of autos, including "loading and unloading" therefrom. The policy's definition of "mobile equipment" does not consider

loading and unloading. Because the trial court found that the subject vehicle was "mobile equipment," how the vehicle was being used at the time of the accident is not an issue.

In *Alpine*, the California court noted that it

> is an established rule of appellate procedure that if there is a finding of fact that is dispositive and necessarily controls the judgment, the presence or absence of findings on other issues is inconsequential. In other words, sometimes a single finding is all that is really important. There is such a finding in this case.

85 Ca. Rptr. 2d at 779 (citations omitted). Similarly, in this case, the trial court's determination that the vehicle was "mobile equipment" controls the judgment. Thus the only relevant exception would be any exception to coverage of "mobile equipment." According to Canopius's policy, the only exception to coverage for "mobile equipment" is when the "mobile equipment" is being transported. It is undisputed that the subject vehicle was not being transported at the time of the accident.

For these reasons, the trial court did not err when it found that the subject vehicle was "mobile equipment" within the meaning of Canopius's commercial general liability policy, and thus Canopius was required to provide coverage to RN'G as provided in such policy.

Attorneys' Fees

In its motion to alter or amend the judgment, Penn National sought recovery from Canopius of $164,133.64 in legal fees and costs incurred in the instant case. Later, Penn

National sought recovery of additional fees and costs of $80,676.95, representing fifty percent of RN'G's defense costs that Penn National paid. (Canopius paid the other half).[10]

Penn National argues that, because Canopius refused to acknowledge its coverage obligations and now must provide coverage for RN'G, Penn National is entitled to recover all attorneys' fees and costs incurred in the defense of RN'G and in the instant declaratory judgment action. According to Penn National, Canopius knew that it owed coverage but "roll[ed] the dice" in an attempt to delay the resolution of the claims and to "force others to relieve it of some of the burden it contracted to undertake."

We agree that Canopius must reimburse Penn National's legal fees and expenses, not because Canopius "rolled the dice," but because Canopius had a contractual duty to provide coverage to RN'G, but failed to fulfill that duty. The Court of Appeals has "recognized that one insurance carrier having a duty to defend which denies that duty must reimburse costs and attorney's fees to another carrier that steps in to provide the defense." *Travelers Indem. Co. v. Ins. Co. of North Am.,* 69 Md. App. 664, 679 (1987).

---

[10] On August 5, 2014, Canopius filed in this Court a Motion to Strike Reply Brief of Appellee/Cross-Appellant and Alternatively for Leave to File Sur-Reply Brief. In its motion, Canopius claimed that Penn National improperly reargued the coverage issue, rather than confining its argument to the attorneys' fees issue. We disagree, because the coverage issue was sufficiently intertwined in the attorneys' fees issue to allow reference to the coverage dispute. Therefore, we will deny Canopius's motion.

Additionally, an individual who is insured by one company may recover the fees and costs for prosecuting the declaratory judgment action "against an insurer that unjustifiably refused to provide a defense." *Id.* The Court of Appeals has recognized that the

> rule in this State is firmly established that when an insured must resort to litigation to enforce its liability insurer's contractual duty to provide coverage for its potential liability to injured third persons, the insured is entitled to a recovery of the attorneys' fees and expenses incurred in that litigation.

Nolt v. United States Fid. & Guar. Co., 329 Md. 52, 66 (1993). Recovery of fees and costs for prosecuting the declaratory judgment action, however, is not limited to the insured. "[A]n insurer is subrogated to claims of its insured against others. . . ." *Travelers*, 69 Md. App. at 680. In other words, an insurance company that prosecutes a declaratory judgment action on behalf of the insured is entitled to be reimbursed by the insurance company that ultimately is determined to owe coverage. *See id.*

In *Rentals Unlimited, Inc. v. Aetna Cas. & Sur. Ins. Co.*, one insurer, Aetna, settled the underlying claim against the insured after the other insurer, Rentals, refused to provide coverage. 101 Md. App. 652, 657 (1994), *cert. denied*, 337 Md. 90 (1995). This Court affirmed the trial court's decision that Rentals was obligated to provide coverage to the insured and thus was legally obligated to reimburse Aetna for "reasonable expenses and attorney's fees incurred in defense and settlement of the claims and in prosecution of the declaratory judgment action." *Id.* at 657, 664. Looking to *Travelers*, we held that "'the

package of rights to which a defending insurer is subrogated includes the insured's right to recover the cost of prosecuting a declaratory action against an insurer declared to have wrongfully refused to provide a defense.'" *Id.* at 663 (quoting *Travelers*, 69 Md. App. at 680).

Canopius argues, however, that it did not "wrongfully refuse[] to provide a defense," because it did "agree early in the litigation" to defend RN'G. We are not persuaded.

Although Canopius may have agreed to defend RN'G "early in the litigation," Canopius failed and refused to acknowledge its exclusive coverage obligation, with the result that it paid only one-half of the defense costs, forcing Penn National, acting on behalf of RN'G, to pay the other half. Penn National has prevailed in the declaratory judgment action, so Canopius was wrong in refusing to pay the full amount of the defense costs. Therefore, Penn National is entitled to recover from Canopius the fees and costs incurred in defending the action against RN'G that Canopius was obligated to defend. *See Ryder Truck Rental Inc. v. Schapiro & Whitehouse, Inc.*, 259 Md. 354, 364-67 (1970) (recognizing that where one insurance carrier has a duty to defend and denies that duty, it must reimburse the costs and attorneys' fees to another carrier that steps in to provide the defense).

Because of Canopius's refusal to provide full indemnity to RN'G, up to the limits of its policy, Penn National may also recover the fees and costs of prosecuting the declaratory judgment action. *See Travelers*, 69 Md. App. at 680 (concluding that the "cost of

prosecuting a declaratory action against a recalcitrant insurer has been ‘authorized’ by its refusal to defend whether the declaratory action is brought by the insured or the defending insurer”). Accordingly, the trial court erred in denying to Penn National the attorneys’ fees and costs that it paid for the defense of the claims against RN’G and that it incurred in the declaratory action, including the instant appeal.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND REVERSED IN PART; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. APPELLANT TO PAY COSTS.