[Cite as *Celina Ins. Group v. Yoder & Frey, Inc.*, 2009-Ohio-4926.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Celina Insurance Group	Court of Appeals No. F-09-008
Appellant	Trial Court No. 08-CV-000313
v.	
Yoder & Frey, Inc.	**DECISION AND JUDGMENT**
Appellee	Decided: September 18, 2009

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Lorri J. Britsch, for appellant.

David W. Stuckey, for appellee.

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SHERCK, J.

{¶ 1} Appellant, Celina Insurance Group ("Celina"), appeals an award of summary judgment to its insured, Yoder & Frey, Inc., in a declaratory judgment action. The Fulton County Court of Common Pleas found that Celina's insurance policy

extended coverage and a defense for an underlying lawsuit against its insured. For the following reasons, we affirm.

{¶ 2} Yoder & Frey auctions consigned farm machinery. At three separate auctions during 2003 and 2004, Yoder & Frey auctioned three skid loaders which had been consigned to it by a client, Jerry Palladino. Prior to those auctions, according to Yoder & Frey's customary practices, it had Palladino sign an "Auction Sale Agreement." By signing the agreement, the consignor represented that he or she was the owner of the equipment and that the equipment was free of encumbrances.

{¶ 3} Quarrick Equipment Company ("Quarrick"), which purchased the three skid loaders, filed suit against Yoder & Frey in 2008 for breach of warranty of title, negligent misrepresentation, and unjust enrichment. Quarrick's complaint alleged that after it re-sold the three skid loaders, the Pennsylvania State Police informed Quarrick that they believed that Palladino had stolen the skid loaders. The skid loaders were impounded. The buyers to whom Quarrick had re-sold the skid loaders contacted Quarrick and demanded reimbursement of the purchase price. Quarrick's complaint against Yoder & Frey seeks compensation for the damages.

{¶ 4} After Yoder & Frey sought a defense, indemnification, and coverage from Celina, Celina filed the instant declaratory action. The trial court granted summary judgment to Yoder & Frey, finding that Celina had a duty to defend and provide coverage for the underlying claims.

{¶ 5} Celina raises one assignment of error for review:

{¶ 6} "The trial court erred in denying appellant's motion for summary judgment because under the insurance contract, coverage is not afforded to appellee."

{¶ 7} An appellate court reviews a grant of summary judgment de novo, using the same standard as the trial court. *Smiddy v. The Wedding Party, Inc*. (1987), 30 Ohio St.3d 35. Summary judgment is properly granted when the evidence, construed most strongly in favor of the nonmoving party, demonstrates that there is no genuine issue of material fact and that reasonable minds can come to only one conclusion. Civ.R. 56(C).

{¶ 8} First, Celina argues that the sale of stolen goods does not constitute a covered "occurrence" within the meaning of the policy it provided to Yoder & Frey. The policy defines a covered "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The policy does not define what constitutes an "accident."

{¶ 9} When a word is undefined, we examine the common meaning of the word and Ohio case law involving the language at issue. *Shear v. West Am. Ins. Co*. (1984), 11 Ohio St.3d 162, 165. "Common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument." *Alexander v. Buckeye Pipe Line Co*. (1978), 53 Ohio St.2d 241, paragraph two of the syllabus.

{¶ 10} Celina points to *Munchick v. Fidelity & Cas. Co. of New York* (1965), 2 Ohio St.2d 303, wherein the Ohio Supreme Court defined "accidental" as "an unexpected

happening without intention or design." Celina then argues that the sale of stolen goods is not "accidental" because "it was not an accident the item was sold." Celina also points to Webster's Dictionary, which, it suggests, defines "accident" as "anything that happens by chance without an apparent cause."

{¶ 11} *Munchick* is, actually, on point. In *Munchick*, the insureds transferred title to their vehicle to a third person who, instead of rendering payment, re-sold the vehicle and converted the proceeds. The third person was convicted of larceny by trick. The insureds sought coverage from the insurer for the loss.

{¶ 12} The insurer argued that the insureds' sale of the vehicle was intentional and was, therefore, excluded from coverage as the insureds' act was not "accidental." The court disagreed, finding that while the insureds' transfer of the vehicle's title was intentional, it was not their intention to have the vehicle stolen. Thus, "[o]nly losses which are intentionally caused by the insured are excluded from coverage." Id. at 306.

{¶ 13} Similarly, while Yoder & Frey intentionally sold the consigned skid loaders at auction, no evidence suggests that it was its intention to accept *stolen* skid loaders for consignment. And, no evidence suggests that it intended to sell *stolen* skid loaders. The fact that the skid loaders were stolen was, from the insured's perspective, "an unexpected happening without intention or design." Id. Therefore, Celina's argument is not well-taken.

{¶ 14} Next, Celina argues that if there was an "occurrence," then coverage is barred by the policy exclusion for wrongful acts of agents. Celina contends that the

"auction sale agreement" between Yoder & Frey and its consignors is sufficient to create an agency relationship. This is incorrect. The sale agreement states that Yoder & Frey is the agent of the consignor – not vice-versa. It is axiomatic that auctioneers are the agents of the sellers of goods. *Ley Industries v. Charleston Auctioneers* (1991), 77 Ohio App.3d 727, 731, citing *Hadley v. Clinton Cty. Importing Co.* (1862), 13 Ohio St. 502, 505. Palladino was not an employee or agent of Yoder & Frey. Therefore, the policy exclusion disallowing coverage for the wrongful acts of agents of the insured does not apply. This argument is also not well-taken.

{¶ 15} Last, Celina takes issue with the trial court's written decision granting summary judgment, insofar as it took notice that Celina had, in a previous suit before the court, provided coverage and a defense to Yoder & Frey for a similar underlying occurrence. In response, Yoder & Frey argue estoppel. We need not consider these arguments because our decision involving the definition of "occurrence" is sufficient to determine the matter. On these facts, Celina's policy provides coverage and a duty to defend the current claims against Yoder & Frey. The assignment of error is not well-taken.

{¶ 16} The judgment of the Fulton County Court of Common Pleas is, therefore, affirmed. Appellant is hereby ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James R. Sherck, J.
CONCUR. _____
JUDGE

Judge James R. Sherck, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.