[Cite as *Grange Ins. Co. v. Stubbs* , 2011-Ohio-5620.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Grange Insurance Company,	:	
Plaintiff-Appellee,	:	
v.	:	
Nicole Case Stubbs,	:	No. 11AP-163 (C.P.C. No. 06CVH11-14432)
Defendant-Appellee,	:	(ACCELERATED CALENDAR)
and	:	
Amy Stubbs & Alexander Stubbs,	:	
Defendants-Appellants.	:	

D E C I S I O N

Rendered on November 1, 2011

Morgan Law Offices, *LLC*, and *Kelly M. Morgan*, for appellee Grange Insurance Company.

Cecil & Geiser LLP, and *Matthew E. Ice*, for appellants.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellants, Amy and Alexander Stubbs, appeal from a judgment of the Franklin County Court of Common Pleas denying their motion for summary judgment

and granting summary judgment in favor of appellee, Grange Insurance Company ("Grange"). For the following reasons, we affirm.

{¶2} Amy Stubbs is Alexander's biological mother. At all relevant times hereto, Alexander, age six, resided with his biological father, Jody Stubbs, pursuant to a shared parenting agreement at 6691 Johnson Road in Galloway, Ohio. Jody's new wife, Nicole Case Stubbs, also resided at the Johnson Road address with her and Jody's son, Zachary, Jody's other son, David, and Nicole's two children from a previous marriage, Kaitlynn and Joseph. The Johnson Road address was insured through a homeowner's policy issued by American Family Insurance ("American Family"). The policy listed Jody as the only named insured.

{¶3} On October 11, 2004, Alexander fell from the back of a riding lawnmower being operated by Nicole on the Johnson Road property. Alexander sustained multiple injuries to his lower extremities as a result of the fall.

{¶4} At the time of the incident, Nicole owned a property located at 8705 Fairbrook Avenue, also in Galloway, Ohio, which she used as a rental property and had not resided in since the end of 2003. The Fairbrook Avenue property was insured through a homeowner's policy issued by Grange. The policy listed Nicole as the named insured and provided her with personal liability coverage in the event she became legally obligated to pay damages because of bodily injury or property damage. Specifically, the policy stated:

> We will pay all sums, up to [its] limits of liability, arising out of any one loss for which an **insured person** becomes legally obligated to pay as damages because of **bodily injury or property damage**, caused by an **occurrence** covered by this policy. * * *

> If a claim is made or suit is brought against the **insured person** for liability under this coverage, we will defend the **insured person at our** expense, using lawyers of our choice. We are not obligated to pay any claim or judgment or to defend after we have paid an amount equal to the limit of our liability. We may investigate or settle any claim or suit as we think appropriate.

(Grange Policy, 9; emphasis sic.)

{¶5} The policy excluded coverage for personal injuries suffered for certain residents of Nicole's household, stating that Grange will not cover:

> 7. **Bodily injury** to:
>
> * * *
>
> (b) **your** relatives residing in **your** household; and
> (c) any other person under the age of 21 residing in **your** household who is in **your** care or the care of a resident relative.

(Grange Policy, 12; emphasis sic.)

{¶6} The October 11, 2004 incident resulted in the filing of three lawsuits. Amy, acting individually and on behalf of Alexander, filed a personal-injury action against Nicole in case No. 06CVC09-12420. American Family and Grange each brought declaratory-judgment actions in case Nos. 06CVH11-14432 and 06CVH11-15342 pertaining to their respective insurance policies. The parties agreed to consolidate all three actions and litigate the insurance coverage issues before litigating the underlying personal-injury claim.

{¶7} This appeal arises from Grange's declaratory-judgment action in case No. 06CVH11-14432. Grange moved for summary judgment against appellants and Nicole on the ground that Grange had no duty to defend or indemnify Nicole for the

October 11, 2004 incident under the Fairbrook Avenue policy. Grange argued that Alexander resided in Nicole's household, thereby barring coverage under the household-resident exclusions in 7(b) and (c). According to Grange, Nicole's "household," for purposes of the exclusions, was the Johnson Road address where she, Jody, Alexander, and the rest of her family resided.

{¶8} In their joint memorandum in opposition and cross-motion for summary judgment, appellants argued that the household-resident exclusions did not apply because Alexander did not reside in Nicole's "household." Appellants contended that "household" should carry the same definition as "residence premises," which the policy defined as the property listed in the declarations page, i.e., the Fairbrook Avenue address. Appellants also argued that a separate exclusion, which barred coverage for bodily injuries arising from "motorized land conveyances," did not apply, although Grange did not rely on that exclusion in its motion for summary judgment.

{¶9} The trial court granted Grange's motion for summary judgment and denied appellants' motion for summary judgment. Without addressing Grange's argument that the October 11, 2004 incident was excluded from coverage by the household-resident exclusions in 7(b) and (c), the trial court instead found that coverage was barred under the exclusion for injuries arising from the use of motorized land conveyances. The trial court concluded that Grange was not obligated to pay any claim alleged by appellants or to indemnify any loss.

{¶10} In a timely appeal, appellants advance the following assignment of error for our consideration:

> The Common Pleas Court erred in granting Plaintiff-Appellee Grange Insurance Co.'s motion for summary judgment and denying the motion for summary judgment of Defendant-Appellant Amy Stubbs.

{¶11} This court reviews decisions granting and denying summary judgment de novo. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, ¶8. De novo review requires us to apply the same summary-judgment standard as the trial court and conduct an independent review, without deference to the trial court's determination. *Zurz v. 770 W. Broad AGA, LLC*, 192 Ohio App.3d 521, 2011-Ohio-832, ¶5. Thus, "we must affirm the trial court's judgment if any of the grounds raised by the movant at the trial court are found to support it, even if the trial court failed to consider those grounds." *Cicero v. American Satellite, Inc.*, 10th Dist. No. 10AP-638, 2011-Ohio-4918, ¶5; see also *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶12} To obtain summary judgment, the movant must show that (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion when viewing evidence in favor of the nonmoving party and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *Hudson v. Petrosurance, Inc.*, 127 Ohio St.3d 54, 2010-Ohio-4505, ¶29. The movant bears the initial burden of informing the trial court of the basis for the motion and of identifying those portions of the record demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. Once the moving party meets this initial burden, the nonmoving party has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmoving party does not

so respond, summary judgment, if appropriate, shall be entered against the nonmoving party. Id.

{¶13} Appellants' sole assignment of error challenges the trial court's decision denying their motion for summary judgment and granting summary judgment in favor of Grange. Specifically, appellants argue that the household-resident exclusions in 7(b) and (c) did not prevent coverage of the October 11, 2004 incident.

{¶14} "An insurance policy is a contract between the insurer and the insured." *Ward v. United Foundries, Inc.*, 129 Ohio St.3d 292, 2011-Ohio-3176, ¶18. When interpreting an insurance policy, our task is to examine the contract as a whole and presume that the intent of the parties is reflected in the language used in the policy. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶11. Moreover, we must "look to the plain and ordinary meaning of the language used in the policy unless another meaning is clearly apparent from the contents of the policy." Id., citing *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241, paragraph two of the syllabus.

{¶15} At issue here is the meaning of "household" for purposes of the household-resident exclusions in 7(b) and (c) of the policy. It is undisputed that Alexander and Nicole both resided at the Johnson Road address at the time of the incident; however, the parties disagree as to whether Nicole's "household" was the Johnson Road address or the Fairbrook Avenue address. Grange advocates the former view and argues that, because Alexander resided with Nicole at the Johnson Road address, he was a "relative[ ] residing in [Nicole's] household," thereby barring Nicole from coverage. In contrast, appellants contend that Alexander did not reside at Nicole's

household, which, according to appellants, was the Fairbrook Avenue address. Appellants reason that "household" is ambiguous in this regard and should be equated with the "residence premises," which the policy defines as "the one or two family dwelling where you reside, including the building, the grounds and other structures on the grounds and which is described in the Declarations." (Grange Policy, 1.)

{¶16} Although the term "household" is not defined in the policy, "[t]he mere absence of a definition in an insurance contract does not make the meaning of the term ambiguous." *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 1995-Ohio-214. "Common, undefined words appearing in a contract '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 agreement." *Sunoco, Inc. (R&M) v. Toledo Edison Co.*, 129 Ohio St.3d 397, 2011-Ohio-2720, ¶38, quoting *Alexander* at paragraph two of the syllabus.

{¶17} For decades, courts have applied the common and ordinary meaning of "household" when the word was not defined in the insurance policy. See, e.g., *Shear v. W. American Ins. Co.* (1984), 11 Ohio St.3d 162; *Nationwide Ins. Co. v. Alli*, 178 Ohio App.3d 17, 2008-Ohio-4318, ¶25. In *Shear*, the Supreme Court of Ohio relied on the Webster's Dictionary definition and interpreted "household" to mean "those who dwell under the same roof and compose a family: * * * a social unit comprised of those living together in the same dwelling place." Id. at 166. Similarly, this court and others have defined "resident of your household" as "one who lives in the home of the named insured for a period of some duration or regularity, although not necessarily there permanently, but excludes a temporary or transient visitor." *Farmers Ins. of Columbus,*

Inc. v. Taylor (1987), 39 Ohio App.3d 68, syllabus; see also *American States Ins. Co. v. Guillermin* (1995), 108 Ohio App.3d 547, 553; *Allstate Ins. Co. v. Eyster*, 189 Ohio App.3d 640, 2010-Ohio-3673, ¶21; *Comisford v. Erie Ins. Property Cas. Co.*, 4th Dist. No. 10CA3, 2011-Ohio-1373, ¶37. Moreover, Black's Law Dictionary defines "household" as "[a] family living together" and "[a] group of people who dwell under the same roof. Cf. family." Black's Law Dictionary (9th ed.2009).

{¶18} Similarly, we find "household" to be unambiguous in the context of the household-resident exclusions in 7(b) and (c). Given the common and ordinary meaning of the word, we reject appellants' attempt to equate "household" with "residence premises." "Household" refers to the family unit of the insured, whereas "residence premises" refers to the physical building and location of the address listed in the declarations page. As aptly stated by one Michigan appellate court in explaining the difference between these two terms, " 'Residence premises' refers to a type of physical structure while 'household' refers to a distinct type of living arrangement in the sense of a social unit." *Meridian Mut. Ins. Co. v. Hunt* (1988), 168 Mich.App. 672, 680-81.

{¶19} When applying the common and ordinary definition of "household" to the record before us, we find that Nicole's "household" was the Johnson Road residence where she, her husband, her biological children, and her stepchildren—including Alexander—resided. Although Nicole still owned the Fairbrook Avenue property at the time of the incident, she stated in her deposition that she used it only as a rental property. (Deposition, 13-14.) According to Nicole, her family had not lived at the Fairbrook Avenue address since the end of 2003. (Deposition, 18-19.) Thus, unlike the Fairbrook Avenue property, the Johnson Avenue property was the dwelling place of

Nicole's family unit and, consequently, her "household" for purposes of the exclusions in 7(b) and (c). Accordingly, Grange was entitled to summary judgment on the ground that the policy excluded coverage for the October 11, 2004 incident.

{¶20} Appellants also argue that the trial court erred by applying the policy exclusion for injuries arising from the use of "motorized land conveyances" when Grange did not raise that exclusion in its motion for summary judgment. However, because de novo review requires this court to conduct an independent review, without deference to the trial court's determination, the dispositive question is whether Grange has presented any valid grounds supporting summary judgment, "even if the trial court failed to consider those grounds." *Cicero* at ¶5; see also *Ecker* at 41-42. Because we have already answered this question affirmatively, the trial court was correct to deny appellants' motion for summary judgment and to grant summary judgment in favor of Grange.

{¶21} Accordingly, appellants' sole assignment of error is overruled.

{¶22} Having overruled appellants' sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT, P.J., and FRENCH, J., concur.

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