

[Cite as *Nurse & Griffin Ins. Agency, Inc., 2001-Ohio-1725*]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

NURSE & GRIFFIN INSURANCE
AGENCY, INC.

C.A. No. 20460

Appellant

v.

ERIE INSURANCE GROUP

Appellee

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 00 02 0715

DECISION AND JOURNAL ENTRY

Dated: November 7, 2001

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

CARR, Judge.

Appellant, Nurse & Griffin Insurance Agency, Inc. (“Nurse & Griffin”), has appealed a judgment of the Summit County Court of Common Pleas granting the motion of appellee, Erie Insurance Group (“Erie”), for a directed verdict. This Court affirms.

I.

Nurse & Griffin initially filed suit against Erie in the Mahoning County Court of Common Pleas, alleging that Erie maliciously breached the Agency Agreement (“agreement”) between Nurse & Griffin and Erie, and that Erie

intentionally interfered with the sale of the agency. Nurse & Griffin filed an amended complaint containing various other allegations. However, by the time of trial, Nurse & Griffin no longer contested Erie's right to exercise the termination portion of the agreement.

Erie filed a motion for judgment on the pleadings. The Mahoning County Court of Common Pleas granted Erie's motion for judgment on the pleadings. The Mahoning County Court of Appeals affirmed the judgment of the Mahoning County Court of Common Pleas in part, and remanded in part for further proceedings.

By agreement of the parties, the action was then transferred to Summit County on February 3, 2000. Erie moved for summary judgment on April 4, 2000. Erie's motion was denied. Nurse & Griffin filed a second amended complaint on June 29, 2000. The trial on this matter commenced on January 16, 2001. Before the trial began, Erie filed a motion *in limine*. As part of that motion, Erie asked that the court preclude any evidence or argument that Erie's termination of the agreement was in bad faith. In response to Erie's motion *in limine*, the trial court ruled that Erie's motives in terminating the agreement were not relevant.

At the close of Nurse & Griffin's case, Erie filed motions for directed verdicts. The trial court granted Erie's motions for directed verdicts as to all claims except one. The sole claim that survived the directed verdict motion was the claim for tortious interference with the sale of Nurse & Griffin's book of

business to another Erie agent, Robert Greenwood. The jury returned a verdict for Erie on that claim.

Nurse & Griffin timely appealed, and has set forth two assignments of error for review.

II.

FIRST ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN RULING THAT ANY EVIDENCE CONCERNING EVENTS PRIOR TO THE TERMINATION OF APPELLANT NURSE & GRIFFIN INSURANCE AGENCY, INC. BY APPELLEE ERIE INSURANCE GROUP WAS INADMISSIBLE[.]

Nurse & Griffin has argued that the court should have admitted evidence concerning events that occurred prior to the Erie's termination of Nurse & Griffin's Agency Agreement.

As a threshold matter, this Court finds that Nurse & Griffin has not preserved this issue for our review. A motion *in limine* is a request for a preliminary order regarding the admissibility of evidence that a party believes may be improper or irrelevant. *Riverside Methodist Hosp. Assn. v. Guthrie* (1982), 3 Ohio App.3d 308, 310. The purpose of a motion *in limine* is to alert the court and counsel of the nature of the evidence in order to remove discussion of the evidence from the presence of the jury until the appropriate time during trial when the court makes a ruling on its admissibility. *Id.* An appellate court need not determine the propriety of an order granting or denying a motion in limine, unless the claimed

error is preserved by an objection, proffer, or ruling on the record at the proper point during the trial. *State v. Maurer* (1984), 15 Ohio St.3d 239, 259-60. In order for an appellate court to review the propriety of the exclusion of evidence, the party claiming prejudice must proffer into the record the substance of the excluded evidence. *State v. Tait* (Jan. 29, 1997), Lorain App. No. 96CA006339, unreported. See, also, Evid.R. 103(A)(2). This enables the reviewing court to “determine whether or not the [ruling] of the trial court [was] prejudicial.” *Smith v. Rhodes* (1903), 68 Ohio St. 500, 505.

In the case *sub judice*, the trial court sustained objections to the admission of evidence pertaining to events that occurred prior to Erie’s termination of Nurse & Griffin’s contract. However, the record shows that the trial court did allow some evidence of events that occurred prior to Erie’s termination of the agreement. If Nurse & Griffin intended to present still more evidence of events that took place prior to Erie’s termination of the agreement, a proffer was required under Evid.R. 103. Such a proffer would have allowed the trial court to decide whether its preliminary ruling was appropriate regarding that evidence. Absent such a proffer, this Court cannot determine whether or not relevant evidence was excluded. Counsel for Nurse & Griffin did not make such a proffer for the record.

Nurse & Griffin’s first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

**THE TRIAL COURT ERRED IN GRANTING APPELLEE
ERIE INSURANCE GROUP’S MOTIONS TO DIRECT A**

**VERDICT ON APPELLANT NURSE & GRIFFIN
INSURANCE AGENCY, INC.'S CLAIMS[.]**

In its second assignment of error, Nurse & Griffin has argued that the trial court erred in granting Erie's motion for a directed verdict.

The only support that Nurse & Griffin has offered for its argument is that the directed verdict was granted because the trial court erroneously excluded evidence that was vital to Nurse & Griffin's case. Essentially, this argument is a restatement of Nurse & Griffin's first assignment of error. This Court need not address this assignment of error because Nurse & Griffin failed to prove its argument by offering a proffer.

III.

Nurse & Griffin's second assignment of error is overruled.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E).

Costs taxed to appellant.

Exceptions.

DONNA J. CARR
FOR THE COURT

BAIRD, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

RONALD N. TOWNE and ANN L. WEHENER, Attorney at Law, 2210 First Merit Tower, Akron, Ohio 44308-1449, for Appellant.

JAMES D. KUREK, Attorney at Law, 50 S. Main St., P.O. Box 1500, Akron, Ohio 44309-1500, for Appellee.

JAMES M. LYONS, JR., Attorney at Law, P.O. Box 5521, 3737 Embassy Pkwy., Akron, Ohio 44334, for Appellee.