[Cite as *Royal Paper Stock Co. v. Robinson*, 2013-Ohio-1206.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

The Royal Paper Stock Company et al.,	:	
Plaintiffs-Appellants/ Cross-Appellees,	:	
	:	
United Services Automobile Association,	:	
Intervenor Plaintiff-Appellee,	:	
	:	No. 12AP-455
v.		(C.P.C. No. 10CVC-2-2533)
	:	
Kyle Robinson et al.,		(REGULAR CALENDAR)
	:	
Defendants-Appellees,	:	
	:	
Alexander Roller-Knapp, a minor et al.,	:	
Defendants-Appellees/ Cross-Appellants.	:	

D E C I S I O N

Rendered on March 28, 2013

Zeehandelar, Sabatino & Associates, LLC, Steven J. Zeehandelar, Alessandro Sabatino, Jr., and *Brittany M. Hensley*, for appellants/cross-appellees.

White, Getgey & Meyer Co., LPA, and *C. Joseph McCullough*, for intervenor plaintiff-appellee.

Law Office of James D. Gilbert, LLC, and *James D. Gilbert*, for appellees.

Gallagher, Gams, Pryor, Tallan & Littrell L.L.P., and *Barry W. Littrell*, for appellees/cross-appellants.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Plaintiffs-appellants, The Royal Paper Stock Company, Inc. ("Royal Paper") and Grange Mutual Casualty Company ("Grange"), collectively referred to as appellants, appeal from the judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of intervening plaintiff-appellee, United Services Automobile Association ("USAA"). Defendants-appellees/cross-appellants, Alexander Roller-Knapp, a minor ("Alexander"), Diane K. Roller ("Roller"), and Martin J. Knapp ("Knapp"), cross-appeal from the judgment of the trial court denying in part their motion for summary judgment. For the reasons that follow, we affirm the judgment of the trial court with respect to USAA's motion for summary judgment and dismiss the cross-appeal for lack of jurisdiction.

I. BACKGROUND

{¶ 2} This litigation began as a subrogation action filed by Royal Paper and its insurer Grange for damages incurred as a result of a fire that occurred at Royal Paper's warehouse on May 3, 2009.

A. Factual Background

{¶ 3} According to the record, on May 3, 2009, both 17-year-old Kyle Robinson ("Kyle") and 12-year-old Tyler Robinson ("Tyler") were living with their grandparents, Edward and Doramarie Sterling ("the Sterlings"). Though Kyle had spent the previous night at 16-year-old Alexander's house, on the morning of May 3, Alexander's mother drove Alexander, Kyle, and another boy to an area in the vicinity of Royal Paper's property. At some point after Alexander's mother dropped them off, the boys entered the warehouse. Once inside, the boys began playing inside of the warehouse and jumping on the bales of paper. Thereafter, the boys left the warehouse and returned home with Alexander's mother.

{¶ 4} Later that day, Kyle received permission from his grandmother to use her car so that he, Alexander, and Tyler could go "skate at a warehouse," and Kyle drove himself and the two boys to Royal Paper's property. (Kyle Tr., 15.) The boys gained entry to the property by going through a fence and subsequently gained entry to the warehouse whereupon the boys began playing. According to Kyle, the boys jumped on paper stacks

and played on the machines even though the machines were not actually working. The boys then began playing with lighters and started lighting fires.

{¶ 5} The record indicates the boys first set fire to small pieces of paper that they would subsequently extinguish with a fire extinguisher. The boys then progressed to bales of paper that they lit on fire and again subsequently extinguished. At some point, the boys moved to another area of the warehouse that contained office computer equipment. According to the record, Alexander intended to take some of the equipment to later sell on the internet. However, once the boys returned to the area of the warehouse where they had previously set fire to paper, Kyle and Tyler realized the paper was currently burning.

{¶ 6} Kyle testified at his deposition:

> It went in progression. It went in progression. It started with playing with the fire extinguishers, then, you know, our minds connected fire extinguisher with fire, let's put a fire out with these fire extinguishers. So I separated a shredded paper stack on the cement floor and I lit those, you know. We put that out. There was no problem there. So we started going on the bales, you know, the ones, the big blocks that were connected and we just, you know, put them out, but it kind of, like, started back up when we weren't really aware. We went off to a different part of the building and then came back and it was like phew.

(Kyle Tr., 17.)

{¶ 7} Further, Kyle testified, "We went down in a line: Light it up. I'd put it out, light it up, I'd put it out. You know, we were finished with all of that, we came back and the fires had started back up." (Kyle Tr., 19.)

{¶ 8} After returning from the office area of the warehouse and realizing the fires had reignited, the fire became large enough that the boys were unable to extinguish it. Therefore, the boys left the building with some computer equipment and returned to the Sterlings' residence. Kyle testified that, though starting the fires was his idea, it was not his intention to burn the building down. (Kyle Tr., 27.)

{¶ 9} Tyler testified at his deposition that he thought they were going to the warehouse to go skateboarding, but once inside the warehouse, they began jumping on the large bales of paper. At some point, the boys started playing with lighters and eventually started lighting pieces of paper on fire; however, Tyler testified they would

extinguish the burning paper with a fire extinguisher. According to Tyler, one of the fires they had extinguished "caught on fire again" and the boys were unable to extinguish it with either water or the fire extinguisher. (Tyler Tr., 13.) After the fire got "too big," the boys left the building. A few days later, Kyle was charged with arson as a juvenile. Kyle was subsequently adjudicated a delinquent minor with respect to said charge.

B. Procedural History

{¶ 10} The instant litigation began on February 18, 2010, with the filing of appellants' complaint against Kyle, Tyler, the Sterlings, Alexander, Roller, and Knapp. Appellants' complaint alleged that, while on a joint venture, Kyle, Tyler, and Alexander negligently and/or intentionally set fire to Royal Paper's warehouse. Appellants also alleged that, as Kyle and Tyler's legal guardians, the Sterlings were liable under a theory of negligent supervision. As to Alexander's parents, Roller and Knapp, appellants alleged negligent supervision and liability pursuant to R.C. 3109.09. State Farm Fire and Casualty Company ("State Farm") and USAA were granted leave to intervene. State Farm issued a homeowners' insurance policy under which Alexander, Roller, and Knapp are insureds and USAA issued a homeowners' insurance policy that provided coverage for Kyle, Tyler, and the Sterlings.

{¶ 11} Several motions for summary judgment followed. The first was filed by Alexander, Roller, and Knapp in which Alexander argued appellants were unable to establish he engaged in a joint venture with Tyler and Kyle. Roller and Knapp argued appellants were unable to establish either negligent supervision or liability under R.C. 3109.09. The second motion for summary judgment was filed by the Sterlings who argued appellants were unable to establish negligent supervision. The third motion for summary judgment was filed by USAA. In its motion, USAA argued Kyle's and Tyler's acts were excluded under the policy of insurance issued to the Sterlings. After consideration, the trial court rendered a decision that (1) granted in part and denied in part Alexander's, Roller's, and Knapp's motion for summary judgment, (2) granted the Sterlings' motion for summary judgment, and (3) granted USAA's motion for summary judgment.

{¶ 12} Specifically, the trial court concluded Roller and Knapp established the absence of a genuine issue of material fact with respect to the claim asserted against them

for negligent supervision. However, with respect to appellants' claims for liability under R.C. 3109.09 and joint venture, the trial court concluded genuine issues of material fact existed. Based upon these conclusions, the motion for summary judgment was granted in part and denied in part.

{¶ 13} Regarding the Sterlings' motion for summary judgment, the trial court concluded no genuine issues of material fact remained regarding appellants' claim for negligent supervision, and, therefore, the Sterlings were entitled to summary judgment. With respect to USAA, the trial court concluded USAA was entitled to summary judgment under both the doctrine of inferred intent and the terms of the policy issued by USAA.

{¶ 14} A judgment entry reflecting the trial court's actions was filed on May 2, 2012. The judgment entry included Civ.R. 54(B) language and indicated that all remaining claims, i.e., those against Kyle, Tyler, Alexander, Roller, and Knapp would be stayed pending the outcome of appellants' appeal.

II. ASSIGNED ERRORS

{¶ 15} No issues have been raised with respect to the trial court's grant of summary judgment in favor of Roller, Knapp, and the Sterlings on appellants' claims for negligent supervision. Rather, we are presented only with appellants' challenge to the trial court's grant of summary judgment in favor of USAA and the cross-appeal filed by Alexander, Roller, and Knapp that challenges the trial court's denial of its motion for summary judgment.

{¶ 16} Appellants assert the following assignment of error for our review:

> The trial court erred as a matter of law when it granted summary judgment in favor of intervening plaintiff, USAA.

{¶ 17} In their cross-appeal, Alexander, Roller, and Knapp assert the following three assignments of error:

> A. The Trial Court erred, as a matter of law, by not granting summary judgment in favor of Alexander Roller-Knapp as to the allegation that he negligently and/or intentionally set fire to the Royal Paper's building because there is no substantial evidence that he set any fire.
>
> B. The Trial Court erred, as a matter of law, by not granting summary judgment in favor of Alexander Roller-Knapp as to

> the allegation that he was on a joint venture because there is no substantial evidence that he had a common purpose with the Robinson boys to go onto the Royal Paper property to set a fire.
>
> C. The Trial Court erred, as a matter of law, by not granting summary judgment in favor of Diane Roller and Martin Knapp because the trial court misapplied the law regarding Ohio Revised Code Section 3109.09.

III. JURISDICTION

{¶ 18} We begin by addressing a jurisdictional issue raised by this court during oral argument at which time the court questioned whether the trial court's judgment denying in part Alexander's, Roller's, and Knapp's motion for summary judgment was a final appealable order. After oral argument, the parties were permitted time to submit supplemental briefing on the issue. Appellants assert the cross-appeal must be dismissed for lack of jurisdiction because the judgment from which it is taken does not constitute a final appealable order under Ohio law. In their supplemental brief, while acknowledging a lack of legal authority supporting their position that the order appealed from is final and appealable, Alexander, Roller, and Knapp assert judicial economy dictates that their cross-appeal be heard at this time.

{¶ 19} The Ohio Constitution, Article IV, Section 3(B)(2) and R.C. 2505.03 limit this court's appellate jurisdiction to the review of final orders of lower courts. " 'The entire concept of "final orders" is based upon the rationale that the court making an order which is not final is thereby retaining jurisdiction for further proceedings. A final order, therefore, is one disposing of the whole case or some separate and distinct branch thereof.' " *Browder v. Shea*, 10th Dist. No. 04AP-1217, 2005-Ohio-4782, ¶ 10, quoting *Noble v. Colwell*, 44 Ohio St.3d 92, 94 (1989), quoting *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St.2d 303, 306 (1971). Conversely, " '[a] judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order.' " *Id.*, quoting *State ex rel. Keith v. McMonagle*, 103 Ohio St.3d 430, 2004-Ohio-5580, ¶ 4, quoting *Bell v. Horton*, 142 Ohio App.3d 694, 696 (4th Dist.2001).

{¶ 20} An appellate court may raise, sua sponte, the jurisdictional question of whether an order is final and appealable. *See Chef Italiano Corp. v. Kent State Univ.*, 44

Ohio St.3d 86, 87 (1989); *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 544 (1997). Moreover, we must sua sponte dismiss an appeal that is not from a final appealable order. *See Kopp v. Associated Estates Realty Corp.*, 10th Dist. No. 08AP-819, 2009-Ohio-2595, ¶ 6, citing *Whitaker-Merrell Co. v. Geupel Constr. Co.*, 29 Ohio St.2d 184, 186 (1972).

{¶ 21} A trial court's order is final and appealable only if it meets the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Denham v. New Carlisle*, 86 Ohio St.3d 594, 596 (1999), citing *Chef Italiano Corp.* at 88. However, "the presence of Civ.R. 54(B) certification is relevant only if the trial court's order first qualifies as a final order under R.C. 2505.02." *In re Estate of L.P.B.*, 10th Dist. No. 11AP-81, 2011-Ohio-4656, ¶ 10.

{¶ 22} As applicable to the matter before us, R.C. 2505.02(B) defines a final order as any of the following:

> (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
> (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment.

{¶ 23} " 'Under both R.C. 2505.02(B)(1) and (B)(2), an order is a final order only if it affects a substantial right.' " *In re Adoption of M.P.*, 10th Dist. No. 07AP-278, 2007-Ohio-5660, ¶ 22, quoting *Epic Properties v. OSU LaBamba, Inc.*, 10th Dist. No. 07AP-44, 2007-Ohio-5021, ¶ 13. " 'Substantial right' means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). A denial of summary judgment is generally not a final appealable order under R.C. 2905.02 and, therefore, is not subject to immediate appeal. *Carter v. Complete Gen. Constr. Co.*, 10th Dist. No. 08AP-309, 2008-Ohio-6308, ¶ 8, citing *Celebrezze v. Netzley*, 51 Ohio St.3d 89 (1990).

{¶ 24} When the trial court denied Alexander's, Roller's, and Knapp's motion for summary judgment on appellants' claims for joint venture and liability, pursuant to R.C. 3109.09, it did so because it concluded genuine issues of material fact exist with respect to said claims. Hence, the trial court's judgment did not determine or prevent a judgment in Alexander's, Roller's or Knapp's favor and, accordingly, does not constitute a final order under R.C. 2508.02(B)(1). Similarly, the judgment does not constitute a final order under

R.C. 2508.02(B)(2). A denied summary judgment motion, even if made in a special proceeding, does not affect a substantial right under R.C. 2505.02 because an "order," within the statutory meaning of that word, has not been made, and, instead, the court has retained the case for trial on the merits. *Cincinnati Ins. Co. v. Setterlin & Sons*, 10th Dist. No. 07AP-47, 2007-Ohio-5094, ¶ 37, citing *Swanson v. Ridge Tool Co.*, 113 Ohio App. 357, 359 (9th Dist.1961). Such is exemplified here as the trial court's judgment expressly acknowledges that the remaining claims against Alexander, Roller, and Knapp remain pending, but are stayed pending the outcome of appellants' appeal.

{¶ 25} Consequently, we find the decision from which Alexander, Roller, and Knapp filed a cross-appeal is not a final appealable order, pursuant to R.C. 2505.02(B), and their cross-appeal is dismissed. *Carter* (cross-appeal presenting an appeal from a denial of summary judgment dismissed for lack of a final appealable order); *Dibert v. Carpenter*, 196 Ohio App.3d 1, 2011-Ohio-5691 (2d Dist.) (denial of partial summary judgment not a final appealable order; therefore, cross-appeal based upon the same was dismissed for lack of jurisdiction).

IV. DISCUSSION

A. Standard of Review

{¶ 26} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 588 (8th Dist.1994), citing *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App.3d 704, 711 (4th Dist.1993). When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.*, 83 Ohio App.3d 103, 107 (10th Dist.1992); *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41-42 (9th Dist.1995).

{¶ 27} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

{¶ 28} Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978).

{¶ 29} Courts generally interpret insurance policies in accordance with the same rules as other types of contracts. *Hybud Equip. Corp. v. Sphere Drake Ins. Co.*, 64 Ohio St.3d 657, 665 (1992). When provisions of an insurance policy are reasonably susceptible to more than one interpretation, we must construe them strictly against the insurer. *Faruque v. Provident Life & Acc. Ins. Co.*, 31 Ohio St.3d 34, 38 (1987), citing *Buckeye Union Ins. Co. v. Price*, 39 Ohio St.2d 95 (1974), syllabus. Under such circumstances, we must adopt any reasonable construction that results in coverage for the insured. *Emps. Reinsurance Corp. v. Worthington Custom Plastics, Inc.*, 109 Ohio App.3d 550 (10th Dist.1996).

{¶ 30} However, if the policy's terms are clear and unambiguous, the interpretation of the policy is a matter of law. *Spears v. Spears*, 10th Dist. No. 06AP-705, 2006-Ohio-6747, ¶ 10. In determining whether ambiguities or uncertainties exist, we will give words and phrases their plain and ordinary meaning, absent specific contractual definitions. *Hedmond v. Admiral Ins. Co.*, 10th Dist. No. 02AP-910, 2003-Ohio-4138, ¶ 33. We must determine coverage based on a reasonable construction of the document in conformity with the intention of the parties as gathered from the ordinary and commonly understood meaning of the language actually employed. *Cincinnati Ins. Co. v. Am. Line Builders Apprenticeship Training Program*, 93 Ohio App.3d 392, 395 (2d Dist.1994).

B. Appellants' Assignment of Error

{¶ 31} We now turn to appellants' assignment of error in which appellants assert the trial court erred as a matter of law when it granted summary judgment in favor of USAA. In granting USAA's motion for summary judgment, the trial court concluded that, under the doctrine of inferred intent, the acts of the insureds, Kyle and Tyler, were intentional or purposeful such that damages resulting therefrom were excluded under the policy. The trial court also concluded that, even absent application of the inferred intent

doctrine, coverage under USAA's policy was not available because the policy excluded coverage for damages caused by intentional acts, irrespective of whether or not the insured's intended to cause harm. Both of the trial court's conclusions were derived from the trial court's review of the policy in light of *Allstate Ins. Co. v. Campbell*, 128 Ohio St.3d 186, 2010-Ohio-6312. Appellants assert the trial court erred in applying the doctrine of inferred intent to the matter at hand and in finding the insureds' actions were intentional such that coverage for damages was excluded under the terms of the policy.

{¶ 32} The relevant portions of the policy are as follows:

> SECTION II – LIABILITY COVERAGES
>
> COVERAGE E – Personal Liability
>
> If a claim is made or a suit is brought against an Insured for damages because of bodily injury or property damage caused by an occurrence to which this coverage applies, we will:
>
> 1. pay up to our limit of liability for the damages for which the Insured is legally liable;
>
> * * *
>
> SECTION II – EXCLUSIONS
>
> 1. Coverage E – Personal Liability * * * do not apply to bodily injury or property damage:
>
> a. caused by the intentional or purposeful acts of any insured, including conduct that would reasonably be expected to result in bodily injury to any person or property damage to any property.

(Policy, 13.)

{¶ 33} According to the definitions provided in the policy, " 'occurrence' means an accident" which results in bodily injury or property damage. (Policy, 1.) " '[P]roperty damage' means physical damage to, or destruction of tangible property, including loss of use of this property." (Policy, 1.)

{¶ 34} As previously mentioned, the trial court, relying on *Campbell*, determined the policy's exclusions precluded coverage in this case. In *Campbell*, the Supreme Court

of Ohio reviewed several policies of insurance to determine whether the insurers were obligated to defend or indemnify their insureds in an underlying negligence action arising from a prank committed by teenage boys. According to the facts set forth in *Campbell*, a group of teenage boys stole a styrofoam deer decoy and placed it just below the crest of a hill on a curvy two-lane road. The boys placed the deer on the road after dark and then remained in the area so that they could watch the reactions of passing motorists. Soon thereafter, though taking evasive action to miss the deer, a motorist lost control of his vehicle. The vehicle overturned and came to rest in a nearby field resulting in serious injuries to the driver and his passenger.

{¶ 35} The injured parties filed suit against the boys, their parents, and their insurance companies. The insurers filed motions for summary judgment which were granted by the trial court. The trial court inferred the boys' intent as a matter of law and concluded none of the insurance polices provided coverage for the claims asserted against them. The appellate court reversed finding that genuine issues of material fact existed regarding the boys' intent and, therefore, summary judgment was precluded.

{¶ 36} The Supreme Court of Ohio granted discretionary jurisdiction and first reiterated the well-established principle that " 'an insurance company is under no obligation to its insured, or to others harmed by the actions of an insured, unless the conduct alleged of the insured falls within the coverage of the policy.' " *Campbell* at ¶ 8, quoting *Gearing v. Nationwide Ins. Co.*, 76 Ohio St.3d 34, 36 (1996). While recognizing a homeowners' insurance policy typically contains an intentional-act exclusion, which states that the insurance company will not be liable for harm intentionally caused by the insured, the court stated that where evidence of direct intent to cause harm is lacking, in certain circumstances, the insured's intent to cause harm will be inferred as a matter of law. *Campbell* at ¶ 9.

{¶ 37} The court in *Campbell* reviewed policies of insurance issued by Allstate Insurance Company ("Allstate"), American Southern Insurance Company ("American Southern"), Erie Insurance Exchange ("Erie"), and Grange. The Allstate policies excluded coverage for "any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person." *Id.* at ¶ 13 (emphasis omitted). Grange's policy excluded coverage for "[b]odily

injury or property damage expected or intended by any insured person." *Id.* at ¶ 31. Similarly, Erie's policies excluded coverage for "[b]odily injury, property damage or personal injury expected or intended by anyone we protect even if: a. the degree, kind or quality of the injury or damage is different than what was expected or intended; or b. a different person, entity, real or personal property sustained the injury or damage than was expected or intended." *Id.* at ¶ 25-27 (emphasis omitted).

{¶ 38} In analyzing the policies in light of the doctrine of inferred intent, the court stated "[i]t is clear that as applied to an insurance policy's intentional-act exclusion, the doctrine of inferred intent applies only in cases in which the insured's intentional act and the harm caused are intrinsically tied so that the act has necessarily resulted in the harm." *Id.* at ¶ 48. The court found that limiting the scope of the doctrine was appropriate because "the rule is needed only in a narrow range of cases — those in which the insured's testimony on harmful intent is irrelevant because the intentional act could not have been done without causing harm." *Id.* The court stated "an insured's intent to cause injury or damage may be inferred only when that harm is intrinsically tied to the act of the insured – i.e., the action necessitates the harm." *Id.* Further, the court cautioned that "courts should be careful to avoid applying the doctrine in cases where the insured's intentional act will not necessarily result in the harm caused by that act." *Id.*

{¶ 39} The court discussed "clear examples" of cases in which the resulting harm was inherent and the doctrine applied, such as those involving murder or sexual molestation. *Id.* at ¶ 49. The court also discussed other acts, such as firing a BB gun from a long distance, or a bad-faith refusal to settle a claim, where the acts would not necessarily result in harm. In such cases, the court concluded a factual inquiry was necessary to determine whether the insured's actions were intentional and thereby excluded from coverage.

{¶ 40} In considering the particular facts before it, the court could not say as a matter of law that the act of placing a deer decoy in the road, as was done in that case, necessarily results in harm. The court's conclusion was based in part because "other cars had passed by and avoided the target." *Id.* at ¶ 51. Though finding the boys' acts ill-conceived and irresponsible, the court stated "the action and the harm are not intrinsically tied the way they are in murder and sexual molestation. We accordingly

conclude that while the doctrine of inferred intent may apply to actions other than murder or sexual molestation, it does not apply in this case." *Id*.

{¶ 41} To clarify, the court stated "the doctrine of inferred intent applies only in cases in which the insured's intentional act and the harm caused are intrinsically tied so that the act has necessarily resulted in the harm. Because this test provides a clearer method for determining when intent to harm should be inferred as a matter of law, we hold that courts are to examine whether the act has necessarily resulted in the harm — rather than whether the act is substantially certain to result in harm." *Id*. at ¶ 56. Thus, because the boys denied that harm was expected or intended and because intent to harm could not be inferred as a matter of law, the court concluded a factual inquiry was necessary to determine whether coverage was available under the Allstate, Grange, and Erie policies that excluded coverage for injury or damages expected or intended.

{¶ 42} In contrast, American Southern's policy contained exclusionary language that differed from the policies issued by Allstate, Grange, and Erie. Instead of excluding coverage for injury or damages expected or intended, American Southern's policy excluded coverage for bodily injury or property damage resulting directly or indirectly from "an intentional act of any insured." *Id.* at ¶ 60. The court found that by using broad exclusionary language that excluded coverage for harm caused by any intentional act — regardless of whether the harm is expected or intended by the insured — American Southern worded its policy in a manner that freed it from the line of cases analyzing whether coverage was excluded for harm "caused intentionally" or "expected or intended" by the insured. *Id*. at ¶ 61. Because the policies of Allstate, Grange, and Erie contained exclusions for an intentional or expected injury and American Southern's policy contained exclusions for an intentional act, the court concluded "as a matter of law, American Southern is under no duty to defend or indemnify [the insureds] for any liability resulting from his intentional acts in participating in the events at issue in this case." *Id*.

{¶ 43} In the present matter, appellants challenge the trial court's finding that Kyle's and Tyler's intent to cause harm can be inferred as a matter of law. We do not reach that issue because USAA's policy does not exclude coverage for harm intentionally caused, but, instead, excludes coverage for harm caused by intentional or purposeful conduct of an insured. Thus, as *Campbell* instructs, the exclusionary language in USAA's

policy does not require an analysis of whether Kyle or Tyler intended to cause harm, but, rather, requires a determination of whether the harm was caused by Kyle's and Tyler's intentional acts. Accordingly, we conclude analysis of the doctrine of inferred intent is not required here.

{¶ 44} While USAA's exclusionary language is similar to that of American Southern's as presented in *Campbell,* appellants assert this matter is distinguishable because Kyle's and Tyler's actions were not intentional but, rather, were negligent. According to appellants, these facts are distinguishable from *Campbell* because, in that case, the boys intentionally put a decoy in the road to see how people would react to it, whereas here, they argue the boys did not light paper on fire to start additional or larger fires, but, rather, did so in order to utilize fire extinguishers and extinguish the flames. We reject appellants' position.

{¶ 45} It is undisputed that Kyle and Tyler were intentionally lighting pieces of paper on fire inside of a warehouse housing paper. It is also undisputed that they attempted to extinguish the fires and thought the fires were extinguished. Appellants contend though initially acting intentionally, this is really an accident caused by negligent conduct, specifically, leaving the area with the belief that the fires were sufficiently extinguished.

{¶ 46} USAA directs this court to a similar factual scenario presented in *Black v. Richards*, 5th Dist. No. 08 CA 19, 2010-Ohio-2938, wherein two juveniles entered another's property and one of the boys set fire to curtains. In that case, the other boy pulled the curtains down and the pair attempted to stomp the fire out, but failed to do so completely resulting in damages to several adjoining buildings.

{¶ 47} The boy who initially set fire to the curtains argued he did not intend to burn the building down, and that, before the fire spread, he and the other boy stomped on the curtains until they thought the fire was out. Much like appellants argue here, the appellants in *Black* argued the boys' negligence in failing to put out the fire and in failing to contact the fire department was an intervening cause that broke the causal connection between the intentional act of setting the fire and the resulting damage.

{¶ 48} In rejecting the argument, the court in *Black* stated an intervening cause is not present if the alleged intervening cause was reasonably foreseeable by the one who is

guilty of the negligence. *Id.* at ¶ 70, citing *Queen City Terminals, Inc. v. Gen. Am. Transp. Corp.*, 73 Ohio St.3d 609, 619 (1995). The court concluded there was a connection or relationship of cause and effect between the original fire and the subsequent acts such that the boys committed an intentional act. " '[F]ailing to adequately stomp the fire out, failing to check the box for smoldering embers, failing to douse the curtains and box and contents with water, and failing to call the fire department would not have resulted in [appellants'] damages absent the original fire that Defendant Kenneth Richards intentionally set.' " *Id.* at ¶ 72 (quoting the insurer's brief). Thus, the court concluded summary judgment in favor of the insurer was appropriate.

{¶ 49} Appellants suggest *Black* is inapplicable because it was decided prior to *Campbell*. This is irrelevant because *Black* does not discuss the doctrine of inferred intent. Rather, the issue in *Black*, as it is here, is whether the insureds' act of attempting to put out the fire they intentionally started constitutes an intervening act that broke the causal connection between the intentional act of setting the fire and the resulting damage. For this purpose, we find *Black* applicable.

{¶ 50} Here, it is undisputed that Kyle and Tyler intentionally set fire to pieces of paper in a warehouse housing paper so that they could use the fire extinguishers to put out the fires. The fact that they may have been negligent in failing to fully extinguish the fires they created does not negate the connection of cause and effect between the original fire and the subsequent acts. As explained by this court in *Hubbell v. Ross*, 10th Dist. No. 99AP-294 (Nov. 9, 1999), a causal connection between a defendant's act and the resulting damage may be broken by an intervening event. An intervening cause is foreseeable to the original negligent actor if the original and successive acts may be joined together as a whole, linking each of the actors to the liability. *Id.*; *Queen City*. However, the original act is excused if there is a new or independent act that intervenes and breaks the causal connection. *Hubbell*. The term new means the second act could not reasonably have been foreseen by the original actor. *Id.*

{¶ 51} Like the factual scenario presented in *Black*, it cannot be said that this case presents an intervening cause that broke the causal connection between the intentional act of setting fire to paper in a warehouse housing paper and the resulting damage. Because USAA's policy excludes coverage for damages caused by an intentional act, we

conclude USAA is under no obligation to defend or indemnify Kyle and Tyler for any liability resulting from their intentional acts in participating in the events presented in this case. *Campbell* at ¶ 61.

{¶ 52} Accordingly, we overrule appellants' assignment of error.

V. CONCLUSION

{¶ 53} For all of the foregoing reasons, appellants' assignment of error is overruled, the cross-appeal is dismissed for lack of jurisdiction, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Cross-appeal dismissed;
judgment affirmed.

DORRIAN, J., concurs.
BROWN, J., concurring separately.

BROWN, J., concurring separately.

{¶ 54} I agree that the policy language, as applied to the facts of this case, precludes coverage under *Allstate Ins. Co. v. Campbell,* 128 Ohio St.3d 186, 2010-Ohio-6312. I concur separately to note that the particular facts and circumstances of each case should dictate whether an insurance policy will exclude a particular injury arising from an intentional act. As one court has observed: "very few acts are purely involuntary," and "most 'accidents' are the result of at least nominally 'intentional' acts." *RAM Mut. Ins. Co. v. Meyer,* 768 N.W.2d 399, 405 (Minn.App.2009). The conduct in the instant case involves a criminal/intentional act of setting fire to property; however, accidents may arise out of intentional acts.
