[Cite as *Willis v. Gall*, 2015-Ohio-1696.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

EMERSON H. WILLIS	:	
Plaintiff-Appellee,	:	Case No. 14CA9
v.	:	DECISION AND
REBECCA GALL, ET AL.,	:	JUDGMENT ENTRY
Defendants-Appellants.	:	RELEASED 04/28/2015

APPEARANCES:

Heather R. Zilka and Jason P. Walker, Smith, Rolfes & Skavdahl Co., L.P.A., Columbus, Ohio, for defendant-appellant Auto-Owners Mutual Insurance Company.

Thomas J. Diehl, Diehl & Hubbell, LLC, Lebanon, Ohio, for plaintiff-appellee Emerson H. Willis.

Hoover, P.J.

{¶ 1} Defendant-appellant Auto-Owners Mutual Insurance Company ("Auto-Owners") appeals the judgment of the Highland County Common Pleas Court, which following a bench trial found that plaintiff-appellee Emerson H. Willis ("Willis") was entitled to underinsured motorist coverage under his employer's insurance policy with Auto-Owners. Auto-Owners contends that Willis is not entitled to coverage because he was not "occupying" the insured vehicle at the time of the accident. Finding no merit to this appeal, we affirm.

I. FACTS

{¶ 2} On March 16, 2011, Willis was severely injured when he was struck by a vehicle driven by Rebecca Gall ("Gall") on Main Road in Marshall Township, Highland County, Ohio. On the day of the accident, Willis had been performing duties for his employer Thompson

Interstate Mowing, Inc. ("Thompson"). Specifically, Willis and his co-worker, Denver Hall ("Hall"), were on various roadways in Marshall Township loading fallen tree branches and limbs into a wood chipper. The wood chipper had been connected to the hitch of a 1998 Chevrolet 3500 truck (the "pick-up truck" or "truck").

{¶ 3} From about 8:00 AM to 12:30 PM, Hall and Willis were in and out of the truck several times as they collected branch debris to place into the wood chipper. However, because it was Willis's first day of employment, he did not drive the truck on the date of the accident. Instead, Willis travelled in the passenger seat of the truck until it got to a cluster of cleared brush. He would then exit the truck, shove branches into the chipper, and then repeat the process down the roadway. If there were a continuous course of debris, instead of entering the passenger compartment of the truck Willis would simply walk behind the truck as it advanced forward picking up and chipping debris along the way. It was only when there was an interruption in the course of debris that Willis would enter the truck and traverse to the next set of branches. From time to time, Hall and Willis removed saws, rakes, and shovels from the bed of the truck to complete the job. Using this method, Hall and Willis collected debris along five or six miles of roadway during the morning hours.

{¶ 4} Following a short lunch break, Hall drove the pick-up truck and attached wood chipper to the next section of debris along the roadway near the intersection of Main Road and State Route 124. Willis travelled in the passenger seat of the truck to the intersection. When they reached the intersection both Hall and Willis exited the truck and placed a "men at work" sign on the roadway, as well as an orange cone. After placing the road sign and cone, Hall and Willis got back into the truck and travelled a few hundred feet until they came upon some debris along the roadway. Willis then exited the truck, and placed the debris into the wood chipper. Willis then

re-entered the truck and Hall drove the truck up a hill in the southbound lane of Main Road. As they approached the top of the hill Willis exited the truck and began feeding the wood chipper. Hall remained in the driver's seat of the truck. Willis was in the process of feeding debris into the wood chipper when Gall's vehicle came over the crest of the hill and hit Willis pinning him between her vehicle and the wood chipper. Willis testified that he had been out of the truck for a "matter of minutes" when he was struck by Gall's vehicle. Hall testified that he had just placed the truck in gear at the time of the accident because he intended to advance the truck forward to chip more debris.

{¶ 5} At the time of the accident, the pick-up truck was insured by a policy issued to Thompson by Auto-Owners. The policy provides $1 Million per person/ $1 Million per occurrence of underinsured motorist coverage. However, in order for an employee, such as Willis, to qualify for underinsured coverage, the employee must have been "occupying" the insured automobile at the time of the accident.[1] Under the policy, "occupying" is defined as "being in or on an automobile as a passenger or operator, or being engaged in the immediate acts of entering, boarding or alighting from an automobile." Endorsement Form 79303 (7-07) § 1(a).

{¶ 6} On March 15, 2013, Willis filed suit against Gall and Auto-Owners, claiming negligence and seeking underinsured motorist coverage.[2] Willis claimed entitlement to underinsurance coverage as an insured employee of Thompson. In response, Auto-Owners filed an answer and also asserted a counterclaim for declaratory relief based upon the terms of the policy. Specifically, Auto-Owners requested a declaration that Willis was not entitled to coverage, as he was not "occupying" a covered "automobile" as those terms are defined in the

[1] Specifically, the policy provides that underinsured motorist coverage does not apply "to any employee * * * of any named insured, * * * unless the employee, * * * is operating or occupying an automobile for which Underinsured Motorist Coverage is provided by this policy." Endorsement Form 79303 (7-07) § 3(g).
[2] The Ohio Bureau of Worker's Compensation was also named as a party in the complaint because it may have a subrogation claim for payments made to Willis.

policy. Auto-Owners and Willis filed cross-motions for summary judgment on the issue of coverage. The trial court denied both motions for summary judgment indicating that it did not have enough facts to determine whether Willis was "occupying" a covered "automobile" as defined in the policy.

{¶ 7} The matter proceeded to a bench trial solely on the issue of coverage in March 2014. The negligence, damages, and subrogation issues were bifurcated from the coverage issue. Following testimony by Hall and Willis, the trial court issued a decision and final judgment entry[3] finding that Willis was "occupying" a covered automobile; and thus determining that Willis was entitled to coverage under the underinsured motorist provision of the insurance policy. Thereafter, Auto-Owners filed a timely notice of appeal.

II. ASSIGNMENTS OF ERROR

{¶ 8} Auto-Owners asserts the following assignments of error for review:

First Assignment of Error:

> The trial court erred in denying Appellant's motion for summary judgment as there were no genuine issues of material fact and Auto-Owners was entitled [to] judgment as a matter of law. (Defendant's Motion for Summary Judgment, filed 12/03/2013; including Hearing on cross-motions for summary judgment conducted on 01/29/2014; and Transcript of Hearing on cross-motions for summary judgment filed on 05/30/2014)[.]

Second Assignment of Error:

> The trial court erred in finding in favor of Appellee, Emerson Willis, at the bench trial of this matter and finding Mr. Willis is entitled to coverage under the terms of the policy issued by Auto-Owners. (Transcript of Bench Trial filed on 05/30/2014)[.]

III. LAW AND ANALYSIS

{¶ 9} For ease of analysis, we will address Auto-Owners' assignments of error out of order. In its second assignment of error, Auto-Owners contends that the trial court erred,

[3] The decision and final judgment entry contains "no just cause for delay" language.

following the bench trial, in determining that Willis was entitled to underinsurance motorist coverage under the terms of the policy. In particular, Auto-Owners contends that the trial court erred in concluding that Willis was "occupying" the insured vehicle at the time of the accident.

{¶ 10} Auto-Owners does not challenge the findings of fact made by the trial court. Rather, it contends that the trial court erred in construing the policy language and applying the facts of the case to the terms of the policy. The interpretation of a written contract, such as an insurance policy, is a matter of law that we review de novo. *Shafer v. Newman Ins. Agency*, 4th Dist. Highland No. 12CA11, 2013-Ohio-885, ¶ 10; *see also Hardert v. Neumann*, 4th Dist. Adams No. 13CA977, 2014-Ohio-1770, ¶ 8 ("[W]e conduct a de novo review of a party's challenges to the trial court's choice or application of law.").

{¶ 11} The sole issue before this Court is whether Willis was "occupying" the pick-up truck at the time of the accident. Auto-Owners contends that the definition of "occupying" in the insurance policy is clear and unambiguous, and that Willis was not occupying the truck when he was struck by Gall's vehicle. Willis, on the other hand, argues that the definition of "occupying" is ambiguous and therefore should be construed against Auto-Owners and in favor of coverage.

{¶ 12} "In construing a written instrument, the primary and paramount objective is to ascertain the intent of the parties so as to give effect to that intent." *Shafer* at ¶ 10, citing *Aultman Hosp. Assn. v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51, 53, 544 N.E.2d 920 (1989). "Courts must give common words their ordinary meaning unless manifest absurdity would result or some other meaning is clearly evidenced from the face or overall contents of the written instrument." *Id*., citing *In re All Kelley & Ferraro Asbestos Cases*, 104 Ohio St.3d 605, 2004-Ohio-7104, 821 N.E.2d 159, ¶ 29. " 'If a contract is clear and unambiguous, the court need not go beyond the plain language of the agreement to determine the parties' rights and obligations; instead, the

court must give effect to the agreement's express terms.' " *Id*., quoting *Uebelacker v. Cincom Sys., Inc.*, 48 Ohio App.3d 268, 271, 549 N.E.2d 1210 (1st Dist.1988).

{¶ 13} On the other hand, where the language of an insurance contract is ambiguous, i.e., susceptible to more than one interpretation, it must be construed in favor of the insured and against the insurer. *Dominish v. Nationwide Ins. Co.*, 129 Ohio St.3d 466, 2011-Ohio-4102, 953 N.E.2d 820, ¶ 7; *see also Faruque v. Provident Life & Acc. Ins. Co.*, 31 Ohio St.3d 34, 508 N.E.2d 949 (1987), syllabus ("Language in a contract of insurance reasonably susceptible of more than one meaning will be construed liberally in favor of the insured and strictly against the insurer."). "This is particularly true when considering provisions that purport to limit or qualify coverage under the policy." *Westfield Ins. Co. v. Hunter*, 128 Ohio St.3d 540, 2011-Ohio-1818, 948 N.E.2d 931, ¶ 11.

{¶ 14} Willis cites several cases in support of his argument that the definition of "occupying" is ambiguous. *See* case discussions and citations *infra*. Auto-Owners, meanwhile, contends that the cited cases involve definitions of "occupying" which are materially different from the definition in the policy at issue; and that the plain and ordinary meaning of the terms contained within the definition of "occupying" leads to the conclusion that there is no coverage for Willis under the facts of the case.

{¶ 15} In *Joins v. Bonner*, 28 Ohio St.3d 398, 504 N.E.2d 61 (1986), the Ohio Supreme Court had to determine whether a child was "occupying" the insured vehicle for purposes of uninsured motorist coverage under an automobile insurance policy. Specifically, the *Joins* court was tasked with determining whether a child had been occupying the insured vehicle when the child had exited the passenger side of the vehicle, crossed in front of the vehicle, and in proceeding to cross the street to the opposite curb, was struck by an uninsured motorist at a point

about seven feet from the opposite curb. *Joins* at 400. "Occupying" was defined in that policy as "in or upon or entering into or alighting from." *Id.* at syllabus. The Court held that the child was entitled to coverage under the policy's uninsured motorist provision stating that: "When, as here, a passenger who exits an insured vehicle and proceeds immediately to cross the street in front of such car to the opposite curb and, before reaching the opposite curb, is struck and injured by an uninsured vehicle, such passenger is 'alighting from' such insured vehicle within the meaning of such terms in the uninsured motorist coverage provision of the insurance policy." *Id.* at 400. The Court further explained that ambiguous language in an insurance contract should be liberally construed in favor of the insured and that: "In construing uninsured motorist provisions of automobile insurance policies which provide coverage to persons 'occupying' insured vehicles, the determination of whether a vehicle was occupied by the claimant at the time of an accident should take into account the immediate relationship the claimant had to the vehicle, within a reasonable geographic area." *Id.* at 401.

{¶ 16} Since the decision in *Joins* was reached, various courts in this state have been presented matters involving a definition of "occupying" and claims for coverage under uninsured or underinsured motorist provisions by persons who were not physically inside the insured automobile when injured. In *Etter v. Travelers Ins. Cos.*, 102 Ohio App.3d 325, 657 N.E.2d 298 (2nd Dist.1995), a motorist was struck by an underinsured driver in a highway median, after the motorist had exited the insured vehicle to assist a third person in an attempt to move a disabled vehicle. *Etter* at 326-327. After noting that the term "occupying" as defined in insurance policies often seems unambiguous on its face, the Second District Court of Appeals found that it often becomes ambiguous when determining whether insurance coverage should be extended in certain factual circumstances. *Id.* at 328. Ultimately, the appellate court held that the motorist

was "occupying" the insured vehicle and thus was entitled to underinsured motorist coverage, because he had an immediate relationship to the vehicle. *Id*. at 331. The policy in that case defined the word "occupying" as "in, upon, getting in, on, out or off." *Id*. at 327.

{¶ 17} In *Disbennet v. Utica Natl. Ins. Group*, 12th Dist. Fayette No. CA2002-04-009, 2003-Ohio-2013, and *Norris v. Allstate Ins. Co.*, 8th Dist. Cuyahoga No. 70591, 1996 WL 732545 (Dec. 19, 1996), the claimants were surveyors working in the center of a highway between four traffic cones when they were struck by an underinsured/uninsured motorist. *Disbennet* at ¶ 2; *Norris* at * 1. In each case, the claimant came to the site in an employer's vehicle, which was parked 80 and 30 feet, respectively, from the point of the accident. *Disbennet* at ¶ 2; *Norris* at * 1. Each claimed against his employer's underinsured/uninsured motorist policy. *Disbennet* at ¶ 3; *Norris* at * 1. In each case, the appellate courts concluded that, as a matter of law, the claimant was "occupying" his employer's vehicle for purposes of establishing uninsured/underinsured coverage. *Disbennet* at ¶ 16; *Norris* at * 2. The *Disbennet* court concluded that the claimant was "* * * within a reasonable geographic distance to the insured vehicle and that he was engaged in an activity that was foreseeably identifiable with the use of the insured vehicle at the time of the accident." *Disbennet* at ¶ 16.

{¶ 18} In *Yoerger v. Gen. Acc. Ins. Co. of Am.*, 98 Ohio App.3d 505, 648 N.E.2d 919 (10th Dist.1994), an uninsured motorist struck a highway crew worker after the worker exited the vehicle he was occupying to replace a broken reflector lens in the dividing lane of a highway. *Yoerger* at 508. The crew worker's vehicle had uninsured motorist insurance that covered anyone who "occupied" the vehicle.[4] *Id*. at 507. The Tenth District Court of Appeals held that the crew worker's activity was foreseeably identifiable with the normal use of the insured vehicle. *Id*. at 508. However, the matter was remanded to the trial court to determine if the crew worker was

[4] Whether the insurance policy provided a definition of "occupied" is not made known in the appellate opinion.

within a reasonable geographic distance of the insured vehicle at the time of the accident. *Id*. at 509.

{¶ 19} In addition to the above-discussed cases, Willis cites to numerous other decisions in support of his argument. *See Halterman v. Motorists Mut. Ins. Co.*, 3 Ohio App.3d 1, 443 N.E.2d 189 (8th Dist.1981) (holding that a plaintiff who had left his vehicle to assist a stranded motorist was "occupying" his vehicle and was covered by the uninsured motorist provision of the insurance policy)[5]; *State Farm Mut. Auto. Ins. Co. v. Cincinnati Ins. Co.*, 8th Dist. Cuyahoga No. 62930, 1993 WL 215450 (June 17, 1993) (finding occupancy where a man was walking along a highway retrieving pop bottles 100 feet from the insured vehicle)[6]; *Williams v. Safe Auto Ins. Co.*, 8th Dist. Cuyahoga No. 83882, 2004-Ohio-3741 (finding occupancy where a woman was walking toward the insured vehicle)[7]; *Anderson v. Nationwide Mut. Fire Ins. Co.*, 6th Dist. Lucas No. L-04-1251, 2005-Ohio-3043 (finding occupancy where a surveyor was placing warning flags in the roadway about 20-25 feet from the insured vehicle)[8]; *McCallum v. Am. States Ins. Co.*, 6th Dist. Lucas No. L-90-354, 1991 WL 254150 (Nov. 15, 1991) (finding occupancy where a man had exited the insured vehicle and was walking down the road)[9]; and *State Farm Mut. Auto Ins. Co. v. Counts*, 9th Dist. Summit Nos. 14490, 14492, 1990 WL 177476 (Nov. 7, 1990) (finding occupancy where a man was doing brake work under the insured vehicle when injured)[10].

{¶ 20} Willis contends that the above cases demonstrate that the determination of whether he was "occupying" the truck should focus on his activities and relationship with the

[5] The policy at issue in *Halterman* defined "occupying" as "in or upon or entering into or alighting from." *Halterman* at 2.
[6] The policy at issue in *State Farm* defined "occupying" as "in, upon, getting in, on, out or off." *State Farm* at * 2.
[7] The policy at issue in *Williams* defined "occupying" as "in, on, getting in, or getting out of." *Williams* at ¶ 11.
[8] The policy at issue in *Anderson* defined "occupying" as "in, upon, getting in, on, out or off." *Anderson* at ¶ 17.
[9] The policy at issue in *McCallum* defined "occupying" as "in, upon, getting in, on, out or off." *McCallum* at * 2.
[10] The policy at issue in *Counts* defined "occupying" as "in, upon, getting in, on, out or off." *Counts* at * 4.

truck, not merely whether he was inside, touching, or attached to the truck at the time of the accident. Auto-Owners disagrees, and contends that the policy at issue differs from the policies in the cited cases because its definition of "occupying" does not include the word "upon", and adds the words "immediate" and "passenger." Auto-Owners argues that the words were intentionally included or excluded from the definition to limit coverage, and that the definition as written plainly and unambiguously limits coverage to situations where the claimant was either (1) inside or on top of the vehicle as an operator or passenger; or (2) engaged in the immediate act of entering, boarding, or alighting from the vehicle.

{¶ 21} We disagree with Auto-Owners and find that the policy's definition of "occupying" is ambiguous and susceptible to more than one meaning. For instance, we do not believe that the policy's use of the word "on", as opposed to "upon", limits coverage to situations where the claimant was physically on top of and touching the insured vehicle. The word "on" has various meanings, including its use "as a function word to indicate position in close proximity with [an object]." *See* Merriam-Webster Dictionary at www.merriam-webster.com/dictionary/on. Certainly Willis was "in close proximity with" the truck at the time of the accident; and thus, one could reasonably conclude that he was "on" the vehicle.

{¶ 22} Auto-Owners also argues that Willis had been outside of the truck for a significant period of time and could not have been in engaged in the "immediate" act of entering or alighting from the truck when he was struck by Gall's vehicle. In other words, Auto-Owners asserts that immediate action equates to instantaneous action or action without delay. Willis contends, to the contrary, that the term "immediate" is subject to multiple definitions. Specifically, he notes that the term is also defined as "being near at hand" and "near to or related to the present." *See* Merriam-Webster Dictionary at www.merriam-

webster.com/dictionary/immediate. The trial court also found that there are numerous definitions for the word "immediate" and cited the Ballentine's Law Dictionary (3rd ed. 1969) definition, which defines the word as "[a] word of qualification of both time and distance but having no one precise signification in either respect, being relative to the event." [Decision and Final Judgment Entry at 7.]

{¶ 23} While our review is conducted de novo and without deference to the trial court, we nonetheless agree with the trial court's conclusion that the policy language is ambiguous. Like the trial court said, "the determination of what is immediate must be determined based upon all of the facts of each case." [Decision and Final Judgment Entry at 8.] Accordingly, we do not believe that the insertion of the word "immediate" in the definition of "occupying" makes the definition unambiguous, or otherwise distinguishes this case from the cases discussed above.

{¶ 24} We conclude that the definition of "occupying" is not plainly unambiguous, but rather is susceptible to more than one interpretation. We also agree with the rationale of *Joins* and the other cases discussed above, and conclude that when a claimant is within a reasonable geographic distance of the insured vehicle and was engaged in an activity that was foreseeably identifiable with the use of the insured vehicle, then the claimant was occupying the vehicle for purposes of underinsured motorist coverage.

{¶ 25} On the day of the accident, Willis was feeding branches into the wood chipper attached to the truck. The truck was a scheduled vehicle under a commercial insurance policy issued to a business involved in landscaping and similar duties. Willis's job required that he repeatedly enter and exit the truck as the truck would travel to different sets of debris along the roadway. He also retrieved tools held in the bed of the truck to aid in the performance of his job

duties. At the moment he was struck by Gall's vehicle, he was immediately[11] behind the truck and in the process of feeding the wood chipper. Based on these facts, we believe that Willis was engaged in an activity that was foreseeably identifiable with the use of the insured vehicle and within a reasonable geographic distance of the insured vehicle. Accordingly, the trial court did not err in holding that Willis was entitled to underinsurance motorist coverage under the terms of the policy. Auto-Owners' second assignment of error is overruled.

{¶ 26} In its first assignment of error, Auto-Owners contends that the trial court erred in denying its motion for summary judgment. Auto-Owners again contends that it was entitled to judgment as a matter of law because Willis was not "occupying" the insured vehicle at the time of the accident, and thus, was excluded from underinsurance motorist coverage.

{¶ 27} "A party may appeal the denial of a motion for summary judgment after a subsequent adverse final judgment." *Spencer v. Blakenship*, 4th Dist. Scioto No. 03CA2882, 2004-Ohio-1738, ¶ 15, citing *Balson v. Dodds*, 62 Ohio St.2d 287, 405 N.E.2d 293 (1980), paragraph one of the syllabus. However:

> Any error by a trial court in denying a motion for summary judgment is rendered moot or harmless if a subsequent trial on the same issues raised in the motion demonstrates that there were genuine issues of material fact supporting a judgment in favor of the party against whom the motion was made.

Continental Ins. Co. v. Whittington, 71 Ohio St.3d 150, 642 N.E.2d 615 (1994), syllabus.

{¶ 28} As the Tenth District Court of Appeals has explained:

> [I]f a trial court denies a summary judgment motion due to the existence of genuine issues of material fact, and a subsequent trial on these issues of fact

[11] Note how "immediately" in this sentence relates to a spatial observation as opposed to an increment of time; thus illustrating the multiple meanings attached to the word.

> results in a verdict supported by the evidence for the party who did not move for summary judgment, then substantial justice requires an appellate court to affirm the denial of summary judgment. To allow a summary judgment decision based upon less evidence to prevail over a verdict reached on more evidence would defeat the fundamental purpose of judicial inquiry.
>
> On the other hand, when a trial court denies a motion for summary judgment based upon the resolution of a purely legal question, an appellate court may review that decision regardless of the movant's success at trial. Unlike factual questions, legal questions are not mooted by a subsequent trial that results in a verdict adverse to the movant.

(Citations omitted.) *Miller v. Lindsay-Green, Inc.*, 10th Dist. Franklin No. 04AP-848, 2005-Ohio-6366, ¶¶ 31-32.

{¶ 29} Auto-Owners' arguments in favor of its first assignment of error are identical to the arguments raised in support of its second assignment of error. Accordingly, we rely upon the analysis above and overrule Auto-Owners' first assignment of error. We further note that additional evidence was presented at the bench trial and it would be improper to review the summary judgment motion that was based upon less evidence.

IV. CONCLUSION

{¶ 30} Based on the foregoing, Auto-Owners' assignments of error are overruled. The judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

Harsha, J., dissenting:

{¶ 31} I respectfully dissent because Auto-Owners addition of the word "immediate" to the definition of "occupying" removes the ambiguity that the appellee artfully has attempted to create. The seminal case cited by the majority, *Joins v. Bonner, supra,* is clearly distinguishable based upon the absence of the word "immediate" from its definition of "occupying," which read: "[O]ccupying means in or upon or entering into or alighting from." Therefore, *Joins* and its prodigy do not control the outcome here. *See, also,* the dissent of Justice Holmes in *Joins* for an insightful rejection of the attempt to expand the logical and common sense meaning of "entering into or alighting from" a vehicle.

{¶ 32} Likewise, I cannot join in the creation of an expansive definition of "on" when the clear language of the policy evidences the intent of the parties to the contract, i.e. Auto-Owners and Gall, to limit coverage to persons having an immediate physical contact with a covered vehicle. The mere fact that multiple definitions of a word exist does not per se create an ambiguity. The meaning of such words must be construed based upon the context in which they are used. *Mustard v. Owners Insurance Co.*, 4th Dist. No. 13CA3362, 2014-Ohio-865, ¶ 20. In this relationship between the parties to the insurance contract, it is obvious they intended to limit coverage, not expand it. Thus, I cannot agree that the parties to the contract intended that "on" means "somewhere close."

{¶ 33} So, I respectfully dissent.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J.: Concurs in Judgment and Opinion.
Harsha, J.: Dissents with Dissenting Opinion.

For the Court

By:_____
Marie Hoover, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.