

[Opinion should not be cited as authority. See 2011-Ohio-1420.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NATIONWIDE MUTUAL INSURANCE
COMPANY

Appellant

-vs-

CORY M. BRIGGS

Appellee

JUDGES:

Hon. Sheila G. Farmer, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 2009 CA 00108

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2008 CV 01747

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 7, 2009

APPEARANCES:

For Appellant

For Appellee

KIRK E. ROMAN
50 South Main Street, Suite 502
Akron, Ohio 44308

STEPHEN A. GINELLA, JR.
3600 Cleveland Ave., N.W., Suite 6
Canton, Ohio 44709

Hoffman, J.

{¶1} Plaintiff-appellant Nationwide Mutual Insurance Company (“Nationwide”) appeals the April 9, 2009 Judgment Entry entered by the Stark County Court of Common Pleas, overruling its motion for summary judgment and finding defendant–appellee Cory M. Briggs entitled to coverage by Nationwide.

STATEMENT OF THE FACTS AND CASE

{¶2} Sometime in mid-June, 2007, Appellee purchased approximately \$170 worth of fireworks, including bottle rockets and smoke grenades. At approximately 9:30 or 10:00pm on July 3, 2007, Appellee and his friend, Quinton Paulik, were watching television and playing video games. Sometime after 10:00pm, Appellee and Paulik went outside and observed some neighborhood children shooting off little firecrackers in a nearby field. A middle school formerly occupied the space.

{¶3} Appellee went inside and retrieved some of the fireworks he had previously purchased. Appellee positioned himself in the middle of the field to shoot off some of the larger sized bottle rockets. The first bottle rocket went up in to the air about twenty yards, made a ninety degree angle, and flew into the garage of a nearby house. In his deposition, Appellee stated his intention was for the bottle rocket to travel straight into the air. Five or six of the children who had been outside shooting off firecrackers ran over to the garage. Appellee grabbed the remainder of his fireworks and returned them to the house. When he came back inside, he observed a small flame at the back of the garage. Appellee started running toward the garage, screaming for someone to dial 911. Appellee also yelled for the occupants of the house to get out. Attempts to squelch the fire with a garden house were unsuccessful.

{¶4} Appellee was subsequently charged with possession of fireworks, and discharge of fireworks, in violation of City of Massillon Ordinances 1519.04(a) and (b). Appellee entered pleas of no contest to the charges and was found guilty.

{¶5} At the time of the incident, Kenneth and Peggy Briggs, Appellee's parents, were the named insureds in a Nationwide homeowner's policy, which was in full force and effect at the time of the incident. Nationwide does not dispute Appellee falls within the definition of "insured" under the policy. Nationwide does, however, dispute whether Appellee is entitled to coverage. Accordingly, on April 8, 2008, Nationwide filed a Complaint for Declaratory Judgment. Appellee filed an Answer and Counterclaim for Declaratory Judgment. On January 26, 2009, Nationwide filed a Motion for Summary Judgment. Appellee filed a motion in opposition thereto. Via Judgment Entry filed April 9, 2009, the trial court overruled Nationwide's motion for summary judgment, finding Appellee was entitled to coverage.

{¶6} It is from this judgment entry Nationwide appeals, raising the following assignment of error:

{¶7} "I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE APPELLANT HAS NEITHER A DUTY TO DEFEND NOR A DUTY TO INDEMNIFY APPELLEE, CORY M. BRIGGS, FOR THE INCIDENT WHICH IS THE SUBJECT OF THE INSTANT CASE."

I

{¶8} In its sole assignment of error, Nationwide contends the trial court erred in denying its motion for summary judgment as it had neither a duty to defend nor a duty to indemnify Appellee under the provisions of the insurance policy. Specifically,

Nationwide argues, because Appellee's possession and discharge of the fireworks was criminal in nature, coverage under the policy for the incident is excluded. We disagree.

{¶9} Section II – Liability exclusions of the Policy provides, in pertinent part:

{¶10} “1. Coverage E – Personal Liability, and Coverage F – Medical Payments to others do not apply to bodily injury or property damage:

{¶11} “a) caused intentionally, by or at direction of an insured, including willful acts, the result of which the insured knows or ought to know will flow from the insured's conduct

{¶12} “b) caused by or resulting from an act or omission which is criminal in nature and committed by an insured.

{¶13} “This exclusion 1.b. applies regardless of whether the insured is actually charged with, or convicted of a crime.”

{¶14} Nationwide submits Ohio courts have found “criminal acts exclusions to be valid and enforceable, and not violative of public policy. Nationwide cites *American Family Mut. Ins. Co. v. Annette Scott*, 2nd Dist. App. No. 07CA28, 2008 Ohio 1865; and *Allstate Ins. Co. v. Cartwright*, 2nd Dist. App. No. 15472 and 154783, unreported.

{¶15} As noted by the trial court, criminal acts exclusions have long been accepted based upon the rationale providing insurance coverage for criminal acts would encourage anti-social behavior by shifting the financial burden away from the wrongdoer. However, the trial court found and we agree, the policy language at issue herein is overly broad as applied to Appellee. The language of the exclusion found in Section II, Subsection 1(b) does not differentiate between damages or injuries intended or reasonably expected to result and those damages or injuries which are accidental or

result from mere negligent conduct. The cases relied upon by Nationwide involve situations in which the criminal acts exclusion contains language the wrongdoer knew or ought to have known damage or injury would result from his or her act.

{¶16} Based upon the foregoing, we find the trial court appropriately denied Nationwide's motion for summary judgment, finding the criminal acts exclusion as applied to Appellee was overly broad as applied to Appellee in this case.

{¶17} Nationwide's sole assignment of error is overruled.

{¶18} The judgment of the Stark County Court of Common Pleas is affirmed.

By: Hoffman, J.

Farmer, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NATIONWIDE MUTUAL INSURANCE
COMPANY

Appellant

-vs-

CORY M. BRIGGS

Appellee

:
:
:
:
:
:
:
:
:
:
:

JUDGMENT ENTRY

Case No. 2009 CA 00108

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE