Court Clarifies Application of 'Inferred Intent' Doctrine to Intentional Acts Exclusion in Insurance Policy

Doctrine Not Applicable to Teens Who Placed Decoy Deer in Roadway

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2009-2358. Allstate Ins. Co. v. Campbell, Slip Opinion No. 2010-Ohio-6312.
Franklin App. Nos. 09AP-306, 09AP-307, 09AP-308, 09AP-309, 09AP-318, 09AP-319, 09-AP320, and 09AP-321, 2009-Ohio-6055. Judgment of the court of appeals affirmed in part and reversed in part, and cause remanded to the trial court.
O'Connor and Lanzinger, JJ., concur.
Brown, C.J., and Pfeifer, J., concur in the syllabus paragraphs and in part of the judgment.
Lundberg Stratton, O'Donnell, and Cupp, JJ., concur in the first syllabus paragraph and in part of the judgment.
Opinion: **http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2010/2010-Ohio-6312.pdf**

View oral argument video of this case.

(Dec. 30, 2010) The Supreme Court of Ohio ruled today that when an insurance policy excludes coverage for intentional acts, the doctrine of "inferred intent" can be applied in cases other than those involving homicide or sexual molestation, however inferred intent applies only where an insured person's intentional act and the resulting harm are intrinsically linked, so that the act necessarily results in the harm.

Applying that analysis to a Hardin County case, the Court held that inferred intent should not have been applied to grant summary judgment to four insurance companies seeking to deny coverage for damages caused by a teenage prank. The Court's lead opinion, written by Justice Judith Ann Lanzinger partially affirmed and partially reversed a ruling by the 10th District Court of Appeals.

On the evening of November 18, 2005, a group of teenage boys, including Dailyn Campbell, Jesse Howard, and Corey Manns, stole a lightweight Styrofoam target deer typically used for shooting or archery. The boys fastened a piece of wood to the target so that it could stand upright. Along with Carson Barnes, they then placed it just below the crest of a hill in Hardin County on County Road 144, a hilly and curvy two-lane road with a speed limit of 55 miles per hour. They put the target on the road after dark – between 9:00 and 9:30 p.m. – in a place in which drivers would be unable to see it until they were 15 to 30 yards away. The boys then remained in the area so that they could watch the reactions of motorists. About five minutes after the boys placed the target in the road, appellee Robert Roby drove over the hill. Roby took evasive action to avoid the decoy, but ultimately lost control of his vehicle, which left the road, overturned, and came to rest in a nearby field. The accident caused serious injuries to both Roby and his passenger, Dustin Zachariah.

Roby and Zachariah filed suits in the Franklin County Court of Common Pleas against the boys, their parents, and their insurance companies, which included Allstate, Erie Insurance Exchange, Grange Mutual Casualty Co. and American Southern Insurance Company, seeking recovery for the damages sustained in the accident.

The insurers filed declaratory judgment actions seeking a declaration that, based on "intentional acts" exclusions in their respective policies, they were under no duty to defend or indemnify their insureds, the juveniles and their parents, against the Roby and Zachariah lawsuits. After consolidating the declaratory judgment actions, the trial court granted the insurance companies' motions for summary judgment. Although the court did not find that the boys directly intended to cause harm, it inferred their intent as a matter of law, based in part on the finding that their conduct was substantially certain to result in harm. The trial court thus concluded that none of the insurance policies provided coverage and that none of the insurers had a duty to defend or indemnify its insureds against the damage claims asserted by Roby and Zachariah.

The juveniles and their parents appealed. On review, the 10th District Court of Appeals reversed and remanded the case to the trial court for further proceedings. The appellate panel held that none of the four insurance companies was entitled to summary judgment because there were genuine issues of material fact regarding whether the boys intended to cause harm when they placed the deer target in the road, whether harm was substantially certain to result from their actions, and whether those actions fall within the scope of their individual insurance policies. The court of appeals concluded that the boys' actions did not support an objective inference of intent to injure as a matter of law.

The insurance companies sought and were granted Supreme Court review of the 10th District's ruling.

In today's lead opinion, Justice Judith Ann Lanzinger noted that homeowners' insurance policies typically provide coverage for harm accidentally caused by an insured party, but contain language stating that the insurer will not be liable for harm intentionally caused by the insured. She explained that the doctrine of inferred intent has evolved through several Ohio Supreme Court decisions holding that certain conduct by an insured is so inherently harmful that there can be no question those acts are intended to cause injury. – and therefore damages caused by the conduct are presumptively excluded from

coverage under an insurance policy's intentional acts exclusion.

Justice Lanzinger noted that the doctrine of inferred intent was implicitly recognized in *Preferred Risk Ins. Co. v. Gill* (1987) where the Court held that no proof of subjective intent to cause injury was necessary to deny coverage when an insured sought coverage for civil claims arising from his aggravated murder of a child.

The first explicit recognition of the doctrine occurred in *Gearing v. Nationwide Ins. Co.* (1996). *"Gearing* involved a declaratory judgment action in which an insured sought a declaration that the insurance company was obligated to defend him in a civil suit arising from his alleged sexual molestation of three girls," wrote Justice Lanzinger. "We affirmed the judgment of the court of appeals, holding that the insurance company owed no duty to defend the insured. ... "

"In *Gearing*, the insurance policy had provided an exclusion for bodily injury or property damage that is 'expected or intended by the insured.' ... "

"We concluded, 'Incidents of intentional acts of sexual molestation of a minor do not constitute "occurrences" for purposes of determining liability insurance coverage, as intent to harm inconsistent with an insurable incident is properly inferred as a matter of law from deliberate acts of sexual molestation of a minor.' ... "

"In adopting the doctrine of inferred intent only in the context of sexual-molestation cases, we did not address the question of whether intent may be inferred in cases involving acts other than sexual molestation or murder. Furthermore, as a result of this limited adoption of the rule, we did not enunciate a clear standard for courts to apply in determining whether a certain act gives rise to an inference of intent."

Justice Lanzinger also pointed to two cases in which this Court held that inferred intent *did not* apply to presumptively preclude insurance coverage: *Physicians Insurance Co. of Ohio v. Swanson* (1991), in which a minor and his parents were sued for his firing a BB gun towards some teenagers from approximately 70 to 100 feet away, and *Buckeye Union Ins. Co. v. New England Ins. Co.* (1999), in which a policyholder sought tort damages from an insurer based on the company's bad-faith denial of a claim.

"Limiting the scope of the doctrine is 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. Thus, 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. The doctrine of inferred intent does not apply only to cases arising from acts of murder or sexual molestation. For example, intent could hypothetically be inferred in certain felonious-assault or rape cases, where the intentional acts necessarily cause harm; however, 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."

Applying that analysis to the lower court rulings in this case, Justice Lanzinger wrote: "The present case is similar to *Swanson* and *Buckeye Union*. We cannot say as a matter of law that the act of placing a target deer in a road in the manner done here necessarily results in harm. Indeed, other cars had passed by and avoided the target. While the boys' act was ill-conceived and irresponsible and resulted in serious injuries, 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. … "

"We now clarify that 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. ... "

"Because we determine that under the circumstances of this case, intent to harm may not be inferred as a matter of law, we affirm the judgment of the court of appeals on this point and conclude that the trial court must conduct a factual inquiry on remand to determine whether a duty to defend and indemnify arises from the Allstate, Grange, and Erie policies."

"The Allstate, Grange, and Erie polices each contain exclusionary language stating that the insurers will not cover harm expected or intended by an insured. Because we do not infer the insureds' intent to harm as a matter of law and the boys deny that harm was intended or expected, whether the injury was expected or reasonably expected is an issue to be determined by the trier of fact. ... "

"An insurer's motion for summary judgment may be properly granted when intent may be inferred as a matter of law. In cases such as this one, where the insured's act does not necessarily result in harm, we cannot infer an intent to cause injury as a matter of law. We therefore hold that summary judgment is not proper. In a declaratory action like this, the trier of fact on remand must weigh the facts in evidence to determine whether the boys intended or expected harm and, consequently, whether the insurance agreements provide coverage in this case."

Finally, Justice Lanzinger noted that, in contrast to the language of the Allstate, Grange and Erie policies at issue in the case, the American Southern policy issued to the Campbell family excludes coverage for bodily injury or property damage "which results directly or indirectly from ... an intentional act of any insured." Because the broad language of that exclusion is not limited to harm "expected or intended" by an insured, Justice Lanzinger wrote, "we must conclude that as a matter of law, American Southern is under no duty to defend or indemnify Dailyn Campbell or his family for any liability resulting from his intentional acts in participating in the events at issue in this case."

Justice Lanzinger's opinion was joined in its entirety by Justice Maureen O'Connor.

Justice Paul E. Pfeifer entered a separate opinion, joined by Chief Justice Eric Brown, in which he concurred in the Court's syllabus holdings and in all of the judgment except the portion differentiating the American Southern policy from the three other companies' policies. Justice Pfeifer wrote that under the lead opinion's broad reading of the American Southern policy language, that policy would exclude coverage "for any injury that resulted from any waking, nonreflexive act of an insured."

Justice Terrence O'Donnell entered a separate opinion, joined by Justice Evelyn Lundberg Stratton, in which he concurred in only paragraph one of the syllabus holding that the inferred intent doctrine is not limited to cases involving sexual molestation or homicide. He dissented however, from the majority majority's creation of a new test for inferred intent, where the insured's intentional act and the harm caused are intrinsically tied so that the act has necessarily resulted in the

harm."Instead, Justice O'Donnell urged the court to adhere to its existing precedent as enunciated in *Gearing,* that inferred intent applies when an insured's intentional act was "substantially certain to result in injury."

Applying the *Gearing* standard to this case, Justice O'Donnell wrote: "Intent to injure is properly inferred as a matter of law from the act of placing an obstruction out of the line of sight of a motorist below the crest of a grade at night, in the middle of a lane of eastbound traffic on a 55 m.p.h. highway, because that act is substantially certain to cause injury. Here, the teens anticipated injury because they repeatedly drove past the deer to witness the reactions of oncoming motorists as they encountered the deer, and their deposition testimony is that they witnessed Roby drive past them and witnessed the aftermath of the crash. These actions more than suggest that they knew that injury would occur, they anticipated it and waited for it. Our case law applies to these circumstances because these teens knew injury would result from their conduct. Because their deliberate actions were designed to result in injury substantially certain to occur, the injury to Roby and Zachariah was not an accident, and thus not an occurrence as defined by the language in these policies. ... Accordingly, the insurance companies should have no duty to defend or indemnify their insured because these injuries resulted from an intentional act, and the policies exclude coverage for intentional acts. Thus, I would reverse the judgment of the Tenth District Court of Appeals and reinstate the judgment of the trial court."

Justice Robert R. Cupp also wrote separately. In his opinion, Justice Cupp concurred with the Court's syllabus holding that the inferred intent doctrine is applicable to cases not involving homicide or sexual molestation. He also agreed with the lead opinion's holdings that Erie and Grange were not entitled to summary judgment in the case based on the intentional acts exclusions in their policies, and that American Southern was entitled to summary judgment based on the different wording of the intentional acts exclusion in its policy.

Justice Cupp wrote that, unlike the majority, he would also hold that the language of the Allstate policy exclusion for injury or property damage "which may reasonably be expected to result from the intentional or criminal acts or omissions of" an insured was sufficiently similar to the American Southern policy language to support the trial court's grant of summary judgment in favor of Allstate.

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