OHIO COURT OF APPEALS, SIXTH APPELLATE DISTRICT

Buehrer v. Meyers

2020-Ohio-3207 (Ohio Ct. App. 2020) · No. WM-19-009 · Decided June 5, 2020

SUMMARY

The Sixth District Court of Appeals affirmed summary judgment declaring that a homeowners insurance policy provided no personal liability or medical-payments coverage for claims arising from the insured's in-home child-care services. The court held that the policy clearly and unambiguously defined applicable home day-care services as a business and that the undisputed facts did not satisfy any exception to the business definition. The court also concluded that the parties' differing opinions about whether the activity constituted a business did not create a genuine issue of material fact.

CASE DETAILS

COURT	Ohio Court of Appeals, Sixth Appellate District
WRITING FOR THE COURT	Thomas J. Osowik; Christine E. Mayle; Gene A. Zmuda
JURISDICTION	Ohio
DECIDED	June 5, 2020
DOCKET	WM-19-009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed the Williams County Court of Common Pleas' grant of summary judgment to intervenor Auto-Owners (Mutual) Insurance Company in its declaratory-judgment action concerning insurance coverage for claims arising from in-home child care.
STANDARD OF REVIEW	The court reviewed the summary-judgment determination de novo under Civ.R. 56 and reviewed questions of law, including declaratory-judgment rulings and insurance-policy interpretation, de novo.
PRECEDENTIAL VALUE	published Ohio Court of Appeals decision
PARTIES	Daniel C. Buehrer, individually, Hannah L. Buehrer, individually and as administratrix of the estate of Z.B. v. Auto-Owners (Mutual) Insurance Company, Kristy L. Meyers, Dustin Meyers

TOPICS

insurance coverage · duty to defend · duty to indemnify · summary judgment · declaratory relief insurance

PRACTICE AREAS

insurance coverage · insurance litigation · civil procedure · appellate procedure

QUESTIONS PRESENTED

1. Whether the homeowners insurance policy's definition of business and its business exclusion were clear and unambiguous.
2. Whether the undisputed facts established that Kristy Meyers' in-home child-care activities constituted a business under the policy.
3. Whether a genuine issue of material fact precluded summary judgment concerning application of the business exclusion and Auto-Owners' coverage obligations.

HOLDINGS

1. The homeowners insurance policy clearly and unambiguously defined home day-care services provided by an insured as a business and excluded personal-liability and medical-payments coverage for bodily injury arising out of an insured's business.
2. Kristy Meyers' regular in-home child-care services constituted a business under the homeowners policy, even though she did not formally advertise, did not regard the activity as a business, and may have had motives beyond profit.
3. Summary judgment for Auto-Owners was proper because no genuine issue of material fact remained and reasonable minds could reach only the conclusion that the policy excluded coverage for appellants' claims.

KEY QUOTATIONS

> *"At this juncture, the reasonable meaning of "home day care services" in the subject homeowners' insurance policy is Mrs. Meyers' day care for another, presumably children, other than her own family, in her home during the day."* (¶ 28)

> *"The differing opinions between Mrs. Meyers and the appellant-mother as to whether or not Mrs. Meyers operated a child care business out of her home do not create material issues of fact where the underlying facts about Mrs. Meyers' child care activities are undisputed."* (¶ 31)

> *"We conducted a de novo review of the record using the well-established standards under Civ.R. 56 and find there remain no genuine issues of material fact and, after construing all the evidence most strongly in favor of appellants, reasonable minds can come to but one conclusion that appellee is entitled to summary judgment as a matter of law that the subject homeowner's insurance policy does not provide personal liability coverage to defendants for appellants' claims."* (¶ 38)

FACTUAL BACKGROUND

Kristy Meyers provided scheduled, paid child-care services in her home to unrelated children, including the Buehrers' ten-week-old infant. During the policy period, she regularly cared for multiple children, generally on weekdays and for compensation, and used the income for household expenses. The infant was injured while in her care and died two days later. Auto-Owners' homeowners policy defined home day-care services as a business and excluded bodily-injury claims arising from an insured's business.

PROCEDURAL HISTORY

The Buehrers sued Kristy and Dustin Meyers for wrongful death, emotional distress, and loss of consortium after their infant died while in Kristy Meyers' paid in-home care. Auto-Owners intervened and sought a declaration that its homeowners policy provided no coverage and imposed no duty to defend or indemnify. After discovery, the trial court granted Auto-Owners summary judgment and declared that the policy excluded coverage for the claims. The Sixth District previously determined that appellants had standing to appeal, and then affirmed the summary-judgment judgment.

DISPOSITION

affirmed

CASES CITED

- Buehrer v. Meyers, 6th Dist. No. WM-19-009 (Sept. 24, 2019)
- Chalmers v. HCR ManorCare, Inc., 2017-Ohio-5678, ¶ 21 (6th Dist.)
- Hudson v. Petrosurance, Inc., 127 Ohio St.3d 54, 2010-Ohio-4505, 936 N.E.2d 481, ¶ 29
- Cunningham v. J. A. Myers Co., 176 Ohio St. 410, 413, 200 N.E.2d 305 (1964)
- Harless v. Willis Day Warehousing Co., 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978)
- Beckloff v. Amcor Rigid Plastics USA, LLC, 2017-Ohio-4467, ¶ 14 (6th Dist.)
- Arnott v. Arnott, 132 Ohio St.3d 401, 2012-Ohio-3208, 972 N.E.2d 586, ¶ 13
- Sauer v. Crews, 140 Ohio St.3d 314, 2014-Ohio-3655, 18 N.E.3d 410, ¶¶ 10-11
- Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co., 95 Ohio St.3d 512, 2002-Ohio-2842, 769 N.E.2d 835, ¶¶ 4, 8
- Rhoades v. Equitable Life Assur. Soc. of U.S., 54 Ohio St.2d 45, 47, 374 N.E.2d 643 (1978)
- Houston v. Liberty Mut. Fire Ins. Co., 2005-Ohio-4177, ¶ 36 (6th Dist.)
- Westfield Ins. Co. v. Galatis, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 11
- Laboy v. Grange Indemn. Ins. Co., 144 Ohio St.3d 234, 2015-Ohio-3308, 41 N.E.3d 1224, ¶ 10
- Hybud Equip. Corp. v. Sphere Drake Ins. Co., 64 Ohio St.3d 657, 665, 597 N.E.2d 1096 (1992)
- Cleveland Elec. Illum. Co. v. City of Cleveland, 37 Ohio St.3d 50, 524 N.E.2d 441 (1988)
- Cook v. Kozell, 176 Ohio St. 332, 336, 199 N.E.2d 566 (1964)
- State Farm Fire & Cas. Co. v. Straw, 9th Dist. Medina No. 2849-M, 2000 WL 141077, *2-3 (Feb. 2, 2000)
- W. Am. Ins. Co. v. Sluder, 119 Ohio App.3d 211, 214-216, 695 N.E.2d 7 (1st Dist. 1997)
- Watkins v. Brown, 97 Ohio App.3d 160, 164-166, 646 N.E.2d 485 (2d Dist. 1994)
- Lenart v. Doversberger, 8th Dist. Cuyahoga No. 65372, 1994 WL 189433, *7 (May 12, 1994)
- Titterington, By & Through Guardians Titterington v. Portman, 11th Dist. Geauga No. 93-G-1803, 1994 WL 587514, *1-2 (Aug. 12, 1994)

- Titterington v. Portman, 11th Dist. Geauga No. 95-G-1933, 1996 WL 200597, *2 (Mar. 29, 1996)
- Allstate Ins. Co. v. Vasquez, 74 Ohio App.3d 564, 567, 599 N.E.2d 756 (8th Dist. 1991)
- Am. Family Ins. v. Phillips, 2017-Ohio-8670, 100 N.E.3d 947, ¶¶ 17, 23, 35, 40 (6th Dist.)
- Byers v. Motorists Ins. Cos., 169 Ohio App.3d 404, 2006-Ohio-5983, 863 N.E.2d 196, ¶ 10 (4th Dist.)