SUPREME COURT OF OHIO

Elevators Mutual Insurance Co. v. J. Patrick O'Flaherty's, Inc.

Elevators Mut. Ins. Co. v. J. Patrick O'Flaherty's, Inc., 125 Ohio St. 3d 362, 2010-Ohio-1043 (Ohio 2010) · No. 2009-0321 · Decided March 24, 2010

SUMMARY

The Supreme Court of Ohio held that Criminal Rule 11(B)(2) and Evidence Rule 410(A) prohibit using convictions based on no-contest pleas in a declaratory judgment action concerning insurance coverage. The court rejected a distinction between the plea and the resulting conviction and held that the limited exception recognized in State v. Mapes did not apply to this contract dispute. The court affirmed the court of appeals' judgment.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lanzinger, J.; Moyer, C.J.; Pfeifer, J.; O'Connor, J.; Cupp, J.; O'Donnell, J.; Lundberg Stratton, J.
JURISDICTION	Ohio
DECIDED	March 24, 2010
DOCKET	2009-0321
DISPOSITION	affirmed
PROCEDURAL POSTURE	Discretionary appeal from the Sixth District Court of Appeals in a declaratory-judgment action concerning insurance coverage. The Supreme Court of Ohio reviewed whether criminal convictions entered after no-contest pleas could be admitted as evidence against the insured.
STANDARD OF REVIEW	The court reviewed the legal issue of admissibility under Crim.R. 11(B)(2) and Evid.R. 410(A) de novo and reviewed the summary-judgment disposition under the applicable legal standard.
PRECEDENTIAL VALUE	Published precedential decision of the Supreme Court of Ohio
PARTIES	Elevators Mutual Insurance Company, NAMIC Insurance Company v. J. Patrick O'Flaherty's, Inc., Richard A. Heyman, Jan N. Heyman

TOPICS

insurance coverage · declaratory relief insurance · evidence · summary judgment · civil procedure

PRACTICE AREAS

insurance law · evidence · civil procedure · contract law

QUESTIONS PRESENTED

1. Whether Crim.R. 11(B)(2) and Evid.R. 410(A) prohibit admission in a civil declaratory-judgment action of a conviction entered on a no-contest plea.
2. Whether the limited exception recognized in State v. Mapes permits use of such a conviction to establish an insurance-policy exclusion.
3. Whether the rules permit a distinction between offensive and defensive use of a no-contest plea or resulting conviction.

HOLDINGS

1. Crim.R. 11(B)(2) and Evid.R. 410(A) prohibit the use against the defendant of a conviction based on a no-contest plea in an action for declaratory judgment concerning insurance coverage.
2. The limited exception recognized in State v. Mapes does not apply merely because the conviction is relevant to an insurance-policy exclusion.
3. Evid.R. 410(A) makes no exception for offensive versus defensive use; a conviction based on a no-contest plea remains inadmissible when offered against the person who entered the plea.
4. The evidentiary rules do not bar an insurer from proving the underlying facts supporting a policy exclusion through evidence other than the no-contest plea or conviction.

KEY QUOTATIONS

> *"The plain language of Evid.R. 410(A) prohibits admission of a no contest plea, and the prohibition must likewise apply to the resulting conviction."* (125 Ohio St. 3d at 364)

> *"Although Crim.R. 11(B)(2) and Evid.R. 410(A) prevent the use of convictions based on no contest pleas in an action for declaratory judgment for insurance coverage, the rules do not prevent use of the facts upon which those convictions are based."* (125 Ohio St. 3d at 367)

FACTUAL BACKGROUND

A fire damaged a restaurant owned by J. Patrick O'Flaherty's, Inc., which submitted a claim under a commercial fire-insurance policy issued by Elevators Mutual. After investigating, Elevators Mutual concluded that shareholder and officer Richard Heyman intentionally started the fire and denied coverage under policy exclusions for dishonest or criminal acts and fraud. Heyman later pleaded no contest to arson and insurance fraud and was convicted, while charges against Jan Heyman were dismissed.

PROCEDURAL HISTORY

Elevators Mutual filed an action seeking a declaration of no coverage and recovery of an advance paid on a fire-insurance claim. After the insured, Richard Heyman, pleaded no contest to arson and insurance fraud, the trial court admitted the resulting convictions and granted summary judgment for Elevators Mutual. The court of appeals reversed and remanded, and the Supreme Court of Ohio affirmed that judgment.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The judgment of the Sixth District Court of Appeals was affirmed; the opinion does not state additional remand instructions beyond the appellate court's prior reversal and remand.

CASES CITED

- State v. Mapes, 19 Ohio St. 3d 108, 19 OBR 318, 484 N.E.2d 140 (1985)
- Rose v. Uniroyal Goodrich Tire Co., 219 F.3d 1216, 1220 (10th Cir. 2000)
- Allstate Ins. Co. v. Simansky, 45 Conn. Supp. 623, 628, 738 A.2d 231 (1998)
- Walker v. Schaeffer, 854 F.2d 138, 143 (6th Cir. 1988)
- USX Corp. v. Penn Cent. Corp., 137 Ohio App. 3d 19, 27, 738 N.E.2d 13 (2000)
- Lichon v. Am. Universal Ins. Co., 435 Mich. 408, 418-419, 459 N.W.2d 288 (1990)
- Jaros v. Ohio State Bd. of Emergency Med. Servs., Lucas App. No. L-01-1422, 2002-Ohio-2363, ¶ 21
- Bivins v. Ohio State Bd. of Emergency Med. Servs., 165 Ohio App. 3d 390, 2005-Ohio-5999, 846 N.E.2d 881, ¶ 4
- Shrader v. Equitable Life Assurance Society of the United States, 20 Ohio St. 3d 41, 44, 20 OBR 343, 485 N.E.2d 1031 (1985)
- In re Estate of Kissinger, 166 Wash. 2d 120, 125, 206 P.3d 665 (2009)
- White Co. v. Canton Transp. Co., 131 Ohio St. 190, 5 O.O. 548, 2 N.E.2d 501 (1936)
- Hanover Ins. Co. v. Cunningham Drug Stores, Inc., 8th Dist. No. 44066, 1982 WL 5341, at *3 (Ohio Ct. App. May 6, 1982)
- Valley Forge Ins. Co. v. Premier Recyclers Plastics, Inc., Summit App. No. 22633, 2005-Ohio-6317