

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JANICE CASEY)

Plaintiff)

vs.)

ERIE INSURANCE COMPANY, et al.)

Defendants)

CASE NO. CV-17-880327

JUDGE NANCY R. MCDONNELL

**ORDER GRANTING DEFENDANT
STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

Defendant State Farm Mutual Insurance Co. (State Farm) has filed a Motion for Summary Judgment against Erie Insurance Co. (Erie) alleging that coverage by State Farm is precluded by its policy and that Erie's policy is in effect.

On June 5, 2015, plaintiff Joseph Casey was a passenger in a car provided and owned by his employer Heights Driving School (Heights). The vehicle was retrofitted with a brake on the passenger side so that the plaintiff instructor could control the car while it was being driven by a student. The vehicle was provided by Heights and covered under a policy provided by Erie. Plaintiff would drive the car to work from his home. It was used for instructing drivers. Plaintiff did not use the car for personal errands or any other trips.

Plaintiff had two policies with State Farm. The first was a personal automobile insurance policy, and the second was an umbrella policy.

Plaintiff's personal automobile policy specifically excludes coverage for a non-owned vehicle furnished or made available for "regular use" by the insured. It is undisputed the vehicle

was not owned by plaintiff but rather by Heights. The issue is whether the vehicle was provided for “regular use” by Heights and the exclusion is applicable.

Erie argues that the State Farm policy covers this accident as plaintiff is not a “regular user” but rather an “incidental driver” and further that he was only a passenger at the time of the accident and a student was actually driving. These arguments are without merit.

Initially, ORC §3937.18(I)(1) which governs uninsured and underinsured coverage specifically permits exclusion of coverage as presented in this case.

(I) Any policy of insurance that includes uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages may, subject to section 3937.46 of the Revised Code, include terms and conditions that preclude coverage for bodily injury or death suffered by an insured under specified circumstances, including but not limited to any of the following circumstances:

(1) While the insured is operating or occupying a motor vehicle owned by, furnished to, or available for the regular use of a named insured, a spouse, or a resident relative of a named insured, if the motor vehicle is not specifically identified in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy under which the uninsured motorist coverage, underinsured motorist coverage, or both uninsured and underinsured motorist coverages are provided;

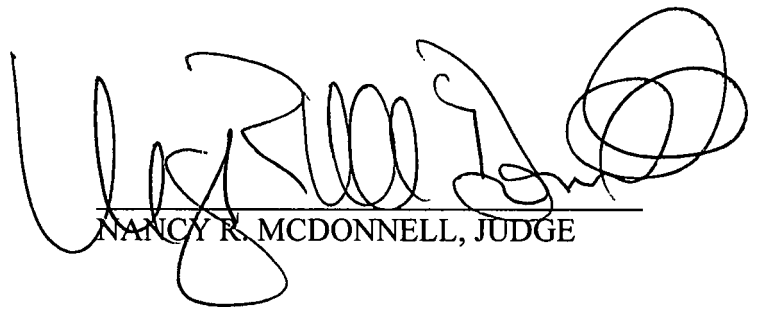
The Eighth District Court of Appeals defined the term “regular use” in *Liggins v. White*, 2011 Ohio App. Lexis 3662 as “frequent, steady, constant or systematic use of a vehicle.” In the

instant case, plaintiff's use of the car clearly falls within the "regular use" exclusion of the policy issued by Erie to Heights which covers the motor vehicle accident at hand.

Next, the issue of whether plaintiff was a driver will be addressed. Erie's position is that at the time of the accident the student was the driver and plaintiff was merely a passenger. This argument belies the facts and law. Plaintiff was a driver. He exercised control over the car by means of a brake and over the student by means of instruction. Furthermore, courts have held the regular use exclusion precluded coverage to a sanitation worker injured while riding on the back of a garbage truck (*McCall v. State Farm Mutual Auto Insurance Co.*, Ninth District Summit No. 23601, 2007-Ohio-5109) and also to a child passenger who benefits from its use because he is transported to activities in the vehicle. (*Roos v. Roos*, Twelfth District Butler No. 2012-02-033, 2012-Ohio-5243.)

For all of the foregoing reasons, defendant State Farm's Motion for Summary Judgment is granted.

IT IS SO ORDERED.



NANCY R. MCDONNELL, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing Order Granting Defendant State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment was sent by ordinary U.S. Mail this 8th day of June, 2018 to:

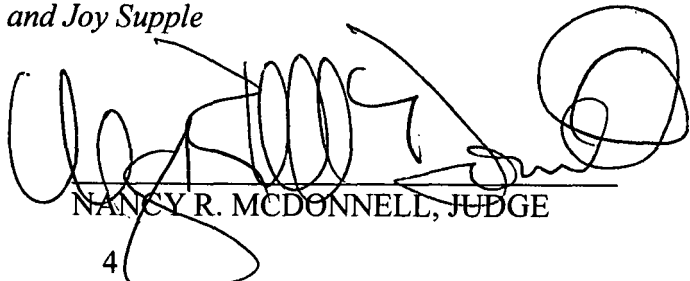
Beverly A. Adams, Esq.
Collins, Roche, Utley & Garner, LLC
800 Westpoint Parkway, Suite 1100
Cleveland, OH 44145
Attorney for Defendant Erie Insurance Company

David L. Grant, Esq.
Frank L. Gallucci, III, Esq.
Plevin & Gallucci Co., L.P.A.
55 Public Square – Suite 2222
Cleveland, OH 44113
Attorneys for Plaintiff

Stuart D. Baker, Esq.
Cynthia K. Curtin, Esq.
Curtin & Curtin, LLP
159 South Main Street, Suite 920
Akron, OH 44308
Attorneys for Defendant State Farm Mutual Automobile Insurance Company

Anne M. Markowski, Esq.
Williams, Moliterno & Scully Co., L.P.A.
2 Summit Park Drive, Suite 235
Cleveland, OH 44131
Attorney for Defendant Kaycie J. Merkel

Robert J. Koeth, Esq.
Koeth, Rice & Leo Co., L.P.A.
1280 West Third Street, 3rd Floor
Cleveland, OH 44113
Attorney for Defendants Derrek Supple and Joy Supple


NANCY R. MCDONNELL, JUDGE
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