

ORIGINAL

IN THE SUPREME COURT OF OHIO

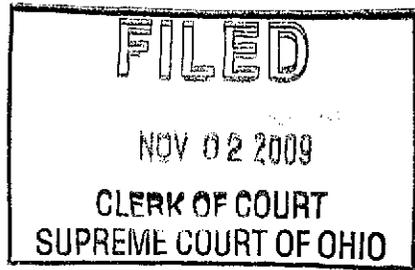
Cheryl Boley, Executrix of the Estate of)	Case No.: 2009-0542
Mary Adams, and Clayton Adams)	
)	
Plaintiff-Appellant,)	On Appeal from the
)	Cuyahoga County Court
-vs-)	of Appeals, Eighth Appellate
)	District
Goodyear Tire and Rubber Company,)	Case No. CA-08-091404
)	
Defendant-Appellees.)	

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I. INTRODUCTION

This is a take home asbestos exposure case. Appellants' decedent, Mary Adams, was exposed to asbestos via washing her husband's asbestos contaminated work clothes. Mary Adams husband was Clayton Adams. Clayton Adams worked at Appellee Goodyear Tire & Rubber Company's facility in St. Marys, Ohio from 1973 until 1983. Clayton Adams was exposed to a myriad of asbestos-containing products while employed at the Goodyear Tire and Rubber Company in St. Mary's Ohio, and brought asbestos home on his clothes that his wife washed. From 1973 until 1983, Mary Adams was regularly exposed to asbestos from washing her husband's asbestos contaminated work clothes. Mary Adams was diagnosed with malignant mesothelioma on, or about, March 22, 2007. *Surgical Pathology Report*, attached to *Appellants' Brief in Opposition as Goodyear Tire and Rubber Company's Motion for Summary Judgment as Exhibit "1"*. Mary Adams passed away from malignant mesothelioma on July 23, 2007. *Death Certificate of Mary Adams*, attached to *Appellants' Brief in Opposition to Goodyear Tire and Rubber Company's Motion for Summary Judgment as Exhibit "2"*. The trial court granted summary judgment based on R.C. 2307.941(A), the asbestos premises liability statute, even though Appellants asserted that their suit was a negligence suit, and not a premises liability suit. (Appx. 15 and 19). The Eighth District Court of Appeals affirmed the decision in an opinion and journal entry dated February 17, 2009. (Appx. 4). Appellants timely filed their Notice of Appeal to the Ohio Supreme Court. (Appx. 1).

II. COUNTER STATEMENT OF THE FACTS

On or about June 13, 2007, Appellants filed their complaint against numerous defendants including Appellee Goodyear Tire & Rubber Company (hereinafter referred to as “Appellee Goodyear”). The *Complaint* alleged causes of action for strict products liability, negligence, failure to warn, breach of warranties, premises liability and numerous other torts against numerous Defendants related to Mary Adams exposure to asbestos. Included in this complaint was a cause of action for negligence asserted against Appellee Goodyear. Appellants’ decedent, Mary Adams, was deposed by defense counsel and Plaintiffs’ counsel on June 25, 2007. See June 25, 2007, Deposition of Mary Adams. At her deposition, on her death bed, Mary Adams stated that she would shake out and wash Clayton Adams clothes when he worked at Goodyear. June 25, 2007, Deposition of Mary Adams, p. 33 and 54. Clayton Adams clothes were dusty when Mary Adams would shake them out. *Id.*, p. 44. Mary Adams would breath the dust when she was shaking out Clayton Adams clothes. *Id.*, p. 59.

Mary Adams’ husband, Clayton Adams was deposed over three days. See Transcript of Deposition of Clayton Adams, Taken September 17, 2007, Transcript of Deposition of Clayton Adams, Taken September 18, 2007, and Transcript of Continued Deposition of Clayton Adams, Taken on November 5, 2007. In Clayton Adams’ depositions, he described being exposed to everything from asbestos containing pipe insulation to asbestos-containing packing while at Appellee Goodyear. Michael Boley, a coworker of Clayton Adams while he worked at Appellee Goodyear was deposed in this matter on September 19, 2007. See Transcript of Deposition of Michael Boley, Taken September 19, 2007. Mr. Boley described Clayton Adams being exposed to everything from asbestos-containing pipe insulation to asbestos cement pipe while Clayton Adams was employed at Appellee Goodyear. Mr. Boley described Clayton Adams clothes as

being dusty while he worked at Appellee Goodyear, and described the whole operation at Appellee Goodyear's facility as being dusty. *Transcript of Deposition of Michael Boley, Taken September 19, 2007*, p. 289 and 291. Mary Adams was diagnosed with malignant mesothelioma¹ on, or about, March 22, 2007. *Surgical Pathology Report*, attached to *Appellant's Brief in Opposition as Exhibit "1"*. Mary Adams passed away from malignant mesothelioma on July 23, 2007. *Death Certificate of Mary Adams to Goodyear Tire and Rubber Company's Motion for Summary Judgment.*, attached as *Exhibit "2"* to *Appellant's Brief in Opposition to Goodyear Tire and Rubber Company's Motion for Summary Judgment*.

Appellants are not claiming that Mary Adams was exposed to asbestos on Appellee Goodyear's premises, and there is no evidence to support that Mary Adams was exposed to asbestos at any Appellee Goodyear facility.

III. ARGUMENT

1. Despite Appellee's Claim to the Contrary, R.C. 2307.941 Does Not Apply to Appellants' Claim for Relief.

In Gladon v. Greater Cleveland Regional Transit Auth. (1996), 75 Ohio St. 3d 312, 315, the Ohio Supreme Court stated that "Ohio adheres to the common-law classifications of invitee, licensee, and trespasser in cases of premises liability." The Court went on to further state that "[i]n Ohio, the status of the person who enters upon the land of another (i.e., trespasser, licensee, or invitee) continues to define the scope of the legal duty that the landowner owes the entrant."

¹ Mesothelioma is a rare form of cancer caused by asbestos exposure. There is no known cure for mesothelioma.

Id., citing Shump v. First Continental-Robinwood Assoc. (1994), 71 Ohio St. 3d 414, 417. A landowner owes a duty to an invitee to exercise ordinary care for the invitee's safety and protection. Id. at 317. [A] landowner owes no duty to a licensee or trespasser except to refrain from willful, wanton or reckless conduct which is likely to injure him. Id.

Here Mrs. Adams is not a trespasser, licensee, or invitee. As stated by the Ohio Supreme Court, a premises liability claim is based on "the legal duty that the landowner owes the entrant." Id. at 315. Here, Mrs. Adams never entered upon the land of Appellee Goodyear. Quite to the contrary, this is a take home exposure case, where all of Mrs. Adams' exposure occurred at home while washing her husband's asbestos contaminated clothing. This basic, fundamental element of a premises liability claim, i.e. being on the premises, is missing in the current situation. Therefore, this is not a premises liability claim. This is a common law negligence claim.

A full reading of R.C. 2307.941 clearly indicates that the statute is not applicable to the case at bar. (Appx. 19). R.C. 2307.941 is a premises liability statute, and is titled as such. *Id.* As Appellants have already demonstrated, this is not a premises liability case. Further, the very language of R.C. 2307.941 makes it abundantly clear that the statute does not apply in this case. *Id.* R.C. 2307.941 states in pertinent part:

(A) The following apply to all tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos on the premises owner's property:

(1) A premises owner is not liable for any injury to any individual resulting from asbestos exposure unless that individual's alleged exposure occurred while the individual was at the premises owner's property.

Id. Section A of R.C. 2307.941 makes it abundantly clear that the statute only applies "to all

tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos on the premises owner's property." *Id.* All other sections of the statute are sub servant to this overriding section of the statute. Here, the injured party, Mrs. Adams, was never exposed to asbestos on Appellee Goodyear's premises. Therefore, R.C. 2307.941 cannot apply where a person was never on the premises owner's property. *Id.*

When interpreting a statute, "[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted." Sears v. Weimer (1944), 143 Ohio St. 312, 312. As stated by the Ohio Supreme Court in Slingluff:

[T]he intent of the lawmakers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly, and distinctly the sense of the lawmaking body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.

Slingluff v. Weaver (1902), 66 Ohio St. 621, Syllabus. In this case, the trial court and the Eighth District Court of Appeals ignored the plain meaning of R.C. 2307.941(A). (Appx. 19 to Appellants' Merit Brief).

The Ohio Supreme Court has further stated that "Courts do not have the authority to ignore, in guise of statutory interpretation, the plain and unambiguous language in a statute." Board of Ed. of Pike-Delta-York Local School Dist. v. Fulton County (1975), 41 Ohio St.2d 147,

156. This means that "[U]nambiguous statutes are to be applied according to plain meaning of words used, and courts are not free to delete or insert other words." State ex rel. Burrows v. Indus. Comm. (1997), 78 Ohio St.3d 78, 81. Finally, "it must be presumed that the legislature was aware of the rules of grammar when the statute was promulgated." Penn v. A-Best Prods. Co. (10th Dist. 2007), Slip Copy, 2007 WL 4564402.

In the case *sub judice*, Appellee Goodyear would have R.C. 2307.941(A)(1) exist in a vacuum. (Appx. 19 to Appellants' Merit Brief). In their reply brief of their motion for summary judgment, Appellee Goodyear never once fully quoted the statute or even mentions R.C. 2307.941(A). *Id.* It is easy to see why. This previous section of R.C. 2307.941 completely undermines the assertions made in moving for summary judgment. *Id.* R.C. 2307.941(A) clearly states: The following apply to all tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos **on the premises owner's property**. *Id.* Here, the plain language of the statute is clear and unambiguous. For R.C. 2307.941(A)(1) to apply in this case, the asbestos injury must have occurred from "exposure to asbestos on the premises owner's property." *Id.* That is clearly not the situation in this case. Mary Adams was never exposed to asbestos *on* Appellee Goodyear's property. Mary Adams was exposed to asbestos from washing her husband's clothing. Some of the asbestos on her husband's clothes was the result of his employment at Appellee Goodyear. However, this case is not about Clayton Adams' exposure at Appellee Goodyear (in which case the statute may apply), but about Mary Adams' exposure at home. Therefore, R.C. 2307.941(A)(1) can not act as a bar to Plaintiff's claims against Appellee Goodyear in this case. *Id.*

Furthermore, the case law makes it clear that a court is to apply a statute as it is written, not how a defendant wishes it were written. If Appellee Goodyear wished this statute to apply in

the current case, then R.C. 2307.941(A) should state: The following apply to all tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos *from* the premises owner's property. *Id.* However, that is not what the statute says. R.C. 2307.941(A) clearly and unequivocally states: "The following apply to all tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos *on* the premises owner's property." *Id.* As this Honorable Court has stated, "[u]nambiguous statutes are to be applied according to plain meaning of words used, and courts are not free to delete or insert other words." State ex rel. Burrows v. Indus. Comm. (1997), 78 Ohio St.3d 78, 81. Regardless of the words Appellee Goodyear may wish the legislature would have chosen when writing this statute, it is clear from the plain meaning of the words used that the statute does not apply in this case.

Finally, the application of R.C. 2307.941 effectively slams the courthouse door on take home exposure cases against a family member's employer. *Id.* If Clayton Adams, instead of Mary Adams was diagnosed and died from mesothelioma as a result of exposure to asbestos from working at Appellee Goodyear's facility, he would have recourse against Appellee Goodyear. Clayton Adams could file an intentional tort claim and a workers' compensation claim. Furthermore, Mary Adams could file a workers' compensation death claim against Appellee Goodyear. Hence, R.C. 2307.941 violates Appellants' right to due process of the law, because neither Mary Adams nor her estate has any legal recourse against Appellee Goodyear. (Appx. 19) and Ohio Constitution, Art I, Section 16, (Appx. 21 Appellants' Merit Brief). Here, Appellants' claims against Appellee Goodyear are for negligently exposing Mary Adams to asbestos via Clayton Adams contaminated work clothes, and not based on premises liability.

2. The Issue Before This Court is Not About Negligence, or “take home exposure” in general, as Appellee and the Numerous Amicus Briefs State.

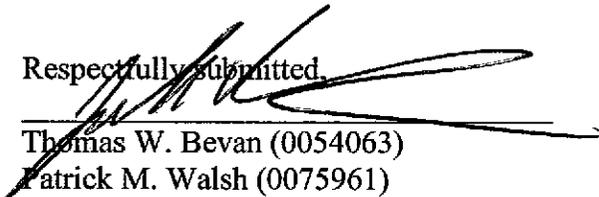
The only issue before this Honorable Court is whether R.C. 2307.941(A)(1) applies to Appellant’s claims. The issue before this Court has nothing to do with common law negligence or “take home exposure” in general as to products liability. As this Court has stated in the past, only issues that the Court has accepted jurisdiction on are subject to review. Corporex Dev. & Constr. Mgmt. v. Shook (2005), Inc., 106 Ohio St. 3d 412, 414, footnote 4 (“As we did not accept jurisdiction based upon that issue, we refrain from addressing it”). Here, this issue of whether Appellant has stated a cognizable claim for negligence against Appellee is not before this Honorable Court, and therefore, need not be addressed.

Therefore, the trial court erred in applying R.C. 2307.941(A)(1), and the Appellate Court erred in affirming the judgment, in this case, and summary judgment should be reversed.

III. CONCLUSION

For 2307.941(A) to apply, Appellant’s decedent must have had asbestos exposure on the premises of Goodyear. Furthermore, the statute is unconstitutional. Therefore, the granting of summary judgment against Appellants should be reversed, and the case remanded to the trial court for trial.

Respectfully submitted,


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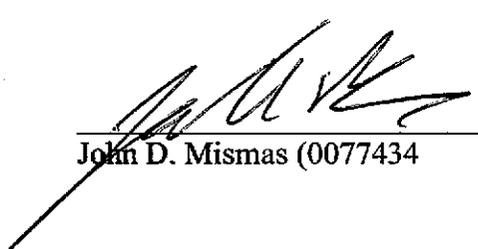
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