[Cite as *Black v. Ryan*, 2012-Ohio-866.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

MISTY BLACK,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-L-030**
- vs -	:	
MATTHEW RYAN,	:	
Defendant,	:	
NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY, a.k.a. NATIONWIDE INSURANCE COMPANIES, a.k.a. NATIONWIDE INSURANCE, a.k.a. ALLIED INSURANCE, a.k.a. NATIONWIDE AGRIBUSINESS, a.k.a. TITAL INSURANCE, a.k.a. VICTORIA INSURANCE,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 09CV003985.

Judgment: Reversed and remanded.

Mitchell D. D'Amico, 7333 Center Street, Mentor, OH 44060, and *Brian L. Summers*, 7327 Center Street, Mentor, OH 44060 (For Plaintiff-Appellee).

Gregory E. O'Brien and *Megan Miller*, Cavitch, Familo & Durkin Co., L.P.A., 1300 East Ninth Street, 20th Floor, Cleveland, OH 44114 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Nationwide Property and Casualty Insurance Company (Nationwide), appeals from the Judgment Entry of the Lake County Court of

Common Pleas, granting plaintiff-appellee, Misty Black's, Motion for Summary Judgment on Nationwide's Counterclaim for Declaratory Judgment. The issue to be determined in this case is whether, pursuant to R.C. 3937.32 and 3937.33, an insurer is required to send written notice to all insureds under a policy or to only the policyholder. For the following reasons, we reverse the decision of the court below.

{¶2} On December 16, 2009, Black filed a Complaint in the Lake County Court of Common Pleas against Matthew Ryan and Nationwide, arising from a July 4, 2008 accident in which Ryan's automobile struck a motorcycle on which Black was a passenger. In the Complaint, Black asserted three claims against Nationwide, an Uninsured/Underinsured Motorist (UM/UIM) Claim, a Bad Faith Claim, and a Negligence/Negligence Per Se Claim. In the UM/UIM Claim, Black asserted that she had a Nationwide policy, Policy Number 92 34K 488846, in effect at the time of the July 4 accident and that the policy covered losses created by an uninsured or underinsured motorist. The Bad Faith and Negligence Claims related to allegations that Nationwide improperly refused to pay on the UM/UIM claim.

{¶3} On February 16, 2010, Nationwide filed an Answer and Counterclaim, asserting a Counterclaim for Declaratory Judgment. Nationwide asserted that it was not responsible for any losses because Black was not entitled to coverage under the Nationwide policy, as it was cancelled for non-payment prior to the date of the accident. Nationwide asserted that Black failed to make an insurance payment due on May 9, 2008, Nationwide mailed a notice of cancellation to Black on May 14, 2008, and the policy was cancelled on May 26, 2008.

{¶4} Nationwide filed a Motion to Dismiss Count Six of the Claim, the Negligence/Negligence Per Se Claim. On June 2, 2010, the trial court dismissed this claim against Nationwide.

{¶5} The following facts were presented through depositions and evidence attached to the parties' Motions for Summary Judgment.

{¶6} Black had an automobile insurance policy with Nationwide for a six-month term commencing February 9, 2008, and expiring August 9, 2008, provided that Black made monthly payments. The policy was reissued for a period from May 1, 2008 to August 9, 2008, adding Black's daughter, Tiffany, as an insured driver. The policy included UM/UIM coverage. The policy stated that the "Policyholder (Named Insured)" was Misty Black and further stated that the "Insured Drivers" were Misty Black and Tiffany Black. On May 14, 2008, Nationwide sent Black a notice of cancellation, and the policy was cancelled on May 26, 2008, due to non-payment. No evidence was present in the record that Black ever paid the payment due in May of 2008.

{¶7} On July 4, 2008, Black was involved in an automobile accident, during which she was a passenger on the back of a motorcycle struck from behind by an automobile driven by Ryan. Black's daughter, Tiffany, was not involved in the accident. Black sustained multiple injuries, including a broken leg, which required several surgeries to treat. Black filed a claim with Nationwide, asserting that her UM/UIM coverage covered the accident.[1]

1. The testimony of Black and Amanda Lacks, an insurance adjustor, demonstrated that a second insurance policy was taken out in Black's name, with Victoria Specialty Insurance, a subsidiary of Nationwide. The claim in the present case was initially filed under the Victoria policy and denied, as the Victoria insurance policy was taken out on July 15, 2008, subsequent to the July 4 accident. The Complaint filed in this lawsuit deals with whether Black was covered under the original Nationwide policy, not the Victoria policy.

{¶8} In her deposition, Black testified that she did not remember the last time she made a payment on her Nationwide policy and did not recall if she made a payment for the month of May, 2008. She also did not remember receiving a bill in April of 2008, relating to the payment due on May 9, and did not recall receiving a notice of cancellation regarding her Nationwide policy. Black stated that on May 1, 2008, she added her sixteen year old daughter, Tiffany, to her policy, and said that she believed she would not be required to pay another payment until she received a bill reflecting the increase in payment due to the change in her policy.

{¶9} Gerald Merhar, the owner of the Merhar Agency, a corporation that sells Nationwide insurance, and Black's insurance agent, testified regarding the circumstances surrounding the cancellation of Black's insurance. Merhar testified Black did not make a payment for the statement issued on April 22, 2008. Prior to the cancellation of Black's Nationwide policy, an employee from Merhar's office made a courtesy phone call to Black's cell phone to inform her that the policy was in danger of cancellation due to late payment, but was unable to reach her. Merhar's records also indicated a postcard was mailed to Black on May 22, 2008, to inform her about the late payment. Black still did not make the payment and her insurance was cancelled on May 26, 2008.

{¶10} Merhar testified that Tiffany, Black's daughter, was added as "an insured driver" on Black's Nationwide policy on May 1, 2008. Merhar testified that Tiffany was not an "insured" but was an "insured driver while operating her mother's vehicle." He stated that an "insured driver" is one who "drives with her mother's permission." Merhar testified that no bill was generated regarding the increase in premium that would occur

with the addition of Tiffany to the policy, since the insurance policy was cancelled on May 26.

{¶11} Regarding the issue of the written notice of cancellation, an affidavit of Bradley McClain, a Nationwide employee who supervises mail handling, was presented. He attested to the fact that a notice of cancellation was sent to Black via bulk mail on May 14, 2008. Nationwide also presented a copy of the notice and a certificate of bulk mailing to verify that the notice was sent to Black.

{¶12} On November 5, 2010, Black filed a Motion for Summary Judgment on Nationwide's Counterclaim for Declaratory Judgment. Black argued that she was entitled to judgment as a matter of law because Nationwide did not properly cancel her insurance policy, pursuant to R.C. 3937.32 and 3937.33. Black asserted that Nationwide failed to provide notice of cancellation to Black's daughter, Tiffany, who was listed as an "insured driver" on the policy. Black argues that since Nationwide did not comply with the notice requirement, the cancellation was ineffective and the policy continues in force.

{¶13} Nationwide also filed a Motion for Summary Judgment as to the Counterclaim and Black's remaining Claims. Nationwide argued that R.C. 3937.32's requirement of giving notice to "the insured" has been interpreted to mean giving notice to only the policyholder. Nationwide stated that since a notice of cancellation was mailed to Black, she was not covered under her Nationwide policy at the time of the accident.

{¶14} On March 4, 2011, the trial court granted Black's Motion for Summary Judgment on Nationwide's Counterclaim for Declaratory Judgment. The trial court

found that the statute requires that "an insurer is required to mail notice to the insured." The court further found that Tiffany was explicitly listed as an insured driver and was therefore entitled to notice of cancellation. The court found that because Tiffany was not given proper notice of cancellation, the cancellation of the entire policy was improper and Black was covered at the time of the accident. The trial court also found that since Black was entitled to UM/UIM coverage, there remained genuine issues of material fact as to the issue of bad faith in denying Black's insurance claim.

{¶15} Nationwide timely appeals and asserts the following assignments of error:

{¶16} "[1.] The trial court erred in granting Plaintiff-Appellee Misty Black's Motion for Summary Judgment on Defendant-Appellant Nationwide Property and Casualty Insurance Company's Counterclaim for Declaratory Judgment and denying Nationwide's Motion for Summary Judgment on Count 5 of the Complaint based upon its opinion that R.C. 3937.30 *et seq.* requires an insurer to send separate, identical notices of cancellation of coverage to all insureds.

{¶17} "[2.] The trial court erred in granting Plaintiff-Appellee Misty Black's Motion for Summary Judgment on Defendant-Appellant Nationwide Property and Casualty Insurance Company's Counterclaim for Declaratory Judgment and denying Nationwide's Motion for Summary Judgment on Count 5 of the Complaint based upon its opinion that Tiffany Black was an 'explicitly named insured[]' entitled to notice of cancellation under the Policy.

{¶18} "[3.] The trial court erred in granting Plaintiff-Appellee Misty Black's Motion for Summary Judgment on Defendant-Appellant Nationwide Property and Casualty Insurance Company's Counterclaim for Declaratory Judgment and denying

Nationwide's Motion for Summary Judgment on Count 5 of the Complaint based upon its opinion that Nationwide's notice of cancellation was ineffective with respect to Black."

{¶19} Pursuant to Civil Rule 56(C), summary judgment is proper when (1) the evidence shows "that there is no genuine issue as to any material fact" to be litigated, (2) "the moving party is entitled to judgment as a matter of law," and (3) "it appears from the evidence * * * that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence * * * construed most strongly in the party's favor."

{¶20} A trial court's decision to grant summary judgment is reviewed by an appellate court under a de novo standard of review. *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). An appellate court must independently review the record to determine if summary judgment was appropriate. Therefore, an appellate court affords no deference to the trial court's decision while making its own judgment. *Schwartz v. Bank One, Portsmouth, N.A.*, 84 Ohio App.3d 806, 809, 619 N.E.2d 10 (4th Dist.1992); *Morehead v. Conley*, 75 Ohio App.3d 409, 411-412, 599 N.E.2d 786 (4th Dist.1991).

{¶21} In its first assignment of error, Nationwide argues that it provided the appropriate notice of cancellation to Black, the policyholder. Nationwide asserts that Black was the only individual required to be notified, her policy was properly cancelled, and, therefore, she cannot receive compensation under her cancelled Nationwide policy.

{¶22} Black argues that, pursuant to R.C. 3937.32 and 3937.33, notice of cancellation must be provided to all "insured." Black asserts that, regardless of whether Black was sent notice of cancellation, because no notice was sent to her daughter, Tiffany, Nationwide failed to comply with the requirements of R.C. 3937.33 and the policy was never cancelled.

{¶23} There are three separate grounds supporting a determination that Black was not covered under her Nationwide policy at the time of the accident. First, the language of R.C. 3937.33 supports a finding that only the policyholder must be given notice of cancellation.

{¶24} R.C. 3937.32 (A)-(C) states that "[n]o cancellation of an automobile insurance policy is effective, unless it is pursuant to written notice to the insured of cancellation," and requires that the written notice include the policy number, the date of the notice, and the date of cancellation. "Where cancellation is for nonpayment of premium at least ten days notice from the date of mailing of cancellation * * * shall be given." R.C. 3937.32(E).

{¶25} "An insurer may cancel an automobile insurance policy at such time prior to its expiration for such reasons as may be permitted by section 3937.31 of the Revised Code, by mailing to the insured, at his last known address appearing on the insurer's records, at least thirty days prior to the effective date of cancellation, a notice of cancellation pursuant to section 3937.32 of the Revised Code. * * * In the event of the insurer's failure to comply with any requirement of this section, such cancellation shall be ineffective and the policy shall continue in force until such time as it is cancelled or otherwise terminated pursuant to law and the terms of the policy." R.C. 3937.33.

{¶26} We first note that neither party argues that the notice mailed to Black herself was inadequate or that Black was not the policyholder. Instead, Black asserts, and the trial court found, that because Tiffany was not given notice, Black's policy should not have been cancelled because Nationwide did not comply with the statutory requirements for notice.

{¶27} In support of its assertion that the Revised Code requires notice be mailed only to the policyholder, not all insured drivers listed on the policy, Nationwide asserts that, in *DeBose v. Travelers Ins. Cos.*, 6 Ohio St.3d 65, 451 N.E.2d 753 (1983), the Ohio Supreme Court stated that notice of cancellation must be given "to the policyholder." *Id.* at the syllabus.

{¶28} Black argues that in *DeBose*, the court was simply "mimicking" and "parroting back" the language of a previous case, *Morey v. Educator & Executive Insurers, Inc.,* 45 Ohio St.2d 196, 342 N.E.2d 691 (1976), which it overturned, and did not really intend to use the word "policyholder" in place of "insured."

{¶29} *DeBose* and related cases do not make a specific finding interpreting the meaning of the words "the insured." Instead, *DeBose* makes a general finding that notice of cancellation is required, overturning its previous holding in *Morey*. However, the *DeBose* court, in finding that insurance companies are required to provide notice of cancellation, stated in its syllabus that "[i]n order to terminate an automobile insurance policy for nonpayment of premiums and within the mandatory renewal period set forth in R.C. 3937.31, the issuer of the policy must send, pursuant to R.C. 3937.30 *et seq.,* a notice of cancellation to the policyholder." *DeBose* at the syllabus, overruling *Morey*.

{¶30} Although Black asserts that the Supreme Court merely restated the "policyholder" language from a previous case and did not intend to use the word "policyholder" or make a finding as to this issue, this court cannot agree with that interpretation. If the Supreme Court intended for all insureds under a policy to receive notice of cancellation, we must presume that the court would have used such language in its opinion, instead of using the specific word "policyholder." Since the Supreme Court was considering the issue of whether notice of cancellation was required, we must assume that the court carefully worded the language to include those individuals who should be notified of cancellation. "[I]t is well-established that the syllabus of an opinion issued by [the Ohio Supreme Court] states the law of the case." *Smith v. Klem*, 6 Ohio St.3d 16, 18, 450 N.E.2d 1171 (1983); *State ex rel. Heck v. Kessler*, 72 Ohio St.3d 98, 103, 647 N.E.2d 792 (1995) ("all lower courts in this state are bound to adhere to the principles set forth" in the syllabus of an Ohio Supreme Court decision); *State v. Ragle*, 9th Dist. No. 22137, 2005-Ohio-590, ¶ 20 ("[a]s an inferior appellate tribunal, we are constrained to follow the holdings of the Ohio Supreme Court as stated in the syllabus") (citation omitted) (Carr, J., concurring). If the Supreme Court was mistaken in including such language, it is left to that court to make such a finding. *Heck* at 103 (it is "generally improper for a lower court to determine that a syllabus of an Ohio Supreme Court opinion is *obiter dictum*").

{¶31} While the dissent argues that the syllabus controls only if there is disharmony, since there is no conflict between the law within the text of *DeBose* and the law found in the syllabus, there is no need to consider which controls. Both are applicable law and can be applied to the present case, as discussed above. Moreover,

this court's holding does not construe the syllabus broadly, or at all, as it merely applies the plain language contained in the *DeBose* syllabus.

{¶32} Black also argues that the court's holding in *DeBose* actually supports a conclusion opposite of Nationwide's assertion and that the court found that notice was required as to all insureds.

{¶33} In reviewing *DeBose*, the Supreme Court did not find that all insureds under a policy must receive notice. The Court simply found that there was no distinction as to "lapses" and "cancellations" under R.C. 3937.31, and that notice is required in all such cases. 6 Ohio St.3d at 67-68. Moreover, in *DeBose*, all parties had a contractual right to notice. In the present case, the contract states that notice must be given only to the policyholder. Therefore, unlike the parties in *DeBose*, Tiffany had no contractual right to receive notice.

{¶34} Although Black also argues that the *DeBose* court expressly stated that the insurer failed to send notice to "any of the insureds," this does not serve as a holding that all or any insureds must be given notice. *Id.* at 66, fn. 1. Instead, the court appeared to be simply noting that the insurance company failed to send any notice at all, not making a judgment as to whether notice was required for all insureds on a policy.

{¶35} In addition, given that the syllabus in *DeBose* states that notice must be given "to the policyholder," had the Legislature intended for "the insured" to encompass parties in addition to the policyholder, it could have amended R.C. 3937.32 to reflect that *all* insured are entitled to notice. Such a change would make it clear that the *DeBose* court's statement of law was in conflict with the Legislature's intent. *See State*

ex rel. Carna v. Teays Valley Local Sch., 4th Dist. No. 10CA18, 2011-Ohio-1522, ¶ 18 (if the legislature intended a different result than the interpretation made by the court, "it possesses the authority to amend the statute and to clarify its intent"). The Legislature's failure to make such a change lends support to the finding that it intended for notice to be given to only the policyholder.

{¶36} In addition, defining the term "the insured" to mean "the policyholder" is consistent with principles of statutory construction.

{¶37} In construing a statute, the "definite article 'the' particularizes the subject which it precedes and is word of limitation as opposed to indefinite or generalizing force 'a' or 'an.'" *Crosby-Edwards v. Ohio Bd. of Embalmers & Funeral Dirs.*, 175 Ohio App.3d 213, 2008-Ohio-762, 886 N.E.2d 251, ¶ 29 (10th Dist.), citing Black's Law Dictionary (6 Ed.1990), 1477 (using the definite article "the," as opposed to the more general "a" or "any," limits the group of persons to which the statute applies); *Judy v. Ohio Bur. Of Motor Vehicles*, 100 Ohio St.3d 122, 2003-Ohio-5277, 797 N.E.2d 45, ¶ 22 (the use of the definite article "the" and a singular word following "the" indicates a singular thing or individual); *State v. McDonald*, 4th Dist. No. 04CA2806, 2005-Ohio-3503, ¶ 13 (4th Dist.), citing Webster's II New College Dictionary (1999) 1 and 1143 (defining "a" as an indefinite article that is "used before nouns and noun phrases that denote a single, but unspecified, person or thing" and defining "the" as a word "used before *singular or plural nouns* and noun phrases that denote *particular persons or things*") (emphasis added).

{¶38} In both R.C. 3937.32 and 3937.33, the language states that notice of cancellation must be sent to "*the* insured." Based on the foregoing rules of statutory

interpretation, it appears that the Legislature was trying to particularize or limit those who should be provided with notice of cancellation. If the Legislature intended for all individuals listed on a policy to receive notice, the statute could have stated a more generalized term such as "any," "an," or "all" before the word "insured." Use of the term "the insured" seems to indicate that there was a particular individual in mind, such as the policyholder. This seems especially applicable, given that the policyholder is generally responsible for maintenance tasks related to the policy, such as making payment on a policy or adding new drivers.

{¶39} The dissent asserts that the foregoing rule of interpretation does not apply because the singular and plural of "insured" are the same. However, several portions of the relevant statutory language show that the legislature intended for "the insured" to be singular, not plural. First, in R.C. 3937.31(A), which went into effect with R.C. 3937.32 and allows a policy to be cancelled for nonpayment, refers to "insureds." The legislature's use of the term "insureds" undercuts the argument that "insured" has a plural meaning and was not meant to apply to a particular individual.

{¶40} In addition, in R.C. 3937.32, the Legislature makes additional references that support a conclusion that "the insured" is a specific, limited individual. First, references in the statute use the word "his" to refer to "the insured" on several occasions. The Legislature chose to use the singular pronoun "his" instead of a plural pronoun such as "their," further evidencing its intent for "the insured" to be used in a singular form. Since there were several indicators present in the statute that the use of "insured" was singular, it is appropriate for this court to consider the Legislature's use of the article "the."

{¶41} The second consideration supporting a determination that Black is not entitled to coverage is based on a reading of the notice statute, which reveals that minors who were members of a household and listed as additional insureds are not persons intended to be recipients of a notice of cancellation. Therefore, even if the interpretation of "the insured" as a policyholder, as outlined above, was inapplicable, Black's interpretation of R.C. 3937.33 would still fail. Pursuant to R.C. 1.49 (A) and (E), if a statute is unclear or unambiguous, the court may determine the intention of the legislature by considering various factors, including the "object sought to be attained," and the "consequences of a particular construction," both of which are pertinent to the present case.

{¶42} Tiffany lived in her mother's household and was sixteen years old at the time of the cancellation. The notice sent to Black was sufficient to provide both individuals with notice that the policy was being cancelled. It informed the policyholder, Misty Black, who was the only adult on the policy and responsible for making the payments. Requiring notice to Tiffany would not further the objective of ensuring that all drivers are insured, as she was not the policyholder, was unable to enter into a contract, and could not operate a vehicle without a licensed driver in the car. Pursuant to these facts, it cannot be determined that Tiffany was intended to be included in the class of "insured" persons entitled to notice of cancellation or that such a construction would be the "object sought to be obtained" by the Legislature.

{¶43} Moreover, this finding is consistent with the purpose of uninsured motorist statutes and accompanying notice statutes, which intend to "protect persons injured in automobile accidents from losses which, because of the tort-feasor's lack of liability

coverage, would otherwise go uncompensated." (Citation omitted.) *Saccucci v. State Farm Mut. Auto. Ins. Co.*, 32 Ohio St.3d 273, 276, 512 N.E.2d 1160 (1987).

{¶44} We note that other jurisdictions with similar statutory language regarding notices of cancellation have also determined that notice need not be given to all insureds, especially those to which such notice would be duplicative. In interpreting similar statutory language, the Michigan Supreme Court found that, where the statute requires notice to "the insured," if notice is given to the "principal named insured" or to the "policyholder," that is "sufficient notice to any other insured person who is a family member and who lives in the same household." *Auto Club Ins. Assn. v. Hawkins*, 435 Mich. 328, 337, 458 N.W.2d 628 (1990). The court further stated that this outcome met the objectives of the Legislature, which, like those in Ohio, were to prevent individuals from operating a vehicle without insurance and protect the public from the dangers of insured drivers. *Id.* at 336; *Lease Car of America, Inc. v. Rahn*, 419 Mich. 48, 54, 347 N.W.2d 444 (1984).

{¶45} Finally, the third ground for finding that Black was not covered relates to the ineffectiveness of notices under R.C. 3937.33, which states that an insurer's failure to comply with the notice requirements renders cancellation "ineffective and the policy shall continue in force until such time as it is cancelled or otherwise terminated pursuant to law and the terms of the policy." However, even if the notice statute was construed to include Tiffany as an "insured" entitled to notice of cancellation, failure to provide such notice to Tiffany did not deem the notice provided to Misty ineffective.

{¶46} Misty is the policyholder, the primary insured, and is responsible for paying the insurance premium. She failed to pay this premium and received proper

statutory notice. R.C. 3937.33 should be construed to limit the ineffectiveness of cancellation to those who were entitled to receive the notice, but who did not. This is consistent with the rules of statutory interpretation found in R.C. 1.49(E), which require the court to consider the consequences of a particular statutory construction. Such a construction prevents individuals who fail to make a payment from being able to continue receiving coverage, even though they have received notice of the impending cancellation. The construction outlined above prevents such an unjust result.

{¶47} Since Black was the policyholder, failed to make the required insurance payment, received notice of cancellation of the policy, and was the only Nationwide-insured party involved in the accident, we find that Black's policy was properly cancelled by Nationwide pursuant to R.C. 3937.33. Therefore, the trial court erred in finding that Black's policy was in effect at the time of the accident and that she is entitled to UM/UIM coverage.

{¶48} The first assignment of error is with merit.

{¶49} Since we find that Tiffany was not entitled to notice under R.C. 3937.32 and 3937.33, and this issue is dispositive of the appeal, Nationwide's second and third assignments of error are overruled as moot.

{¶50} For the foregoing reasons, the Judgment Entry of the Lake County Court of Common Pleas, granting Black's Motion for Summary Judgment, is reversed and remanded for further proceedings consistent with this opinion. Costs to be taxed against appellee.

TIMOTHY P. CANNON, P.J., concurs in part with a Concurring Opinion.

MARY JANE TRAPP, J., dissents with a Dissenting Opinion.

TIMOTHY P. CANNON, P.J., concurring in part.

{¶51} I respectfully concur with the decision of the majority. However, I agree with only two of the conclusions reached by the lead opinion.

{¶52} There are two issues in this case: first, what the parties should understand as being required by the phrase "by mailing to the insured," as it is used in R.C. 3937.33; and, second, what the parameters are with regard to the sanction imposed by that section for a failure to comply with the "mailing to the insured" requirement.

{¶53} Initially, it is important to note that this case is *not* about interpretation of a contract. The parties and the trial court analyzed Tiffany's status as defined and referred to in the insurance contract. The trial court made note of the fact that Tiffany, a minor child who had just been issued a restricted license weeks before the policy was cancelled, was listed as an "insured driver." Given the factual scenario in this case, it is simply distracting to put too much emphasis on what the definition in the contract may be. How her status is defined in the insurance contract does not control. The insurance contract may, after all, define "insured" as all people living in the household who have red hair. Our analysis is controlled by what is intended by the phrase "mailing to the insured." R.C. 3937.33.

{¶54} It is not clear from a reading of the statute that minors who were members of the household and listed as additional insureds are persons whom the statute intended to be recipients of the notice. At the very least, when applied to the facts of this case, it is ambiguous in that regard. As a result, the first statutory rule of construction to observe is R.C. 1.49.

{¶55} That statute states:

{¶56} "If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:

{¶57} "(A) The object sought to be attained;

{¶58} "(B) The circumstances under which the statute was enacted;

{¶59} "(C) The legislative history;

{¶60} "(D) The common law or former statutory provisions, including laws upon the same or similar subjects;

{¶61} "(E) The consequences of a particular construction;

{¶62} "(F) The administrative construction of the statute."

{¶63} In addition, the intention of the legislature in the enactment of the statute must be construed in accord with R.C. 1.47, which provides:

{¶64} "In enacting a statute, it is presumed that:

{¶65} "(A) Compliance with the constitutions of the state and of the United States is intended;

{¶66} "(B) The entire statute is intended to be effective;

{¶67} "(C) A just and reasonable result is intended;

{¶68} "(D) A result feasible of execution is intended."

{¶69} The purpose of the statute in question, as stated by the Ohio Supreme Court and noted by the trial court, is "primarily * * * to protect the public from the dangers which uninsured motorists pose. R.C. 3937.31(A) attempts to ameliorate this threat by mandating that insureds * * * receive notice of any planned cancellation of their policies in time for them to secure new coverage." *DeBose v. Travelers Ins. Cos.*, 6 Ohio St.3d 65, 67 (1983).

{¶70} In an effort to analyze "the object sought to be obtained," the "consequences of a particular construction," and a "just and reasonable result," I cannot say that the legislature intended, or that the parties should have reasonably discerned, that a minor child was to be included in the universe of "insured" persons entitled to notice.

{¶71} The second issue is what the parameters are with regard to the sanction imposed by R.C. 3937.33 for an "ineffective" cancellation. That is, whether the "ineffective" cancellation is "ineffective" as to the persons who properly received the notice. Applying the statutory construction set forth above, even if it is assumed that the policy cancellation was ineffective as to Tiffany, it does not follow that the cancellation would be ineffective as to Misty. As noted by the lead opinion, Misty is the policyholder, the primary insured, and is responsible for paying the premium. She did not pay the premium. She did, however, receive the proper statutory cancellation notice. I would construe this portion of the statute to limit the ineffectiveness of the cancellation to those who were entitled to receive the notice, but did not. This is consistent with the rules of construction set forth in R.C. 1.49(E), where one must consider the consequences of a particular construction, and R.C. 1.47(C), to achieve a just result that makes sense.

{¶72} The construction encouraged by Misty has the potential to create significant inequities. If multiple members of a household were determined to be insureds under a multiple-vehicle policy, and only one of them was not sent the required cancellation notice, it would put the insureds in a position where they could do nothing for a lengthy period of time and yet have coverage afforded for all of them and their vehicles. This construction creates numerous potential scenarios with unjust results.

{¶73} Misty argues that even if the cancellation was effective as to her, she would still be covered because it is an uninsured motorist claim; and since Tiffany should still be covered, Misty is insured because she is a member of Tiffany's household. However, it should be made clear that, in this factual situation, Misty should have *no* coverage under the policy that was properly cancelled as to her.

{¶74} I do not agree that we should read "insured" as synonymous with "policyholder." These words clearly have different meanings. As acknowledged by counsel at oral argument, all "policyholders" would be "insureds," but not all "insureds" would be "policyholders." If the legislature intended these words to be synonymous, the General Assembly, not this court, must redraft the statute at issue. I also would not limit the term "insured" to a single person due to the use of the connector "the."

{¶75} For the foregoing reasons, I concur in part.

MARY JANE TRAPP, J., dissenting.

{¶76} I must respectfully dissent as I concur with the detailed and well-reasoned opinion of the trial court in this matter. I can only reiterate two salient points from the trial court's written opinion and add a new, but very cogent point of my own.

{¶77} Firstly, I agree with the trial court's analysis of the Supreme Court of Ohio's decision in *DeBose*. There is absolutely no law, syllabus or otherwise, emanating from *DeBose* as to the question before us, which is whether notice to all insured drivers listed in an automobile liability policy was required.

{¶78} In *DeBose*, the insurance company failed to send notice of cancellation to the insured, which included the policyholders as well as an "additional insured," to wit, an automobile leasing company. The insurance company argued it was not obligated to send notice of cancelation pursuant to R.C. 3937.30 et seq., for nonpayment of the premium. The *DeBose* court disagreed. In doing so, it overruled the court's prior decision, *Morey*, which held that the insurer need not send a cancellation notice before terminating an automobile insurance policy for nonpayment of the premium. The *DeBose* court stated that *Morey*'s "distinction[] between lapses and cancellations may be germane to common-law analyses of insurance policy terminations," but the General Assembly "has statutorily defined 'cancellation' to include such lapses as occur when an insurer refuses to renew a policy." *DeBose* at 67. Thus, the question in *DeBose* was *whether* notice had to be given *at all,* not *which parties* are entitled to notice.

{¶79} The majority opinion cites the syllabus in *DeBose*, which states: "In order to terminate an automobile insurance policy for nonpayment of premiums and within the mandatory renewal period set forth in R.C. 3937.31, the issuer of the policy must send,

pursuant to R.C. 3937.30 et seq., a notice of cancellation to the policyholder. (*Morey v. Educator & Executive Insurers*, 45 Ohio St. 2d 196 [74 O.O.2d 305], overruled.)" Pointing to the word "policyholder" in that syllabus, the majority states that "had the Legislature intended for 'the insured' to encompass parties in addition to the policyholder, it could have amended R.C. 3937.32 to reflect that all insured are entitled to notice."

{¶80} In this connection, I will point out that effective May 1, 2002, S.Ct.Rep.R.1 was amended to read, "The law stated in a Supreme Court opinion is contained within its syllabus (if one is provided), and its text, including footnotes." S.Ct.Rep.R.1(B)(1). The syllabus controls only "[i]f there is disharmony between the syllabus of an opinion and its text or footnotes." S.Ct.R.Rep.R.(B)(2). Even prior to the amendment to S.Ct.Rep.R.1, the syllabus of a Supreme Court opinion was "not to be construed as being broader than the facts of that specific case warrant." *Zurz v. 770 West Broad AGA, LLC*, 192 Ohio App.3d 521, 2011-Ohio-832, citing *State v. McDermott*, 72 Ohio St.3d 570, 574 (1995).

{¶81} Thus, reading the syllabus of *DeBose* in the context of the facts of the case, we may not construe it as broader than an answer to the question of whether notice had to be given in a lapse situation. The majority's focus on the word "policyholder" in the syllabus is misplaced. Instead, we presume that the Supreme Court of Ohio did not rule on an issue that was not before it. *Wireman v. Keneco Distrib, Inc.*, 75 Ohio St.3d 103 (1996) (setting forth the general rule that the Supreme Court will consider only questions previously raised and considered by the lower court).

{¶82} Secondly, as the trial court found, a careful and plain reading of the cancellation statute itself reveals that notice is required to the "insured," not merely the policyholder. This is indeed in keeping with the legislative intent to combat the threat of uninsured drivers in this state. Regardless of the number of times the uninsured/underinsured motorist statute has been amended since the *DeBose* decision in 1983, the notice statute has not been amended to limit notice to just the "policyholder."

{¶83} The fact of the matter is that the insurer was collecting an additional premium for an additional named insured driver in that household, i.e., Misty's daughter, Tiffany. Tiffany's name could have easily been added to the notice mailed to their home address in order to comply with the statute and this case would have had a different outcome.

{¶84} Finally, both the appellant and the majority go to great lengths to construe the statute and resort to the use of the "definitive article" rule (use of the word "the" before a singular word) to arrive at the conclusion that the notice requirement is limited to only one insured. This analysis rests on a faulty premise as the singular and the plural of the noun "insured" is the same. *Oxford Dictionaries Online*.

{¶85} For these reasons I would affirm the decision of the trial court.