

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: Second Appellate District

Case Name: *Grange Mut. Cas. Co. v. Reynolds*, 2010-Ohio-114

Decided: January 15, 2010

Issue(s): R.C. § 3109.09

Summary of Opinion: Reynolds, a fifteen-year-old, used another's car without permission and negligently damaged it. Grange Mutual Casualty Company ("Grange") insured the car. Grange paid its insured \$4,030.96 for her loss, and filed suit against Reynolds alleging that it was entitled to recover that amount from him on its right of subrogation. Additionally, Grange alleged that Reynolds's mother was liable for the damage that he caused pursuant to R.C. § 3109.09.

Thereafter, Reynolds's mother filed a notice of bankruptcy, seeking a stay of the proceedings against her. Reynolds filed an answer denying liability and setting up affirmative defenses. He then moved to dismiss, arguing that while his mother might be liable under R.C. § 3109.09, he had not reached the age of majority and could not be sued in the trial court on this issue. The trial court dismissed the action without prejudice because Grange could not sue Reynolds under the statute. Grange appealed.

The Second District Court of Appeals explained that at common law, parents were not liable for the wrongful acts of their children. However, R.C. § 3109.09 created an exception to this rule, permitting liability to be imposed on parents for damages to property resulting from the wrongful conduct of their children.

The court determined that the trial court erred in dismissing the action because while

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the claim against the mother relied on the statute, the claim against Reynolds alleged a common law negligence. The court explained that the two claims were separate and independent. Further, the bankruptcy stay against Reynolds's mother was irrelevant to Grange's claim against him.

The court also instructed that while a civil action commenced against a minor was irregular, the irregularity may be cured by the appointment of a guardian ad litem to represent the minor in the action. As a result, the trial court should have appointed a guardian ad litem to represent Reynolds in the action instead of dismissing the case.

The judgment was reversed and remanded.

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