[Cite as *Honzell v. Nationwide Ins. Co.*, 2012-Ohio-6154.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Tia M. Honzell et al.,	:	
Plaintiffs-Appellants,	:	
		No. 11AP-998
v.	:	(C.P.C. No. 10CVC-12-17581)
Nationwide Insurance Company et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on December 27, 2012

Michael D. Christensen Law Offices, LLC, and *Chanda L. Higgins*, for appellants.

Joyce V. Kimbler, for appellees.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiffs-appellants, Tia M. Honzell and Jazmine M. Honzell, appeal from a judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of defendant-appellee, Nationwide Insurance Company. Because there is independent corroborative evidence supporting appellants' uninsured motorist coverage claim, we reverse.

I. Factual and Procedural Background

{¶ 2} On December 6, 2008, appellant, Tia Honzell, was the driver of a vehicle traveling on Refugee Road in Columbus, Ohio. Her daughter, Jazmine Honzell, also an appellant, was a passenger in the vehicle sitting in the front passenger seat. Appellants were stopped in the left hand turn lane on Refugee Road attempting to make a left hand

turn into the Kroger parking lot. While waiting for clearance to make the turn, another vehicle allegedly struck appellants' vehicle from behind. According to appellants, Tia and the driver of the other car both exited their vehicles. Tia described the other driver as a heavy set African-American lady about Tia's height in her 30s or 40s. Tia believed the unidentified driver was driving a white vehicle with four doors. Jasmine described the other driver as a black woman, with her hair pulled back. According to Jazmine, the woman was in her 30s and wore a white t-shirt and jeans. Jazmine believed the other vehicle was a white Honda with four doors.

{¶ 3} According to Tia, the other driver suggested that they both pull their vehicles into the Kroger parking lot to exchange information. Therefore, Tia got back in her car and appellants turned left into the Kroger parking lot. However, the other vehicle continued down Refugee Road and fled the scene of the accident. Appellants were unable to get the license plate number of the other vehicle or any other information that enabled them to identify the other vehicle or its driver. There were no known witnesses to the alleged accident.

{¶ 4} Appellants immediately called the police. An officer responded and completed a police report. The report includes a narrative written by the officer that described the accident based upon information he received from appellants. The report also reflects the officer's firsthand observation of "non-functional damage" to the center of the rear bumper of appellants' vehicle.

{¶ 5} After speaking with the police officer, appellants received medical treatment in the emergency room at Mt. Carmel East Hospital for cervical strain without the need for X-rays (Tia) and lumbosacral strain without the need for X-rays (Jazmine).

{¶ 6} Appellants were insured under an auto insurance policy written by appellee. The auto insurance policy included uninsured motorist coverage. Appellants made a claim under the uninsured motorist coverage. Appellee denied the claim. Thereafter, appellants filed a complaint seeking a declaratory judgment that appellants were entitled to uninsured motorist coverage under the policy.

{¶ 7} Ultimately, both appellants and appellee filed motions for summary judgment. The trial court denied appellants' motion for summary judgment and granted appellee's motion for summary judgment. The trial court concluded that appellants failed

to present any independent corroborative evidence to support their uninsured motorist insurance claim as required by the policy and by R.C. 3927.18(B)(3).

II. The Appeal

{¶ 8} Appellants appeal from the trial court's judgment, assigning the following error for this court's review:

> The trial court erred by granting summary judgment in favor of Defendant when the record presents genuine issues of material fact that demand resolution by the trier of fact.

A. Summary Judgment Standard

{¶ 9} We review a summary judgment *de novo*. *White v. Westfall*, 183 Ohio App.3d 807, 2009-Ohio-4490, ¶ 6 (10th Dist.), citing *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 588 (8th Dist. 1994). When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Fuller v. Allstate Ins. Co.*, 10th Dist. No. 11AP-1014, 2012-Ohio-3705, ¶ 7.

{¶ 10} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66 (1978). Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59 (1992); *Fuller* at ¶ 8.

B. Legal Analysis

{¶ 11} Appellants' auto insurance policy with appellee included uninsured motorist coverage for bodily injury. An uninsured motor vehicle is defined under the policy as:

> [O]ne for which the identity of the owner and operator of the motor vehicle cannot be determined, but independent corroborative evidence exists to prove that the bodily injury, sickness, disease, or death of the insured was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. For purposes of this section, the testimony of any insured seeking recovery from the insurer shall not constitute independent corroborative evidence, unless the testimony is supported by additional evidence.

Appellees' exhibit G, page U2.

{¶ 12} This policy language is consistent with the requirements of R.C. 3937.18(B)(3), which sets forth conditions for "uninsured motorist" claims:

> (B) For purposes of any uninsured motorist coverage included in a policy of insurance, an "uninsured motorist" is the owner or operator of a motor vehicle if any of the following conditions applies:
>
> * * *
>
> (3) The identity of the owner or operator cannot be determined, but independent corroborative evidence exists to prove that the bodily injury, sickness, disease, or death of the insured was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. For purposes of division (B)(3) of this section, the testimony of any insured seeking recovery from the insurer shall not constitute independent corroborative evidence, unless the testimony is supported by additional evidence.

{¶ 13} The issue before us is whether appellants presented independent corroborative evidence to meet the threshold requirement for an uninsured motorist claim. An uninsured motorist claim may go forward if there is independent corroborative evidence that the negligence of an unidentified driver/vehicle was a proximate cause of the accident. *Fuller* at ¶ 11, citing *Girgis v. State Farm Mut. Auto. Ins. Co.*, 75 Ohio St.3d 302 (1996). This court has defined "independent corroborative evidence" as evidence that " 'supplements evidence that has already been given and which tends to strengthen or confirm it. It is additional evidence, or [sic] a different character, to the same point.' " *Fuller* at ¶ 11, quoting *England v. Grange Mut. Cas. Co.*, 10th Dist. No. 97APE07-894 (Dec. 23, 1997). We have also found that corroborative evidence is "independent" if it

comes from a source other than the insured seeking coverage. *Fuller* at ¶ 11, citing *Hassan v. Progressive Ins. Co.*, 142 Ohio App.3d 671, 675 (10th Dist.2001).

{¶ 14} Here, appellants contend that they presented three sources of independent corroborative evidence: (1) each appellant corroborated the deposition testimony of the other; (2) the police report corroborates the deposition testimony of both appellants; and (3) the medical records corroborates the deposition testimony of appellants. Because it is dispositive of the issue before us, we first address the impact of the police report.

{¶ 15} Although the narrative portion of the police report reflects only what the appellants told the investigating officer, the report also reflects the officer's firsthand observations. Significantly, the police report indicates that the officer observed "non-functional damage" to the center of the rear bumper of appellants' vehicle. This damage supports appellants' testimony regarding the circumstances of the alleged accident. This portion of the police report is independent corroborative evidence supporting appellants' contention that an unidentified driver struck the rear of their vehicle.[1] Therefore, appellants have presented evidence that satisfies the threshold requirements for an uninsured motorist claim under the policy and R.C. 3937.18(B)(3). When all the evidence is construed in appellants' favor for purposes of summary judgment, this independent corroborative evidence creates a genuine issue of material fact regarding whether an unidentified driver proximately caused appellants' injuries.

{¶ 16} Appellee contends that the police report cannot be considered because it was not submitted in compliance with Civ.R. 56(C). Appellee also argues that the police report is not independent corroborative evidence. Appellee's arguments are unpersuasive.

{¶ 17} Although the police report attached to appellants' motion and memorandum contra did not comply with Civ.R. 56(C), appellee did not object to the appellants' submission of that evidence, nor did it move to strike it. Therefore, appellee

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[1] The trial court noted that because the officer was not present when the accident occurred, he had no way of verifying that the alleged phantom driver caused the observed non-functional damage. This point, however, has no bearing on whether the observed damage constitutes independent corrobative evidence. The observed damage is evidence that is independent of appellants' description of the accident. Ultimately, the trier of fact will determine whether appellants can prove their claims.

has waived that argument. Moreover, appellee attached the same police report as an exhibit to its own motion for summary judgment.

{¶ 18} Appellee also contends that a police report that merely repeats what the insured told the officer about an occurrence for which the insured is seeking coverage is not independent corroborative evidence. Appellee cites *Willford v. Allstate Indem. Co.*, 10th Dist. No. 97APE05-657, (Nov. 10, 1997), at 4-6 in support of this argument. However, unlike the police report before the court in *Willford*, the police report at issue here reflects the officer's firsthand observation of the damage to appellants' vehicle. This damage is consistent with appellants' description of the accident. Therefore, appellee's reliance on *Willford* is misplaced.

{¶ 19} Because at least a portion of the police report constitutes independent corroborative evidence, we need not address whether appellants could be independent third-party witnesses for each other or whether the medical records would constitute independent corroborative evidence. For the foregoing reasons, we sustain appellants' assignment of error. We reverse the judgment of the Franklin County Court of Common Pleas and remand this case to that court for further proceedings in accordance with law and consistent with this decision.

Judgment reversed; cause remanded.

SADLER and CONNOR, JJ., concur.