[Cite as *Meister v. Zaragoza*, 2004-Ohio-4311.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

JOHN MEISTER,	:	
		CASE NOS. CA2003-05-126
Plaintiff-Appellant,	:	CA2003-05-128
		CA2003-05-129
	:	CA2003-05-130
- vs -		
	:	O P I N I O N
		8/16/2004
JUAN ZARAGOZA, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2001-10-2361

Jeffrey S. Bakst, 2406 Auburn Avenue, Cincinnati, Ohio 45219, for plaintiff-appellant

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WALSH, P.J.

{¶1} Appellants, John Meister, Jennifer Boles, Catherine Arnold, and State Farm Mutual Automobile Insurance Company, appeal a decision of the Butler County Court of Common Pleas granting summary judgment in favor of appellee, Westport Insurance Company ("Westport").

{¶2} On May 11, 2001, Meister, Boles, and Arnold were passengers in a vehicle driven and owned by Eric Buckingham, traveling eastbound on North Broad Street in Fairborn. Juan Zaragoza, an underinsured motorist, was driving in the opposite direction when he lost control of his vehicle, crossed the centerline, and struck Buckingham's vehicle, seriously injuring appellants. Appellants were acting within the scope of their employment with the Middletown YMCA at the time of the accident.

{¶3} The YMCA was insured under two policies issued by Westport. The first, a Commercial General Liability ("CGL") policy, provided $2,000,000 in aggregate coverage, and a $1,000,000 limit for each claim. The Business Auto Coverage Declarations contained an endorsement that included liability coverage for "hired" and "non-owned" automobiles used to conduct business. The second policy, a Commercial Excess Liability and Umbrella Liability policy ("umbrella policy"), provided a $1,000,000 limit of coverage. Appellants brought suit, seeking underinsured motorist ("UIM") coverage under both policies.

{¶4} Each side moved for summary judgment. Appellants argued that the policies complied with the definition of a "motor

vehicle liability" policy under R.C. 3937.18(L). While neither policy expressly provided for underinsured motorist coverage, appellants claimed that pursuant to R.C. 3937.18(A)[1] Westport had been required to offer underinsured motorist coverage when it delivered the policies and that, because it had not done so, such coverage had arisen by operation of law.

{¶5} Westport, in turn, argued that it had not been required to offer underinsured motorist coverage because neither policy satisfied the definition of "automobile liability or motor vehicle liability policy of insurance" set forth in R.C. 3937.18(L). Westport argued that a policy must specifically identify vehicles under the "hired" and "non-owned" auto liability coverage definitions in order to comply with this section. Because the policies at issue named only "classes" of vehicles, Westport argued that the policies are not motor vehicle liability policies of insurance under R.C. 3937.18(L)(1) or (2), and are not subject to the requirements of R.C. 3937.18(A).

{¶6} The trial court granted Westport's motion for summary judgment, finding as a matter of law that the CGL policy which covers "hired" and "non-owned" automobiles did not specifically identify any motor vehicles as required by R.C. 3937.18(L)(1).

1. R.C. 3937.18(A) states: "No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless both of the following coverages [uninsured and underinsured motorist coverage] are

Therefore, the court concluded that the policy could not be a motor vehicle liability policy, as described by R.C. 3937.18. As a result, the trial court found that UIM coverage did not arise under R.C. 3937.18(A).

{¶7} As to the umbrella policy, the trial court found that under R.C. 3937.18(L)(2), the policy would only qualify as a motor vehicle liability policy if it were "written as excess over one or more policies described in division (L)(1) of this section." However, since there was no automobile liability policy as defined by R.C. 3937.18(L)(1), the trial court concluded that the umbrella policy could not be written as excess. Appellants appeal, raising a single assignment of error:

{¶8} "THE TRIAL COURT ERRED IN HOLDING THAT APPELLEE WEST-PORT'S POLICIES ARE NOT MOTOR VEHICLE LIABILITY POLICIES THAT PROVIDE AUTOMOBILE LIABILITY COVERAGE FOR SPECIFICALLY IDENTIFIED MOTOR VEHICLES AND ARE NOT MANDATED TO PROVIDE UNINSURED AND UNDERINSURED MOTORIST COVERAGE PURSUANT TO OHIO REVISED CODE §3937.18."

{¶9} An appellate court conducts a de novo review of a trial court's decision granting summary judgment. Grafton v. Ohio Edison Co., 77 Ohio St.3d 102, 105, 1996-Ohio-336. This requires that the appellate court "use[] the same standard that the trial court should have used, and [] examine the evidence to determine

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offered to persons insured under the policy due to bodily injury or death suffered by such insureds."

if as a matter of law no genuine issues exist for trial." Dupler v. Mansfield Journal (1980), 64 Ohio St.2d 116, 119-120. Summary judgment is properly granted when: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) 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. Civ.R. 56(C); Harless v. Willis Day Warehousing Co., (1978), 54 Ohio St.2d 64, 66.

{¶10} Appellants maintain that they are entitled to UIM coverage under the YMCA policies as, in accordance with R.C. 3937.18(L)(1), these policies did act as proof of financial responsibility for Buckingham, the operator of a "non-owned" automobile, giving rise to UIM coverage as a matter of law under R.C. 3937.18(A). Appellants argue that the statute does not state that automobiles must be specifically identified by make, model and VIN number. Rather, appellants argue that the language of the statute should be construed broadly so that "hired or non-owned vehicle" specifically identifies a vehicle by putting it into a category of coverage.

{¶11} Westport, in turn, argues that the trial court was correct in finding that the CGL policy was not a motor vehicle liability policy as defined by R.C. 3937.18(L)(1). Westport contends that R.C. 3937.18(L)(1) requires that motor vehicles be specifically identified, and that the policy at issue names only

classes of vehicles. Accordingly, Westport concludes that R.C. 3937.18(A) is not applicable and UIM motorist coverage does not arise. Westport further contends that the trial court correctly determined that the umbrella policy did not qualify for UIM coverage under R.C. 3937.18(L)(2) because there is no automobile liability policy as defined by R.C. 3937.18(L)(1). We agree with Westport's contentions.

{¶12} R.C. 3937.18(L) states: "As used in this section, 'automobile liability or motor vehicle liability policy of insurance' means either of the following: (1) Any policy of insurance that serves as proof of financial responsibility for owners or operators of the motor vehicles specifically identified in the policy of insurance; (2) Any umbrella liability policy of insurance written as excess over one or more policies described in division (L)(1) of this section."

{¶13} R.C. 3937.18(L) limits the definition of an automobile liability or motor vehicle liability policy of insurance by providing that the proof of financial responsibility provided by the policy must be for owners or operators of the motor vehicles specifically identified in the policy. The policy at issue in the present case does not specifically identify any motor vehicles; rather, it provides coverage only for the categories of "hired" and "non-owned" automobiles.

{¶14} We agree with the reasoning of the majority of Ohio courts which have addressed this issue, that naming a class or

category of autos does not specifically identify any motor vehicles, and does not satisfy the R.C. 3937.18(L) definition of an automobile liability policy of insurance. Accord Burkholder v. German Mut. Ins. Co., Lucas App. No. L-01-1413, 2002-Ohio-1184 (to be "specifically identified" in an insurance policy, motor vehicles must be precisely and individually identified in order to meet the definition of an automobile liability insurance policy which insurers cannot issue without an offer of UM/UIM coverage); Reffitt v. State Automobile Mut. Ins. Co., Allen App. No. 01-02-38, 2002-Ohio-4885 (commercial policy insuring hired and nonowned vehicles did not meet the specifically identified requirement of R.C. 3937.18[L][1]); Jump v. Nationwide Mut. Ins. Co., Montgomery App. No. 18880, 2001-Ohio-1699 (general categories of hired and nonowned vehicles do not qualify as "specifically identified" vehicles using the plain and ordinary meaning of those terms); see, e.g., Green v. Cincinnati Ins. Co. (Dec. 7, 2001), Huron App. No. H-01-018 (a policy which provides coverage for "non-owned" automobiles does not provide proof of financial responsibility and therefore was not a motor vehicle liability policy subject to R.C. 3937.18).

{¶15} Appellants cite Selander v. Erie Ins. Group, 85 Ohio St.3d 541, 1999-Ohio-287, in support of their contention that hired and nonowned vehicles qualify as specifically identified vehicles. However, this decision is inapposite, as it interpreted R.C. 3937.18 before the 2000 amendment, House Bill 261, which

incorporated section (L) and its definition of an automobile liability policy. Appellants also rely on Davis v. State Farm and Cas. Co., Franklin App. No. 00AP-1458, in which the Tenth Appellate District stated, "we do not believe, by using the word 'specified,' that the legislature intended to require makes, models and serial numbers." However, in Davis, the original issuance date of the policy was unclear, so the court came to its conclusion without interpreting R.C. 3937.18(L), and its comment regarding the legislature's intent is mere dicta.

{¶16} Appellants further cite to this court's decision in Lintner v. The Midwestern Indemnity Co., Butler App. No. CA2002-04-077, 2002-Ohio-5609. In Lintner, this court held that a homeowner's policy could not be construed to include a motor vehicle liability policy. Appellants contend that this court's holding would have been different if the policy at issue was a general business liability policy, and not a homeowner's policy. However, appellants' reliance in Lintner is misplaced, since, as they concede, it is factually inapplicable to the present matter.

{¶17} We conclude that, because the YMCA's CGL policy with Westport did not specifically identify any motor vehicles, it did not satisfy the R.C. 3937.18(L) definition of an automobile liability or motor vehicle liability policy of insurance. Consequently, Westport was not required to offer uninsured or underinsured motorist coverage as part of the policy, and such coverage does not arise by the operation of R.C. 3937.18(A).

{¶18} With regard to the umbrella policy, appellants argue that the "Uninsured Rejection Form" in the umbrella policy is invalid as it fails to comply with R.C. 3937.18(A), which requires the acceptance or rejection of both uninsured and

underinsured coverage. Appellants contend this form demonstrates Westport's intent to provide a motor vehicle liability policy, and the offering of the "Uninsured Rejection Form" entitles appellants to underinsured motor vehicle coverage as a matter of law. However, absent a finding that there was a motor vehicle liability insurance policy in place as defined by R.C. 3937.18(L)(1), the umbrella policy is not subject to the requirements of R.C. 3937.18.

{¶19} In sum, we conclude that the trial court properly granted summary judgment in favor of Westport. General categories of hired and nonowned vehicles do not qualify as "specifically identified" vehicles. Consequently, the CGL policy is not a motor vehicle liability policy and neither the CGL nor the umbrella policy is subject to the requirements of R.C. 3937.18. We find that reasonable minds can come to but one conclusion, and that conclusion is adverse to appellants. Westport is entitled to judgment as a matter of law. The assignment of error is overruled.

Judgment affirmed.

FAIN and GRADY, JJ., concur.

Fain, J., of the Second Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 5(A)(3), Article IV of the Ohio Constitution.

Grady, J., of the Second Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 5(A)(3), Article IV of the Ohio Constitution.