

[Cite as *Evans v. Wallen*, 2004-Ohio-1166.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

JESSICA EVANS, et al. :
Plaintiffs-Appellees : C.A. CASE NO. 20171
v. : T.C. NO. 02 CV 1164
TRAVIS L. WALLEN, et al. : (Civil Appeal from
Common Pleas Court)
Defendants-Appellants :

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OPINION

Rendered on the 12th day of March, 2004.

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WOLFF, J.

{¶1} Cincinnati Insurance Company appeals from a summary judgment in favor
of its insureds, Carol and Jessica Evans, that they are entitled to UM/UIM coverage.
We affirm.

{¶2} The issue before the trial court on cross motions for summary judgment was whether Carol Evans - the named insured and mother of Jessica Evans, who was injured in an auto accident - effectively rejected UM/UIM coverage.

{¶3} The trial court determined that *Linko v. Indemn. Ins. Co. of N. Am.* (2000), 90 Ohio St.3d 445 applied, and that CIC's offer of UM/UIM coverage did not contain two of the required *Linko* elements. On appeal, CIC contests neither of these determinations.

{¶4} The trial court also determined, after considering evidence extrinsic to the four corners of the "Acceptance/Rejection" form, that Carol Evans had not effectively rejected UM/UIM coverage, thus concluding that she and her daughter were entitled to UM/UIM coverage.

{¶5} CIC presents its "Law and Argument" in the following format:

{¶6} "A. THE COURT SHOULD PERMIT EXTRINSIC EVIDENCE IN THE CASE AT BAR TO ASSIST IN DETERMINING WHETHER THE PLAINTIFF, CAROL EVANS, EXECUTED A KNOWING REJECTION OF UM/UIM COVERAGE; AND AS SUCH, THE COURT SHOULD APPLY ITS FINDINGS IN *Manalo v. Lumberman's Mutual Cas. Co.* (Feb. 7, 2003), No. 19391, 2nd Dist. App. Montgomery, unreported.

{¶7} "B. ASSIGNMENT OF ERROR #1: THE TRIAL COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT OF THE PLAINTIFFS. EXTRINSIC EVIDENCE PRODUCED BY THE DEFENDANT-APPELLANT CLEARLY DEMONSTRATED GENUINE ISSUES OF MATERIAL FACT CONCERNING THE KNOWLEDGE HELD BY CAROL EVANS OF THE ELEMENTS REQUIRED FOR A VALID OFFER AND REJECTION OF EXCESS UNINSURED/UNDERINSURED

MOTORIST COVERAGE.

{¶8} “C. ASSIGNMENT OF ERROR #2: THE TRIAL COURT ERRED IN DENYING THE MOTION FOR SUMMARY JUDGMENT OF THE DEFENDANT-APPELLANT, THE CINCINNATI INSURANCE COMPANY. EXTRINSIC EVIDENCE PRODUCED IN THE TRIAL COURT ESTABLISHED THAT CAROL EVANS POSSESSED FULL KNOWLEDGE OF THE INFORMATION NECESSARY FOR A VALID OFFER AND REJECTION OF EXCESS UNINSURED/UNDERINSURED MOTORIST COVERAGE.”

{¶9} In CIC’s assignments of error, it argues that extrinsic evidence (to the four corners of the Acceptance/Rejection form) created genuine issues of material fact which precluded summary judgment for the insureds and that extrinsic evidence established conclusively that Carol Evans effectively waived UM/UIM coverage.

{¶10} In order for us to consider the merits of its assignments of error, CIC recognizes that we must revive *Manalo v. Lumberman’s Mut. Cas. Co.* (Feb. 7, 2003), Montgomery App. No. 19391, which we expressly overruled in *Hollon v. Clary* (Oct. 24, 2003), Montgomery App. No. 19826. In short, *Manalo* held that *Linko* compliance could be established by extrinsic evidence, whereas *Hollon v. Clary* held that *Linko* compliance cannot be established by extrinsic evidence but, rather, must be shown within the four corners of the offer of UM/UIM insurance.

{¶11} Although *Manolo* is a well reasoned opinion, another panel of this court saw fit to overrule it. (Judge Fain, who concurred in *Manalo*, authored *Hollon v. Clary*). In the interests of consistency, we believe the better course is to follow our more recent pronouncement rather than to again switch positions.

{¶12} It being undisputed that *Linko* compliance cannot be demonstrated from the four corners of CIC’s offer of UM/UIM coverage, and because CIC cannot resort to extrinsic evidence to establish *Linko* compliance, the assignments of error must necessarily be overruled.

{¶13} The judgment will be affirmed.

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BROGAN, J. and YOUNG, J., concur.

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- Hon. Dennis J. Langer