[Cite as *Williams v. Jones*, 2004-Ohio-5512.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

Derrick L. Williams, et al.,	:	
	:	
Plaintiffs-Appellants,	:	
	:	Case No. 04CA6
vs.	:	
	:	DECISION AND
Charles Jones, et al.,	:	JUDGMENT ENTRY
	:	
Defendants-Appellees.	:	
	:	FILE-STAMPED DATE: 10-12-04

APPEARANCES:

Rick L. Brunner, Michael S. Kolman, and D. Chadd McKitrick, and Perry R. Silverman, Columbus, Ohio, for Appellants.

Barry A. Rudell II, Cincinnati, Ohio, for Appellee Indiana Insurance Company.

Kline, P.J.:

{¶1} Plaintiffs-Appellants Derrick L. Williams and his grandparents, Nancy and Danny Keirns (collectively, "Williams"), appeal the Athens County Court of Common Pleas' decision granting summary judgment in favor of Indiana Insurance Company. Williams asserts that the trial court erred in determining that *Westfield Ins. Cos. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, applies retrospectively to preclude coverage in this case. Additionally, Williams asserts

that the trial court erred in failing to rule that an exception to the usual presumption for retrospective application applies in this case. Because we find that *Galatis* generally applies retrospectively and further because Williams was not a party to the insurance contract who might have relied upon pre-*Galatis* decisions in negotiating coverage, we disagree. Accordingly, we overrule Williams' assignments of error and affirm the judgment of the trial court.

I.

{¶2} On May 29, 2000, Charles Jones allegedly negligently or recklessly operated his vehicle, causing severe and permanent injuries to Derrick L. Williams, a minor and dependant of Nancy and Danny Keirns. At the time, Nancy Keirns was an employee of Athens City Schools. Athens City Schools had an automobile insurance policy from Indiana Insurance Company ("IIC").

{¶3} Williams filed a complaint against Jones. Williams included IIC as a defendant in his complaint, under the theory that Jones is an underinsured motorist as defined by the IIC policy, and that he is entitled to UM/UIM coverage from IIC by operation of law under *Scott-Pontzer v. Liberty Mut. Ins. Co.* (1999), 85 Ohio St.3d 660 and *Ezawa v. Yasuda Fire & Marine Ins. Co.* (1999), 86 Ohio St.3d 557. Upon Williams' motion, the trial court entered partial summary judgment against IIC, finding that Williams was entitled to the UM/UIM coverage.

{¶4} Thereafter, the Supreme Court of Ohio decided *Galatis.* IIC filed a motion for reconsideration of the trial court's ruling regarding coverage. The court sustained IIC's motion, granted summary judgment to IIC, and expressly found that there was no just cause for delay. Williams appeals this ruling, asserting the following assignments of error: "I. The trial court below erred to the prejudice of the plaintiffs-appellants by holding that [*Galatis*] retroactively applied to this case. II. The trial court below erred to the prejudice of the plaintiffs-appellants by holding that they were not entitled to underinsured/uninsured motorist coverage from the automobile insurance policy that defendant-appellee issued to Athens City Schools."

II.

{¶5} In both of his assignments of error, Williams asserts that the trial court erred in granting summary judgment in favor of IIC because he has a vested right to have the IIC policy construed in accordance with *Scott-Pontzer* and *Ezawa* rather than *Galatis.* Accordingly, we consider his assignments of error jointly.

{¶6} Summary judgment is appropriate only when it has been established: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party.

Civ.R. 56(A). See *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146; *Morehead v. Conley* (1991), 75 Ohio App.3d 409, 411. In ruling on a motion for summary judgment, the court must construe the record and all inferences therefrom in the opposing party's favor. *Doe v. First United Methodist Church* (1994), 68 Ohio St.3d 531, 535.

{¶7} In reviewing whether an entry of summary judgment is appropriate, an appellate court must independently review the record and the inferences that can be drawn from it to determine if the opposing party can possibly prevail. *Morehead*, 75 Ohio App.3d at 411-12. "Accordingly, we afford no deference to the trial court's decision in answering that legal question." Id. See, also, *Schwartz v. Bank-One, Portsmouth, N.A.* (1992), 84 Ohio App.3d 806, 809. We review the interpretation of insurance contracts de novo. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm* (1995), 73 Ohio St.3d 107, 108.

{¶8} With *Galatis*, the Ohio Supreme Court abandoned the *Scott-Pontzer* rationale, and ruled that *Scott-Pontzer* no longer applies to all employees of a corporation. *Murphy v. Thornton*, Jackson App. Nos. 03CA18 and 03CA19, 2004-Ohio-1459, at ¶11; *Caplinger v. Raines*, Ross App. No. 03CA2734, 2004-Ohio-1298, at ¶15. "Rather, an employee of a corporation is an insured under the insurance policy issued to that corporation only if the employee suffers the loss

while in the course and scope of employment." *Murphy* at ¶11; *Caplinger* at ¶15. Thus, where claimants do not allege that their injuries occurred while in the course and scope of their employment, the claimants are not insureds under the rule of law pronounced in *Galatis.* *Murphy* at ¶11; *Caplinger* at ¶16.

{¶9} Generally, "a decision issued by a court of superior jurisdiction that overrules a former decision is retrospective in operation. Thus, the effect of the subsequent decision is not that the former decision was 'bad law,' but rather that it never was the law." *Murphy* at ¶12; *Caplinger* at 17. See, also, *Wagner v. Midwestern Indem. Co.* (1998), 83 Ohio St.3d 287, 289; *Peerless Elec. Co. v. Bowers* (1955), 164 Ohio St. 209; *Parks v. Rice*, 157 Ohio App.3d 190, 2004-Ohio-2477, at ¶19. There are exceptions to this rule, such as when the court expressly indicates that its decision is only to apply prospectively, or when contractual rights have been acquired or vested rights have arisen under the prior decision. *Murphy* at ¶12; *Caplinger* at 17; *Parks* at ¶20.

{¶10} Williams first argues that he is an insured under the IIC contract, and that we should not apply *Galatis* retrospectively. He contends that the law in effect at the time of the IIC contract defines the scope of UM/UIM coverage when his accident occurred, and that under that law, he is covered under the IIC policy by operation of law.

{¶11} We rejected this argument in *Murphy* and *Caplinger*. Specifically, we applied *Galatis* retrospectively to reach the determination that the claimants in those cases were not insureds under their employers' policies because they were not acting within the scope of their employment at the time of their injuries. Williams argues that our discussion regarding the retrospective application of *Galatis* in *Murphy* and *Caplinger* is merely dicta because in each decision the discussion is preceded by the statement, "[t]he threshold issue, whether appellants are insureds, completely disposes of this case." *Murphy* at ¶11; *Caplinger* at ¶16. Thus, Williams contends that *Murphy* and *Caplinger* do not apply here.

{¶12} Williams' argument ignores the fact that in order to reach our conclusion regarding that "threshold issue" of whether the appellants were insureds, we needed to determine whether *Galatis* applied retrospectively. In each case, we determined "under the recently-decided *Galatis*, appellants are not insureds." *Murphy* at ¶11; *Caplinger* at ¶16. The fact that our explanation of why *Galatis* applies retrospectively followed our holding rather than preceded it does not make the discussion any less relevant. As we held in *Murphy* and *Caplinger*, we hold today that *Galatis* generally applies retrospectively.

{¶13} Williams contends that he is protected from the general rule for retrospective application of *Galatis* because he possessed a vested right in an accrued cause of

action against IIC under *Scott-Pontzer* and *Ezawa*, which cannot be taken away. He contends that our decision in *Singleton v. Bagshaw Enterprises, Inc.*, Adams App. No. 03CA769, 2004-Ohio-508, supports his position.

{¶14} We expressly reject Williams' argument that he possesses a contractual right that arose under *Scott-Pontzer* and *Ezawa* that cannot be extinguished via the retrospective application of *Galatis.* We agree that courts do not retrospectively apply decisions when doing so will "disturb the operation of contracts formed in contemplation of and reliance upon law that is later overturned by judicial decision." *Parks* at ¶22, citing *Royal Indemn. Co. v. Baker Protective Serv., Inc.* (1986), 33 Ohio App.3d 184, 186. However, the exception will not apply where the party cannot demonstrate reliance upon the prior case law. Id.

{¶15} In *Parks*, the court rejected the claimants' attempt to avoid the retrospective application of *Galatis* because the insurance contract was between the employer and the insurer, and therefore could not have been the basis for any reliance on the claimants' part. *Parks* at ¶22. We employed similar rationale in *Singleton* when we retroactively applied *Galatis* after finding that the claimant could not have relied upon *Ezawa* because *Ezawa* did not exist at the time the parties created the insurance contract. *Singleton* at ¶14.

{¶16} Because Williams was not a party to the contract between IIC and Athens City Schools, the rationale for not retrospectively applying *Galatis* does not apply here. Williams, like the claimants in *Parks*, did not demonstrate that he entered any contract in reliance upon *Scott-Pontzer* and *Ezawa*. Thus, no exception to the general presumption for retrospective application applies here.

{¶17} Accordingly, we overrule Williams' assignments of error and we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that Appellee Indiana Insurance Company recover of Appellants costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 for the Rules of Appellate Procedure.
Exceptions.

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.