

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JOSEPH M. LEARY	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
	:	Hon. Sheila G. Farmer, J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	
-VS-	:	
	:	Case No. 2002CA00173
ERIE INSURANCE COMPANY	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas, Case No. 2002CV00655

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 9, 2002

APPEARANCES:

For Plaintiff-Appellee

DAVID AKE
401 Bank One Tower
Canton, Ohio 44702

For Defendant-Appellant

DAVID J. HANNA
DOUGLAS N. GODSHALL
ROBERT L. TUCKER
3737 Embassy Parkway
Akron, Ohio 44334

Hoffman, P.J.

{¶1} Defendant-appellant Erie Insurance Company appeals the May 3, 2002 Judgment Entry of the Stark County Court of Common Pleas which sustained plaintiff-appellee Joseph M. Leary's motion for summary judgment and overruled appellant's motion for summary judgment.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant issued a personal auto insurance policy to David and Ernestina McGowan. On October 4, 1998, the McGowans signed a written rejection of UM/UIM motorist coverage to be effective upon the October 17, 1998 renewal of the policy.

{¶3} Appellee is McGowan's adult son. He was involved in an auto accident on January 8, 2002, involving an uninsured motorist. Appellee had no UM/UIM coverage of his own and presented a claim for such coverage under his parents' policy. Appellee is an additional named insured under the appellant's policy. Appellant denied the claim based upon the McGowans' written rejection of UM/UIM coverage.

{¶4} Appellee filed a declaratory judgment action against appellant in the Stark County Court of Common Pleas seeking declaration that UM/UIM coverage exists under appellant's policy. Both parties filed motions for summary judgment. On May 3, 2002, the trial court granted appellee summary judgment finding UM/UIM coverage exists for appellee. It is from that judgment entry appellant prosecutes this appeal, assigning as error:

{¶5} "I. THE TRIAL COURT ERRED IN GRANTING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN DENYING THE DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGEMENT."

I.

{¶6} The law in effect at the time of the last two-year renewal of the McGowans' policy (October 17, 2001), was HB 261. At issue herein is whether a written rejection

signed after the effective date of HB 261, but which does not otherwise satisfy the requirements of a valid rejection under *Linko v. Indemnity Ins. Co.* (2000), 90 Ohio St.3d 445, is sufficient to preclude a grant of summary judgment to appellee.

{¶7} This Court has previously addressed this issue in *Pillo v. Stricklin*, 2001-Ohio-7049 (Dec. 31, 2001), Stark App. No. 2001CA00204, unreported, and more recently in *Still v. Indiana Ins. Co.*, 2002-Ohio-1004 (Feb. 25, 2002), Stark App. No. 2001CA00300, unreported. Appellant herein asks us to overrule our prior decisions in *Pillo* and *Still* and cites cases from other appellate districts which have held contrary. Appellant further notes the issue is presently pending before the Ohio Supreme Court in *Kemper v. Michigan Millers Mut. Ins. Co.* (2002), 94 Ohio St.3d 1435.

{¶8} Upon reconsideration of our decisions in *Pillo* and *Still*, we adhere to the opinions expressed therein.

{¶9} Appellant's assignment of error is overruled.

{¶10} The May 3, 2002 Judgment Entry of the Stark County Court of Common Pleas is affirmed.

Hoffman, P.J.

Farmer, J. and

Edwards, J. concur

topic: denial of motion for summary judgment