

[Cite as *Sharp v. Wausau Business Ins. Co.*, 2004-Ohio-4030.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

THERESA L. SHARP

Plaintiff-Appellee

vs.

WAUSAU BUSINESS INSURANCE COMPANY, ET AL.

Defendants-Appellants

JUDGES:

: Hon. W. Scot Gwin, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. John F. Boggins, J.
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: Case No. 2003CA00070
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: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,
Case No. 01CV852

JUDGMENT:

Reversed

DATE OF JUDGMENT ENTRY:

July 19, 2004

APPEARANCES:

For Plaintiff-Appellee

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For Wausau Business Insurance Co.

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For Community Health Plan

JAMES G. PETERS
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Farmer, J.

{¶1} On November 29, 1998, appellee, Theresa Sharp, sustained injuries when struck by a motor vehicle operated by her daughter. Appellee was standing in her garage, and was not acting within the scope and course of her employment.

{¶2} At the time of the accident, appellee was employed by the Licking County Board of Mental Retardation and Developmental Disabilities, insured under a business auto policy issued by Wausau Business Insurance Company.

{¶3} On September 21, 2001, appellee filed a complaint seeking underinsured motorists benefits from Wausau. Wausau filed a counterclaim for declaratory judgment.

{¶4} All parties filed motions for summary judgment. By judgment entry filed February 21, 2003, the trial court found appellee was entitled to underinsured motorists benefits under the Wausau policy. A nunc pro tunc judgment entry including Civ.R. 54(B) language was filed on August 5, 2003.

{¶5} Wausau filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

{¶6} "THE TRIAL COURT ERRED AS A MATTER OF LAW BY DENYING WAUSAU BUSINESS INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AND GRANTING THE MOTIONS FOR SUMMARY JUDGMENT OF APPELLEES THERESA SHARP AND COMMUNITY HEALTH PLAN OF OHIO."

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{¶7} Wausau claims the trial court erred in extending coverage under its business auto policy pursuant to *Scott-Pontzer v. Liberty Mutual Fire Insurance Co.*, 85 Ohio St.3d 660, 1999-Ohio-292.

{¶8} The Wausau policy contained express uninsured/underinsured motorist coverage. The definition of an "insured" under the uninsured/underinsured motorist provisions of the policy is similar to the definition in *Scott-Pontzer*. See, Section B of the Ohio Uninsured Motorists Coverage – Bodily Injury, attached to Wausau's Answer as Exhibit A. Based upon the Supreme Court of Ohio's recent decision in *Westfield Insurance Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, we find appellee is not an insured under the policy.

{¶9} The sole assignment of error is granted.

{¶10} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby reversed.

By Farmer, J.

Gwin, P.J. and

Boggins, J. concur.

JUDGES