

[Cite as *Lemke v. Hall*, 2002-Ohio-2049.]

IN THE COURT OF APPEALS OF LUCAS COUNTY

Lynette Lemke, et al.

Court of Appeals No. L-01-1436

Appellant

Trial Court No. CI-00-4596

v.

Teri Hall, et al.

Defendants

Erie Insurance Company

DECISION AND JUDGMENT ENTRY

Appellee

Decided: April 26, 2002

* * * * *

Steven L. Crossmock and Charles E. Boyk, for
appellants.

Scott A. Haselman, for appellee Erie
Insurance.

* * * * *

HANDWORK, J.

{¶1} This is an appeal from a judgment of the Lucas County Court of Common Pleas which granted summary judgment to appellee, Erie Insurance Company ("Erie"), in this dispute concerning underinsured motorist ("UIM") coverage. For the reasons stated herein, this court affirms the judgment of the trial court.

{¶2} The following facts are relevant to this appeal. On February 3, 1999, Ryan Lemke, the minor child of appellant, Lynette Lemke, ("appellants") was injured when he was struck by an automobile due to the negligence of a UIM tortfeasor. On October

23, 2000, appellants filed a complaint against the UIM tortfeasor and Erie. Appellants had a homeowner's insurance policy with Erie and sought UIM coverage pursuant to that policy. The Erie policy was renewed on October 26, 1997.

{¶3} On June 20, 2001, Erie filed a motion for summary judgment contending that appellants were not entitled to underinsured motorist coverage under their homeowner's insurance policy. Erie argued that the homeowner's insurance policy did not fit under the definition of "automobile liability or motor vehicle liability policy of insurance" in R.C. 3937.18(L), as effective September 3, 1997, and, thus, there was no UIM coverage available to appellants. Appellants responded and filed their own motion for summary judgment.

{¶4} On September 21, 2001, the trial court granted summary judgment to Erie and denied summary judgment to appellants. Appellants filed a timely notice of appeal.

{¶5} Appellants set forth the following assignment of error:

{¶6} "ASSIGNMENT OF ERROR 1

{¶7} "I. THE TRIAL COURT ERRED TO THE PREJUDICE OF THE PLAINTIFFS WHEN IT GRANTED SUMMARY JUDGMENT TO THE DEFENDANT ERIE INSURANCE ON THEIR (SIC) MOTION FOR SUMMARY JUDGMENT ON THE ERIE INSURANCE POLICY."

{¶8} Appellants' assignment of error is found not well-taken on the authority of this court's decision in Burkholder v. German Mut. Ins. Co. (Mar. 15, 2002), Lucas App. No. L-01-1413,

unreported.ⁱ The judgment of the Lucas County Court of Common Pleas is affirmed. Costs assessed to appellants.

JUDGMENT AFFIRMED.

Peter M. Handwork, J.

JUDGE

Melvin L. Resnick, J.

James R. Sherck, J.
CONCUR.

JUDGE

JUDGE

ⁱAt oral argument, this court granted appellants' request to file a reply to Erie's citation to supplemental authority; this court allowed Erie to file a response.