

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Cincinnati Insurance
Company

Court of Appeals No. F-02-012

Appellee

Trial Court No. 01-CV-000233

v.

Jodie Carroll

DECISION AND JUDGMENT ENTRY

Appellant

Decided: February 4, 2003

* * * * *

Stephen C. Roach, for appellee.

Jeffrey B. Charles and Robert J. Bahret, for appellant.

* * * * *

HANDWORK, P.J.

{¶1} This matter is before the court on a motion for reconsideration of this court's decision and judgment entry dated December 30, 2002, filed by appellant, Jodie Carroll. Also before this court is a memorandum in opposition filed by appellee, Cincinnati Insurance Company.

{¶2} In her motion, appellant requests that this court remand this case to the trial court based upon the Ohio Supreme Court's decision in *Ferrando v. Auto-Owners Mut. Ins. Co.*, 98 Ohio St.3d 186, 2002-Ohio-7217, decided on December 27, 2002. In *Ferrando*, overruling in part paragraph four of the syllabus of *Bogan v. Progressive Ca. Ins. Co.* (1988), 36 Ohio St.3d 22, the

Ohio Supreme Court held that an insured's unreasonable delay in giving notice or an insured's breach of a consent-to-settle or other subrogation-related provision is presumed prejudicial to the insurer absent evidence to the contrary. *Id.*, paragraphs one and two of the syllabus. The Ohio Supreme Court remanded the case to the trial court for a factual determination as to the reasonableness of the plaintiffs' notice to the insurer and, if the plaintiffs' notice was not reasonably given, whether the insurer was prejudiced by that breach so that underinsured motorist coverage ("UIM") must be forfeited. The case was also remanded for a factual determination as to whether the plaintiffs' breach of the consent-to-settle provision was prejudicial to the insurer. Pursuant to *Ferrando*, the insured bears the burden of presenting evidence to rebut the presumption of prejudice to the insurer.

{¶3} Appellant's motion for reconsideration meets the standard for such motions set forth in *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 143. Therefore, we find appellant's motion for reconsideration well-taken and the same is, hereby, granted.

{¶4} This case is reversed and remanded to the trial court for determinations consistent with *Ferrando v. Auto-Owners Mut. Ins. Co.*, 98 Ohio St.3d 186, 2002-Ohio-7217.

JUDGMENT REVERSED.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

George M. Glasser, J.
CONCUR.

JUDGE

JUDGE

Judge George M. Glasser, retired, sitting by assignment of
the Chief Justice of the Supreme Court of Ohio.