[Cite as *Ingram v. State Farm Mut. Auto. Ins. Co.*, 2010-Ohio-1599.]

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

Robert E. Ingram	Court of Appeals No. L-09-1201
Appellant	Trial Court No. CI 200901515
v.	
State Farm Insurance Company, et al.	**DECISION AND JUDGMENT**
Appellees	Decided: April 9, 2010

* * * * *

Michael A. Bruno and Charles E. Boyk, for appellant.

Lori Britsch, for appellee Safe Auto.

Todd M. Zimmerman and J. Mark Trimble, for appellee State Farm.

* * * * *

SINGER, J.

{¶ 1} Appellant, Robert E. Ingram, appeals from a decision of the Lucas County Court of Common Pleas granting summary judgment to appellees, State Farm Mutual Automobile Insurance Company and Safe Auto Insurance Company.

{¶ 2} For the reasons that follow, we reverse.

{¶ 3} This matter arose from an automobile accident which occurred on November 27, 2004. According to appellant, he was driving his passenger, Thelma Stovall, home in Stovall's car at approximately 4 a.m. They were stopped at a red light when a driver of a SUV lost control while turning and collided with Stovall's car. The driver of the SUV told appellant he was going to pull over; however, the driver then fled the scene of the accident and was never identified.

{¶ 4} At the time of the accident, appellant had an automobile insurance policy with Safe Auto which included uninsured motorist coverage. Stovall had an automobile insurance policy with State Farm that included uninsured motorist's coverage. Appellant submitted claims under both polices for the injuries he sustained but both appellees denied him uninsured motorist coverage. Appellant thereafter filed suit seeking compensatory damages. Both appellees filed motions for summary judgment which were granted on July 9, 2009. Appellant now appeals setting forth the following assignment of error:

{¶ 5} "The trial court erred to the prejudice of the plaintiff-appellant when it granted the motions for summary judgment of defendant-appellees."

{¶ 6} Appellate review of a summary judgment is de novo. *Hillyer v. State Farm Mut. Auto. Ins. Co.* (1999), 131 Ohio App.3d 172, 175; *Brown v. Scioto Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. Summary judgment is proper only when, looking at the evidence as a whole: (1) there is no genuine issue of material fact; (2) reasonable minds can come to only one conclusion, that is adverse to the party against whom the motion for summary judgment is made, and; (3) the moving party is entitled to judgment

as a matter of law. Civ.R. 56(C); *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146. All issues that are in doubt must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95.

{¶ 7} When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought, *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, syllabus, and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleading, but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery* (1984), 11 Ohio St.3d 75, 79. A "material" fact is one which would affect the outcome of the suit under the applicable substantive law. *Russell v. Interim Personnel, Inc.* (1999), 135 Ohio App.3d 301, 304; *Needham v. Provident Bank* (1996), 110 Ohio App.3d 817, 826, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248.

{¶ 8} It is undisputed that appellant had Stovall's permission to operated Stovall's vehicle at the time of the accident. Appellant's Safe Auto policy defines an uninsured motor vehicle, in pertinent part, as a:

{¶ 9} "* * * hit-and-run motor vehicle that strikes you while you are occupying your covered auto, if neither the driver nor the owner of the hit-and-run motor vehicle can be identified, but independent corroborative evidence exists to prove that your bodily injury was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle."

{¶ 10} Stovall's State Farm policy defines an uninsured motor vehicle in pertinent part as:

{¶ 11} "* * * a land motor vehicle whose owner and operator remain unidentified but independent corroborative evidence exists to prove that the bodily injury was proximately caused by the unidentified operator of the land motor vehicle. The testimony of an insured seeking recovery shall not constitute independent corroborative evidence, unless the testimony is supported by additional evidence."

{¶ 12} R.C. 3937.18(B)(3) provides:

{¶ 13} "[F]or purposes of any uninsured motorist coverage included in a policy of insurance, an 'uninsured motorist' is the owner or operator of a motor vehicle if any of the following conditions applies:

{¶ 14} "* * *

{¶ 15} "[T]he identity of the owner or operator cannot be determined, but independent corroborative evidence exists to prove that the bodily injury, sickness, disease, or death of the insured was proximately caused by the negligence or intentional actions of the unidentified operator of the motor vehicle. For purposes of division (B)(3) of this section, the testimony of any insured seeking recovery from the insurer shall not constitute independent corroborative evidence, unless the testimony is supported by additional evidence."

{¶ 16} "As a result, for an insured to receive benefits under an automobile insurance policy with uninsured motorist coverage when the driver that caused the accident is unknown, the insured must produce independent corroborative evidence to

support her claim. The insured's testimony is not sufficient by itself to be successful. See *Girgis v. State Farm Mut. Auto. Ins. Co*., 75 Ohio St.3d 302, 1996-Ohio-111, paragraph two of the syllabus." *Mosley v. Personal Serv. Ins*., 4th Dist. No. 08CA779, 2009-Ohio-419, ¶ 15.

{¶ 17} In their motions for summary judgment, appellees argued that there was no independent corroborative evidence to show that appellant's injuries were proximately caused by the negligence of the unidentified driver. The trial court agreed interpreting *Girgis* to mean that such independent corroborative evidence must come from the testimony of an independent third party.

{¶ 18} However, there is no requirement in appellees' policies, R.C. 3937.18, or *Girgis* that the "additional evidence" needed to support the insured's testimony be eyewitness testimony.

{¶ 19} In addition to appellant's account of the accident, Stovall's deposition testimony was admitted into evidence. He testified that appellant was driving him home because he had had too much to drink. He testified that he did not see the SUV crash into his car because he was looking down at the time. He testified that he heard appellant warn him that a car was about to collide with them and that he felt the impact of the collision. He then heard appellant tell someone to pull over and that another voice responded, "I'm pulling over."

{¶ 20} Also admitted into evidence was a copy of appellant's medical records showing that he sought medical treatment on November 27, 2004, for injuries he

sustained when another car collided with the car he was driving and the police report that was taken at the scene of the accident which mirrored appellant's account of the accident.

{¶ 21} The trial court dismissed the above evidence as "impermissibly stacking references." Nevertheless, appellant's testimony, Stovall's testimony, the medical documents and the police report are evidence which, if believed, establish that the Stovall car was struck by a hit-and-run driver. Whether the accident was caused by a hit-and-run driver was a question for the trier of fact. Accordingly, appellant's assignment of error is found well-taken.

{¶ 22} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is reversed, and this case is remanded for proceedings consistent with this decision. Appellees are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Keila D. Cosme, J. _____
CONCUR.
JUDGE