[Cite as *Owners Ins. Co. v. Doe*, 2011-Ohio-1263.]

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

Owners Insurance Company, et al.	Court of Appeals No. L-10-1326
Appellant	Trial Court No. CI200903784
v.	
John Doe, et al.	**DECISION AND JUDGMENT**
Appellees	Decided: March 18, 2011

* * * * *

Jeffrey C. Zilba, for appellant.

Benjamin E. Ritterspach, for appellees.

* * * * *

SINGER, J.

{¶ 1} Appellant, Natalie Giovanoli, brings this accelerated appeal from a judgment of the Lucas County Court of Common Pleas granting summary judgment to appellees, Randall and Melissa Zabawa. For the reasons that follow, we affirm.

{¶ 2} On April 26, 2007, appellant was injured in an automobile accident that was caused by a hit-and-run driver. According to witnesses, the errant automobile was registered to appellee, Melissa Zabawa. Melissa's father, Randall Zabawa, had co-signed for her loan.

{¶ 3} On April 21, 2009, appellant's insurer, Owner's Insurance Company ("Owner's"), filed a complaint against appellees seeking damages in the amount of $3,001.67, the amount they paid appellant pursuant to a claim she made following the accident. (Case No. CI0200903784). On May 5, 2009, appellant filed a personal injury action against appellees based on the accident. (Case No. CI0200904093).

{¶ 4} On June 30, 2009, in case No. CI0200904093, appellees filed a motion for summary judgment arguing that Giovanoli's action was barred by the statute of limitations.

{¶ 5} On August 10, 2009, case No. CI0200903784 and case No. CI0200904093 were ordered consolidated under case No. CI0200903784.

{¶ 6} On March 10, 2010, the trial court granted summary judgment to appellees on the basis of the two year statute of limitations. Appellant now appeals, setting forth the following assignment of error:

{¶ 7} "The trial court erred in granting defendants Melissa Zabawa's and Randall Zabawa's motion for summary judgment."

{¶ 8} On review, appellate courts employ the same standard for summary judgment as trial courts. *Lorain Natl. Bank v. Saratoga Apts*. (1989), 61 Ohio App.3d 127, 129, 572 N.E.2d 198. The motion may be granted only when it is demonstrated:

{¶ 9} "* * * (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor." *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 67, 375 N.E.2d 46, and Civ.R. 56(C).

{¶ 10} R.C. 2305.10 sets forth the statute of limitations for causes of actions based on bodily injury and provides that "an action for bodily injury or injuring personal property shall be brought within two years after the cause of action accrues." The statute further states that "a cause of action accrues under this division when the injury or loss to person or property occurs." Id.

{¶ 11} Appellant contends there is a genuine issue of material fact as to whether her claim survived the statute of limitations barrier. Specifically, appellant contends that her claim was preserved through the filing of Owner's complaint, well within the statute of limitations period.

{¶ 12} In support, appellant cites *Owens v. Smith,* 5th Dist. No. 07CA42, 2007-Ohio-6766. In the *Owens* case, appellants were involved in an auto accident. Their insurer sued the tortfeasor within the two year statute of limitations period. Appellants

then filed a motion to intervene in the case and the motion was granted. Later, the trial court granted a motion for summary judgment finding that appellants filed their intervening complaint beyond the statute of limitations, and that their claims did not relate back to their insurer's complaint. The Fifth District Court of Appeals reversed the trial court finding that appellants' claims were not time barred in that appellants had an interest relating to the subject of the action.

{¶ 13} However, *Owens* is distinguishable from the instant case. In *Owens*, appellants intervened in the same action filed by their insurer. Appellant, in this case, took no such action. Instead, a separate action with a different case number was filed by appellant after the two-year period expired. Even though Owner's suit was consolidated with the suit filed by appellant, appellant was not a named party or served in the first suit brought by Owner's and cannot, through consolidation, somehow be considered as a named party in the first suit instituted by Owner's. *Griesmer v. Allstate Ins. Co.*, 8th Dist.No. 91194, 2009-Ohio-725.

{¶ 14} Appellant next contends that the statute of limitations period was tolled because appellee, Melissa Zabawa, absconded from the scene of the accident. R.C. 2305.15(A) provides:

{¶ 15} "When a cause of action accrues against a person, if the person is out of the state, has absconded, or conceals self, the period of limitation for the commencement of the action as provided in sections 2305.04 to 2305.14, 1302.98, and 1304.35 of the Revised Code does not begin to run until the person comes into the state or while the

person is so absconded or concealed. After the cause of action accrues if the person departs from the state, absconds, or conceals self, the time of the person's absence or concealment shall not be computed as any part of a period within which the action must be brought."

{¶ 16} In her deposition testimony, appellee testified that she has lived at a residence in Ida, Michigan for five years. She categorically denied that she was involved in an accident on April 26, 2007. She acknowledged that the location of the accident is in an area she frequently drives through and she acknowledged that she is the owner of the vehicle described by witnesses to the accident. She stated that she first heard that she was being accused of hit-and-run when her insurance company sent her a letter in December 2007. She contacted her insurer and was told that they would take care of the matter.

{¶ 17} We agree with the trial court that appellant demonstrated no reasonable basis for the application of R.C. 2305.15(A). As indicated above, R.C. 2305.15(A) permits the tolling of the statute of limitations when a party has absconded or concealed himself. In the present case, appellant failed to present any evidence that appellee absconded in a manner that would invoke the tolling statute. *Conway v. Smith* (1979), 66 Ohio App.2d 65, 419 N.E.2d 1117. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶ 18} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE