

[Cite as *Hall v. Strzelecki*, 2002-Ohio-2258.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 80097

CARSON K. HALL, et al.	:	
	:	
Plaintiffs-appellees	:	
	:	
vs.	:	JOURNAL ENTRY
	:	and
	:	OPINION
STEPHEN L. STRZELECKI, et al.	:	
	:	
Defendants-appellants	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION	:	MAY 9, 2002
CHARACTER OF PROCEEDING	:	Civil appeal from Cuyahoga
	:	County Common Pleas Court
	:	Case No. 363,954
JUDGMENT	:	DISMISSED.
DATE OF JOURNALIZATION	:	
APPEARANCES:		
For plaintiffs-appellees:		JONATHAN D. MESTER KATHLEEN J. ST. JOHN Attorneys at Law Nurenberg, Plevin, Heller & McCarthy 1370 Ontario Street, Suite 100 Cleveland, Ohio 44113-1792
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KENNETH A. ROCCO, J.:

{¶1} *Sua sponte*, this appeal is dismissed for lack of a final appealable order, at appellant's cost.

{¶2} This court dismissed a prior appeal in this case for lack of a final, appealable order, concluding that the common pleas court's entry granting summary judgment on a claim for declaratory judgment did not declare the rights of the parties and so was not a final judgment. *Hall v. Strzelecki* (June 25, 2001), Cuyahoga App. No. 78653, unreported. After that appeal was dismissed, the common pleas court entered the following order, which is the subject of the present appeal:

{¶3} Upon remand from the court of appeals (8th District), this court issues the following order:

{¶4} π 's mtn for S.J. is granted. This court finds that the π is afforded uninsured/underinsured motorist coverage under the Brotherhood Mutual Ins. Policy which had been issued to his employer, Cleveland Baptist Church.

{¶5} In accordance w/ Rule 54(B) this is a final judgment & there is no just reason for delay. Final.

{¶6} This entry also does not construe the terms of the insurance policy at issue and determine the parties' rights and obligations thereunder. R.C. 2721.04. Therefore, it is not final

and appealable. *Haberley v. Nationwide Mut. Fire Ins. Co.* (2001), 142 Ohio App.3d 312.

{¶7} This court has routinely noted that a trial court fails to fulfill its function when it disposes of the issues in a declaratory judgment action by journalizing an order sustaining or overruling a motion for summary judgment without setting forth any construction of the document under consideration. The issue has been raised frequently in cases in which a party demands a declaratory judgment concerning the construction of an insurance policy allegedly providing uninsured/underinsured motorists coverage. See, e.g., *Haberley*, 142 Ohio App.3d 312; *Nickschinski v. Sentry Ins. Co.* (1993), 88 Ohio App.3d 185; *Motorists Mut. Ins. Cos. v. Grischkan* (1993), 86 Ohio App.3d 148. Our decision in *Haberley* makes clear the trial court's construction of the insurance contract and declaration of rights is a jurisdictional concern, not merely an advisable practice.

{¶8} The court's conclusion that the appellee "is afforded uninsured/underinsured motorist coverage under the Brotherhood Mutual Ins. policy which had been issued to his employer, Cleveland Baptist Church" is insufficient to make its ruling a final declaratory judgment. We do not opine as to the level of

specificity required,¹ but the court must do more than state that a party is or is not entitled to insurance coverage.

Appeal dismissed.

¹The Ohio Supreme Court's description of the common pleas court's order granting summary judgment in *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660, may be instructive.

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This cause is dismissed.

It is, therefore, considered that said appellee recover of said appellant its costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PRESIDING JUDGE
KENNETH A. ROCCO

JAMES D. SWEENEY, J. and

COLLEEN CONWAY COONEY, J. CONCUR

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

KEYWORD SUMMARY

Appeal and error – Final appealable order – Declaratory judgment – Judgment – Summary – Motions – Summary judgment.