

[Cite as *McDonald v. Williamson*, 2003-Ohio-6606.]

Please see original opinion at *McDonald v. Williamson*, 2003-Ohio-4801.

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 81590
Reconsideration, Motion No. 352679

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| JOHN T. MCDONALD, | : | |
| Plaintiff-Appellant | : | JOURNAL ENTRY |
| vs. | : | AND |
| JAMMY L. WILLIAMSON, | : | OPINION |
| Defendant-Appellee | : | |
| | : | |
| DATE OF ANNOUNCEMENT OF DECISION | : | DECEMBER 11, 2003 |
| | : | |
| CHARACTER OF PROCEEDING | : | Civil appeal from Common Pleas Court Case No. CV-427843 |
| JUDGMENT | : | RECONSIDERATION GRANTED AND JUDGMENT AFFIRMED |
| DATE OF JOURNALIZATION | : | |

APPEARANCES:

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ANNE L. KILBANE, J.

{¶1} This is a reconsideration of an appeal from an order of Judge Kenneth R. Callahan that granted summary judgment to the Hartford Insurance Company ("Hartford") on John T. McDonald's claim for uninsured motorist ("UM") benefits under a commercial motor vehicle policy Hartford issued to his employer, Entex Information Services, Inc. ("Entex"). Hartford is a Connecticut company; Entex is a Delaware corporation based in New York. McDonald, an Ohio resident who was employed by Entex in Ohio, claims it was error to apply Connecticut law to the interpretation of the policy and to find that Connecticut law would deny him UM coverage.

{¶2} In a previous opinion we found error in the grant of summary judgment, and reversed and remanded the case. Hartford filed a motion for reconsideration and, while the motion was pending, the Ohio Supreme Court released its decision in *Westfield Ins. Co. v. Galatis*,¹ which limited the decision in *Scott-Pontzer*

¹100 Ohio St.3d 216, [2003-Ohio-5849](#).

*v. Liberty Mut. Fire Ins. Co.*² Based on the change in Ohio law, we grant the motion for reconsideration and affirm the judgment.

{¶3} In February of 1999, McDonald, driving his own uninsured car in Portage County, Ohio, was injured in a collision with a car driven by Jammy L. Williamson. He sued Williamson, alleging negligent operation; Donyel Williamson, alleging negligent entrustment; and Hartford, the business auto insurance carrier for Entex, on a UM claim pursuant to *Scott-Pontzer*.

{¶4} Hartford moved for summary judgment, arguing that the policy was not subject to Ohio law because Entex did not own any vehicles registered or principally garaged in Ohio and, therefore, the policy was not “delivered or issued for delivery”³ in Ohio. McDonald countered that he was entitled to UM coverage under Ohio law, and added that he would also be entitled to UM coverage if Connecticut law applied. Hartford then argued that McDonald would not be entitled to UM coverage under Connecticut law because of a Connecticut statute limiting “stacking” of UM coverage under different policies.

{¶5} The judge granted summary judgment to Hartford after finding that Connecticut law applied and that the policy would not provide UM coverage for McDonald. The judge did not rely on Hartford’s arguments but found that, under Connecticut law,

²85 Ohio St.3d 660, [1999-Ohio-292](#), 710 N.E.2d 1116.

³R.C. 3937.18(A).

McDonald was not entitled to UM coverage as an Entex employee because he was not driving a covered vehicle in the course and scope of his employment. The judge later entered a \$400,000 default judgment against the Williamsons and certified the case for appeal under Civ.R. 54(B).⁴

{¶6} McDonald asserts two assignments of error: the first claims the judge erred in applying Connecticut law, and the second claims the judge misapplied that law. We review the grant of summary judgment de novo using the same standard as the trial judge, which requires that we consider the evidence in the light most favorable to the non-moving party to determine whether a material dispute of fact exists.⁵

APPLICATION OF OHIO AND CONNECTICUT LAW

{¶7} Before engaging in any choice of law analysis, a court must first determine whether such analysis is necessary. If the competing states would use the same rule of law or would otherwise reach the same result, there is no need to make a choice of law determination because there is no conflict of law.⁶ McDonald claims that he would be entitled to UM coverage under Connecticut or Ohio law because Connecticut has addressed the same ambiguity of

⁴Apparently in order to preserve John Doe claims.

⁵Civ.R. 56(C); *Stephens v. A-Able Rents Co.* (1995), 101 Ohio App.3d 20, 26, 654 N.E.2d 1315.

⁶*Akro-Plastics v. Drake Indus.* (1996), 115 Ohio App.3d 221, 224, 685 N.E.2d 246, citing 1 Restatement of the Law 2d, Conflict of Laws (1971) 2, Section 1, comment b.

definition decided in *Scott-Pontzer* and has reached the same conclusion.

{¶8} McDonald cannot recover under Ohio law, however, because the Ohio Supreme Court recently limited *Scott-Pontzer* in *Westfield Ins. Co. v. Galatis*.⁷ Under *Westfield Ins. Co.*, McDonald is not entitled to UM coverage because his loss did not occur in the course of his employment with Entex.⁸ Therefore, he can only defeat summary judgment if we find that Connecticut law applies and would not deny him UM coverage.

{¶9} In *Ceci v. Natl. Indemn. Co.*,⁹ the defendant insurer had issued a policy to a corporate entity owned by a single shareholder. The plaintiff-employee, who was also the brother of the sole shareholder, sought UM coverage as a "family member" of a named insured. The policy, however, did not identify anyone other than the corporation as the named insured, and a lower court found the claimant could not recover because a corporation has no family members.¹⁰ The Connecticut Supreme Court, however, rejected this conclusion because such a construction would render the UM endorsement's extension of coverage to "family members"

⁷100 Ohio St.3d 216, [2003-Ohio-5849](#).

⁸*Id.*, paragraph two of the syllabus.

⁹(1993), 225 Conn. 165, 622 A.2d 545.

¹⁰*Id.* at 167-168.

superfluous.¹¹ The court ruled that the "family member" language rendered the policy ambiguous as to who was insured under the UM endorsement, although it did not specifically find, as the *Scott-Pontzer* court did, that the policy was ambiguous in the definition of the term "you."

{¶10} In *Hansen v. Ohio Cas. Ins. Co.*,¹² the Connecticut Supreme Court extended its reasoning in *Ceci* to reach another UM claim involving a policy issued to a close corporation. In *Hansen*, the plaintiff and her deceased husband were the only shareholders of a corporation named as an insured under the defendant's policy, and UM benefits were claimed under an endorsement that again defined those insured as "you." The endorsement's definition differed from that in *Ceci*, however, because coverage was extended to "family members," only "[i]f you are an individual[.]"¹³ The court viewed the case as a "sequel" to *Ceci* and utilized different reasoning because the case did not "solely revolve around family member language."¹⁴ Therefore, the court specifically found that the decedent qualified under the policy's definition of "you."¹⁵

¹¹Id. at 173-175.

¹²(1996), 239 Conn. 537, 687 A.2d 1262.

¹³Id. at 541; cf. *Ceci*, 225 Conn. at 171.

¹⁴*Hansen*, 239 Conn. at 543.

¹⁵Id. at 547-548.

{¶11} The *Hansen* court specifically stated that it could not read the language "if you are an individual," as unambiguous because it would render other policy provisions superfluous.¹⁶ The court thus concluded that "the individual oriented language, combined with the family oriented language," combined to create ambiguity within the policy.¹⁷ *Hansen's* reasoning is extremely similar, if not identical, to that in *Scott-Pontzer*.

{¶12} In *Agosto v. Aetna Cas. & Sur. Co.*,¹⁸ a companion case to *Hansen*, the court specifically extended *Hansen's* reasoning to include employees of organizations that were not close corporations.¹⁹ In *Agosto*, the court ruled that the plaintiff's decedent, a Connecticut state employee, was entitled to UM benefits under a policy issued to the state. Although it did not specifically state that the decedent qualified as an insured under the definition of "you," the court stated that he was entitled to UM coverage based upon its reasoning in *Hansen*.²⁰ Furthermore, the facts of *Agosto* lead to no other rational conclusion, because it is unlikely the court would have found the decedent entitled to UM benefits as a "family member" of the state.

¹⁶*Hansen*, 239 Conn. at 547.

¹⁷*Id.* at 548.

¹⁸(1996), 239 Conn. 549, 687 A.2d 1267.

¹⁹*Id.* at 551-552.

²⁰*Id.* at 552.

{¶13} Based on the Connecticut Supreme Court's decisions in *Ceci, Hansen, and Agosto*, we conclude that Connecticut law would reach the same result as the Ohio Supreme Court reached in *Scott-Pontzer*. Other Connecticut courts have reached the same conclusion. In *Scofield v. AIU Ins. Co.*,²¹ a Connecticut judge applied *Ceci, Hansen, and Agosto* to allow a UM claim by an employee of a pest control company even though the defendant insurer argued that the employee did not qualify as a family member and that Connecticut Supreme Court precedent should be construed as limited to policies issued to closely held corporations. The judge rejected this view, ruling that "the explicit and sweeping holdings" of those cases showed that they were "not limited to their fact patterns."²² Therefore, our view that Connecticut law is in accord with *Scott-Pontzer* is supported by Connecticut authority interpreting the same precedents.

{¶14} The summary judgment ruling apparently disregarded *Ceci, Hansen, and Agosto* altogether, as the judge, based upon a misreading of Connecticut workers' compensation law, found that McDonald would be denied UM coverage because he was not operating a covered vehicle in the course and scope of his employment. All three of the cited Connecticut Supreme Court cases involved such

²¹(Mar. 4, 2002), Conn. Super. Ct., Danbury Dist., No. CV000339294S.

²²*Id.*

facts, and all three determined that coverage was available. Moreover, Hartford has not sought to uphold the judgment on this ground.

{¶15} Hartford does not attempt to distinguish *Ceci, Hansen, and Agosto*, but claims that a provision in Connecticut's uninsured motorist statute, Conn.Gen.Stat. 38a-336(d), would prohibit McDonald from seeking UM coverage from Entex because he is entitled only to the UM coverage available under the policy covering the vehicle. Specifically, Hartford refers to language that states:

"If any person insured for uninsured and underinsured motorist coverage is an occupant of an owned vehicle, the uninsured and underinsured motorist coverage afforded by the policy covering the vehicle occupied at the time of the accident shall be the only uninsured and underinsured motorist coverage available."

{¶16} However, Hartford has not provided any authority showing that this provision would be applied in cases where there is no policy providing UM coverage for the "owned vehicle," as all of its cited authority concerns cases in which claimants sought UM benefits from a second policy even though a primary insurance policy covered the involved vehicle.²³ Conn.Gen.Stat. 38a-1(15)

²³*Timmons v. Am. States Ins. Co.* (June 22, 1998), Conn. Super. Ct., New London Dist., No. 113905; *Fuller v. S. Carolina Farm Bur.* (Dec. 16, 1998), Conn. Super. Ct., New Haven Dist., No. CV 970400737S.

defines "policy" as a "document * * * purporting to be an enforceable contract, which memorializes in writing some or all of the terms of an insurance contract." Under this definition, McDonald's failure to insure his vehicle would not bar his recovery under Conn.Gen.Stat. 38a-336(d) because that section specifically refers to "the policy," and no policy exists under the applicable definition of the term. Moreover, there is no reason to believe that Connecticut law would penalize McDonald for failing to obtain motor vehicle insurance for his Ohio vehicle; Connecticut law, similar to Ohio law, does not require motor vehicle insurance, but "security," which can be provided by other means.²⁴

{¶17} Hartford also claims McDonald is not entitled to UM coverage under either Connecticut or Ohio law because he was not operating a vehicle covered under the policy's UM provisions. The Entex policy contains a "covered auto designation" for UM coverage that includes "only those 'autos' you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage." If Connecticut law is applied, however, the designation is irrelevant because McDonald's UM coverage arises by operation of law under Conn.Gen.Stat. 38a-334 and 38a-336, and the terms of such coverage are set forth in Connecticut insurance regulations. When coverage arises by operation of law, permissible exclusions such as

²⁴Conn.Gen.Stat. 38a-371.

that in Conn.Gen.Stat. 38a-336(a)(1)(B) are inapplicable because the insurer's failure to include UM coverage in the policy's terms also prevents reliance on exclusions that might have been asserted in the absent coverage.

{¶18} Because neither the covered auto designation nor Conn.Gen.Stat. 38a-336(d) denies McDonald UM coverage under the Entex policy, he is entitled to coverage under Connecticut law. Because there is a conflict between the results of applying Connecticut and Ohio law, we must determine which state's law applies.

CHOICE OF LAW DETERMINATION

{¶19} When there is a dispute over which state law governs insurance policy provisions, we apply the choice of law rules for contracts under the Restatement of the Law 2d, Conflict of Laws, Sections 187 and 188.²⁵ Because the insurance policy does not make an express choice of law,²⁶ section 188 is applicable, and states:

"(1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in [section] 6.

(2) In the absence of an effective choice of law by the parties (see [section] 187), the contacts to be taken into

²⁵*Ohayon v. Safeco Ins. Co. of Illinois*, 91 Ohio St.3d 474, [2001-Ohio-100](#), 747 N.E.2d 206, paragraph two of the syllabus.

²⁶See 1 Restatement of the Law 2d, Conflict of Laws (1971) 561, Section 187.

account in applying the principles of [section] 6 to determine the law applicable to an issue include:

the place of contracting,
the place of negotiation of the contract,
the place of performance,
the location of the subject matter of the contract, and
the domicile, residence, nationality, place of incorporation
and place of business of the parties.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

(3) If the place of negotiating the contract and the place of performance are in the same state, the local law of this state will usually be applied, except as otherwise provided in [sections] 189-199 and 203."²⁷

{¶20} When applying section 188, however, one does not simply tally up the number of contacts existing for each state; instead, the importance of each particular contact must be assessed with reference to the choice of law principles in section 6 and the contact's "relative importance with respect to the particular issue."²⁸ Section 6 states:

"(1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.

(2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include

(a) the needs of the interstate and international systems,
(b) the relevant policies of the forum,

²⁷Id. at 575, Section 188.

²⁸Id., Section 188(2).

(c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
(d) the protection of justified expectations,
(e) the basic policies underlying the particular field of law,
(f) certainty, predictability and uniformity of result, and
(g) ease in the determination and application of the law to be applied."²⁹

{¶21} Because Section 6(2)(g) of the Second Restatement includes "ease in the determination and application of the law to be applied" as a choice of law consideration, a perceived indeterminacy in Connecticut law favors the application of Ohio law. Furthermore, McDonald's residence and car registration in Ohio are significant contacts under *Ohayon v. Safeco Ins. Co. of Illinois*, supra, which found that, due to the nature of insurance policies, the "principal location of the insured risk"³⁰ is a critical consideration in determining the parties' expectations concerning which state's law will apply. The court concluded that this location was the same as the place where the vehicle was registered and principally garaged and that "[t]he principal location of the insured risk described in Section 193 neatly corresponds with one of Section 188's enumerated factors - the location of the subject matter of the contract."³¹

²⁹Id. at 10, Section 6.

³⁰*Ohayon*, 91 Ohio St.3d at 479, quoting 1 Restatement of the Law 2d, Conflict of Laws (1971) 610, Section 193.

³¹Id. at 480.

{¶22} Ohayon's focus on the "site of the insured risk" points toward application of Ohio law, and the policy's nationwide coverage defeats the claim that the Connecticut contacts are significant to this case. Hartford's Connecticut residence is insignificant because the policy expressly contemplates the application of several state's laws. Similarly, the negotiation and execution of the policy in Connecticut are insignificant because nothing in the policy's terms indicates that Hartford believed Connecticut law would apply to the policy generally. Where nationwide coverage is provided, the policy's legitimate expectation is that the site of the insured risk is more significant than the insurer's residence or the place of negotiation. When a large insurer issues a policy designed to apply nationwide, it has no legitimate expectation that the law of its residence will apply in other states.³²

{¶23} In *Misseldine v. Progressive Cas. Ins. Co.*,³³ the appellant claimed that Ohio law should apply because it was the place of negotiation and execution of the contract³⁴ but the court rejected the argument because, based on *Ohayon*, it was more important that the insurance policy was issued for vehicles

³²*Jocek v. Nationwide Mut. Fire Ins. Co.*, *supra*.

³³Cuyahoga App. No. 81770, [2003-Ohio-1359](#).

³⁴*Id.* at ¶10.

registered and garaged in Hawaii.³⁵ Just as Hawaii's legislature intended its UM statute to apply to vehicles registered or principally garaged in its state, R.C. 3937.18 is evidence of Ohio's "overriding public policy interest" in having its law apply to vehicles registered or garaged in this state.³⁶ Connecticut law reflects the same policy because its automobile insurance statutes also apply only to vehicles registered or principally garaged in that state.³⁷ Therefore, the location of McDonald and his car³⁸ are significant factors pointing toward application of Ohio law, and Ohio law should be applied.

{¶24} As we have seen, however, McDonald is not entitled to coverage under Ohio law, and Hartford is entitled to summary judgment even though the judge erred in applying Connecticut law. We have the authority to affirm the judgment on grounds other than those relied upon by the judge.³⁹ Therefore, the assignments of error are overruled, albeit on other grounds.

CONCLUSION

³⁵Id. at ¶47-49.

³⁶See *Misseldine*, supra, ¶49.

³⁷Conn.Gen.Stat.Ann. 38a-334.

³⁸The site of the accident is not part of this analysis; In this case Ohio would still be the site of the insured risk even if the accident had occurred in another state.

³⁹*Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96, 551 N.E.2d 172.

{¶25} The parties presented the judge with a choice between applying Ohio law or Connecticut law, and the Second Restatement's choice of law principles show that Ohio's contacts are more significant than those of Connecticut. Therefore, as between Ohio and Connecticut, Ohio's law should be applied, and McDonald is not entitled to UM coverage under that law.

{¶26} The judgment is affirmed.

Judgment affirmed.

PATRICIA A. BLACKMON, J., concurs.

MICHAEL J. CORRIGAN, P.J., CONCURS IN PART AND DISSENTS IN PART (SEE SEPARATE CONCURRING AND DISSENTING OPINION).

MICHAEL J. CORRIGAN, P.J., CONCURRING IN PART AND DISSENTING IN PART.

{¶27} I believe that Connecticut law applies in this case. Entex Information Services is a Delaware corporation headquartered in New York City. The Hartford is a Connecticut corporation. The Hartford and Entex entered into the policy in Connecticut. Entex neither owns nor garages cars in Ohio, although it does do business in this state as well as many others. John McDonald was not acting in the course and scope of his employment at the time of the accident. Since Connecticut was the place of contracting and the place of performance, I see no viable argument that Ohio law would apply. The only possible reason for applying Ohio law, indeed McDonald's sole rationale for applying Ohio law, was the existence of *Scott-Pontzer*. Now that *Scott-Pontzer* has been limited to the point of rendering it a non-factor in insurance law, McDonald's

basis for applying Ohio law as the choice of law has evaporated.

As for the application of Connecticut law, I believe that despite Connecticut law's seeming similarity with *Scott-Pontzer*, the Connecticut Supreme Court would not apply the law of that state to provide coverage in a manner consistent with *Scott-Pontzer*. In both *Ceci* and *Hansen*, the Connecticut Supreme Court found ambiguity in the use of family member language, particularly since those seeking coverage were family members of closely-held corporations who believed that their policies covered them as individuals. The ambiguity thus existed because of the family member wording of the definition of an insured.

{¶28} The *Agnosto* decision presents a more difficult comparison. *Agnosto* worked for the state police -- not a closely-held corporation. Nevertheless, the Connecticut Supreme Court continued to adhere to its finding that the family member language in the policy created an ambiguity, just as that same language created an ambiguity in *Ceci* and *Hansen*. And in a somewhat vague reference, the Connecticut Supreme Court hinted that contract principles relating to third party beneficiaries had a bearing on its decision, although exactly what bearing it had is not at all clear. A reference to the third party beneficiary's expectations would imply that the police officer believed that he was covered by the state's policy, perhaps in a manner akin to those owners of closely-held companies in *Hansen* and *Ceci*. Supposing that to be the actual basis for the court's decision in *Agnosto* would be

consistent with the prior holdings insofar as they could be premised on the claimants' belief that they had been named insureds under the family member language of their respective policies. Moreover, it is consistent with Connecticut precedent that calls for insurance policies to be "construed from the perspective of a reasonable layperson in the position of the purchaser of the policy." *Ceci*, 225 Conn. at 168.

{¶29} This interpretation of *Agnosto* does not help McDonald. Nothing in the record shows that at the time Entex and The Hartford manifested any subjective belief that they would be insuring all of Entex's employees who happened to be driving their own vehicles outside the scope of employment. Nor does McDonald bring to light any facts that would suggest that he had any subjective belief at the time of contracting that he would be covered under the policy. McDonald's position would require us to interpret Connecticut law in a manner that would extend the Connecticut Supreme Court's holdings far beyond their stated basis.

{¶30} I would find that Connecticut law would not provide coverage to McDonald and that the court did not err by granting summary judgment. Of course, even if Ohio law did apply, we could summarily reverse the court based on *Galatis*.

It is ordered that appellee shall recover of appellant costs herein taxed.

The court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas 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.

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).
COURT OF APPEALS OF OHIO EIGHTH DISTRICT