[Cite as *Quickle v. Progressive Cas. Co.*, 2004-Ohio-4496.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 82818

KARL QUICKLE, Individually and as Administrator of the ESTATE of WILLIAM R. QUICKLE, Deceased, et al.,	:	
Plaintiffs-Appellants	:	JOURNAL ENTRY
vs.	:	AND
PROGRESSIVE CASUALTY CO., et al.,	:	OPINION
Defendants-Appellees	:	
	:	
DATE OF ANNOUNCEMENT OF DECISION		AUGUST 26, 2004
	:	
	:	
CHARACTER OF PROCEEDING	:	Civil appeal from Common Pleas Court Case No. CV-446008
JUDGMENT	:	AFFIRMED IN PART, REVERSED IN PART AND REMANDED FOR ADDITIONAL DETERMINATIONS
DATE OF JOURNALIZATION	:	

APPEARANCES:

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ANNE L. KILBANE, P.J.

{¶1} Karl Quickle, personally and as administrator of the estate of William Quickle, deceased, and William's mother, appeal from an order of Judge Brian J. Corrigan that granted summary judgment in favor of Kemper Insurance Company ("Kemper"), Michigan Mutual Insurance Company ("Michigan Mutual"), Zurich American Insurance Company ("Zurich"), and First Specialty Insurance Company ("First Specialty") on claims for loss of consortium and *Scott-Pontzer*[1] uninsured/underinsured motorist ("UM/UIM") benefits. They

[1]85 Ohio St.3d 660, 1999-Ohio-292, 710 N.E.2d. 1116.

assert that the judge: failed to acknowledge that the "Broadened Coverage" endorsement in the Zurich policy did not alter the ambiguity in its UIM coverage, failed to find the decedent a resident relative and an insured under the Kemper policy; failed to consider Karl Quickle as an insured under both his employer's Kemper primary policy and an umbrella policy issued by First Specialty; and by finding that the Michigan Mutual policy did not provide UIM coverage in this case. We affirm in part, reverse in part and remand for additional determinations.

{¶2} From the record we glean the following: On August 9, 1999, William Quickle, then seventeen years old, and son of Karl Quickle and Chantal Monet, was operating his father's motorcycle when a car, driven by Tracy L. McClough, turned left in front of him. He was ejected, and sustained fatal injuries. Ms. McClough's automobile liability carrier tendered to the estate its remaining policy limit of $293,911.22.[2]

{¶3} On the date of the incident, William Quickle was employed by The Gap, Inc., the named insured under an automobile insurance policy issued by Zurich. Karl Quickle was employed by EMH Regional Care, the named insured under an automobile policy issued by Kemper, with additional umbrella coverage provided by First Specialty. Prior to his death, William Quickle was living with his

[2]$6,088.00 was paid to State Farm, Karl Quickle's carrier, for its subrogation claims.

paternal grandfather, Stacey Quickle, who was employed by Ford Motor Co.. Michigan Mutual had issued a policy providing commercial general liability, business auto and personal auto coverages to Ford.

{¶4} The parents and estate filed a complaint against these carriers seeking damages for loss of consortium and UIM and medical payments benefits. The parents/estate and each insurer moved for summary judgment seeking to find or exclude coverage. The judge granted the motion of each insurer holding that each owed no duty to provide UIM coverage to any plaintiff. The parents/estate asserts four assignments of error set forth in Appendix A of this opinion.

{¶5} We review the grant of summary judgment de novo applying the same standard of review applied by the trial judge.[3]

THE ZURICH POLICY

{¶6} Quickle contends that his decedent was a UIM insured under The Gap's policy and Zurich was not prejudiced by his failure to preserve its subrogation rights against the tortfeasor. We need not address whether the Zurich policy is ambiguous under *Scott-Pontzer*, supra, or whether Quickle violated the notice provisions

[3]*Buyers First Realty Inc. v. Cleveland Area Bd. of Realtors* (2000), 139 Ohio App.3d 772, 745 N.E.2d 1069, citing *Druso v. Bank One of Columbus* (1997), 124 Ohio App.3d 125, 131, 705 N.E.2d 717.

of the policy because the *Westfield Ins. Co. v. Galatis*[4] controls our decision here. The Ohio Supreme Court has limited the application of the *Scott-Pontzer* decision by holding that "a policy of insurance that names a corporation as an insured for uninsured or underinsured motorist coverage covers a loss sustained by an employee of the corporation only if the loss occurs within the course and scope of employment."[5] It is undisputed that William Quickle was not a named insured or on the job when he sustained his injuries/loss and, therefore, neither his estate nor his parents are insured under the Zurich policy.

{¶7} The first assignment of error lacks merit.

THE KEMPER POLICY AND FIRST SPECIALTY UMBRELLA

{¶8} In the second and third assignments of error, Karl Quickle, as an individual and as administrator of his son's estate, asserts claims against his employer's Kemper policy for primary coverage and against First Speciality for umbrella coverage based upon his losses as a parent and for those of his son as a resident relative. The decedent son's status as a insured under his father's employer's policy is again controlled by the *Galatis* decision.

{¶9} **"Where a policy of insurance designates a corporation as a named insured, the designation of 'family members' of the named insured as other insureds does not extend coverage to a family member of an employee of the**

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[4]100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256.

[5]Id. at syllabus 2.

corporation, unless that employee is also a named insured."[6]

{¶10} Because Karl Quickle is not a named insured under either of his employer's policies, any family member would not be a UIM insured under either. His claim under each policy as a father, however, may still be viable because the Ohio Supreme Court's assault on *Scott-Pontzer* is limited in nature.

{¶11} "Absent a specific language to the contrary, a policy of insurance that names a corporation as an insured for uninsured or underinsured motorist coverage covers a loss sustained by an employee of the corporation only if the loss occurs within the course and scope of employment."[7]

{¶12} The pre-2001 version of R.C. 3937.18 did not require that an insured sustain bodily injury in order to recover damages. Under *Moore v. State Auto. Mut. Ins. Co.,*[8] a parent may have a viable claim for the medical expenses resulting from his minor child's injuries as well as for the loss of consortium, etc. The *Galatis* decision did not and could not overrule *Moore* in light of the language of R.C. 3937.18, nor could *Galatis* impose any preconditions such as requiring that an employee be operating a motor vehicle when the loss is sustained to be a UIM insured.

{¶13} The record does not reveal in what capacity Karl Quickle was employed by EMH Regional Care, the named insured under the

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[6]Id. at syllabus 3.

[7]Id. at syllabus 2.

[8]88 Ohio St.3d 27, 2000-Ohio-264, 723 N.E.2d 97.

Kemper Policy, or his work schedule. William Quickle was fatally injured at 4:59 p.m. on August 9, 1999, a Monday, and Karl Quickle may have been working at that time. His loss, therefore, could have occurred within the course and scope of his employment, making him eligible for coverage under the Kemper Policy pursuant to *Moore.*

{¶14} *Galatis* was limited to whether the estate of a deceased son could claim UIM coverage under a master insurance policy issued to his mother's employer but does not control the claims of a parent/employee under the employer's policy.

{¶15} It was First Specialty's position that absent UIM coverage under the Kemper policy, any UIM coverage imposed by operation of law either never arose and/or would be viable only when and if the underlying coverage was exhausted. Because the judge found no UIM coverage for William Quickle under the Kemper policy – the father's claims were not discussed -- he found "no duty to provide UM/UIM coverage to Plaintiffs."[9]

{¶16} Although we agree, based upon *Galatis*, that William Quickle is not an insured under the First Specialty policy, such may not be the case for Karl Quickle's individual UIM claims. If, on remand, it is found that the father's loss occurred within the course and scope of his employment, the Kemper policy would provide

[9]Opinion of March 24, 2003, page 5. On page 4 he found that the minor was not a 'resident relative' and, therefore, not an

the primary UIM coverage and, if exhausted, then the First Specialty UIM coverage, imposed by law, would apply.

{¶17} Because, in granting summary judgment to Kemper and First Specialty, the judge did not address whether the estate/parents had compromised the subrogation interests of each carrier or otherwise caused prejudice by a delay in giving prompt notice of the claim, there is a genuine issue of material fact in dispute. Under *Ferrando v. Auto-Owners Mut. Ins.*,[10] these issues must be determined. The second and third assignments of error are well taken in part.

THE MICHIGAN MUTUAL POLICY

{¶18} The Michigan Mutual comprehensive insurance policy provides Ford with Commercial General Liability ("CGL") coverage, Business Automobile Liability ("BA")coverage and Personal Auto Liability ("PA") coverage. Policy language promises that Michigan Mutual is to pay all sums its insured incurs because of negligence, etc. When faced with the parent/estate claims for UIM benefits, it relied upon an "Indemnity and Reimbursement Agreement" with Ford, whereby Ford agrees to pay all losses under the policies and deductible endorsements, reimburse the carrier for any loss or expense it incurs, and all investigation, settlement, adjusting, and defense expenses.

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insured under the Kemper policy.

[10]98 Ohio St.3d 186, 2002-Ohio-7217, 781 N.E.2d 927.

{¶19} Although the decedent lived with his grandfather, Stacey Quickle, a Ford Motor Co. employee, only the estate and the decedent's parents asserted claims under Ford's Michigan Mutual policy. We need not address Michigan Mutual's contention that Ford had rejected UM/UIM coverage under both its CGL and BA policies because, under *Galatis*, neither parent nor the decedent is an insured for any Michigan Mutual liability insurance and, therefore, cannot be an insured for any UIM coverage. The fourth assignment of error has no merit.

CONCLUSION

{¶20} Only Karl Quickle, individually, could be a UIM insured under the Kemper and First Specialty policies. That portion of the judgment is reversed and remanded for a determination of whether; under *Ferrando*, the subrogation interests of each carrier was compromised or prejudiced, the loss Quickle sustained because of the death of his son occurred within the course and scope of his employment and, if so, the value of that loss.

{¶21} Judgment reversed in part, affirmed in part and remanded.

APPENDIX A: ASSIGNMENTS OF ERROR

{¶22} "I. THE TRIAL COURT ERRED IN GRANTING DEFENDANT ZURICH AMERICAN'S MOTION FOR SUMMARY JUDGMENT BY FAILING TO CONSIDER CONTROLLING EIGHTH DISTRICT PRECEDENT REGARDING THE "DRIVE OTHER CAR-BROADENED COVERAGE" ENDORSEMENT OF THE ZURICH POLICY."

{¶23} "II. THE TRIAL COURT ERRED BY GRANTING DEFENDANT KEMPER'S MOTION FOR SUMMARY JUDGMENT BECAUSE (1) THE DECEDENT MUST BE CONSIDERED THE RESIDENT RELATIVE OF HIS CUSTODIAL PARENT, AND (2) THE COURT FAILED TO CONSIDER THE DECEDENT'S FATHER'S STATUS AS AN INSURED UNDER HIS EMPLOYERS' POLICY IN

HIS INDIVIDUAL CAPACITY."

{¶24} "III. THE TRIAL COURT ERRED IN FINDING NO COVERAGE UNDER THE FIRST SPECIALITY UMBRELLA POLICY OVERLAYING THE KEMPER POLICY BECAUSE THE FIRST SPECIALTY POLICY IS A "FOLLOW-FORM" POLICY."

{¶25} "IV. THE TRIAL COURT ERRED IN FINDING THAT MICHIGAN MUTUAL IS "SELF-INSURED IN THE PRACTICAL SENSE," IN FAILING TO CONSIDER THE BANKRUPTCY LANGUAGE IN THE MICHIGAN MUTUAL POLICY, IN FAILING TO CONSIDER THE SEPARATE UM/UIM AGREEMENT IN THE MICHIGAN MUTUAL POLICY, AND IN HOLDING THAT THE MICHIGAN MUTUAL PERSONAL AUTO POLICY DOES NOT COVER PLAINTIFFS."

It is ordered that the parties bear their own costs herein taxed.

This court finds 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.

FRANK D. CELEBREZZE JR., J., CONCURS

TIMOTHY E. MCMONAGLE, J., CONCURS IN PART AND DISSENTS IN PART (SEE SEPARATE OPINION ATTACHED).

TIMOTHY E. MCMONAGLE, J., concurring in part and dissenting in part.

{¶26} Although I agree with the majority's disposition of the first and fourth assignments of error, I disagree with the conclusions reached regarding the second and third assignments of error and, therefore, respectfully dissent.

{¶27} The majority places great weight on the language employed by the Ohio Supreme Court as set forth in paragraph two of the syllabus in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849. "Absent specific language to the contrary, a policy of insurance that names a corporation as an insured for uninsured or underinsured motorist coverage covers a loss sustained by an employee of the corporation only if the loss occurs *within the course and scope of employment*." (Emphasis added.) Id.

{¶28} What the majority disregards, however, is that the *Galatis* court acknowledged that it was addressing "Ohio's law regarding whether uninsured and underinsured motorist insurance issued to a corporation may compensate an individual for a loss that was unrelated to the insured corporation." Id. at ¶2. The *Galatis* court concluded that Ohio law did not support compensation for such a loss, despite what the

majority claims is controlling syllabus law stating otherwise. In particular, the majority asserts that a "loss sustained" could include a loss of consortium claim if the "loss occur[red]" while the employee was working "within the course and scope of employment." I disagree.

{¶29} The rationale underlying *Galatis* emanates from the general intent of a motor vehicle insurance policy issued to a corporation, which is "to insure the corporation as a legal entity against liability arising from the use of motor vehicles." Id. at ¶20, citing *King v. Nationwide Ins. Co.* (1988), 35 Ohio St.3d 208, 211. In that regard, "a motor vehicle operated by an employee of a corporation in the course and scope of employment is operated by and for the corporation and that an employee, under such circumstances, might reasonably be entitled to uninsured motorist coverage under a motor vehicle insurance policy issued to his employer." Id. An employee's activities outside the scope of employment, however, are not of any direct consequence to the employer as a legal entity. Id.

{¶30} The majority mistakes this general intent to be one that covers an employee for a loss of consortium claim that may arise as a result of an accident between an uninsured/underinsured motorist and the employee's family member during the time that the employee was at work for the employer. Loss of consortium claims suffered by a corporation's employees that are unrelated to the business of the corporation are not risks that a corporation is likely to insure against. The majority, nonetheless, interprets the term "within" to mean "during" so as to find a viable claim. I cannot agree with this interpretation.

{¶31} "Within," by definition, means "inside the limits of influence," "in the limits," or "in or to the inner part of." These alternative variations indicate that the term is used as a term of *relation* not a term of *time*. Thus, I interpret "within the course and scope of employment" as used in paragraph two of the syllabus to mean "related to the course and scope of employment." It therefore follows that a loss of consortium claim that arises from events unrelated to the furtherance of the corporation's business but that arguably may have arisen during the time the employee is otherwise employed, is a claim that is not related to the course and scope of employment and is, therefore, not compensable for uninsured/underinsured coverage purposes.