[Cite as *Jarvis v. Kemper Ins. Co.*, 2004-Ohio-634.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82353

CARA JARVIS

Plaintiff-appellant

vs.

KEMPER INSURANCE CO., ET AL.

Defendants-appellees

JOURNAL ENTRY

AND

OPINION

DATE OF ANNOUNCEMENT OF DECISION:	FEBRUARY 12, 2004
CHARACTER OF PROCEEDING:	Civil appeal from Common Pleas Court, Case No. CV-442543
JUDGMENT:	Affirmed.
DATE OF JOURNALIZATION:	
APPEARANCES:	
For plaintiff-appellant:	DAVID J. ELK, ESQ. TODD O. ROSENBERG, ESQ. Elk & Elk Co., L.P.A. 6110 Parkland Boulevard Mayfield Heights, Ohio 44124
For defendants-appellees:	
KEMPER INSURANCE CO., ET AL.	RONALD A. RISPO, ESQ. JILL S. PATTERSON, ESQ. Weston, Hurd, Fallon, Paisley & Howley, L.L.P. 2500 Terminal Tower 50 Public Square Cleveland, Ohio 44113-2241

Appearances continued on next

page.

LUMBERMENS MUTUAL CASUALTY CO.	SHAWN W. MAESTLE, ESQ. Weston, Hurd, Fallon, Paisley & Howley, L.L.P. 2500 Terminal Tower 50 Public Square Cleveland, Ohio 44113-2241

KARPINSKI, J.

{¶1} Plaintiff, Cara Jarvis, appeals the trial court granting defendant-appellee Lumbermens Mutual Casualty Company's ("Lumbermens") two motions for summary judgment. For the reasons that follow, we affirm the decision of the trial court.

{¶2} In June 1992, plaintiff was one of four passengers in an automobile driven by George Hensley. Intoxicated while driving, Hensley ran a stop sign and caused a collision with another vehicle. Hensley and three other passengers were killed. Plaintiff survived the crash but sustained multiple and severe injuries caused by Hensley's negligence.

{¶3} After the accident, plaintiff sought uninsured/underinsured ("UM/UIM") coverage under her parents' employers' insurance policies. At the time, plaintiff's parents, Charles and Pamela Jarvis, worked for Volvo Trucking of North America ("Volvo") and the Bell & Howell Company ("Bell & Howell"), respectively. Both companies were separately insured under business auto policies issued by Lumbermens ("Lumbermens/Volvo" and "Lumbermens/Bell & Howell").

{¶4} After Lumbermens denied plaintiff coverage under both policies, she filed this action seeking a declaration that she was

an insured under Volvo's and Bell & Howell's policies and entitled to UM/UIM coverage pursuant to *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.*, 85 Ohio St.3d 660, 1999-Ohio-292, 710 N.E.2d 1116.[1] All parties filed motions for summary judgment.

{¶5} In its motion for summary judgment, Lumbermens/Volvo argued that the question of whether plaintiff was entitled to coverage had to be decided according to North Carolina contract law. In support of its motion, Lumbermens/Volvo attached a purported copy of its policy, a document entitled "Plaintiff, Cara Jarvis Responses to Request For Admissions Propounded by Defendant ***," and a plethora of Ohio case law in support of its arguments.

{¶6} When Lumbermens/Bell & Howell filed its motion for summary judgment, it argued that Illinois contract law applied. Attached to its motion, Lumbermens/Bell & Howell included an authenticated copy of its policy, a document entitled "Plaintiff, Cara Jarvis Responses to Request For Admissions Propounded by Defendant ***," and case law from numerous counties in Ohio.

{¶7} Plaintiff filed two motions for summary judgment; one against Lumbermens/Volvo and one against Lumbermens/Bell & Howell. In each of her motions, plaintiff argued that Ohio contract law applied to each insurance policy and, therefore, she was entitled to UM/UIM coverage under those policies pursuant to *Scott-Pontzer*.

---

[1]Plaintiff's claims for coverage under the Lumbermens/Volvo policy and the Lumbermens/Bell & Howell policy constitute two separate claims against two separate defendants. Lumbermens has different defense counsel for each policy.

Plaintiff also appended a multitude of cases in support of her position.

{¶8} The trial court agreed with both defendants that the laws of North Carolina and Illinois were applicable to their two policies and, therefore, *Scott-Pontzer* was inapplicable. The court also determined that plaintiff had breached both policies' notice and subrogation provisions. The trial court separately granted each defendant's motion for summary judgment. Plaintiff's motions for summary judgment against each of the defendants were both denied. It is from these orders plaintiff timely appeals and presents the following assignments of error.

> **"I. THE TRIAL COURT ERRED IN FAILING TO APPLY OHIO LAW TO THE LUMBERMEN'S POLICIES ISSUED TO VOLVO MOTORS COMPANY AND TO BELL AND HOWELL."**

{¶9} Plaintiff argues the trial court erred in granting summary judgment to both defendants on the choice of law issue. Plaintiff claims the choice of law principles enunciated in *Ohayon v. Safeco Ins. Co.* (2001), 91 Ohio St.3d 474, compels the application of Ohio contract law to the two Lumbermens' policies in this case, not North Carolina or Illinois law.

{¶10} Summary judgment shall be rendered where (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to only one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made.

Civ.R. 56(C); *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 375 N.E.2d 46.

{¶11} Recently, the Ohio Supreme Court in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, held: "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." Id. at paragraph two of the syllabus. The Ohio Supreme Court also recognized that "the designation of 'family members' of the named insured as other insureds does not extend insurance coverage to a family member of an employee of the corporation, unless that employee is also a named insured." Id. at paragraph three of the syllabus.

{¶12} Under both policies in this case, the named insured was a corporation, Jarvis's parents were not named insureds, and there was no designation of "family members" as other insureds. Further, Jarvis was not employed by Volvo or Bell & Howell and does not meet the definition of "[a]nyone else while using with your permission a covered 'auto' you own, hire or borrow." Accordingly, under Ohio law, Jarvis was not an insured for UM/UIM purposes. See Id.

{¶13} In this case, regardless of whether Ohio, North Carolina, or Illinois law is applied, Jarvis would not be entitled to UM/UIM coverage. Illinois does not recognize a *Scott-Pontzer* type claim or follow the reasoning thereof. See *McRoberts v. Kemper Risk Management*, Hamilton App.

No. C-030115, 2003-Ohio-5517; *Starks v. Fed. Ins. Co.*, Stark App. No. 2003CA00069, 2003-Ohio-4382 (all noting Illinois law does not recognize *Scott-Pontzer* claims). Under North Carolina law, employees of a corporation and their family members are not considered insureds when only the corporation is listed as the named insured. See *Carr v. Isaacs*, Butler App. No. CA2001-08-191, 2002-Ohio-1734, citing N.C.G.S. 20-279.21(b) and *Sproles v. Greene* (1991), 329 N.C. 603, 605, 407 S.E.2d 497, 499-500. Therefore, Jarvis's UM/UIM claims would fail as a matter of law under application of Illinois as well as North Carolina law.

{¶14} Since Jarvis would not be entitled to UM/UIM coverage under any of these state's laws, there are no genuine issues of material fact in dispute, and reasonable minds can come to but one conclusion. Accordingly, this court affirms the judgment of the trial court, albeit for another reason. *Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96.

Judgment accordingly.

COLLEEN CONWAY COONEY and SEAN C. GALLAGHER, JJ., concur.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the 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.

DIANE KARPINSKI
PRESIDING JUDGE

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).