

[Cite as *Bibby v. Nationwide Ins. Co.*, 2004-Ohio-989.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NOS. 83096 & 83116

REGINA BIBBY	:	
	:	
Plaintiff-appellant	:	
	:	JOURNAL ENTRY
vs.	:	and
	:	OPINION
NATIONWIDE INS. CO., et al.	:	
	:	
Defendants-appellees:	:	
	:	

DATE OF ANNOUNCEMENT OF DECISION	:	<u>MARCH 4, 2004</u>
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CHARACTER OF PROCEEDING	:	Civil appeal from Cuyahoga
	:	County Common Pleas Court
	:	Case No. CV-477785

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

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KENNETH A. ROCCO, J.

{¶1} Plaintiff Regina Bibby appeals from a common pleas court order granting summary judgment in favor of defendant National Union Fire Insurance Company ("National Union"), the automobile insurance carrier for Bibby's employer, on her claim for underinsured motorists insurance coverage. Co-defendant Nationwide Insurance Company ("Nationwide"), Bibby's personal automobile insurance carrier, has also appealed, asserting that the court erred by holding that underinsured motorists coverage was not available from both insurers on a primary, pro-rata basis.

{¶2} The Ohio Supreme Court's recent decision in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, has significantly altered the legal landscape since the parties filed their briefs. In *Galatis*, at ¶62, the supreme court limited its holding in *Scott-Pontzer v. Liberty Mut.*

Ins. Co. (1999), 85 Ohio St.3d 660, and determined that, "[a]bsent 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." In this case, appellant did not sustain an injury in the course and scope of her employment. Therefore, even if we assumed that National Union's business auto liability policy afforded underinsured motorists coverage by operation of law, appellant would not be an insured under her employer's policy. See, e.g., *Mason v. Am. & Foreign Ins. Co.*, Stark App. No. 2003CA00028, 2003-Ohio-6843. This determination moots the other issues raised in this appeal. Accordingly, we affirm the judgment in favor of National Union.

PATRICIA ANN BLACKMON, P.J., and FRANK D. CELEBREZZE, JR., J.,
concur.

It is ordered that appellee recover of appellant its 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.

JUDGE
KENNETH A. ROCCO

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).