[Cite as *Bossin v. Groves*, 2010-Ohio-664.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92975

STEPHEN H. BOSSIN, ET AL.

PLAINTIFFS-APPELLEES

vs.

BEVERLY JOHNS GROVES, ET AL.

DEFENDANTS

[Appeal by Travelers Indemnity Company]

JUDGMENT:
REVERSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-514843

BEFORE: Gallagher, A.J., Celebrezze, J., and Jones, J.

RELEASED: February 25, 2010
JOURNALIZED:

ATTORNEYS FOR APPELLANTS

For Travelers Indemnity Company
Shawn W. Maestle
John G. Farnan
Daniel A. Richards
Weston Hurd LLP
The Tower at Erieview
1301 East Ninth Street, Suite 1900
Cleveland, Ohio 44114-1862

ATTORNEYS FOR APPELLEES

For Stephen H. Bossin, et al.
Christopher M. DeVito
Morganstern, MacAdams & DeVito Co., L.P.A.
623 West St. Clair Avenue
Cleveland, Ohio 44113-1204

Henry W. Chamberlain
Chamberlain Law Firm
526 Superior Avenue
620 Leader Building
Cleveland, Ohio 44114

For Beverly Johns Groves, et al.
Kirk E. Roman
50 S. Main Street, Suite 502
Akron, Ohio 44308

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant, The Travelers Indemnity Company of Illinois ("Travelers"),[1] appeals the decision of the Cuyahoga County Court of Common Pleas that granted partial summary judgment in favor of appellee, Stephen H. Bossin ("Bossin"), and declared that Bossin is covered under the Travelers policy at issue. For the reasons stated herein, we reverse the decision of the trial court.

{¶ 2} This case arises from a motor vehicle accident that occurred on November 19, 2001, in which Bossin was injured. Bossin and his wife, Heather Bossin, filed this action against the following defendants named in the second amended complaint: (1) Dontez Robinson, the driver of the vehicle that allegedly struck Bossin; (2) Beverly Johns Groves, the owner of that vehicle; and (3) Travelers.[2]

{¶ 3} At the time of the accident, Bossin was an employee of Viacom Outdoor Group, Inc. ("Viacom Outdoor"), a wholly owned subsidiary of Viacom, Inc. ("Viacom"). Viacom held a commercial automobile policy issued by Travelers ("the Travelers policy"). Bossin sought to recover

---

[1] It is represented in the record that The Travelers Indemnity Company of Illinois was erroneously named as St. Paul Travelers Insurance.

[2] The claims against Robinson and Groves were settled and dismissed with prejudice. These defendants are not parties to this appeal.

uninsured/underinsured motorists ("UM/UIM") coverage under the Travelers policy.

{¶ 4} The Travelers policy, identified as policy No. TJ-CAP-260T3968, was effective from January 1, 2001 to January 1, 2002. Viacom, through its risk management department, executed a rejection of UM/UIM coverage on November 14, 2000. The rejection was signed on behalf of Viacom by Louis Noe, Viacom's then director of insurance. The rejection form provided a brief description of UM/UIM coverage and set forth UM/UIM coverage limits. However, the rejection form did not state the premium for said coverage. Travelers introduced extrinsic evidence to show that it was aware of UM/UIM coverage premiums.

{¶ 5} At the time of this lawsuit, Noe was no longer with Viacom. Travelers produced the affidavit of Gary Bennett, a director at Travelers Insurance Company. Bennett was responsible for underwriting and managing the Travelers account with Viacom at the time the Travelers policy was issued to Viacom. Bennett stated that he met with Noe, who signed the rejection form, that the premiums for UM/UIM coverage were discussed with Viacom, and that Viacom was aware of the increase in premiums that would be charged for a selection of UM/UIM coverage for the commercial automobile policy.

{¶ 6} Travelers also provided the affidavit of Gene Mellevold. Mellevold, who worked for Viacom, stated that he was involved in the purchase and selection of coverage from Travelers, that it was Viacom's policy to reject UM/UIM coverage whenever possible, that Viacom was aware that an increase in premiums would be charged for such coverage, and that Viacom made a knowing business decision to reject UM/UIM coverage for the state of Ohio.

{¶ 7} During his deposition, Mellevold conceded that he was not a party to any conversations that occurred at the time the rejection form was executed by Noe. He also acknowledged that he did not know if Bennett specifically discussed with Noe what the premiums were for the UM/UIM coverage. However, Mellevold testified that during his direct dealings with Bennett regarding insurance policies for Viacom, the premiums for UM/UIM coverage and the cost factor were a part of the discussion.

{¶ 8} Travelers filed a motion for summary judgment that the trial court denied. Bossin filed a motion for partial summary judgment on the coverage issue that the trial court granted. The court declared that Bossin was entitled to coverage under the Travelers policy. Thereafter, the parties filed a stipulation of damages.

{¶ 9} Travelers timely filed this appeal from the trial court's determination in favor of coverage. Travelers has raised one assignment of

error for our review that provides as follows: "Appellee, Stephen Bossin, is not entitled to UM/UIM coverage and the trial court erred in so declaring."

{¶ 10} Appellate review of summary judgment is de novo, governed by the standard set forth in Civ.R. 56. *Comer v. Risko*, 106 Ohio St.3d 185, 186, 2005-Ohio-4559, 833 N.E.2d 712. Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. *Hollins v. Shaffer*, 182 Ohio App.3d 282, 286, 2009-Ohio-2136, 912 N.E.2d 637. Under Civ.R. 56(C), summary judgment is proper when the moving party establishes that "(1) no genuine issue of any material fact remains, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and construing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *State ex rel. Duncan v. Mentor City Council*, 105 Ohio St.3d 372, 374, 2005-Ohio-2163, 826 N.E.2d 832, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

{¶ 11} Travelers argues that UM/UIM coverage is not available to Bossin under the Travelers policy because (1) Viacom made a valid, knowing rejection of such coverage; and (2) Bossin was not occupying a covered auto at the time of the accident.

{¶ 12} We first address whether there was a valid rejection of UM/UIM coverage. The record reflects that a UM/UIM rejection was executed by Viacom, through its director of insurance, for the Travelers policy. Under the version of R.C. 3937.18, as amended by H.B. 261, which is applicable in this matter, a signed rejection of UM/UIM coverage creates a presumption that a valid offer of coverage has been made. Nevertheless, the Ohio Supreme Court has recognized that under this version of R.C. 3937.18, a court must still make a determination of whether a valid offer of UM/UIM coverage was in fact made. *Hollon v. Clary*, 104 Ohio St.3d 526, 2004-Ohio-6772, 820 N.E.2d 881.

{¶ 13} In *Hollon*, the Ohio Supreme Court held that "a signed, written rejection of UM/UIM coverage is valid under the H.B. 261 version of R.C. 3937.18 if it was made in response to an offer that included a brief description of the coverage and the coverage premiums and limits. Once a signed rejection is produced, the elements of the offer may be demonstrated by extrinsic evidence." Id. at 529.[3] In *Hollon*, the written offer of UM/UIM coverage did not set forth the premiums for the coverage. The court recognized that in light of the presumption of an offer of coverage created by the H.B. 261 version of R.C. 3937.18(C), "*Linko*'s requirements are arguably

[3] The requirements for a valid offer were originally set forth by the Ohio Supreme Court in *Linko v. Indemn. Ins. Co. of N. Am.*, 90 Ohio St.3d 445, 2000-Ohio-92, 739 N.E.2d 338, and are known as the "*Linko* requirements."

less relevant." Id. The court reiterated that the *Linko* requirements were chosen to ensure that an insurer makes a meaningful offer, which is "an offer in substance and not just in name" and which allows the insured to make "an express, knowing rejection of [UM/UIM] coverage." Id., quoting *Linko,* 90 Ohio St.3d at 449.

{¶ 14} Upon the record before it, the *Hollon* court determined as follows:

> **"Though Twin City's written offer, per se, did not satisfy all the *Linko* requirements, we will not elevate form over substance or ignore the expressed intent of the parties to a contract. Unequivocally, American expressed that it did not wish to purchase UM/UIM coverage. Twin City's written offer of UM/UIM coverage, in conjunction with Miller's unrebutted affidavit, demonstrates that American's rejection was made after having received a brief description of coverage, an express statement of UM/UIM coverage limits, and the applicable premiums. We are, therefore, certain that American made an express, knowing rejection of UM/UIM coverage, and under H.B. 261, we can presume that a valid offer had been made."**

Hollon, supra at 529.

{¶ 15} This case falls squarely under *Hollon*. While we empathize with Bossin's position, the Ohio Supreme Court has said that extrinsic evidence is permitted to establish the contracting party's knowledge of UM/UIM coverage, and we must acknowledge that the intent of the named insured to reject coverage is presumed from the document it signed.

{¶ 16} Here, Travelers produced a signed rejection that created a presumption of a valid offer. Although the written offer did not contain the coverage premiums, pursuant to *Hollon*, the named insured's knowledge of the premiums could be demonstrated by extrinsic evidence. Id.

{¶ 17} Travelers produced two affidavits to demonstrate that Viacom was aware that additional premiums would be charged for UM/UIM coverage and made an express, knowing rejection of said coverage. Bennett, a director at Travelers, attested that he met with Viacom's director of insurance, that the premiums for UM/UIM coverage were discussed with Viacom, and that Viacom was aware of the increase in premium that would be charged for a selection of UM/UIM coverage for the Travelers policy. Mellevold, who was with Viacom, attested that the rejection was consistent with Viacom's policy to reject UM/UIM coverage whenever possible, that Viacom was aware that an increase in premiums would be charged for such coverage, and that Viacom made a knowing business decision to reject UM/UIM coverage for the state of Ohio. Although Mellevold acknowledged in his deposition that he

was not involved with the rejection form at issue, he was able to confirm that during his direct dealings with Bennett regarding insurance policies for Viacom, premiums for UM/UIM coverage and the cost factor have been a part of the discussion.

{¶ 18} Although Bossin argues that Travelers did not provide an affidavit from Noe, who executed the rejection and is no longer with Viacom, this was not fatal to Travelers' defense. We find the extrinsic evidence offered by Travelers was sufficient to demonstrate that Viacom was aware that additional coverage premiums would be charged and, that consistent with its company policy, made a knowing rejection of UM/UIM coverage. This evidence and the presumption of a valid offer were unrebutted.

{¶ 19} Bossin also argues that Travelers did not provide evidence of the exact amount of the premium that would be charged. However, the evidence clearly demonstrates that Viacom was aware of the additional premiums associated with UM/UIM coverage and made a knowing rejection of coverage. As stated in *Hollon*, "we will not elevate form over substance or ignore the expressed intent of the parties to a contract." Id. Here, the record demonstrates that Viacom made a valid rejection after receiving a brief description of coverage and the coverage premiums and limits.

{¶ 20} Bossin raises a few additional challenges to the rejection. First, Bossin asserts that the policy number on the policy itself is

TJ-CAP-260T3968-TIL-01, while the policy number listed on the rejection sheet is TC2J-CAP-260T396-8-TIL-01. Bossin has not shown any significant difference with the referenced policy numbers, and the evidence in the record indicates that the rejection was executed with respect to the issuance of the Travelers policy at issue.

{¶ 21} Second, Bossin asserts that there is an ambiguity with respect to the identification of the policy as "Viacom, Inc. (Non-Executive Fleet)." Mellevold stated in his deposition that there was a separate policy established for some senior executives. From our review, we find no apparent ambiguity concerning the application of the rejection to the Travelers policy.

{¶ 22} Third, Bossin argues that the rejection form predates the policy. We find no merit to this argument as our review reflects that the rejection form was signed a short period prior to the effective date of the policy and applied to the Travelers policy.

{¶ 23} Fourth, Bossin argues that he was employed by Viacom Outdoor, a wholly owned subsidiary of Viacom, Inc., and there is no evidence that Viacom, Inc. had the authority to reject UM/UIM coverage on Viacom Outdoor's behalf. This contention lacks merit. The H.B. 261 version of R.C. 3937.18(C) applicable herein expressly permits the named insured to reject coverage on behalf of and for "all other named insureds, insureds, or

applicants." Consistent therewith, in *Rice v. Progressive Max Ins. Co.*, Cuyahoga App. No. 83970, 2004-Ohio-6107, this court held that a parent corporation's reduction of UM/UIM coverage was binding on its subsidiary when there was no evidence that the subsidiary made insurance and risk management decisions independent of the parent company. In this case, the record demonstrates that Viacom's rejection of UM/UIM coverage applied to its subsidiaries, including Viacom Outdoor.

{¶ 24} Having considered the arguments raised by the parties, we find the trial court erred in granting summary judgment in favor of Bossin and that Travelers is entitled to judgment in its favor. We further declare that Viacom executed a valid rejection of UM/UIM coverage for the Travelers policy and that Bossin is not entitled to coverage as a matter of law. Travelers' first assignment of error is sustained in this regard.

{¶ 25} Because our resolution of the rejection issue is dispositive of the matter, we need not consider the "covered auto" issue raised by Travelers.[4]

Judgment reversed.

It is ordered that appellant recover from appellees costs herein taxed.

---

[4] We note that in the event a rejection is deemed invalid, UM/UIM coverage is imposed by operation of law. When UM/UIM coverage is imposed by operation of law, the court must look to the definition of who is an insured in the liability section of the policy. *Gooden v. Natl. Union Fire Ins. Co.*, Stark App. No. 2004CA00011, 2004-Ohio-5569; *Comeans v. Clark*, Montgomery App. No. 20239, 2004-Ohio-2420. In this case, the liability section of the policy defines an insured to include "You for any covered 'auto.'"

The court finds there were reasonable grounds for this appeal.

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.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

FRANK D. CELEBREZZE, JR., J., and
LARRY A. JONES, J., CONCUR