

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE AUTOMOBILE MUTUAL INSURANCE COMPANY

Appellee

and

MARTINA SCHAEFER

Appellee

C.A. No. 21853

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2000 08 3721 v.

NATIONWIDE MUTUAL
INSURANCE COMPANY

Appellant

DECISION AND JOURNAL ENTRY

Dated: May 19, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BAIRD, Presiding Judge.

{¶1} Appellant, Nationwide Mutual Insurance Company, appeals from the decision of the Summit County Court of Common Pleas which found that certain policies of Appellant provided UM/UIM coverage to Martina Shaefer pursuant to *Scott-Pontzer v. Liberty Mutual Fire Insurance Co.* (1999), 85 Ohio St.3d 660 and *Selander v. Erie Insurance Group* (1999), 85 Ohio St.3d 541. We reverse.

I.

{¶2} On August 22, 1998, Appellee, Martina Shaefer (“Shaefer”), and her husband, Shane Wamsley (“Wamsley”), were traveling home on I-76 after visiting several local bars. Wamsley was driving Shaefer’s vehicle, and negligently caused an automobile accident in which Shaefer was seriously injured.

{¶3} In April 1999, Shaefer entered into a settlement agreement with her insurance carrier for \$125,000.00, paid pursuant to a UM/UIM provision of her policy. Shaefer then asserted a claim against Appellee, State Automobile Mutual Insurance Co. (“State Automobile”), for UM/UIM benefits under a policy which covered Wamsley’s employer, NGN Electrical Corporation. Shaefer and State Automobile eventually entered into a settlement agreement and assignment related to her claims for UM/UIM coverage.

{¶4} Following this agreement, Shaefer and State Automobile jointly pursued an action against Appellant for UM/UIM benefits under a policy which

covered Shaefer's employer, Britain Manhattan Corporation. Following motions for summary judgment from all parties, the trial court, in September 2002, found that UM/UIM coverage existed under Appellant's policy pursuant to *Scott-Pontzer*, 85 Ohio St.3d 660. Appellant filed a motion to reconsider that decision, which the court denied. The court entered a final order regarding its coverage decision on November 6, 2003. Appellant timely appealed and raises one assignment of error.

II.

Assignment of Error

“THE TRIAL COURT ERRED AND IMPROPERLY GRANTED SUMMARY JUDGMENT TO THE APPELLEES, AND DENIED SUMMARY JUDGMENT TO THE APPELLANT, BY FINDING THAT UM/UIM COVERAGE IS AVAILABLE FROM THE NATIONWIDE POLICY. UM/UIM COVERAGE IS UNAVAILABLE FROM THE NATIONWIDE POLICY BECAUSE THE *WESTFIELD V. GALATIS* DECISION TERMINATES ANY POSSIBLE ARGUMENT FOR *SCOTT-PONTZER* COVERAGE. FURTHERMORE, EVEN IF THE COURT CHOOSES NOT TO APPLY *GALATIS*, UM/UIM COVERAGE DOES NOT EXIST BECAUSE THE NATIONWIDE POLICY IS NOT AN AUTOMOBILE LIABILITY POLICY OF INSURANCE AS DEFINED BY OHIO'S FORMER UM/UIM STATUTE.”

{¶5} In its only assignment of error, Appellant argues that the trial court erred in granting summary judgment on its insurance policy for UM/UIM coverage under *Scott-Pontzer*. Following the decision in *Galatis*, Appellant contends that *Scott-Pontzer* coverage does not exist where an individual is not

acting in the course and scope of employment at the time of the accident. We agree.

{¶6} Shaefer and State Automobile premised their claims for UM/UIM coverage under *Scott-Pontzer*, 85 Ohio St.3d 660. On November 5, 2003, after the trial court made its initial ruling on UM/UIM coverage, the Ohio Supreme Court issued its decision in *Westfield Insurance Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, which greatly curtailed the application of *Scott-Pontzer*. In *Galatis*, the Court held that:

“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.” *Galatis* at paragraph two of the syllabus.

Shaefer and State Automobile concede that *Galatis* effectively eliminated UM/UIM coverage under Appellant’s policy in this case as Shaefer was not acting within the course and scope of her employment at the time of the accident. Accordingly, we sustain Appellant’s assignment of error.

III.

{¶7} We sustain Appellant’s assignment of error, reverse the decision of the Summit County Court of Common Pleas, and remand for proceedings consistent with this opinion.

Judgment reversed
and remanded.

WILLIAM R. BAIRD
FOR THE COURT

SLABY, J.
BATCHELDER, J.
CONCUR

APPEARANCES:

TIMOTHY D. JOHNSON and JEFFREY G. PALMER, Attorneys at Law, 2500 Terminal Tower, 50 Public Square, Cleveland, OH 44113-2241, for Appellant.

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