

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY

KATHERINE TOMKO,

PLAINTIFF-APPELLANT,

v.

ACE AMERICAN INSURANCE
COMPANY,

DEFENDANT-APPELLEE

CASE NO. 9-26-30

OPINION AND
JUDGMENT ENTRY

Appeal from Marion County Common Pleas Court
General Division
Trial Court No. 2025-CV-0019

Judgment Affirmed

Date of Decision: October 13, 2026

APPEARANCES:

Thomas Jeffrey Beausay for Appellant

Christopher G. Keim for Appellee

ZIMMERMAN, P.J.

{¶1} Plaintiff-appellant, Katherine Tomko (“Tomko”), appeals the April 7, 2026 judgment entry of the Marion County Court of Common Pleas granting judgment in favor of defendant-appellee, ACE American Insurance Company (“ACE”). For the reasons that follow, we affirm.

{¶2} On March 27, 2024, Tomko was injured in an automobile accident caused by the negligence of an underinsured motorist. At the time of the accident, Tomko was driving a vehicle owned by her employer, ACI Foodsystems (“Foodsystems”). The vehicle was insured under a business auto policy issued by ACE to Foodsystems.

{¶3} On January 13, 2025, Tomko filed a complaint against ACE alleging a claim for underinsured motorist coverage (“UIM coverage”). Neither the at-fault driver nor Foodsystems were named as defendants in the complaint. The complaint was brought solely against ACE for UIM coverage under the policy issued to Foodsystems. Specifically, paragraph 8 of Tomko’s complaint alleged as follows:

8. The vehicle was insured under a business policy written by defendant ACE American Insurance Company, policy number H10780160, which contained underinsured motorist coverage, to which plaintiff is entitled.

(Doc. No. 1). Notably, Tomko did not attach a copy of the ACE policy to her complaint.

{¶4} ACE failed to timely respond to the complaint and, on March 17, 2025, Tomko applied for default judgment against ACE. Tomko requested judgment by default in the amount of \$500,000. On April 24, 2025, the trial court entered the following order, in pertinent part:

This case is before the court on plaintiff's application for default judgment pursuant to Civ.R. 55 and Local Rule 203. For good cause shown, said motion is granted. The court will conduct a hearing on damages on Friday, May 30, 2025[.]

(Doc. No. 7).

{¶5} On May 27, 2025, ACE filed a motion for reconsideration, arguing that it cannot be liable to Tomko for damages because the business auto policy issued to Foodsystems does not include UIM coverage. Attached to ACE's motion is a copy of the UIM coverage summary page that states, "No Coverage is offered or provided for vehicles principally garaged or registered in the following states: **MI, OH, PR.**" (Bolded text in original.) (Doc. No. 8).

{¶6} On May 29, 2025, the trial court granted ACE's motion and set aside the default entered against ACE on April 24, 2025. ACE was given until June 26, 2025 to move, plead, or otherwise respond to Tomko's complaint.

{¶7} On June 3, 2025, Tomko filed a motion requesting that the trial court reconsider its decision to set aside the default entered against ACE. On June 6, 2025, ACE filed its response to Tomko's motion, and Tomko filed her reply thereto on June 11, 2025.

{¶8} On July 7, 2025, Tomko filed a second motion for default judgment against ACE based on ACE's failure to respond to the complaint. Tomko again requested judgment by default in the amount of \$500,000. On July 9, 2025, the trial court granted Tomko's motion and set a hearing on damages for August 15, 2025.

{¶9} On July 10, 2025, ACE filed a motion to vacate the July 9, 2025 order and requested leave to file a motion to dismiss instante. On July 14, 2025, Tomko filed her opposition to ACE's motion, and ACE filed its reply thereto on July 16, 2025. On that same day, the trial court denied ACE's motion to vacate and further denied ACE's request for leave to file a motion to dismiss instante.

{¶10} On July 24, 2025, ACE filed a motion requesting that the trial court reconsider its July 16, 2025 order denying ACE's motion to vacate. On that same day, the trial court entered an order rescheduling the damages hearing to August 29, 2025.

{¶11} All parties appeared at the damages hearing on August 29, 2025. At the hearing, the trial court acknowledged ACE's pending motion for reconsideration. At the conclusion of the hearing, the trial court took the matter under advisement and permitted the parties to file post-hearing briefs.

{¶12} On September 16, 2025, the trial court granted ACE's motion for reconsideration and further granted Tomko's "Motion for Default Judgment consistent with the limitations detailed herein." (Doc. No. 33). The trial court explained the "limitations" as follows:

[T]he fact [Tomko's] Complaint did not contain the relevant policy information precludes the Court's rendering a legal conclusion on default that coverage exists. As ACE has repeatedly stressed, a question remains whether the ACE policy affords any UIM coverage in the first instance. Without the ability to review the actual policy documents, this Court could not properly enter a default judgment finding that ACE's policy "contained underinsured motorist coverage, to which [Tomko] is entitled." Complaint, ¶ 8. For these reasons, the Court concludes that ACE may still challenge the issue of coverage under its policy regardless of a decision granting default.

(*Id.*). The trial court ordered the parties to submit "further briefing and evidence to determine if the ACE policy affords UIM coverage for [Tomko's] loss." (*Id.*). The trial court further ordered ACE to "support its motion with a properly authenticated copy of the complete ACE policy." (*Id.*).

{¶13} On September 30, 2025, ACE filed its brief as directed by the trial court. Attached to ACE's brief is an authenticated copy of the business auto policy issued by ACE to Foodsystems. On October 7, 2025, Tomko filed her response to ACE's brief.

{¶14} On April 7, 2026, the trial court granted judgment in favor of ACE after finding that Tomko failed to establish entitlement to UIM coverage under the business auto policy issued by ACE to Foodsystems. The trial court determined that "based on the entire record, the Court cannot enter default judgment in Plaintiff's favor and must enter judgment in favor of Defendant ACE." (Doc. No. 39). The trial court reached its decision after reviewing the plain language of the ACE policy and concluding that it does not provide UIM coverage.

{¶15} On April 22, 2026, Tomko timely filed a notice of appeal. She raises a single assignment of error for our review.

Assignment of Error

The trial court erred in requiring plaintiff to prove her case on the merits after it found the defendant in default.

{¶16} In her sole assignment of error, Tomko argues that the trial court erred by granting judgment in favor of ACE. Specifically, Tomko argues that the trial court erred by not awarding her damages under Civ.R. 55.

Standard of Review

{¶17} We review a trial court's decision on a motion for default judgment for an abuse of discretion. *Conrad v. Hamrick*, 2025-Ohio-1773, ¶ 12 (3d Dist.). An abuse of discretion suggests that the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

Analysis

{¶18} On appeal, Tomko concedes that the business auto policy issued by ACE to Foodsystems does not provide UIM coverage. Nevertheless, Tomko argues that the trial court erred by requiring her to prove her case after default had been entered against ACE. Tomko contends that "when a defendant is in default, liability is admitted and no proof is required to establish the truth or accuracy of the complaint allegations." (Appellant's Brief at 6). According to Tomko, once a

default has been entered, the trial court is limited to determining damages. We disagree.

{¶19} Civ.R. 55 provides trial courts with considerable discretion when ruling on motions for default judgment. In relevant part, Civ.R. 55(A) states as follows:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing or orally to the court therefor; . . . If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages *or to establish the truth of any averment by evidence* or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall when applicable accord a right of trial by jury to the parties.

(Emphasis added.) Thus, it is within the trial court’s discretion to require further evidence to establish the truth of any averment or allegation contained in a complaint. *See Buckeye Supply Co. v. Northeast Drilling Co.*, 24 Ohio App.3d 134, 136 (9th Dist. 1985) (“It has always been within the discretion of the trial court to determine whether further evidence is required to support a claim against a defaulting defendant.”).

{¶20} In this case, paragraph 8 of Tomko’s complaint alleged that she is “entitled” to UIM coverage under the business auto policy issued by ACE to her employer, Foodsystems. (Doc. No. 1). Even though Tomko raised a claim for UIM coverage, she did not attach a copy of the relevant policy to the complaint. *See*

Civ.R. 10(D)(1) (“When any claim . . . is founded on [a] . . . written instrument, a copy of the . . . written instrument must be attached to the pleading. If the . . . written instrument is not attached, the reason for the omission must be stated in the pleading.”). Therefore, under Civ.R. 55(A), the trial court was well within its discretion to require evidence to establish the truth of the allegation contained in paragraph 8 of the complaint.

{¶21} Moreover, in its September 16, 2025 entry, the trial court adequately explained its rationale for requiring evidence under Civ.R. 55(A). In particular, the trial court noted that the “entry of default in favor of [Tomko] does not resolve the central legal issue—whether ACE’s policy provides UIM coverage for [Tomko’s] loss.” (Doc. No. 33). Only after reviewing a complete copy of the business auto policy issued by ACE to Foodsystems could this legal issue be resolved. *See Jordan v. United Ohio Ins. Co.*, 2021-Ohio-2170, ¶ 14 (3d Dist.) (acknowledging that interpretation of an insurance contract is a matter of law).

{¶22} Here, after reviewing an authenticated copy the policy, the trial court determined that Tomko’s claim to UIM coverage fails as a matter of law because the plain language of the policy expressly excludes UIM coverage. Thus, the trial court entered judgment in favor of ACE. *See Streeton v. Roehm*, 83 Ohio App. 148, 152 (1st Dist. 1948) (reasoning that if the court exercises its discretion to require evidence to support the plaintiff’s claim, “it follows that the court should make its

decision conform to the law as applicable to the facts proven, and if no cause of action is shown no default judgment in plaintiff's favor should be rendered").

{¶23} We conclude that, consistent with Civ.R. 55(A), the trial court did not err by requiring evidence to establish whether the business auto policy issued by ACE to Foodsystems afforded UIM coverage for Tomko's loss. The trial court's decision to review an authenticated copy of the policy was not unreasonable, arbitrary, or unconscionable. Since the plain language of the policy expressly excludes UIM coverage, the trial court did not abuse its discretion by granting judgment in favor of ACE.

{¶24} Tomko's sole assignment of error is overruled.

{¶25} Having found no error prejudicial to the appellant herein in the particulars assigned and argued in her sole assignment of error, we affirm the judgment of the trial court.

Judgment Affirmed

MILLER and WALDICK, J.J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignment of error is overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

William R. Zimmerman, Judge

Mark C. Miller, Judge

Juergen A. Waldick, Judge

DATED:
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