

**COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT**

WILLIAM F. VOHSING, et al.	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. John W. Wise, J.
Plaintiffs-Appellants	:	Hon. John F. Boggins, J.
	:	
-vs-	:	
	:	Case No. 01-CA-56
AUTO-OWNERS INSURANCE	:	
COMPANY	:	
	:	<u>OPINION</u>
Defendant-Appellee	:	

CHARACTER OF PROCEEDING: Civil appeal from Licking County Common Pleas Court, Case No. 98CV769

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: 1/14/2002

APPEARANCES:

For Plaintiffs-Appellants

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For Defendant-Appellee

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STATEMENT OF THE FACTS AND CASE

This is an appeal from a trial court decision denying Appellant's Motion for Summary judgment and holding that Appellant was not entitled to UM/UIM coverage under a homeowner's insurance policy issued by Appellee.

The collision from which this case arises occurred on March 9, 1995.

Appellant appeals said decision, assigning the following sole assignment of error:

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED TO THE SUBSTANTIAL PREJUDICE OF PLAINTIFFS-APPELLANTS IN GRANTING JUDGMENT TO THE DEFENDANT-APPELLEE DETERMINING THAT THE HOMEOWNER'S POLICY ISSUED BY THE DEFENDANT-APPELLEE TO THE PLAINTIFFS-APPELLANTS WAS NOT SUBJECT TO R.C. §3937.18.

Appellant claims the trial court erred in denying its motion for summary judgment. We disagree.

Summary judgment motions are to be resolved in light of the dictates of Civ.R. 56. Said rule was reaffirmed by the Supreme Court of Ohio in *State ex rel. Zimmerman v. Tompkins* (1996), 75 Ohio St.3d 447, 448:

Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (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 viewing such

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. Parsons v. Fleming* (1994), 68 Ohio St.3d 509, 511, 628 N.E.2d 1377, 1379, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 4 O.O3d 466, 472, 364 N.E.2d 267, 274.

As an appellate court reviewing summary judgment motions, we must stand in the shoes of the trial court and review summary judgments on the same standard and evidence as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35

The sole issue for our review is whether a homeowner's policy that provides limited insurance coverage to an insured for liability to a residence employee arising out of the use of a motor vehicle that is subject to motor vehicle registration laws on the public highways is sufficient to subject said homeowner's policy to R.C. §3937.18, thereby requiring UM/UIM coverage. ¹

Appellant, contends that because the homeowner's policy issued in the case *sub judice* provides automobile liability coverage in limited circumstances, Auto-Owners Insurance Company was required to offer uninsured/underinsured motorist

¹The Ohio Supreme Court has certified a conflict on this issue and the matter is presently pending before the Supreme Court, *Lemm v. The Hartford* (2001), 93 Ohio St.3d 1475 in the cases of *Lemm v. The Hartford* (Oct. 4, 2001), Franklin App. No. 01AP-251, unreported, 2001 WL 1167585 and *Davis v. Shelby Ins. Co.* (June 12, 2001), Cuyahoga App. No. 78610, unreported, 2001 WL 674854.

benefits. When it failed to do so, such benefits arose by operation of law and, moreover, were not subject to setoff or to the subrogation provisions under that policy.

Appellee, Auto-Owners Insurance Company, on the other hand, maintains that UM/UIM benefits were not offered in the instant case because the policy of insurance was a homeowner's policy not an automobile policy and therefore was not subject to R.C. §3937.18.

We reject Appellant's based on our prior decision in *Henry v Nationwide Mutual Fire Insurance Company* (Sept. 28, 2001), Muskingum App. No. CT2001-0014, unreported, wherein we rejected the argument that the residence employee provision which provided limited liability for injuries to a residence employee as sustained in a motor vehicle was sufficient to invoke the requirements of R.C. §3937.18. In so holding, we relied on our previous ruling in *Pillo v. Stricklin* (Feb. 5, 2001), Stark App. No 2000CA00201, unreported, and the recent Ohio Supreme Court decision in *Davidson v. Motorists Mutual Insurance Company* (2001), 91 Ohio St.3d 262.

In *Davidson*, supra, the Ohio Supreme Court held:

"[I]n the case of bodily injury, homeowner's liability insurance is essentially designed to indemnify against liability for injuries that noninsureds sustain themselves, typically while in the insured's home. In contrast, the purpose of uninsured motorist coverage is 'to protect persons from losses which, because of the tortfeasor's lack of liability coverage, would otherwise go uncompensated.' " *Id.*, quoting *Cincinnati Indemn. Co. v. Martin*

(1999), 85 Ohio St.3d 604, 608.

"Common sense alone dictates that neither the insurer nor the insured bargained for or contemplated that such homeowner's insurance would cover personal injuries arising out of an automobile accident that occurred on a highway away from the insured's premises." *Davidson*, 91 Ohio St.3d at 269.

We acknowledge that the *Davidson* court did not specifically address whether a "residence employee" exclusion in a homeowner's policy could be construed so as to provide UM/UIM coverage. *Id.* at 265. ² We see no reason, however, not to extend the reasoning of *Davidson* to the policy at issue in this case. Consequently, the policy at issue in this case cannot be construed so as to provide UM/UIM coverage.

We therefore find Appellant's sole assignment of error not well-taken and overrule same.

For the foregoing reasons, the judgment of the Court of Common Pleas of Licking County, Ohio, is affirmed.

By Boggins, J.

Farmer P.J. and

Wise, J. concur.

²The Ohio Supreme Court declined to decide the issue concerning the residence employee exclusion contained in the policy because it had not been argued to the lower courts in that case.

JUDGES

FIFTH APPELLATE DISTRICT

WILLIAM F. VOHSING, et al.	:	
	:	
Plaintiffs-Appellants	:	
	:	
-vs-	:	JUDGMENT ENTRY
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	:	
AUTO-OWNERS INSURANCE	:	
COMPANY	:	
	:	CASE NO. 01-CA-56
Defendant-Appellee	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Court of Common Pleas of Licking County, Ohio is affirmed. Costs to appellant.

JUDGES