

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RIC CAMPBELL, AS EXECUTOR OF THE ESTATE OF BRANDON D. CAMPBELL, ET AL.

Plaintiffs-Appellees

vs.

GREAT NORTHERN INSURANCE COMPANY, ET AL.

Defendants-Appellants

: JUDGES:
: Hon. William B. Hoffman, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. John W. Wise, J.
:
:

: Case No. 2003CA00060
:
:

: OPINION

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 2002CV1975

JUDGMENT: Reversed

DATE OF JUDGMENT ENTRY: November 24, 2003

APPEARANCES:

For Plaintiffs-Appellees

For Great Northern Insurance Co.

STANLEY R. RUBIN
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Canton, OH 44702

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Farmer, J.

{¶1} On May 30, 1996, Brandon Campbell sustained fatal injuries in a motor vehicle accident while at work for Briarwood Landscape Nursery, caused by the negligence of a co-worker.

{¶2} At the time of the accident, Brandon's mother, Carol Campbell, was employed by Ohio Kentucky Oil, insured under a business auto policy issued by Great Northern Insurance Company.

{¶3} On June 7, 2002, Brandon's father, Ric Campbell, individually and as executor of the estate of Brandon Campbell, together with other next of kin, filed a complaint for declaratory judgment seeking underinsured motorists benefits from various insurance companies. Great Northern was added as a party on October 9, 2002.

{¶4} All parties filed motions for summary judgment. By judgment entry filed January 17, 2003, the trial court found appellees were entitled to underinsured motorists benefits under the Great Northern policy.

{¶5} Great Northern filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶6} "THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF IS ENTITLED TO UM/UIM COVERAGE UNDER GREAT NORTHERN'S BUSINESS AUTO POLICY ISSUED TO OHIO KENTUCKY OIL."

II

{¶7} "THE TRIAL COURT ERRED IN FAILING TO HOLD THAT GREAT NORTHERN IS ENTITLED TO A \$515,000 SET OFF."

I

{¶8} Great Northern claims the trial court erred in extending coverage under its business auto policy pursuant to *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.*, 85 Ohio St.3d 660, 1999-Ohio-292, and *Ezawa v. Yasuda Fire & Marine Ins. Co.*, 86 Ohio St.3d 557, 1999-Ohio-124.

{¶9} The Great Northern policy contained express uninsured/underinsured motorist coverage. The definition of an "insured" under the uninsured/underinsured motorist provisions of the policy is similar to the definition in *Scott-Pontzer*. See, Section B of the Ohio Uninsured Motorists Coverage – Bodily Injury, attached to Plaintiffs' Complaint as Exhibit B. Based upon the Supreme Court of Ohio's recent decision in *Westfield Insurance Co. v. Galatis*, 100 Ohio St.3d ___, 2003-Ohio-5849, we find appellees are not insureds under the policy.

{¶10} Assignment of Error I is granted. Assignment of Error II is moot.

{¶11} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby reversed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.