

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CHERYL HURSEY, Et Al.

Plaintiffs-Appellees

-vs-

TRAVELERS INSURANCE COMPANY,
Et Al.

Defendants-Appellants

: Hon W. Scott Gwin, P.J.
: Hon. William B. Hoffman, J.
: Hon. John F. Boggins, J.

:
: Case Nos. 2003CA00081
:

: O P I N I O N

CHARACTER OF PROCEEDING:

Civil appeal from Stark County Common
Pleas Court, Case No. 02-CV-333

JUDGMENT:

REVERSE AND REMAND

DATE OF JUDGMENT ENTRY:

FEBRUARY 9, 2004

APPEARANCES:

For Plaintiffs-Appellees

For Defendants-Appellants

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Boggins, J.

{¶1} This is an appeal from a decision in Fairfield County Court of Common
Pleas.

STATEMENT OF THE FACTS AND CASE

{¶2} On May 14, 2000, Plaintiff-Appellee, Cheryl Hursey was injured in an automobile crash. At the time of this incident, Ms. Hursey was employed by Ralcorp Holdings, Inc. The parties stipulated that Ms. Hursey was not in the course and scope of her employment with Ralcorp Holdings, Inc. at the time of the subject crash.

{¶3} Appellant, Travelers Indemnity Company of Illinois, had issued a business automobile insurance policy to Ralcorp Holdings, Inc. Appellees filed a complaint in the Fairfield County Court of Common Pleas seeking insurance coverage under the Travelers' Policy issued to Ralcorp Holdings, Inc. pursuant to Scott-Pontzer v. Liberty Mut. Fire Ins. Co. (1999), 85 Ohio St.3d 660.

{¶4} By judgment entered September 23, 2003, the Fairfield County Court of Common Pleas determined that Appellees were entitled to insurance coverage under the Travelers' insurance policy issued to Ralcorp Holdings, Inc. pursuant to Pontzer.

{¶5} Travelers Insurance Company has filed the instant appeal from the trial court's judgment. Appellees have failed to file a response brief and Appellees have not defended the within appeal in any other manner.

{¶6} Appellant assigns as error:

ASSIGNMENT OF ERROR

{¶7} "THE TRIAL COURT ERRED IN GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT."

{¶8} This Court hereby sustains Appellant's sole assigned error based upon the authority set forth in Westfield Ins. Co. v. Galatis (2003), 100 Ohio St.3d 1409.

{¶9} For these reasons, we hereby reverse the trial court's judgment and remand this matter to that court for further proceedings according to law.

By: Boggins, J.

Gwin, P.J. and

Hoffman, J. concur