[Cite as *Clarke v. Am. Family Ins. Co.*, 2026-Ohio-3639.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

RUBY CLARKE,	:	
Plaintiff-Appellant,	:	
v.	:	No. 115988
AMERICAN FAMILY INSURANCE COMPANY, ET AL.,	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 17, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-25-121406

Appearances:

Ruby Clarke, *pro se*.

Christy M. Rafferty, *for appellee* American Family Insurance Company.

Curry Roby, LLC, Bruce A. Curry and Lisa C. Haase, *for appellees* Brian and Lisa Squirek.

TIMOTHY W. CLARY, J.:

{¶ 1} Plaintiff-appellant Ruby Clarke ("Ruby") appeals from the trial court's December 31, 2025 judgment entry that granted defendants-appellees Brian and Lisa Squirek's ("Brian and Lisa") motion to dismiss the amended complaint pursuant to Civ.R. 12(B)(6); granted defendant-appellee American Family Insurance Company's ("American Family") motion for summary judgment; denied Ruby's motion for leave to file a second amended complaint; and denied or found moot multiple discovery motions filed by Ruby. For the following reasons, we affirm.

I. Factual and Procedural History

{¶ 2} This case stems from a motor vehicle accident that occurred on April 8, 2024, when nonparty tortfeasor Bradley Squirek ("Bradley") was driving his Ford Mustang and collided with a motor vehicle ("motor vehicle accident") driven by Nicholas Clarke ("Nicholas"), Ruby's ex-husband. Nicholas was allegedly driving his vehicle with Uber-passenger Jermaine Huddleston ("Jermaine") when the impact occurred; Nicholas and Huddleston both claimed they sustained injuries from the accident. At all relevant times, American Family insured the Ford Mustang under a family car policy ("insurance policy") issued to Bradley's parents, Brian and Lisa. Bradley was listed as a "nondriver" on the policy.

{¶ 3} We will limit the procedural history to pleadings that are relevant to this appeal.

{¶ 4} On July 24, 2025, Ruby filed a pro se complaint on behalf of Nicholas and herself against American Family, Brian, and Lisa. On August 25, 2025, Brian and Lisa filed a Civ.R. 12(B)(6) motion to dismiss the complaint, arguing that Ruby could not prove her claim of negligent entrustment because Brian and Lisa did not own the vehicle driven by Bradley. Jermaine and his wife, Monique Huddleston, filed a pro se motion to intervene as plaintiffs, and American Family answered Ruby's complaint.

{¶ 5} On October, 6, 2025, the trial court issued a journal entry that found Ruby was not a licensed attorney and when "a person not admitted to the [Ohio] Bar attempts to represent another in court on the basis of a power of attorney assigning pro se rights, that person violates R.C. 4705.01. *See Office of Disciplinary Counsel v. Coleman*, 88 Ohio St.3d 155 (2000)." The court struck all of Ruby's motions and pleadings, granted her 30 days to file an amended complaint that complied with Civ.R. 11, and struck Brian and Lisa's Civ.R. 12(B)(6) motion to dismiss Ruby's complaint. *See* Oct. 6, 2025 journal entries.

{¶ 6} One day later, Ruby filed a pro se amended complaint naming American Family, Brian, and Lisa as defendants. The amended complaint sought a declaratory judgment that American Family's insurance policy provided coverage for the motor vehicle accident and alleged breach of contract, bad faith denial of coverage, and negligence by American Family. The amended complaint also alleged negligent entrustment by Brian and Lisa. Ruby sought punitive damages from all three defendants, and Ruby alleged that because of the motor vehicle accident she suffered emotional distress, financial burden, and caregiving hardship when she cared for Nicholas. Ruby included these factual statements in the amended complaint:

6. On or about April 8, 2024, Nicholas Clarke was injured in a crash on 1-480 near Cleveland, when a yellow Ford Mustang driven by Bradley Squirek — listed as a non-driver under the [American Family] policy — t-boned a vehicle and collided into Nicholas Clarke's vehicle during a high-speed police chase exceeding 100 mph.

7. The Mustang was insured under an [American Family] policy issued to Bradley's parents, Brian and Lisa Squirek. Despite being listed as a non-driver, Bradley was the sole operator and user of the vehicle.

8. Bradley Squirek's license was suspended as of February 6, 2024, due to an unpaid traffic citation in Boise City, Oklahoma, issued December 11, 2023 for speeding.

9. [American Family] denied coverage based on Bradley Squirek's suspended license, yet failed to exercise due diligence at the inception of the policy on December 2, 2023, when the 2016 yellow Ford Mustang was added and Bradley Squirek was listed as a non-driver. Despite his presence in the household and his known history, including a speeding citation issued on December 11, 2023, [American Family] did not conduct or act upon an updated Motor Vehicle Report (MVR) to properly assess risk. This omission reflects a critical underwriting failure and directly contradicts the policy's intent and purpose, especially where no specific exclusions or driver restrictions were listed for Bradley Squirek.

10. Settlement with Trexis Insurance: Plaintiff is informed and believes that Bradley E. Squirek resolved a separate bodily-injury claim under a limited-liability policy issued by Trexis Insurance in relation to the April 8, 2024 incident. That settlement does not release or extinguish [American Family]'s duties under the [American Family] policy or the independent negligence of Brian and Lisa Squirek; nor does it bar this Court from declaring the parties' rights and obligations under the [American Family] policy

11. Related Intervenors: Monique and Jermaine Huddleston sought to intervene due to injuries arising from the same collision. Their prior motion was denied as procedurally moot following the Court's Journal Entry striking pleadings; they intend to re-file after this Amended Complaint. Their involvement underscores that multiple third parties were affected and that declaratory relief is necessary to avoid piecemeal litigation and inconsistent coverage determinations.

Amended Complaint, paragraphs 6-11.

{¶ 7} In support of her claims for breach of contract, bad faith denial of coverage, negligence, and negligent entrustment, Ruby alleged the following:

> COUNT II — BREACH OF CONTRACT ([AMERICAN FAMILY])
>
> 14. [American Family] breached its duties by denying coverage without reasonable investigation, failing to apply policy terms fairly, and prioritizing premiums over public safety.
>
> COUNT III — BAD FAITH DENIAL OF COVERAGE ([AMERICAN FAMILY])
>
> 15. [AMERICAN FAMILY] acted in bad faith by refusing to defend or indemnify Bradley Squirek and by rejecting coverage based solely on license status while ignoring its underwriting responsibilities.
>
> COUNT IV — NEGLIGENCE ([AMERICAN FAMILY])
>
> 16. [American Family] failed to properly verify the driving eligibility and safety record of the listed household member (Bradley Squirek), thereby enabling foreseeable harm.
>
> COUNT V — NEGLIGENT ENTRUSTMENT (AGAINST BRIAN AND LISA SQUIREK)
>
> 17. Plaintiff incorporate by reference all preceding paragraphs of this Complaint as if fully restated herein.
>
> 18. Defendants Brian and Lisa Squirek, although not the titled owners of the yellow Ford Mustang involved in the collision, knowingly and voluntarily listed the yellow Ford Mustang under their automobile insurance policy with American Family Insurance. In doing so, they named Bradley E. Squirek as a non-driver and provided full insurance coverage for the vehicle, thereby facilitating his access to operate the vehicle.
>
> 19. At the time of insuring the vehicle and listing Bradley E. Squirek as a non-driver, Brian and Lisa Squirek knew or should have known that Bradley had received a citation for speeding in Boise City, Oklahoma,

> on December 11, 2023, and that his driving privileges were suspended due to non[-]payment.
>
> 20. Despite this knowledge, they continued to maintain insurance coverage on the yellow Mustang for the benefit of Bradley E. Squirek, and failed to take any reasonable steps to prevent him from operating the vehicle.
>
> 21. The doctrine of negligent entrustment holds liable any person who entrusts a motor vehicle to another whom they know, or should know, is incompetent to operate the vehicle. See *Gulla v. Straus*, 154 Ohio St. 193 (1950); see also *Ohio Fair Plan Underwriting Ass'n v. Goldstein, 2 Ohio App.3d 313, 441 N.E.2d 1146 (8th Dist. 1982), reaffirming that entrusting a vehicle to an unfit driver may constitute actionable negligence.
>
> 22. The actions of Brian and Lisa Squirek in facilitating Bradley E. Squirek's continued operation of the yellow Mustang despite his known citation, suspension and driving history constitute negligent entrustment, directly contributing to the events that resulted in injury and damage to the Plaintiff.
>
> 23. As a direct and proximate result of the negligent entrustment by Brian and Lisa Squirek, Plaintiff suffered damages in an amount exceeding the jurisdictional limits of this Court, including bodily injury, property damage, medical expenses, pain and suffering, and other losses.

Amended Complaint, paragraphs 14-23.

{¶ 8} On October 20, 2025, Ruby filed a motion for leave to file a second amended complaint and the second amended complaint instanter.

{¶ 9} On October 21, 2025, Brian and Lisa filed a Civ.R. 12(B)(6) motion to dismiss Ruby's amended complaint — not to be confused with the second amended complaint — arguing that her negligent-entrustment claim must fail because she did not allege Brian and Lisa owned the automobile in question. Alternatively, the motion sought to dismiss the punitive-damages claim against Brian and Lisa because Ruby failed to plead actual malice, which is a required component of the claim. Ruby filed a brief in opposition.[1] Brian and Lisa filed a combined reply brief in support of their Civ.R. 12(B)(6) motion and in opposition to Ruby's motion for leave to file a second amended complaint.

{¶ 10} On October 23, 2025, American Family filed a motion for summary judgment. Ruby subsequently filed a brief in opposition, and American Family filed a reply brief.

{¶ 11} On December 31, 2025, the trial court issued a journal entry that (1) granted Brian and Lisa's Civ.R. 12(B)(6) motion to dismiss Ruby's amended complaint, (2) granted American Family's motion for summary judgment, (3) denied Ruby's motion for leave to file a second amended complaint; and (4) either denied or found moot Ruby's outstanding discovery motions.

{¶ 12} The same day Ruby filed a notice of appeal, and she now presents seven assignments of error:

> Assignment of Error I: The trial court erred in dismissing appellant Ruby Clarke's amended complaint under Civ.R. 12(B)(6) because the complaint stated cognizable claims for direct damages, negligent entrustment, and declaratory relief, and the court failed to accept all well-pleaded facts as true and draw all reasonable inferences in appellant's favor.
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> Assignment of Error II: The trial court erred in granting American Family Insurance Company's motion for summary judgment where genuine issues of material fact existed regarding coverage under the policy, the proper interpretation of paragraph 8 of the policy, and the independent liability of named insureds Brian and Lisa Squirek.

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[1] Ruby's brief in opposition was titled a motion for leave to file a sur-reply (sic) and was filed with the trial court on October 23, 2025.

> Assignment of Error III: The trial court erred in interpreting the [American Family] policy to exclude coverage where the policy language is ambiguous, [American Family]'s own adjusters characterized the identical provision inconsistently as both a "definition" and an "exclusion," and Ohio law requires ambiguous policy language to be construed against the insurer and in favor of coverage.
>
> Assignment of Error IV: The trial court erred in dismissing the negligent entrustment claims against defendants Brian E. Squirek and Lisa L. Squirek where the amended complaint alleged sufficient facts under Ohio Supreme Court authority, including the household presumption of knowledge under R.C. § 4511.203, the control-based liability theory under *Motorists Ins. v. Sokol*, and the independent negligent act standard of *Huston v. Konieczny*.
>
> Assignment of Error V: The trial court erred in dismissing Appellant Ruby Clarke's independent claims for direct out-of-pocket economic losses, lost time, emotional distress, and declaratory relief where those claims are personal to Ruby Clarke, are not derivative of Nicholas Clarke's bodily injury claims, and were supported by sworn affidavit testimony.
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> Assignment of Error VI: The trial court erred in denying appellant Ruby Clarke's motion for leave to file a second amended complaint where no finding of bad faith, undue delay, or prejudice to the opposing parties was made, and where Ohio Civ.R. 15(A) mandates that leave to amend be freely given when justice so requires.
>
> Assignment of Error VII: The trial court abused its discretion by granting the motion to quash appellant's subpoena, denying appellant's Civ.R. 56(D) motion for additional discovery, and entering summary judgment on the same date all discovery motions were denied or mooted, thereby preventing appellant from obtaining materials uniquely within [American Family]'s possession that were necessary to oppose judgment.

{¶ 13} On January 27, 2026, in *Clarke v. Am. Family Ins. Co.,* 8th Dist. Cuyahoga No. 116070 ("App. No. 116070"), Nicholas filed a notice of appeal. In the same appeal, Jermaine filed a pro se motion for leave to file an amicus curiae brief.

This court dismissed App. No. 116070 because Nicholas was not a party to the proceedings below, and the dismissal rendered Jermaine's motion moot. App. No. 116070, motion No. 592874 (Mar. 24, 2026).

{¶ 14} In the instant appeal, Brian and Lisa filed a notice of supplemental authority. Ruby filed a "response in opposition" requesting that this court not afford any weight to the supplemental authority.

II. Legal Analysis

{¶ 15} Initially, we note that Ruby acted pro se before the trial court and represents herself pro se on appeal. This court has previously recognized that

> a pro se litigant may face certain difficulties when choosing to represent oneself. Although a pro se litigant may be afforded reasonable latitude, there are limits to a court's leniency. *Henderson v. Henderson*, 2013-Ohio-2820, ¶ 22 (11th Dist.). Pro se litigants are presumed to have knowledge of the law and legal procedures, and are held to the same standard as litigants who are represented by counsel. *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St. 3d 43, 2013-Ohio-5478, ¶ 22, 3 N.E.3d 173.

Saeed v. Greater Cleveland Regional Transit Auth., 2017-Ohio-935, ¶ 7 (8th Dist.). "Pro se civil litigants are bound by the same rules and procedures as those litigants who retain counsel. They are not to be accorded greater rights and must accept the results of their own mistakes and errors." *Heller v. Ohio Dept. of Jobs & Family Servs.*, 2010-Ohio-517, ¶ 18 (8th Dist.), quoting *Meyers v. First Natl. Bank of Cincinnati*, 3 Ohio App.3d 209, 210 (1st Dist. 1981). Thus, we presume Ruby had knowledge of the law, legal procedures, and appellate process regarding her burden of demonstrating error on appeal.

A. Civ.R. 12(B)(6) Motion

{¶ 16} In her first and fourth assignments of error, Ruby contends that the trial court improperly dismissed her complaint pursuant to Brian and Lisa's Civ.R. 12(B)(6) motion. We disagree.

1. Standard of Review

{¶ 17} A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim tests the sufficiency of a complaint. *Assn. for Defense of Washington Local School Dist. v. Kiger*, 42 Ohio St.3d 116 (1989). A Civ.R. 12(B)(6) dismissal of a complaint for failure to state a claim upon which relief can be granted is appropriate if, after presuming the truth of all factual allegations of the complaint and making all reasonable inferences in a nonmoving party's favor, it appears beyond doubt that the nonmoving party could prove no set of facts entitling it to the requested relief. *Rosen v. Celebrezze*, 2008-Ohio-853, ¶ 13. In considering a Civ.R. 12(B)(6) motion to dismiss, "[t]he factual allegations of the complaint and items properly incorporated therein must be accepted as true." *Vail v. Plain Dealer Publishing Co.*, 1995-Ohio-187, ¶ 5, citing *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, (1988).

{¶ 18} On appeal, we review a trial court's decision regarding a Civ.R. 12(B)(6) motion de novo. *Perrysburg Twp. v. Rossford*, 2004-Ohio-4362. In our de novo review, this court undertakes an independent examination of Brian and Lisa's motion to dismiss and affords no deference to the trial court's determination. *Tedeschi v. Atrium Ctrs., L.L.C.*, 2012-Ohio-2929, ¶ 16 (8th Dist.), citing *Gilchrist v.*

Gonsor, 2007-Ohio-3903 (8th Dist.). We note that Brian and Lisa's Civ.R. 12(B)(6) motion to dismiss related only to the negligent-entrustment claim alleged against them and did not correspond with any allegations against American Family.

2. Legal Analysis

{¶ 19} Negligent entrustment was the sole cause of action asserted against Brian and Lisa.[2] Brian and Lisa premised their Civ.R. 12(B)(6) motion on the fact that they did not hold title to the Ford Mustang and, thus, could not be liable under negligent entrustment. Ruby contended that negligent entrustment relied upon permission and control, not ownership of the vehicle, which Brian and Lisa exhibited by insuring the Ford Mustang under their car insurance policy thereby facilitating Bradley's access to the vehicle. Any additional arguments Ruby presented for the first time on appeal are not considered in our review. *State v. Herrington*, 2018-Ohio-3049, ¶ 15 (8th Dist.).

{¶ 20} The Ohio Supreme Court identified the following elements necessary to establish negligent entrustment:

> In an action against the owner of a motor vehicle for injury arising from its entrustment for operation, the burden is upon the plaintiff to establish that the motor vehicle was driven with the permission and authority of the owner; that the entrustee was in fact an incompetent driver; and that the owner knew at the time of the entrustment that the entrustee had no driver's license, or that he was incompetent or unqualified to operate the vehicle, or had knowledge of such facts and

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[2] Ruby's amended complaint erroneously identifies punitive damages as a separate cause of action. "'Punitive damages are awarded as punishment for causing compensable harm and as a deterrent against similar action in the future. No civil cause of action in this state may be maintained simply for punitive damages.'" *Niskanen v. Giant Eagle, Inc.*, 2009-Ohio-3626, ¶ 13, quoting *Bishop v. Grdina*, 20 Ohio St.3d 26, 28 (1985), *superseded by rule on other grounds*.

> circumstances as would imply knowledge on the part of the owner of such incompetency.

Gulla v. Strauss, 154 Ohio St. 193 (1950), paragraph five of the syllabus.

{¶ 21} Ruby argues that the first element — that the Ford Mustang was driven with the permission and authority of the owner — can be based upon possession and control of the vehicle rather than ownership. Ruby further argues that possession and control were shown by Brian and Lisa's payment of the Ford Mustang's insurance premiums. Ruby stated in her amended complaint that Bradley was the titled owner of the Ford Mustang.

{¶ 22} Ruby's argument appears to be premised on dicta in *Motorists Ins. Co. v. Sokol*, 1983 Ohio App. LEXIS 12943 (8th Dist. Ap. 7, 1983), that states an individual may be liable for negligent entrustment even if he or she does not own the vehicle that was involved in the accident. *Sokol* does not address whether insurance payments demonstrate permission and authority to use a vehicle, and we decline to make that determination. We find that the trial court's dismissal of the negligent-entrustment cause of action was correct because Brian and Lisa were not the owners of the Ford Mustang and Ruby offers no case law in support of her claim that payment of the insurance premiums constitutes possession and control sufficient to establish negligent entrustment.

{¶ 23} Additionally, the court's dismissal of the negligent-entrustment claim renders Ruby's attempt to recover punitive damages moot. *Moskovitz v. Mt. Sinai Medical Ctr.*, 69 Ohio St.3d 638, 650 (1994) (*overruled on other grounds*)

(“[P]unitive damages are awarded as a mere incident of the cause of action in which they are sought” and a “compensable harm stemming from a cognizable cause of action must be shown to exist before punitive damages can be considered.”).

{¶ 24} For the foregoing reasons, we overrule Ruby’s first and fourth assignments of error.

B. Motion for Summary Judgment

1. Standard of Review

{¶ 25} Before a trial court grants a motion for summary judgment, pursuant to Civ.R. 56(C), the court must determine that

> (1) [n]o 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 party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977).

{¶ 26} On a summary judgment motion, the moving party’s initial burden is to identify specific facts in the record that demonstrate its entitlement to summary judgment. *Dresher v. Burt*, 1996-Ohio-107, ¶ 17. If the moving party does not satisfy this burden, summary judgment is not appropriate. If the moving party meets the burden, the nonmoving party has a reciprocal burden to point to evidence of specific facts in the record that demonstrate the existence of a genuine issue of material fact for trial. *Id.* Where the nonmoving party fails to meet this burden, summary judgment is appropriate. *Id.* “[A]ll evidence submitted upon a motion for summary judgment [must] be construed most strongly in favor of the party against whom the motion is made." *Morris v. First Natl. Bank & Trust Co.*, 21 Ohio St.2d 25 (1970), paragraph two of the syllabus.

{¶ 27} An appellate court applies a de novo standard when reviewing a trial court's decision that granted summary judgment. *Bayview Loan Servicing, L.L.C. v. St. Cyr*, 2017-Ohio-2758, ¶ 11 (8th Dist.).

2. Legal Analysis

{¶ 28} Ruby's second assignment of error argues the existence of genuine issues of material fact regarding coverage under the insurance policy, interpretation of paragraph eight of the insurance policy, and Brian and Lisa's negligent entrustment.[3] In the third assignment of error, Ruby contends that summary judgment was inappropriate because the insurance policy language was ambiguous and should have been construed against American Family.

{¶ 29} American Family argued in its motion for summary judgment that Ruby is not a third-party beneficiary of Brian and Lisa's insurance policy and may not sue the insurer under that theory. American Family also argued that R.C. 3929.06 prohibits a direct action against a tortfeasor's insurance company unless the judgment against the insured tortfeasor remains unpaid for 30 days or longer. Further, American Family contended that Ohio law does not permit a third-party claimant to sue an insurer for bad faith or to file a declaratory-judgment action

[3] Allegations of negligent entrustment were resolved with the grant of Brian and Lisa's Civ.R. 12(B)(6) motion.

seeking a determination of the rights and obligations under an insurance policy. We find that the trial court's order granting American Family's motion for summary judgment was not in error.

{¶ 30} This court previously found that

> [a]s a general practice when an automobile accident results in personal injury the injured party will seek compensation from the person he believes is at fault. Assuming the alleged wrongdoer has liability insurance, by the terms of the normal policy he would be required to give the insurer notice of the claim against him and the insurer would then have a duty to settle or defend against the claim. In attempting to negotiate a settlement, and in deciding whether to settle, the insurance company owes a duty to its insured to exercise good faith. *Wasserman v. Buckeye Union Casualty Co.* (1972), 32 Ohio St. 2d 69.

Chitlik v. Allstate Ins. Co., 34 Ohio App.2d 193, 195 (8th Dist. 1973). The insurance company executes the insurance policy with the intention of benefiting the insured, not someone injured by their insured. *Chitlik* at 197.

{¶ 31} A standard liability insurance policy is not a contract for the benefit of a third person, such as a party like Ruby, who is allegedly injured by an insured's actions. *Id.* An individual seeking a personal injury claim must first file a lawsuit against the alleged tortfeasor, "and if the facts are found as alleged, [the insured tortfeasor] will be primarily liable." *Chitlik* at 197. Only after the injured party obtains a judgment against the insured may he or she potentially proceed on a lawsuit against the insurer. R.C. 3929.06; *Chitlik*, paragraph two of the syllabus. Similarly, R.C. 3929.06 prohibits a direct action against a tortfeasor's insurance company unless a judgment against the insured tortfeasor remains unpaid for 30 days. Ruby had to file her negligence claim against the tortfeasor, Bradley, and obtain a judgment before she could pursue American Family directly.

{¶ 32} Ruby's allegation of bad faith argued that American Family was obligated to provide coverage for Bradley's actions, and her breach-of-contract claim argued that American Family breached its duties when it denied coverage "without [performing a] reasonable investigation, failing to apply policy terms fairly, and prioritizing premiums over public safety." Amended complaint, para. 14.[4] However, under Ohio law, a third-party claimant cannot directly sue an insurer for bad faith. *Siemientkowski v. State Farm Ins. Co.*, 2005-Ohio-4295, ¶ 20 (8th Dist.), citing *Pasipanki v. Morton*, 61 Ohio App.3d 184, 185 (9th Dist. 1990). "The duty to act in good faith runs only from the insurer to its own insured." *Pasipanki*. An insurance company has a duty to its insured to negotiate in good faith with an individual injured by its insured, but the insurance company has no similar, independent duty to the injured party. *Achor v. Clinton Cty. Bd. of Mental Retardation & Dev. Disabilities*, 1986 Ohio App. LEXIS 7000 (10th Dist. June 5, 1986). Accordingly, Ruby, as a third-party claimant, could not recover from American Family on her bad-faith or breach-of-contract claims.

{¶ 33} Further, Ohio law does not support Ruby's declaratory-judgment action against American Family. R.C. 2721.02(B) provides as follows:

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[4] American Family's motion for summary judgment addressed Ruby's breach-of-contract allegation as a bad faith claim. Even if the breach-of-contract claim was argued as a negligence claim, it would have been properly dismissed under summary judgment for the same reasons presented in the preceding paragraphs. *See Chitlik*.

> A plaintiff who is not an insured under a particular policy of liability insurance may not commence against the insurer that issued the policy an action or proceeding under this chapter that seeks a declaratory judgment or decree as to whether the policy's coverage provisions extend to an injury, death, or loss to person or property that a particular insured under the policy allegedly tortiously caused the plaintiff to sustain or caused another person for whom the plaintiff is a legal representative to sustain, until a court of record enters in a distinct civil action for damages between the plaintiff and that insured as a tortfeasor a final judgment awarding the plaintiff damages for the injury, death, or loss to person or property involved.

In other words, a plaintiff not insured under a specific liability insurance policy cannot initiate a declaratory-judgment action against the insurer alleging that the insurance company's insured tortiously caused the plaintiff to sustain injuries before a final judgment is entered between the plaintiff and the insured, awarding the plaintiff damages for the alleged injuries. Ruby is not insured by American Family, nor has she obtained a final judgment against Bradley for her alleged injuries stemming from the motor vehicle accident. Pursuant to R.C. 2721.02(B), Ruby was precluded from filing a declaratory-judgment action against American Family.

{¶ 34} For the foregoing reasons, Ohio law prohibits Ruby's amended complaint against American Family. The trial court did not err when it found no genuine issues as to any material fact remained to be litigated and American Family was entitled to judgment as a matter of law. The trial court did not err when it did not address the merits of Ruby's arguments, and, thus, we find Ruby's second and third assignments of error are overruled.

C. Damages Claim

{¶ 35} In her fifth assignment of error, Ruby argues that the trial court erred when it dismissed her independent claims for "direct out-of-pocket economic losses," "substantial lost time and opportunity costs exceeding 2,500 hours," "emotional distress and disruption to her normal life," and declaratory relief. Ruby contends that these causes of action are not dependent upon Nicholas's bodily injury claims and it was error for the court not to assess these damages prior to dismissing the case. Ruby further contends that her "emotional distress claim" is meritorious pursuant to *Paugh v. Hanks*, 6 Ohio St.3d 72 (1983). Lastly, Ruby argues that she "has standing to pursue declaratory relief regarding [American Family's] coverage obligations." Appellant's brief, section V. We are unpersuaded by Ruby's arguments.

{¶ 36} Ruby's lack of standing to pursue declaratory relief from American Family was addressed in detail above when we discussed Ruby's second and third assignments of error and found that the trial court did not err when it granted American Family's motion for summary judgment. This argument lacks merit.

{¶ 37} Ruby's "independent claims" represent her alleged damages rather than independent causes of action. In her amended complaint, Ruby requests compensatory damages, emotional distress damages, punitive damages, costs, interest, legal fees, and any other relief the court deemed just and proper. Even though Ruby listed punitive damages as a separate count, we have already explained that punitive damages are incidental to the cause of action from which they are sought. *Moskovitz*, 69 Ohio St.3d at 650. Similarly, following the dismissal of

Ruby's negligent-entrustment claim pursuant to Civ.R. 12(B)(6) and her remaining claims under the court's grant of American Family's motion for summary judgment, no cause of action remained upon which Ruby could recover damages. *See FDIC v. Schulz*, 1986 Ohio App. LEXIS 5820, *9 (8th Dist. Mar. 6, 1986) ("When the court below dismissed AFS's counterclaim, it necessarily extinguished any chance for AFS to recover damages in the case at bar.").

{¶ 38} For the foregoing reasons, Ruby's fifth assignment of error is overruled.

D. Second Amended Complaint

{¶ 39} In her sixth assignment of error, Ruby argues that the trial court erred when it denied her motion for leave to file a second amended complaint.

{¶ 40} We review a trial court's decision to grant or deny a motion to amend a pleading under Civ.R. 15 for an abuse of discretion. *Cold Harbor Bldg. Co. v. Allied Restoration & Caulking*, 2015-Ohio-2863, ¶ 14 (8th Dist.), citing *State ex rel. Askew v. Goldhart*, 75 Ohio St.3d 608, 610 (1996). The term abuse of discretion "implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). An abuse of discretion occurs when a court exercises its judgment in an unwarranted way regarding a matter over which it has discretionary authority. *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35.

{¶ 41} App.R. 16(A)(7) requires an appellant to include in his or her appellate brief "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." "An appellate court may disregard an assignment of error pursuant to App.R. 12(A)(2) if an appellant fails to cite to any legal authority in support of an argument as required by App.R. 16(A)(7)." *Strauss v. Strauss*, 2011-Ohio-3831, ¶ 72 (8th Dist.), citing *State v. Martin*, 1999 Ohio App. LEXIS 3266 (12th Dist. July 12, 1999); *Siemientkowski*, 2005-Ohio-4295 (8th Dist.).

{¶ 42} Ruby cites Civ.R. 15(A) for the general proposition that courts will freely grant a motion to amend a pleading when justice so requires and generally references Civ.R. 19 and 19.1 in her reply brief. Appellant's brief, section VI, appellant's reply brief, section III. However, Ruby references no case law nor provides any legal analysis to establish how the trial court abused its discretion when it denied her leave to file a second amended complaint. "'If an argument exists that can support [the] assigned error, it is not this court's duty to root it out.'" *Strauss*, quoting *Cardone v. Cardone*, 1998 Ohio App. LEXIS 2028 (9th Dist. May 6, 1998).

{¶ 43} Based upon Ruby's failure to comply with App.R. 16, we overrule her sixth assignment of error.

E. Discovery Claims

{¶ 44} In her seventh assignment of error, Ruby contends that the trial court erred when it issued the December 31, 2025 judgment entry that collectively determined the outcome of Brian and Lisa's Civ.R. 12(B)(6) motion, American Family's summary-judgment motion, and Ruby's outstanding discovery requests.

{¶ 45} A trial court's decisions on discovery matters is subject to an abuse-of-discretion standard. *N. Star Med. Research, LLC v. Kozlovich*, 2025-Ohio-5410, ¶ 25 (8th Dist.), citing *Mauzy v. Kelly Servs.*, 1996-Ohio-265, ¶ 51.

{¶ 46} "'The completion of discovery is not relevant to the granting of a motion to dismiss[,]' because the trial court's consideration of a motion to dismiss under Civ.R. 12(B)(6) is limited to the allegations and evidence contained in the complaint and precludes facts outside of the complaint.'" *King v. Divoky*, 2021-Ohio-1712, ¶ 21 (9th Dist.), quoting *Lindow v. N. Royalton*, 104 Ohio App.3d 152, 159 (8th Dist. 1995). Further, nothing in Civ.R. 56(A) requires the completion of discovery; the rule permits a litigant to move for summary judgment "at any time after the expiration of the time permitted under [the civil] rules for a responsive motion or pleading by the adverse party, or after service of a motion for summary judgment by the adverse party."

{¶ 47} The trial court's grant of Brian and Lisa's Civ.R. 12(B)(6) motion and American Family's motion for summary judgment dismissed the case in its entirety. Any outstanding discovery motions were irrelevant to the court's rulings on those motions, and we do not find that the trial court's combined judgment entry amounted to an abuse of discretion. Thus, we overrule Ruby's seventh assignment of error.

{¶ 48} Judgment affirmed.

It is ordered that appellees recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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TIMOTHY W. CLARY, JUDGE

EILEEN T. GALLAGHER, P.J., and
MICHAEL JOHN RYAN, J., CONCUR