

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

MARK W. REITZ, Administrator of the Estate of Carey J. Reitz, et al.

Appellants

v.

ZURICH AMERICAN INSURANCE COMPANY, et al.

C.A. No. 21646

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2001-10-5322

Appellees

DECISION AND JOURNAL ENTRY

Dated: March 3, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BAIRD, Presiding Judge.

{¶1} Appellants, Carol Reitz and William Reitz, appeal from a judgment of the Summit County Court of Common Pleas, which granted summary judgment

in favor of the Appellees, Northern Insurance Company (“Northern”); and General Star National Insurance Company (“General Star”).¹ We affirm.

I.

{¶2} William and Carol are the parents of Carey Reitz, deceased. On June 16, 1990, Carey was killed when a vehicle driven by Leon Howlett collided head-on into the vehicle she was driving. Howlett was uninsured at the time of the accident. William, the former administrator of Carey’s estate, obtained a \$2,500,000 wrongful death judgment against Howlett. This award was apportioned among William, Carol, and Carey’s brother, Mark Reitz, but was, in the end, unrecoverable.

{¶3} At the time of the accident, William was employed by Myers Industries, Inc. (“Myers”). Myers maintained a business auto policy issued by Northern and an umbrella policy issued by General Star. On October 3, 2001, the Appellants filed a claim with the Summit County Court of Common Pleas, seeking, among other things not relevant to this appeal, declarations that they are entitled to uninsured motorist (“UM”) coverage under the two policies issued to Myers, pursuant to the Ohio Supreme Court’s decision in *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660.

¹ Zurich American Insurance Company, an affiliate of Northern, has also been designated as an appellee in this action. Mark Reitz was initially designated as an appellant, both personally and in his capacity as administrator of Carey’s estate. Mark voluntarily dismissed his appeal against the remaining defendants.

{¶4} Northern, General Star, and the Appellants each filed motions for summary judgment. On June 23, 2003, the trial court granted the motions of Northern and General Star. First, the court determined that the Northern policy's definition of the insured is not ambiguous, and therefore not open to the interpretation that the Appellants are included among the insured. Next, the court determined that the Appellants are not insured by a policy issued to Myers by Home Insurance Company of Illinois ("Home").²

{¶5} The court then turned to the General Star umbrella policy. The umbrella policy lists the policies issued by Home and Northern as its underlying policies. Having determined that the Appellants are not insured by these two underlying policies, the court concluded that the Appellants are not entitled to coverage under the umbrella policy.

{¶6} Appellants timely appealed, asserting two assignments of error, which have been consolidated for ease of review.

II.

First Assignment of Error

“THE TRIAL COURT ERRED AS A MATTER OF LAW BY GRANTING SUMMARY JUDGMENT IN FAVOR OF NORTHERN INSURANCE COMPANY.”

We construe this dismissal as ending Mark's appeal in both his personal capacity and in his capacity as administrator of Carey's estate.

² Home Insurance Company of Illinois was initially designated as an appellee in this action. The appeal against it was later dismissed pursuant to a New Hampshire Order of Liquidation declaring Home Insurance insolvent and enjoining all claims against it.

Second Assignment of Error

“THE TRIAL COURT ERRED AS A MATTER OF LAW BY GRANTING SUMMARY JUDGMENT IN FAVOR OF GENERAL STAR INSURANCE COMPANY.”

{¶7} In their two assignments of error, Appellants challenge the trial court’s grant of summary judgment to Northern and General Star. We affirm the decision of the trial court, albeit for reasons other than those relied upon by the trial court. See *Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96.

{¶8} Appellants’ claims of coverage under the policies issued by Northern and General Star are premised upon the reasoning of *Scott Pontzer v. Liberty Mutual Fire Ins. Co.* (1999), 85 Ohio St.3d 660. On November 5, 2003, after the trial court issued its judgment in this case, the Ohio Supreme Court significantly limited its holding in *Scott-Pontzer*. See *Westfield Ins. Co. v. Galatis* (2003), 100 Ohio St.3d 216, 2003-Ohio-5849. In *Galatis*, at paragraph two of the syllabus, the Court held that:

“Absent specific language to the contrary, a policy of insurance that names a corporation as an insured for uninsured or underinsured motorist coverage covers a loss sustained by an employee of the corporation only if the loss occurs within the course and scope of employment.”

{¶9} The Court further held that where a policy designates a corporation as a named insured, the designation of “family members” of the named insured as other insureds does not extend coverage to a family member of an employee of the corporation, unless that employee is also a named insured, overruling *Ezawa v.*

Yasuda Fire & Marine Ins. Co. of Am. (1999), 86 Ohio St.3d 557. *Galatis*, 100 Ohio St.3d, at paragraph three of the syllabus.

{¶10} William is not a named insured on either the Northern policy or the General Star policy issued to his employer, Myers, Inc. Therefore, William must, at the very least, have sustained his losses during the course and scope of his employment with Myers in order to qualify as an insured under those policies. It is undisputed that the accident in which William's daughter Carey was killed was unrelated to William's employment with Myers. Because he did not sustain his losses during the course and scope of his employment with Myers, William is not insured by the Northern and General Star policies. Moreover, because William is not a named insured on either policy, his family members, including Carol, are not insured by either policy. Appellants' two assignments of error are overruled.

III.

{¶11} Appellants' two assignments of error are overruled, and the judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

WILLIAM R. BAIRD
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

HOWARD E. MENTZER, JOHN W. MYGRANT and ERIK M. JONES, Attorneys at Law, I Cascade Plaza, 20th Floor, Akron, Ohio 44308, for Appellants William L. Reitz and Carol L. Reitz.

ROBERT P. RUTTER, Attorney at Law, I Summit Office Park, Suite 650, 4700 Rockside Road, Cleveland, Ohio 44131, for Appellants Mark W. Reitz and Mark W. Reitz, Administrator.

MICHAEL F. SCHMITZ, Attorney at Law, 1400 Midland Building, 101 Prospect Avenue West, Cleveland, Ohio 44115-1093, for Appellee General Star National Insurance Company.

ALISA LABUT WRIGHT and DONALD P. SCREEN, Attorneys at Law, 222 S. Main Street, Suite 400, Akron, Ohio 44308, for Appellee Northern Insurance Company of New York.

JOHN G. FARNAN, Attorney at Law, 2500 Terminal Tower, 50 Public Square, Cleveland, Ohio 44113-2241, for Appellee Home Insurance Company of Illinois.