

[Cite as *Hofmeister v. Van Meter*, 2004-Ohio-2634.]

STATE OF OHIO, COLUMBIANA COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

VICKI HOFMEISTER, ADMR.,)	
OF THE ESTATE OF RONALD)	
DANIEL HOFMEISTER, et al.,)	
)	CASE NO. 03 CO 1
PLAINTIFFS-APPELLEES,)	
)	
- VS -)	OPINION
)	
ANNA VAN METER, et al,)	
)	
DEFENDANTS)	
)	
- AND -)	
)	
TRAVELERS INSURANCE COMPANY,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Case Nos. 2000CV518, 2001CV452.

JUDGMENT: Reversed. Judgment Granted to
Travelers Insurance Company.

JUDGES:

Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Joseph J. Vukovich

Dated: May 21, 2004

APPEARANCES:

For Plaintiffs-Appellees:

Attorney Ian Robinson
600 East State Street
P.O. Box 590
Salem, OH 44460
Atty. for Vicki Hofmeister, Admr.

Attorney Steven J. Brian
North Pointe Centre
5770 Dressler Road, N.W.
Suite 101
North Canton, OH 44720
Attorney for David and Billie Whitaker

For Defendants-Appellants:

Attorney Daniel A. Richards
Weston, Hurd, Fallon, Paisley &
Howley, L.L.P.
2500 Terminal Tower
50 Public Square
Cleveland, OH 44113
Attorney for Travelers Insurance Co.

Attorney Brian T. Winchester
McNeal, Schick, Archibald & Birco Co.,
Van Sweringen Arcade, Suite 250
123 Prospect Avenue, West
Cleveland, OH 44115
Atty. for Auto Owners Insurance Co.

DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, the parties' briefs, and their supplemental authority. Defendant-Appellant, Travelers Insurance Company, appeals the decision of the Columbiana County Court of Common Pleas which granted summary judgment in favor of Plaintiffs-Appellees, David and Billie Whitaker. The Whitakers' claims against Travelers are based on

Scott-Pontzer v. Liberty Mut. Fire Ins. Co. (1999), 85 Ohio St.3d 660, which was recently limited by the Ohio Supreme Court in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849. Because we conclude that the Court's decision in *Galatis* excludes the Parks from coverage, the decision of the trial court is reversed and judgment is granted to Travelers.

Facts

{¶2} David Whitaker was driving his car when another car, driven by Jeffery Casto and owned by Anna Van Meter, struck and injured him. At the time of the accident, David was employed by Goodyear but was not acting in the scope or course of his employment. At the time of the accident, Goodyear had a commercial automobile insurance policy with Travelers. Subsequently, the Whitakers filed a complaint seeking underinsured motorist benefits from Travelers pursuant to *Scott-Pontzer* and *Ezawa v. Yasuda Fire & Marine Ins. Co. of Am.* (1999), 86 Ohio St.3d 557. Each party moved for summary judgment. The trial court found the Whitakers were insureds under the Travelers' policy and granted their motion for summary judgment. Travelers timely appealed that judgment. This court remanded the case to the trial court so it could make a finding in accordance with Civ.R. 54(B). The trial court did so. Afterward, Travelers filed an amended notice of appeal.

Westfield v. Galatis

{¶3} The Whitakers' claims for underinsured motorist benefits from Travelers are based on the Ohio Supreme Court's decision in *Scott-Pontzer* and *Ezawa*. In *Scott-Pontzer*, the court held that a person can recover underinsured motorist benefits from her employer's automobile insurance carrier if the employer is the named insured and a corporation and the commercial automobile liability policy defines an insured as "you". The court held that the "you" in the insurance policy was ambiguous, so it read

the insurance policy against the insurance company and held that a corporation's employees are insureds under these types of insurance policies. *Id.* at 664. *Ezawa* extended this rationale to an employee's family members.

{¶4} The Ohio Supreme Court recently limited the application of *Scott-Pontzer* and overruled *Ezawa* in *Galatis*. *Galatis* at paragraphs two and three of the syllabus.

{¶5} “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. (*King v. Nationwide Ins. Co.* [1988], 35 Ohio St.3d 208, 519 N.E.2d 1380, applied; *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* [1999], 85 Ohio St.3d 660, 710 N.E.2d 1116, limited.)

{¶6} “Where a policy of insurance designates a corporation as a named insured, the designation of ‘family members’ of the named insured as other insureds does not extend insurance coverage to a family member of an employee of the corporation, unless that employee is also a named insured. (*Ezawa v. Yasuda Fire & Marine Ins. Co. of Am.* [1999], 86 Ohio St.3d 557, 715 N.E.2d 1142, overruled.)” *Id.*

{¶7} In *Parks v. Rice*, 7th Dist. Nos. 02 CA 197, and 02 CA 198, 2004-Ohio-2477, we noted that the Ohio Supreme Court has applied *Galatis* retrospectively and determined that we must do so as well.

{¶8} *Galatis* states that an employee is not an “insured” for the purposes of uninsured/underinsured motorist coverage if the employee is not within the scope of her employment when she is injured unless the policy contains specific language to the contrary. As stated above, David was conducting personal business outside the

scope of his employment when he was injured. And the insurance contracts do not contain specific language extending coverage to the Whitakers. Accordingly, we must conclude that the Whitakers are not insureds under the terms of that contract and have no claim against Travelers. The judgment of the trial court is reversed and judgment is granted to Travelers.

Waite, P.J., and Vukovich, J., concur.