

[Cite as *Pollard v. St. Paul Mercury Ins. Co.*, 2004-Ohio-4419.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Mark Pollard, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 04AP-106
 : (C.P.C. No. 03CVH01-828)
 St. Paul Mercury Insurance Company, : (ACCELERATED CALENDAR)
 :
 Defendant-Appellee. :

O P I N I O N

Rendered on August 24, 2004

The Brunner Firm Co., L.P.A., Rick L. Brunner, Michael S. Kolman and Rebecca L. Egelhoff, for appellant.

Gallagher, Sharp, Fulton & Norman, Larry C. Greathouse, Timothy J. Fitzgerald and Colleen A. Mountcastle, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

WATSON, J.

{¶1} Plaintiff-appellant, Mark Pollard (hereinafter "appellant"), appeals from the decision and entry of the Franklin County Court of Common Pleas granting summary judgment in favor of defendant-appellee, St. Paul Mercury Insurance Company (hereinafter "appellee"). For the reasons which follow, we affirm the judgment of the trial court.

{¶2} On June 1, 2002, Rosa Robinson (hereinafter "Robinson"), operated a vehicle and struck appellant while he was walking east across Stelzer Road, Columbus, Ohio. Robinson was an underinsured motorist.

{¶3} At the time of the accident, Continental Office Furniture (hereinafter "Continental") employed appellant. However, appellant was not in the course and scope of his employment when Robinson struck him.

{¶4} Appellant insured Continental under a package policy, which included commercial auto coverage, commercial general liability coverage, and umbrella excess liability protection, for the period January 1, 2002 to January 1, 2003.

{¶5} On January 23, 2003, appellant filed an underinsured motorist claim based on *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 86 Ohio St.3d 660. The trial court subsequently granted summary judgment in favor of appellee against appellant.

{¶6} Appellant timely appeals and asserts the following assignments of error:

[1.] The Trial Court Below Erred To The Prejudice Of The Plaintiff-Appellant By Holding That Westfield Ins. Cos. v. Galatis, 100 Ohio St.3d 216, 797 N.E.2d 1256 (2003), Applied Retroactively To This Case.

[2.] The Trial Court Below Erred To The Prejudice Of The Plaintiff-Appellant By Failing To Hold That He Was Entitled By Scott-Pontzer v. Liberty Mut. Ins. Co., 85 Ohio St.3d 660, 710 N.E.2d 1116 (1999), Or Its Predecessors To Underinsured/Uninsured Motorist Coverage From The Automobile Insurance Policy That Defendant-Appellee Issued To His Employer.

[3.] The Trial Court Below Erred To The Prejudice Of The Plaintiff-Appellant By Failing To Hold That He Was Entitled By Linko v. Indemnity Ins. Co. Of N. Am., 90 Ohio St.3d 445, 739 N.E.2d 338 (2000), To Underinsured/Uninsured Motorist Coverage From the Automobile Insurance Policy That Defendant-Appellee Issued To His Employer.

{¶7} After this matter was filed with the trial court, but prior to the trial court's summary judgment decision, the Supreme Court of Ohio decided *Westfield Ins. Co. v. Galatis* (2003), 100 Ohio St.3d 216. The *Galatis*, decision limited the holding of *Scott-Pontzer*, stating "[a]bsent 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." *Galatis*, paragraph two of the syllabus.

{¶8} As previously stated, appellant was not in the course and scope of his employment at the time of the accident. Accordingly, pursuant to *Galatis*, supra, he is not entitled to coverage under Continental's insurance policies.

{¶9} Moreover, appellant's argument that *Galatis*, cannot be applied retrospectively to this case is misplaced. The Supreme Court of Ohio and this court previously applied *Galatis*, supra, retrospectively. *In re Uninsured & Underinsured Motorist Coverage Cases* (2003), 100 Ohio St.3d 302, 2003-Ohio-5888; *Reinhart v. Mayes*, Franklin App. No. 03AP-707, 2004-Ohio-2527; *Adams v. Osterman*, Franklin App. No. 03AP-547, 2004-Ohio-1412. Therefore, the trial court did not err in applying *Galatis* to this matter and granting summary judgment in favor of appellee.

{¶10} Accordingly, appellant's first, second and third assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

PETREE and KLATT, JJ., concur.
