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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA09-585

RICHARD E. WILLIAMS & KATHY WILLIAMS APPELLANTS V. SOUTHERN FARM BUREAU CASUALTY INSURANCE CO. APPELLEE	**Opinion Delivered** December 9, 2009 APPEAL FROM THE MISSISSIPPI COUNTY CIRCUIT COURT, [NO. CV-08-13] HONORABLE VICTOR LAMONT HILL, JUDGE REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

Richard E. Williams and Kathy Williams, individually and as the parents and next friend of Shante Williams (the Williamses), appeal from a declaratory judgment in favor of appellee Southern Farm Bureau Insurance Company (Southern Farm Bureau). The issue was whether Shante was covered under the uninsured motorist provision of her parents' automobile insurance policy when the Passeo moped that she was riding was struck by an automobile driven by an uninsured driver. On appeal, the Williamses argue that the trial court erred in interpreting their insurance policy. We reverse and remand.

In its order, the trial court found that Shante was a "covered person" under the policy, and that the driver of the vehicle that struck her was an "uninsured motorist." It nonetheless found that no coverage was due under the insurance policy. It reasoned:

[A] vital condition precedent to the [Williamses] recovering from [Southern Farm

> Bureau] under the policy has not been met. Before [Southern Farm Bureau] has any obligation to pay, the incident giving rise to the injury or loss must involve, not only an insured person, it must also involve one of the vehicles that the [Williamses] contracted to insure.

Southern Farm Bureau concedes that this finding was in error, because "there is no such requirement in Farm Bureau's policy and the court erred in that respect." Nonetheless, it urges us to affirm because the trial court reached the right result, asserting grounds that it pled and argued to the trial court. We must decline.

Although the Williamses attempt to cast this case as one where we review the insurance policy and decide whether it is ambiguous, we believe that this argument misses the mark. The policy is clear that uninsured motorist coverage under the policy does not apply to any "auto owned by or furnished for the regular use of anyone residing in your household unless the auto is insured for these coverages under the policy." Further, the policy expressly defines "autos" as "motor vehicle, motorcycle, semi-trailer, or trailer, designed primarily to be used on public roads." The only question, therefore, is whether the conveyance that Shante was riding at the time she was struck by the uninsured motorist was an "auto" under the terms of the policy. The trial court did not make a finding on this issue.

It is settled law that we review declaratory-judgment proceedings in the same manner as any other judgment, and if there is any substantial evidence to support the finding upon which the judgment is based, it will be affirmed. *Hoffman v. Gregory*, 361 Ark. 73, 204 S.W.3d 541 (2005). The key word in the sentence outlining the scope of our review is "finding," because it is also well settled that it is not within the purview of appellate courts

to make findings of fact. *Ward v. Williams*, 354 Ark. 168, 118 S.W.3d 513 (2003). Consequently, we remand to the trial court to determine whether the conveyance that Shante was riding at the time of her mishap is an "auto" as defined under the policy and, if not, for further appropriate proceedings.

Reversed and remanded.

VAUGHT, C.J., and ROBBINS, J., agree.