

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-000192-MR

SHARON MURPHY

APPELLANT

v.

APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE JEFFREY T. BURDETTE, JUDGE  
ACTION NO. 11-CI-00597

TRAVELERS CASUALTY AND SURETY COMPANY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: MOORE, NICKELL AND STUMBO, JUDGES.

STUMBO, JUDGE: Sharon Murphy appeals from an order of the Pulaski Circuit Court granting a motion for summary judgment in favor of Travelers Casualty and Surety Company. We find no error and affirm.

On May 19, 2011, Murphy filed a claim against Travelers. She alleged that Travelers violated Kentucky's Unfair Claim Settlement Practices Act (UCSPA) by failing to respond to correspondence from her attorney regarding

damage to her property and by failing to pay her claim in a timely manner.

Murphy claimed that the damage to her property was a result of the blasting activities of Hinkle Contracting Company, LLC. Travelers insured Hinkle from March 31, 2007, to March 31, 2008. Travelers did not insure Hinkle after March 31, 2008.

After some discovery, Murphy admitted that the damage to her property occurred on or about November 8, 2008. This was over seven months after Travelers' policy with Hinkle ended. Travelers moved for summary judgment, arguing that the damage to Murphy's property occurred after the policy had ended; therefore, there can be no violation of the UCSPA. On January 9, 2013, the trial court entered an order granting the motion for summary judgment. This appeal followed.

The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56.03. . . . "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest*, 807 S.W.2d at 480, *citing Paintsville Hospital Co. v. Rose*, 683 S.W.2d 255 (Ky. 1985). Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor. . . ." *Huddleston v. Hughes*, 843 S.W.2d 901, 903 (Ky. App.

1992)[.]

*Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

KRS 304.12-230 states in relevant part that “[i]t is an unfair claims settlement practice for any person to commit or perform any of the following acts or omissions: . . . (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims *arising under insurance policies*[.]”

(Emphasis added.) The courts of this Commonwealth have continually held that absent a contractual obligation, i.e., an insurance policy, there can be no bad faith cause of action and no violation of the UCSPA. *See Davidson v. American Freightways, Inc.*, 25 S.W.3d 94 (Ky. 2000); *Wittmer v. Jones*, 864 S.W.2d 885 (Ky. 1993); *Kentucky Nat. Ins. Co. v. Shaffer*, 155 S.W.3d 738 (Ky. App. 2004). We are bound by those decisions.

In the case at hand, Murphy admits the damage to her property occurred at a time when there was no insurance coverage between Travelers and Hinkle. This is the only material fact relevant to this cause of action. There being no contractual obligation to pay any claim, Murphy cannot, as a matter of law, maintain an action against Travelers for bad faith or for a violation of the UCSPA.

Based on the foregoing, we affirm the order of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Scott M. Webster  
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BRIEF FOR APPELLEE:

Katherine S. Dozier  
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