

appellant was employed by appellee Oglebay Norton Marine Services Co. ("Oglebay"), which held a commercial automobile insurance policy with appellee CNA Insurance Companies ("CNA"). Appellant filed suit against both Oglebay and CNA, claiming that he was an insured under the CNA policy and that the policy therefore provided uninsured/underinsured coverage to him with respect to the death of his sister. Appellees moved for summary judgment, and on July 11, 2001, the trial court granted appellees' motion. The trial court found that the accident did not occur while appellant was driving a covered vehicle and that appellant therefore was not covered at the time of his sister's accident.

{¶6} In reviewing a summary judgment, this court must apply the same standard as the trial court. Lorain Natl. Bank v. Saratoga Apts. (1989), 61 Ohio App.3d 127, 129. Summary judgment will be granted when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶7} Appellant asserts that his damages arose from the use of a covered vehicle and that he is therefore entitled to coverage for his sister's accident and death.

{¶8} Oglebay's policy with CNA provides in relevant part, "The following are 'insureds': (a) You for any covered 'auto.'" Endorsement CA99 33 12 93 states: "The following is added to the LIABILITY COVERAGE WHO IS AN INSURED provision: Any employee of yours is an 'insured' while using a covered 'auto' ***." [Emphasis

added.]

{¶9} Appellant argues at length as to the policy's definition of a covered auto. This court finds that issue irrelevant, however, because it is clear from the language of the policy that appellant was not an insured since he was not using any automobile, covered or otherwise.

{¶10} This court has reviewed the entire record of proceedings before the trial court and, upon consideration thereof and the law, finds that there exists no genuine issue of material fact and, when construing the evidence that was before the trial court most strongly in favor of appellant, reasonable minds can only conclude that appellant was not an insured under his employer's policy at the time of his sister's death and that appellees are entitled to summary judgment as a matter of law. Accordingly, appellant's sole assignment of error is not well-taken.

{¶11} On consideration whereof, the judgment of the Sandusky County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

Richard W. Knepper, J.

Mark L. Pietrykowski, P.J.
CONCUR.

James R. Sherck, J.
CONCURS AND WRITES SEPARATELY.

SHERCK, J., CONCURRING.

{¶12} The named insured on the declaration page of the CNA insurance policy at issue is the Oglebay-Norton Company, a corporation. Throughout the remainder of the policy, the named insured is referred to as "you."

{¶13} Pursuant to Scott-Pontzer v. Liberty Mut. Fire Ins. (1999), 85 Ohio St.3d 660, 666, such an arrangement creates an ambiguity in the terms of the policy which, absent other

{¶14} restrictions, means that "you" thereafter refers to the named insured corporation's employees. Consequently, appellant, as an employee of the corporation, meets the threshold test to be an insured under the policy.

{¶15} The declaration page, however, places a definitional restriction upon who is entitled to UM/UIM coverage under the policy. Referenced under UM/UIM coverage is item number six of the "Business Auto Coverage Form," which limits UM/UIM coverage to,

{¶16} "[o]nly those 'autos' you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage, ***"

{¶17} Pursuant to Scott-Pontzer, the "you" in this provision refers to appellant. Therefore, coverage is limited to only "those 'autos' [appellant] own[s]." There is no evidence in the record that appellant owned the automobile in which his sister was killed. Accordingly, no UM/UIM coverage arose under the policy.