[Cite as *Safe Auto Ins. Co. v. Barnier*, 2014-Ohio-2106.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Safe Auto Insurance Company

Appellee

v.

Courtney Barnier, et al.

Appellants

Court of Appeals No. L-13-1277

Trial Court No. CI0201203500

DECISION AND JUDGMENT

Decided: May 16, 2014

* * * * *

Stuart A. Keller, for appellee.

Rene Mays, pro se, and Leon Jones, pro se.

* * * * *

SINGER, J.

{¶ 1} This case is before the court as an accelerated appeal. Appellants, Rene Mays and Leon Jones, appeal a Lucas County Court of Common Pleas decision denying appellants' motion to vacate a judgment. For the reasons that follow, we affirm.

{¶ 2} On August 11, 2010, appellant Leon Jones was westbound on Airport Highway in Lucas County when the car he was driving was involved in a three-car collision. Appellant Rene Mays was a passenger in Jones' vehicle. Appellants claim injury and damages as the result of the accident.

{¶ 3} On July 26, 2011, appellants sued Courtney Barnier, the driver of one of the other cars in the collision, Brian Brittingham, the owner of the car Barnier was driving, and appellee, Safe Auto Insurance Company, in the Toledo Municipal Court. Appellants alleged that Barnier's negligence was the cause of the accident. Appellee was subsequently dismissed from the suit.

{¶ 4} On May 29, 2012, appellee filed the complaint for a declaratory judgment that underlies this appeal. Appellee sought a declaration that it had no duty to defend or indemnify Courtney Barnier for this accident under the terms of an auto insurance policy it issued to Katelynn Barnier, Courtney Barnier's sister.

{¶ 5} Appellee subsequently moved for and was granted summary judgment; the trial court declared as a matter of law that appellee had no duty to defend or indemnify Courtney Barnier under the terms of the policy issued to Katelynn Barnier.

{¶ 6} Appellants subsequently moved for relief from this judgment pursuant to Civ.R. 60(B). Appellants maintained that the court failed to "consider or fully consider" the evidence before the court on the motion for summary judgment. When the trial court denied the motion for relief from judgment, appellants brought this appeal, pro se. Appellants set forth a single assignment of error:

I. The trial court abused its discretion in denying *inter alia* Appellants' Rule 60(B) motion to vacate judgment entry of April 15, 2013, under the facts and circumstances of this case.

{¶ 7} Appellants contend that the trial court abused its discretion by denying a Civ.R. 60(B) motion under the facts and circumstances of this case.

{¶ 8} To prevail on a Civ.R. 60(B) motion:

> (1) the party [must] ha[ve] a meritorious defense or claim to present if relief is granted; (2) the party [must be] entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion [must be] made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken. *GTE Automatic Elec., Inc. v. ARC Indus., Inc.*, 47 Ohio St.2d 146, 150-51, 351 N.E.2d 113, 116 (1976).

{¶ 9} Because the elements of the *GTE* test are conjunctive, a failure of any single element is fatal. *Strack v. Pelton,* 70 Ohio St.3d 172, 174, 637 N.E.2d 914 (1994). Civ.R. 60(B) is a remedial rule and should be liberally construed. *Babcock Dairy Co., Inc. v. Davis*, 6th Dist. Lucas No. L-83-142, 1983 WL 6910, *2 (Aug. 12, 1983), citing *Blasco v. Mislik*, 69 Ohio St.2d 684, 685, 433 N.E.2d 612 (1982); *Colley v. Bazell*, 64 Ohio St.2d 243, 248, 416 N.E.2d 605 (1980).

{¶ 10} Appellants assert a right to relief from judgment pursuant to Civ.R. 60(B)(1) (mistake, inadvertence, surprise or excusable neglect). They, however, have failed to set forth a meritorious claim or defense. Appellee has issued no insurance policy to Courtney Barnier. It insured Katelynn Barnier, but her policy extends coverage to "insured persons" and "covered vehicles." "Insured persons" included the policyholder, Katelynn Barnier, any relative, or any other person listed on the declarations page of the policy. A "relative" is someone related to the policyholder *and* residing in the same household. The declarations page of the insurance policy did not list Courtney Barnier's name. Additionally, Katelynn Barnier's sworn affidavit stated that Courtney Barnier did not reside in her household.

{¶ 11} A "covered vehicle" is any vehicle listed on the declarations page. The declarations page of the insurance policy did not list the vehicle Courtney Barnier was driving when she was involved in the aforementioned accident.

{¶ 12} Courtney Barnier was not an "insured person," nor was she driving a "covered vehicle," at the time of the accident. On appeal, appellants express their disagreement with both the trial court's consideration of Katelynn Barnier's affidavit and its denial of the motion to vacate. However, appellants do not adequately raise a meritorious defense or claim. Accordingly, appellants failed to satisfy the *GTE* test and appellants' single assignment of error is found not well-taken.

{¶ 13} On consideration, the judgment of the Lucas County Court of Common Pleas is affirmed. It is ordered that appellants pay the court costs of this appeal pursuant to App.R.24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _______________________________ JUDGE

Thomas J. Osowik, J.

James D. Jensen, J. _______________________________ JUDGE
CONCUR.

_______________________________ JUDGE

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