

GILD ET AL., APPELLANTS, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,  
APPELLEE.

[Cite as *Gild v. State Farm Mut. Auto. Ins. Co.* (2000), 88 Ohio St.3d 510.]

*Automobile liability insurance — Uninsured/underinsured motorist coverage — Court of appeals' judgment vacated and cause remanded to trial court.*

(No. 99-2310 — Submitted April 26, 2000 — Decided May 24, 2000.)

APPEAL from the Court of Appeals for Portage County, No. 98-P-0056.

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*The Okey Law Firm, L.P.A., Mark D. Okey and Scott A. Washam, for appellants.*

*Buckingham, Doolittle & Burroughs, L.L.P., and David W. Hilkert, for appellee.*

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The judgment of the court of appeals is vacated, and the cause is remanded to the trial court for further proceedings and consideration, where applicable, of the Supreme Court's decisions in *Wolfe v. Wolfe* (2000), 88 Ohio St.3d 246, 725 N.E.2d 261, and *Moore v. State Auto. Mut. Ins. Co.* (2000), 88 Ohio St.3d 27, 723 N.E.2d 97.

DOUGLAS, RESNICK, F.E. SWEENEY and PFEIFER, JJ., concur.

DOUGLAS, J., concurs separately.

MOYER, C.J., COOK and LUNDBERG STRATTON, JJ., dissent.

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**DOUGLAS, J., concurring.** I concur for the reasons set forth in my concurrence in *Stickney v. State Farm Mut. Auto. Ins. Co.* (2000), 88 Ohio St.3d 504, 727 N.E.2d 1286.

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**LUNDBERG STRATTON, J., dissenting.** I respectfully dissent because I do not agree that *Wolfe v. Wolfe* (2000), 88 Ohio St.3d 246, 725 N.E.2d 261, or *Moore v. State Auto. Mut. Ins. Co.* (2000), 88 Ohio St.3d 27, 723 N.E.2d 97, applies to this case. A remand for application of either one of these cases will result in the

parties and the court below struggling to comply with an order that has no relevance to the issues.

In this case, appellants challenge the constitutionality of Am.Sub.S.B. No. 20 (“S.B. 20”), in particular R.C. 3937.18(A)(2), regarding the amount of setoff, and R.C. 3937.18(H), which limits a loss of consortium claim to the single limit of coverage. The issue of whether the insurance contract constitutes a new contract or a renewal was not raised in the court below. This court will not ordinarily consider a claim of error that was not raised in any way in the appellate court and was not considered or decided by that court. *State v. Williams* (1977), 51 Ohio St.2d 112, 5 O.O.3d 98, 364 N.E.2d 1364; *Toledo v. Reasonover* (1965), 5 Ohio St.2d 22, 34 O.O.2d 13, 213 N.E.2d 179, paragraph two of the syllabus.

However, to the extent that the majority believes that these cases apply, I respectfully dissent for the reasons set forth in the dissenting opinions in *Wolfe v. Wolfe*, 88 Ohio St.3d at 252-255, 725 N.E.2d at 267-269, and *Moore v. State Auto. Mut. Ins. Co.*, 88 Ohio St.3d at 33-36, 723 N.E.2d at 103-105.

MOYER, C.J., and COOK, J., concur in the foregoing dissenting opinion.