

SHAUNA ZALOSKI
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CLERK OF COURTS

IN THE MAGISTRATE OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SHAUNA POPE,

Plaintiff,

-vs-

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA

Defendants.

CASE NO. 1999 11 4676

JUDGE ADAMS

MAGISTRATE'S DECISION

PURSUANT TO CIV R 53 (E) (1) THE
CLERK OF COURTS SHALL SERVE
UPON ALL PARTIES NOT IN DEFAULT
FOR FAILURE TO APPEAR NOTICE OF
THIS MAGISTRATE'S DECISION AND
ITS DATE OF ENTRY UPON THE
JOURNAL

To the Honorable John R. Adams, Judge of the Court of Common Pleas, Summit County,

Ohio:

Pursuant to Civil Rule of Practice 53, Local Rule of Practice 18, and the Order of Reference made in this case, the Magistrate hereby reports his Decision to the Court, based on the evidence and upon the briefs submitted to the Magistrate regarding Plaintiff's and Defendant's Motions for Summary Judgment. Specifically, the Magistrate, by agreement with the parties, now issues a decision on the issues of whether Beverly Enterprises is self-insured and whether the Defendant received valid rejections of uninsured/underinsured motorist insurance from Beverly Enterprises.

FINDINGS OF FACT

1. Plaintiff Shauna Pope was previously employed by Beverly Enterprises, Inc., dba Valley View Nursing and Rehabilitation Center. On March 12, 1998, while employed with Beverly Enterprises, Plaintiff was involved in a vehicle/pedestrian collision, she being the pedestrian.

2. It is undisputed by the Defendant that Plaintiff sustained severe and permanent injuries as a result of this collision.

3. After identifying Defendant as the insurer of Beverly Enterprises, Plaintiff's counsel contacted Defendant. On May 26, 1999 a case manager for the Defendant sent Plaintiff a letter denying coverage for the Plaintiff. The denial was based on Beverly Enterprises' alleged rejection of Uninsured/Underinsured Motorists Coverage. Plaintiff then initiated this action for a declaratory judgment that she is an insured under Beverly Enterprise's policy with the Defendant.

5. Defendant issued a commercial automobile insurance policy to Beverly Enterprises. Policy No. CA 143-34-29 was effective May 1, 1996 through May 1, 1997. This policy was renewed and became effective from May 1, 1997 through May 1, 1998.

6. The Magistrate finds that the Defendant received two rejection forms from Beverly Enterprises. The first followed the policy's initial inception on May 1, 1996 and is dated August 15, 1996. The second followed the policy's renewal effective May 1, 1997 and is dated May 7, 1997.

CONCLUSIONS OF LAW

1. By way of introduction, the following is a summary of the issues covered in the Motions for Summary Judgment filed by the Plaintiff and Defendant: (1) whether Beverly Enterprises was self-insured and therefore exempt from the requirements of R.C. 3937.18; (2) whether a valid rejection was received prior to the inception of the policy applicable at the time of the accident; (3) whether the rejection was valid in light of other requirements; and (4) whether the Plaintiff was an insured under the policy.

2. The Defendant argues that Beverly was self-insured and therefore not subject to the requirements of R.C. § 3937.18. Plaintiff argues that Beverly is not self-insured for the effective policy period or, in the alternative, that being self-insured is, for all practical purposes, irrelevant. As uninsured/underinsured motorist coverage ("UIM") was offered in the policy, the fact that Beverly may or may not have been required to offer such is moot. The Magistrate concludes that once UIM is offered, the rejection of such must comply with the requirements of R.C. 3937.18 as laid out in Gyori v. Johnston Coca-cola Bottling Group (1996), 76 Ohio St. 3d 565. Therefore the issue of whether Beverly is self-insured is irrelevant as to the issues presented in the Motions for Summary Judgment. If it is ultimately decided, through this action or others, that Ms. Pope is an insured of the subject policy and that she is entitled to recover the proceeds of the policy, then whether Beverly is self-insured for any amount will become an issue.

3. The Defendant next argues that Beverly properly rejected UIM. The Plaintiff argues that neither rejection received by the Defendant from Beverly is valid because neither preceded the corresponding policy's inception as required by R.C. § 3937.18. The Defendant

argues that even if the first rejection didn't precede the first policy, the first rejection did precede the renewal policy and is therefore a valid rejection as to that policy which became effective in May 1997.

4. The Magistrate concludes that neither rejection was received prior to its respective policy's inception and therefore, neither was valid for its respective policy. The Magistrate further concludes that the first rejection, signed August 15, 1996, although received prior to the renewal policy's inception date, is an invalid rejection as to the policy that was effective May 1, 1997. The Magistrate is fully aware of the holdings in Hillver v. State Farm Ins. Co., No. 97-L-031, 1998 WL 1093918 (11th Dist. December 18, 1998) (invalid rejection for prior policy was valid for renewal policy) and Hammer v. Lumbermens Mut. Cas. Co., No. L-98-1283, 1999 WL 628684 (6th Dis. August 20, 1999) (additional rejection not required for renewal policies). However, neither case is controlling. The Magistrate concludes that the holding in Gyori v. Johnston Coca-Cola Bottling Group, Inc. (1996), 76 Ohio St. 3d 565 (emphasis added) applies and is controlling: "[i]n order for rejection of uninsured motorist coverage to be expressly and knowingly made, rejection must in writing and received by the insurer prior to commencement of the policy year." If a rejection is not valid for the policy for which it is submitted, it does not transform into a valid rejection for later policies. Allowing such would open the door to problematic issues with the timing of the rejections.

5. The Plaintiff further argues that, even if the first rejection is accepted as being received prior to the inception of the second policy, the rejection fails for various other reasons. As the Magistrate has already concluded that the subject insurance policy is lacking a valid rejection of UDM, the remaining presented by Plaintiffs as to the rejection are moot.

6. Because there was no valid rejection of uninsured/underinsured motorist coverage, the Magistrate concludes that the subject insurance policy did have uninsured/underinsured motorist coverage.

There remains to be addressed by the Magistrate the issue of whether the Plaintiff was an insured. That issue will be addressed as it is presented in the Motions for Summary Judgment after a status conference, which has been scheduled in the matter on January 26, 2001 at 10:00am.

IT IS SO DECIDED.


Magistrate John H. Shoemaker
for Judge John Adams

cc: Attorney Mark Willis/Todd Willis
Attorney Steve Janik/ Brian Spitz

Dnt

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CLERK OF COURTS

IN THE MAGISTRATE OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SHAUNA POPE,

Plaintiff,

-vs-

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA

Defendants.

) CASE NO. 1999 11 4676

) JUDGE ADAMS

) MAGISTRATE'S DECISION

) PURSUANT TO CIV. R. 53 (E) (1) THE
) CLERK OF COURTS SHALL SERVE
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) THIS MAGISTRATE'S DECISION AND
) ITS DATE OF ENTRY UPON THE
) JOURNAL

To the Honorable John R. Adams, Judge of the Court of Common Pleas, Summit County,

Ohio:

Pursuant to Civil Rule of Practice 53, Local Rule of Practice 18, and the Order of Reference made in this case, the Magistrate hereby reports his Decision to the Court, based on the evidence and upon the briefs submitted to the Magistrate regarding Plaintiff's and Defendant's Motions for Summary Judgment. The Magistrate filed a decision regarding the validity of a "rejection" on January 10, 2001. An objection to that decision was filed by the Defendant on January 24, 2001 and is pending before the Court. Plaintiff responded on February 2, 2001. By agreement of the parties, the Magistrate now issues a decision on whether Plaintiff is an insured.

FINDINGS OF FACT

1. Plaintiff Shauna Pope was previously employed by Beverly Enterprises, Inc., dba Valley View Nursing and Rehabilitation Center. On March 12, 1998, while employed with Beverly Enterprises, Plaintiff was involved in a vehicle/pedestrian collision, she being the pedestrian.

2. It is undisputed by the Defendant that Plaintiff sustained severe and permanent injuries as a result of this collision.

3. After identifying Defendant as the insurer of Beverly Enterprises, Plaintiff's counsel contacted Defendant. On May 26, 1999 a case manager for the Defendant sent Plaintiff a letter denying coverage for the Plaintiff. The denial was based on Beverly Enterprises' alleged rejection of Uninsured/Underinsured Motorists Coverage. Plaintiff then initiated this action for a declaratory judgment that she is an insured under Beverly Enterprise's policy with the Defendant.

5. Defendant issued a commercial automobile insurance policy to Beverly Enterprises. Policy No. CA 143-34-29 was effective May 1, 1996 through May 1, 1997. This policy was renewed and became effective from May 1, 1997 through May 1, 1998.

6. The Magistrate finds that the insurance policy defined "insured" with the following language:

B. WHO IS AN INSURED

1. You.
2. If you are an individual, any "family member."
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered auto must be out of service because of its breakdown, repair, servicing, loss or destruction.

4. Anyone for damages he or she is entitled to recover because of "bodily injury" sustained by another "insured".

CONCLUSIONS OF LAW

1. By way of introduction, the following is a summary of the issues covered in the Motions for Summary Judgment filed by the Plaintiff and Defendant: (1) whether Beverly Enterprises was self-insured and therefore exempt from the requirements of R.C. 3937.18; (2) whether a valid rejection was received prior to the inception of the policy applicable at the time of the accident; (3) whether the rejection was valid in light of other requirements; and (4) whether the Plaintiff was an insured under the policy.

2. The Magistrate previously decided that the issue of whether Beverly was self-insured would not be relevant until the Plaintiff is declared to be an insured under the policy and entitled to recover from the Defendant. The Magistrate further decided that the rejections were not valid.

3. The next issue to be addressed is whether Plaintiff Shauna Pope is an insured under the policy. Defendant argues that the insured is Beverly Enterprises, the "named insured", not the individual employees and that the policy is not ambiguous as to how it distinguishes between organizations and individuals for the purposes of "named insured" and "insured". Defendant's argument cannot be supported and is without merit.

4. The Plaintiff argues that Beverly Enterprises cannot be the only insured as it cannot occupy an automobile or suffer bodily injury and that, even though Defendant claims its

policy covers individuals as well as Beverly Enterprises, the policy fails to specifically identify any individuals. Plaintiff's position is convincing and compelling.

5. The Magistrate concludes that Plaintiff Shauna Pope is an insured under the policy. In this case, the Plaintiff was injured by an uninsured/underinsured motorist while off the job and seeks coverage from her employer's (Beverly Enterprises) commercial insurance policy. The same facts were present in Scott-Pontzner v. Liberty Mutual Fire Ins. Co. (1999), 85 Ohio St.3d 660. In that case the Court held: (1) the corporation's employees were insureds entitled to UIM coverage; and (2) employees enjoyed such status regardless of whether they were acting within the scope of employment.


6. The Defendant attempts to limit the coverage to the corporation and its subsidiaries. Such effort is not persuasive. The insurer made the same argument in Scott-Pontzner. The term "you" may refer solely to Beverly Enterprises, but that does not preclude the Magistrate from finding Plaintiff as an insured. It is both logical and reasonable to conclude that "you", while referring to Beverly Enterprises, also includes Beverly's employees, since a corporation can act only by and through real live persons. Id. As the Supreme Court indicated in Scott-Pontzner:

It would be nonsensical to limit protection solely to the corporate entity, since a corporation, itself, cannot occupy an automobile, suffer bodily injury or death, or operate a motor vehicle. Here, naming the corporation as the insured is meaningless unless the coverage extends to some person or persons - including the corporation employees.

Furthermore, "uninsured motorist coverage... was designed by the General Assembly to protect persons, not vehicles." Id. The Magistrate agrees and therefore concludes that the Plaintiff is an insured for purposes of UM/UTM coverage under Beverly Enterprises' commercial policy.

7. In summary, the Magistrate previously decided that the subject policy provided UIM/UM coverage, as the rejection was not valid. The Magistrate now decides that Plaintiff is an insured under the policy. The question was raised as to whether the issue of the Plaintiff's entitlement to damages is before the Court. The Complaint is fairly clear in that it requests a declaratory judgment stating (1) that the policy provides UIM/UM coverage and (2) that Shauna Pope is an insured. The Answer and Counterclaim filed by the Defendant does not extend these issues to include whether Plaintiff is entitled to receive damages.

IT IS SO DECIDED.


Magistrate John H. Shoemaker
for Judge John Adams

cc: Attorney Mark Willis/Todd Willis
Attorney Steve Janik/ Brian Spitz

Dns

JOHN ZALESKI
JUN 18 PM 3:41

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SHAUNA POPE)	CASE NO. CV 99 11 4676
Plaintiff)	
)	JUDGE ADAMS
-vs-)	
)	
NATIONAL UNION FIRE INSURANCE)	
COMPANY OF PITTSBURGH, PA.,)	ORDER
Defendant)	

This declaratory action came for hearing before this Court on Tuesday, June 5, 2001 on Defendant's objection to the magistrate's decision dated January 10, 2001. This matter had been referred to the magistrate for a decision regarding the cross Motions for Summary Judgment filed by the parties in this action.

The Magistrate rendered two decisions in this matter. On January 10, 2001, the Magistrate concluded that the issue of whether the Plaintiff's employer was self-insured was irrelevant as to the issues presented in the Motions for Summary Judgment, and additionally concluded that uninsured/underinsured motorists ("UM/UIM") coverage was not validly rejected for purposes of this action. On March 13, 2001, the Magistrate further concluded that the Plaintiff is an insured under the policy at issue, pursuant to the current status of the law in Ohio as articulated in Scott-Ponrzer v. Liberty Mutual Fire Ins. Co., et al. (1999), 85 Ohio St.3d 660. The Defendant objected to the Magistrate's decision dated January 10, 2001, and neither party filed an objection to the Magistrate's decision dated March 13, 2001. Upon hearing this matter in open court today, this Court adopts the Magistrate's decisions and incorporates them in this order.

WHEREFORE, Defendant's objections to the Magistrate's report are hereby overruled and both decisions of the Magistrate are hereby adopted. Summary judgment is granted in favor of the Plaintiff. This matter is hereby referred to arbitration for the determination of whether the Plaintiff is "legally entitled to recover damages," and subsequently if so, the matter should then be arbitrated to determine the "amount of damages that are recoverable," all pursuant to the arbitration provision of the UNINSURED MOTORIST COVERAGE Endorsement to the policy, which states:

E. CHANGES IN CONDITIONS

4. The following Condition is added:

ARBITRATION

a. If we and an "insured" disagree whether the "insured" is legally entitled to recover damages from the owner or driver of an "uninsured motor vehicle" or do not agree as to the amount of damages that are recoverable by that "insured," then the matter may be arbitrated. However, disputes concerning coverage under this endorsement may not be arbitrated. Either party may make a written demand for arbitration. In this event, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

IT IS SO ORDERED.

THE HONORABLE JOHN ADAMS