

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

JAMES COX, ET AL.	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
	:	Hon. W. Scott Gwin, P.J.
Plaintiffs-Appellants	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 01CA97
NATIONWIDE INSURANCE CO.	:	
	:	
Defendant-Appellee	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of
Common Pleas, Case No. 01-282D

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: May 10, 2002

APPEARANCES:

For Plaintiffs-Appellants

CHARLES M. BROWN
28 Park Avenue West
Mansfield, Ohio 44902

Gwin, J.

For Defendant-Appellee

TIMOTHY D. JOHNSON
50 Public Square, Ste. 2500
Cleveland, Ohio 44113

Summary Judgment Entry of the Richland County Court of Common Pleas, which denied appellants' motion for summary judgment, but granted defendant-appellee Nationwide Insurance Co.'s cross-motion for summary judgment.

STATEMENT OF THE FACTS AND CASE

{¶2} In November, 1992, appellant James Cox was involved in a multi-vehicle collision, which resulted in his sustaining extensive injuries. Appellants James Cox and his wife, Cher Cox, sought recovery from the two alleged tortfeasors. After a jury trial, appellant James Cox received a judgment of \$200,000, and appellant Cher Cox was awarded \$20,000 for her loss of consortium claim from one of the defendants. The tortfeasor's auto insurer paid its policy limits of \$50,000. Appellants subsequently recovered underinsured motorist coverage from their own auto liability insurer. Thereafter, appellants presented a claim for underinsured motorist coverage under their homeowner's policy issued by appellee Nationwide in the amount of \$50,000, representing the unrecovered portion of the judgment.

{¶3} After Nationwide denied the claim, appellants brought the instant declaratory judgment action in the Richland County Court of Common Pleas. The parties filed cross-motions for summary judgment on the sole issue of whether appellants' homeowner's policy could be considered an automobile liability policy, subject to the mandatory UIM offering requirement. Via Summary Judgment Entry filed November 2, 2001, the trial court overruled appellants' motion for summary judgment and entered judgment in favor of Nationwide.

{¶4} It is from this judgment entry, appellants appeal, raising the following assignment of error:

{¶5} "THE COURT ERRED AS A MATTER OF LAW IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT-APPELLEES AND IN OVERRULING THE

MOTION FOR SUMMARY JUDGMENT FILED BY THE PLAINTIFFS-APPELLANTS, SINCE AS A MATTER OF LAW, THE UNDISPUTED FACTS SHOW THAT PLAINTIFFS WERE ENTITLED TO JUDGMENT AS A MATTER OF LAW.”

I

{¶6} Herein, appellants contend the trial court erred in overruling their motion for summary judgment and granting summary judgment in favor of Nationwide.

{¶7} This Court has previously addressed the issue of whether the residents employee provision in a homeowner’s policy could be construed so as to provide UM/UIM coverage. In accordance with this Court’s decisions in *Henry v. Nationwide Mut. Fire Ins. Co.*¹, *Trussell v. United Ohio Ins. Co.*², *Vohsing v. Auto-Owners Ins. Co.*³, and *Mattox v. Allstate Ins. Co.*⁴, we overruled appellants’ sole assignment of error.

{¶8} The judgment of the Richland County Court of Common Pleas is affirmed.

By: Gwin, J.

Wise, J. concur

Hoffman, P.J. dissents

Hoffman, P.J., dissenting

{¶9} I respectfully dissent for the reasons set forth in my dissent in *Mattox v. Allstate Ins. Co.* (March 25, 2002), Stark App. No. 2001CA218, unreported.

¹*Henry v. Nationwide Mut. Fire Ins. Co.* (Sept. 28, 2001), Muskingum App. No. Ct2001-0014, unreported.

²*Trussell v. United Ohio Ins. Co.* (Jan. 16, 2002), Perry App. No. 01-CA-15, unreported.

³*Vohsing v. Auto-Owners Ins. Co.* (Jan. 14, 2002), Licking App. No. 01-CA-56, unreported.

⁴*Mattox v. Allstate Ins. Co.* (Mar. 25, 2002), Stark App. No. 2001CA218, unreported.

JUDGE WILLIAM B. HOFFMAN