

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DORIS E. HOKE	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellant	:	Hon. Sheila G. Farmer, J.
	:	Hon. John F. Boggins, J.
-vs-	:	
	:	
STATE FARM FIRE AND CASUALTY	:	Case No. 2002CA00003
COMPANY, ET AL.	:	
	:	
Defendants-Appellees	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 00CV0987

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: July 26, 2002

APPEARANCES:

For Plaintiff-Appellant

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Columbus, OH 43215
Farmer, J.

For Defendants-Appellees

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{¶1} On April 3, 1999, Dennis Lloyd was killed in a motor vehicle accident. At the time of his death, his mother, appellant, Doris Hoke, was insured by a policy of homeowner's insurance issued by appellee, State Farm Fire & Casualty Company, with liability limits of \$100,000.

{¶2} On December 19, 2000, appellant filed a complaint seeking uninsured/underinsured motorist coverage under the policy. Said complaint was amended on March 2, 2001 to add party-defendant State Farm Mutual Automobile Insurance Company. All parties filed motions for summary judgment. By judgment entry filed December 5, 2001, the trial court found in favor of appellees.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶4} "THE TRIAL COURT ERRED IN FINDING THAT THE HOMEOWNER'S POLICY ISSUED BY DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY DID NOT PROVIDE PLAINTIFF WITH UNINSURED MOTORIST COVERAGE."

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{¶5} Appellant claims the trial court erred in finding her homeowner's policy was not a motor vehicle policy controlled by the mandates of R.C. 3938.17. We disagree.

{¶6} The relevant liability coverage and exclusions in question are as follows:

{¶7} "SECTION II LIABILITY COVERAGES

{¶8} "COVERAGE L - PERSONAL LIABILITY

{¶9} "If a claim is made or a suit is brought against an insured for damages because of bodily injury or property damage to which this coverage applies, caused by an occurrence, we will:

{¶10} “1. Pay up to our limit of liability for the damages for which the insured is legally liable;

{¶11} “SECTION II EXCLUSIONS

{¶12} “Coverage L and Coverage M do not apply to:

{¶13} “e. bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of:

{¶14} “(2) a motor vehicle owned or operated by or rented or loaned to any insured;

{¶15} “This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee’s employment by an insured.”

{¶16} We have previously addressed this question in *Jones, et al. v. Nationwide Insurance Company* (July 23, 2001), Stark App. No. 2000CA00329, *Cox, et al. v. Nationwide Insurance Company* (May 10, 2002), Richland App. No. 01CA97, and *Mattox, et al. v. Allstate Insurance Company* (March 25, 2002), Stark App. No. 2001CA00218. In the above cited cases, we found the residence employee provision could not be construed to a policy subject to R.C. 3937.18.

{¶17} The sole assignment of error is denied.

{¶18} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Farmer, J. and

Boggins, J. concur.

Hoffman, P.J. dissents.

topic: “residence employee” provision

Hoffman, P.J. dissenting

{¶19} I respectfully dissent for the reasons set forth in my dissent in *Mattox, et al.* v. *Allstate Insurance Company* (March 25, 2002), Stark App. No. 2001CA00218, unreported.

JUDGE WILLIAM B. HOFFMAN