

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

ESTATE OF CLARADELL HELSEP	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-CA-282
ALLSTATE INSURANCE CO., ET AL	:	
	:	
Defendants-Appellants	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of Common Pleas, Case No. 2009CV00072

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: June 14, 2010

APPEARANCES:

For Plaintiff-Appellee

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For Defendants-Appellants

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Gwin, P.J.

{¶1} Defendant-appellant American Family Insurance Company appeals a summary judgment of the Court of Common Pleas of Stark County, Ohio, entered in favor of Plaintiffs-appellees the Estate of Claradell Heslep, James Heslep, and Michael Heslep. The action was initiated as a declaratory judgment action, seeking to determine the rights and obligations of the parties under the insurance policies, and praying for a judgment in an amount to compensate the appellees.

{¶2} The trial court found appellees James and Michael Heslep are both entitled to underinsured motorist coverage under their respective American Family Insurance policies, up to the per accident policy limits and subject to set-off of the funds already received from the tortfeasor. The trial court then sent the matter to arbitration to determine damages.

{¶3} We find we do not have jurisdiction to review the trial court's judgment. Section 3, (B)(2), Article IV, of the Ohio Constitution gives appellate court's jurisdiction to review final orders or judgments. See also *Gehm v. Timberline Post & Frame*, 112 Ohio St. 3d 514, 2007-Ohio-607, 861 N.E. 2d 519. If there is no final appealable order, we have no jurisdiction to review the matter. *General Accident Insurance v. Insurance Company of North America* (1989), 44 Ohio St. 3d 17, 540 N.E. 2d 266. We have no option but to dismiss the appeal. *Renner's Welding and Fabrication, Inc. v. Chrysler Motor Corporation* (1996), 117 Ohio App. 3d 61, 689 N.E. 2d 1015.

{¶4} In *Walburn v. Dunlap*, 121 Ohio St. 3d 373, 2009-Ohio-1221, 904 N.E. 2d 863, the Supreme Court held: "An order that declares that an insured is entitled to coverage but does not address damages is not a final order as defined in R.C.

2505.02(B)(2), because the order does not affect a substantial right even though made in a special proceeding.” Syllabus by the court.

{¶15} A judgment in a declaratory judgment action is not a final appealable order if the trial court finds the insured is entitled to coverage, but has not addressed the issue of damages even if the order includes a certification made pursuant to Civ. R. 54 (B). “As a general rule, even where the issue of liability has been determined, but a factual adjudication of relief is unresolved, the finding of liability is not a final appealable order even if Rule 54(B) language was employed.’ A trial court’s use of such language does not convert an otherwise non-final order into a final, appealable order.” *Id. Walburn* at paragraph 31, quoting *Noble v. Colwell* (1989), 44 Ohio St.3d 92, 96, 540 N.E.2d 1381.

{¶16} We find we have no jurisdiction to review the matter. The appeal is dismissed.

By Gwin, P.J.,

Wise, J., and

Delaney, J., concur

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HON. W. SCOTT GWIN

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HON. JOHN W. WISE

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HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

ESTATE OF CLARADELL HELSEP	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ALLSTATE INSURANCE CO., ET AL	:	
	:	
	:	
Defendants-Appellants	:	CASE NO. 09-CA-282

For the reasons stated in our accompanying Memorandum-Opinion, the within appeal is dismissed. Costs to be split between the parties.

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HON. W. SCOTT GWIN

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HON. JOHN W. WISE

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HON. PATRICIA A. DELANEY