

[Cite as *Floering v. Huering*, 2004-Ohio-4142.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

Cynthia Floering, et al.

Court of Appeals No. WD-03-040

Appellants

Trial Court No. 98-CV-319

v.

Jordan Huering, et al.

DECISION AND JUDGMENT ENTRY

Appellees

Decided: August 6, 2004

* * * * *

Steven L. Crossmock, for appellant.

Jeanne M. Mullin and Donald J. Moracz, for appellees.

* * * * *

LANZINGER, J.

{¶1} This appeal comes to us from the summary judgment granted by the Wood County Court of Common Pleas in a case involving uninsured/underinsured (“UM/UIM”) motorist coverage pursuant to *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660. Because we conclude that summary judgment is proper in this case, we affirm.

{¶2} Appellant Cynthia Floering, filed UM/UIM claims pursuant to *Scott-Pontzer*, supra, against appellee, Hamilton Mutual Insurance Company

(“Hamilton”), her son’s employer’s insurer. The claims stemmed from a motor vehicle accident and resulting death of Floering’s son, Austin, a passenger in motor vehicle driven by his friend, Jordan Huering. The trial court initially found that Austin was an insured under his employer’s policy pursuant to *Scott-Pontzer*. Nevertheless, the court later granted summary judgment in favor of Hamilton, stating that at the time of the accident, he was not in a “covered auto” as defined under the insurance policy. Both parties filed appeals from the trial court’s judgment.

{¶3} The record reveals that Austin was riding around with friends in Huering’s van when the vehicle struck a tree at approximately 1:30 a.m. Therefore, Austin was not acting within the scope of his employer’s business when the accident related to his UM/UIM claims occurred.

{¶4} Pursuant to *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, we conclude that Austin was not an “insured” under the Hamilton policy, negating any coverage for his UM/UIM claims. Therefore, since no material issues of fact remain in dispute and Hamilton is entitled to judgment as a matter of law, summary judgment was properly granted in favor of Hamilton.

{¶5} Cynthia Floering’s sole assignment of error is not well-taken. Hamilton’s cross-assignments of error are rendered moot.

{¶6} The judgment of the Wood County Court of Common Pleas is affirmed. Pursuant to App.R. 24, court costs of this appeal are assessed to appellant.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Mark L. Pietrykowski, J.

JUDGE

Judith Ann Lanzinger, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE