



*Gwin, P.J.*

{¶1} Defendant Nationwide Agribusiness Insurance Company appeals a summary judgment of the Court of Common Pleas of Stark County, Ohio, entered in favor of plaintiffs Brandon Eslich and Michelle and Dennis Miller. Nationwide assigns three errors to the trial court:

{¶2} “THE TRIAL COURT ERRED IN APPLYING *SCOTT-PONTZER* TO A POLICY OF INSURANCE ISSUED TO A SCHOOL DISTRICT.

{¶3} “PLAINTIFFS-APPELLEES ARE NOT ENTITLED TO EXCESS UNDERINSURED MOTORIST COVERAGE UNDER THE NATIONWIDE EDUCATION UMBRELLA POLICY.

{¶4} “THE TRIAL COURT ERRED IN FAILING TO RULE THAT PLAINTIFF-APPELLEE BRANDON ESLICH FAILED TO GIVE PROMPT AND TIMELY NOTICE OF THE ACCIDENT AND HIS CLAIMS TO NATIONWIDE AND THEREFORE IS PRECLUDED FROM MAKING AN UNDERINSURED MOTORIST CLAIM.”

{¶5} The facts which gave rise to this case are undisputed. On November 4, 1999, Brandon Eslich was involved in an automobile collision with the alleged tortfeasor, Michael Johnson, who is not a party to this appeal. At the time of the accident, Eslich was seventeen years old and resided with his mother and step-father. Brandon’s mother owned the vehicle he was driving at the time of the collision.

{¶6} Erie Insurance Group insured Brandon and his mother under two personal auto policies.

{¶7} Eslich and his parents brought suit against the alleged tortfeasor, Erie Insurance Group, and various insurance companies which insured the employers of Brandon, his mother, and his step-father.

{¶8} The trial court entered summary judgment in favor of Brandon and his family against Erie, and found Erie's coverage was primary, subject to any set-offs of the tortfeasor.

{¶9} Eslich's other claims were made pursuant to *Scott-Pontzer v. Liberty Mutual Fire Insurance Company* (1999), 85 Ohio St. 3d 660 710 N.E. 2d 1116, and *Ezawa v. Yasuda Fire & Marine Insurance Company* (1999), 86 Ohio St. 3d 557, 715 N.E. 2d 1142. Brandon Eslich was employed by Burlington Coat Factory and Advanced Auto Parts. Royal Indemnity Insurance Company insured Burlington Coat Factory with a business auto policy and a commercial general liability policy. The trial court found Brandon Eslich was entitled to UM/UIM coverage under the business auto policy, but not under the commercial general liability policy. Royal also insured Advanced Auto Parts, and the trial court found Brandon Eslich was entitled to UM/UIM coverage under the business auto policy, but not under the commercial general liability policy.

{¶10} Brandon Eslich's mother, Michelle Miller, was employed by the Jackson Local School District. Nationwide Agribusiness Insurance Company insured the Jackson Local School District under an education liability policy and an education umbrella policy. Indiana Insurance Company insured the Jackson Local School District under a commercial auto policy with an uninsured/underinsured motorist endorsement. The trial court found *Scott-Pontzer*, and its progeny applied to school boards, and the school board's authority to purchase UM/UIM coverage has no bearing on determining

the scope of coverage under any policies the Board may have had in place at the time of the collision. The trial court concluded Brandon Eslich and his parents are entitled to UM/UIM coverage under the Indiana Insurance Policy and under Nationwide's umbrella policy. The trial court found the educational liability policy is not a motor vehicle policy of insurance, and for this reason, Brandon Eslich and his parents were not entitled to any coverage under that policy.

{¶11} Brandon Eslich's step-father, Dennis Miller, was employed by Sentry Insurance, who was insured by Sentry under a commercial auto policy with express UM/UIM coverage. The trial court found Brandon Eslich and his parents were covered under the Sentry policy.

{¶12} The trial court found Erie Insurance, as the personal auto insurance carrier for Brandon Eslich and his parents was primary, and subject only to the tortfeasor's setoff. The trial court found that amongst the various other insurance companies, each was obligated on pro-rata basis, after the primary coverage and the tortfeasor setoff.

{¶13} Four separate appeals were taken from this judgment, Stark Appellate Nos. 2003CA00200; 2003CA00207; 2003CA00195, and 2003CA00205. All are related and present similar issues, but for the purposes of clarity, each appeal will be addressed separately.

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{¶14} The trial court found *Scott-Pontzer, supra*, and *Ezawa, supra*, applied to policies of insurance issued to school districts, and found Nationwide's policy provided coverage to Brandon Eslich.

{¶15} During the pendency of the appeal, the Ohio Supreme Court decided the case of *Westfield Insurance Company v. Galatis* 100 Ohio St. 3d 216, 2003-Ohio-5849. In *Galatis*, the Supreme Court limited the holding in *Scott-Pontzer* to situations where an employee is injured within the course and scope of his or her employment. The Supreme Court overruled the *Ezawa* case.

{¶16} None of the appellees were injured within the course and scope of their employment. For this reason, we find, *Galatis* controls, and the trial court's decision must be reversed.

{¶17} The first and second assignments of error are sustained; the third assignment of error is overruled as moot.

{¶18} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed, and pursuant to App. R. 12, we enter final judgment in favor of Nationwide.

By Gwin, P.J.,

Edwards, J., and

Boggins, J., concur