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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-209

Filed 17 December 2024

Nash County, No. 22-CVS-1318

GEICO INDEMNITY COMPANY, Plaintiff,

v.

DEYOUNG TYREE POWELL and LAKISHA MONIQUE POWELL, Defendants.

Appeal by Defendants from order entered 23 July 2023 by Judge Timothy W. Wilson in Nash County Superior Court. Heard in the Court of Appeals 11 September 2024.

Richard E. Batts, PLLC, by Attorney Richard E. Batts, for the defendants-appellants.

Hornthal, Riley, Ellis & Maland, LLP, by Attorney L. Phillip Hornthal, III, for the plaintiff-appellee.

STADING, Judge.

De’Young Tyree Powell and Lakisha Monique Powell (collectively “Defendants”) appeal from the trial court’s order granting Geico Indemnity Company’s (“Geico”) motion for judgment on the pleadings. We affirm.

I. Background

On 15 February 2019, De’Young Tyree Powell (“De’Young”) was shot and injured in the State of Maryland while traveling to North Carolina in a vehicle insured by Geico. The insurance policy was purchased by Lakisha Monique Powell, who is the mother of De’Young and co-defendant in this case. An unknown assailant (“John Doe”), driving another vehicle, shot at De’Young, resulting in personal injury and damage to the vehicle as follows: “[m]ultiple bullets . . . entered the cabin of [] De’Young’s vehicle, one through the windshield . . . striking [] De’Young in his shoulder and one through the passenger side door striking his passenger in the right leg.” In response to the shooting, De’Young “pressed on the gas pedal, sped away . . . to report the incident and to seek medical care.” The identity of the operator or owner of the shooter’s vehicle remains unknown. Following the incident, Defendants filed a claim with Geico to recover for the personal injury suffered by De’Young and property damage to the vehicle—that claim was denied.

On 7 March 2022, Defendants filed a complaint (“the underlying companion case”) against Geico asserting that De’Young’s injury from the shooting was covered by the uninsured motorist provision contained in the automobile policy.¹ The complaint alleges that Geico breached the contract with Defendants by failing to

¹ The underlying companion case, Nash County Superior Court File No. 22 CVS 206, is styled as “FIRST CLAIM FOR RELIEF UNINSURED MOTORIST COVERAGE BREACH OF CONTRACT.”

cover De’Young’s injuries and vehicle damage arising out of the shooting. Defendants’ pleading also asserts that “[t]he policy does provide coverage for the claims and allegations made by [Defendants], covering the vehicle, [] De’Young and his passengers under the provisions of uninsured and underinsured motorist coverage provisions, which upon information and belief does not exclude coverage for the injury and damage”

Contained in the policy are the relevant provisions addressing uninsured motorist coverage:

PART C1 – UNINSURED MOTORISTS COVERAGE

. . . .

We will pay compensatory damages which an insured is legally entitled to recover from the owner or operator of an uninsured motor vehicle because of:

1. Bodily injury sustained by an insured and caused by an accident; and
2. Property damage caused by an accident.

The owner’s or operator’s liability for these damages must arise out of the ownership, maintenance or use of the uninsured motorist vehicle. . . .

. . . .

Uninsured motor vehicle means a land motor vehicle or trailer of any type:

. . . .

3. Which, with respect to damages for bodily injury only, is a hit-and-run vehicle whose operator or owner cannot be identified and which hits:

- a. you or any family member;
- b. a vehicle which you or any family member are occupying; or

c. your covered auto.

....

EXCLUSIONS

....

B. We do not provide coverage for property damage caused by a hit-and run vehicle whose operator or owner cannot be identified.

....

On 22 September 2022, Geico filed a complaint for declaratory judgment against Defendants seeking: (1) a judgment declaring “that the policy does not provide coverage for Defendants’ claims,” (2) “that [Geico] recover its costs,” and (3) that “the Court . . . enter an Order staying the underlying [companion case] . . . until the Court enters a declaratory judgment in this matter.” Defendants filed an answer on 7 December 2022 and an amended answer on 20 December 2022.

Geico moved for a judgment on the pleadings under N.C. Gen. Stat. § 1A-1, Rule 12(c) (2023). On 23 July 2023, the trial court entered an order concluding that “Geico does not owe [Defendants] coverage under the uninsured motorists coverage portion of its policy for [Defendants’] claim in the underlying companion case.” On 23 August 2023, Defendants entered their notice of appeal.

II. Jurisdiction

This Court has jurisdiction to consider Defendants’ appeal under N.C. Gen. Stat. § 7A-27(b)(1) (2023) (“final judgment of a superior court”).

III. Analysis

Defendants submit two issues for our consideration: (1) whether the trial court erred in granting Geico’s motion for judgment on the pleadings for failure to consider whether Defendants could alternatively recover general liability or compensatory damages; and (2) whether the trial court erred in declaring that Geico did not owe Defendants coverage under the uninsured motorist portion of its policy for Defendants’ claims in the underlying companion case. After careful review, we hold that the trial court did not commit error.

A. Judgment on the Pleadings

Defendants first argue that the trial court erred in granting Geico’s motion for judgment on the pleadings because it solely considered its claim within the scope of the uninsured motorist provision of the policy. Defendants contend that since “[t]here was no conclusion that the [Defendants] were not entitled to recover general liability damages outside of the uninsured and underinsured provisions of the policy[,]” the trial court’s “[j]udgment should be reversed.” We disagree.

Under North Carolina law, “[a]fter the pleadings are closed but within such time as not to delay the trial, a party may move for judgment on the pleadings.” N.C. Gen. Stat. § 1A-1, Rule 12(c). A motion for judgment on the pleadings must be viewed “in the light most favorable to the nonmoving party.” *Ragsdale v. Kennedy*, 286 N.C. 130, 137, 209 S.E.2d 494, 499 (1974). Moreover, “[a] motion for judgment on the pleadings . . . should not be granted unless ‘the movant clearly establishes that no

material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.” *Samost v. Duke Univ.*, 226 N.C. App. 514, 518, 742 S.E.2d 257, 260 (2013) (citations omitted). “Judgment on the pleadings is proper only when the pleadings fail to present any issue of fact for the jury.” *Gammon v. Clark*, 25 N.C. App. 670, 671, 214 S.E.2d 250, 251 (1975). “The law does not authorize the entry of a judgment on the pleadings in any case where the pleadings raise an issue of fact on any single material proposition.” *Cline v. Seagle*, 27 N.C. App. 200, 201, 218 S.E.2d 480, 481 (1975) (citation omitted).

The purpose of Rule 12(c) “is to dispose of baseless claims or defenses when the formal pleadings reveal their lack of merit. A motion for judgment on the pleadings is the proper procedure when all the material allegations of fact are admitted in the pleadings and only questions of law remain.” *Benigno v. Sumner Constr., Inc.*, 278 N.C. App. 1, 4, 862 S.E.2d 46, 50 (2021) (citation omitted). “This Court reviews *de novo* a trial court’s ruling on motions for judgment on the pleadings. Under a *de novo* standard of review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court.” *Wachovia Bank Nat’l Ass’n v. Superior Constr. Corp.*, 213 N.C. App. 341, 346, 718 S.E.2d 160, 163 (2011) (citations omitted). And “[a] party seeking judgment on the pleadings must show that the complaint . . . fails to allege facts sufficient to state a cause of action or admits facts which constitute a complete legal bar thereto.” *Dicesare v. Charlotte-Mecklenburg Hosp. Auth.*, 376

N.C. 63, 70, 852 S.E.2d 146, 151 (2020) (citations and quotations omitted). Further, “[i]n deciding a motion for judgment on the pleadings, the trial court looks solely to the pleadings and may only consider facts that have been properly pled and documents attached to or referred to in the pleadings.” *Erie Ins. Exch. v. Builders Mut. Ins.*, 227 N.C. App. 238, 242, 742 S.E.2d 803, 808 (2013) (citation omitted).

Defendants contend “in addition to uninsured motorist coverage, [Defendants] sought general liability and compensatory damages,” which the trial court did not rule on, and that there remained an issue of fact for the jury. But even a liberal reading of their complaint does not assert recovery based in other causes of action. *See id.* Defendants raised these arguments for the first time in their amended brief in opposition to Geico’s motion for judgment on the pleadings.

At the motion hearing, Geico asserted that the underlying companion case only brought a claim based on uninsured motorist coverage. Geico argued that Defendants styled their complaint solely within the scope of the uninsured and underinsured provisions of the policy. Defendants rebutted, noting that “paragraph [] number 23” included an additional claim for general liability coverage separate from uninsured motorist coverage. The trial court took notice of this discrepancy and agreed with Geico, stating that “[Defendants] complaint specifically focused on uninsured motorist coverage only.” Paragraph 23 of the complaint states:

At the time of this incident, there was in force a vehicle liability insurance policy issued to Plaintiff Lakisha

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Powell, with provisions contained either in the policy or in the endorsements thereto which became a part of said insurance policy, providing for payment by said insurance company of all sums which an insured under the policy shall, *be legally entitled to recover as damages from the owner and operator of an uninsured vehicle because of bodily injury.*

Contrary to Defendants’ urging, this paragraph sought recovery “as damages from the owner and operator of an uninsured vehicle.” The remainder of the contents of Defendants’ complaint also merely reference recovery pursuant to the uninsured motorist provisions. *See Erie Ins. Exch.*, 227 N.C. App. at 242, 742 S.E.2d at 808; *see also Dicesare*, 376 N.C. at 70, 852 S.E.2d at 151.

Here, no error was committed by the trial court by not ruling on the matter of general liability coverage or compensatory damages as nothing in the pleadings specified such a cause of action. The trial court disposed of the sole cause of action contained in Defendants’ complaint in the underlying companion case—coverage under the uninsured motorist provision of Part C1.

B. Uninsured Motorist Coverage

Defendants next contend that the trial court erred in concluding that the uninsured motorist provision of the policy does not cover De’Young’s bodily or property injuries. Defendants argue that because De’Young’s injuries arose from the “ownership, maintenance, or use of the uninsured motor vehicle,” it falls within coverage. After comprehensively reviewing the policy and applicable law, we

disagree.

“Uninsured [motorist] coverage . . . is available when an insured plaintiff is injured by a motor vehicle with no liability insurance or with liability insurance in an amount less than our state’s statutory minimum.” *Johnson v. N.C. Farm Bureau Ins.*, 112 N.C. App. 623, 625, 436 S.E.2d 265, 267 (1993). An “unidentified motor vehicle . . . is statutorily treated as an uninsured motor vehicle.” *Id.* Under Section 20-279.21(b)(3)(b), an insured may institute an action directly against an insurer:

Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury *as the result of collision between motor vehicles* and asserts that the identity of the operator or owner of the vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained

N.C. Gen. Stat. § 20-279.21(b)(3)(b) (2023) (emphasis added). However, “[a]n uninsured carrier is not obligated to pay uninsured proceeds when there is no contact between its insured and an unknown motorist’s vehicle.” *Johnson*, at 625, 436 S.E.2d at 267 (citations omitted). “Our courts have interpreted [Section 20-279.21(b)(3)(b)] to require physical contact between the vehicle operated by the insured motorist and the vehicle operated by the hit-and-run driver for the uninsured motorist provisions of the statute to apply.” *Moore v. Nationwide Mut. Ins.*, 191 N.C. App. 106, 109–110, 664 S.E.2d 326, 328–29 (2008) (citations omitted) (determining that a plaintiff who “struck a pine tree log that had fallen off a truck and was lying in the middle of the interstate” did not satisfy the physical contact requirement of Section 20-

279.21(b)(3)(b).).

Here, the trial court answered two questions in ruling on whether Defendants' uninsured motorist policy covered De'Young's bodily injuries: (1) whether there *could* be any causal connection "between the use of John Doe's automobile and the injuries suffered by [De'Young;]" and (2) if so, whether there was sufficient contact between the two vehicles as a matter of law. To be covered under the uninsured motorist policy in question, there must have been a causal connection *and* contact between the vehicles:

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the uninsured motorist vehicle. . . .

. . . .

Uninsured motor vehicle means a land motor vehicle or trailer of any type:

. . . .

3. Which, with respect to damages for *bodily injury only*, is a *hit-and-run* vehicle whose operator or owner cannot be identified and which *hits*:

- a. you or any family member;
- b. a vehicle which you or any family member are occupying; or
- c. your covered auto.

(emphasis added). The trial court concluded that although there may have been a causal connection between John Doe's ownership, use, or maintenance of his vehicle and De'Young's injuries, *State Cap. Ins. Co. v. Nationwide Mut. Ins.*, 318 N.C. 534, 350 S.E.2d 66 (1986), that judgment as a matter of law was appropriate because there

was insufficient “contact” between the two vehicles.² *Johnson*, at 625, 436 S.E.2d 265, 267 (1993) (citations omitted). Here, *Anderson v. Baccus*, 335 N.C. 526, 439 S.E.2d 136 (1994) and *Moore*, 191 N.C. App. at 106, 664 S.E.2d at 326 are particularly instructive about the issue of physical contact.

In *Anderson*, a car accident occurred involving three vehicles. 335 N.C. at 527, 439 S.E.2d at 137. The plaintiff’s vehicle, approaching an intersection, swerved to avoid colliding with a third vehicle impermissibly traveling in its path. *Id.* As a result, the plaintiff’s vehicle collided with another, different vehicle. *Id.* “The third automobile did not stop at the scene and the driver was never . . . identified.” *Id.* The plaintiff and the insurance company moved for summary judgment for the issue of uninsured motorist coverage. *Id.* at 528, 439 S.E.2d at 137. The trial court granted summary judgment in favor of the plaintiff. *Id.* Yet on appeal, our Court reversed the trial court’s order and held that Section 20-279.21(b)(3) “clearly required that the unidentified vehicle make contact with the insured or the insured’s auto.” *Id.* (quoting *Anderson v. Baccus*, 109 N.C. App. 16, 19, 426 S.E.2d 105, 107 (1993)). Our Court added that the statute does not “provide for uninsured motorist coverage where

² The trial court’s order refers to *State Capital Ins. Co. v. Nationwide Mut. Ins. Co.*, 318 N.C. 534, 350 S.E.2d 66 (1986). This case answers whether the shooting of a firearm constitutes the use, ownership, or maintenance of an automobile within the scope of general liability coverage. *See id.* at 539–40, 350 S.E.2d at 69 (“The test for determining whether an automobile liability policy provides coverage for an accident is not whether the automobile was a proximate cause of the accident. Instead, the test is whether there is a causal connection between the use of the automobile and the accident.”).

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a phantom vehicle allegedly causes a collision between two other automobiles but makes no physical contact with either.” *Id.* (quoting *Anderson*, 109 N.C. App. at 19, 426 S.E.2d at 107).

In reaching its conclusion, our Court noted:

Our interpretation of [section 20-279.21] is further supported by the fact that the legislature has undertaken to amend the uninsured motorist statute subsequent to this Court’s first interpreting it as requiring physical contact between the insured and the hit-and-run driver. To date, it has not chosen to amend the statute to indicate that [such] physical contact is not required. When the legislature acts, it is always presumed that it acts with full knowledge of prior and existing law; and where it chooses not to amend a statutory provision that has been interpreted in a specific, consistent way by our courts, we may assume that it is satisfied with that interpretation. Thus, in consideration of the time-tested prior rulings of this Court, we are constrained to conclude that any shift away from the physical contact requirement must derive not from this Court, but from legislative action, or action by our Supreme Court[,] which is the final arbiter for interpreting the statutes of this state.

Id. at 529, 439 S.E.2d at 138 (internal quotation marks omitted) (brackets in original) (quoting *Anderson*, 109 N.C. App. at 22, 426 S.E.2d at 108–09). The North Carolina Supreme Court affirmed our Court, “declin[ing] to change existing judicial interpretation of the uninsured motorist statute.” *Id.*

In *Moore*, the plaintiff “struck a pine tree log that had fallen off a truck and was lying in the middle of the interstate[] and [defendant] . . . refused plaintiff’s uninsured motorist claim because . . . a log does not fit the definition of an uninsured

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motor vehicle.” *Moore*, 191 N.C. App. at 107, 664 S.E.2d at 327 (cleaned up). The plaintiff, insured by the defendant, brought a complaint alleging the right to recover damages under the uninsured motorist policy. *Id.* The trial court granted the defendant’s motion to dismiss, and the plaintiff brought appeal to this Court. On appeal, citing *Anderson*, this Court held that the “plaintiff’s complaint fail[ed] to satisfy the physical contact requirement” and as such, the trial court properly granted the defendant’s motion to dismiss. *Id.* at 110, 664 S.E.2d at 329, *aff’d* 362 N.C. 673, 669 S.E.2d 321 (2008).

Corresponding with *Anderson* and *Moore*, De’Young’s vehicle and John Doe’s vehicle never made contact. Defendants’ Geico policy used nearly identical language to define uninsured motor vehicle as the *Anderson* case: “a hit-and-run vehicle whose operator or owner cannot be identified and which hits: a. you or any family member; b. a vehicle which you or any family member are occupying; or c. your covered auto.” And Defendants brought “no authority for the proposition that contact between bullets that came from John Doe’s vehicle and . . . [De’Young] or the vehicle he was in would suffice for a finding of coverage, and neither [Geico’s] policy nor North Carolina law would support that proposition.” Thus, the trial court did not err in finding that there “was not any contact between the two vehicles[,]” and that “no allegation in the complaint in the underlying companion case” raised such an inference.

Nor did the trial court err in concluding that the uninsured motorist policy did not cover De'Young's property damage sustained to his vehicle. Upon review of the uninsured motorist policy's exclusions, section B expressly notes: "We *do not* provide coverage for property damage caused by a hit-and run vehicle whose operator or owner *cannot* be identified." (emphasis added). The record shows that the identity of the operator or owner of John Doe's vehicle remains unknown. We thus hold that the trial court did not err by ruling that Geico "does not owe [Defendants] coverage under the Uninsured Motorists Coverage portion of its policy"

Accordingly, the trial court did not commit error by concluding that Defendants were not entitled to uninsured motorist coverage for the gunshot injuries sustained by De'Young and property damage to the vehicle. After careful consideration, we hold that there was insufficient physical contact to warrant coverage under our precedents interpreting N.C. Gen. Stat. § 20-279.21(b)(3)(b). *See Anderson*, 335 N.C. at 528, 439 S.E.2d at 137; *see also Moore*, 191 N.C. App. at 110, 664 S.E.2d at 329.

IV. Conclusion

After careful consideration, we hold that the trial court did not commit error by granting Geico's motion for judgment on the pleadings or by concluding that Defendants' injuries were not afforded coverage under the uninsured motorist provision of their policy.

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AFFIRMED.

Judges CARPENTER and FLOOD concur.

Report per Rule 30(e).