

NOTICE

Decision filed 05/30/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 120492-U

NO. 5-12-0492

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

PROGRESSIVE INSURANCE COMPANY,

Plaintiff-Appellee,

v.

LAWRENCE GAUSE,

Defendant-Appellant.

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Appeal from the
Circuit Court of
St. Clair County.

No. 12-MR-107

Honorable
Stephen P. McGlynn,
Judge, presiding.

PRESIDING JUSTICE SPOMER delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment in favor of the plaintiff proper where defendant failed to report the accident as required by the insurance policy.

¶ 2 The defendant, Lawrence Gause, appeals the August 7, 2012, order of the circuit court of St. Clair County that granted a motion for a summary judgment in favor of the plaintiff, Progressive Insurance Company. For the following reasons, we affirm.

¶ 3

FACTS

¶ 4 On June 19, 2012, a discovery deposition of the defendant was taken. At the deposition, the defendant testified that he was traveling on his motorcycle in the early morning hours of April 7, 2011. The record reflects that an insurance policy (policy) was provided by the plaintiff for the defendant and his motorcycle and was in effect on that date. The defendant testified that while riding his motorcycle, he observed a dark-colored truck traveling in front of him, although he did not note the make or model of the truck nor did he

see the driver. The defendant stated that the truck merged into a right-turn lane and he proceeded to pass the truck. As the defendant began passing, the truck moved back into the defendant's lane. In order to avoid a collision with the truck, the defendant accelerated, swerved to the left, and struck the median, resulting in injury to the defendant. The defendant testified that neither he nor his motorcycle came into contact with the truck. He further testified that he did not report the accident to the police or to anyone other than the plaintiff, nor did any other individual report the accident on his behalf.

¶ 5 On April 8, 2011, the defendant spoke with a representative of the plaintiff to request a claim for uninsured motorist bodily injury coverage under the policy. The plaintiff denied the defendant's claim and on March 26, 2012, filed a complaint in the circuit court for a declaratory judgment, pursuant to section 2-701 of the Illinois Code of Civil Procedure (735 ILCS 5/2-701 (West 2010)). On July 5, 2012, the plaintiff filed a motion for a summary judgment, which the circuit court granted in an order entered on August 7, 2012. After his motion to reconsider was denied, the defendant filed a timely notice of appeal.

¶ 6 ANALYSIS

¶ 7 The sole issue on appeal is whether the circuit court erred by granting the plaintiff's motion for a summary judgment. "A summary judgment is properly granted when the pleadings, depositions and affidavits show no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law." *Hagy v. McHenry County Conservation District*, 190 Ill. App. 3d 833, 842 (1989). "In ruling on a motion for summary judgment, the court must construe the evidence *** strongly against the movant." *Id.* "Summary judgment should be awarded with caution so as not to preempt the right *** to present fully a factual basis for a case when a material dispute may exist." *Id.* "Summary judgment is appropriate, however, where there is no dispute as to any material fact but only as to the legal effect of the facts." *Id.* "In appeals from summary judgment rulings, a

reviewing court conducts a *de novo* review." *Makowski v. City of Naperville*, 249 Ill. App. 3d 110, 115 (1993). "The reviewing court's function in reviewing a summary judgment is to determine whether the trial court correctly found that no genuine issue of material fact existed and whether the trial court correctly entered judgment for the moving party as a matter of law." *Id.* "In the light of the record made at the time the trial court ruled [citation], a reviewing court may sustain the decision of the trial court on any grounds called for by the record, regardless of whether the trial court made its decision on the proper ground." *Id.*

¶ 8 At issue in this case is Part III of the policy with regard to uninsured/underinsured motorist coverage, under which the defendant attempted to file his claim. This section of the policy provides, *inter alia*, as follows:

**"INSURING AGREEMENT - UNINSURED/UNDERINSURED MOTORIST
BODILY INJURY COVERAGE**

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from the owner or operator of an **uninsured motor vehicle** or **underinsured motor vehicle** because of **bodily injury**:

1. sustained by an **insured person**;
2. caused by an accident; and
3. arising out of the ownership, maintenance, or use of an **uninsured motor vehicle** or **underinsured motor vehicle**.

* * *

ADDITIONAL DEFINITIONS

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4. **'Uninsured motor vehicle'** means a land motor vehicle of any type:

* * *

- d. that is a hit-and-run vehicle whose owner or operator cannot be identified and

which strikes or causes an object to strike:

- (i) **you** or a **relative**;
- (ii) a vehicle that **you** or a **relative** are **occupying**; or
- (iii) a **covered motorcycle**;

provided that the **insured person**, or someone on his or her behalf, reports the accident to the police or civil authority within 24 hours or as soon as practicable after the accident." (Emphases in original.)

¶ 9 In this case, the defendant is not entitled to an uninsured motor vehicle claim under the "hit-and-run" vehicle provisions because the policy contains a caveat which states that such a claim is available, "provided that the **insured person**, or someone on his or her behalf, reports the accident to the police or civil authority within 24 hours or as soon as practicable after the accident." (Emphasis in original.) The defendant testified at the deposition that he did not report the accident to the police or to anyone other than the plaintiff, nor did any other individual report the accident on his behalf. Accordingly, the defendant did not meet the policy requirements for making an uninsured motor vehicle claim and the trial court did not err by granting the plaintiff's motion for a summary judgment because there were no genuine issues of material fact and the judgment was correctly entered as a matter of law. See *Makowski*, 249 Ill. App. 3d at 115. Because the defendant did not report the accident as required by the policy, we affirm on this basis and need not address the question of whether contact was made between the unidentified vehicle and the defendant.

¶ 10 CONCLUSION

¶ 11 For the foregoing reasons, we affirm the August 7, 2012, order of the circuit court of St. Clair County that granted the plaintiff's motion for a summary judgment.

¶ 12 Affirmed.