

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ELIZABETH GAUCHE,	:	APPEAL NO. C-110330
	:	TRIAL NO. A-0800324
Plaintiff-Appellant,	:	
	:	JUDGMENT ENTRY.
vs.	:	
STATE FARM FIRE & CASUALTY,	:	
	:	
Defendant-Appellee	:	
	:	
and	:	
	:	
WARD TAYLOR,	:	
	:	
Defendant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Plaintiff-appellant Elizabeth Gauche presents an appeal arguing that the trial court improperly granted summary judgment in favor of defendant-appellee State Farm. We affirm.

On January 13, 2006, Gauche was in an automobile accident caused by defendant Wade Taylor. On January 10, 2008, Gauche filed a personal-injury complaint against Wade claiming that he had been negligent, that he had caused her to incur medical expenses “in excess of \$9,000,” and that she was entitled to judgment against Taylor “in an amount in excess of \$25,000.00 plus pre-judgment and post-judgment interests and costs.”

On December 9, 2009, Gauche filed an amended complaint adding defendant-appellee State Farm as a party and claiming entitlement to underinsured-motorist benefits (UIM) under her policy. The State Farm policy named Gauche as an insured and provided UIM coverage limits of \$50,000 per person and \$100,000

per occurrence. As had Gauche's original complaint, her amended complaint also claimed that she had incurred medical expenses "in excess of \$9,000," and that she was entitled to a judgment in excess of \$25,000. By the time the amended complaint was filed, 47 months had passed since the date of the accident.

State Farm filed a combined motion to dismiss or motion for summary judgment, claiming that the suit was barred by the two-year limitation period contained in the contract, which stated that Gauche could not sue State Farm "under underinsured motor vehicle coverage unless such action is commenced within two years after the date of the accident." The trial court granted State Farm's motion for summary judgment.

The Ohio Supreme Court recently addressed a similar issue in *Angel v. Reed*, 119 Ohio St.3d 73, 2008-Ohio-3193, 891 N.E.2d 1179. In that case, the plaintiff had sued the defendant, believing him to be insured. Three years after the accident, the plaintiff discovered that the defendant was uninsured and brought a claim for uninsured-motorist benefits against Allstate. The court determined that the two-year limitations provision, functionally equivalent to the one before this court, barred the action. The court noted that it had previously said that "a two-year limitation period would be a 'reasonable and appropriate' period of time in which to require an insured who has suffered bodily injury to commence an action under the uninsured/underinsured-motorist provisions of an insurance policy." *Id.* at ¶8, citing *Miller v. Progressive Cas. Ins. Co.* (1994), 69 Ohio St.3d 619, 624, 1994-Ohio-160, 635 N.E.2d 317, and *Sarmiento v. Grange Mut. Cas. Co.*, 106 Ohio St.3d 403, 2005-Ohio-5410, 835 N.E.2d 692, at ¶11. The court then concluded that "[o]ur precedent controls, and the two-year limitation period in the Allstate policy is enforceable." *Id.* at ¶9. The court also concluded that the time began to run, as the policy indicated, on the date of the accident. *Id.* at ¶15. The court noted that the case did not represent an "unusual" uninsured-motorist case, and it concluded that

“[c]onsistency with precedent requires the application of the unambiguous language in the Allstate policy.” Id. at ¶19.

In a recent decision from the Tenth Appellate District, the court reached a similar result regarding underinsured-motorists claims. In *D'Ambrosia v. Hensinger*, 10th Dist. No. 09AP-496, 2010-Ohio-1767, the plaintiff waited over six years after the accident before seeking to make a claim for underinsured motorist coverage. The court in *D'Ambrosia* noted the plaintiff's argument that the *Angel* decision did not create a per se rule requiring the court to consider the facts of the particular case. The court did not expressly agree with the plaintiff's point, but did note that “[w]hile we agree that courts typically engage in this type of analysis, appellant has given us no reason to conduct such an analysis. Indeed, appellant has failed to present any relevant facts or circumstances demonstrating that the provision is unreasonable.” Id. at ¶10.

In this case, Gauche presented no relevant facts or circumstances demonstrating that the provision was unreasonable. Gauche claimed that the tortfeasor's policy limit was \$25,000. In her initial complaint, she alleged that she had suffered over \$25,000 in damages based on over \$9,000 in medical bills and other losses. In her amended complaint, she again alleged that she had suffered over \$25,000 in damages based on over \$9,000 in medical bills and other losses. So, if the *Angel* decision had, in fact, not created a per se rule, Gauche did not demonstrate that her claim was anything other than “a standard underinsured motorist claim.” Id. at ¶11. Therefore, the two-year contractual limitation period in the contract applies.

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We overrule Gauche's sole assignment of error and affirm the decision of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DINKELACKER, P.J., HENDON and CUNNINGHAM, JJ.

To the clerk:

Enter upon the Journal of the Court on December 30, 2011
per order of the Court _____.

Presiding Judge

