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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**



LILLIAN JOHNSON
Plaintiff

Case No: CV-10-723296

Judge: BRENDAN J SHEEHAN

PROGRESSIVE PREFERRED INSURANCE CO., ET AL
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

OPINION AND JUDGMENT ENTRY. O.S.J.
COURT COST ASSESSED AS EACH THEIR OWN.

Judge Signature

Date

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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|------------------------------------|---|-----------------------------|
| LILLIAN JOHNSON, |) | CASE NO. CV 10 723296 |
| |) | |
| Plaintiff, |) | |
| |) | JUDGE BRENDAN J. SHEEHAN |
| v. |) | |
| |) | |
| PROGRESSIVE PREFERRED |) | |
| INSURANCE COMPANY, <i>et al.</i> , |) | OPINION AND JUDGMENT |
| |) | ENTRY |
| Defendants. |) | |



This matter is before the Court on Defendant Progressive Preferred Insurance Company's ("Progressive's") Motion for Summary Judgment. The issues have been fully briefed to the Court.

Plaintiff obtained a policy of insurance from Defendant Progressive. The policy specifically identifies the three automobiles covered by the policy and identifies Plaintiff as the named insured. Plaintiff's son, Lavelle Randall, is specifically identified as an "excluded driver".

Plaintiff's son was operating a motorcycle and was fatally injured when struck by a vehicle operated by Defendant Jeffrey M. Novak. Plaintiff filed this action claiming damages under the UM/UIM policy of insurance as the Administratrix of the Estate of Lavelle Randall and for her personal claim of post traumatic stress resulting from her son's death.

Defendant Progressive filed a counterclaim for declaratory relief and now seeks summary judgment in its favor on Plaintiff's claims against it on the grounds that Plaintiff's son was clearly excluded from coverage and that Plaintiff is not entitled to recover individually under the policy.

Under Civ.R. 56, summary judgment is appropriate when, (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the non-moving party. *Holliman v. Allstate Ins. Co.* (1999), 86 Ohio St.3d 414; *Temple v. Wean United, Inc.* (1997), 50 Ohio St.2d 317, 327. When a motion for summary judgment is properly made and supported, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial and may not merely rest on allegations or denials in the pleadings. *Dresher v. Burt* (1996), 75 Ohio St.3d 280. The nonmoving party must produce evidence on any issue for which that party bears the burden of production at trial. *Wing v. Anchor Media, Ltd.* (1991), 59 Ohio St.3d 108, 111. Further, to survive summary judgment, a plaintiff must produce more than a scintilla of evidence in support of his position. *Markle v. Cement Transit Co., Inc.* (1997), 1997 WL 578940, 2, citing *Redd v. Springfield Twp. School District* (1993), 91 Ohio App.3d 88, 92.

In construing the terms of the insurance policy at issue, the Court applies the well-established rule of contract interpretation that “[i]f a contract is clear and unambiguous, then its interpretation is a matter of law and there is no issue of fact to be determined.” *Alexander v. Buckeye Pipe Line Co.* (1978), 53 Ohio St.2d 241.

Concerning Plaintiff’s claim as the Administratrix of the Estate of Lavelle Randall, the insurance policy at issue specifically and unambiguously excludes Lavelle Randall as an insured. Plaintiff’s efforts to modify the exclusion to allow coverage as a relative of an insured are unavailing. The insurance policy was issued and accepted with the plain,

simple and direct exclusion of coverage for Lavelle Randall and no coverage can be implied by contract or law.

As to Plaintiff's claim related to her emotional distress upon the loss of her son, the terms of coverage related to Plaintiff provide:

If **you** pay the premium for this coverage, **we** will pay for damages that an **insured person** is legally entitled to recover from an **uninsured motorist** or **underinsured motorist** because of **bodily injury**:
sustained by the **insured person**;
caused by an accident; and
arising out of the ownership, maintenance, or use of a **motor vehicle** by an **uninsured motorist** or **underinsured motorist**.

The plain language of the contract requires that the insured person sustain a "bodily injury". The term "bodily injury", under circumstances similar to the one at bar, has been found to not include "nonphysical harm such as mental anguish over the loss of a loved one", excluding "nonphysical, emotional, or mental harm originating in the mind, not the body". *Gilkey Gibson* (1998) 1998 WL 514109, 3.¹

The Court finds that Plaintiff Lillian Johnson's mental anguish over the loss of her son is tragic, but it is not a "bodily injury" compensable as a matter of law under the terms of the insurance policy at issue.

For the foregoing reasons, **DEFENDANT PROGRESSIVE PREFERRED INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. JUDGMENT IS ENTERED IN FAVOR OF DEFENDANT**

¹ *Gilkey* was decided under a previous version of R.C. 3937.18 but its rationale remains applicable under the current version of the law and the insurance policy at issue.

PROGRESSIVE PREFERRED INSURANCE COMPANY AND AGAINST
PLAINTIFF, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF
LAVELLE RANDALL. EACH PARTY TO BEAR THEIR OWN COSTS.

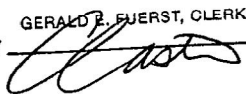
IT IS SO ORDERED.


JUDGE BRENDAN J. SHEEHAN

Dated: 10.27.10

RECEIVED FOR FILING

OCT 29 2010

GERALD R. FUERST, CLERK
BY  DEP.

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 28th day of October,

2010:

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