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NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-001052-MR

BRUCE STALLARD

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE A.C. MCKAY CHAUVIN, JUDGE  
ACTION NO. 09-CI-005866

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KRAMER, MAZE, AND VANMETER, JUDGES.

VANMETER, JUDGE: This case involves the question of whether a helmet is an integral part of a motorcycle triggering the uninsured motorist hit-and-run provision of an insurance policy. In granting summary judgment for the insurer, the Jefferson Circuit Court held, as a matter of law, that a helmet is not an integral part of a motorcycle and, accordingly, the accident was not caused by a force

projected by the hit-and-run vehicle. Because no genuine issue of material fact was presented by the non-moving party, we affirm the grant of summary judgment.

### **I. Facts and Procedure**

Bruce Stallard is a motorcycle owner and a member of a motorcycle club. Once a year, his club hosts a picnic and ride with other clubs. In 2008, this event began at a park where around 150 motorcycle owners gathered. The group then departed for a different park. This large group was broken into smaller groups of approximately twenty-five riders which left at staggered times.

Stallard was in the middle of the second group, with members from both his club and other clubs. As the group approached the highway, Stallard saw the motorcycles in front of him begin to brake and swerve. Stallard also began braking, swerving to the left to avoid colliding with the motorcycles in front of him. When he swerved, his back tire swung forward and to the right, making contact with a helmet flown towards him from the front of the group. Upon contact with the helmet, Stallard was thrown from his motorcycle. The fall resulted in multiple serious injuries.

Stallard later stated in his deposition that another member of his club, Terry Lovan, told him the helmet had come from a rider at the front of their group. This rider had failed to secure his helmet and it flew off as he accelerated onto the highway. It bounced back among the other riders and ultimately collided with Stallard's motorcycle as he tried to avoid hitting anyone else. This unidentified rider was not a member of Stallard's club and remains unknown.

At the time of the accident, Stallard had a policy with State Farm Insurance Company.<sup>1</sup> The relevant portions of the policy provide:

*Uninsured Motor Vehicle* — means:

...

2. a “hit-and-run” land motor vehicle whose owner or driver remains unknown and which strikes:

a. the *insured* or

b. the vehicle the *insured* is *occupying*

and causes *bodily injury* to the *insured*.

State Farm denied coverage on the basis that the unidentified motorcycle did not qualify as an uninsured motor vehicle under Stallard’s policy. Stallard then brought this action in Jefferson Circuit Court. State Farm filed a motion for summary judgment on the basis that the policy validly imposed a “physical impact” requirement for hit-and-run coverage, and since neither the unidentified motorcycle nor an “integral part” of it struck Stallard or his motorcycle, the policy did not provide coverage. Stallard argued, conversely, that the helmet was an “integral part” of the unidentified motorcycle, and thus its impact with Stallard’s motorcycle satisfied the policy terms. The trial court agreed with State Farm’s position and granted its motion. This appeal followed.

## II. Standard of Review

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<sup>1</sup> Stallard’s policy with State Farm covering the motorcycle did not include uninsured motorist coverage. But Stallard had a second policy covering another vehicle which did include uninsured motorist coverage applicable to Stallard.

Upon review of a summary judgment, we must determine whether the trial court correctly found that no genuine issue as to any material fact existed and the moving party was entitled to judgment as a matter of law. *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment is appropriate “[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor[.]” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). “[T]he movant must convince the court, by the evidence of record, of the nonexistence of an issue of material fact.” *Id.* Since factual findings are not at issue, an appellate court need not defer to the trial court and instead reviews issues *de novo*. *Blevins v. Moran*, 12 S.W.3d 698, 700 (Ky. App. 2000). In this case, the facts are undisputed, leaving for our determination “only a question of law concerning ‘the construction[,] meaning[,] and legal effect’ of the [uninsured motorist] clauses[.]” *State Farm Mut. Auto. Ins. Co. v. Baldwin*, 373 S.W.3d 424, 428 (Ky. 2012) (citation omitted).

### **III. Analysis**

In *Baldwin*, the Kentucky Supreme Court undertook an extensive review of uninsured motorist coverage in the context of hit-and-run accidents, including the identical provisions of the State Farm policy at issue here. Insurance companies may, but are not required to, provide coverage for hit-and-run incidents. *Id.* at 429. To the extent coverage for hit-and-run accidents is provided, the policy terms may define “uninsured motorist” restrictively and limit the coverage and terms of the policy. *Id.* And, while most insurance policies do include coverage

for hit-and-run situations, almost all policy language requires “physical contact” by the hit-and-run vehicle upon the insured in order to recover. *Id.* This requirement has been found reasonable in order to prevent fraudulent claims. *Id.*

Specifically, with respect to the State Farm policy provisions, taking into account prior precedent, the court held that uninsured motorist coverage was available under three scenarios: 1) an uninsured land motor vehicle directly, physically contacts the insured’s vehicle; 2) an integral part of an uninsured motor vehicle directly, physically contacts the insured vehicle; or 3) an uninsured vehicle projects a force in a chain reaction accident. *Id.* at 431-32

In this case, the unidentified motorcycle did not directly, physically contact Stallard’s motorcycle. Thus, the first scenario does not apply. Stallard argues that the third scenario may apply since the uninsured vehicle projected a force upon the helmet resulting in a chain reaction accident. However, in *Baldwin*, the court effectively limited that scenario to situations in which the unidentified vehicle projects a force on another object which then hits the insured’s vehicle. *Id.* at 432. On this point, the court stated “when an object that is not an integral part of the uninsured vehicle bounces off the vehicle, **comes [loose] from it**, or ricochets off of it, the uninsured vehicle is not projecting a force on the object. . . . [T]he force of the trailing, insured vehicle . . . results in the impact.” *Id.* (emphasis added).<sup>2</sup> Since the helmet came loose from the unidentified driver, the third

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<sup>2</sup> Irrespective of whether we agree with the court’s analysis on this point, we are nevertheless bound by its precedents. Kentucky Rules of Supreme Court (SCR) 1.030(8)(a).

scenario does not apply. Stallard therefore may prevail, under the second scenario, only if the helmet was an integral part of the unidentified motorcycle.

In *Baldwin*, the court analyzed what constitutes an “integral” part, stating, “[t]ypically, mechanical parts and factory-installed components are integral to a vehicle because they are essential to [its] completeness or are otherwise formed as a unit with the vehicle.” *Id.* at 431. Whether an item is permanently or semi-permanently affixed, or statutorily required, may also bear on its classification as an integral part. *Id.* at 431-32.

Stallard argues that a helmet is a necessary piece of safety equipment and essential to the operation of a motorcycle. We disagree. A helmet is not essential to a motorcycle’s completeness, and is not necessary for the operation of a motorcycle. Nor is it affixed to the motorcycle or intended to be a permanent part of a motorcycle. Stallard also argues that an operator is “the most integral” part of a motor vehicle and a helmet is essential to an operator’s safety.<sup>3</sup> He maintains this, in turn, makes a helmet integral. However, this argument ignores the fact that a motorcycle can be operated with or without a helmet. The operator may permissibly choose whether to wear a helmet.

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<sup>3</sup> Stallard points out that if the operator of the motorcycle himself was thrown into a car and managed to leave the scene, rendering him an unidentified hit-and-run driver, he would, of necessity, be considered an integral part of the motorcycle. While this hypothetical is interesting, those facts are not currently under consideration, and, therefore, need not be addressed.

While some states require helmets for all riders, Kentucky is not one of those states.<sup>4</sup> Therefore, it cannot be argued that a helmet is somehow integral because its use is statutorily required in a few narrow instances.<sup>5</sup> Without proof the unidentified rider was required by statute to wear a helmet, the helmet does not meet the integral parts test and the uninsured motorist provision is not applicable. The only evidence offered by Stallard, other than his pleadings, was an affidavit from Terry Lovan. In the affidavit, Lovan states that he saw the helmet come from a motorcycle rider at the front of Stallard's group, thereby proving the helmet came from the unidentified rider and was not merely road debris. Unfortunately, this affidavit did not prove this rider was or may possibly be someone who was required by statute to wear a helmet.

#### **IV. Conclusion.**

In conclusion, none of the three possible scenarios occurred which would afford coverage to Stallard under the terms of the hit-and-run provisions of the uninsured motorist insurance. The Jefferson Circuit Court correctly granted State Farm's motion for summary judgment, and we affirm its judgment.

ALL CONCUR.

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<sup>4</sup> The requirement for all operators to wear approved protective headgear was deleted in 1998. 1998 Ky. Acts ch. 21.

<sup>5</sup> In Kentucky, a motorcycle operator is required to wear a helmet only in three specific circumstances: he or she is under 21, operating on a motorcycle permit, or possessing a license for less than a year. KRS 189.285(3). However, absent some form of evidence, we cannot assume the unidentified rider falls within one of the classes required by the statute to wear a helmet.

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