IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARTINA URIBE and CARLOTA URIBE, Plaintiffs/Appellants, v. MARYLAND AUTOMOBILE INSURANCE FUND, Defendant/Appellee.	)	C.A. No. N13A-09-014 CLS

ORDER

On this 12th Day of February and upon Appellee Maryland Automobile Insurance Fund's ("MAIF") Motion to Dismiss, the Court finds:

1. On April 12, 2013, Appellants Martina and Carlota Uribe ("Appellants") were involved in a motor vehicle accident in Delaware while they were occupying a vehicle insured by MAIF, a Maryland state agency. Appellants filed suit in the Court of Common Pleas against MAIF seeking PIP benefits pursuant to 21 *Del. C.* § 2118. On September 23, 2013 and upon MAIF's Motion to Quash and Dismiss for lack of personal jurisdiction, the Court of Common Pleas dismissed the complaint.

2. MAIF now moves to dismiss the appeal, arguing that the appeal is now moot because, even if jurisdiction existed, Appellants could not recover under the policy because it was void. According to MAIF, further investigation has revealed a misrepresentation by the policy holder which rendered the insurance policy at issue *void ab initio*. To support this assertion, MAIF submitted two letters (each dated October 23, 2013) that it sent to Plaintiffs' counsel, stating that the policy was voided.[1]
3. In addition to challenging MAIF's arguments about the existence of the policy, Appellants oppose MAIF's motion primarily because MAIF's motion relates to the merits of the underlying claim rather than the issue of jurisdiction.
4. On an appeal from a decision of the Court of Common Pleas, this Court determines "whether there is legal error and whether the factual findings made by the trial judge are supported by the record and are the product of an orderly and logical deductive process."[2] An appeal of a decision to dismiss a complaint presents a question of law which is subject to *de novo* review.[3]

---

[1] MAIF Mot., Ex. A.

[2] *Wright v. Platinum Financial Services,* 930 A.2d 929, 2007 WL 1850904, at *2 (Del. Jun. 28,2007)(TABLE).

[3] *Del. State Housing Authority/Clark's Corner v. J. of Peace Ct. 16,* 2007 WL 625901, at *2 (Del.Super. Jan 25, 2007).

5. The lower court's decision was based on the threshold issue of whether MAIF was amenable to the jurisdiction of a Delaware court. Therefore, the only question posed by Appellants' appeal is whether the lower court's decision to dismiss the complaint for lack of jurisdiction was proper. The Court agrees that MAIF's current motion calls upon the Court to determine an issue based on the merits, which is not only contested, but also beyond the scope of this Court's review for this appeal. Therefore, MAIF's motion to dismiss is **DENIED.**
6. MAIF must respond to Appellants' opening brief by **March 14, 2014**.

IT IS SO ORDERED.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.