NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 2022

CAROL ROBERTSON, AS PARENT OF TYRONICA ROBERTSON AND KE'VANTA VENIBLE, KERISTIN POOL, AS PARENT OF NAKIA COOK, WILLIE MITCHELL, AS PARENT OF CHRISTINE MITCHELL, DEMETRIA NICHOLS, AS PARENT OF JAVARI NICHOLS AND DE'KEVIA NICHOLS, ANETRA POOL, AS PARENT OF NYKEIDRIA POOL, JACQUELINE ROBERTSON, AS PARENT OF RONALD ROBERTSON, JR., RONNEKA ROBERTSON AND DARRIYN MCKNIGHT, ESHUNDRA BOYD, AS PARENT OF EDDIE BOYD, EMMA ATKINS, AS PARENT OF CHARLESTON TAPLIN AND CARLTON ATKINS

VERSUS

ARGUSTA SELF, VALFOUR SELF, PROGRESSIVE INSURANCE COMPANY, KENNETH T. HOOFKIN AND ST. PAUL INSURANCE COMPANY

Judgment Rendered: June 8, 2007

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of St. Helena, Louisiana
Trial Court Number 18805

Honorable Elizabeth P. Wolfe, Judge

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Robert J. Carter
Greensburg, LA

Attorney for
Plaintiffs – Appellants
Carol Robertson, et al.

Christopher Moody
Hammond, LA

Attorney for
Defendants – Appellees
Kenneth Hoofkin and St.
Paul Ins. Co.

Jeff Watson
Baton Rouge, LA

Attorney for
Defendant – Appellee
Progressive Security Ins.

David Schexnaydre
Covington, LA

Attorney for
Defendant – Appellee
Argusta Self and Valfour Self

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

WELCH, J.

In this action for damages arising out of a motor vehicle accident, the plaintiffs appeal a summary judgment granted in favor of the defendant, St. Paul Insurance Company ("St. Paul"), that dismissed the plaintiffs' uninsured/underinsured motorist ("UM") claims against St. Paul. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

On January 5, 2004, a school bus owned and operated by Kenneth T. Hoofkin, utilizing its emergency lights and stop signs, stopped in the northbound lane of Louisiana Highway 1051 for the purpose of allowing children to board the bus. While the bus was stopped, a 2004 Dodge Stratus owned by Argusta Self and operated by Valfour Self, which was traveling in the southbound lane of Louisiana Highway 1051, entered the northbound lane and struck the school bus head-on. Although the school bus was owned and operated by Mr. Hoofkin, it was leased to the Tangipahoa Parish School Board ("TPSB") and was insured by St. Paul pursuant to policy number GP06300954 issued to the TPSB.

On November 24, 2004, the plaintiffs in this matter, Carol Robertson, Keristin Pool, Willie Mitchell, Demetria Nichols, Anetra Pool, Jacqueline Robertson, Eshundra Boyd, and Emma Atkins, who are the parents of children that were the passengers in the school bus, filed a petition for damages, naming as defendants Argusta Self, Valfour Self, Progressive Insurance Company ("Progressive") as the alleged insurer of Valfour Self,[1] Mr. Hoofkin, and St. Paul as Mr. Hoofkin's insurer.

In its answer, St. Paul averred that the TPSB had "a plan of self-insurance for the first $150,000 of damages," and "[b]eyond that," St. Paul admitted that it

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[1] Although Progressive had initially issued a policy to Ms. Self on October 31, 2003, she failed to pay the initial premium for the policy, and therefore in December 2003, Progressive rescinded the policy and declared it void. Pursuant to a judgment signed on May 18, 2006, summary judgment was granted in favor of Progressive, and Progressive was dismissed from these proceedings. No appeal has been taken from this judgment.

provided liability coverage for Mr. Hoofkin's school bus, but asserted that UM coverage had been contractually rejected by the TPSB.

On January 31, 2005, St. Paul filed a motion for summary judgment, contending that it was entitled to be dismissed from the plaintiffs' lawsuit because its named insured, the TPSB, had rejected UM coverage. After a hearing, the trial court granted the motion and dismissed the plaintiffs' UM claims against St. Paul. A judgment in conformity with the trial court's ruling was signed on June 30, 2006, and it is from this judgment that the plaintiffs have appealed.[2]

On appeal, the plaintiffs contend that the trial court erred in finding that UM coverage was validly rejected, since Mr. Hoofkin, the owner of the school bus, did not sign the rejection form and was not given any choice with regard to UM coverage.

II. LAW AND DISCUSSION

A. Summary Judgment Law

A motion for summary judgment should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue as to material fact and that mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B). In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **MSOF Corp. v. Exxon Corp.**, 2004-0988, p. 17 (La. App. 1st Cir. 12/22/05), 934 So.2d 708, 720, writ denied, 2006-1669 (La. 10/6/06), 938 So.2d 78.

The issue of whether an insurance policy, as a matter of law, provides or

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[2] The June 30, 2006 judgment was designated as a final judgment for the purpose of an immediate appeal after an express determination that there was no just reason for delay. See La. C.C.P. art. 1915(B). After a *de novo* review of the matter, we find no error in this determination. See **R.J. Messinger, Inc. v. Rosenblum**, 2004-1664, pp. 13-14 (La. 3/2/05), 894 So.2d 1113, 1122-23.

precludes coverage is a dispute that can be resolved properly within the framework of a motion for summary judgment. **Johnson v. Allstate Ins. Co.**, 95-1953, p. 3 (La. App. 1st Cir. 5/10/96), 673 So.2d 345, 347, writ denied, 96-1292 (La. 6/28/96), 675 So.2d 1126. Summary judgment declaring a lack of coverage under an insurance policy may not be rendered unless there is no reasonable interpretation of the policy, when applied to the undisputed material facts shown by the evidence supporting the motion, under which coverage could be afforded. **Reynolds v. Select Properties, Ltd.**, 93-1480 (La. 4/11/94), 634 So.2d 1180, 1183.

B. Rejection of UM Coverage

In all automobile liability insurance policies delivered in this state covering vehicles registered in this state, Louisiana law requires UM coverage in the same amount as the bodily injury liability coverage, unless "any insured named in the policy either rejects coverage, selects lower limits, or selects economic-only coverage." La. R.S. 22:680(1)(a)(i). "Such rejection, selection of lower limits, or selection of economic-only coverage shall be made only on a form prescribed by the commissioner of insurance" for that purpose, be "signed by the named insured or his legal representative" and "shall be conclusively presumed to become part of the policy." La. R.S. 22:680(1)(a)(ii). "A properly completed and signed form creates a rebuttable presumption that the insured knowingly rejected coverage, selected a lower limit, or selected economic-only coverage." *Id.*

The object of UM insurance is to provide full recovery for automobile accident victims who suffer damages caused by a tortfeasor who is not covered by adequate liability insurance. **Duncan v. U.S.A.A. Ins. Co.**, 2006-0363, p. 4 (La. 11/29/06), 950 So.2d 544, 547. The UM statute is to be liberally construed, and thus the exceptions to coverage are to be interpreted strictly. *Id.* Any exclusion from coverage in an insurance policy must be clear and unmistakable, and the insurer bears the burden of proving any insured named in the policy rejected in

writing the coverage equal to bodily injury coverage or selected lower limits. *Id.*

According to the evidence submitted by St. Paul in support of its motion for summary judgment, on September 7, 2003, the TPSB renewed its insurance policy number GP06300954 with St. Paul. This renewal was effective from September 7, 2003 at 12:01 a.m. until September 7, 2004 at 12:01 a.m. On October 7, 2003, the TPSB adopted a resolution authorizing the Superintendent of the TPSB, Louis L. Joseph, to sign the "required Louisiana [UM] form reflecting a selection of Rejection of [UM] Coverage," which selection would be applicable to its automobile insurance coverage for the period "September 7, 2003 through September 6, 2004."[3]

A UM selection form to this effect was executed by Mr. Joseph on November 11, 2003. On the UM selection form, the hand-written initials "LLJ" were placed by option "5," which reads: "**I do not want [UM] Coverage**. I understand that **I will not be compensated through [UM] coverage** for losses arising from an accident caused by an uninsured/underinsured motorist." "TANGIPAHOA PARISH SCHOOL BOARD" was typed into the blank for "Named Insured or Legal Representative," the form was signed by Mr. Joseph as the Superintendent of the TPSB, it was dated "11/11/03," and policy number "GP06300954" was typed in the blank above "Policy Number."

In opposition to St. Paul's motion for summary judgment, the plaintiffs contend that since Mr. Hoofkin was employed by the Tangipahoa Parish School System ("TPSS"), owned the school bus involved in the accident, and by contract, gave the TPSS and TPSB authority to contract liability insurance on the school bus, but was required by TPSB to pay his pro-rata share of the premium, Mr. Hoofkin should have been given the opportunity to either accept or reject UM coverage or select lower limits. Since Mr. Hoofkin's employment contract with

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[3] We note that the policy did not actually expire until September 7, 2004 at 12:01 a.m.

the TPSS and contract of lease with the TPSB only allowed him to reject UM, the plaintiffs contend that such rejection was invalid, and therefore, summary judgment should have been denied.

In support of this contention, the plaintiffs cite **Martin v. Clanton**, 626 So.2d 909 (La. App. 5th Cir. 1993). In **Martin**, the fifth circuit court of appeal held that where an employer leased vehicles from its employees and agreed to "provide" fleet insurance, the employees had to be given an opportunity to reject UM coverage. In so concluding, the court reasoned that since the employer's actions effectively sold portions of its policy to the employees, the employees became named insureds and had to be given a meaningful chance to accept or reject UM coverage. Thus, the employer's rejection was not binding on the employees. **Martin**, 626 So.2d at 912.

In opposition to the plaintiffs' position, St. Paul cites the more recent case of **Bullock v. Homestead**, 29,536 (La. App. 2nd Cir. 6/20/97), 697 So.2d 712, writ denied, 97-1936 (La. 11/7/97), 703 So.2d 1272, which criticizes **Martin**. In **Bullock**, the plaintiff leased his vehicle to Rebel Transport, an interstate ICC carrier. Rebel leased trucks from individual owners so that the owners could operate under its ICC permit. Under the terms of the lease, Rebel agreed to secure liability insurance for the leased vehicle, although Bullock, the truck driver, paid the monthly premium on the policy. Rebel's president rejected UM coverage for the listed vehicles, and Bullock was not given the opportunity to accept or reject coverage. Thereafter, Bullock was injured in an automobile accident caused by an uninsured motorist and sued Rebel and its insurer to recover uninsured motorist benefits. Bullock contended that Rebel's UM rejection was not enforceable. The trial court granted summary judgment in favor of Bullock based on **Martin**. The second circuit court of appeal reversed, rejecting the finding that under the terms of the lease, Bullock was "buying insurance through Rebel." **Bullock**, 29,536 at p. 8,

697 So.2d at 716. The court reasoned that by a plain reading of the UM statute, UM coverage may be rejected by any insured named in the policy, and because Rebel, a named insured, executed a valid, written rejection of UM coverage, Bullock was bound by the rejection. **Bullock**, 29,536 at p. 7, 697 So.2d at 715.

In **Reily v. Frey**, 99-1166, p. 5 (La. App. 1st Cir. 6/23/00), 762 So.2d 728, 731, this court expressly agreed with the rationale of **Bullock** and held that "under R.S. 22:1406D [now La. R.S. 22:680(1)[4]], *any named insured* in the policy can reject UM coverage in its entirety." In **Reily,** the plaintiff was rear-ended by an underinsured truck. At the time, the plaintiff was driving a vehicle owned by Wheels, Inc. and leased to the plaintiff's employer. Pursuant to the lease agreement, the plaintiff's employer was required to maintain its own liability insurance on the vehicle. The employer purchased such a policy from an insurer, was the named insured under the policy, and executed a rejection of UM coverage prior to the accident. The plaintiff was never provided an opportunity to either select or reject UM coverage on the vehicle he was driving. In concluding that the rejection of UM coverage was valid, this court noted that the claim at issue was against the insurer, rather than against the entity that arguably had a duty to give the plaintiff an option to accept or reject UM coverage (*i.e.*, the plaintiff's employer), and that the insurer "simply had no duty to offer UM coverage to [the plaintiff], who was neither a named insured nor a person with whom [the insurer] contracted." **Reily**, 99-1166 at p. 4, 762 So.2d at 731.

Applying this court's rationale and holding in **Reily** to our *de novo* review of the record in this matter, we find that St. Paul met its burden of proving that there were no genuine issues of material fact that the TPSB, the named insured under the policy, clearly and unmistakably rejected UM coverage and that this rejection was

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[4] Pursuant to 2003 La. Acts, No. 456, § 3, effective August 15, 2003, La. R.S. 22:1406 was amended and redesignated La. R.S. 22:680.

valid. Therefore, summary judgment was appropriate as a matter of law.

III. CONCLUSION

For the above and foregoing reasons, the June 30, 2006 judgment of the trial court granting summary judgment in favor of St. Paul and dismissing the plaintiffs' uninsured/underinsured motorist claims against St. Paul is hereby affirmed. All costs of this appeal are assessed to the plaintiffs/appellants.

AFFIRMED.