STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 CA 1812

ERICA BATISTE, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, HIRAM BATISTE, LADASHA BATISTE, ALICIA BATISTE, AND JAMARIOUS BATISTE, AND AUDREY TAYLOR ON BEHALF OF LACEY TAYLOR, AND RANSOM TAYLOR

VERSUS

MONICA DUNN, MATTHEW BAZILE, ALLSTATE INSURANCE COMPANY AND IMPERIAL FIRE AND CASUALTY INSURANCE COMPANY

Judgment Rendered: JUN 10 2011

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On Appeal from the Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
Docket No. 2009-002780

Honorable M. Douglas Hughes, Judge Presiding

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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

Whipple, J. dissents & assigns reasons.

McCLENDON, J.

In this appeal, the plaintiffs challenge a trial court judgment in favor of the insurer, determining that an automobile liability insurance policy issued to the owner of the vehicle involved in an accident did not afford uninsured/underinsured motorist (UM) coverage to guest passengers injured in the accident. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 24, 2008, Hiram Batiste, Ladasha Batiste, Alicia Batiste, Jamarious Batiste, Lacey Taylor, and Ransom Taylor were guest passengers in a vehicle owned and operated by Erica Batiste, when they were involved in an automobile accident in Tangipahoa Parish with a vehicle driven by Matthew Bazile and owned by his mother, Monica Dunn. Ms. Batiste, individually and on behalf of her minor children, Hiram Batiste, Ladasha Batiste, Alicia Batiste, and Jamarious Batiste; and Audrey Taylor, on behalf of Lacey Taylor; and Ransom Taylor, filed a petition for damages on August 10, 2009, against Ms. Dunn; Ms. Bazile; Ms. Dunn's automobile liability insurer, Allstate Insurance Company (Allstate); and Ms. Batiste's automobile liability insurer, Imperial Fire and Casualty Insurance Company (Imperial). Imperial filed an answer admitting that it issued an automobile liability insurance policy to Ms. Batiste, which also included UM coverage benefits.

On February 17, 2010, following the compromise and settlement of all matters between the plaintiffs and Ms. Dunn, Mr. Bazile and Allstate, a Joint Motion and Order of Dismissal with Prejudice was filed and signed by the trial court. Thereafter, the remaining defendant, Imperial, filed a motion for partial summary judgment seeking a determination that its policy did not afford UM insurance coverage in connection with the automobile accident at issue to Audrey Taylor on behalf of Lacey Taylor, and Ransom Taylor. Imperial asserted that Lacey Taylor and Ransom Taylor, who were guest passengers in the vehicle insured by Imperial, were not "insured persons" under the terms of the policy for purposes of UM coverage. In support of its motion, Imperial submitted its policy

of insurance, as well as interrogatories and answers demonstrating that neither Lacey Taylor nor Ransom Taylor were related by blood, adoption, or marriage to Ms. Batiste. Audrey Taylor, on behalf of Lacey Taylor, and Ransom Taylor, opposed the motion, arguing that they would be considered insureds under the liability portion of the policy and, therefore, were insured persons for purposes of UM coverage.

Following a hearing on April 12, 2010, the trial court granted summary judgment in favor of Imperial. Judgment was signed on April 27, 2010, in favor of Imperial finding that Audrey Taylor, on behalf of Lacey Taylor, and Ransom Taylor, were not insured for UM benefits under the policy issued by Imperial and, therefore, were not entitled to recover UM coverage from Imperial, so that their claims against Imperial were dismissed with prejudice. The trial court judgment further recognized that its ruling did not affect the UM insurance coverage as it related to the other remaining plaintiffs. This appeal by Audrey Taylor, on behalf of Lacey Taylor, and Ransom Taylor (plaintiffs) followed.[1]

DISCUSSION

Appellate courts review the grant or denial of a motion for summary judgment *de novo*. **Magnon v. Collins**, 98-2822, p. 5 (La. 7/7/99), 739 So.2d 191, 195; **Lambert v. Lavigne**, 04-1961, p. 3 (La.App. 1 Cir. 9/23/05), 923 So.2d 704, 706, writ denied, 05-2283 (La. 3/10/06), 925 So.2d 515. An appellate court thus asks the same questions as does the trial court in determining whether summary judgment is appropriate: whether there is any genuine issue of material fact and whether the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966B; **Lambert**, 04-1961 at p. 3, 923 So.2d at 706.

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[1] With regard to Imperial's motion to supplement the record with the rulings of the fourth circuit and the supreme court in the matter entitled **Sharone Knight, et al. v. Navarro A. Edwards, et al.**, 10-1474 (La.App. 4 Cir. 1/7/11), writ denied, 11-0245 (La. 3/4/11), 58 So.2d 479, said motion is hereby denied. It is inappropriate to supplement the record with matters not considered by the trial court. See **Diamond B. Constr. Co., Inc. v. Louisiana Dep't of Transp. and Dev.**, 00-1583, p. 17 (La.App. 1 Cir. 12/22/00), 780 So.2d 439, 449, writ denied, 01-0246 (La. 4/20/01), 790 So.2d 633. However, see Rule 2-12.6.1 of the Uniform Rules of the Louisiana Courts of Appeal.

An insurance policy is a conventional obligation that constitutes the law between the insured and insurer, and the agreement governs the nature of their relationship. LSA-C.C. art. 1983; **Lambert**, 04-1961 at pp. 3-4, 923 So.2d at 706. The goal of judicial interpretation of a policy's wording is to determine the common intent of the contracting parties. See LSA-C.C. art. 2045; **Cadwallader v. Allstate Ins. Co.**, 02-1637, p. 3 (La. 6/27/03), 848 So.2d 577, 580; **Grace v. Crespo**, 07-0397, p. 5 (La.App. 1 Cir. 9/19/07), 970 So.2d 1007, 1012, writ denied, 07-2010 (La. 12/7/07), 969 So.2d 636. Absent a conflict with statutory provisions or public policy, insurers, like other individuals, are entitled to limit their liability and to impose and enforce reasonable conditions upon the policy obligations they contractually assume. Thus, if the policy wording at issue is clear and unambiguously expresses the parties' intent, the insurance contract must be enforced as written. **Magnon**, 98-2822 at p. 7, 739 So.2d at 196-97; **Lambert**, 04-1961 at p. 4, 923 So.2d at 706. Further, an insurance contract or policy should not be interpreted in an unreasonable manner under the guise of contractual interpretation to enlarge or restrict the applicable provisions beyond what is reasonably understood from unambiguous terms. The rules of construction simply do not authorize a manipulation or perversion of the contract's language to create an ambiguity where none exists. **Cadwallader**, 02-1637 at p. 3, 848 So.2d at 580; **Grace**, 07-0397 at p. 6, 970 So.2d at 1012.

Under Louisiana's UM statute, automobile liability insurance must provide UM motorist coverage equal to the liability provided for bodily injury, unless UM coverage has been validly rejected or lower UM limits have been selected. See LSA-R.S. 22:1295.[2] The purpose of the UM statute is to protect the insured against the generalized risk of damages at the hands of uninsured motorists. **Howell v. Balboa Ins. Co.**, 564 So.2d 298, 301-02 (La. 1990). Although Louisiana's public policy strongly favors UM coverage and a liberal construction of

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[2] Renumbered from LSA-R.S. 22:680 by Acts 2008, No. 415, § 1, eff. Jan. 1, 2009. Redesignated from LSA-R.S. 22:1406(D) by Acts 2003, No. 456, § 3.

the UM statute, it is well-settled that a person who does not qualify as a liability insured under a policy of insurance is not entitled to UM coverage under the policy. **Magnon**, 98-2822 at p. 5, 739 So.2d at 195-96; **Lambert**, 04-1961 at p. 4, 923 So.2d at 706. In **Howell**, the supreme court reasoned that because UM insurance follows the person rather than the vehicle, a court must determine whether a plaintiff is an insured for liability purposes in order to determine whether he is entitled to UM coverage. **Howell**, 564 So.2d at 301. In other words, a claimant must be an "insured" under the policy's auto liability coverage to be entitled to UM coverage. **Magnon**, 98-2822 at p. 6, 739 So.2d at 196; **Lambert**, 04-1961 at p. 4, 923 So.2d at 706. See also **Filipski v. Imperial Fire & Cas. Ins. Co.**, 09-1013, p. 5 (La. 12/1/09), 25 So.3d 742, 745.

With these principles in mind, we examine the applicable policy provisions. Part C of the Imperial insurance policy sets forth UM coverage and defines an "insured person" or "insured persons" as:

1. **you** or a person residing in the same household as **you**, and related to **you** by blood, marriage, or adoption, including a ward, stepchild, or foster child; and

2. Any person who is entitled to recover damages covered by this Part C because of **bodily injury** sustained by a person described in 1 above.

"**You**" is defined in the policy as "the person shown as the **named insured** on the **Declarations Page**, and that person's spouse if residing in the same household and holding a valid driver's license." Erica Batiste is the only named insured on the declarations page and plaintiffs are not related to Ms. Batiste. Thus, under its clear terms, unlike some policies that include occupants within the definition of "insured persons" under the UM provisions of the insurance policy, the policy herein does not so provide.

However, plaintiffs argue that this language violates Louisiana's UM statute by failing to provide UM coverage for all persons classified as a liability "insured person" and violates public policy.[3] Plaintiffs maintain that they fit

[3] Our supreme court has noted that it is not the public policy of this state to protect and provide compensation to injured persons at all times and indicated that there is no public policy against

within the definition of "insured persons" under the liability portion of Imperial's policy and, therefore, must be considered "insured persons" under the UM portion of the policy as well. They contend that Imperial is attempting to circumvent the UM statute by defining an insured person for the purposes of UM coverage differently than an insured person for purposes of liability coverage.

As previously stated, it is well-settled that UM coverage attaches to the person of the insured, not the vehicle. **Howell**, 564 So.2d at 301. Any determination of whether a plaintiff is entitled to UM benefits must follow a determination that the plaintiff is an insured for purposes of auto liability insurance coverage. **Magnon**, 98-2822 at p. 6, 739 So.2d at 196. Thus, the argument that someone is insured for UM coverage simply because they occupy an insured vehicle and sustained injury due to an uninsured motorist is clearly contrary to well-established law.

Part A of the Imperial policy sets forth the provisions for liability coverage. Under Part A, "insured person" or "insured persons" is defined as:

1. **you** or a **relative** with respect to an **accident** arising out of the ownership, maintenance, or use of a **covered vehicle**;

2. any person with respect to an **accident** arising out of that person's use of a **covered vehicle** with the express or implied permission of **you**;

3. **You** or a **relative** with respect to an **accident** arising out of the maintenance or use of a **non-owned vehicle** with the express or implied permission of the **owner** of the **vehicle**; and

4. any Additional Interests Insured designated by **you** in **your** application or by a change request agreed to by **us**, with respect to liability for an **accident** arising out of the use of a **covered vehicle** or **non-owned vehicle** by a person described in 1, 2, or 3 above.

Plaintiffs argue that they were "using" the vehicle as passengers with the express permission of the named insured as defined in the policy. Thus, they contend, they were insured persons under the second definition in Part A.

The petition for damages filed in this matter provided, in pertinent part:

> Petitioner, Erica Batiste, was operating and Hiram Batiste, Ladasha Batiste, Alicia Batiste, Jamarious Batiste, Lacey Taylor, and Ransom Taylor were riding as guest passengers in Erica Batiste's

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excluding guest passenger UM coverage when the guest passengers are not insureds. See **Taylor v. Rowell**, 98-2865 (La. 5/18/99), 736 So.2d 812.

> 2000 Dodge Caravan, which was headed northbound on 7th Street in Ponchatoula, Louisiana in Tangipahoa Parish. Defendant, Matthew Bazile's vehicle, a 2001 Ford Explorer owned by Monica Dunn and being operated with permission by Defendant, was traveling westbound on West Hickory Street, pulled out into Petitioner's lane of traffic from the side street, and therefore caused a collision to occur between the two vehicles.

By the plain terms of the insuring agreement, we cannot find that the accident arose out of plaintiffs' use of the vehicle. To find that plaintiffs were "using" the vehicle simply because they were riding as guest passengers would require a strained interpretation inconsistent with the meaning of the word and beyond what could have been contemplated by the parties. Further, even were we to assume that plaintiffs were "using" Ms. Batiste's vehicle, the accident at issue did not arise out of said use. The "use" provision is designed to limit coverage to liability resulting from conduct of the insured which constitutes both a use of the vehicle and a legal cause of the injury. See **Carter v. City Parish Government of East Baton Rouge**, 423 So.2d 1080, 1084 (La. 1982); **Kessler v. Amica Mut. Ins. Co.**, 573 So.2d 476, 478 (La. 1991). Clearly, the act of riding in the insured vehicle did not cause or contribute to the accident in this case. The plain unambiguous wording of the policy simply cannot be manipulated to include plaintiffs' interpretation. Accordingly, plaintiffs are not "insured persons" under the liability portion of Imperial's insurance policy, and thus are not entitled to UM coverage under the statute.

As a result, Imperial was entitled as a matter of law to summary judgment finding that its policy did not provide UM coverage to plaintiffs under the facts presented herein.

CONCLUSION

For these reasons, the April 27, 2010 judgment of the trial court granting partial summary judgment in favor of Imperial Fire and Casualty Insurance Company, is affirmed. Costs of this appeal are assessed to plaintiffs, Audrey Taylor, on behalf of Lacey Taylor, and Ransom Taylor.

MOTION TO SUPPLEMENT RECORD DENIED; JUDGMENT AFFIRMED.

ERICA BATISTE, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, HIRAM BATISTE, LADASHA BATISTE, ALICIA BATISTE, AND JAMARIOUS BATISTE; AND AUDREY TAYLOR ON BEHALF OF LACEY TAYLOR AND RANSOM

VERSUS

MONICA DUNN, MATTHEW BAZILE, ALLSTATE INSURANCE COMPANY, AND IMPERIAL FIRE AND CASUALTY INSURANCE COMPANY

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WHIPPLE, J., dissenting.

Louisiana Revised Statute 22:1295 governs the issuance of UM coverage and mandates, in pertinent part, as follows:

> (1)(a)(i) No automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle designed for use on public highways and required to be registered in this state or as provided in this Section unless coverage is provided therein or supplemental thereto, in not less than the limits of bodily injury liability provided by the policy, under provisions filed with and approved by the commissioner of insurance, for the protection of persons insured thereunder who are legally entitled to recover nonpunitive damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death resulting therefrom... .

Thus, under Louisiana's UM statute, LSA-R.S. 22:1295, automobile liability insurance must provide UM motorist coverage equal to the liability limits provided for bodily injury, unless UM coverage has been validly rejected or lower UM limits have been selected. Lambert v. Lavigne, 2004-1961 (La. App. 1st Cir. 9/23/05), 923 So. 2d 704, 706, writ denied, 2005-2283 (La. 3/10/06), 925 So. 2d 515. I also agree that it is well settled that a person who does not qualify as a "liability insured" under a policy of insurance is not entitled to UM coverage under the policy inasmuch as a claimant must be an "insured" under the policy's automobile liability coverage to be entitle to UM coverage. Cf. Lambert, 923 So. 2d at 706-707 (wherein a guest passenger was not entitled to UM coverage under

the UM provisions of the driver's father's umbrella policy because he did not meet the narrowly drawn definition of an "insured" for purposes of UM coverage under the umbrella policy).

As the Supreme Court has recognized, uninsured motorist coverage embodies a strong public policy in this state. Taylor v. Rowell, 98-2865 (La. 5/18/99), 736 So. 2d 812, 816. Moreover, the Court reiterated its earlier pronouncement in Roger v. Estate of Moulton, 513 So. 2d 1126, 1130 (La. 1987), wherein the Court observed:

> The object of the statute is to promote recovery of damages for innocent automobile accident victims by making UM coverage available for their benefit as primary protection when the tortfeasor is without insurance, and as additional or excess coverage when he is inadequately insured.
>
> To carry out this objective of providing reparation for those injured through no fault of their own, this Court has held that the statute is to be liberally construed. Thus, the requirement that there be UM coverage is an implied amendment of any automobile liability policy, even one which does not expressly address the subject matter, as UM coverage will be read into the policy unless validly rejected. [Citations omitted.]

As the majority correctly notes, a determination of whether UM coverage is available turns on whether the claimant is an "insured" under the policy's liability coverage. Here, Part A of the Imperial policy sets forth the provision for liability coverage and specifically defines an "insured person," in pertinent part as "any person with respect to an **accident** arising out of that person's use of a **covered vehicle** with the express or implied permission of you." Thus, in my view, Lacey Taylor and Ransom Taylor meet the definition of "insured persons" under the terms of the Imperial policy.

Further, although the Supreme Court did observe that, at least in the context of a self-insured rental car agency, "there is no public policy against excluding guest passenger UM coverage when the guest passengers are not insureds," see

Taylor, 736 So. 2d at 818, such is not the case herein, where the claimants meet the definition of "insureds" under the liability provisions of the policy at issue.

Thus, pretermitting the threshhold issue of whether the majority's interpretation of the policy renders it *contra bonos mores*, I respectfully dissent from the majority's determination, through a strained interpretation of the policy, that Lacey Taylor and Ransom Taylor are not "insured persons." For these reasons, I respectfully dissent.