

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 0993

JUANITA LOCKHART

VERSUS

**CONTINENTAL CASUALTY COMPANY, JILL L. CRAFT, CRAFT AND
CRAFT, A.P.L.C. AND RICHARD P. BULLOCK**

Judgment Rendered: DEC 23 2008

On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 534,024

Honorable Timothy Kelley, Judge Presiding

Alfred Shapiro
Baton Rouge, LA

Plaintiff/Appellee
Juanita Lockhart

Kelsey K. Funes
Baton Rouge, LA
Richard A. Simpson
Washington, D.C.

Defendant/Appellant
Continental Casualty Co.

BEFORE: PETTIGREW, McDONALD, AND HUGHES, JJ.

*Jmm
McDonald, J. concurs and assigns reasons.*

HUGHES, J.

This is an appeal of a summary judgment rendered in this legal malpractice action in favor of the plaintiff, Juanita Lockhart (Ms. Lockhart) and against the defendant insurer, Continental Casualty Company (Continental), finding the professional liability policy it issued to one of the named defendants, attorney Jill Craft and her law firm, Craft & Craft, A Professional Law Corporation (Craft & Craft, APLC) also provided coverage to another named defendant, Richard Bullock, whom the trial court found to be an “insured” within the terms of the policy in the record. We review summary judgments *de novo*. **Boudreaux v. Vankerkhove**, 07-2555, p. 5 (La. App. 1st Cir. 8/11/08), 993 So.2d 725. Our review of the record reveals it is deficient in that it contains only one of two policies germane to resolving the issue of coverage. For the reasons explained below, without both policies, genuine issues of material fact remain. We therefore remand this matter to the trial court for further proceedings consistent herewith.

FACTUAL AND PROCEDURAL HISTORY

In 1999, prior to this lawsuit, Ms. Lockhart retained Jill Craft to represent her in an employment-related matter. Shortly thereafter, Ms. Craft, with Ms. Lockhart’s consent, made arrangements for attorney Richard P. Bullock to assist with the representation of Ms. Lockhart in that matter. That matter was ultimately dismissed as abandoned based on a finding that no steps were taken in the prosecution of Ms. Lockhart’s case for more than three years.

Ms. Lockhart then filed this lawsuit seeking damages for legal malpractice, naming as defendants Jill L. Craft, Craft & Craft, APLC, Richard Bullock, and Continental Casualty Company, as the professional liability insurer of Ms. Craft and Craft & Craft, APLC. The petition alleged Continental was solidarily liable with defendant, Craft, for damages caused by her alleged malpractice under a

policy “which was in full force and effect during the above described events [the failure to take steps in the prosecution of Ms. Lockhart’s case since 2000].”

Continental filed an answer to plaintiff’s petition admitting that it issued a policy of professional liability insurance to Craft & Craft, APLC and that the policy provided coverage to defendant, Ms. Craft, “at all pertinent times herein.” Continental denied any liability on the part of Ms. Craft and further averred that the representation of Ms. Lockhart, with her consent, had been assumed by Richard Bullock, at which time Ms. Craft’s attorney/client relationship with Ms. Lockhart ceased.

Mr. Bullock filed a cross claim against Continental asserting that based on his affiliation with the named insured, Jill Craft, in the Lockhart employment matter, he too is an “insured” within the scope of the professional liability policy issued to Ms. Craft and her law firm by Continental and is entitled to the benefits of coverage provided therein.

Continental answered Bullock’s cross claim admitting that it issued a professional liability policy “No. 169748274 to Bruce A. Craft for the policy period February 22, 2005 to February 22, 2006,” but denied and disputed Bullock’s claims regarding the terms and conditions contained therein. Specifically, Continental asserted Bullock was not an insured under the terms of the aforementioned policy and, therefore, not entitled to coverage.

The plaintiff also responded to Bullock’s cross claim by filing an amended petition alleging that Bullock, too, was an insured within the terms and provisions of the same liability policy issued by Continental that provided coverage to Jill Craft and therefore Bullock also was entitled to coverage thereunder.

Continental then filed a motion for summary judgment, asserting that it owes neither defense nor coverage to Bullock “under the professional liability policy it issued to the Craft & Craft law firm.” Continental attached to its motion for

summary judgment “Lawyers Professional Liability Policy number LAW-169748274,” issued to Bruce A. Craft as the Named Insured, with an effective policy period of February 22, 2005 to February 22, 2006. Continental also attached an affidavit executed by Jill Craft stating that from 1993 through January 21, 2004, she was a shareholder with Craft & Craft, APLC . Ms. Craft further attested that Bullock was never a partner, officer, associate, salaried employee, nor in any other way affiliated with Craft & Craft, APLC and that neither she nor her firm billed or received any fees for work performed by Bullock on Ms. Lockhart’s employment related matter.

The trial court, based on the 2005-2006 policy in the record in support of the motion for summary judgment, found Bullock to be an “insured” within the scope of the policy language and entitled to coverage. Based thereon, it denied Continental’s motion and granted summary judgment in favor of Ms. Lockhart.

DISCUSSION

The issue before us on appeal of that judgment, which as stated before, we review *de novo*, is whether Mr. Bullock is an insured and entitled to coverage under the professional liability policy in effect and issued by Continental to Ms. Craft and Craft & Craft. The record before us renders it impossible to make that determination because it contains only the policy in effect at the time Ms. Lockhart filed her suit. It is undisputed that this policy was issued *to Bruce A. Craft, as named insured* with a policy period of February 22, 2005 to February 22, 2006. Conspicuously absent from the record is the policy implicated by the allegations in plaintiff’s petition and in Bullock’s cross claim. These refer to a policy issued *to Jill Craft and Craft & Craft, APLC* in effect at the time of the alleged association between Bullock and Ms. Craft and the alleged act(s) of malpractice. The record also reveals that the policy language relating to coverage requires a determination

of a person's status *vis-à-vis* the "named insured." It is undisputed that the "named insured" was different in the two policies.

CONCLUSION

In the absence of that policy, genuine issues of material fact related to coverage remain unanswerable, rendering summary judgment premature. Accordingly, the judgment in favor of the plaintiff finding coverage for Bullock under Continental's policy is vacated. This matter is hereby remanded for further proceedings consistent herewith.

JUDGMENT VACATED; REMANDED.

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VERSUS

CONTINENTAL CASUALTY COMPANY

McDONALD, J. concurring:

I respectfully concur with the majority's opinion in this case. They correctly point out that the only policy in the record is the professional liability policy in effect at the time the suit was filed (policy # 169748274). Any policy in effect at the time of the alleged association between Bullock and Ms. Craft and during the time of the alleged malpractice is not in the record. The majority suggests that another policy is implicated in the plaintiff's petition and in Bullock's cross claim. Because of this, the majority is of the opinion that the absence of this policy creates a genuine issue of material fact and the issue of coverage cannot, therefore, be determined. While this may be correct, it is immaterial to the issue before us on appeal. The judgment is only directed to policy number 169748274. The judgment states:

...the Motion for Summary Judgment filed by the Plaintiff, Juanita M. Lockhart, is granted and it is hereby declared that Richard M. Bullock is an insured under Continental Casualty Company Policy No. 169748274 as asserted in the Petition for Damages in Legal Malpractice Action filed in this Civil Action and as amended.

It is this judgment that is the subject of this appeal. The judgment finds that Bullock is an insured under this policy. Even if the record were supplemented with other policies, they would not be part of this judgment. This judgment is a partial

summary judgment under La. C.Civ. Pro. art. 1915(B)(1) and is only appealable if it is certified by the trial court that there is no just reason for delaying the appeal. The trial court has done so.

There is no reason that we should not address the issue raised in this appeal, whether Bullock is an insured under policy number 169748274. I believe this issue is directly before us and is not premature. I believe the appellant is correct that the policy does not provide coverage for Bullock. Therefore, the trial court's ruling should be reversed and judgment should be rendered in favor of Continental Casualty finding there is no coverage under Policy No. 169748274. The case should be remanded for a determination of the rest of the issues that are still pending.

For these reasons I respectfully concur.