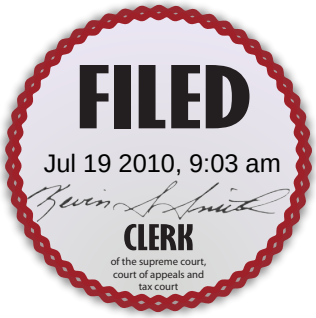

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IN THE
COURT OF APPEALS OF INDIANA

ANDY C. PITCHER d/b/a LIBERTY BELL,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 81A04-0908-CV-458
	)	
BERKLEY RISK ADMINISTRATORS COMPANY, LLC, and CONTINENTAL WESTERN INSURANCE COMPANY,	)	
	)	
Appellees-Defendants.	)	

APPEAL FROM THE UNION CIRCUIT COURT
The Honorable Ronald T. Urdal, Special Judge
Cause No. 81C01-0708-CC-191

July 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Andy Pitcher, d/b/a Liberty Bell, (hereinafter "Pitcher") appeals the trial court's grant of summary judgment in favor of Berkley Risk Administrators Company, LLC and Continental Western Insurance Company (collectively "Continental") on Pitcher's complaint alleging breach of contract. Pitcher raises a single issue for our review, namely, whether there exists a genuine issue of material fact precluding summary judgment.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 2005, Pitcher, a sole proprietor with approximately fifty employees, purchased a worker's compensation insurance policy from Continental. The policy was effective June 1, 2005, until June 1, 2006. Pitcher did not receive a renewal notice from Continental prior to June 1, 2006, and the policy expired without being renewed.

On July 26, 2006, one of Pitcher's employees sustained an injury during the course of her employment, and Pitcher sought coverage for that claim with Continental. Pitcher learned that the policy had expired on June 1, and Continental denied the claim. Pitcher filed a complaint alleging that Continental "failed to give [Pitcher] the appropriate notice of premium due" and that Continental is liable under the policy. Appellant's App. at 126. Continental moved for summary judgment, and, following a hearing, the trial court entered summary judgment in favor of Continental. In its order, the court stated:

> [I]n this court's opinion, [the] factual issue as to whether the offer of renewal statement was in fact sent to [Pitcher] or to one of his agents . . . is not a material fact; therefore, there is no genuine issue as to any material fact and defendants are entitled to a full and final judgment in their favor as a matter of law.

Appellant's App. at 112. Pitcher filed a motion to correct error, which the court denied. This appeal ensued.

DISCUSSION AND DECISION

When reviewing the grant of a summary judgment motion, we apply the same standard applicable to the trial court. Wagner v. Yates, 912 N.E.2d 805, 808 (Ind. 2009). Summary judgment is proper only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). We do not weigh the evidence, but will consider the facts in the light most favorable to the non-moving party. Wagner, 912 N.E.2d at 808.

Pitcher contends that Continental was legally required to send him a renewal notice at least sixty days prior to the expiration of his policy and that there is a question of fact whether Continental sent any such notice. Pitcher maintains that the trial court erred when it found that that question of fact was not material. In support of that contention, Pitcher relies on a rule allegedly promulgated by the Indiana worker's compensation rating bureau, which provides as follows:

> (3) Renewals . . . .
> At least sixty (60) calendar days prior to the expiration of the policy, the carrier shall send a renewal proposal or nonrenewal notice, as appropriate, to the employer and the producer of record.

Appellant's App. at 99.[1]

[1] Pitcher's designated evidence on this issue consists of a single piece of paper. At the top of the paper, the words "Assigned Risk Supplement" appear, and the page bears a copyright that states "1998 National Council on Compensation Insurances, Inc." Appellant's App. at 99. There is no indication in the text that the page is part of an agency regulation or any law pertaining to worker's compensation insurance carriers in Indiana.

On appeal, Pitcher admits that he has been unable to establish that the renewal notice "rule" is, in fact, a law with which Continental must comply. In particular, Pitcher states:

> Counsel has attempted, without success, to obtain finite documentary proof that that which was represented to the trial court as being part of the rating bureau's manual rules was, in fact, filed by the bureau and, in fact, approved by the commissioner. Numerous requests were made of the rating bureau prior to the hearings held before the trial court to provide such documentation; but, documentary proof was not (apparently) available or forthcoming. Attempts at obtaining such documented verification of the applicable section of the rating bureau's manual by which to evince that such section was a) filed by the rating bureau and b) approved by the commissioner, were attempted by counsel through various websites, including http://www.in.gov/legislative/iac/ and at www.icrb.net. Again, such attempts were to no avail. . . . Counsel was left to obtain such verification through discussing telephonically the subject manual rule . . . with administrators of the rating bureau and, thereafter, as an officer of the court of relating to the trial court . . . that the [alleged rule] is pursuant to rating bureau personnel a rating bureau manual rule used by the rating bureau[.]

Brief of Appellant at 9-10.

Pitcher then asserts that

> if the language [of the alleged rule] is a provision of the rating bureau manual which has been approved by the commissioner, it is governing law and the trial court is in error in concluding that it is an immaterial fact whether Continental sent a renewal notice. Conversely, if the language [of the alleged rule] is not a provision of the rating bureau manual which has not been approved by the commissioner, it is not governing law and does not, therefore, govern and the trial court is correct in concluding that the issue (of whether Continental sent a renewal proposal) is not material.

Id. at 10 (emphasis added). And Pitcher continues,

> [b]ecause this appeal turns on the aforestated issue (of whether the [alleged rule] is a provision of the rating bureau's manual approved by the commissioner[)] [Pitcher], by way of counsel, respectfully, requests hereby that the Court take judicial notice of the aforesaid [alleged rule] as a part of the published and approved regulations of the rating bureau, a governmental agency. Judicial notice of law, inclusive of published

> regulations of governmental agencies, is authorized by Indiana Evidence Rule 201(b).

Id.

Indiana Evidence Rule 201(b) provides:

> A court may take judicial notice of law. Law includes (1) the decisional, constitutional, and public statutory law, (2) rules of court, (3) published regulations of governmental agencies, (4) codified ordinances of municipalities, (5) records of a court of this state, and (6) laws of other governmental subdivisions of the United States or of any state, territory or other jurisdiction of the United States.

In sum, Pitcher asks this court to take judicial notice of the rule he contends is a law that applies to Continental. And Pitcher concedes that his appeal "turns on" whether the rule is a law. While Pitcher's counsel has made a serious and concerted effort to ascertain the legal status of the rule, Pitcher has not shown that the rule has the operation and effect of a law. Our research into Indiana's annotated statutes, case law, and administrative code does not indicate that any such law exists. While we are presumed to know the law, see, e.g., Apple v. Apple, 149 Ind. App. 529, 274 N.E.2d 402, 410 (1971), our knowledge is not without limits. And, ultimately, it is Pitcher's burden to demonstrate reversible error on appeal. Without any verification that Continental was legally bound by the alleged renewal notice rule, we agree with the trial court that whether Continental sent a renewal proposal or non-renewal notice is immaterial and, therefore, hold that the trial court did not err when it entered summary judgment in favor of Continental.

Affirmed.

VAIDIK, J., and BROWN, J., concur.