

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 CA 0850

**ERNEST L. DALTON, INDIVIDUALLY AND IN HIS CAPACITY AS
NATURAL TUTOR OF HIS MINOR SON, JONATHAN DALTON,
AND WANDA R. DALTON**

VERSUS

**WILLIE BROWN, GLADYS K. BROWN, CONTINENTAL
INSURANCE COMPANY AND STATE FARM INSURANCE**

Judgment Rendered: December 21, 2007

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**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Case No. 491,102**

The Honorable William A. Morvant, Judge Presiding

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General Insurance Company**

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BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

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GAIDRY, J.

SUMMARY DISPOSITION

This is an action for damages for personal injury arising from a motor vehicle accident of January 5, 2001, in East Baton Rouge Parish. The plaintiff, Jonathan Dalton, was a passenger in an automobile operated by Kelvin Brown, Jr. and owned by his grandparents and legal guardians, Willie Brown and Gladys K. Brown (the Browns). The plaintiffs, Ernest L. Dalton and Wanda Dalton, initiated this action seeking damages individually and on behalf of their son Jonathan, then a minor. Through their original and supplemental petitions, they named as defendants the Browns; the Browns' liability and underinsured motorists (UIM) insurer, Continental Insurance Company (Continental); Kelvin Brown, Sr. and Sandra Brown, the biological parents of Kelvin Brown, Jr.; GEICO General Insurance Company, Kelvin Brown, Sr.'s liability insurer; and State Farm Mutual Automobile Insurance Company (State Farm), in its dual capacities as Sandra Brown's liability insurer and the plaintiffs' own UIM insurer. The plaintiffs asserted alternate liability and UIM claims, based upon the fault of either Kelvin Brown, Jr. or the other involved driver, with whom the plaintiffs had compromised prior to instituting this litigation. The plaintiff, Jonathan Dalton, appeals an adverse judgment dismissing all claims against all defendants on the grounds that the plaintiffs failed to prove the negligence of Kelvin Brown, Jr. and the underinsured status of the other driver.

The plaintiff initially contends that the trial court committed error in permitting the investigating State Police trooper to give lay opinion testimony on the speed of the vehicle operated by Kelvin Brown, Jr. and whether he committed any violations of motor vehicle statutes. We

conclude that any lay opinion testimony was based upon the trooper's rational perceptions of the facts and physical evidence, and that the trial court did not accord such opinions any undue weight. *See State v. LeBlanc*, 05-0885, pp. 8-9 (La. App. 1st Cir. 2/10/06), 928 So.2d 599, 603-4.

The issue of the respective negligence of Kelvin Brown, Jr., the other driver, or both was a fact issue, resolved by the trial court adversely to the plaintiffs based upon an express credibility determination. Based upon our review of the record, we find no manifest error in that determination.

The defendants' answers, combined with the trial stipulation regarding the plaintiffs' settlement with the other driver and her liability insurer, sufficiently established the amount of that insurer's liability coverage limits. However, the plaintiffs failed to adequately establish the other driver's underinsured status based upon the absence of any other available liability coverage, sufficient to either shift the burden of proof to the UIM insurers or to prove entitlement to recovery under those coverages. *See, e.g., Cabral v. Nat'l Fire Ins. Co.*, 563 So.2d 533, 536 (La. App. 5th Cir.), *writ denied*, 567 So.2d 1129 (La. 1990); *Leday v. Safeway Ins. Co. of La.*, 04-610, p. 8 (La. App. 3rd Cir. 11/17/04), 888 So.2d 1084, 1090.

We affirm the judgment of the trial court through this summary disposition, in accordance with Rules 2-16.2(A)(4), (5), (6), (7), and (8) of the Uniform Rules of the Louisiana Courts of Appeal. All costs of this appeal are assessed to the plaintiff-appellant, Jonathan Dalton.

AFFIRMED.