

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

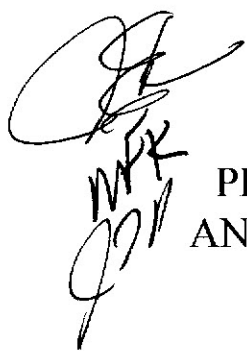
COURT OF APPEAL

FIRST CIRCUIT

2010 CA 0929

KENNETH K. KRYGIER

VERSUS


KAREN M. VIDRINE,
PROGRESSIVE CASUALTY INSURANCE COMPANY
AND LIBERTY MUTUAL FIRE INSURANCE COMPANY

DATE OF JUDGMENT: OCT 29 2010

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 2007-12327, DIVISION A, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE RAYMOND S. CHILDRESS, JUDGE

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BEFORE: KUHN, PETTIGREW, AND KLINE, JJ,¹

Disposition: AFFIRMED.

¹ The Honorable William F. Kline, Jr. is serving *pro tempore* by special appointment of the Louisiana Supreme Court.

Kuhn, J.

Defendant, Progressive Casualty Insurance Company (“Progressive”), an uninsured/underinsured motorist (“UM”) insurer, appeals a trial court judgment that awarded attorney fees, costs, and interest to plaintiff, Kenneth K. Krygier.² We affirm.

In *Krygier v. Vidrine*, 10-121 (La. App. 1st Cir. 9/10/10) (unpublished opinion), this court affirmed a summary judgment that awarded penalties to Krygier for Progressive’s failure to make a timely tender of its policy limits following an October 11, 2006 motor vehicle accident, in which Krygier sustained serious injuries. In that appeal, Progressive urged that Krygier had not met his burden of proving the underinsured status of defendant-tortfeasor, Karen M. Vidrine before February 11, 2009,³ and that once Vidrine’s underinsured status was established, Progressive had timely tendered its policy limits on March 12, 2009. We rejected these claims, concluding that “reasonable persons could reach only one conclusion, *i.e.*, that Progressive acted arbitrarily, capriciously, or without probable cause in not tendering its policy limits within thirty days of September 26, 2008.” *Id.* at p. 13. We concluded that prior to that date, Progressive had received proof of the available liability coverage and had been

² The January 12, 2010 judgment cast Progressive for a total of \$52,789.04, which amount consists of the following itemized awards: a.) \$15,608.22 in prejudgment interest (representing the interest on Progressive’s policy limits from the date Krygier filed suit to the date that Progressive tendered its policy limits; b.) \$180.82 in interest on a prior award of penalties pursuant to La. R.S. 22:1892 (formerly La. R.S. 22:658); c.) \$36,000 in attorney’s fees; and d.) \$1000 in costs.

³ Progressive acknowledges its February 11, 2009 receipt of an “Affidavit of No Other Insurance,” executed by Vidrine, wherein she attested to the fact that she had no other liability insurance in effect on the date of the accident other than a policy issued by Liberty Mutual Fire Insurance Company that provided coverage for the vehicle she was operating at the time of the accident.

furnished Krygier's employment records and medical records establishing losses greater than \$130,000, the combined limits of the available liability coverage and Progressive's UM coverage. *Id.* at pp. 11-12.

In the present appeal, Progressive asserts that the trial court improperly assessed interest, attorney's fees, and court costs against it, claiming once again that it timely tendered its policy limits to Krygier. Progressive urges again that Krygier did not meet his burden of proof and that "sufficient admissible proof of [Vidrine's] insured status ... was not established until February 11, 2009; and, [Progressive] timely tendered policy limits to [Krygier] within 30 days of knowledge of [Vidrine's] insured status...."

For the detailed reasons set forth in our previous opinion, we find no merit in the arguments that Progressive merely reiterates in this appeal. Otherwise, we find no error in the trial court's judgment and find it is supported by the record. Appeal costs are assessed against Progressive.

AFFIRMED.