NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2014 CA 1169

LAUREN STAFFORD

VERSUS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND STEVEN T. FUGLER

Judgment Rendered: MAY 26 2015

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Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Suit Number 142411

Honorable Brenda Bedsole Ricks, Presiding

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BEFORE: GUIDRY, THERIOT, AND DRAKE, JJ.

GUIDRY, J.

In this personal injury action, plaintiff, Lauren Stafford, appeals from a judgment of the trial court granting summary judgment in favor of defendant, State Farm Mutual Automobile Insurance Company (State Farm), and dismissing her claims against it with prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On August 23, 2012, Ms. Stafford was a guest passenger on a 2006 Yamaha motorcycle owned by Scott Trenton Jefferson and operated by Steven Fugler. While traveling westbound on Blackmud Road in Livingston Parish, Mr. Fugler lost control of the motorcycle and ran off of the roadway and into a ditch. As a result, Ms. Stafford and Mr. Fugler were ejected from the motorcycle. At the time of the accident, the motorcycle operated by Mr. Fugler was uninsured.

Thereafter, on August 26, 2013, Ms. Stafford filed a petition for damages, naming Mr. Fugler and his insurer, State Farm, as defendants, alleging that she suffered multiple and serious injuries as a result of the accident. Ms. Stafford asserted that at the time of the accident, Mr. Fugler had in full force and effect an automobile liability insurance policy with State Farm that provided coverage for the accident and further, that the policy did not contain an express exclusion for motorcycles or for vehicles with less than four wheels.

State Farm answered Ms. Stafford's petition generally denying the allegations contained therein. State Farm additionally asserted that while Mr. Fugler did have a policy of insurance with State Farm at the time of the accident, the motorcycle driven by Mr. Fugler does not qualify as a covered vehicle under the terms of the policy because it does not constitute either a temporary substitute, newly acquired, or non-owned car as defined in the policy. According to State Farm, a "car" is defined in the policy as "a land motor vehicle with four or more wheels, which is designed for use mainly on public roads."

Thereafter, State Farm filed a motion for summary judgment, asserting that pursuant to the terms of its policy, the motorcycle does not conform to the definition of a covered vehicle and therefore, State Farm is not liable to Ms. Stafford for any alleged damages arising from the accident.

Following a hearing on State Farm's motion, the trial court signed a judgment granting summary judgment in favor of State Farm and dismissing Ms. Stafford's claims against it with prejudice. Ms. Stafford now appeals from the trial court's judgment.

DISCUSSION

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. Johnson v. Evan Hall Sugar Cooperative, Inc., 01-2956, p. 3 (La. App. 1st Cir. 12/30/02), 836 So. 2d 484, 486. A motion for summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issue of material fact, and that mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2). Only evidence admitted for purposes of the motion for summary judgment shall be considered by the court in its ruling on the motion. La. C.C.P art. 966(F)(2).[1]

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. Lieux v. Mitchell, 06-0382, p. 9 (La. App. 1st Cir. 12/28/06), 951 So. 2d 307, 314, writ denied, 07-0905 (La. 6/15/07), 958 So. 2d 1199.

[1] Louisiana Code of Civil Procedure article 966 was amended by 2013 La. Acts No. 391, § 1, and the content of former subparagraph (E)(2) was reenacted in subparagraph (F)(2) and (3).

The issue of whether an insurance policy, as a matter of law, provides or precludes coverage is a dispute that can be resolved properly within the framework of a motion for summary judgment. Johnson v. Allstate Insurance Company, 95-1953, p. 3 (La. App. 1st Cir. 5/10/96), 673 So. 2d 345, 347, writ denied, 96-1292 (La. 6/28/96), 675 So. 2d 1126. In seeking a declaration of coverage under an insurance policy, Louisiana law places the burden on the plaintiff to establish every fact essential to recovery and to establish that the claim falls within the policy coverage. McDonald v. American Family Life Assurance Company of Columbus, 10-1873, p. 4 (La. App. 1st Cir. 7/27/11), 70 So. 3d 1086, 1089. Summary judgment declaring a lack of coverage under an insurance policy may not be rendered unless there is no reasonable interpretation of the policy, when applied to the undisputed material facts shown by the evidence supporting the motion, under which coverage could be afforded. Jones v. Estate of Santiago, 03-1424, p. 12 (La. 4/14/04), 870 So. 2d 1002, 1010.

An insurance policy is an agreement between the parties and should be construed according to the general rules of interpretation of contracts as set forth in the Louisiana Civil Code. Cadwallader v. Allstate Insurance Company, 02-1637, p. 3 (La. 6/27/03), 848 So. 2d 577, 580. When interpreting insurance contracts, the court's responsibility is to determine the parties' common intent. Louisiana Insurance Guaranty Association v. Interstate Fire & Casualty Company, 93-0911 (La. 1/14/94), 630 So. 2d 759, 763; see La. C.C. art. 2045. The parties' intent, as reflected by the words of the policy, determines the extent of coverage. Ledbetter v. Concord General Corporation, 95-0809, p. 3 (La. 1/6/96), 665 So. 2d 1166, 1169, decree amended, 95-0809 (La. 4/18/96), 671 So. 2d 915.

When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent. La. C.C. art. 2046. Such intent is to be determined in accordance with the

general, ordinary, plain, and popular meaning of the words used in the policy, unless the words have acquired a technical meaning. Ledbetter, 95-0809 at pp. 3-4, 665 So. 2d at 1169; see La. C.C. art. 2047. If the policy wording at issue is clear and expresses the intent of the parties, the agreement must be enforced as written. Ledbetter, 95-0809 at p. 4, 665 So. 2d at 1169. An insurance policy should not be interpreted in an unreasonable or a strained manner so as to enlarge or restrict its provisions beyond what is reasonably contemplated by its terms or to achieve an absurd conclusion. Reynolds v. Select Properties, Ltd., 93-1480 (La. 4/11/94), 634 So. 2d 1180, 1183. Absent a conflict with statutory provisions or public policy, insurers are entitled to limit their liability and to impose and enforce reasonable conditions on the policy obligations they contractually assume. Parekh v. Mittadar, 11-1201, p. 6 (La. App. 1st Cir. 6/20/12), 97 So. 3d 433, 437-438.

The Liability Coverage provision of State Farm's policy provides, in pertinent part:

> ***Insured*** means:
> 1. ***you*** and ***resident relatives*** for:
>   a. the ownership, maintenance, or use of:
>   (1) ***your car***;
>   (2) a ***newly acquired car***; or
>   (3) a ***trailer***; and
>   b. the maintenance or use of:
>   (1) a ***non-owned car***; or
>   (2) a ***temporary substitute car***;

The definitions section of the policy defines a "car" as "a land motor vehicle with four or more wheels, designed for use primarily on public roads."

In the instant case, Mr. Fugler was operating a non-owned motorcycle. However, State Farm's policy does not provide liability coverage for any non-owned *vehicle*. Rather, the plain language of the policy provides that liability coverage under the policy only extends to Mr. Fugler's operation of a non-owned *car*. A car, by definition in the policy, has four or more wheels. Accordingly, because Mr. Fugler was operating a two-wheeled motorcycle at the time of the

subject accident, he is not insured for purposes of liability coverage, and therefore, the policy does not provide liability coverage for the damages claimed by Ms. Stafford.

Furthermore, we disagree with Ms. Stafford's assertion that State Farm's policy is ambiguous because of provisions contained in the insuring agreement referring to a "vehicle." The provision relied on by Ms. Stafford provides, in pertinent part:

> 1. ***We*** will pay:
> a. damages an ***insured*** becomes legally liable to pay because of:
> (1) ***bodily injury*** to others; and
> (2) damage to property
> caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy[.]

In order for this provision to be operational, an accident must involve a vehicle for which the insured is provided liability coverage. As previously stated, Mr. Fugler is not an insured for purposes of liability coverage under the State Farm policy because he was not operating a non-owned car as that term is defined. Therefore, we find this argument to be without merit.

Finally, we find that such a provision is not violative of public policy, as it is not the responsibility of an insurer to provide blanket coverage for all non-owned motor vehicles that the insured may conceivably drive during the term of the policy. Clearly, the insurer can reasonably limit the type or classification of non-owned motor vehicles that are covered under the policy without violating La. R.S. 32:900(B)(2), the public policy embodied therein, or any other public policy. See Gunn v. Automotive Casualty Insurance Company, 614 So. 2d 154, 157-158 (La. App. 3rd Cir. 1993).

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court granting summary judgment in favor of State Farm and dismissing Ms. Stafford's claim against it with prejudice. All costs of this appeal are assessed to Lauren Stafford.

AFFIRMED.