NOT DESIGNATED FOR PUBLICATION

LEROY PHOENIX	*	**NO. 2000-CA-1600**
VERSUS	*	**COURT OF APPEAL**
PAMELA ROSENTHAL, STEVEN MCLENDON & ALLSTATE INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 99-57464, SECTION "A"
Honorable Charles A. Imbornone, Judge

* * * * * *

Judge Steven R. Plotkin

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(Court composed of Judge Steven R. Plotkin, Judge Michael E. Kirby, Judge Max N. Tobias Jr.)

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REVERSED.

Defendant Allstate Insurance Co. appeals a trial court judgment awarding plaintiff Leroy Phoenix $4,786 in general damages and $1,490 in special damages, claiming primarily that Mr. Phoenix failed to carry his burden to establish a prima facie case that Allstate is responsible for his damages. We reverse the trial court judgment, and dismiss Mr. Phoenix's claims against Allstate.

Mr. Phoenix claims that he suffered injury on March 10, 1999, as the result of an automobile accident in which the vehicle he was driving was rear-ended by a vehicle allegedly owned by defendant Steven McClendon and driven by Pamela Rosenthal. On October 4, 1999, Mr. Phoenix filed suit seeking damages for personal injuries against Mr. McClendon, Ms. Rosenthal, and Allstate, alleging that Allstate provided liability insurance in favor of McClendon. The petition was served on defendant Allstate, who filed an answer denying all the pertinent allegations of Mr. Phoenix's petition on November 24, 1999, including denial of coverage for the rear-ending vehicle and driver. The other defendants were never served and did

not appear for trial

The case went to trial against Allstate alone. At trial, Mr. Phoenix testified that his vehicle was "reared-off at the Manhattan exit of the Westbank Expressway highrise area" by a white Mustang that came "out of nowhere." Mr. Phoenix testified that he suffered property damage, which was paid by Allstate. Moreover, he testified that the accident was investigated by a trooper, who cited the other driver. The trial court entered judgment in favor of Mr. Phoenix.

Allstate's argument that Mr. Phoenix failed to establish a prima facie to support the trial court's judgment is based on its claim that Mr. Phoenix failed to identify the driver of the offending vehicle, failed to prove that Allstate afforded automobile liability insurance on the offending vehicle, and failed to prove causation between the accident and his alleged injuries. Allstate further argues that the trial court improperly allowed Mr. Phoenix to testify that Allstate paid for his property damages because that fact is not relevant to his bodily injury claim. Allstate does not contest Mr. Phoenix's testimony that it paid for his property damage, nor does Allstate claim that it does not provide liability insurance to the offending vehicle. Allstate simply argues that Mr. Phoenix failed to prove his case.

In response to Allstate's arguments on appeal, Mr. Phoenix asserts

that his testimony that his vehicle was rear-ended is sufficient to shift the burden of proof to the defendant because that evidence gives rise to a presumption of negligence. Moreover, Mr. Phoenix notes that the matter is not final against Ms. Rosenthal or Mr. McClendon, and that he intends to litigate his case against those defendants after this court renders an opinion. Finally, Mr. Phoenix claims that he offered sufficient circumstantial evidence to prove a prima facie case against Allstate.

Our review of the record confirms Allstate's claim that Mr. Phoenix failed to establish a prima facie case of liability against Allstate. Nothing in the record of this case connects Mr. Phoenix's accident to an Allstate policy. Mr. Phoenix failed to present any evidence whatsoever identifying either the driver or the owner of the offending vehicle. Moreover, the record contains no evidence that Allstate issued an automobile liability insurance policy insuring the offending vehicle.

Moreover, the trial court improperly admitted evidence that Allstate paid Mr. Phoenix's property damages. LSA-R.S. 22:661 provides as follows:

> No settlement made under a motor vehicle liability insurance policy of a claim against any insured thereunder arising from any accident or other event insured against for damage to or destruction of property owned by another person shall be construed as an admission of liability by the insured, or the insurer's recognition of such liability, with respect to any other claim arising from the same accident or event.

The above provision has been construed by this court to apply to multiple claims made by the same party against an insurer. Sotomayor v. Lewis, 95-2520, p. 4-5 (La. App. 4 Cir. 2/24/96), 673 So. 2d 1201, 1203-04. Further, La. C.E. art. 409 provides as follows:

> In a civil case, evidence of furnishing or offering or promising to pay expenses or losses occasioned by an injury to person or damage to property is not admissible to prove liability for the injury or damage nor is it admissible to mitigate, reduce, or avoid liability therefor. This Article does not require the exclusion of such evidence when it is offered solely for another purpose, such as to enforce a contract for payment.

Thus, the fact that Allstate paid Mr. Phoenix's property damages in this case could not be used to establish Allstate's liability for Mr. Phoenix's personal injury.

Accordingly, we reverse the trial court judgment in favor of Mr. Phoenix and against Allstate and dismiss Mr. Phoenix's claims against Allstate.

REVERSED.