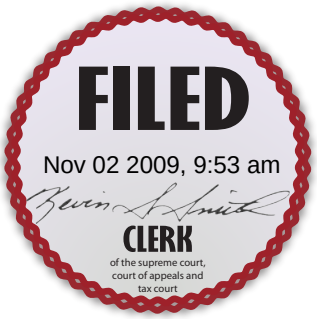

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IN THE
COURT OF APPEALS OF INDIANA

GRANGE MUTUAL CASUALTY COMPANY,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 73A01-0905-CV-220
	)	
BETTY JEAN RADY,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE SHELBY SUPERIOR COURT
The Honorable Jack A. Tandy, Judge
Cause No. 73D01-0808-CT-11

November 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Grange Mutual Casualty Company appeals from the denial of its motion for summary judgment. We reverse and remand.

FACTS AND PROCEDURAL HISTORY

On December 5, 2006, Betty Jean Rady was eastbound on Interstate 74 in Shelby County when struck from behind and forced off the roadway by a vehicle driven by Richard E. McLemore. Rady suffered personal injury as a result. At the time, Rady was insured under an "umbrella" policy issued by Grange ("the Policy"), which had a policy number of GH8399362. When Rady had originally applied for umbrella coverage in 1995, her application was assigned the number 8017792. The Policy provided, in part, as follows: "We do not provide coverage … [f]or any claim for Uninsured Motorists or Underinsured Motorists Coverages unless a limit of liability is shown in the Declarations for Uninsured Motorists Coverage." Appellant's App. pp. 39, 41. Moreover, in the "Declarations Page" associated with the Policy, the "Uninsured Motorists Coverage Limit" was listed as "N/A[.]" Appellant's App. pp. 17, 19.

On August 1, 2008, Rady filed a complaint against McLemore, Grange, and Pekin Insurance Company, claiming, *inter alia*, that McLemore was underinsured at the time of the collision and that the Policy entitled her to underinsured motorist coverage. On November 12, 2008, Grange moved for summary judgment on the basis that the plain language of the Policy precluded underinsured motorist coverage. On January 13, 2009, Rady replied to Grange's summary judgment motion, arguing that the designated evidence did not tend to show that she was offered and rejected, in writing, uninsured and underinsured motorist

coverage, as required by Indiana Code section 27-7-5-2 (1994).

On January 27, 2009, Grange filed a response in further support of its summary judgment motion and designated additional evidence. Included in this designated evidence was a document bearing the number 8017792 which Rady and her husband signed entitled "Acceptance or Rejection of Excess Uninsured Motorists Insurance" on which "Option 1. REJECT the right to purchase Excess Uninsured and Underinsured Motorists Insurance Coverage" had been selected. Appellant's App. p. 82. Grange also designated an affidavit from Grange Senior Litigation Specialist Deborah Jacobs that the above document referred to the Policy. In her affidavit, Jacobs noted that the waiver document bore Rady's application number, and that Rady's application for umbrella coverage bore the Policy's number. On February 20, 2009, the trial court denied Grange's summary judgment motion on the basis that there existed a genuine issue of material fact as to whether the written waiver was effective as to the Policy.

DISCUSSION AND DECISION

Standard of Review

When reviewing the grant or denial of a summary judgment motion, we apply the same standard as the trial court. *Merchs. Nat'l Bank v. Simrell's Sports Bar & Grill, Inc.*, 741 N.E.2d 383, 386 (Ind. Ct. App. 2000). Summary judgment is appropriate only where the evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.*; Ind. Trial Rule 56(C). "A genuine issue of material fact exists where facts concerning an issue which would dispose of the litigation are in dispute or

where the undisputed facts are capable of supporting conflicting inferences on such an issue." *Scott v. Bodor, Inc.*, 571 N.E.2d 313, 318 (Ind. Ct. App. 1991). "We will neither reweigh the evidence nor judge the credibility of witnesses, and we must construe all facts and reasonable inferences drawn therefrom in favor of the nonmoving party." *Peterson v. Ponda*, 893 N.E.2d 1100, 1104 (Ind. Ct. App. 2008), *trans. denied*. To prevail on a motion for summary judgment, a party must demonstrate that the undisputed material facts negate at least one element of the other party's claim. *Merchs. Nat'l Bank*, 741 N.E.2d at 386. Once the moving party has met this burden with a prima facie showing, the burden shifts to the nonmoving party to establish that a genuine issue does in fact exist. *Id*. The party appealing the summary judgment bears the burden of persuading us that the trial court erred. *Id*.

At all times relevant to this case, Indiana Code section 27-7-5-2 has provided that insurance companies in Indiana must make uninsured and underinsured motorist coverage available in each automobile or motor vehicle liability policy.[1] Section 27-7-5-2 also provides that the insured may reject uninsured and underinsured motorist coverage, but that such a rejection must be in writing. Grange contends that its designated evidence shows that there is no genuine issue of material fact regarding whether Rady validly rejected uninsured and underinsured motorist coverage under the Policy. Rady contends that the designated evidence raises a genuine issue of material fact as to whether the designated written waiver is, in fact, associated with the Policy.

[1] The parties do not dispute that the Policy, although an "umbrella" policy, is subject to Indiana Code section 27-7-5-2. *See United Nat'l Ins. Co. v. DePrizio*, 705 N.E.2d 455, 457 (Ind. 1999) (concluding that commercial umbrella policy providing coverage in excess of limits of underlying policies, one of which was for automobile liability, was subject to section 27-7-5-2).

Rady has not designated any evidence disputing the validity of the waiver, but, rather, asks us to weigh its credibility, which we may not do, and suggests that the designated evidence does not unequivocally connect the waiver to the Policy. The undisputed facts designated by Grange, however, are not internally contradictory in any way and lead to only one conclusion, namely that Rady validly waived uninsured and underinsured coverage under the Policy. Quite simply, Grange designated uncontradicted evidence of a waiver of uninsured and underinsured coverage signed by Rady and uncontradicted evidence that the waiver referred to the Policy. Because Rady has failed to carry her burden to show that a genuine issue of material fact remains, we conclude that the trial court incorrectly denied Grange's summary judgment motion. We remand with instructions to enter summary judgment in favor of Grange.

We reverse the judgment of the trial court and remand with instructions.

NAJAM, J., and VAIDIK, J., concur.