**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2012 CA 0243**

**DALBERT FONTENOT and**
**CATHERINE ANN FONTENOT**

**VERSUS**

**AMERICAN HOME ASSURANCE COMPANY**

Judgment Rendered: NOV 15 2012

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On Appeal from the 32nd Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Docket No. 150,146

The Honorable David W. Arceneaux, Judge Presiding

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| Mr. Frank A. Flynn<br>Lafayette, Louisiana | Counsel for Plaintiffs/Appellants<br>Dalbert and Catherine Fontenot |
| Ms. Tara E. Clement<br>Mr. Robert I. Siegel<br>New Orleans, Louisiana | Counsel for Defendant/Appellee<br>American Home Assurance Company |
| Mr. Todd A. Hebert<br>Houma, Louisiana | Counsel for Defendant<br>Allstate Insurance Company |

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**BEFORE: PARRO, HUGHES, AND WELCH, JJ.**

**HUGHES, J.**

This is an appeal of a summary judgment dismissing the claims of plaintiffs/appellants, Dalbert and Catherine Fontenot, against defendant/appellee, American Home Assurance Company (American). For the reasons that follow, we affirm.

## FACTS AND PROCEDURAL HISTORY

This matter arose from an automobile accident involving a vehicle owned by Dollar General Corporation (Dollar General). Dollar General's employee, Mr. Dalbert Fontenot, was driving the vehicle and was injured in the accident. Mr. Fontenot filed suit against Dollar General's insurer, American, among others.[1] Therein, he alleged that the policy of insurance issued to Dollar General provided uninsured/underinsured motorist (UM) insurance coverage to which he was entitled.

American moved for summary judgment, arguing that Dollar General had rejected UM coverage. In support of its motion, American produced a copy of the applicable UM rejection form. Mr. Fontenot opposed the motion, alleging that the form failed to satisfy the legal requirements and was therefore invalid.

After a hearing on the motion for summary judgment, the trial court concluded that the UM rejection form was valid. Thus, summary judgment in favor of American was rendered. Mr. Fontenot appeals.

## LAW AND ANALYSIS

The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by LSA-C.C.P. art. 969; the procedure is favored and shall be

[1] The sole issue on appeal is the summary judgment dismissing the appellants' claims against American.

construed to accomplish these ends. LSA-C.C.P. art. 966(A)(2). Summary judgment shall be rendered in favor of the mover if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B).

Appellate courts review summary judgments *de novo* under the same criteria that govern a district court's consideration of whether summary judgment is appropriate. **Samaha v. Rau**, 2007-1726, pp. 3-4 (La. 2/26/08), 977 So.2d 880, 882; **Allen v. State ex rel. Ernest N. Morial-New Orleans Exhibition Hall Authority**, 2002-1072, p. 5 (La. 4/9/03), 842 So.2d 373, 377; **Boudreaux v. Vankerkhove**, 2007-2555, p. 5 (La. App. 1 Cir. 8/11/08), 993 So.2d 725, 729-30.

Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Richard v. Hall**, 2003-1488, p. 5 (La. 4/23/04), 874 So.2d 131, 137; **Dyess v. American National Property and Casualty Company**, 2003-1971, p. 4 (La. App. 1 Cir. 6/25/04), 886 So.2d 448, 451, writ denied, 2004-1858 (La. 10/29/04), 885 So.2d 592; **Cressionnie v. Intrepid, Inc.**, 2003-1714, p. 3 (La. App. 1 Cir. 5/14/04), 879 So.2d at 736, 738-39.

In Louisiana, UM coverage is provided for by statute and embodies a strong public policy. **Duncan v. U.S.A.A. Ins. Co.**, 06-0363, p. 4 (La. 11/29/06), 950 So.2d 544, 547. The object of UM insurance is to provide a full recovery for automobile accident victims who suffer damages caused by a tortfeasor not covered by adequate liability insurance. **Henson v. Safeco Ins. Companies**, 585 So.2d 534, 537 (La. 1991), see also **Tugwell v. State**

**Farm Ins. Co.**, 609 So.2d 195, 197 (La. 1992). Under the UM statute, the requirement of UM coverage is an implied amendment to any automobile liability policy even when not expressly addressed, as UM coverage will be read into the policy unless validly rejected. **Duncan**, 950 So.2d at 547.

The statute is to be liberally construed and a rejection of the coverage provided by law must be clear and unmistakable. **Roger v. Estate of Moulton**, 513 So.2d at 1126, 1130 (La. 1987). Although the insurer bears the burden of proof of a rejection of UM coverage, once it produces a properly completed and signed form it is entitled to a presumption that the insured knowingly rejected the coverage. LSA-R.S. 22:680, renumbered as LSA-R.S. 22:1295 by 2008 La. Acts, No. 415, Section 1, effective January 1, 2009.

The issue in this appeal is whether the UM rejection form produced by American is valid. In **Duncan**, 950 So.2d at 551, the Louisiana Supreme Court identified the six specific tasks that are required in order to complete a valid and enforceable UM rejection form as prescribed by the Commissioner of Insurance pursuant to former LSA-R.S. 22:680:

> Essentially, the prescribed form involves six tasks: (1) initialing the selection or rejection of coverage chosen; (2) if limits lower than the policy limits are chosen (available in options 2 and 4), then filling in the amount of coverage selected for each person and each accident; (3) printing the name of the named insured or legal representative; (4) signing the name of the named insured or legal representative; (5) filling in the policy number; and (6) filling in the date.

Those criteria were reiterated by the court in its more recent decision in **Harper v. Direct General Ins. Co.**, 2008-2874 (La. 2/13/09), 2 So.3d 418.

The UM waiver form provided by American contains the following:

1. Initials, indicating that coverage is rejected (tasks #1 and #2);

2. A printed name (task #3);

3. A signature (task #4);

4. The policy number (task #5); and

5. A date (task #6).

Thus, all six **Duncan** requirements were addressed in this case, and it therefore appears that American produced a properly completed and signed form. However, Mr. Fontenot argues that the form does not meet the criteria set forth in **Duncan** in four respects:

1. The corporation's name is misplaced;

2. The form does not contain a statement or designation that the signatory acted as the legal representative of Dollar General;

3. The printed name and signature are misplaced because they are inverted; and

4. The printed name and signature are not clearly written.

In the case of **National Interstate Insurance Company v. Collins**, 2009-1214 (La. 11/6/09), 21 So.3d 316, decision clarified on rehearing, 08-0693 (La. App. 1 Cir. 5/4/09), 12 So.3d 316, reversed on other grounds, 09-1214 (La. 11/6/09), 21 So.3d 316, the supreme court overruled this court's opinion and squarely rejected Mr. Fontenot's first argument: that the name of the corporation must be written in the bottom right corner of the form.[2] In fact, the court held that the corporation name need not be contained in the document at all. Instead, the court specified that the legal requirement is that *either* the name of the insured, *or* the name of its legal representative, appears on the form. The court reasoned that the inclusion of the policy number (task #5) removed any doubt as to which policy was involved. As

[2]The name of the corporation, Dollar General, *is* printed on the form in this case, only not in the bottom right corner of the page.

such, the court concluded that the name of the corporation was not required. We also note that Mr. Fontenot's argument relies upon guidelines published in bulletins issued by the Commissioner of Insurance, which are *advisory* only, and not the law.

Moreover, Mr. Fontenot's second argument is also implicitly rejected as a result of the **National Interstate** opinion. Again, the supreme court upheld the validity of the rejection form, notwithstanding that the representative capacity of the signatory was uncertain on the face of the form because the named insured was not noted on the form. Mr. Fontenot seeks to distinguish that case (and all previous adverse opinions) from the instant case, arguing that in previous cases the signatory proved by affidavit his capacity and authority to complete the waiver. Because no affidavit was produced by American in this case, Mr. Fontenot concludes that American has failed to meet its burden of proof that coverage was rejected. Thus, he argues that American is required not only to produce a completed form, but also an affidavit attesting to the validity of that form. We find that his position would impose upon American a task that is not required by law. The UM statute does not require the execution of an affidavit to effectuate a valid waiver of coverage.

We are not persuaded that an error in the precise placement of the information on the form will invalidate an otherwise effective waiver. In this case, the representative signed his name in the space labeled "printed name," and printed his name in the space labeled "signature." Obviously, he mistakenly inverted the two. However, the statute only requires that both versions of the name appear on the form. No restrictions or other instructions regarding their placement and/or sequence are mandated. As such, none should be imposed by this court. Moreover, it is not necessary

that the signature be perfectly legible in order to be effective. And while the printed name on the form before us may not be the best example of penmanship, it identifies the writer as the Director of Risk Management and clearly comports with the signature provided.

American produced a completed and signed form that addressed each legally required task. As such, it is entitled to the rebuttable presumption that Dollar General knowingly rejected UM coverage in its policy of insurance. Mr. Fontenot produced no evidence to rebut that presumption. Accordingly, American was entitled to summary judgment as a matter of law.

## CONCLUSION

For the foregoing reasons, the judgment of the district court is affirmed. All costs of this appeal are assessed to plaintiffs/appellants, Dalbert and Catherine Fontenot.

**AFFIRMED.**