NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0151

RHP by Guidry
JMG by Guidry

CATHERINE M. STEIN, INDIVIDUALLY, AND AS NATURAL TUTRIX OF HER MINOR CHILDREN, MOIRA E. MATHERNE, ANNE M. MATHERNE, JESSIE L. MATHERNE, AND JOSIE E. MATHERNE

VERSUS

PROGRESSIVE SECURITY INSURANCE COMPANY, SEAN MELANCON, MELANCON GAUGING, ABC INSURANCE COMPANY, AND XYZ INSURANCE COMPANY, ET AL.

On Appeal from the 17th Judicial District Court
Parish of Lafourche, Louisiana
Docket No. 109,698, Division "E"
Honorable F. Hugh Larose, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

Judgment rendered FEB 28 2014

PARRO, J.

In this appeal, Catherine Stein, who was injured in an automobile accident, challenges a partial summary judgment, which dismissed her suit for damages against an automobile liability insurance company, based on the trial court's determination that the insurer's policy did not provide coverage for the vehicle being driven by the person who caused the accident. For the following reasons, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On the morning of July 12, 2007, Wayne Melancon, owner of Melancon Gauging Services, Inc. (MGSI), drove MGSI's only company-owned vehicle, a 2003 Chevrolet Silverado truck (Silverado) to Cut Off, Louisiana, on work-related business. Because Wayne was using the Silverado, he instructed Sean Melancon, his son, who was an employee of MGSI, to drive his mother's 2006 Chevrolet Tahoe (Tahoe) to Noble Energy in Golden Meadow, Louisiana, to check some gauges. As Sean was proceeding northbound on Louisiana Highway 1 near Leeville, Louisiana, he crossed the center line, striking a southbound 2006 Ford F-150 truck driven by Patrick O'Donnell. According to the accident report, the Tahoe then rotated counterclockwise into the path of oncoming traffic and was struck by a southbound 2004 Chevrolet C-2500 truck driven by Ms. Stein.

Ms. Stein filed a suit for damages, individually, and on behalf of her four minor children, against Sean; MGSI, as Sean's employer; and Progressive Security Insurance Company (Progressive), as Sean's insurer, as insurer of the Tahoe, and/or as MGSI's insurer.[1] In due course, Progressive, in its capacity as MGSI's insurer, filed a motion for partial summary judgment, claiming that the insurance policy it issued to MGSI (policy number 02190811-7) did not provide coverage for the Tahoe that Sean was driving

[1] In her original petition, Ms. Stein also named the following parties as defendants: Mr. O'Donnell; Traylor Massman Joint Venture (Traylor), as owner of the truck driven by Mr. O'Donnell; Travelers Property Insurance Company, as Mr. O'Donnell's and/or Traylor's insurer; and ABC and XYZ Insurance Companies, as fleet or excess liability insurers of Sean and MGSI. In amending and supplemental petitions, she also later added the following parties as defendants: State Farm Automobile Insurance Company, as her uninsured/underinsured motorist insurer, and Certain Underwriters at Lloyd's of London, as MGSI's general liability insurer. The record indicates that some of these claims were ultimately dismissed. In her appellate brief, Ms. Stein asserts that this matter has now been resolved as to all parties except Progressive.

when the accident occurred.[2] Ms. Stein opposed the motion, claiming coverage did exist, because Sean was an "insured person" and the Tahoe was an "insured auto" under the terms of the Progressive policy.

After a hearing, the trial court took the matter under advisement. On November 17, 2010, the trial court signed a judgment granting Progressive's motion for partial summary judgment. In reasons for judgment, the trial court indicated that the Progressive policy provided no coverage for the Tahoe, because the Tahoe did not qualify as a "temporary substitute auto" as defined by the policy. Ms. Stein appealed the adverse judgment.[3]

RULE TO SHOW CAUSE

After Ms. Stein appealed, this court issued a rule to show cause order indicating the November 17, 2010 judgment appeared to lack appropriate decretal language disposing of and/or dismissing Ms. Stein's claims against Progressive. On June 14, 2013, the trial court signed an amended judgment, which stated, in pertinent part:

> The Judgment signed by this Court on November 17, 2010 is amended to include the necessary decretal language that may have been omitted in the original Judgment.
>
> This matter came before the court on November 4, 2010 regarding the defendant's, [Progressive], Motion for Partial Summary Judgment.
>
> . . . .
>
> Upon consideration of the defendant's Motion, counsel's arguments, and the law,
>
> **IT IS ORDERED, ADJUDGED AND DECREED** that the defendant's, [Progressive], Motion for Partial Summary Judgment is hereby granted on the grounds that the vehicle operated by the defendant at the time of the accident was not covered by the policy issued by the Mover-in-Rule, thereby dismissing the plaintiffs' claims against [Progressive].

The appellate record was supplemented with the amended judgment, and the rule to show cause was referred to this appellate panel for disposition, along with the merits of

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[2] As later discussed, Wayne's deposition testimony, submitted by Progressive in support of its motion for partial summary judgment, establishes that the Tahoe was titled in Wayne's name; his wife was the Tahoe's primary driver; and the Tahoe was insured under a separate Progressive insurance policy issued to Wayne personally, not under the Progressive policy issued to MGSI. For purposes of this opinion, our reference to the "Progressive policy" is to Progressive policy number 02190811-7, the policy issued to MGSI.

[3] Ms. Stein first challenged the November 17, 2010 judgment by filing an application for supervisory writs in this court. This court denied the writ, declining to exercise our supervisory jurisdiction, and stating that Ms. Stein would "have an adequate remedy on appeal after a final judgment on the merits." Stein v. Progressive Sec. Ins. Co., 11-0026 (La. App. 1st Cir. 5/9/11) (unpublished writ action).

the appeal.

The November 17, 2010 judgment, as amended by the June 14, 2013 judgment, contains the appropriate decretal language to be a valid final judgment, that is, it names the party in favor of whom the ruling is ordered, the party against whom the ruling is ordered, and the relief that is granted. See Jenkins v. Recovery Technology Investors, 02-1788 (La. App. 1st Cir. 6/27/03), 858 So.2d 598, 600. Therefore, we dismiss the rule to show cause, declare the existence of a final, appealable judgment, and maintain the appeal. See LSA-C.C.P. art. 2088; see also Henkelmann v. Whiskey Island Preserve, LLC, 11-0304 (La. App. 1st Cir. 6/1/12), 2012 WL 1965853 (unpublished). We now address the merits of Ms. Stein's appeal.

DISCUSSION

An appellate court reviews a trial court's decision to grant a motion for summary judgment de novo, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. Smith v. Our Lady of the Lake Hosp., Inc., 93-2512 (La. 7/5/94), 639 So.2d 730, 750. 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. West v. Clarendon Nat'l. Ins. Co., 99-1687 (La. App. 1st Cir. 7/31/00), 767 So.2d 877, 879. The summary judgment procedure is favored and is designed to secure the just, speedy, and inexpensive determination of every action. LSA-C.C.P. art. 966(A)(2); Perry v. City of Bogalusa, 00-2281 (La. App. 1st Cir. 12/28/01), 804 So.2d 895, 899. The motion should be granted only 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 the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B);[4] Perry, 804 So.2d at 899.

[4] Although LSA-C.C.P. art. 966 was amended after the partial summary judgment was rendered in this case, the amendments are not implicated in the issues presented in this appeal. See 2012 La. Acts, No. 257, §1, and No. 741, §1, effective August 1, 2012, and 2013 La. Acts, No. 391, §1, effective August 1, 2013.

Whether an insurance policy, as a matter of law, provides or precludes coverage is a dispute that can be properly resolved within the framework of a motion for summary judgment. Doiron v. Louisiana Farm Bureau Mut. Ins. Co., 98-2818 (La. App. 1st Cir. 2/18/00), 753 So.2d 357, 362 n.2. 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. George S. May Intern. Co. v. Arrowpoint Capital Corp., 11-1865 (La. App. 1st Cir. 8/10/12), 97 So.3d 1167, 1171. 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 (La. 4/14/04), 870 So.2d 1002, 1010; George S. May Intern. Co., 97 So.3d at 1171.

On appeal, Ms. Stein concedes, as the trial court found, that the Tahoe does not qualify as a "temporary substitute auto" for which the Progressive policy provides insurance coverage. Rather, she contends, in two assignments of error, that the trial court erred in granting the partial summary judgment in favor of Progressive because: (1) the Tahoe falls within the Progressive policy's definition of "insured auto" as an "additional auto"; and (2) in interpreting the "ambiguous" definition of "insured auto," the trial court failed to consider Wayne's reasonable expectation that his employees were covered by the Progressive policy while in the course and scope of their employment.

Generally, under the terms of the **LIABILITY TO OTHERS** section of the Progressive policy, as long as MGSI paid the premium for liability coverage, Progressive agreed to pay damages for bodily injury and property damage for which MGSI became legally responsible because of an accident arising out its ownership, maintenance, or

use of an "insured auto."[5] The **GENERAL DEFINITIONS** section of the Progressive policy defines an "insured auto," in pertinent part, as follows:

> 5. "**Insured auto**" or "**your insured auto**" means:
>
> a. Any **auto** specifically described on the **Declarations Page**, unless **you** have asked **us** to delete that **auto** from the policy.
>
> b. Any additional **auto** on the date **you** become the owner if:
>
> (i) **you** acquire the **auto** during the policy period shown on the **Declarations Page**;
>
> (ii) **we** insure all **autos** owned by **you** that are used in **your** business; and
>
> (iii) no other insurance policy provides coverage for that **auto**.
>
> . . . .

The only auto specifically described on the Declarations Page of the Progressive policy is MGSI's company-owned Silverado; thus, the Tahoe is not an "insured auto" under Paragraph 5(a) above. And, under Paragraph 5(b), the Tahoe only qualifies as an "additional auto" within the definition of "insured auto" if: (1) it was acquired by MGSI during the policy period, March 9, 2007, through September 9, 2007; (2) Progressive insures all autos owned by MGSI that MGSI uses in its business; and (3) no other insurance policy provides coverage for the Tahoe.

Progressive introduced Wayne's deposition into evidence in support of its motion for partial summary judgment. Wayne's deposition testimony establishes that he bought the Tahoe in 2006 in his personal capacity, and, although the vehicle was titled in his name, his wife was the primary driver of the Tahoe. His testimony also establishes that the Tahoe was not insured under the policy that Progressive issued to MGSI, but it was insured by Progressive under another policy issued to him personally. Notably, Wayne specifically admitted that the Tahoe was not listed on the "company policy." Based on this undisputed evidence, we find no ambiguity in the definition of "insured auto" and that the Tahoe is not an "additional auto" under Paragraph 5(b) of

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[5] The section of the Progressive policy titled **PART I – LIABILITY TO OTHERS** reads, in pertinent part:

> **INSURING AGREEMENT – LIABILITY TO OTHERS**
>
> Subject to the Limits of Liability, if **you** pay the premium for liability coverage, **we** will pay damages, OTHER THAN PUNITIVE OR EXEMPLARY DAMAGES, for **bodily injury, property damage**, and **covered pollution cost or expense**, for which an **insured** becomes legally responsible because of an **accident** arising out of the ownership, maintenance or use of an **insured auto**. However, **we** will only pay for the **covered pollution cost or expense** if the same **accident** also caused **bodily injury** or **property damage** to which this insurance applies.

the **GENERAL DEFINITIONS** section of the Progressive policy. That is, the Tahoe was not acquired by MGSI during the March 9, 2007 through September 9, 2007 policy period; rather, it was personally acquired by Wayne, the titled owner, in 2006, before the policy period. Further, there was a separate Progressive policy, issued to Wayne personally, that provided coverage for the Tahoe.

When applied to the undisputed material facts shown by the evidence supporting Progressive's motion, there is no reasonable interpretation of the Progressive policy's definition of "insured auto" under which coverage could be afforded to the Tahoe. And, despite any expectations that Wayne, as MGSI's owner, may have had regarding the Progressive policy's coverage of his employees, where a policy of insurance contains a definition of any word or phrase, that definition is controlling. Parekh v. Mittadar, 11-1201 (La. App. 1st Cir. 6/20/12), 97 So.3d 433, 438. The definition of "insured auto" is clear and explicit and leads to no absurd consequences. See LSA-C.C. art. 2046. As such, this court may make no further interpretation of the policy in search of the parties' intent and must enforce their agreement as written. See LSA-C.C. art. 2046; see also George S. May Intern. Co., 97 So.3d at 1175.

Based on our de novo review, we conclude the trial court properly granted partial summary judgment, and we find Progressive's policy number 02190811-7 did not provide coverage for the Tahoe.[6]

DECREE

For the above reasons, we dismiss the rule to show cause and declare the trial court's November 17, 2010 judgment, as amended by its June 14, 2013 judgment, to be a final, appealable judgment. Further, we affirm the amended judgment insofar as it grants partial summary judgment in favor of Progressive Security Insurance Company, in its capacity as the insurer of Melancon Gauging Services, Inc., and dismisses

[6] Appeals are taken from judgments, not reasons for judgment. Judgments are often upheld on appeal for reasons different than those assigned by the trial judges. Wooley v. Lucksinger, 09-0571 (La. 4/1/11), 61 So.3d 507, 572. So, the fact that we affirm the amended judgment due to a lack of coverage based on a different definition of the Progressive policy than that relied upon by the trial court in its reasons for judgment is a difference without significance.

Catherine Stein's claims against Progressive Security Insurance Company. Costs of this appeal are assessed to Catherine Stein.

RULE TO SHOW CAUSE DISMISSED; JUDGMENT AFFIRMED.