NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 1622

MELINDA HOLLINS, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, DREW HOLLINS

VERSUS

JOHN ADAIR, OLD AMERICAN COUNTY MUTUAL FIRE INSURANCE COMPANY, d/b/a AFFIRMATIVE INSURANCE COMPANY AND ALLSTATE INSURANCE COMPANY

Judgment Rendered: JUN 0 3 2014

* * * * * *

Appealed from the
Twentieth Judicial District Court
In and for the Parish of West Feliciana
State of Louisiana
Suit Number 21491

Honorable William G. Carmichael, Presiding

* * * * * *

Dana B. Brown
David Conachen
Baton Rouge, LA

Counsel for Plaintiff/Appellant
Melinda Hollins

Anne Marie P. Muller
Baton Rouge, LA

Counsel for Defendant/Appellee
Allstate Insurance Company

* * * * * *

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

Parro, J. concurs.

GUIDRY, J.

Plaintiff, Melinda Hollins, appeals from a judgment of the trial court granting summary judgment in favor of defendant, Allstate Insurance Company, and dismissing her claims against Allstate. For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

On January 18, 2011, Melinda Hollins and her son, Drew Hollins, both residents of Mississippi, were traveling southbound on US-61 in West Feliciana Parish, Louisiana, when their vehicle was struck by a vehicle driven by John Adair, a Texas resident.[1] On the date of the accident, John Adair had in full force and effect a policy of automobile insurance issued by Old American Country Mutual Fire Insurance Company d/b/a Affirmative Insurance Company (Affirmative) in Texas with limits of liability of $25,005 per person and $50,005 per accident. Additionally, Ms. Hollins had in full force and effect a policy of uninsured/underinsured motorist (UM) coverage issued to her by Allstate Insurance Company (Allstate) with limits of $25,000 per person and $50,000 per accident. Allstate issued the policy to Ms. Hollins in Mississippi, and at the time of the accident, Ms. Hollins's vehicle was garaged in Mississippi.

Because Ms. Hollins and her son sustained injuries in the accident, Ms. Hollins, individually and on behalf of her son, filed a petition for damages, naming as defendants John Adair, Affirmative, and Allstate. Ms. Hollins later settled with Mr. Adair and Affirmative for the policy limits of $25,005 with respect to her

[1] We note that the parties asserted in the trial court and in their appellate briefs that Mr. Adair is a resident of Louisiana. However, this assertion is not supported by the record. The plaintiffs' petition alleges that Mr. Adair is a resident of Texas, Mr. Adair admitted in his answer to the petition that he is a resident of Texas, and Mr. Adair's insurance policy shows that he resides in Texas. This would normally end our analysis, since none of the criteria of La. R.S. 22:1295 for application of Louisiana law are present in the instant case. However, constrained by La. C.C.P. art. 966(F)(1) and noting this issue was not set forth in the motion under consideration by the court, we shall hereinafter conduct a choice-of-law analysis.

claim, and for $5,000 with respect to the claim for her son.[2] Consequently, Ms. Hollins, individually and on behalf of her son, dismissed Mr. Adair and Affirmative from the lawsuit on May 3, 2012.

Thereafter, Allstate filed a motion for summary judgment, asserting that its policy in effect on the date of the accident was a Mississippi policy, and in accordance with the conflict of law analysis prescribed by La. C.C. art. 3515, Mississippi law applies to the insurance contract. Allstate further asserted that because Ms. Hollins had been compensated more than the limits of the UM coverage provided by the Allstate policy, Ms. Hollins is not defined as an uninsured/underinsured motorist, and Allstate is entitled to judgment as a matter of law.

Following a hearing on Allstate's motion, the trial court signed a judgment granting summary judgment in favor of Allstate, finding Mississippi law applied to the UM policy at issue, and dismissing Ms. Hollins's claims, in her individual capacity, against Allstate. The trial court designated the judgment as final in accordance with La. C.C.P. art. 1915.[3] Ms. Hollins now appeals from the trial court's judgment.

STANDARD OF REVIEW

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

---

[2] According to the record, an individual from another vehicle involved in the subject accident received the remaining $20,005 available under the Affirmative policy.

[3] The district court concluded there was no just cause for delay and designated the partial judgment as final, although it gave no reasons for its conclusion. Nevertheless, based on our *de novo* review of the relevant factors outlined in R.J. Messinger, Inc. v. Rosenblum, 04-1664, p. 14 (La. 3/2/05), 894 So. 2d 1113, 1122, we find the designation was proper.

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).

On a motion for summary judgment, the burden of proof is on the mover. If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the mover's burden on the motion does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. La. C.C.P. art. 966(C)(2).

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.

DISCUSSION

In Champagne v. Ward, 03-3211, p. 2 (La. 1/19/05), 893 So. 2d 773, 775, the Louisiana Supreme Court held that Louisiana law does not automatically apply to UM claims under a policy issued in another state, even though a Louisiana resident is involved in the accident and the accident occurs in Louisiana. Rather, the appropriate starting point in a multistate case is to first determine that there is a difference between Louisiana's law and the law of the foreign state and then to conduct a choice-of-law analysis, as codified in Book IV of the Civil Code, to determine which state's law applies to the interpretation of the UM policy.

Champagne, 03-3211 at p. 22, 893 So. 2d at 786. Because the instant accident occurred in Louisiana and caused injury to a Mississippi resident, who was driving a vehicle covered by an insurance policy issued in Mississippi, we must look to Louisiana and Mississippi law, as it is relevant to the facts of this case.

An uninsured motor vehicle is defined in Louisiana law as "an insured motor vehicle when the automobile liability insurance coverage on such vehicle is less than the amount of damages suffered by an insured ... at the time of an accident." La. R.S. 22:1295(2)(b). However, Mississippi law defines an uninsured motor vehicle as:

> An insured motor vehicle, when the liability insurer of such vehicle has provided limits of bodily injury liability for its insured which are less than the limits applicable to the injured person provided under his uninsured motorist coverage.

Mississippi Code 1972, Section 83-11-103(c)(iii). Therefore, in accordance with Champagne, a choice-of-law analysis is necessary to determine which state's law applies to the interpretation of the UM contract.

Louisiana Civil Code article 3515 provides:

> Except as otherwise provided in this Book, an issue in a case having contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.
>
> That state is determined by evaluating the strength and pertinence of the relevant policies of all involved states in the light of: (1) the relationship of each state to the parties and the dispute; and (2) the policies and needs of the interstate and international systems, including the policies of upholding the justified expectations of parties and of minimizing the adverse consequences that might follow from subjecting a party to the law of more than one state.

Additionally, La. C.C. art. 3537, regarding conventional obligations, provides:

> Except as otherwise provided in this Title, an issue of conventional obligations is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue.

> That state is determined by evaluating the strength and pertinence of the relevant policies of the involved states in the light of: (1) the pertinent contacts of each state to the parties and the transaction, including the place of negotiation, formation, and performance of the contract, the location of the object of the contract, and the place of domicile, habitual residence, or business of the parties; (2) the nature, type, and purpose of the contract; and (3) the policies referred to in Article 3515, as well as the policies of facilitating the orderly planning of transactions, of promoting multistate commercial intercourse, and of protecting one party from undue imposition by the other.

Louisiana's conflict-of-law provisions, as set forth above, set out factors to use in the balancing of competing interests between states. Article 3515 instructs the court to examine the relationship of each state to the parties and the dispute. Article 3537 invites analysis of the nature, type, and purpose of the contract. The objective of these provisions is to identify the state whose policies would be most seriously impaired if its laws were not applied to the issue at hand. Champagne, 03-3211 at p. 22, 893 So. 2d at 786. In the instant case, the law of the state applicable to the insurance contract and its UM coverage is determined by evaluating the strength and pertinence of the relevant policies of the involved states in light of the factors set forth in these Civil Code articles. Champagne, 03-3211 at p. 22, 893 So. 2d at 786.

We note that profound competing public policies and interests exist between the states of Louisiana and Mississippi in this case. The purpose of Louisiana's UM legislation is to promote full recovery for innocent accident victims. See Champagne, 03-3211 at p. 25, 893 So. 2d at 788. Factors supporting Louisiana's strong interest in promoting full recovery for innocent automobile accident victims are: (1) there are economic interests involved, which include costs of medical care (which are more likely to be paid if there is sufficient insurance); (2) there is significant involvement of the facilities of the Department of Public Safety and Corrections and the judicial system; and (3) the issuing states of the insurance policy often have credit and reduction provisions in their UM coverage, thereby

reducing limits and serving to prevent full recovery by the innocent accident victims. Zuviceh v. Nationwide Insurance Company, 00-0773, p. 7 (La. App. 1st Cir. 5/11/01), 786 So. 2d 340, 345, writ denied, 01-2141 (La. 11/9/01), 801 So. 2d 373. Any credit reducing the UM limits by the amount of liability insurance of the adverse driver is clearly contrary to the underinsured motorist protection required by Louisiana statute. Zuviceh, 00-0773 at p. 7, 786 So. 2d at 345-346.

Mississippi, however, has an interest in the regulation of its insurance industry and in the contractual obligations that are inherent parts thereof. The integrity of the contract is a substantial and real interest. The fact that Congress has allowed fifty states to have their own uniform systems of regulations governing insurance strongly suggests this is a legitimate public purpose. Champagne, 03-3211 at p. 26, 893 So. 2d at 788.

In the instant case, Ms. Hollins and Allstate entered into a contract of insurance that provided for UM bodily injury limits of $25,000 per person and $50,000 per accident. This contract specifically provided:

> This policy is issued in accordance with the laws of Mississippi and covers property or risks principally located in Mississippi. Subject to the following paragraph, any and all claims or disputes in any way related to this policy shall be governed by the laws of Mississippi.
>
> If a **covered** loss to the auto, a **covered** auto accident, or any other occurrence **for which coverage applies under this policy** happens outside Mississippi, claims or disputes regarding that **covered** loss to the auto, **covered** auto accident, or other **covered** occurrence may be governed by the laws of the jurisdiction in which that covered loss to the auto, covered auto accident, or other covered occurrence happened. [Emphasis added.]

In conformity with Mississippi law, the Allstate policy defined an "uninsured auto" as "an underinsured motor vehicle which has bodily injury liability protection in effect and applicable at the time of the accident, but in an amount less than the applicable limit of bodily injury liability for this coverage shown on the Policy Declarations." Because Mr. Adair's policy with Affirmative had limits of $25,005,

Ms. Hollins was not entitled to UM coverage under the terms of the Allstate policy.

Considering the aforementioned legal precepts, we evaluate the various contacts connecting the parties to Louisiana and Mississippi in the instant case. The record shows the following contacts with Louisiana: (1) the accident occurred in West Feliciana Parish, Louisiana; (2) Ms. Hollins worked five days a week in Baton Rouge, Louisiana, for thirteen years; (3) Ms. Hollins's minor child attended day care five days a week in Baton Rouge, Louisiana; and (4) Ms. Hollins received medical care in Louisiana following the subject accident. With regard to Mississippi, the evidence establishes: (1) Ms. Hollins was a resident of Mississippi, with a Mississippi address and a Mississippi driver's license; (2) Ms. Hollins's vehicle is garaged in Mississippi; (3) Ms. Hollins's UM insurance policy with Allstate is a Mississippi contract, negotiated and purchased in Mississippi; and (4) the Allstate policy specifically provides that any and all claims or disputes in any way related to the policy shall be governed by the laws of Mississippi.

After carefully reviewing the facts of this case, we conclude that Mississippi has a more substantial interest in the uniform application of its law governing insurance contracts than Louisiana has in providing an insurance remedy to an out-of-state resident who was injured while in Louisiana. See Wendling v. Chambliss, 09-1422, pp. 8-9 (La. App. 1st Cir. 3/26/10), 36 So. 3d 333, 338. The insurance contract entered into between Allstate and Ms. Hollins contained a specific provision dictating that any claims related to the policy shall be governed by the laws of Mississippi. Furthermore, although Ms. Hollins is correct in her contention that the paragraph in the policy immediately following the statement that Mississippi law applies to any claim or dispute, as outlined *supra*, evidences that the parties contemplated the application of other state's laws to claims or disputes related to the policy, a plain reading of the policy indicates that this provision

applies only *after* a determination has been made that a loss, accident, or occurrence is covered under the terms of the policy in accordance with Mississippi law.

Accordingly, considering the facts of the instant case, we find that the application of Louisiana law to the policy would result in the abrogation of a Mississippi contract. Moreover, Ms. Hollins's premium for UM coverage was based on the application of Mississippi law to the contract. See Zuviceh, 00-0773 at p. 11, 786 So. 2d at 348. Therefore, under a conflict-of-laws analysis, Mississippi's interests would be the most seriously impaired if its law is not applied to the insurance policy. See Wendling, 09-1422 at p. 9, 36 So. 3d at 339.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court granting summary judgment in favor of Allstate Insurance Company, applying Mississippi law to the UM policy at issue, and dismissing Melinda Hollins's claims, in her individual capacity, against Allstate. All costs of this appeal are assessed to Melinda Hollins.

AFFIRMED.