

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2013 CA 1730

BILLY RAY DOYLE AND  
LISA MARIE GODFREY DOYLE

VERSUS

STEPHAN MURPHY, ET AL.

Judgment Rendered: MAY 02 2014

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Appealed from the  
32<sup>nd</sup> Judicial District Court  
In and for the Parish of Terrebonne, Louisiana  
Trial Court Number 165,923

Honorable David W. Arceneaux, Judge

\*\*\*\*\*

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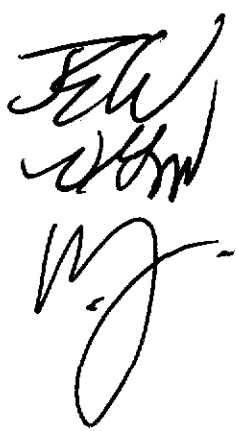
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Defendant – Louisiana Farm Bureau  
Casualty Insurance Company

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**BEFORE: WHIPPLE, C.J., WELCH, AND CRAIN, JJ.**



**WELCH, J.**

Plaintiff, Billy Ray Doyle, appeals a judgment granting motions for summary judgment in favor of defendants, Sonia Murphy and Louisiana Farm Bureau Casualty Insurance Company (Farm Bureau), and sustaining both defendants' peremptory exceptions raising the objection of no cause of action. We affirm the judgment dismissing all of the plaintiff's claims against Sonia Murphy and Farm Bureau and issue this opinion in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.2(A)(5) and (6).

Plaintiff's daughter, Amanda, was killed when a vehicle in which she was riding, driven by Stephen Murphy, left the roadway and hit a brick mailbox. Plaintiff sued a number of defendants seeking damages arising from the fatal collision, including for the purposes of this appeal, Sonia Murphy, Stephen's mother, and Farm Bureau, in its capacity as Sonia's homeowners' insurer and the automobile liability insurer of Sonia and her husband. Plaintiff alleged that Stephen was under the influence of alcohol at the time of the accident and asserted that his mother was at fault based on her failure to contact law enforcement shortly before the accident when she knew that her son was driving under the influence of alcohol. Sonia and State Farm filed motions for summary judgment and exceptions of no cause of action. These motions and exceptions asserted that: (1) Sonia did not breach any legal duty and was not at fault in causing Amanda's death and therefore, the homeowner's policy provided no coverage to Sonia; and (2) the Farm Bureau automobile policy excluded coverage for the accident because it is undisputed that the vehicle Stephen was driving was not listed on the Farm Bureau policy and had been furnished to Stephen for his regular use by his grandfather.

In granting the motions for summary judgment and the exceptions of no cause of action, the trial court issued extensive written reasons detailing the background of this case, the parties' central arguments, and its legal conclusions

regarding liability based upon the undisputed facts of this case. After a thorough review of the record, we find no error in the trial court's conclusions that Sonia did not owe a duty to report to law enforcement that her son was driving under the influence of alcohol and that the Farm Bureau policy did not provide liability coverage to Stephen or uninsured motorist coverage to Amanda. We affirm the judgment and in so doing, we adopt the trial court's written reasons as our own, attaching those reasons hereto as Appendix A. All costs of this appeal are assessed to appellant, Billy Ray Doyle.

**AFFIRMED.**

BILLY RAY DOYLE  
V.  
STEPHEN A. MURPHY, ET AL  
DOCKET NUMBER 165923

\* 32ND JUDICIAL DISTRICT COURT  
\* PARISH OF TERREBONNE  
\* STATE OF LOUISIANA  
\* DIVISION D

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REASONS FOR JUDGMENT GRANTING PEREMPTORY EXCEPTIONS AND  
MOTIONS FOR SUMMARY JUDGMENT

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On February 9, 2012, Billy Ray Doyle and Lisa Marie Godfrey Doyle filed the instant suit seeking damages as a result of the death of their daughter Amanda Doyle. The plaintiffs allege their daughter was killed while riding as a passenger in a Ford Ranger pickup truck operated by Stephen A. Murphy who was under the influence of alcohol. According to the petition, on December 11, 2011, Mr. Murphy failed to negotiate a curve on Savanne Road in Houma and the truck flipped over into a ditch after hitting a brick mailbox. The plaintiffs identified Mr. Murphy's grandfather Michael Dupree, Sr., as the owner of the pickup truck.

Initially named as defendants were Mr. Murphy, Allstate Insurance Company (hereinafter "Allstate") as the automobile liability insurer of Mr. Murphy under a policy which insured the Ford Ranger, and Louisiana Farm Bureau Casualty Insurance Company (hereinafter "Farm Bureau") as the automobile liability insurer of Mr. Murphy pursuant to a policy insuring another vehicle.

On March 13, 2012, the claims of Amanda's mother Lisa Marie Godfrey Doyle were dismissed without prejudice, leaving only Mr. Doyle as the plaintiff in this case.

By supplemental petitions filed August 16, 2012, November 8, 2012, and January 14, 2013, the plaintiff named eleven additional defendants, including:

1. Shane Snyder, the alleged driver of a vehicle Stephen A. Murphy claimed cut in front of him and caused the accident in question;

2. John Boudreaux and Shayna Boudreaux, who are alleged to have hosted a party and furnished alcohol to Stephen A. Murphy at their home shortly before the accident;

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MAY 06 2013

3. Edward Zurga and Debra Zurga, whose liability to the plaintiff is based on their alleged responsibility for the mailbox struck by Stephen A. Murphy;

4. Sonia Murphy, Stephen A. Murphy's mother, whose liability is alleged to be based upon her failure to contact law enforcement shortly before the accident when she knew that her son was driving under the influence of alcohol;

5. Terrebonne Parish Consolidated Government (hereinafter "TPCG"), the alleged "owner" of Savanne Road and against whom the plaintiff asserts liability for failure to keep the Savanne Road right of way clear of the mailbox owned by Edward Zurga and Debra Zurga;

6. State Farm Fire and Casualty Insurance Company (hereinafter "State Farm"), the homeowners liability insurer of John and Shayna Boudreaux;

7. Farm Bureau, in its capacity as the homeowners liability insurer of Sonia Murphy;

8. Lighthouse Property Insurance Corporation (hereinafter "Lighthouse"), the homeowners liability insurer of Edward and Debra Zurga; and,

9. Progressive Security Insurance Company (hereinafter "Progressive"), the automobile liability insurer of Shane Snyder.

On December 21, 2012, the claims of the plaintiff against John and Shayna Boudreaux and their alleged homeowners liability insurer State Farm, were dismissed with prejudice.

On December 10, 2012, Farm Bureau filed a motion for summary judgment seeking dismissal of the claims against it in its capacity as the automobile liability insurer of a vehicle not involved in the accident which resulted in Amanda's death. The following day, on December 11, 2012, Farm Bureau filed a peremptory exception of no cause of action and a motion for summary judgment seeking dismissal of the claims against it in its capacity as the homeowners insurer of Steven A. Murphy's mother, Sonia Murphy. On February 19, 2013, Sonia Murphy individually filed a peremptory exception and a motion for

summary judgment seeking dismissal of the claims against her.

A hearing on the two motions for summary judgment and peremptory exception filed by Farm Bureau was held on March 22, 2013. By agreement of all counsel, the motion for summary judgment and peremptory exception filed by Sonia Murphy scheduled for hearing on April 5, 2013, was submitted on the pleadings. Counsel agreed that the documentary evidence offered by the plaintiff and Farm Bureau and received as evidence at the hearing on March 22, 2013, was to be accepted by the court in connection with the hearing scheduled for April 5, 2013.

In support of its motion for summary judgment, Farm Bureau, in its capacity as an automobile liability insurer, offered the following items of documentary evidence at the hearing in this matter on March 22, 2013:

Exhibit A: Copy of the June 19, 2012, deposition of Stephen A. Murphy;

Exhibit B: Copy of the June 19, 2012, deposition of Michael Dupre, Sr.;

Exhibit C: Copy of Allstate Property and Casualty Insurance Company policy number 98521388611/25 issued to Michael and Mary Dupre for a 2006 Ford Ranger truck and other listed vehicles;

Exhibit D: Copy of Louisiana Farm Bureau Casualty Insurance Company policy number AV72957 issued to Robert and Sonia Murphy for a 2002 Ford F150 pickup truck; and,

Exhibit E: Copy of the June 19, 2012, deposition of Sonia Murphy.

In opposition to this motion for summary judgment filed by Farm Bureau, the plaintiff offered and the court accepted the following items of documentary evidence:

Exhibit 1: The entire record of this proceeding;

Exhibit 2: Copy of Louisiana Farm Bureau Casualty Insurance Company policy number AV72957 issued to Robert and Sonia Murphy for a 2002 Ford F150 pickup truck;

Exhibit 3: Copy of Allstate Property and Casualty Insurance Company policy number 98521388611/25 issued to Michael and Mary Dupre for a 2006 Ford Ranger truck and other listed vehicles;

Exhibit 4: Copy of the June 19, 2012, deposition of Stephen A. Murphy;

Exhibit 5: Copy of the June 19, 2012, deposition of Sonia Murphy; and,

SCANNED

MAY 06 2013

758

Exhibit 6: Copy of the June 19, 2012, deposition of Michael Dupre, Sr.

In support of its motion for summary judgment, Farm Bureau, in its capacity as the homeowners liability insurer of Sonia Murphy, offered the following items of documentary evidence at the hearing in this matter on March 22, 2013:

Exhibit A: Copy of the June 19, 2012, deposition of Stephen A. Murphy;

Exhibit B: Copy of Louisiana Farm Bureau Mutual Insurance Company homeowner policy number H0426569 issued to Robert and Sonia Murphy for the premises at 225 Fairmont Drive, Houma, Louisiana; and,

Exhibit C: Copy of the June 19, 2012, deposition of Sonia Murphy.

These same items have been accepted as evidence by the court on behalf of Sonia Murphy in connection with her motion for summary judgment.

In opposition to this motion for summary judgment filed by Farm Bureau and the motion for summary judgment filed by Sonia Murphy, the plaintiff offered and the court accepted the following items of documentary evidence:

Exhibit 1: The entire record of this proceeding;

Exhibit 2: Copy of the June 19, 2012, deposition of Sonia Murphy;

Exhibit 3: Copy of the June 19, 2012, deposition of Robert Murphy;

Exhibit 4: Copy of the June 19, 2012, deposition of Stephen A. Murphy;

Exhibit 5: Copy of the June 19, 2012, deposition of Michael Dupre, Sr.; and,

Exhibit 6: Copy of Louisiana Farm Bureau Mutual Insurance Company homeowner policy number H0426569 issued to Robert and Sonia Murphy for the premises at 225 Fairmont Drive, Houma, Louisiana.

The court has thoroughly reviewed all of the pleadings, exhibits, and memoranda offered by the parties, and has thoroughly considered the arguments of counsel. For the reasons that follow, the court has granted the peremptory exceptions sought herein and has granted both motions for summary judgment requested by Farm Bureau and the motion for summary judgment requested by Sonia Murphy.

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MAY 06 2013

The purpose of the peremptory exception of no cause of action is to determine the sufficiency in law of the petitioner's claim. The exception is triable on the face of the pleading. The well-pled facts must be accepted as true and evidence is not admissible to support or controvert the exception. In the face of such an exception, the court is obligated to determine whether the proponent is legally entitled to the relief sought. Louisiana Code of Civil Procedure article 931; Everything on Wheels Subaru, Inc. v. Subaru South, Inc., 616 So. 2d 1234 (La., 1993).

In his petition, the plaintiff asserts liability against Farm Bureau and Sonia Murphy based on the alleged breach of a legal duty by Sonia Murphy to contact law enforcement shortly before the accident and report that her son was drinking and driving with a passenger in his vehicle, despite her knowledge that he was doing so.

Both Farm Bureau and Sonia Murphy have asserted a peremptory exception of no cause of action in this proceeding. It is the position of Sonia Murphy that she had no legal duty to control, protect, or warn against the actions of her adult son which allegedly led to the death of Amanda. Farm Bureau's position is that in the absence of some breach of duty by Sonia Murphy, its insured, it is not liable to the plaintiff.

Under Louisiana law, in a case of this nature, the elements of a cause of action are fault, causation, and damage. In order to be found at fault in this case, Sonia Murphy must have been negligent in some regard. In order to resolve the negligence issue, the court must determine the duty imposed by law on her, if any, and then determine whether or not the risk which led to the incident in question, was within the scope of that duty. For the risk to be within the scope of that duty, the duty imposed on the defendant must have been intended to protect against the risk involved. Absent either a duty to the plaintiff, or a risk included within that duty, there is no negligence on the part of the defendant. The imposition of a duty depends on a case-by-case analysis. Gresham v. Davenport,

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MAY 06 2013



There is no duty on the part of anyone, including the parent of an adult driver, to report to law enforcement, prior to an accident or otherwise, that someone is drinking and driving, even despite legitimate concerns that an accident might occur. In his petition, the plaintiff confirms that the defendant Stephen A. Murphy is a major domiciliary and there is no suggestion by the plaintiff in any of his pleadings or otherwise that the alleged liability of Sonia Murphy is vicarious. In the absence of a duty on her part, neither Sonia Murphy nor her homeowner insurer Farm Bureau can be liable in this case. Each of their peremptory exceptions of no cause of action is well-founded.

Ordinarily, under article 934 of the Louisiana Code of Civil Procedure, when the grounds of an objection pleaded by the peremptory exception may be removed by amendment of the petition, the judgment sustaining the exception shall order an amendment of the petition. However, in light of the court's ruling with regard to the common motion for summary judgment filed by Sonia Murphy and Farm Bureau, such an amendment would serve no purpose.

Louisiana Code of Civil Procedure article 966 declares that summary judgment procedure is favored in Louisiana and shall be construed to accomplish the just, speedy, and inexpensive determination of judicial proceedings. The party requesting summary judgment is entitled to the same as a matter of law if the pleadings, depositions, answers to interrogatories, admissions, and affidavits furnished by the parties show that there is no genuine issue as to material fact. Ordinarily, the burden of proof to make such a showing is on the movant. However, if the movant will not bear the burden of proof at trial, the movant's burden on the motion for summary judgment is merely to show an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. As provided by Louisiana Code of Civil Procedure article 966(C) (2), "[t]hereafter, if the adverse party fails to

produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact."

In this case, at trial the plaintiff will bear the burden of proving all the elements of his claims by a preponderance of the evidence. In order to prevail on their motions for summary judgment, Sonia Murphy and Farm Bureau, as her homeowner insurer, need only allege an absence of factual support for an essential element of the plaintiffs' claims.

Because, as described above, Sonia Murphy had no legal duty to the plaintiff in this case, an essential element of the plaintiff's claims against her and Farm Bureau is missing. The court finds, based on a review of the evidence offered by the parties, there is no genuine issue of any material fact that could serve as a basis to impose liability upon Sonia Murphy in this case. As a result, and because the liability of Farm Bureau under its homeowners policy depends on the liability of Sonia Murphy, the motions for summary judgment filed by Sonia Murphy and Farm Bureau as her homeowners insurer must be granted.

Farm Bureau also filed a motion for summary judgment as the automobile insurer of Robert and Sonia Murphy, alleging that there is no genuine issue of material fact to the effect that its automobile liability policy excludes coverage for the plaintiff's claims against it because Stephen A. Murphy, at the time of the accident, was operating a vehicle furnished for his regular use and not described in the policy issued by Farm Bureau.

In support of its position, Farm Bureau offered as evidence a copy of its policy number AV72957 issued to Robert and Sonia Murphy for a 2002 Ford F150 pickup truck, effective for a term of six months which included the date of the accident in this case. It is undisputed that at the time of the accident Stephen A. Murphy was operating a 2006 Ford Ranger pickup truck insured by Allstate policy number 98521388611/25 issued to Michael and Mary Dupre. The 2002 Ford F150 pickup truck was not involved in the accident.

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MAY 06 2013

In support of its motion for summary judgment, Farm Bureau points to the following language in its policy:

"USE OF OTHER AUTOMOBILES If the named insured is an individual or husband and wife, and if during the policy period such named insured or the spouse of such individual, owns a private passenger automobile or farm truck covered by this policy, such insurance as is afforded by this policy...with respect to said automobile applies with respect to the use of any other automobile with permission of the owner subject to the following provisions:

- (a) Under Coverages A and B [bodily injury and property damage liability] only, the unqualified word "insured" includes:
  - (1) such named insured and spouse while a resident of the named insured's household and a relative of the named insured or spouse while a resident of the named insured's household....

\* \* \*

(d) This insuring agreement does not apply:

- (1) to any automobile owned by or furnished for regular use to either the named insured or a member of the same household...."

(Emphasis added).

There is no genuine issue regarding the following facts. First, the 2006 Ford Ranger pickup truck operated by Stephen A. Murphy at the time of the accident was owned by his grandfather, Michael Dupre. Secondly, this vehicle was furnished to Stephen A. Murphy for his regular use, and at the time of the accident he was operating the truck with his grandfather's permission. Finally, the vehicle is not listed as a covered vehicle in the Farm Bureau policy and the named insureds under the policy are Robert Randall Murphy and Sonia Dupre Murphy, husband and wife, who were residents of the same household.

As a result of the foregoing undisputed facts, the 2006 Ford Ranger pickup truck operated by Stephen A. Murphy at the time of the accident is an "other automobile" for which coverage would be possible under the Farm Bureau policy in favor of Stephen A. Murphy if he is "a relative of the named insured or spouse while a resident of the named insured's household." In other words, if he was related to Robert Randall Murphy or Sonia Dupre Murphy and he was a resident of their household at the time of the accident, coverage in his favor under the Farm Bureau

SCANNED  
MAY 06 2013

763

policy would be possible.

It is clear Stephen A. Murphy was related to the named insureds at the time of this accident. He is their son. Farm Bureau admits that there is a dispute as to whether or not he was a resident of his parents' household at the time of the accident. If he was such a resident, coverage would be possible. If he was not such a resident, there would be no coverage.

Notwithstanding the possibility of coverage under the Farm Bureau policy if Stephen A. Murphy was a resident of his parents' household at the time of the accident, Farm Bureau asserts there is no coverage because, in any event, the insuring agreement "does not apply...to any automobile...furnished for regular use to either the named insured or a member of the same household...." Under this exclusion, even if Stephen A. Murphy was a resident of his parents' household and coverage would be a possibility, that possibility is extinguished because coverage is excluded for any automobile furnished for the regular use of a member of the household. And as stated above, there is no genuine dispute about the fact that the vehicle Stephen A. Murphy was operating at the time of the accident was furnished to him by his grandfather for his regular use.

The plaintiff has raised the possibility that Farm Bureau may be liable to the plaintiff pursuant to the uninsured/underinsured provisions of its policy. The court notes the policy provides such coverage to "any other person while occupying an insured automobile." It appears the plaintiff would be entitled to the benefits of such coverage if Amanda occupied "an insured automobile."

"Insured automobile" is a term defined on pages five and six of the Farm Bureau policy. It is undisputed that the vehicle operated by Stephen A. Murphy at the time of the accident was not described in the Farm Bureau policy. It was not owned by the named insureds Robert Randall Murphy or Sonia Dupre Murphy. It was not a temporary substitute automobile for an otherwise insured automobile. As a result, the 2006 Ford Ranger pickup

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MAY 06 2013

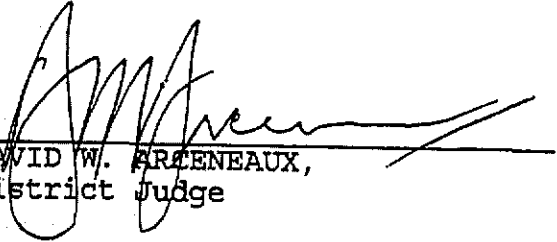
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truck can be an insured automobile under the uninsured/underinsured motorist provisions of the Farm Bureau policy only if it was a non-owned automobile being operated by a named insured.

The vehicle was being operated by Stephen A. Murphy. He was not a named insured. Therefore, there is no uninsured/underinsured motorist coverage provided by the Farm Bureau policy in this case.

Judgment has been rendered in accordance with these reasons.

REASONS GIVEN in Chambers at Houma, Louisiana, on this 23rd day of April, 2013.

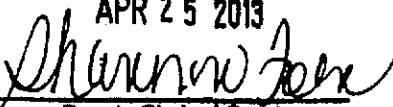
  
DAVID W. ARCENEAUX,  
District Judge

Please serve:

1. The plaintiff Billy Ray Doyle through his attorney of record Julius P. Hebert, Jr., 4752 Highway 311, Suite 114, Houma, Louisiana 70360.
2. The defendant Louisiana Farm Bureau Casualty Insurance Company through its attorney of record James S. Thompson, 704 Carondelet Street, New Orleans, Louisiana 70130.
3. The defendant Sonia Murphy through her attorney of record William S. Watkins, 101 Wilson Avenue, P. O. Box 3017, Houma, Louisiana 70361.

**FILED**

APR 25 2013



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Parish of Terrebonne, LA

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MAY 06 2013

765