STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2020CA0386

IRIS NELL SPINKS JOURDAN, ROBIN RENE JOURDAN SMITH AND MISTY MICHELLE JOURDAN APPE

VERSUS

ALLMERICA FINANCIAL BENEFIT INSURANCE COMPANY, ET AL

Judgment Rendered: DEC 30 2020

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Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of Washington
State of Louisiana
Suit Number 110195

Honorable Alan A. Zaunbrecher, Presiding

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Ron S. Macaluso Hammond, LA	Counsel for Plaintiffs/Appellants Iris Nell Spinks Jourdan, Robin Rene Jourdan Smith, and Misty Michelle Jourdan Appe
Sidney J. Angelle Stephen J. Eckholdt New Orleans, LA	Counsel for Defendants/Appellees Allmerica Financial Benefit Insurance Company and Karen Spears
James M. Benson Mandeville, LA	Counsel for Defendant/Appellee Federated Rural Electric Insurance Exchange

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BEFORE: GUIDRY, McCLENDON, AND LANIER, JJ.

GUIDRY, J.

Plaintiffs/appellants, Iris Nell Spinks Jourdan, Robin Rene Jourdan Smith, and Misty Michelle Jourdan Appe, appeal from a trial court judgment dismissing their claims against Federated Rural Electric Insurance Exchange (Federated), seeking uninsured/underinsured motorist coverage under Federated's All Risk Blanket Policy. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Lawrence "Cotton" Jourdan was a member of the Board of Directors of Washington St. Tammany Electric Co-Operative, Inc. (Co-Op). Following a board meeting on March 8, 2016, at the Co-Op's office in Franklinton, Louisiana, the board members met for dinner at Fair City Café. Jourdan had ridden to the board meeting with another board member, Dennis Glass, so he rode with Glass to the café. Glass parked his vehicle in a parking lot across the street from the café. While walking across the street from the parking lot to the café, Jourdan was struck by a vehicle driven by Karen Spears. Jourdan sustained serious injuries as a result of the accident, and he later died as a result of his injuries.

Thereafter, on December 8, 2016, plaintiffs, Jourdan's surviving spouse and adult children, filed a petition for damages, naming Spears, her insurer, Allmerica Financial Benefit Insurance Company, and Federated, the insurer of the Co-Op, as defendants. Particularly, with regard to Federated, plaintiffs alleged that Federated had issued an All Risk Blanket Policy (All Risk policy) to the Co-Op, which named Directors of the Co-Op as insureds under the policy. As such, plaintiffs asserted that the All Risk policy included uninsured/underinsured motorist (UM) benefits, which provide coverage to Jourdan and the plaintiffs because Jourdan was in the course and scope of his duties and responsibilities as a member of the Board of Directors of the Co-Op at the time of the accident.

On June 2, 2017, plaintiffs filed a motion for summary judgment, seeking a declaration from the trial court that the Federated policy provides UM coverage to the plaintiffs for the accident at issue. Federated also filed a motion for summary judgment as to coverage, seeking dismissal of plaintiffs' claims against it because there is no coverage afforded to Jourdan and/or the plaintiffs for the accident in question under the All Risk policy issued to the Co-Op.

Following a hearing on the parties' motions, the trial court signed a judgment denying Federated's motion for summary judgment and granting plaintiffs' motion, ordering that the UM coverage of the All Risk policy issued by Federated to the Co-Op provides coverage to the plaintiffs. Federated appealed the trial court's judgment to this court, and in Jourdan v. Allmerica Financial Benefit Insurance Company, 17-1630, pp. 6-7 (La. App. 1st Cir. 11/30/18), 267 So. 3d 627, 631, writs denied, 18-2086 (La. 2/18/19), 265 So. 3d 775 and 18-02105 (La. 2/18/19), 265 So. 3d 776 (Jourdan I), this court found that according to the plain language of the UM endorsement, because Jourdan was not "occupying" an auto at the time of the accident, he was not entitled to contractual UM coverage under the UM endorsement of the Federated Policy. However, in examining whether Jourdan was otherwise entitled to UM coverage under the Federated policy as an insured under the liability coverage, this court found, based on the evidence then in the record, that there was a genuine issue of material fact as to whether attending a dinner following the Co-Op board meeting was within the course and scope of a director's duty. Jourdan I, 17-1630 at pp. 8-9, 267 So. 3d at 632. As such, this court reversed the trial court's judgment, granting summary judgment in favor of the plaintiffs, and remanded the matter to the trial court for further proceedings. Jourdan I, 17-1630 at p. 9, 267 So. 3d at 633.

Following a trial of the matter, the trial court found, adopting this court's reasoning in Jourdan I, that Jourdan was not entitled to contractual UM coverage

under the Federated policy because he was not an insured as contemplated by the UM endorsement of the policy. The court further found, based on the testimony and exhibits admitted at trial, that Jourdan was not acting within the course and scope of his duties when the accident occurred and therefore, he was not insured under the auto liability portion of Federated's All Risk Policy. As such, the trial court signed a judgment dismissing plaintiffs' claims against Federated with prejudice. Plaintiffs now appeal from the trial court's judgment, asserting that the trial court erroneously interpreted Federated's policy provisions and as such, erred in finding Jourdan was not entitled to contractual UM coverage as an insured under the UM endorsement of the Federated policy or that Jourdan was not an insured covered by the Federated UM endorsement.

DISCUSSION

Contractual UM Coverage

Plaintiffs allege as error on appeal the trial court's interpretation of Federated's policy provisions and its finding that Jourdan was not entitled to contractual UM coverage as an insured under the UM endorsement of the Federated policy.

The law of the case doctrine embodies the principle that an appellate court generally does not revisit its own rulings of law on a subsequent appeal in the same case. Family Worship Center Church, Inc. v. Solomon, 17-0064, p. 14 (La. App. 1st Cir. 6/21/18), 255 So. 3d 649, 658, writ denied, 18-1778 (La. 1/28/19), 263 So. 3d 427. The law of the case doctrine is a discretionary guide that relates to (a) the binding force of a trial judge's ruling during the later stages of trial; (b) the conclusive effects of appellate rulings at trial on remand, and (c) the rule that an appellate court ordinarily will not reconsider its own rulings of law on a subsequent appeal in the same case. Zanella's Wax Bar, LLC v. Trudy's Wax Bar, LLC, 19-0043, p. 4 (La. App. 1st Cir. 11/7/19), 291 So. 3d 693, 696, writ denied, 19-01931

(La. 1/28/20), 291 So. 3d 1052. It applies to all prior rulings or decisions of an appellate court or the supreme court in the same case, not merely those arising from the full appeal process. Family Worship Center Church, Inc., 17-0064 at p. 15, 255 So. 3d at 658. The reasons for the doctrine are to avoid re-litigation of the same issues, to promote consistency of result in the same litigation, and to promote efficiency and fairness to the parties by affording a single opportunity for the argument and decision of the matter at issue. Zanella's Wax Bar, LLC, 19-0043 at pp. 4-5, 291 So. 3d at 696.

As previously stated, the issue of contractual UM coverage was raised in conjunction with the previously filed motion for summary judgments and was previously addressed by this court in Jourdan I. Specifically, this court, after examining the policy at issue, found that according to the plain language of the UM endorsement, because Jourdan was not "occupying" an auto at the time of the accident, he was not entitled to contractual UM coverage under the UM endorsement of the Federated Policy. Jourdan I, 17-1630 at pp. 6-7, 267 So. 3d at 631. Therefore, because this issue involving the same parties and the same facts was previously addressed by this court in the same suit, we find that the law of the case doctrine applies, and we decline to reconsider our previously rendered decision. See Vancourt v. St. James Parish School Board, 18-75, p. 4 (La. App. 5th Cir. 10/17/18), 257 So. 3d 1293, 1296-97.

UM Coverage/Auto Liability Coverage

The Louisiana Supreme Court has found that while a plaintiff may not be entitled to contractual UM coverage under a policy, a plaintiff may still be entitled to UM coverage if he is an insured under the auto liability coverage. Bernard v. Ellis, 11-2377, p. 6 (La. 7/2/12), 111 So. 3d 995, 1000.

The relevant portion of the Federated policy states:

SECTION II- AUTOMOBILE AND
GENERAL LIABILITY INSURANCE

Coverage A. Personal Injury Liability Coverage
Property Damage Liability Coverage
Advertising Injury Liability Coverage

Federated will pay on behalf of the insured all sums, up to the Limit of Liability in the Declarations, which the insured shall become legally obligated to pay as damages because of personal injury...to which this insurance applies, caused by an occurrence during the policy period.

* * *

F. Persons Insured

Each of the following is an insured under this insurance to the extent set forth below:

1. the organization listed in the Declarations and any executive officer, director, trustee, employee or volunteer of the policyholder *while acting within the scope of their duties as such*; [Emphasis added.]

There is no dispute that Jourdan was a director of the Co-Op, the policyholder listed on the declarations page, at the time of the accident. Therefore, the issue of coverage focuses on whether Jourdan was acting within the scope of his duties as a director at the time of the accident.[1] Specifically, the issue is whether attending a dinner following the Co-Op board meeting was within the scope of a director's duties. See Jourdan I, 17-1630 at pp. 9-10, 297 So. 3d at 632.

The determination of whether an injury occurred in the course and scope of employment is a mixed question of law and fact. Joliboix v. Cajun Comfort, Inc., 16-414, p. 4 (La. App. 5th Cir. 12/7/16), 207 So. 3d 655, 658.

The requirement that an employee's injury occur "in the course of" employment focuses on the time and place relationship between the injury and the

[1] Plaintiffs assert on appeal that the phrase "while acting within the scope of their duties as such" does not apply to directors, but rather, is limited to "volunteers." However, we find that the language of the Federated policy is clear. "[O]f the policyholder while acting within the scope of their duties as such" applies to all of the preceding types of employees who work for the organization referenced. Therefore, we find plaintiffs' argument to the contrary to be without merit.

employment. Sharp v. United Fire and Indemnity Company, 15-0976, p. 4 (La. App. 1st Cir. 12/23/15), 185 So. 3d 830, 833. The principal criteria for determining "course of employment" are time, place, and employment activity. Mundy v. Department of Health and Human Resources, 593 So. 2d 346, 349 (La. 1992). An accident occurs in the course of employment when the employee sustains an injury while actively engaged in the performance of his duties during work hours, either on the employer's premises or at other places where employment activities take the employee. McLin v. Industrial Specialty Contractors, Inc., 02-1539, p. 4 (La. 7/2/03), 851 So. 2d 1135, 1140. The requirement that an employee's injury "arise out of" (or in the scope of) the employment relates to the character or origin of the injury suffered by the employee and whether this injury was incidental to the employment. McLin, 02-1539 at p. 4, 851 So. 2d at 1140; see Barnes v. Thames, 578 So. 2d 1155, 1167 (La. App. 1st Cir. 1991).

The Louisiana Supreme Court has stated that social or recreational activities are within the course of employment when:

> (1) They occur on the premises during a lunch or recreation period as a regular incident of the employment; or
>
> (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
>
> (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

Jackson v. American Insurance Company, 404 So. 2d 218, 219 (La. 1981); see also Obein v. Mitcham Peach Farms, LLC, 43,637, p. 5 (La. App. 2nd Cir. 10/29/08), 997 So. 2d 670, 673.

At the trial of this matter, plaintiffs submitted deposition testimony from a Co-Op employee, executives, and board members. Sherri Goss, administrative assistant to the general manager of the Co-Op for twenty years, stated in her deposition

testimony that the board of directors for the Co-Op regularly has a meal after the board meetings that is paid for by the Co-Op. Goss also stated that she completed a Metropolitan Life Insurance Company Statement of Claim for Business Travel Accident Benefits (MetLife) form, wherein she answered "yes" to whether the covered person suffered a loss as the result of an accident that occurred while he was traveling on company business. Goss further indicated that the loss was "Death" and noted that the nature of the company business was "Attend Regular Monthly Meeting of Board of Directors and meal following."

Plaintiffs also submitted the deposition testimony of Charles Hill, the general manager of the Co-Op. Hill stated that the directors, general manager, and the attorney for the Co-Op go to dinner after the board meetings. Hill stated that the dinners were a moment of fellowship after the board meetings had adjourned, and no one was required to attend the dinners. Hill stated that board members were not compensated to attend the dinners and they were not reimbursed for mileage associated with driving to or from the dinners. Hill acknowledged that these dinners were paid for by the Co-Op as a business expense because they were a tradition and a "thank you" to the directors. Further, with regard to the submission of the MetLife form, Hill stated that there was "tribulation" over filling out the forms and answering "yes" to the work related question. However, Hill stated that he was not consulted by Goss when she filled out the form, and he was of the opinion that it was up to the National Rural Electric Cooperative Association to decide if it was work-related.

Plaintiffs also submitted deposition testimony from fellow board members Joe Jarrell and Dennis Glass. Both Jarrell and Glass confirmed that attendance at these dinners was not mandatory, and that Co-Op business was rarely, if ever, discussed. In fact, Jarrell stated that he was instructed that once the board meetings adjourned, the members could not have any discussion of the business of the Co-Op. Rather, Jarrell and Glass stated that the board members discussed topics such as hunting,

fishing, politics, and football. Jarrell also confirmed that the dinners were for fellowship.

From our review of the entire record, we find no manifest error in the trial court's finding that Jourdan was not acting within the scope of his duties when the accident occurred. The trial court was presented with substantial evidence that the business of the board was concluded when the meetings were adjourned. Thereafter, the board members went to dinner, located off Co-Op premises. These dinners were recognized by the members as purely voluntary, and the purpose of the dinners was solely to promote fellowship. Furthermore, while an employee of the Co-Op may have made the determination that Jourdan's death was work-related, that evidence is not determinative of the issue. Rather, the factual and legal decision of whether Jourdan was acting within the scope of his duties as a director at the time of the accident is for the trial court to decide based on the law and the facts contained in the record. Therefore, we find no error in the trial court's judgment dismissing plaintiffs' claims against Federated with prejudice.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are assessed to plaintiffs, Iris Nell Spinks Jourdan, Robin Rene Jourdan Smith, and Misty Michelle Jourdan Appe.

AFFIRMED.