STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2020 CA 0516

PAIGE HUGGINS AND WILLIAM HUGGINS,
INDIVIDUALLY AND ON BEHALF OF THEIR MINOR CHILDREN,
HAYES HUGGINS AND JOLIE HUGGINS

VERSUS

AMTRUST INSURANCE COMPANY OF KANSAS, INC.,
RED OTTER SERVICES, L.L.C., PAUL BARNES,
STEPHEN SMITH, USAA CASUALTY INSURANCE COMPANY,
GEICO CASUALTY INSURANCE COMPANY, KATHLEEN LANE,
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
JANICE GUITREAUX, AND GEICO CASUALTY COMPANY

Decision Rendered: DEC 30 2020

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ON APPEAL FROM
THE 19TH JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH, LOUISIANA
DOCKET NUMBER 671,778

HONORABLE TRUDY M. WHITE, JUDGE

* * * * * * *

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BEFORE: McDONALD, HOLDRIDGE, and PENZATO, JJ.

Holdridge J. concurs w/ Reasons

McDONALD, J.

In this appeal, an automobile liability insurer challenges a summary judgment rendered against it, ordering that the insurer's policy provided primary coverage for an accident and ranked first, ahead of a second insurer's policy. The insurer also challenges the denial of its own motion for summary judgment wherein it sought a judgment that its policy provided no coverage for the accident, because it automatically terminated when the second insurer's policy became effective. For the following reasons, we reverse in part, and affirm in part.

FACTUAL AND PROCEDURAL BACKGROUND

On June 1, 2017, USAA Casualty Insurance Company (USAA) issued a personal automobile insurance policy to Stephen Aaron Smith, the named insured, providing coverage for three vehicles, including a 2007 Toyota Tundra truck, effective June 1, 2017 through November 15, 2017. The USAA policy stated Mr. Smith's address as 2340 Olive Street, Baton Rouge, LA, 70806, and listed him and his wife as operators of the insured vehicles.

On June 15, 2017, Technology Insurance Company, Inc. (Technology) issued a commercial automobile insurance policy to Red Otter Services, LLC (Red Otter), the named insured, providing coverage for the same 2007 Toyota Tundra truck insured by the USAA policy, effective June 15, 2017 through June 15, 2018. The Technology policy declarations page stated Red Otter's address also as 2340 Olive Street, Baton Rouge, LA, 70806, and the policy application listed Mr. Smith as Red Otter's contact.

On September 26, 2017, Paul Barnes, a Red Otter employee, was driving the Toyota truck southbound on Airline Highway in Baton Rouge, Louisiana, when he rear-ended Paige Huggins, whose vehicle then crossed over into oncoming traffic and was struck by two oncoming vehicles. Mrs. Huggins was injured in the multi-vehicle collision.

Mrs. Huggins and her husband, William, later filed suit, individually and on behalf of their minor children, against several defendants, including USAA and Technology in their capacities as insurers of the Toyota truck. In due course, USAA filed a motion for

summary judgment seeking a judgment that its policy did not provide coverage for the Toyota truck on the date of the accident, because its policy automatically terminated on June 15, 2017, the effective date of the Technology policy. Mr. and Mrs. Huggins filed a cross motion for summary judgment seeking a judgment that the USAA policy *did* provide coverage and ranked ahead of the Technology policy. After a hearing on both motions, the district court signed a judgment on November 13, 2019, denying USAA's motion for summary judgment and granting the Hugginses' motion for summary judgment. The judgment stated that the USAA policy provided primary coverage for the September 26, 2017 accident and ranked first, ahead of the Technology policy.

USAA appeals from the grant of the Hugginses' motion and the denial of its own motion. In its first assignment of error, USAA argues the district court erred in finding the USAA policy provides coverage when Mr. Smith voluntarily secured other insurance from Technology, which in turn, terminated the USAA policy well before the September 26, 2017 accident. In its second assignment of error, USAA argues the district court erred in finding the USAA policy provides primary coverage for the accident when the policy had automatically terminated approximately three months earlier; alternatively, USAA contends the district court's ranking of the policies at the summary judgment stage was premature because further discovery is needed on this issue.

APPLICABLE LAW

The denial of a motion for summary judgment is an interlocutory judgment and is appealable only when expressly provided by law. Where there are cross motions for summary judgment raising the same issues, however, this court can review the denial of a summary judgment in addressing the appeal of the grant of the cross motion for summary judgment. *Andel v. Burkeens,* 20-0158 (La. App. 1 Cir. 11/9/20), 2020 WL 6557839 *2, n.3; *Pelle v. Munos,* 19-0549 (La. App. 1 Cir. 2/19/20), 296 So.3d 14, 18, n.2. Thus, we review the denial of USAA's motion in conjunction with USAA's appeal of the grant of the Hugginses' cross motion.

Appellate courts review the grant or denial of a motion for summary judgment *de novo* under the same criteria governing the district court's determination of whether

summary judgment is appropriate. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966A(3); *Bosse v. Access Home Ins. Co.,* 18-0482 (La. App. 1 Cir. 12/17/18), 267 So.3d 1142, 1145. Summary judgment is appropriate for determining issues relating to insurance coverage. *Bosse,* 267 So.3d at 1145. The insured bears the initial burden of proving his loss is covered by the policy. If the insured meets this burden, the insurer then has the burden of proving the applicability of policy exclusions. *Doerr v. Mobil Oil Corp.,* 00-0947 (La. 12/19/00), 774 So.2d 119, 124, *modified on other grds. on reh'g,* 00-0947 (La. 3/16/01), 782 So.2d 573.

DISCUSSION

Summary Judgment Granting the Hugginses' Motion

We first address whether the district court properly granted the Hugginses' motion for summary judgment. The Hugginses, as movers and as the insureds, had the initial burden of proving their loss was covered by the USAA policy. *See* La. C.C.P. art. 966D(1); *Doerr,* 774 So.2d at 124. Their motion for summary judgment states that five exhibits are attached: their petition for damages; the answer filed by Technology, Red Otter, Mr. Barnes and Mr. Smith; the USAA policy; USAA's Statement of Undisputed Facts; and, the Technology policy. However, the appellate record does not include these exhibits, and the Hugginses' attorney admits as much in the appellate brief, as follows: "The [e]xhibits which were filed with Plaintiff-Appellees' Motion for Summary Judgment were apparently not included in the appellate record by the Trial Court; however, the exhibits are in the record from previous filings, and undersigned [counsel] has cited to same in the instant brief." Then, in support of the Hugginses' motion, the appellate brief extensively cites to exhibits that *USAA* properly annexed to affidavits filed in support of *its* motion for summary judgment, including the USAA policy and the Technology policy.

The trial court, and this court on *de novo* review, may only consider evidence that is admissible under the express provisions of La. C.C.P. arts. 966-67. *Horrell v. Alltmont,* 19-0945 (La. App. 1 Cir. 7/31/20), ___ So.3d ___, 2020 WL 4380659 *6. We may consider *only those documents filed in support of or in opposition to the motion for summary judgment* and shall consider any documents to which no objection is made. La. C.C.P. art. 966D(2) (emphasis added). The only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations, and admissions. La. C.C.P. art. 966A(4).

The appellate record does not clearly show that the Hugginses' summary judgment evidence was attached to their motion when it was filed into the record below. Although the hearing transcript indicates the district court and counsel had copies of the USAA and Technology policies at the summary judgment hearing, such does not demonstrate that the Hugginses, as movers, properly filed evidence showing they were entitled to summary judgment.[1] As such, because the appellate record does not include their summary judgment evidence, we conclude the Hugginses did not meet their initial burden of proving their loss was covered by the USAA policy. Moreover, to the extent the Hugginses refer to other exhibits appearing in the record, *i.e.,* USAA's summary judgment evidence, we note that we cannot consider those documents in reviewing the Hugginses' motion, because they were not specifically filed in support of or in opposition to the Hugginses' motion for summary judgment. *James as Co-Trustees of Addison Family Trust v. Strobel,* 19-0787 (La. App. 1 Cir. 6/24/20), 2020 WL 3446635 *4.

We recognize the duplicative nature of requiring the Hugginses to include their own copies of the USAA and Technology policies in the record, when the very same policies already appear in the record, albeit, attached to their opponent's cross motion

[1] We also note that, under current summary judgment law, as enacted by 2015 La. Acts, No. 422, §1, effective January 1, 2016, parties may not introduce summary judgment evidence at the hearing. *See* La. C.C.P. art. 966A(4) and D(2); *Denoux v. Grodner,* 19-0525 (La. App. 1 Cir. 6/3/20), 2020 WL 2897364 *5. Even if such were still permissible, the transcript does not show that evidence was introduced at the hearing herein.

for summary judgment. Under prior summary judgment law, in a case where cross motions for summary judgment were filed, the district court was able to consider each party's motion as an opposition to the other party's motion and to consider all evidence offered on the cross motions. *See Bouquet v. Williams,* 16-0134 (La. App. 1 Cir. 10/28/16), 206 So.3d 232, 236-37; *also see Smart v. Calhoun*, 49,943 (La. App. 2 Cir. 7/29/15), 174 So.3d 168, 172-73 (finding that former La. C.C.P. art. 966F(2) did not require a separate opposition pleading when the parties filed cross motions for summary judgment on the same issue). However, under current La. C.C.P. art. 966D(2), in reviewing the grant of summary judgment to the Hugginses, we may consider only those documents specifically filed in support of or in opposition to the Hugginses' motion for summary judgment.

Accordingly, we must reverse the November 13, 2019 judgment, insofar as it granted the Hugginses' motion for summary judgment. This decision renders USAA's second assignment of error moot.

Summary Judgment Denying USAA's Motion

We now address whether the trial court properly denied USAA's motion for summary judgment. As mentioned, an insurer seeking to avoid coverage through summary judgment bears the burden of proving some exclusion applies to preclude coverage. *Doerr,* 774 So.2d at 124; *Green v. Johnson,* 16-1525 (La. App. 1 Cir. 1/10/18), 241 So.3d 1188, 1191.

An insurance policy is a contract between the parties and is subject to the basic rules of contract interpretation found in the Louisiana Civil Code. *See* La. C.C. arts. 2045, *et seq.; Mayo v. State Farm Mut. Auto. Ins. Co.,* 03-1801 (La. 2/25/04), 869 So.2d 96, 99. Interpretation of a contract is the determination of the parties' common intent. La. C.C. art. 2045. The parties' intent, as reflected by the policy's wording, determines the extent of coverage. *Bosse*, 267 So.3d at 1146. In ascertaining the common intent, words and phrases in a policy must be given their generally prevailing meaning. *See* La. C.C. art. 2047. When the policy's wording is clear, no further interpretation may be made in search of the parties' intent, and the policy must be

enforced as written. *See* La. C.C. art. 2046; *Bosse*, 267 So.3d at 1146.

USAA argues the district court erred in finding the USAA policy provides coverage in this case. According to USAA, under its policy terms, coverage on the Toyota truck automatically terminated on June 15, 2017, when Mr. Smith procured the Technology policy providing similar insurance on the same truck and with the same bodily injury liability limits. In support of its motion for summary judgment, USAA filed: (1) the USAA policy attached to a USAA representative's affidavit; (2) the Technology policy attached to a Technology representative's affidavit; and (3) the Hugginses' petition for damages.

We turn to the USAA and Technology policy wording, which reflects the parties' intent and determines the extent of coverage. La. C.C. art. 2045; *Bosse,* 267 So.3d at 1146. The USAA policy, Part E – GENERAL PROVISIONS, pertinently provides:

> **TERMINATION**
> * * *
> C. Automatic Termination
> * * *
> 2. If **you** obtain other insurance on **your covered auto**, any similar insurance provided by this policy will terminate as to that auto on the effective date of the other insurance.

The USAA policy, LOUISIANA AUTO POLICY – DEFINITIONS section, defines "**you**" as "the 'named insured' shown on the Declarations and spouse if a resident of the same household." It further defines "**your covered auto**" as including "[a]ny vehicle shown on the Declarations." The USAA policy Declarations page lists Mr. Smith as the named insured and shows the Toyota truck in the description of covered vehicles. The Technology policy Declarations page lists Red Otter as the named insured and lists the Toyota truck in the policy's Schedule of Covered Autos.

As defined by the policies, it is clear that the "you" who obtained the USAA insurance, *i.e.,* Mr. Smith, is not the same "you" that obtained the Technology insurance, i.e., Red Otter. There are two kinds of persons: natural persons and juridical persons. A natural person is a human being, and a juridical person is an entity to which the law attributes personality, such as a corporation or a partnership. The personality of a juridical person is distinct from that of its members. La. C.C. art. 24. Mr. Smith, a

natural person, is a wholly separate person from Red Otter, a limited liability company, which is a juridical person. *See Danos Tree Service, LLC v. Proride Trailers, LLC,* 17-1546 (La. App. 1 Cir. 7/10/18), 255 So.3d 1078, 1084; *Wilson v. Two SD, LLC,* 15-0959 (La. App. 1 Cir. 12/23/15), 186 So.3d 103, 114. And, even though Red Otter necessarily must act through its member, Mr. Smith, Red Otter's personality remains distinct from Mr. Smith's personality. *See Kevin Associates, L.L.C. v. Crawford,* 03-0211 (La. 1/30/04), 865 So.2d 34, 41.

Thus, because the policy wording clearly shows that the person who obtained the USAA policy is not the same person that obtained the Technology policy, the USAA automatic termination clause was not triggered when Red Otter obtained coverage on the Toyota truck after Mr. Smith had previously insured it on his personal policy. Because the policy wording is clear, we make no further interpretation in search of the parties' intent and enforce the USAA policy as written. *See* La. C.C. art. 2046. The district court properly denied USAA's motion for summary judgment.

CONCLUSION

After a *de novo* review, we reverse the November 13, 2019 judgment, insofar as it granted Paige and William Huggins' motion for summary judgment and ordered that the USAA Casualty Insurance Company policy provides primary coverage for the September 26, 2017 accident and ranks first, ahead of the Technology Insurance Company policy. We affirm the November 13, 2019 judgment, insofar as it denied USAA Casualty Insurance Company's motion for summary judgment. We assess appeal cost one-half to Paige and William Huggins and one-half to USAA Casualty Insurance Company.

REVERSED IN PART; AFFIRMED IN PART.

PAIGE HUGGINS AND WILLIAM HUGGINS, INDVIDUALLY AND ON BEHALF OF THEIR MINOR CHILDREN, HAYES HUGGINS AND JOLIE HUGGINS

VERSUS

AMTRUST INSURANCE COMPANY OF KANSAS, INC., RED OTTER SERVICES, L.L.C., PAUL BARNES, STEPHEN SMITH, USAA CASUALTY INSURANCE COMPANY, GEICO CASUALTY INSURANCE COMPANY, KATHLEEN LANE, STATE FARM MUTUAL AUTOMOBILE INSURNACE COMPANY, JANICE GUITREAUX, AND GEICO CASUALTY COMPANY

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2020 CA 0516

HOLDRIDGE, J., concurs.

I respectfully concur with the report. When parties file cross motions for summary judgment, the parties are free to file a joint written stipulation in accordance with La. C.C.P. art. 966A(4), in which the parties would stipulate that any documents filed in connection with a motion for summary judgment or opposition in one case may be used in the cross motion without the necessity of the party re-filing the same documents. A joint written stipulation would avoid the expense of re-filing the same documents, as well as allowing this court, in its *de novo* review, to consider all documents filed in both cross motions for summary judgment.