NOT DESIGNATED FOR PUBLICATION

CAMMIE FOE	*	**NO. 2000-CA-0875**
VERSUS	*	**COURT OF APPEAL**
STATE FARM INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

APPEAL FROM
FIRST CITY COURT OF NEW ORLEANS
NO. 99-51454, SECTION "C"
Honorable Sonja M Spears, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Michael E. Kirby, and Judge David S. Gorbaty)

Salvador M. Brocato, III
Sean D. Alfortish
4240 Canal Street
2nd Floor
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLANT

Christopher W. Jennings
James P. Nader
LOBMAN, CARNAHAN, BATT, ANGELLE & NADER
The Texaco Center, Suite 2300
400 Poydras Street
New Orleans, LA 70130
COUNSEL FOR DEFENDANT/APPELLEE

AFFIRMED

This appeal arises from a judgment granting the defendant's request for summary judgment. The trial court concluded that no issues of material fact were presented in this case and that the defendant was entitled to a judgment as a matter of law. We agree.

FACTS

On June 10, 1998, plaintiff/appellant, Cammie Foe, was involved in a motor vehicle accident in New Orleans, Louisiana, in which she suffered personal injuries. Ms. Foe's brother, Winston Foe, was driving the automobile in which she was a guest passenger at the time of the accident. On the date of the accident, State Farm Mutual Automobile Insurance Company, the defendant/respondent, insured Winston Foe in this case.

Cammie Foe made a claim against State Farm under the liability portion of the State Farm policy in which she and her brother were the named drivers. In her claim, Ms. Foe stated that her brother was the sole cause of the accident. State Farm settled this claim for $9,500.00. After this

settlement had been reached under the liability portion of the policy, Ms. Foe brought a cause of action again alleging that Winston Foe was the sole cause of the accident and that she was entitled to an additional claim under the uninsured/underinsured motorist ("UM") provisions of the State Farm policy. It is from this suit that State Farm brought its claim for summary judgment to the trial court.

The trial court determined that State Farm was entitled to a judgment as a matter of law, and granted its request for summary judgment. It is from this decision that Ms. Foe appeals.

THE APPLICABLE LAW

The central issue in this case is whether, under Louisiana law, a motor vehicle can be both the insured vehicle as well as a uninsured/underinsured vehicle under the same automobile insurance policy.

There is no doubt that there is a strong public policy favoring UM coverage in this state. The Louisiana Supreme Court has held that the purpose of UM coverage is to protect those who are insured under an automobile insurance policy who become the innocent victims of an

uninsured driver's negligence. *See Jones v. Henry*, 543 So.2d 507 (La. 1989). The Supreme Court has also stated the general proposition that any person who enjoys the status of insured under a Louisiana automobile insurance policy which includes UM coverage also enjoys coverage protection simply by reason of having sustained injury by an uninsured or underinsured motorist. *See Taylor v. Roswell*, 736 So.2d 812, 817 (La. 1999).

The public policy encouraging UM protection is so strong in fact that UM coverage is provided for by statute. Louisiana Revised Statute § 22:1406(D)(1)(a) mandates UM coverage for the protection of persons insured under automobile liability policies in this state. This coverage, however, is not effective in all circumstances. The insurance policy itself may provide limitations on this coverage. In addition, the wording of the statute itself serves to limit UM coverage.

In *Breaux v. Government Employees Ins. Co.*, 369 So.2d 1335 (La. 1979), the Supreme Court concluded that LA-R.S. 22:1406 distinguishes between the "insured vehicle" and "uninsured/underinsured vehicle", and that the statute does not contemplate that a vehicle could be both at once. In *Breaux*, the parents of a deceased guest passenger who was killed in an accident caused

solely by the negligence of the host driver entered into a settlement with the insurance company under the liability portion of the driver's policy. When the plaintiffs attempted to make a UM claim against the insurance company on this same policy, the insurance company claimed that, under its policy, the insured vehicle was specifically excluded from coverage as an uninsured vehicle. Stating that the statute differentiates between the insured vehicle and uninsured/underinsured vehicle, the Supreme Court concluded in *Breaux* that the exclusion in the insurance policy was enforceable. Under these circumstances, the plaintiff was unable to make a liability claim and a UM claim under the same policy for injuries arising from the same accident where the insured driver was the sole cause of the accident.

In *Nall v. State Farm Mutual Ins. Co.*, 406 So.2d 216 (La. 1981), the Supreme Court again considered the issue of whether a liability claim and a UM claim arising out of the same accident could be made on the same insurance policy. In *Nall*, the plaintiff was attempting to recover under both the liability and UM portions of the insurance policy covering the automobile in which he was a passenger. The Supreme Court concluded that the State Farm has the right to exclude

guest passenger UM benefits from the policy coverage, solely providing UM coverage for other uninsured vehicles not owned by the policyholder. While reaffirming its decision in *Breaux*, the Supreme Court stated that a vehicle occupied by the plaintiff cannot at the same time be considered an insured vehicle for liability coverage purposes and an uninsured or underinsured vehicle for UM coverage purposes.

Following Louisiana Supreme Court precedent, this Court has interpreted the UM coverage statute as applying to two distinct automobiles. The statute as a whole contemplates two separate automobiles: the vehicle with respect to which the UM coverage is issued and the uninsured or underinsured vehicle. *See Johnson v. Davis*, 697 So.2d 311, 319 (La. App. 4 Cir. 1997). In *Johnson*, this Court concluded that "*Nall* is a clear indication that the admonition to construe the UM statute liberally in favor of coverage is not license to seize upon isolated phrases in the statute out of context, although some such phrases might literally, when read out of context, appear to require UM coverage". *See Johnson*, at 319. Even though the statute at issue requires UM coverage for the protection of persons insured under automobile insurance policies in this state, the statute *must be* read in its entirety to apply to two distinct automobiles.

This Court again addressed this issue in *Insurance Co. of N. Am. v. Patton*, 665 So.2d 1312. In *Patton*, this Court faced the issue of whether an injured guest passenger in an automobile involved in an accident may recover under his host driver's UM coverage where the host driver was the sole cause of the accident. This Court held that the uninsured motorist statute provides that a vehicle that is insured under an automobile insurance policy in Louisiana cannot at the same time be considered to be an uninsured or underinsured vehicle under the same policy. *See Patton*, at 1314.

Additionally, in *Cannon v. Allstate Ins. Co.*, 595 So.2d 745 (La. App. 4 Cir. 1992), this Court concluded, consistent with Supreme Court precedent, that a plaintiff has no UM claim when a vehicle involved in an accident was not uninsured under the defendant's policy. The plaintiff cannot recover under the liability and UM benefits in the same policy where the host driver's negligence was the sole cause of the accident. This Court came to this conclusion even though the plaintiff in this case was attempting to claim UM benefits on a second vehicle included on the policy but not involved in the accident. The defendant insurance company was granted summary judgment on the basis that its policy did not allow recovery under the liability and

UM provisions when a single car accident was caused by the policyholder. An insurance company is entitled to limit its UM coverage notwithstanding the strong public policy in Louisiana favoring UM coverage.

ANALYSIS

In the instant case, plaintiff/appellant, Cammie Foe, argues that the trial court's granting of summary judgment is contrary to Louisiana law, and that the case law established by the Louisiana Supreme Court is distinguishable from the instant case. We disagree with this assessment.

In her brief, Ms. Foe avers that LA-R.S. 22:1406(D)(2)(b) provides that "for the purposes of [UM] coverage the term uninsured motor vehicle shall . . . also be deemed to include an insured motor vehicle when the liability insurance on such vehicle is less than the amount of damages suffered by an insured". Ms. Foe has, in a manner beneficial to her case, left out an important phrase from the statute that she cites. In reality, LA-R.S. 22:1406(D)(2)(b) provides that "for the purposes of [UM] coverage the term uninsured motor vehicle shall,

subject to the terms and conditions of such coverage, also be deemed to include an insured motor vehicle when the liability insurance on such vehicle is less than the amount of damages suffered by an insured". (Emphasis added). By citing the statute in the manner in which she did, Ms. Foe has omitted a crucial element of the statute. The statute, as well as the precedent provided for in the decisions of the Louisiana Supreme Court, provides that an insurance company may restrict UM coverage through its policy provisions. Therefore, notwithstanding the portion of the statute that Ms. Foe cited in her brief, the full wording of the statute indicates that State Farm is well within its rights to restrict its UM coverage through its policy provisions.

While there is a strong public policy favoring the protection of automobile insurance policy holders who become the innocent victims of uninsured or underinsured drivers, there are certain limits to this protection. These limits come in the form of the wording of the statute itself as well as the specific provisions included in individual insurance policies. While these limitations may serve to lessen the coverage provided in insurance policies, they are not against public policy.

Ms. Foe is correct in her assertion that the Supreme Court in

Breaux and *Nell* did not consider the plaintiff as also being an insured driver in the policy under which the plaintiff was claiming UM benefits. In the instant case, Ms. Foe is making a claim for UM benefits as an insured driver under her own insurance policy. This, however, does not mean that the instant case is distinguishable from the Supreme Court cases. These cases stand for the proposition that LA-R.S. 22:1406 makes an implicit distinction between the "insured vehicle" and the "uninsured or underinsured vehicle", meaning that an automobile may not at the same time be both the insured and the uninsured vehicle for the purposes of liability and UM coverage. Whether or not Ms. Foe is a named insured under the policy is irrelevant to this issue.

While it may seem unjust that a named insured would be precluded from claiming UM coverage under her own liability policy, the statute does not protect against this situation. Though Ms. Foe has found it convenient to omit this particular section in her brief to this Court, the statute, as promulgated by the Louisiana legislature, provides that an insurance company may limit UM coverage in its own policy. The record shows that the State Farm policy in question specifically states "an uninsured motor vehicle under coverage U does not include a land motor vehicle insured under the liability coverage of

this policy". State Farm was well within its rights, and in perfect line with the decisions of the highest court in this state, to limit its UM coverage in this manner. Even if Ms. Foe was an insured driver under this policy, the terms of the policy, as well as the case law of this state, provide that she will not be able to claim UM benefits in this case. She cannot recover claims under both the liability and UM portions of the policy for injuries resulting from the same accident when the insured party was the sole cause of the accident.

CONCLUSION

After a careful review of the record, this Court finds that summary judgment was properly granted in this case. The UM coverage statute (LA-R.S. 22:1406) as well as the established case law on this issue mandate the conclusion that State Farm was well within its rights to limit UM coverage under its policy. By excluding the insured vehicle from the definition of an uninsured vehicle within the policy, State Farm has legally prevented Ms. Foe from claiming UM benefits in this case. For the reasons stated above, the decision of the trial court is affirmed.

AFFIRMED