NOT DESIGNATED FOR PUBLICATION

ODESSIA WILLIAMS	*	**NO. 2006-CA-0764**
VERSUS	*	**COURT OF APPEAL**
VERNES KEELER, JR., V. KEELER & COMPANY, INC., AND PROGRESSIVE CASUALTY INSURANCE COMPANY	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	* * * * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2004-16923, DIVISION "J-13"
Honorable Nadine M. Ramsey, Judge
* * * * * *
Judge David S. Gorbaty
* * * * * *

(Court composed of Judge Terri F. Love, Judge David S. Gorbaty, Judge Edwin A. Lombard)

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AFFIRMED

In this appeal, plaintiff contends that the trial court erred in granting Progressive Casualty Insurance Company's ("Progressive") Motion for Summary Judgment. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

On October 23, 2004, an automobile accident occurred involving Vernes Keeler, Jr. and a seven-year-old child, Laterra Williams, which resulted in the child's death. On November 30, 2004, the mother of Laterra Williams filed a wrongful death and survival action against Vernes Keeler, Jr.; his alleged employer, V. Keeler & Company, Inc.; and Progressive as the alleged liability insurer of defendants and the vehicle involved in the

accident. Progressive filed a Motion for Summary Judgment, in which it contended that on January 2, 2004, it mailed a proper cancellation notice to the insured concerning the subject vehicle prior to the accident date. The trial court found that the policy had been properly canceled and granted Progressive Motion for Summary Judgment without giving written reasons. Plaintiff subsequently filed this appeal.

DISCUSSION

Plaintiff avers that the trial court erred in ruling that the January 2, 2004 notice was a legally effective "cancellation notice" and not just a notice of "intent to cancel," which did not cancel the policy in question.

Summary judgments are reviewed *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate: whether there is a genuine issue of material fact, and whether the mover is entitled to judgment as a matter of law. *Champagne v. Ward*, 2003-3211, p.4 (La. 1/19/05), 893 So.2d 773, 776; *Ocean Energy, Inc. v Plaquemines Parish Gov't*, 2004-0066, p.4 (La. 7/6/04), 880 So.2d 1,4.

In the case at bar, on January 2, 2004, Progressive mailed a "Cancel Notice" to V. Keeler & Associates, Inc. at 3701 Desire Parkway, New

Orleans, Louisiana, 70126, which referred to policy number 04158956-3 and stated:

> If we don't receive your payment, your policy will be canceled at 12:01 a.m. on January 13, 2004 because you did not pay the required premium. To maintain continuous coverage, your payment must be received or postmarked by 12:01 a.m. on January 13, 2004. If you have already sent your payment- thank you.

The "Cancel Notice" also indicated that $14,469.75 was the minimum amount due. The "Payment Coupon" attached to the "Cancel Notice" again indicated that the minimum amount due was $14, 469.75 with a due date of January 13, 2004. Below the due date was the language: "To maintain coverage, your payment must be received or postmarked by 12:01 a.m. on January 13, 2004. The "Record of Mailing" confirms that the "Cancel Notice" was mailed to V. Keeler & Associates, Inc. at the address on the policy/ declaration sheet on January 2, 2004 in reference to policy number 04158956-3. On January 22, 2004, a notice stating, "Your policy was canceled" on 1/13/04 was mailed to V. Keeler & Associates, Inc. at the same address. There is no proof of mailing for this document.

La. R.S. 22:636.1 sets forth the requirements for an insurance company to effect a proper cancellation of a policy for non-payment of a premium:

> B. (1) A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:
>
> (a) Nonpayment of premium.
>
> * * *
>
> D. (1) No notice of cancellation of a policy to which Subsection B or C of this Section applies shall be effective unless mailed by certified mail or delivered to the insurer by the named insured at least thirty days prior to the effective date of cancellation; however, when cancellation is for nonpayment of premium, at least ten days notice of cancellation, accompanied by the reason therefore shall be given. In the event of nonpayment of premiums for a binder, a ten day notice of cancellation shall be required before the cancellation shall be effective. Notice of cancellation for nonpayment of premiums shall not be required to be sent by certified mail. Unless the reason accompanies the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer within six months after the effective date of cancellation, the insurer will specify the reason for such cancellation. This Subsection shall not apply to non-renewal.

Further, proof of mailing of notice of cancellation, or of intention not to renew or of the reasons for cancellation, to the named insured at the address on the policy, shall be sufficient proof of notice. La. R.S. 22:636.1 (F). Proof of receipt of that notice is not required. *Dufrene v. Dixie Auto Ins. Co.*, 376 So.2d 507, 509 (La. App. 4 Cir. 1979).

This court addressed the issue of sufficient cancellation language in *Narcisse v. Evans*, 2001-1092 (La. App. 4 Cir. 1/16/02), 807 So.2d 339. On July 10, 1995, Clarendon National Insurance Company ("Clarendon") mailed Evans, the insured, a "Premium Due Notice" which stated that if he did not pay by July 30, 1995 at 12:01 a.m., his policy would be cancelled for

nonpayment of premium. The notice provided that payment postmarked on or after the Cancellation Date of July 30, 1995 would not be accepted. The bottom of the notice contained the following language:

NOTICE OF INTENT TO CANCEL FOR
NON-PAYMENT OF PREMIUM

THIS IS THE ONLY NOTICE YOU WILL RECEIVE

You are hereby notified in accordance with the terms and conditions of the above-mentioned policy that your insurance will be cancelled at 12:01 a.m. Standard Time on 7/30/05 if premium due is not postmarked prior to the cancellation date.

This court in *Narcisse* held that the above notice of cancellation sent by Clarendon was an unambiguous and unequivocal notice of cancellation. The insured was "clearly put on notice that his coverage would terminate at 12:01 a.m. on July 30, 1995 if his payment was not received or postmarked prior to that date. The notice was sent in compliance with La. R.S. 22:636.1 (D)." 807 So.2d at 344.

In its reasoning, the *Narcisse* court relied upon *Rachuba v. Hickerson*, 503 So.2d 570 (La. App. 4 Cir. 1987), and *Gooden v. McMorris*, 588 So.2d 783 (La. App. 4 Cir. 1991), which held that a notice's language authorizing the insured to save the policy by paying the balance due on the account did not contradict or confuse the fact that the notice clearly stated that it was a notice of cancellation for nonpayment, effective on a specific date. The

Narcisse court also noted that the purpose of a notice of cancellation is to make the insured aware that his policy is being terminated and to afford him time to obtain other insurance protection. 807 So.2d at 343.

Plaintiff argues that *Narcisse* is distinguishable from the instant case, because the *Narcisse* "Premium Due Notice" provided that a payment postmarked on or after the cancellation date would not be accepted. Plaintiff points out that the Progressive "Cancel Notice" merely provides that the payment "must be received or postmarked" by a specific date. We do not find this distinction to be meaningful. The Progressive "Cancel Notice" clearly states that the amount must be received by a specific date or the policy will be canceled. This argument has no merit.

Plaintiff also cites a number of First Circuit Cases, including *State Farm Mutual Insurance Co. v. Villneuve,* 98-2421 (La. App. 1 Cir. 12/28/99), 747 So.2d 777, and *Travelers Ins. Co. v. Jenkins*, 285 So.2d 839 (La. App. 1 Cir. 1973), to support the argument that the "Cancel Notice" language is insufficient. However, the First Circuit cases cited are not binding authority in the Fourth Circuit. As such, we decline to follow them, and instead adhere to the precepts set forth in our prior decisions such as *Narcisse, Rachuba,* and *Gooden, supra.*

Finally, plaintiff avers that the Progressive "Cancel Notice" is

insufficient because the official "Record of Mailing" references it as an "intent to cancel." The "Record of Mailing" is an internal document maintained by Progressive to prove that it mailed to the named insured the "Cancel Notice" ten days prior to the effective date of cancellation. It was not sent to the insured. The document entitled "Cancel Notice" was sent to V. Keller at the address listed on the declaration sheet. Thus, there could be no confusion on the part of the named insured over the "Record of Mailing," as he only received the document entitled "Cancel Notice." How the document is described in Progressive's internal system is of no importance. We do not find this argument to be persuasive. We conclude that there are no genuine issues of material fact, and deem that the Motion for Summary Judgment was properly granted.

CONCLUSION

Accordingly, for the foregoing reasons, we affirm the judgment of the trial court.

AFFIRMED