

**NOT DESIGNATED FOR PUBLICATION**

<b>GILBERT R. CHARLES</b>	<b>*</b>	<b>NO. 2009-CA-0399</b>
<b>VERSUS</b>	<b>*</b>	<b>COURT OF APPEAL</b>
<b>U S AGENCIES CASUALTY</b>	<b>*</b>	<b>FOURTH CIRCUIT</b>
<b>INSURANCE COMPANY,</b>	<b>*</b>	<b>STATE OF LOUISIANA</b>
<b>WANDA VAUGHN AND AUTO</b>	<b>*</b>	
<b>CLUB FAMILY INSURANCE</b>		
<b>COMPANY</b>	<b>*****</b>	

**APPEAL FROM**  
**FIRST CITY COURT OF NEW ORLEANS**  
**NO. 2008-50696, SECTION "A"**  
**Honorable Charles A. Imbornone, Judge**

**\*\*\*\*\***

**Judge Dennis R. Bagneris, Sr.**

**\*\*\*\*\***

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

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INSURANCE COMPANY**

**AFFIRMED**

**SEPTEMBER 9, 2009**

Charles R. Gilbert, plaintiff/appellant, appeals the judgment of the district court granting defendants'/ appellees', US Agencies Casualty Insurance Company's, et al, Motion for Summary Judgment and dismissing all claims against the appellees. For the reasons that follow, we affirm.

Mr. Gilbert was involved in an automobile accident with Wanda Vaughn on April 9, 2007. Mr. Gilbert filed a Petition for Damages in First City court for the Parish of Orleans against Auto Club Family Insurance Company (hereinafter ACFIC) as his UM carrier since Ms. Vaughn was underinsured. On December 1, 2008, the First City Court of New Orleans dismissed the matter. On January 13, 2009 the First City Court denied Mr. Gilbert's Motion for New Trial. It is from this judgment that Mr. Gilbert takes the instant appeal.

Now, before this Court, Mr. Gilbert argues that the district court erred in entering summary judgment in favor of ACFIC because Mr. Gilbert never received a notice from ACFIC cancelling his insurance policy for nonpayment. Mr. Gilbert argues that there remains a genuine issue of material fact as to whether the

payment notice that ACFIC sent to Mr. Gilbert was ever received by him and whether ACFIC owed Mr. Gilbert for overcharging him on another automobile policy.

Mr. Gilbert maintained automobile insurance on two vehicles, a 1997 BMW and a 1998 Dodge. Mr. Gilbert's 1998 Dodge was a total loss in September 2006 as a result of a separate accident. The car involved in the accident at issue was Mr. Gilbert's 1997 BMW to which ACFIC administered policy number N-64647832-1 to be effective December 5, 2006 through June 5, 2007. ACFIC sent Mr. Gilbert monthly bills and he made the monthly premium payments accordingly. Mr. Gilbert paid his premium for the months of December, January, February and March. On March 14, 2007, ACFIC mailed Mr. Gilbert a "Payment Notice" which indicated that failure to pay would cause his policy to cancel on April 5, 2007 at 12:01 a.m.. Mr. Gilbert did not submit a payment and ACFIC issued a cancellation notice on April 6, 2007 via U.S. mail. Mr. Gilbert's accident with Ms. Vaughn was on April 9, 2007; a couple of days after his insurance was cancelled. Prior to the cancellation letter being sent, ACFIC erroneously sent a letter to Mr. Gilbert stating that his policy *was* effective at the time of the accident. Mr. Gilbert, although late, continued to make payments to ACFIC and his policy was reinstated retroactively to April 20, 2007.

In determining whether summary judgment is appropriate, appellate courts review the evidence *de novo*. *Reynolds v. Select Properties, Ltd.*, 93-1480 (La.4/11/94), 634 So.2d 1180. Appellate courts review summary judgments *de novo*, using the same criteria applied by trial courts to determine whether summary judgment is appropriate. *Id.* at 1182. The summary judgment procedure is designed

to secure the just, speedy and inexpensive determination of actions. *Two Feathers Enterprises v. First National Bank*, 98-0465 (La.App.4.Cir.10/14/98), 720 So.2d 398, 400. This procedure is now favored and shall be construed to accomplish these ends. La. C.C.P. art. 966(A)(2). This standard of review requires the appellate court to look to the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to show that there is no genuine issue as to a material fact, and that the mover is entitled to a judgment as a matter of law. La. C.C.P. art. 966(B). To affirm summary judgment, we must find reasonable minds would inevitably conclude that the mover is entitled to judgment as a matter of the applicable law on the facts before the court. *Monts v. Board of Supervisors of the Louisiana State University*, 2001-1497, (La.App. 4 Cir. 2/27/02), 812 So.2d 787; *Washington v. State, Dept. of Transp. & Development*, 95-14 (La.App. 3 Cir. 7/5/95), 663 So.2d 47; *Canal 66 Partnership v. Reynoir* 2002-0355 (La.App. 4 Cir. 1/15/03) 838 So.2d 52.

The instant case is not a complex case. What is required of this Court is a review of the record to ensure that there was no error in the district court's finding that no genuine issues of material fact remain.

The record reveals that Mr. Gilbert was in an automobile accident with Ms. Vaughn on April 9, 2007, while driving his 1997 BMW. On March 14, 2007, Mr. Gilbert was sent, via U.S. mail, a notice from ACFIC that his monthly premium was due on the policy assigned to the 1997 BMW or cancellation of the policy would ensue. The policy was cancelled at 12:01 as indicated by ACFIC's mailing because Mr. Gilbert failed to pay the amount owed. Mr. Gilbert's affidavit is not enough proof to conclude that he did not receive notice of the policy cancellation.

ACFIC was not required to notify Mr. Gilbert via certified mail as he argues.

La.R.S. 22:636 *Automobile, property, casualty, and liability insurance policies; cancellations* reads in pertinent part:

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 by the insurer to 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 therefor 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 nonrenewal. **(emphasis added)**

Further, Mr. Gilbert had made his monthly payments prior to April demonstrating that he was familiar with the payment process and was aware of the monthly due date. We are of the opinion that the misrepresentation of an ACFIC adjuster mistakenly informing Mr. Gilbert that he was insured at the time of the accident was just bad business and confusing for the customer. We are *not* of the opinion however that the erroneous statement made by the adjuster over the

telephone, and later in writing, caused Mr. Gilbert's policy to become effective. Further, Mr. Gilbert's contention that ACFIC continued to take payments on a policy that insured two cars (one of which he no longer had) and that ACFIC should have considered the overage and applied the funds to the insurance to the 1997 BMW is far-reaching. Mr. Gilbert should have taken the initiative to maintain his policy for his own benefit. He had an obligation to cancel insurance on a car that was no longer being used. It was irresponsible to assume that ACFIC was tweaking his policy and his payments in a way that is most beneficial to him without his review. The mere fact that Mr. Gilbert made monthly premium payments shows his implied acceptance of the terms of the policy and the coverage. As to Mr. Gilbert's contention that he turned in his license plate to the Department of Motor Vehicles after the accident but continued to pay toward his policy, that this is a non-issue because the record indicates that Mr. Gilbert was reimbursed for the overage by ACFIC.

ACFIC provided the district court with a proof of mailing certificate although Mr. Gilbert submitted an affidavit attesting that he did not receive the cancellation notice sent by ACFIC. ACFIC submitted an affidavit from the adjuster admitting that the information provided to Mr. Gilbert over the telephone was erroneous and was simply based on his personal knowledge of the policy. The evidence presented by Mr. Gilbert fails to rebut the showing of supportive evidence by ACFIC in order for there to remain a genuine issue of material fact. Mr. Gilbert was not insured by ACFIC at the time of the accident, therefore there was no error in the district court's ruling.

**Decree**

For the reasons stated above, we affirm the ruling of the district court.

**AFFIRMED**