CARLA M. SHORTY	*	**NO. 2017-CA-0342**
VERSUS	*	
		COURT OF APPEAL
LARRY N. BURAS, DELTA ICE, AIR & HEAT, INC., STATE FARM MUTUAL INSURANCE COMPANY AND PROGRESSIVE CASUALTY INSURANCE COMPANY	*	**FOURTH CIRCUIT**
		STATE OF LOUISIANA
	* * * * * * *	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2015-12339, DIVISION "G-11"
HONORABLE ROBIN M. GIARRUSSO, JUDGE
* * * * * *

JAMES F. MCKAY III
CHIEF JUDGE
* * * * * *

(Court composed of Chief Judge James F. McKay III, Judge Edwin A. Lombard, Judge Joy Cossich Lobrano)

LOBRANO, J., CONCURS IN THE RESULT

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AFFIRMED

OCTOBER 18, 2017

On January 14, 2015, Carla M. Shorty was driving a vehicle in the far right lane of U.S. Highway 90 B East and headed toward the Slidell on-ramp when her vehicle was struck from behind by a 2013 Nissan Altima driven by Geralyn Moore after Ms. Moore's vehicle was rear-ended by a 2007 Chevrolet 6000 driven by Larry N. Buras. The New Orleans Police Department arrived on the scene following the accident and determined that Mr. Buras was at fault in causing the accident and issued him a citation for following too closely. At the time of the accident, Mr. Buras was driving a vehicle owned by his employer, Delta Ice, Air & Heat, Inc.

On December 30, 2015, Ms. Shorty filed a petition for damages and personal injuries, naming Larry N. Buras, Delta Ice, Air & Heat, Inc., State Farm Fire Mutual Automobile Insurance Company (as the insurer of Delta's vehicle), and Progressive Casualty Insurance Company (Ms. Shorty's uninsured/underinsured provider). Ms. Shorty later amended her lawsuit to seek recovery from State Farm as the insurer of Mr. Buras's personal vehicle, a 1998 Ford Crown Victoria. At

some point, State Farm paid Ms. Shorty the limit of the policy ($100,000.00) which insured the Delta vehicle.

On October 24, 2016, State Farm filed a motion for summary judgment, alleging that the policy it issued to Mr. Buras for his personal vehicle precluded coverage for the accident at issue. Ms. Shorty filed an opposition to State Farm's motion for summary judgment on November 17, 2016. The trial court granted State Farm's motion for summary judgment on December 27, 2016. It is from this judgment that Ms. Shorty now appeals.

On appeal, the only issue before this Court is whether the trial court properly granted State Farm's motion for summary judgment. Whether an insurance policy, as a matter of law, provides or precludes coverage is a dispute that can properly be resolved within the framework of a motion for summary judgment. Moyles v. Cruz, 96-0307, 96-0308 (La.App. 4 Cir. 10/16/96), 682 So.2d 326.

"The summary judgment procedure is designed to secure the just speedy, and inexpensive determination of every action, except those disallowed by Article 969." La. C.C.P. art. 966(A)(2). "The procedure is favored and shall be construed to accomplish those ends." Id. A judgment for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits . . . show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law." La. C.C.P. art. 966(B)(2).

"The burden of proof remains with the movant." La. C.C.P. art. 966(C)(2). However, "if the movant will not bear the burden of proof at trial," the movant need not "negate all essential elements of the adverse party's claim . . . but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim." Id. "Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact." Id.

Appellate courts review the grant of a motion for summary judgment *de novo*. Hebert v. St. Paul Fire & Marine Ins. Cos., 99-0333, p. 3 (La.App. 4 Cir. 2/23/00), 757 So.2d 814, 815. "Appellate courts use the 'same criteria that govern the trial court's consideration of whether summary judgment is appropriate, i.e., whether there is a genuine issue of material fact and whether the mover is entitled to judgment as a matter of law.'" Weintraub v. State Farm Fire & Cas. Co., 08-0351, p. 2 (La.App. 4 Cir. 10/29/08), 996 So.2d 1195, 1196-97, *quoting* Supreme Servs. and Specialty Co. , Inc. v. Sonny Greer, Inc., 06-1827, p. 4 (La. 5/22/07), 958 So.2d 634, 638.

In the instant case, on page six (6) of the State Farm policy issued to Mr. Buras, regarding coverage, the policy, in pertinent part, states:

> 2. the first person shown as a named insured on the Declaration Page … for the maintenance or use of a car that is owned by, or furnished by an employer to, a person who resides primarily in your household, but only if, such car is neither owned by, nor furnished by an employer to, the first person shown as a named insured on the Declarations Page…

In the instant case, Mr. Buras was (as he often did) driving a truck owned by his employer. Mr. Buras was also first person shown on the declarations page on the policy at issue in this case. As such, based on the clear language of the policy, there is no coverage for the accident in this case.[1] Accordingly, there are no genuine issues of material fact and State Farm is entitled to judgment as a matter of law that the policy issued to Mr. Buras does not provide coverage in this case.

For the above and foregoing reasons, we affirm the summary judgment granted by the court below.

AFFIRMED

[1] This finding is also in line with other jurisprudence on this issue. *See* Gibbens v. Whiteside, 2005-1525 (La.App. 1 Cir. 5/6/05), 915 So.2d 866.