

**ZACHARY ADDISON AND
ANDREE ADDISON**

*

NO. 2017-CA-0378

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VERSUS

COURT OF APPEAL

*

AFFIRMATIVE INSURANCE

FOURTH CIRCUIT

COMPANY, LIBERTY

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MUTUAL INSURANCE

STATE OF LOUISIANA

COMPANY AND PHARA

* * * * *

MARTIN

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2014-04168, DIVISION "L-6"
Honorable Kern A. Reese, Judge

* * * * *

Judge Roland L. Belsome

* * * * *

(Court composed of Judge Roland L. Belsome, Judge Joy Cossich Lobrano, Judge
Marion F. Edwards, Pro Tempore)

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AFFIRMED

NOVEMBER 15, 2017

The appellants, Zachary and Andree Addison (the Addisons), appeal the trial court's granting of summary judgment in favor of LM General Insurance Company.

On May 11, 2013, Zachary Addison's automobile was rear-ended by Phara Martin. Thereafter, the Addisons filed suit against Ms. Martin, Affirmative Insurance Company, Martin's liability insurer, and Liberty Mutual¹, which they allege provided uninsured/underinsured motorist (UM) coverage to them.²

LM General filed a motion for summary judgment seeking the dismissal of the Addisons' claims for UM bodily injury (UMBI) coverage. The motion for summary judgment was based on Mr. Addison electronically selecting economic-only UMBI coverage. The trial court granted the motion for summary judgment and limited LM General's coverage to economic-only UMBI. This appeal followed.

¹ Although LM General Insurance is the proper party name, the petition names Liberty Mutual Insurance.

² Mr. Addison alleges injuries from the accident, while Mrs. Addison asserts a loss of consortium claim.

It is well settled that motions for summary judgment are reviewed *de novo* on appeal.³ La. C.C.P. art. 966 provides that “a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.”⁴

Facts

Mr. Addison obtained insurance from LM General by receiving a quote via telephone. He was then given the option to complete his transaction by executing emailed documents that could be returned by mail, fax, or electronically. He chose to complete and submit the documents electronically. The electronic documents had selections of coverage pre-made based on the quote he received. The pre-selected information could not be changed and Mr. Addison did not inquire about changing the selections any time prior to executing and returning the documents. There is no dispute that the documents were electronically signed by Mr. Addison. Additionally, Mr. Addison was sent a copy of the policy prior to its effective date.

On appeal, the Addisons raise numerous assignments of error that all pertain to the validity of the UM rejection form that was e-signed by Mr. Addison and provided for economic-only UMBI coverage.

Generally, UMBI coverage is required by Louisiana law to be in the same amount as the policy limits of bodily injury liability coverage.⁵ However, the law allows a named insured to select lower limits for UMBI coverage, reject UMBI

³ *Maradiaga v. Doe*, 15-0450, p. 4 (La.App. 4 Cir. 11/25/15), 179 So.3d 954, 957, writ denied, 2015-2361 (La. 2/26/16), 187 So.3d 470 (citing *Quantum Resources Mgmt., L.L.C. v. Pirate Lake Oil Corp.*, 12-1472, p. 5 (La.3/19/13), 112 So.3d 209, 214; *Garrison v. Old Man River Esplanade*, 13-0869, p. 3 (La.App. 4 Cir. 12/18/13), 133 So.3d 699, 701; La.Code Civ. Proc. art. 966).

⁴ La. C.C.P. art. 966 (A)(3).

⁵ See La.R.S. 22:1295(l)(a)(i).

coverage completely, or select economic-only UMBI coverage on a form prescribed by the Commissioner of Insurance.⁶ In *Duncan v. U.S.A.A. Ins. Co.*, the Louisiana Supreme Court set forth six requirements for a valid UM form.⁷ Those requirements are: 1) initialing the selection or rejection of coverage chosen; 2) if limits lower than the policy limits are chosen (available in options 2 and 4), then filling in the amount of coverage selected for each person and each accident; 3) printing the name of the named insured or legal representative; 4) signing the name of the named insured or legal representative; 5) filling in the policy number; and 6) filling in the date.⁸

Although, the Addison's assert that the UM rejection form that Mr. Addison e-signed was deficient in meeting the *Duncan* criteria, we disagree. The Addison's assert that the UM form rejection form should fail because the coverage was pre-selected and could not be changed and his name and date do not appear in the designated area on the form. In addition to raising an issue about the proximity of the insured's name and date on the form, the Addison's also argue that an electronic signature cannot stand for both the printed and signed name.

This Court recently addressed the validity of an electronically signed UM form in *Maradiaga v. Doe*. In *Maradiaga*, the insured challenged the e-signed UM rejection form on three grounds: 1) the agent signed and initialed it, 2) the insured did not have the option to make changes to the form, and 3) the insured did not unmistakably and unambiguously reject UM coverage. Like in this case, the

⁶ *Id.*

⁷ 06-0363 (La. 11/29/06), 950 So.2d 544.

⁸ *Id.*

insurer filed a motion for summary judgment based on the electronically signed UM form. The motion was granted by the trial court and the insured appealed. This Court found that just Mr. Maradiaga's testimony that he did not know what he was signing was not enough to overcome the presumption that he knowingly rejected UM coverage.

“A properly completed and signed form creates a rebuttable presumption that the insured knowingly rejected coverage, selected a lower limit, or selected economic-only coverage.”⁹ In this case, the form meets the criteria of *Duncan*. Mr. Addison electronically initialed his selection of economic-only UMBI coverage, his name is printed on the form that was electronically signed by him and it contains the date and policy number. Mr. Addison does not dispute that he e-signed the document, so his claim that his name needs to appear twice on the document to be valid lacks merit. As this Court acknowledged in *Maradiaga*, “the Uniform Electronic Signature Law, La. R.S. 9:2602, *et seq*, applies to automobile insurance policies and required UM forms.”¹⁰ The only evidence presented to rebut Mr. Addison's selection of economic-only coverage is his testimony that he desired and intended on purchasing full coverage UM.

We find that this Court's opinion in *Maradiaga* is controlling. Accordingly, because the Addisons failed to sufficiently rebut the presumption that the LM General UM form is valid, the trial court's granting of summary judgment is affirmed.

AFFIRMED

⁹ La. R.S. 22:1295(1)(a)(ii).

¹⁰ *Maradiaga*, 15-0450 at p. 7, 179 So.3d at 959.