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NO. COA09-1681

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

NATIONWIDE MUTUAL INSURANCE COMPANY,
Plaintiff-Appellee

v.

Wilkes County
No. 08 CVS 2282

DENNIS WILLIAM CAUDILL,
Defendant-Appellant

Appeal by Defendant from judgment entered 19 June 2009 by Judge John O. Craig, III, in Wilkes County Superior Court. Heard in the Court of Appeals 18 August 2010.

Robinson Elliott & Smith, by Katherine A. Tenfelde and William C. Robinson, for Plaintiff-Appellee.

Pope McMillan Kutteh Privette Edwards & Schieck, PA, by Martha N. Peed and William H. McMillan, for Defendant-Appellant.

ERVIN, Judge.

Defendant Dennis William Caudill appeals from a trial court order granting summary judgment in favor of Plaintiff Nationwide Mutual Insurance Company. After careful consideration of Defendant's challenges to the trial court's order in light of the record and the applicable law, we conclude that the trial court's order should be affirmed.

I. Factual Background

A. Substantive Facts

On 14 August 1992, Defendant purchased an automobile liability insurance policy that provided the minimum legally-mandated coverage from Plaintiff. At that time, N.C. Gen. Stat. § 20-279.21 required that all automobile insurance policies provide bodily injury coverage in the amount of at least \$25,000 per person and \$50,000 per incident and property damage coverage in the amount of at least \$15,000. When he obtained the policy in question, Defendant signed a selection/rejection form that had been issued by the North Carolina Rate Bureau with the approval of the North Carolina Department of Insurance in which he rejected combined uninsured/underinsured (UM/UIM) motorists coverage and selected uninsured motorists (UM) coverage of \$25,000 per person, \$50,000 per incident, and \$15,000 in property damage. The amount of UM coverage that Defendant purchased was the minimum required by law at that time. After purchasing this policy, Defendant renewed his automobile liability coverage at the minimum statutorily permissible coverage levels throughout the succeeding years.¹

¹ In 1999, the Legislature amended the Motor Vehicle Safety and Financial Responsibility Act, which is codified at N.C. Gen. Stat. §§ 20-232 through 20-279, effective 1 July 2000. The 1999 amendment, which applied to new or renewal policies on or after that date, raised the minimum required limits for bodily injury coverage from \$25,000 per person and \$50,000 per incident to \$30,000 per person and \$60,000 per incident for all North Carolina insureds. The change in required liability coverage worked by the 1999 amendment resulted in a compulsory increase in the amount of UM coverage provided under Defendant's automobile liability insurance policy to \$30,000 per person and \$60,000 per incident. Defendant, however, continued to renew his automobile insurance policy at the lowest legally permissible level following the effective date of the 1999 amendment.

On 15 February 2006, a new policy period for Defendant's automobile liability insurance policy was scheduled to commence. Prior to renewing his policy, Defendant signed a selection/rejection form on 23 January 2006 in which he elected to add combined UM/UIM coverage in the amount of \$100,000 per person and \$300,000 per incident to his automobile liability insurance coverage. However, after receiving the bill for this increased amount of coverage, Defendant changed his mind and decided to renew his insurance policy at the minimum required levels consistent with his long-established practice.

On 24 February 2006, Defendant went to Plaintiff's office and asked an agent employed by Plaintiff to "make sure his limits remained the same as the minimum limits he was carrying on the Policy." At Defendant's request, the agent issued Defendant a Declaration Page resulting in the provision of bodily injury and property damage coverage at the minimum level allowed by law, the minimum required UM coverage, and no combined UM/UIM coverage. Defendant paid the premium necessary to secure this level of coverage so as to renew his automobile liability insurance coverage at the statutorily-required minimum level.

B. Procedural History

On 5 December 2007, Defendant filed a complaint against David Lee Wyatt, Jr., seeking to recover damages for personal injury arising from an automobile accident that occurred on 10 July 2006. On 13 October 2008, Plaintiff filed a declaratory judgment complaint against Defendant in which it asserted that, in his

litigation with Mr. Wyatt, Defendant had, "upon information and belief, received payment that exhausts all of [Mr. Wyatt's] liability coverage" and "desir[ed] to pursue an underinsured motorist claim." As a result, Plaintiff sought a declaration that Defendant had no underinsured motorist coverage since his automobile liability insurance policy did "not provide any insurance benefits for the automobile accident referenced in [Defendant's] complaint." In his answer to Plaintiff's complaint, Defendant asserted that he was "entitled to underinsured motorist coverage pursuant to [N.C. Gen. Stat. §] 20-279.21."

On 7 May 2009, Plaintiff filed a motion seeking the entry of summary judgment in its favor. After providing both parties with an opportunity to be heard, the trial court granted summary judgment in favor of Plaintiff on 19 June 2009. In its order, the trial court determined that "Defendant Caudill is entitled only to the amount of coverage bought and paid for as indicated on the declarations page dated February 24, 2006[,] which coverage does not include underinsured motorist coverage." Defendant noted an appeal to this Court from the trial court's order.

II. Legal Analysis

A. Standard of Review

The standard of review utilized in reviewing an order granting summary judgment is well established.

We review a trial court's grant of summary judgment *de novo*. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any

material fact and that [a] party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2010). Thus, "[O]n appeal of a trial court's allowance of a motion for summary judgment, we consider whether, on the basis of materials supplied to the trial court, there was a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. Evidence presented by the parties is viewed in the light most favorable to the non-movant."

Valenzuela v. Pallet Express, Inc., ___ N.C. App. ___, 700 S.E.2d 76, ___ (2010) (citing *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470, 597 S.E.2d 674, 693 (2004), and quoting *Summey v. Barker*, 357 N.C. 492, 496, 586 S.E.2d 247, 249 (2003)). "[T]he movant[] has the burden of establishing that no triable issue of fact exists." *Mickles v. Duke Power Co.*, 342 N.C. 103, 105, 463 S.E.2d 206, 208 (1995) (citing *Roumillat v. Simplistic Enterprises, Inc.*, 331 N.C. 57, 62-63, 414 S.E.2d 339, 341-42 (1992)). "Once the moving party meets its burden, the nonmoving party must 'produce a forecast of evidence demonstrating that the [nonmoving party] will be able to make out at least a prima facie case at trial.'" *Moore v. Coachmen Industries, Inc.*, 129 N.C. App. 389, 394, 499 S.E.2d 772, 775 (1998) (quoting *Collingwood v. G.E. Real Estate Equities*, 324 N.C. 63, 66, 376 S.E.2d 425, 427 (1989), and citing *Davis v. Town of Southern Pines*, 116 N.C. App. 663, 666, 449 S.E.2d 240, 242 (1994), *disc. review denied*, 339 N.C. 737, 454 S.E.2d 648 (1995)).

Defendant does not claim that there are disputed issues of fact, and we have not identified any such disputed factual issues based on our own review of the record. "'Although the parties disagree on the legal significance of the established facts, the

facts themselves are not in dispute. Consequently, we conclude that there is no genuine issue as to any material fact surrounding the trial court's summary judgment order,'" *Wal-Mart Stores, Inc. v. Ingles Mkts., Inc.*, 158 N.C. App. 414, 416-17, 581 S.E.2d 111, 114 (2003) (quoting *Adams v. Jefferson-Pilot Life Ins. Co.*, 148 N.C. App. 356, 359, 558 S.E.2d 504, 507, *disc. rev. denied*, 356 N.C. 159, 568 S.E.2d 186 (2002)), and that our attention should be focused on the issue of whether the trial court correctly ruled that Plaintiff was entitled to the entry of judgment as a matter of law.

B. Legal Principles Applicable to Automobile
Liability Insurance Policies

"An insurance policy is a contract and, unless overridden by statute, its provisions govern the rights and duties of the parties thereto." *Brown v. Lumbermens Mut. Casualty Co.*, 326 N.C. 387, 392, 390 S.E.2d 150, 153 (1990) (citing *Fidelity Bankers Life Ins. Co. v. Dortch*, 318 N.C. 378, 380, 348 S.E.2d 794, 796 (1986)). However, "[w]hen a statute is applicable to the terms of an insurance policy, the provisions of the statute become a part of the policy, as if written into it. If the terms of the statute and the policy conflict, the statute prevails." *Isenhour v. Universal Underwriters Ins. Co.*, 341 N.C. 597, 605, 461 S.E.2d 317, 322 (1995) (citing *Sutton v. Aetna Casualty & Surety Co.*, 325 N.C. 259, 382 S.E.2d 759 (1989), and *Insurance Co. v. Chantos*, 293 N.C. 431, 238 S.E.2d 597 (1977)). Consequently, "[w]hen examining cases to determine whether insurance coverage is provided by a particular automobile liability insurance policy, careful attention must be

given to the type of coverage, the relevant statutory provisions, and the terms of the policy." *Smith v. Nationwide Mutual Ins. Co.*, 328 N.C. 139, 142, 400 S.E.2d 44, 47 (1991).

C. Underinsured Motorist Insurance Coverage

[Underinsured Motorists] (UIM) insurance in North Carolina is an outgrowth from and development of uninsured motorist insurance. Uninsured motorist insurance allows a recovery for an injured party where a tortfeasor has no liability insurance. By comparison, UIM coverage allows the insured to recover when the tortfeasor has insurance, but his coverage is in an amount insufficient to compensate fully the injured party.

Sutton, 325 N.C. at 263, 382 S.E.2d at 762 (citation omitted).

"The main statutory provisions controlling UM and UIM insurance in North Carolina are codified as subdivisions (b)(3) and (b)(4), respectively, of N.C.[Gen. Stat.] § 20-279.21." *Progressive American Ins. Co. v. Vasquez*, 350 N.C. 386, 389, 515 S.E.2d 8, 10-11 (1999).

On 23 January 2006, the date when Defendant signed the selection/rejection form upon which he relies before this Court, N.C. Gen. Stat. § 20-279.21(b)(4) provided, in pertinent part, that every automobile insurance policy issued in North Carolina:

[s]hall . . . provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection[.] . . . The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist

coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal . . . policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.

Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.

The statute "permits insureds to select any UIM coverage limit from \$ [30,000] to \$ 1,000,000." *State Farm Mut. Auto. Ins. Co. v. Fortin*, 350 N.C. 264, 267, 513 S.E.2d 782, 783 (1999). However, "[a]n owner's policy of liability insurance must, subject to rejection by the insured, provide UIM coverage 'only with policies that are written at limits that exceed' minimum statutory limits." *Sutton*, at 268, 382 S.E.2d at 765 (quoting N.C. Gen. Stat. § 20-279.21(b)(4) (1983 & Cum. Supp. 1988)). Accordingly, "[o]ur appellate courts have repeatedly construed [N.C. Gen. Stat. §] 20-279.21(b)(4) 'to require a policyholder to maintain liability coverage that is above the statutory minimum in order to be eligible for UIM coverage.'" *Purcell v. Downey*, 162 N.C. App. 529, 533, 591 S.E.2d 556, 559 (2004) (quoting *Pinney v. State Farm Mut. Ins. Co.*, 146 N.C. App. 248, 253, 552 S.E.2d 186, 190 (2001), *disc.*

review denied, 356 N.C. 438, 572 S.E.2d 788 (2002), and citing *Smith*, 328 N.C. at 147, 400 S.E.2d at 50 (noting that, under N.C. Gen. Stat. "§ 20-279.21(b) (4), UIM coverage may be obtained only if the policyholder has liability insurance in excess of the minimum statutory requirement"), and *Morgan v. State Farm Mut. Auto. Ins. Co.*, 129 N.C. App. 200, 205, 497 S.E.2d 834, 837, *aff'd*, 349 N.C. 288, 507 S.E.2d 38 (1998) (stating that, "[s]ince the policy in question only provided the minimum statutory-required coverage of \$ 25,000/\$ 50,000, the policy was not required to provide UIM coverage under section 20-279.21(b) (4)").

D. Coverage Provided by Defendant's Automobile Liability Insurance Policy

The exact legal issue before us in this case is whether the automobile liability insurance policy in effect at the time of the 10 July 2006 accident provided Defendant with combined UM/UIM coverage. Since the undisputed evidence contained in the present record establishes that Defendant purchased a policy providing nothing more than the statutorily-required minimum coverage for bodily injury and property damage, Defendant was not entitled to purchase combined UM/UIM coverage. As a result, the trial court did not err by granting summary judgment in favor of Plaintiff.

In support of its summary judgment motion, Plaintiff filed an affidavit executed by Jeffrey Walsh in which he stated, in pertinent part, that:

1. . . . I am a licensed insurance agent in the State of North Carolina. . . .
2. I am the insurance agent for Mr. Dennis William Caudill and his wife Joyce.

Mr. Caudill has been a customer since 1992, and . . . [I] have spoken to them on several occasions.

3. I have also had an opportunity to review our file materials for the Caudill policy[.]

4. The contents of this Affidavit are based upon (a) my personal knowledge of the Caudill Policy; (b) my interactions with the Caudills; and (c) my review of business records, including documents generated by Nationwide and/or records available to agents . . . kept in the ordinary course of business[.]

5. I have reviewed Mr. Caudill's application for insurance. The application includes a valid selection/rejection form dated August 14, 1992, and signed by Mr. Caudill. The selection/rejection form clearly shows that Mr. Caudill selected only UM (uninsured motorist) coverage at limits of \$25,000 per person and \$50,000 per accident ("25/50"), and that he expressly rejected UM/UIM (combined uninsured and underinsured motorist coverage). . . .

6. My review of the Agency file indicates that Mr. Caudill has never carried anything except a "minimum limits" insurance policy. In other words, Mr. Caudill originally purchased the minimum limits of liability insurance required by the State (25/50) and optional UM coverage of 25/50, and the Policy has remained a "minimum limits" policy through today[.]

7. Mr. Caudill also received Declarations Pages ("Dec Pages") in the mail from Nationwide twice a year when it was time to renew his Policy. In January of 2006, Mr. Caudill received a Dec Page reflecting requested UM/UIM coverage of 100/300. He signed a valid selection/rejection form for this requested coverage. Mr. Caudill did not, however, pay the premium for and bind that coverage. . . .

8. Instead, after Mr. Caudill received the bill for the requested 100/300 UM/UIM

coverage, he came to the Agency and withdrew his request for 100/300 UM/UIM coverage, electing instead to renew the Policy at its current minimum limits, with UM coverage only. Mr. Caudill then paid the premium for and bound that coverage. . . .

9. A Dec Page issued on February 24, 2006, reflected the bought and paid for coverage described in Paragraph 8. Neither Mr. Caudill or Mrs. Caudill came into the office or called Agency staff to report that the coverage amount was incorrect or inaccurate. Mr. Caudill continues to this day to receive Dec Pages with each bi-yearly renewal, at the same coverage limits described above.

10. The Caudill Policy therefore never carried UM/UIM coverage of 100/300.

11. Following this automobile accident and the initiation of his lawsuit, Mr. Caudill remains a customer of Nationwide and the Agency. He continues to carry a minimum limits policy (30/60) with no combined UM/UIM coverage. The Caudill Policy has never carried coverage in excess of the minimum limits required by State law.

Plaintiff also filed an affidavit signed by Dana Holbrook in which she stated, among other things, that:

1. . . . I am an employee of the Duncan Insurance Agency . . . in North Wilkesboro, North Carolina. I am licensed to sell insurance in this State, and I specifically work for Jeff Walsh of the same office, who is the Nationwide agent for Mr. Dennis William Caudill and his wife Joyce.

2. During my employment with the Duncan Agency, I have had several meetings and conversations with both Mr. and Mrs. Caudill.

3. I have also had an opportunity to review our file materials for the Caudill policy[.]

4. The contents of this Affidavit are based upon (a) my personal knowledge of the

Caudill policy; (b) my interactions with the Caudills; and (c) my review of business records, including documents generated by Nationwide and/or records available to agents through Nationwide, kept in the ordinary course of business for the Duncan Agency.

5. Mr. Caudill has been a customer of our agency since 1992. . . .

6. On August 14, 1992, Mr. Caudill signed a North Carolina Rate Bureau promulgated selection/rejection form choosing to specifically reject UM/UIM (combined uninsured and underinsured motorist) coverage and select UM (uninsured motorist) coverage at limits of \$25,000 per person and \$50,000 per accident ("25/50"). . . .

. . . .

8. The Caudills continued to carry the minimum coverage required by North Carolina law[.]

9. In January of 2006, Mr. Caudill received from Nationwide a renewal packet which included a Declarations Page ("Dec Page") and billing statement for the policy period beginning February 15, 2006 and ending August 15, 2006. In this renewal packet, Mr. Caudill also received a blank selection/rejection form.

. . . .

11. On January 23, 2006, Mr. Caudill filled out the selection/rejection form included in his billing packet, affirming his choice to add to his Policy combined UM/UIM coverage in the amount of 100/300 for bodily injury and \$100 thousand for property damage. Mr. Caudill signed the form and returned it to the Agency. Again, this change in coverage would have become effective for the renewal period beginning February 15, 2006.

12. An auto insurance policy goes into effect on the effective date identified on the Dec Page. Nationwide, however, allows the policyholder up to fifteen (15) days from the effective date in which to pay his or her

premium. If payment is made during that time period, the policy is deemed effective as of the identified effective date. The policy is not in effect if the premium is not paid.

13. The Caudills had fifteen (15) days from the effective date of the Policy, February 15, 2006, in which to pay the premium on the Policy, which was \$876.22, and [thereby] put into effect the coverage changes, specifically, the addition of UM/UIM coverage.

14. Neither Mr. or Mrs. Caudill paid the \$876.22 premium for the Policy.

15. . . . [B]efore the time period for payment for the requested change in coverage expired, Mr. Caudill changed his mind and asked me to renew his Policy at its current limits of 30/60, keeping his coverage "as is."

16. . . . [O]n February 24, 2006, Mr. Caudill came to the Agency and told me that he did not want the increased UM/UIM coverage of 100/300 because it was more expensive and instructed me to make sure his limits remained the same as the minimum limits he was carrying on the Policy.

17. In order to carry out Mr. Caudill's instruction, I had to log on to the Nationwide computer system . . . and enter his requested minimum limits coverage manually. This action . . . generated a new Dec Page and billing statement, that issued directly from Nationwide to Mr. Caudill at his home address.

. . .

18. Neither Mr. Caudill or his wife ever came to the Agency or called the Agency after the issuance of this Dec Page . . . to say that it did not reflect the coverage Mr. Caudill bought and paid for, or was inaccurate or incorrect in any way. Mr. Caudill continues to receive Dec Pages on a bi-yearly basis, reflecting only UM coverage, through the present day.

. . .

21. On the same day that he instructed me to continue his current policy coverage (minimum limits), I honored his request and the Agency took Mr. Caudill's payment for his premium for that renewal period beginning February 15, 2006, which was \$775.85, the lower amount. . . .

22. Mr. Caudill paid for his renewal in two (2) installment payments[.] . . .

. . . .

26. Today, Mr. and Mrs. Caudill remain customers of Nationwide and the Agency, and even after this accident and the filing of their lawsuit, they continue to carry a minimum limits policy (30/60) with no combined UM/UIM coverage. The Caudill Policy has never carried coverage in excess of the minimum limits required by State law.

. . . .

28. Had Mr. Caudill wished to add UM/UIM coverage, our Agency would have been glad to work with him to attempt to write the coverage. Mr. Caudill, however, made a personal business decision to renew his coverage "as is" at minimum limits, and we honored his choice and selection.

The affidavits tendered by Plaintiff establish that Defendant purchased an automobile liability insurance policy at the minimum coverage levels permitted by law. As we have already indicated, such a policy is not eligible for combined UM/UIM coverage. Thus, by proffering evidence that Defendant's automobile insurance policy could not have included UM/UIM coverage, Plaintiff met its initial burden of "demonstrat[ing] the absence of a genuine issue of material fact[; therefore,] the burden shift[ed] to the nonmovant to present specific facts which establish the presence of a genuine

factual dispute for trial." *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (citation omitted).

At the summary judgment hearing, Defendant did not dispute Plaintiff's contention that, after receiving the bill for increased coverage he had elected, Defendant changed his mind concerning the amount of coverage that he wished to purchase. On the contrary, he essentially conceded the accuracy of the information contained in Plaintiff's affidavits, as the following colloquy demonstrates:

THE COURT: . . . I thought that he selected the 100-300. . . . The new premium was in the upper 800s. He questioned that, said he didn't want to pay that, and he paid the lower amount. Am I correct in that?

[DEFENSE COUNSEL]: He did question that, and he did say, "I think I'll go back to minimum coverage."

As a result, the record reflects that, after signing a selection/rejection form electing to purchase UM/UIM coverage on 23 January 2006, Defendant made "a subsequent oral modification [to] the policy." Even so, Defendant argues that, because he signed a Rate Bureau form selecting coverage at the \$100,000/\$300,000 level, he is entitled to UM/UIM coverage at that level despite his subsequent decision to purchase a lesser amount of insurance coverage. Put another way, Defendant argues that, when he signed a selection/rejection form on 23 January 2006 requesting higher coverage, "it effectively revoked the prior form," entitling him to coverage at the higher level indicated on the form "despite subsequent changes" to his policy. In other words, Defendant contends that, unless he signed a new selection/rejection form,

Plaintiff "could not . . . infer a decline in underinsured motorist coverage from any request for a change in liability coverage" and that "the UM/UIM motorist coverage is independent of, and therefore not dictated by a change in, the liability coverage[.]"

As support for his position, Defendant notes that N.C. Gen. Stat. § 20-279.21(b)(4) allows policyholders to select UM/UIM coverage in an amount different from their liability coverage. Defendant also quotes an excerpt from N.C. Gen. Stat. § 20-279.21(b)(4) to the effect that an automobile owner's liability insurance policy shall "provide underinsured motorist coverage . . . [in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in [N.C. Gen. Stat. §] 20-279.5 nor greater than one million dollars (\$ 1,000,000)] as selected by the policy owner." However, the statutory provision upon which Defendant relies also states that automobile liability insurance policies shall "provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section[.]" Thus, once Defendant expressly requested a reduction in his liability coverage limits to the minimum levels permitted by statute, Plaintiff was required to delete UM/UIM coverage from Defendant's policy.

Defendant also emphasizes that portion of the selection/rejection form providing that any election relating to UM/UIM coverage that the insured has made remains applicable to "any renewal, reinstatement, substitute, amended, altered,

modified, transfer or replacement policy with this company . . . unless a named insured makes a written request to the company to exercise a different option." The relevant selection/rejection form language clearly implies, however, that the selected level of UM/UIM coverage applies to any policy that qualifies for UM/UIM coverage. "[B]ecause [Defendant's insurance] [p]olicy . . . is a minimum limits policy which by its terms was not 'written at limits that exceed' the minimum financial responsibility amounts set forth by [N.C. Gen. Stat. §] 20-279.21(b)(2), [N.C. Gen. Stat. §] 20-279.21(b)(4) mandates that as a matter of law, UIM coverage is not available to [Defendant] under [his insurance] [p]olicy[.]"

Purcell, 162 N.C. App. at 534, 591 S.E.2d at 559.² Thus, Defendant was not eligible to purchase UM/UIM coverage, rendering the trial court's decision to grant summary judgment in favor of Plaintiff correct.

III. Conclusion

For the reasons set forth above, we conclude that the trial court correctly granted summary judgment in favor of Plaintiff. Thus, the trial court's order should be, and hereby is, affirmed.

AFFIRMED.

Judges MCGEE and STROUD concur.

Report per Rule 30(e).

² Our conclusion to this effect eliminates any need for us to address Defendant's remaining arguments.