NO. COA13-226
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

BONNIE R. ROBINSON, Administrator Of
the Estate of BERNICE D. THOMAS,
Plaintiff

v.

Duplin County
No. 09 CVS 1232

DISCOVERY INSURANCE COMPANY,
Defendant

Appeal by defendant from a judgment entered 14 September 2012 and an order entered 1 February 2013 by Judge John E. Nobles, Jr., in Duplin County Superior Court. Heard in the Court of Appeals 13 August 2013.

Musselwhite, Musselwhite, Branch and Grantham, by Stephen C. McIntyre, for Plaintiff.

Johnson, Lambeth & Brown, by Maynard M. Brown, for Defendant.

ERVIN, Judge.

Defendant Discovery Insurance Co. appeals from a judgment providing that "he limit of the Defendant's underinsured motorist coverage . . . applicable to Plaintiff [Bernice D.

Thomas[1]] is one million dollars per person" based upon a jury verdict determining that Plaintiff "did [not] sign an uninsured/underinsured motorist selection rejection form" and that Defendant had "totally fail[ed] to provide [Plaintiff] the opportunity to select or reject underinsured motorist coverage of up to one million dollars."[2] On appeal, Defendant argues that Judge Gary E. Trawick erroneously denied its summary judgment motion on the grounds that there were no genuine issues of material fact and that Defendant was entitled to judgment as a matter of law given that the evidence forecast by the parties did not show that Defendant had totally failed to inform Plaintiff of her right to select or reject up to $1,000,000 in uninsured motorist liability coverage and that the trial court erroneously denied its directed verdict motions on the grounds that the record evidence did not support a determination that

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[1]After Ms. Thomas died as the result of injuries relating to the 28 August 2008 accident, Bonnie R. Robinson was appointed as administrator of her estate and substituted as a party plaintiff in this case. In the interest of simplicity, we will refer to both Ms. Thomas and her estate as "Plaintiff" throughout the remainder of this opinion.

[2]Although Defendant also noted an appeal to this Court from the trial court's decision to deny its motion for a new trial or the entry of judgment notwithstanding the verdict, we need not determine whether the trial court had the authority to deny that motion on the grounds that Defendant had already noted an appeal from the trial court's judgment as of the date upon which it filed the motion in question given that Defendant has not advanced any challenge to the entry of the order denying this motion in its brief.

Defendant had totally failed to advise Plaintiff of her right to select or reject up to $1,000,000 in uninsured motorist coverage. After careful consideration of Defendant's challenges to Judge Trawick's order and the trial court's judgment in light of the record and the applicable law, we conclude that Defendant's challenge to the denial of its summary judgment motion is not properly before us and that the trial court's judgment should be affirmed.

I. Factual Background

A. Substantive Facts

On or about 23 July 2003, Plaintiff obtained the issuance of a policy of automobile liability insurance from Defendant through the Dixon Insurance Agency, one of its authorized independent agents. The policy in question included uninsured/underinsured motorist coverage which became applicable in the event that Plaintiff suffered injury or damage as the result of conduct by another person who either did not have insurance or had insufficient coverage to fully compensate Plaintiff from any injury or damage which she sustained. The automobile liability policy that Plaintiff had purchased from Defendant was in full force and effect on 28 August 2008.

1. Procurement and Renewal of Liability Policy

The parties presented sharply conflicting evidence concerning the extent to which Defendant afforded Plaintiff an opportunity to select or reject $1,000,000 in UIM coverage at the time that the policy in question was either initially purchased or renewed. A "selection/rejection" form to which Plaintiff's signature had purportedly been affixed and which had been witnessed by Stephen Dixon of Dixon Insurance indicated that, although Plaintiff had been afforded the option to purchase up to $1,000,000 in UIM coverage, she had selected UIM coverage in the amount of $50,000 per person and $100,000 per accident for bodily injury and $50,000 per accident for property damage. In addition, Plaintiff's signature was purportedly affixed to a series of documents developed by Dixon Insurance and executed on each occasion on which Plaintiff renewed her automobile liability policy which provided that the insured "underst[ood] and acknowledge[e]d that a representative of [Dixon Insurance] ha[d] explained to me the polic[]ies for which I am applying" and that, "[although] there are higher liability limits available," "I choose what is indicated above."

Emily J. Will, who was qualified as an expert in handwriting analysis, testified that the signature on the selection/rejection form which purported to be that of Plaintiff was not genuine. In addition, Ms. Will testified that, while

Plaintiff's genuine signature did appear on the renewal forms dated 8 January 2008 and 24 July 2008, the signatures purporting to be those of Plaintiff on the 12 January 2006, 8 August 2006, 4 January 2007, and 25 July 2007 forms were not genuine. Instead, the 12 January 2006, 8 August 2006, 4 January 2007, and 25 July 2007 forms appeared to have been signed by the same individual who signed the selection/rejection form.

On the other hand, Mr. Dixon and Brandon Cole, who had also worked for Dixon Insurance, testified that Plaintiff had signed the selection/rejection form. According to Mr. Dixon and Mr. Cole, the general practice at Dixon Insurance was that an agency representative would have described the coverage that Plaintiff was purchasing and the different coverage options that were available to her, including the option to purchase UIM coverage in an amount up to $1,000,000, at the time that she initially procured her policy from Defendant and on each occasion on which she renewed her policy. However, neither Mr. Dixon nor Mr. Cole could specifically recall having had such a conversation with Plaintiff at the time that she initially purchased an automobile liability policy from Defendant or the times at which she renewed the policy in question.

2. UIM Coverage Dispute

On 28 August 2008, Plaintiff was severely injured in an automobile accident that proximately resulted from the negligent failure of Larry John Smith to stop at a stop sign. As a result, Plaintiff filed an action against Mr. Smith and the owner of the vehicle being driven by Mr. Smith, Lillian Ingram Humphrey, seeking to recover damages for the injuries that she had sustained in the accident. The insurance carriers providing coverage to Mr. Smith and Ms. Humphrey each tendered their policy limits, which totaled $350,000, to Plaintiff. In view of the fact that the damages which Plaintiff had sustained as a proximate result of the 28 August 2008 accident exceeded the amounts tendered to her under the liability policies which provided coverage to Mr. Smith and Ms. Humphrey, Plaintiff sought to recover an additional amount on the basis of the UIM provisions of the policy which she had procured from Defendant. However, Defendant rejected Plaintiff's claim on the grounds that the UIM coverage available to Plaintiff was subject to a bodily injury limit of $50,000 per person.

B. Procedural History

On 16 December 2009, Plaintiff filed a complaint against Defendant in which she sought a declaration that "the limits of underinsured motorist coverage in the . . . policy of automobile liability insurance [issued to her by Defendant] are $1,000,000

per person as provided by statute in the North Carolina Financial Responsibility Act." On 6 February 2010, Defendant filed an answer in which it denied the material allegations of Plaintiff's complaint and sought a declaration "in favor of this Defendant on the issue of whether or not the Plaintiff was provided with a meaningful opportunity to select or reject underinsured motorist coverage in excess of her liability limits" under the automobile liability insurance policy which she had procured from Defendant.

On 8 August 2011, Defendant filed a motion seeking the entry of summary judgment in its favor. On 16 April 2012, Judge Trawick entered an order denying Defendant's summary judgment motion. Although this case came on for trial before Judge Trawick and a jury at the 2 April 2012 civil session of the Duplin County Superior Court, a mistrial was declared as a result of the fact that, "due to multiple [peremptory] and for cause challenges[,] . . . the jury panel became depleted to such an extent that a jury panel of twelve jurors could not be impaneled."

This case came on for trial a second time before the trial court and a jury at the 20 August 2012 civil session of the Duplin County Superior Court. At the conclusion of Plaintiff's evidence and at the close of all of the evidence, Defendant

unsuccessfully moved for a directed verdict in its favor. After the presentation of all of the evidence, the arguments of counsel, and the trial court's instructions, the jury returned a verdict finding that Plaintiff had not "sign[ed] an uninsured/underinsured motorist selection rejection form" and that Defendant had "totally fail[ed] to provide [Plaintiff] the opportunity to select or reject underinsured motorist coverage of up to one million dollars." Based upon the jury's verdict, the trial court entered judgment on 14 September 2012 declaring that "the limit of the Defendant's underinsured motorist coverage policy applicable to Plaintiff is one million dollars per person" and indicating that the trial court would "entertain any post-judgment motions at the appropriate time."

On 31 August 2012, Defendant filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. On 1 February 2013, the trial court entered an order denying Defendant's post-trial motions. Defendant noted an appeal to this Court from the trial court's judgment on 19 September 2012 and from the trial court's judgment and the denial of its post-trial motions on 25 October 2012.

II. Substantive Legal Analysis

A. Underinsured Motorist Coverage

Although the General Assembly has subsequently amended the relevant statutory provisions,[3] the version of N.C. Gen. Stat. § 20-279.21 applicable to this case provided that policies of automobile liability insurance issued in North Carolina must include UIM coverage "in an amount not to be less than [a baseline set by N.C. Gen. Stat. § 20-279.5] nor greater than one million dollars ($1,000,000) as selected by the policy owner;" that an insured should reject UIM coverage or "select different coverage limits" by completing a "selection/rejection" form promulgated by the North Carolina Rate Bureau; and that, if the insured neither rejected UIM coverage or selected a different amount of coverage, the amount of UIM coverage "shall be equal to the highest limit of bodily injury and property damage liability coverage for any one vehicle in the policy." N.C. Gen. Stat. § 20-279.21(b)(4) (2007). As this Court held in *Williams v. Nationwide Mut. Ins. Co.*, 174 N.C. App. 601, 605-06, 621 S.E.2d 644, 647 (2005), *disc. review improvidently granted*, 360 N.C. 586, 634 S.E.2d 887 (2006), a failure on the part of an

[3]On 28 August 2009, the General Assembly amended N.C. Gen Stat. § 20-279.21 to provide, for policies issued or renewed on or after 1 February 2010, that, in the event that an insurer failed to provide an insured with notice that he or she was entitled to purchase UIM coverage in an amount up to one million dollars, the insurer would be subject to a civil penalty pursuant to N.C. Gen. Stat. § 58-2-70 rather than required to provide UIM coverage at the highest available amount of UIM coverage. 2009 N.C. Sess. L., c. 561, ss. 1, 2.

insurer to offer the insured an opportunity to reject UIM coverage and to select a different amount of coverage as required by N.C. Gen. Stat. § 20-279.21(b)(4), an action which we described as a "total failure," resulted in a violation of the statutory requirements that the amount of UIM coverage be "selected by the policy owner" and entitled the insured to "the highest available limit of UIM coverage of $1,000,000." As a result, the ultimate issue at trial was the extent to which Defendant had "totally failed" to inform Plaintiff that she was entitled to purchase up to $1,000,000 in UIM coverage at the time that she initially purchased or renewed the policy which she had procured from Defendant.

B. Denial of Summary Judgment Motion

In his initial challenge to the trial court's judgment, Defendant argues that Judge Trawick erred by denying its summary judgment motion on the grounds that the materials presented in support of and opposition to that motion established that there were no genuine issues of material fact and that it was entitled to judgment as a matter of law. As a result of the fact that a challenge to the denial of a summary judgment order is not properly before the appellate division in an appeal taken from a judgment entered following the conclusion of a trial on the

merits, we decline to address Defendant's challenge to Judge Trawick's order.

According to well-established North Carolina law, the denial of a motion for summary judgment is not reviewable on appeal from a final judgment on the merits. As the Supreme Court has stated:

> Improper denial of a motion for summary judgment is not reversible error when the case has proceeded to trial and has been determined on the merits by the trier of the facts, either judge or jury. To grant a review of the denial of the summary judgment motion after a final judgment on the merits . . . would mean that a party who prevailed at trial after a complete presentation of evidence by both sides with cross-examination could be deprived of a favorable verdict. This would allow a verdict reached after the presentation of all the evidence to be overcome by a limited forecast of the evidence.

Harris v. Walden, 314 N.C. 284, 286, 333 S.E.2d 254, 256 (1985). In other words, a litigant against whom a judgment was entered in the court below following a trial on the merits is not entitled to challenge the validity of the trial court's judgment before the appellate courts on the grounds that summary judgment should have been granted in its favor before the trial began. In view of the fact that the judgment before us in this case was entered following a trial on the merits and the return of a jury verdict in favor of Plaintiff, Defendant is not entitled to

challenge the denial of its earlier summary judgment motion on appeal. As a result, we decline to address Defendant's challenge to the denial of its summary judgment motion on the merits.

C. Denial of Directed Verdict Motion

Secondly, Defendant argues that the trial court erred by denying the directed verdict motions which it made at the close of the Plaintiff's evidence and after the presentation of all of the evidence.[4] In urging us to overturn the trial court's judgment on the basis of this argument, Defendant contends that the record did not contain sufficient evidence to support a determination that Defendant had "totally failed" to inform Plaintiff of her right to obtain up to $1,000,000 in UIM coverage. We do not find Defendant's argument persuasive.

1. Standard of Review

"The standard of review of directed verdict is whether the evidence, taken in the light most favorable to the non-moving

[4]In view of the fact that Defendant elected to present evidence after the denial of the motion for a directed verdict that it made at the conclusion of Plaintiff's evidence, Defendant has waived its right to challenge the denial of that motion. *Boggess v. Spencer*, 173 N.C. App. 614, 617-18, 620 S.E.2d 10, 12 (2005) (citations omitted), *disc. review denied*, 360 N.C. 288, 627 S.E.2d 619 (2006). As a result, the analysis set out in the text of this opinion is limited to a determination of whether the trial court erred by denying the directed verdict motion that Defendant made at the conclusion of all of the evidence.

party, is sufficient as a matter of law to be submitted to the jury." *Davis v. Dennis Lilly Co.*, 330 N.C. 314, 322, 411 S.E.2d 133, 138 (1991) (citing *Kelly v. Int'l Harvester Co.*, 278 N.C. 153, 158, 179 S.E.2d 396, 398 (1971)). "In determining the sufficiency of the evidence to withstand a motion for a directed verdict, all of the evidence which supports the non-movant's claim must be taken as true and considered in the light most favorable to the non-movant, giving the non-movant the benefit of every reasonable inference which may legitimately be drawn therefrom and resolving contradictions, conflicts, and inconsistencies in the non-movant's favor." *Turner v. Duke Univ.*, 325 N.C. 152, 158, 381 S.E.2d 706, 710 (1989). A motion for directed verdict should be denied if more than a scintilla of evidence supports each element of the non-moving party's claim. *Clark v. Moore*, 65 N.C. App. 609, 610-11, 309 S.E.2d 579, 580-81 (1983) (citing *Hunt v. Montgomery Ward and Co.*, 49 N.C. App. 642, 644, 272 S.E.2d 357, 360 (1980)). On appeal, we review the trial court's decision to grant or deny a directed verdict motion using a *de novo* standard of review. *Austin v. Bald II, L.L.C.*, 189 N.C. App. 338, 342, 658 S.E.2d 1, 4, *disc. review denied*, 362 N.C. 469, 665 S.E.2d 737 (2008).

2. Analysis of Record Evidence

The ultimate issue before the jury was whether Defendant "totally failed" to inform Plaintiff that she had the opportunity to purchase UIM coverage in an amount up to $1,000,000. The parties agreed at trial, consistently with well-established North Carolina law, that the burden of establishing an insured's rejection of coverage falls on the insurer. *Hendrickson v. Lee*, 119 N.C. App. 444, 450, 459 S.E.2d 275, 279 (1995). As a result, the parties agreed to the delivery of jury instructions expressly stating that Defendant had the burden of persuading the jury that it had not "totally failed" to provide Plaintiff with the opportunity to select or reject UIM coverage in the amount of up to $1,000,000. Consistently with that decision, Defendant has not challenged the trial court's decision to place the burden of persuasion with respect to the "total failure" issue on Defendant on appeal. As a result, Defendant is essentially asking us to determine that the trial court erred by failing to direct a verdict in favor of the party bearing the burden of proof.

"[I]n order to justify granting a motion for a directed verdict in favor of the party with the burden of proof, the evidence must so clearly establish the fact in issue that no reasonable inferences to the contrary can be drawn." *Murdock v. Ratliff*, 310 N.C. 652, 659, 314 S.E.2d 518, 522 (1984) (citing

North Carolina Nat'l Bank v. Burnette, 297 N.C. 524, 536, 256 S.E.2d 388, 395 (1979)). For that reason, a directed verdict should not ordinarily be granted in favor of the party with the burden of proof when its right to recover depends on the credibility of its own witnesses. *Murray v. Murray*, 296 N.C. 405, 408, 250 S.E.2d 276, 277-78 (1979). On the other hand, however, "a directed verdict . . . may be entered in favor of the party with the burden of proof 'where credibility is manifest as a matter of law.'" *Smith v. Price*, 315 N.C. 523, 527, 340 S.E.2d 408, 411 (1986) (quoting *Burnette*, 297 N.C. at 536, 256 S.E.2d at 395). Although the extent to which the credibility of a party's witnesses is "manifest" must be determined on a case by case basis, such "manifest credibility" has been found to exist:

> (1) Where non-movant establishes proponent's case by admitting the truth of the basic facts upon which the claim of proponent rests. (citations omitted).
>
> (2) Where the controlling evidence is documentary and non-movant does not deny the authenticity or correctness of the documents. (citations omitted).
>
> (3) Where there are only latent doubts as to the credibility of oral testimony and the opposing party "has failed to point to specific areas of impeachment and contradictions." (citations omitted).

Burnette, 297 N.C. at 537-38, 256 S.E.2d at 396. "Needless to say, the instances where credibility is manifest will be rare, and courts should exercise restraint in removing the issue of credibility from the jury." *Id.* at 538, 256 S.E.2d at 396.

A careful review of the evidence adduced at trial establishes that the evidence upon which Defendant relies in support of its challenge to the denial of its directed verdict motion was not manifestly credible. As should be obvious, Plaintiff did not admit the truth of the facts which Defendant sought to establish at trial. On the contrary, Plaintiff clearly denied the authenticity of the documentary evidence upon which Defendant relied and elicited evidence tending to show that the signatures purporting to be those of Plaintiff on many of these documents, including the selection/rejection form, were not genuine. For that reason, Defendant was obligated to prove that Plaintiff had been afforded the opportunity to purchase up to $1,000,000 in UIM coverage in order to prevail at trial.

As Defendant admits in its brief, there is clearly a factual issue as to the authenticity of Plaintiff's signature on the selection/rejection form and four of the renewal forms. Although Defendant attempts to avoid the difficulties created by this conflict in the evidence by claiming that the undisputed evidence shows that Plaintiff signed the two renewal forms

executed in 2008, neither of those forms expressly indicates that Plaintiff was advised of her right to purchase up to $1,000,000 in UIM coverage. Instead, the validity of Defendant's assertion that Plaintiff had been advised of her right to do so hinges upon the testimony of Mr. Dixon and Mr. Cole to the effect that the general practice at Dixon Insurance was to go over the amounts of coverage available to each insured on each occasion when the insured's policy was purchased or renewed and that, as part of that process, Plaintiff would have been advised of her right to purchase $1,000,000 in UIM coverage. Simply put, such "general practice" evidence, while certainly relevant and sufficient to support a finding in Defendant's favor, does not constitute "manifestly credible" evidence that Plaintiff, in particular, was afforded the opportunity to purchase up to $1,000,000 in UIM coverage.

In addition, the record reveals the existence of legitimate reasons to question the credibility of both Mr. Dixon and Mr. Cole. For example, the testimony of both Mr. Dixon and Mr. Cole to the effect that Plaintiff had signed the selection/rejection form was directly contradicted by Ms. Will, who opined that Plaintiff had not, contrary to their assertions, signed the selection/rejection form. Similarly, despite the assertion made by Mr. Dixon and Mr. Cole to the contrary, Ms. Will testified

that the purported signatures of Plaintiff on four of the six renewal forms were not genuine. For that reason, even though Ms. Will testified that the signatures on the 2008 renewal forms were genuine, there was ample basis for a jury to question the credibility of the assertion made by Mr. Dixon and Mr. Cole, based on the standard business practices utilized by Dixon Insurance, that Plaintiff had been informed of her right to purchase UIM coverage up to $1,000,000. In other words, evidence that Plaintiff's signature on certain important forms was not genuine raised legitimate doubts about any assertion that might be made about the information with which Plaintiff had been provided. As a result, given that the evidence which Defendant adduced at trial was not "manifestly credible" and given that "there is conflicting testimony that permits different inferences, one of which is favorable to the non-moving party," concerning the nature of the information that had been provided to Plaintiff, "a directed verdict in favor of [Defendant would have been] improper." *United Lab., Inc. v. Kuykendall*, 322 N.C. 643, 662, 370 S.E.2d 375, 387 (1988).

In seeking to persuade us to reach a different result, Defendant analogizes this case to several decisions handed down by this Court which conclude that, as long as the insurer had done something in furtherance of its obligation to inform the

insured of his or her right to select or reject a higher amount of UIM coverage, no "total failure" as that expression is used in *Williams* had occurred. *Grimsley v. Government Employees Insurance Co.*, __ N.C. App. __, __, 721 S.E.2d 706, 712 (2011) (holding that the mailing of a selection/rejection form to the insured precluded a finding that the insurer had "totally failed" to inform the insured of the amount of UIM coverage that could be purchased), *disc. review denied*, 365 N.C. 522, 724 S.E.2d 505 (2012); *Nationwide Prop. & Cas. Ins. Co. v. Martinson*, 208 N.C. App. 104, 116, 701 S.E.2d 390, 398 (2010) (holding that the mailing of a selection/rejection form to the insured satisfied the insurer's obligation to inform the insured that he had the ability to purchase up to $1,000,000 in coverage despite the absence of any evidence that the insured received the form prior to the accident), *disc. review denied*, 706 S.E.2d 256 (2011); *Nationwide Mut. Ins. Co. v. Burgdoff*, 206 N.C. App. 740, 744, 698 S.E.2d 500, 503 (2010) (holding that our decision in *Williams* should not be extended beyond situations in which an insured had never been given an opportunity to reject or select different UIM coverage limits). None of these decisions, however, is controlling in this instance. Unlike the situation at issue here, nothing in either *Martinson* or *Grimsley* provides any basis for questioning whether the insurer actually mailed a

selection/rejection form to the insured. *Martinson*, 208 N.C. App. at 116, 701 S.E.2d at 397 (stating that, "[alt]hough Mrs. Martinson claims that neither she nor her husband received the form, there is no evidence to contradict Nationwide's assertion that it was mailed on 22 August 2007"); *Grimsley*, __ N.C. App. at __, 721 S.E.2d at 711 (noting that the plaintiff "has offered no evidence . . . to dispute the accuracy and reliability of GEICO's computerized mailing practice"). Defendant's reliance on *Burgdoff* is equally unavailing in light of our recognition in that decision that "[w]hether or not [the plaintiff was] provided the opportunity to reject or select different UIM coverage limits is a factual determination that is generally best resolved by a jury." *Burgdoff*, 206 N.C. App. at 744-45, 698 S.E.2d at 503. As a result, given that there was, in this case, a legitimate basis for questioning Defendant's contention that it had not "totally failed" to afford Plaintiff an opportunity to purchase UIM coverage in an amount of up to $1,000,000, none of the prior decisions of this Court upon which Defendant relies provide any basis for a decision to overturn the trial court's judgment.

In addition to *Martinson*, *Grimsley*, and *Burgdoff*, Defendant directs our attention to the unpublished decision of the United States Court of Appeals for the Fourth Circuit in *Progressive*

Southeastern Ins. Co. v. McLeod, 489 F. App'x 669 (4th Cir. 2012), which held that, despite the absence of an executed selection/rejection form, a "total failure" for purposes of *Williams* had not occurred given the existence of a signed application form which provided, in pertinent part, that "uninsured/underinsured motorist coverage, and the applicable limits of these coverages were explained to me, and I have selected the limits shown." *McLeod*, 489 F. App'x at 673. Although Defendant contends that the language contained in the application form at issue in *McLeod* is indistinguishable from the language contained in the renewal forms at issue in this case and that this fact should persuade us that the trial court erred by failing to grant its directed verdict motion, we are not persuaded by this contention given that Defendant has overlooked the fact that there were no credibility issues of the type that exist here in *McLeod* and the fact that the record indicates that the *McLeod* insured "wished to keep costs down by choosing the lowest required coverage and understood that greater combined UIM coverage limits would have resulted in higher premiums." *Id.* As a result, we conclude that Defendant's arguments in reliance upon *McLeod* do not justify a decision to overturn the trial court's judgment.

Finally, Defendant contends that the provision in the two renewal forms that appear to have actually been signed by Plaintiff to the effect that she "underst[ood] and acknowledge[d] that a representative of Dixon Insurance Agency, Inc. ha[d] explained to me the polic[ies] for which I am applying" and understood that, although "there are higher liability limits available," "I choose what is indicated above," establish that a "total failure" of the type described in *Williams* did not occur. We do not, however, find this argument persuasive given that the record is devoid of documentary evidence tending to show that Plaintiff was ever actually informed that she had the right to purchase up to $1,000,000 in UIM coverage and given that the questions about the credibility of Mr. Dixon and Mr. Cole which have been outlined in detail above cast doubt upon Defendant's assertion that Plaintiff was actually provided with the information described in the renewal-related documents. As a result, since "the evidence must so clearly establish the fact in issue that no reasonable inferences to the contrary can be drawn," *Murdock*, 310 N.C. at 659, 314 S.E.2d at 522 (citing *Burnette*, 297 N.C. at 536, 256 S.E.2d at 395), and since the record provides adequate justification for questioning whether the disclosures outlined

in the renewal forms were actually made to Plaintiff, we do not find Defendant's final contention persuasive.

The ultimate difficulty with all of Defendant's challenges to the trial court's decision to deny its directed verdict motion is that they rest on the assumption that the record provides no basis for questioning the credibility of the testimony of Mr. Dixon and Mr. Cole to the effect that, given the general practices employed at Dixon Insurance, Plaintiff had been informed of her ability to purchase up to $1,000,000 in UIM coverage. However, as we have already demonstrated, the present record reveals the presence of significant questions about the credibility of the evidence upon which Defendant relies. There is no more firmly established principle of North Carolina law than the rule that credibility determinations must be resolved by the trier of fact rather than by the trial court in the course of ruling on a directed verdict motion. *State v. Legins*, 184 N.C. App. 156, 159, 645 S.E.2d 835, 837, *aff'd*, 362 N.C. 83, 653 S.E.2d 144 (2007). As a result, given that the evidence adduced at trial reveals the existence of a legitimate factual issue concerning the extent to which Defendant "totally failed" to advise Plaintiff of her right to purchase up to $1,000,000 in UIM coverage, the trial court correctly denied Defendant's

motion for a directed verdict at the close of all of the evidence.

III. Conclusion

Thus, for the reasons set forth above, we conclude that none of Defendant's challenges to the trial court's judgment have merit. As a result, the trial court's judgment should be, and hereby is, affirmed.

AFFIRMED.

Judges MCGEE and STEELMAN concur.

Report per Rule 30(e).