NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0368

RHP (by JMM)

JMM

JASMINE NYQUASIA RICHARDSON

VERSUS

IMPERIAL FIRE & CASUALTY INSURANCE COMPANY AND JANELLE A. DUPRE

On Appeal from the 32nd Judicial District Court
Parish of Terrebonne, Louisiana
Docket No. 167,067, Division "E"
Honorable Randall L. Bethancourt, Judge Presiding

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BEFORE: PARRO, McDONALD, AND CRAIN, JJ.

Judgment rendered DEC 30 2014

McDonald, J. concurs.

Crain, J. concurs and assigns reasons. (by JMM)

PARRO, J.

This case stems from a collision between a car and a pedestrian. The pedestrian, Jasmine Richardson, appeals a district court judgment that dismissed her claim against the insurer of the car that struck her. The district court found that an exclusion in the personal auto liability insurance policy insuring the car applied to the actions of the driver of that car at the time of the accident. For the following reasons, we affirm.

BACKGROUND

On the evening of February 17, 2012, Janelle Dupre was driving a Chevrolet Malibu in Houma, shortly after the end of a Mardi Gras parade, when an unusual sequence of events occurred. Ms. Dupre was involved in several, separate automobile accidents within the span of about one hour. The first two accidents in which she was involved were with other vehicles, about a tenth of a mile apart. Then, Ms. Dupre was in a subsequent accident with a pedestrian, Ms. Richardson.

After the first accident occurred, a state trooper, Benjamin Thibodeaux, directed both Ms. Dupre and the other driver to pull their vehicles over to the shoulder of the road.[1] However, Mr. Thibodeaux stated that Ms. Dupre drove away from the scene of accident one.

Shortly after accident one, Ms. Dupre was involved in a second vehicular accident. Once again, Ms. Dupre did not remain at the scene of the accident, but drove away. According to Mr. Thibodeaux, Ms. Dupre later told him that she left the scene after getting scared. Mr. Thibodeaux reported that, after accident two, Ms. Dupre's car was involved in three more crashes, one of which involved a pedestrian.

Later, the pedestrian, Ms. Richardson, filed a petition for damages in the 32nd Judicial District Court against Ms. Dupre and the insurer that provided the personal auto policy on the car she was driving,[2] Imperial Fire & Casualty Insurance Company

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[1] Mr. Thibodeaux noted that, although he was a state trooper when he investigated accidents one and two, he left the state police about seven months later, and was not employed by the state police when he testified at his trial deposition in this matter.

[2] The insurance policy for the car in question was issued not to Ms. Dupre, but to Stephanie Rhodes. However, the parties do not dispute that Ms. Dupre had Ms. Rhodes's permission to drive the car at the

(Imperial). The district court tried the case based upon a stipulation, exhibits, and oral argument. The principal exhibits were the insurance policy and the trial deposition of Mr. Thibodeaux. Based on a previous stipulation, Ms. Dupre did not appear at the trial and her counsel waived his appearance. Subsequently, the district court rendered a judgment, and an amended judgment was rendered with the consent of the parties. Relevant here is the fact that the district court judgment dismissed Ms. Richardson's claim against Imperial.

The district court found that an exclusion in Imperial's policy excluded coverage for Ms. Richardson's claims. That policy provision excluded from liability coverage the following: "**bodily injury** . . . occurring while the **insured person** is engaged in a criminal act or fleeing therefrom, or is in the act of fleeing [or] otherwise evading law enforcement authorities." [3] Specifically, the district court found applicable the latter part of that exclusion: "fleeing [or] otherwise evading law enforcement authorities."

After the district court rendered judgment, Ms. Richardson filed a devolutive appeal, asserting three assignments of error:

1. The trial court legally erred by finding that the Imperial Fire & Casualty Insurance Company criminal acts exclusion (exclusion 20) in the automobile policy at issue was unambiguous.

2. The trial court legally erred by finding that the Imperial Fire & Casualty Insurance Company automobile policy at issue did not provide coverage to the tortfeasor and, thus, no protection to the innocent accident victim, Jasmine Richardson, because of the criminal acts exclusion.

3. The trial court legally erred by failing to recognize Louisiana's strong public policy that liability insurance is issued for the protection of the innocent injury victim as well as for the security of the insured.

APPLICABLE LAW

Standard of Review

The appellate jurisdiction of courts of appeal in civil cases encompasses both law and facts. LSA-Const. art. V, § 10(B). A court of appeal assesses questions about factual issues decided below using the manifest error standard of review. Rosell v.

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time of the accident. Thus, the policy covered Ms. Dupre as a permissive driver of a covered vehicle subject to the policy's terms and exclusions.

[3] The policy also contained a similar exclusion in the medical payments coverage portion of the policy, but that exclusion is not at issue in this appeal.

ESCO, 549 So.2d 840, 844 (La. 1989). Under that standard, "reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable." Id. By contrast, legal issues decided below are assessed by a court of appeal using the de novo standard of review. Kevin Associates, L.L.C. v. Crawford, 03-0211 (La. 1/30/04), 865 So.2d 34, 43. Under that standard, the decision by a tribunal below about the interpretation or application of the law is not entitled to deference. Id.

Generally, the "[i]nterpretation of an insurance contract is a matter of law." Maldonado v. Kiewit La. Co., 13-0756 (La. App. 1st Cir. 3/24/14), 146 So.3d 210, 218. However, resolving whether an insurance policy exclusion applies to exclude coverage in a particular case may present a mixed question of law and fact. See, e.g., Doerr v. Mobil Oil Corp., 00-0947 (La. 12/19/00), 774 So.2d 119, 135 n.17, opinion corrected on reh'g, 00-0947 (La. 3/16/01), 782 So.2d 573. "Typically, mixed questions of law and fact are subject to the manifest error standard of review." Ogea v. Merritt, 13-1085 (La. 12/10/13), 130 So.3d 888, 895 n.6. Nevertheless, where there is no dispute as to the dispositive facts, a mixed question of law and fact "can be decided as a matter of law and the review is *de novo*." Id.

Insurance Contract Interpretation

The supreme court has summarized a number of the settled principles of judicial interpretation of insurance contracts, as follows:

> An insurance policy is a contract between the parties and should be construed by using the general rules of interpretation of contracts set forth in the Louisiana Civil Code. The judiciary's role in interpreting insurance contracts is to ascertain the common intent of the parties to the contract. *See* La. Civ.Code art. 2045.
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> Words and phrases used in an insurance policy are to be construed using their plain, ordinary and generally prevailing meaning, unless the words have acquired a technical meaning. *See* La. Civ Code art. 2047. An insurance contract, however, should not be interpreted in an unreasonable or strained manner under the guise of contractual interpretation to enlarge or to restrict its provisions beyond what is reasonably contemplated by unambiguous terms or achieve an absurd conclusion. The rules of construction do not authorize a perversion of the words or the exercise of inventive powers to create an ambiguity where none exists or the making of a new contract when the terms express with sufficient clearness the parties' intent.

> Ambiguous policy provisions are generally construed against the insurer and in favor of coverage. La. Civ.Code art. 2056. Under this rule of strict construction, equivocal provisions seeking to narrow an insurer's obligation are strictly construed against the insurer. That strict construction principle applies only if the ambiguous policy provision is susceptible to two or more *reasonable* interpretations; for the rule of strict construction to apply, the insurance policy must be not only susceptible to two or more interpretations, but each of the alternative interpretations must be reasonable.
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> If the policy wording at issue is clear and unambiguously expresses the parties' intent, the insurance contract must be enforced as written. Courts lack the authority to alter the terms of insurance contracts under the guise of contractual interpretation when the policy's provisions are couched in unambiguous terms. The determination of whether a contract is clear or ambiguous is a question of law.

Cadwallader v. Allstate Ins. Co., 02-1637 (La. 6/27/03), 848 So.2d 577, 580 (internal jurisprudential citations omitted).

DISCUSSION

Standard of Review

As mentioned, no witnesses appeared in court to testify at the trial of Ms. Richardson's claim. The only testimony adduced came in the form of a written transcript of the deposition of Mr. Thibodeaux. The other principal evidence adduced was a copy of the Imperial auto policy. Thus, the dispositive facts of this case were not in dispute. In addition, as the evidence adduced in this case was all in writing, the district court and this court both review the evidence on an equal footing. The central issue in this case is the examination of whether a policy exclusion is applicable. As the dispositive facts of this particular case are not in dispute, we will review the policy exclusion issue de novo. See Ogea v. Merritt, 130 So.3d at 895 n.6.

Assignment of Error Number One

In her first assignment of error, Ms. Richardson argues that the district court should not have found the exclusion applicable because the exclusion was ambiguous. We disagree. The exclusion in question, "exclusion 20," states that the policy's liability coverage does not apply to the following: "**bodily injury** or **property damage** occurring while the **insured person** is engaged in a criminal act or fleeing therefrom, or is in the act of fleeing [or] otherwise evading law enforcement authorities."

(Emphasis in original.)

As noted earlier, resolving whether an insurance contract is ambiguous is a question of law. Cadwallader v. Allstate Ins. Co., 848 So.2d at 580. As such, it is a question we review de novo, without deference to the conclusion reached by the court below. See Kevin Associates, L.L.C. v. Crawford, 865 So.2d at 43. We find exclusion 20 unambiguous. As was stated by another court when it interpreted a statute, "words mean what they say[.]" BellSouth Mobility, Inc. v. Parish of Plaquemines, 40 F. Supp. 2d 372, 377 (E.D. La. 1999). The same reasoning applies here. Exclusion 20 plainly excludes from coverage injury or damages that occur as a result of the insured's: (1) engaging in a criminal act, (2) fleeing from a criminal act, (3) fleeing law enforcement authorities, or (4) evading law enforcement authorities. Thus, we find as a matter of law that exclusion 20 is not ambiguous.

Additionally, Ms. Richardson contends that exclusion 20 is inapplicable in this case because the portion of it excluding coverage for damages resulting from an insured's fleeing or evading law enforcement is ambiguous since it fails to define the terms "fleeing" or "evading." However, an insurance policy's mere failure to define a term does not necessarily make the policy ambiguous. See Cadwallader v. Allstate Ins. Co., 848 So.2d at 581. When an insurance contract does not define a particular term, Civil Code article 2047 instructs that "[t]he words of a contract must be given their generally prevailing meaning." For example, Black's Law Dictionary defines "flee" in everyday language: "1. To run away; to hasten off . . . 2. To run away or escape from danger, pursuit, or unpleasantness; to try to evade a problem[.]" Black's Law Dictionary 756 (10th ed. 2009).

With that definition in mind, we note that the officer who investigated Ms. Dupre's first two accidents, Mr. Thibodeaux, testified at his deposition that, although he had instructed the drivers in accident one to pull off to the shoulder of the road, "Ms. Dupre just left the scene." He also testified that, after accident two, "she said . . . she got scared and fled the scene." Mr. Thibodeaux's testimony was undisputed. Comparing his testimony with Black's definition of "flee," his testimony about Ms.

Dupre's actions squarely fits that definition. Thus, we find that the record supports the district court's finding that the "fleeing or evading" portion of the policy exclusion fits Ms. Dupre's conduct in this case, and we likewise agree with the district court's legal conclusion that this exclusion put Ms. Richardson's damages resulting from Ms. Dupre's actions outside the policy's coverage.

In sum, we conclude that Ms. Richardson's argument that this exclusion should be inapplicable to this case lacks merit.

Assignment of Error Number Two

In her second assignment of error, Ms. Richardson asserts that the district court was incorrect in its legal finding that exclusion 20 provided no protection to her, as she was an innocent victim in the accident. Ms. Richardson describes this exclusion as a criminal acts exclusion or a violation of the law exclusion, and argues that such an exclusion has been held violative of this state's "public policy established for the protection of innocent injury victims." In support of that argument, one authority Ms. Richardson cites to is Young v. Brown, 27,018 (La. App. 2nd Cir. 6/21/95), 658 So.2d 750, writ denied, 95-1811 (La. 10/27/95), 662 So.2d 1. In citing Young, Ms. Richardson acknowledges that the decision also states that another public policy in our state is that insurance is issued for the security of the insured. Young involved an incident in which the plaintiff, Jessie Young, was injured by Thomas Brown, a man who "had consumed several beers and may have been intoxicated[.]" Id. at 751. Mr. Brown, while carrying a gun, stumbled as he approached a group of persons and "fell into the plaintiff." Id. At that point, "[t]he gun fired and plaintiff was shot in the stomach." Id. at 752. Mr. Brown was subsequently charged with the crime of negligent injuring, to which he pleaded guilty. Id. at 751. Mr. Young brought a civil suit against Mr. Brown and his insurer, Allstate Insurance Company. Allstate moved for summary judgment because of a policy exclusion, the district court granted the summary judgment, and Mr. Young appealed.

The policy exclusion in Young provided: "[w]e do not cover any bodily injury or property damage which may reasonably be expected to result from the intentional or

criminal acts of an insured person or which is in fact intended by an insured person." Id. at 752. Allstate argued on appeal that Mr. Brown's guilty plea to a criminal charge in connection with the incident necessarily meant that this exclusion placed Mr. Brown's actions outside the policy's coverage. Id. The court of appeal disagreed, and held that the exclusion was contrary to law in two respects. First, the court of appeal reasoned that the exclusion, by excluding coverage "for non-intentional, inadvertent acts of criminal negligence violates Louisiana's public policy established for the protection of innocent injury victims." Id. at 754. Second, the court of appeal also reasoned that the exclusion in Young was ambiguous in that its scope of coverage was subject to different reasonable interpretations by an insurance purchaser. Id. at 754-55.

We find that Young is not dispositive of the case before us. First, the exclusion in Young is different from the exclusion here. While they both share references to illegal activity, the two exclusions differ in important respects. As noted earlier, the exclusion here removes from coverage damages that occur when the insured is: (1) engaging in a criminal act, (2) fleeing from a criminal act, (3) fleeing law enforcement authorities, or (4) evading law enforcement authorities. The district court here, in its judgment signed November 21, 2013, did not rely upon the first two types of activity named in the exclusion, the criminal acts references.[4] Instead, the district court found that "Imperial has met its burden of proving that the 'fleeing or otherwise evading law enforcement authorities' exclusion in the Imperial policy excludes coverage for Richardson's claims." Thus, unlike what the district court did in Young,[5] the district court in the case here did not point to any criminal activity by Ms. Dupre as the reason for the exclusion's applicability.

Moreover, the second circuit's finding of ambiguity in the exclusion in Young

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[4] While the district court amended the judgment it signed November 21, 2013, by amended judgment signed December 4, 2013, that amended judgment did not change the portions of the original judgment that are at issue in this appeal. We note that, although the amended judgment did make a substantive change, that amendment was done with the consent of the parties. See Villaume v. Villaume, 363 So.2d 448, 450-51 (La. 1978); Radcliffe 10, L.L.C. v. Zip Tube Systems of La., Inc., 09-0417 (La. App. 1st Cir. 12/29/09), 30 So.3d 825, 831, writ denied, 10-0244 (La. 4/9/10), 31 So.3d 394.

[5] In Young, the district court had granted summary judgment to the defendant insurer because Mr. Brown had pleaded guilty to a criminal charge, and the district court found that proved "that the acts leading up to the plaintiff's injury were criminal in nature." Young v. Brown, 658 So.2d at 752.

does not advance Ms. Richardson's position here, because the two exclusionary provisions are different, and we find no ambiguity in the provision before us. In addition, unlike in Young, the parties point to no evidence in the record of this appeal of any criminal conviction of the insured, Ms. Dupre, and we find none. We agree with the district court that the relevant portion of the exclusion here is the portion excluding coverage for damages from the insured's "fleeing [or] otherwise evading law enforcement authorities." In sum, we find that the Second Circuit's decision in Young simply does not speak to the case before us.

Ms. Richardson also directs attention to another Second Circuit decision, Sledge v. Continental Cas. Co., 25,770 (La. App. 2nd Cir. 6/24/94), 639 So.2d 805. Ms. Richardson asserts Sledge is relevant here because that decision involves a "violation of law exclusion." We agree that Sledge is a case that involved a violation of law exclusion; however, we disagree that it supports Ms. Richardson's position.

The exclusion in Sledge stated that it excluded from liability coverage injury or damage arising from "[a]n act committed in violation of a law or ordinance by, or with the knowledge or the expressed or implied consent of a covered person[.]" Sledge, 639 So.2d at 812. The Second Circuit found, as a matter of law, that the insurer's interpretation of the exclusion in Sledge was overly broad, and therefore held that the exclusion could only apply to acts that constituted criminal offenses that normally required specific or general criminal intent, or equivalent offenses. See id. at 812-13. The Second Circuit reasoned that the lack of specificity in the exclusion there meant that the scope of the exclusion could reach an almost limitless range of behavior, and such a broad scope would not have been contemplated by a policyholder. See id. at 812. It was that potentially wide reach of the exclusion that resulted in the Second Circuit's holding that the law allowed the exclusion to reach only criminal conduct of a serious nature. See id. at 812-13. The Second Circuit then found that the conduct at issue there, a teenaged driver's operating a vehicle late at night in violation of a state law, did not fall within the exclusion's allowable reach. See id.

Unlike the exclusion in Sledge, the exclusion here is not one that deals solely

with illegal activity of the insured. While one part of the exclusion here does exclude from coverage the damages from an insured's criminal acts, it also goes on to specifically exclude coverage for damages from "fleeing [or] otherwise evading law enforcement authorities." Thus, unlike the Sledge exclusion, the Imperial exclusion explicitly put the policyholder on notice that coverage would not extend to damages arising from fleeing or evading law enforcement. Therefore, Sledge simply does not address the enforceability of the part of the exclusion relevant here, the "fleeing or otherwise evading law enforcement" portion, and is not dispositive of this appeal.

Thus, we find that Ms. Richardson's second assignment of error lacks merit.

Assignment of Error Number Three

In her third assignment of error, Ms. Richardson argues that the exclusion clause in the Imperial policy contravenes public policy and, therefore, the exclusion is not legally enforceable. Specifically, Ms. Richardson points to the public policy interest in having insurance policies protect innocent victims, although she does acknowledge that another public policy interest that such insurance serves is to provide the insured protection against damage claims.

This policy argument by Ms. Richardson runs counter to the legal principle that "the Civil Code establishes the freedom to contract on all matters not forbidden by law." Travelers Ins. Co. v. Joseph, 95-0200 (La. 6/30/95), 656 So.2d 1000, 1004. Ms. Richardson has pointed us to no statute that prohibits an insured from contracting with its liability insurer to do what the relevant part of exclusion 20 here does, exclude coverage for damages resulting from acts by the insured when fleeing law enforcement authorities or evading law enforcement authorities. Further, we are aware of no such statute. Therefore, we find this assignment lacks merit.

Other Arguments by Ms. Richardson

Separate from her assignments of error, Ms. Richardson makes two other arguments to this court. We now turn to those.

First, Ms. Richardson makes the argument that the exclusion clause should not apply in this case because Imperial "introduced no evidence showing that [Ms. Dupre]

was charged with any crimes for striking [Ms. Richardson] with her car and no evidence concerning the disposition of the charges filed against [Ms. Dupre] related to the other wrecks." This argument is fatally flawed. The argument assumes that the insured had to have been convicted of a crime for the exclusion to apply. However, as mentioned earlier, the portion of the exclusion that the district court found relevant, and which we find relevant, does not require the insured to have been charged with a crime or require that there have been any particular disposition of criminal charges. That portion of the exclusion removes from coverage any damages from the insured's simply fleeing or evading law enforcement authorities. Importantly, the four component parts of the exclusion in question are phrased in the disjunctive, using the word "or"; not in the conjunctive, using the word "and." Logically, a person may flee or evade law enforcement without necessarily also being charged with, much less convicted of, a crime. Thus, this argument by Ms. Richardson misses the mark.

Second, Ms. Richardson puts forward an argument based upon a section of the Motor Vehicle Safety Responsibility Law that contains definitions pertaining to liability insurance policies. She argues that one part of that statute, LSA-R.S. 32:900(B)(1)(a), mandates minimum auto liability limits of $15,000. She then states that, because this statute only contains a provision that allows for the exclusion of certain named persons, then exclusion 20 in the policy at issue may only apply to claims of more than $15,000. We note that Ms. Richardson cites no legal authorities that support this argument, and we have found none. We agree that the statute in question does mandate a $15,000 minimum amount of coverage for an owner of a motor vehicle, and it does permit excluding "a named person as an insured under a commercial policy" under certain conditions. LSA-R.S. 32:900(B)(2)(d). However, the first problem with Ms. Richardson's argument is that the policy at issue here is not a commercial policy, but rather a personal auto policy. Additionally, the statute does not provide that there may be but one policy exclusion. Exclusions are common in auto liability policies. If the legislature had intended to rule out the application of those exclusions to the first $15,000 of all auto liability policies, the legislature would not have left that idea to be

inferred, but would have made it explicit. The legislature has not written that idea into the statute, and it is not the function of the judiciary to do so. See J. Reed Constructors, Inc. v. Roofing Supply Grp., L.L.C., 12-2136 (La. App. 1st Cir. 11/1/13), 135 So.3d 752, 756, writ denied, 14-1031 (La. 9/12/14), 148 So.3d 931.

CONCLUSION

For the reasons stated above, we affirm the district court's judgment dismissing Jasmine Richardson's claim against Imperial Fire & Casualty Insurance Company on the grounds that exclusion 20 in the Imperial personal auto policy excluded coverage for claims resulting from the actions of Janelle Dupre. Costs of this appeal are taxed to Jasmine Nyquasia Richardson.

AFFIRMED.

JASMINE NYQUASIA RICHARDSON	**STATE OF LOUISIANA**
	COURT OF APPEAL
VERSUS	**FIRST CIRCUIT**
IMPERIAL FIRE & CASUALTY INSURANCE COMPANY AND JANELLE A. SUPRE	**2014 CA 0368**

CRAIN, J., concurs in the result.

I concur in the result reached by the majority and would additionally vacate the amended judgment signed by the district court, which was also appealed. Although the supreme court has recognized that a final judgment may be substantively amended by consent of the parties, competent evidence of that consent must appear ***in the record.*** *See LaBove v. Theriot*, 597 So. 2d 1007, 1011 (La. 1992); *see also Glass v. Voiron*, 08-1347 (La. App. 1 Cir. 3/27/09), 2009WL838682; *Starnes v. Asplundh Tree Expert Co.*, 94-1647 (La. App. 1 Cir. 10/6/95), 670 So. 2d 1242, 1246. Since the record does not contain evidence reflecting the parties' consent to the amendment of the original judgment, I would find that the amended judgment is absolutely null. *See* La. Code Civ. Pro. art. 2002; *see also In re Succession of Vaughn*, 12-2248 (La. App. 1 Cir. 12/3/14), 2014WL6853930 (Crain, dissenting).