

Rel: August 20, 2021

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

---

1200462

---

Melvin James

v.

Assurance America Insurance Company

Appeal from Montgomery Circuit Court  
(CV-20-900265)

WISE, Justice.

Melvin James, one of the defendants below, appeals from an order of the Montgomery Circuit Court entering a summary judgment in favor of Assurance America Insurance Company ("Assurance"), the plaintiff

1200462

below, on its complaint for a declaratory judgment. We reverse and remand.

### Facts and Procedural History

On February 17, 2019, Bernardino Mejia and James were involved in a motor-vehicle accident in Montgomery. Mejia was driving a 2003 Chrysler Town and Country minivan, and James was driving a 2004 Toyota Camry automobile. As a result of the accident, Mejia's three children were ejected from the Town and Country. One of Mejia's children died, and the other two were seriously injured. James was also injured as a result of the accident. Mejia was arrested, and, on September 23, 2019, he was indicted for one count of reckless murder and four counts of first-degree assault as a result of the accident. He remains incarcerated on those charges.

On April 30, 2019, James sued Mejia, ALFA Insurance Corporation, USAA Casualty Insurance Company, and various fictitiously named defendants in the Montgomery Circuit Court. The complaint stated claims of negligence, negligence per se, wantonness, and breach of contract. On February 3, 2020, citing his Fifth Amendment privilege

1200462

against self-incrimination, Mejia filed a motion to stay the civil proceeding until the accident-related criminal proceedings against him were concluded. On that same date, the trial court granted the motion for a stay.

On February 17, 2020, Assurance filed a complaint for a declaratory judgment against Mejia and James in the Montgomery Circuit Court. In its complaint, Assurance included the following factual allegations:

"5. An actual controversy of a judicable nature exists between the parties involving claims for injuries and damages claimed by Melvin Alphonsa James and the possibility of coverage available under [an] Assurance America insurance Company policy ... under which Edgar Perez Domingo was the named insured. Defendant Bernardino Mejia was not listed on said policy; however, the 2003 Chevrolet Town & Country LX ... involved in the subject accident was listed on said policy.

"6. Defendant Melvin Alphonsa James has filed suit against Bernardino Mejia, USAA, and ALFA Mutual Insurance Company in the Circuit Court of Montgomery County, Alabama, under Civil Action No.: CV-2019-900770.

"7. Bernardino Mejia was not the named insured under the Assurance America insurance policy ... nor was he an individual listed on said policy. At the time of the accident giving rise to the aforementioned civil action, Bernardino Mejia did not have any valid driver's license."

1200462

Assurance also asserted that the policy that covered the Town and Country that Mejia was driving excludes coverage for injury or damage caused by an insured vehicle when driven by a person who is not listed as a driver on the declarations page of the policy and who does not have a valid driver's license. Assurance requested a judgment declaring the following:

"a. That [the] Assurance America insurance policy ... with an effective coverage period of November 9, 2018 - May 9, 2019 does not afford liability coverage to Bernardino Mejia for the February 17, 2019, motor vehicle accident which is the basis of Melvin James['s] claims against Mr. Mejia in the aforementioned civil action pending in Montgomery, Alabama;

"b. That in addition to the foregoing, ... the Court declare that the subject policy excludes all awards for punitive damages which may be awarded against Bernardino Mejia to Melvin Alphonsa James in the aforementioned civil action; and

"c. That Assurance America does not owe defense or indemnification to any of the parties in the Circuit Court civil action pending in Montgomery County under case number CV-2019-900770 in which Melvin Alphonsa James is the plaintiff and Bernardino Mejia is one of the defendants."

On February 26, 2020, James filed an answer to the complaint. On April 14, 2020, Assurance moved for the entry of a default against Mejia.

1200462

On April 16, 2020, James filed a response in opposition to Assurance's motion for the entry of a default against Mejia.

On May 26, 2020, James served discovery requests on Assurance. Assurance served its responses and/or objections to the discovery requests on June 25, 2020.

On August 23, 2020, Assurance filed a motion for a summary judgment. Among other things, it argued that, "because Bernardino Mejia was an unlicensed driver and was not listed on [the] insurance policy[, he] is therefore excluded from coverage for the subject vehicle accident." In support of its contention that Mejia did not have a valid driver's license, Assurance submitted an unofficial copy of an Alabama Uniform Traffic Crash Report regarding the accident, a screenshot of the results from a purported database search for a driver's license for Bernardino Francisco Mejia, and an affidavit from Annekje Van de Water.

In her affidavit, Van de Water stated:

"1. My name is Annekje Van de Water, and I am over the age of majority and competent to testify as to the matters contained herein based on my own personal knowledge.

"2. I hold the title of Liability Supervisor for Assurance America Insurance Company. I am the assigned claims supervisor for a February 17, 2019 motor vehicle accident occurring in Montgomery County, Alabama involving Bernardino Mejia and Melvin Alphonsa James. ...

"3. At the time of the accident, Mr. Mejia was driving a 2003 Chrysler Town and Country which was listed on [an] Assurance America Insurance Company [policy] under which Edgar Perez Domingo was Named Insured and Edgar Perez Domingo and Everilda Mejia Domingo were listed drivers. Bernardino Mejia was neither a Named Insured under said policy nor a listed driver. A true and correct reproduced copy of said policy is attached hereto as Attachment 1.

"4. Assurance America received the Alabama Uniform Traffic Crash Report which is attached hereto as Attachment 2, and this report noted that Bernardino Mejia did not have a driver's license at the time of the accident.

"5. Assurance America also employed additional effort to confirm whether or not Bernardino Mejia had a valid driver's license at the time of the subject accident. Assurance America hired an independent adjuster to make contact with Bernardino Mejia and said adjuster traveled to the address listed on the Alabama Uniform Traffic Crash Report. This occurred on March 26, 2019. The independent adjuster was unable to establish communications with Mr. Mejia as Mr. Mejia had been arrested on February 26, 2019 and charged with assault first degree and reckless murder. Mr. Mejia remains incarcerated in the Mac Sim Butler Detention Facility.

"6. Assurance America has also searched a reputable database for the existence of any valid driver's license for

Bernardino Mejia. Said database is named TLOxp TransUnion. Attachment 3 is a screenshot of the result from Assurance America's search on the aforementioned database, which shows that there were no results found for a driver's license for anyone named Bernardino Francisco Mejia born on February 22, 1988.

"7. Assurance America retained counsel to assist in the coverage investigation and repeated attempts were made with Mr. Mejia's assigned public defender attorney for a meeting with Mr. Mejia for purposes of further discussing whether he had a license at the time of the accident. Mr. Mejia later changed attorneys, and Mr. Mejia's new attorney will not allow Mr. Mejia to speak with anyone regarding the subject accident.

"8. Mr. Mejia's criminal prosecution for reckless murder is pending in the Circuit Court of Montgomery County, Alabama. Melvin Alphonsa James filed suit against Bernardino Mejia, USAA, and Alfa Mutual Insurance Company in the Circuit Court of Montgomery County, Alabama under Civil Action Number CV-2019-900770. Assurance America Insurance Company filed a Complaint for Declaratory Judgment on February 17, 2020 in the Circuit Court of Montgomery County under case number CV-2020-900265. Bernardino Mejia was duly served by Deputy Sheriff with the Summons and Complaint in the Declaratory Judgment action on February [19], 2020. Bernardino Mejia never filed a responsive pleading or otherwise appeared in the Declaratory Judgment action, and a Motion for Entry of Default was filed on April 14, 2020.

"9. Based on Assurance America's coverage investigation, it was determined that Bernardino Mejia did not have a valid driver's license at the time of the subject accident which occurred on February 17, 2019. Moreover, Bernardino Mejia

1200462

was not a Named Insured under the subject policy ... and was not a listed driver on said policy. Said policy contains the following exclusions:

" 'Exclusions

" 'Coverage for Liability to Others and our duty to defend do not apply to:

" '13. Bodily injury or property damage caused by an insured car when it is driven by any person who:

" 'a. Is not a listed driver on the Declarations Page; and

" 'b. Does not have a valid driver's license.

" '21. Punitive damages of any kind other than Punitive damages awarded pursuant to the Alabama Wrongful Death Act.' "

On September 8, 2020, James filed a response in opposition to Assurance's motion for a summary judgment. He argued, in part, that Assurance had failed to prove that Mejia did not have a driver's license. Specifically, James contended that both the accident report and the computer screenshot were hearsay, that neither was admissible evidence, and that neither established that Mejia did not have a driver's license.



1200462

On September 15, 2020, the trial court conducted a hearing on the motion for a summary judgment and the opposition thereto.<sup>1</sup> Afterward, the trial court allowed the parties to present supplemental arguments in support of their respective positions. Assurance and James submitted supplemental filings that reiterated their previous arguments.

On October 22, 2020, Assurance filed a motion to continue the trial setting and suggested that the matter should be continued until Mejia's criminal proceedings had been completed so he could provide sworn testimony. In that motion, Assurance noted:

"Mr. Mejia is presently under indictment and awaits trial for murder (reckless) in connection with the automobile accident at issue in this declaratory judgment action. Mr. Mejia's lawyers will not allow him to be deposed and will not otherwise provide any information on behalf of Mr. Mejia. This refusal to provide information includes the parties' being unable to obtain sworn testimony from Mr. Mejia in order to confirm whether he had a valid driver's license at the time of the accident. ... Mr. Mejia's criminal case is pending in the Circuit Court of Montgomery County (CC-2019-1090)."

---

<sup>1</sup>The parties did not include a transcript of that hearing in the record before this Court.

1200462

On October 27, 2020, the parties submitted a joint status report. With respect to discovery, that report stated: "Assurance America desires to depose the investigating officer prior to trial as well as Bernardino Mejia. Mr. Mejia presently cannot be deposed as he is under indictment for Murder-Reckless and awaits trial."

On October 28, 2020, the trial court canceled the bench trial that had been scheduled for November 30, 2020. However, on December 17, 2020, the trial court entered an order in which it summarily granted Assurance's motion for a summary judgment. On December 18, 2020, James filed a motion to reconsider the order entering the summary judgment in favor of Assurance.

On December 30, 2020, James filed a motion to vacate the summary judgment, to continue the case until after the conclusion of his civil action, and to conduct an expedited hearing on his motion. In that motion, he argued, in part, that discovery was not complete, explaining: "Because Judge Pool stayed the underlying [civil] action and Bernardino Mejia is standing on his Fifth Amendment rights, the defendant has been unable to obtain any discovery from Mejia on any issue, particularly whether he

1200462

had a valid driver's license at the time of the accident." James also reiterated Assurance's argument from its motion to continue that the parties had not been allowed to obtain sworn testimony or even information from Mejia. He further cited to Rule 56(f), Ala. R. Civ. P., and the affidavit of Van de Water, which Assurance had previously filed, to support his request for a continuance. James subsequently renewed that motion.

James's postjudgment motions were overruled by operation of law.

This appeal followed.

#### Standard of Review

" "This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie

showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

"Prince v. Poole, 935 So. 2d 431, 442 (Ala. 2006) (quoting Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004))."

Brown v. W.P. Media, Inc., 17 So. 3d 1167, 1169 (Ala. 2009).

"The role of this Court in reviewing a summary judgment is well established -- we review a summary judgment de novo, " 'apply[ing] the same standard of review as the trial court applied.' " ' Horn v. Fadal Machining Ctrs., LLC, 972 So. 2d 63, 69 (Ala. 2007) (quoting Stokes v. Ferguson, 952 So. 2d 355, 357 (Ala. 2006), quoting in turn Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038 (Ala. 2004)). "If the movant meets [its] burden of production by making a prima facie showing that [it] is entitled to a summary judgment, 'then the burden shifts to the nonmovant to rebut the prima facie showing of the movant.' " ' Horn, 972 So. 2d at 69 (quoting American Gen. Life & Accident Ins. Co. v. Underwood, 886 So. 2d 807, 811-12 (Ala. 2004), quoting in turn Lucas v. Alfa Mut. Ins. Co., 622 So. 2d 907, 909 (Ala. 1993)).

" '[T]he manner in which the [summary-judgment] movant's burden of production is met depends upon which party has the burden of proof ... at trial.' " Ex parte General Motors Corp., 769 So. 2d 903, 909 (Ala. 1999) (quoting Berner v. Caldwell, 543 So. 2d 686, 691 (Ala. 1989) (Houston, J., concurring specially)). If ... " 'the movant has the burden of proof at trial, the movant must support his motion with credible evidence, using any of the material specified in Rule 56(c), [Ala.] R. Civ. P. ("pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits").' " 769 So. 2d at 909. " 'The movant's proof must be such that he would be entitled to a directed verdict [now referred to as a judgment as a matter of law, see Rule 50, Ala. R. Civ. P.] if this evidence was not controverted at trial.' " Id. In other words, "when the movant has the burden [of proof at trial], its own submissions in support of the motion must entitle it to judgment as a matter of law." Albee Tomato, Inc. v. A.B. Shalom Produce Corp., 155 F.3d 612, 618 (2d Cir. 1998) (emphasis added). See also Equal Employment Opportunity Comm'n v. Union Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico, 279 F.3d 49 (1st Cir. 2002); Rushing v. Kansas City Southern Ry., 185 F.3d 496 (5th Cir. 1999); Fontenot v. Upjohn Co., 780 F.2d 1190 (5th Cir. 1986); Calderone v. United States, 799 F.2d 254 (6th Cir. 1986).'

"Denmark v. Mercantile Stores Co., 844 So. 2d 1189, 1195 (Ala. 2002). Moreover, we review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986)."

White Sands Grp., L.L.C. v. PRS II, LLC, 32 So. 3d 5, 10-11 (Ala. 2009).

Discussion

James argues that the trial court erroneously granted Assurance's motion for a summary judgment. Specifically, he contends that Assurance did not produce substantial admissible evidence to establish that Mejia did not have a valid driver's license at the time of the accident and therefore did not shift the burden of proof to him. We agree.

With regard to summary-judgment motions, Rule 56, Ala. R. Civ. P., provides, in relevant part:

"(c) Motion and Proceedings Thereon.

"(1) Form of Motion and Statement in Opposition Thereto. The motion shall be supported by a narrative summary of what the movant contends to be the undisputed material facts; that narrative summary may be set forth in the motion or may be attached as an exhibit. The narrative summary shall be supported by specific references to pleadings, portions of discovery materials, or affidavits and may include citations to legal authority. Any supporting documents that are not on file shall be attached as exhibits. ...

"....

"....

1200462

"(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. ..."

Also,

"[w]hile Rule 56, Ala. R. Civ. P., permits evidence in the form of depositions, answers to interrogatories, admissions on file, and affidavits to be submitted in support of, or in opposition to, a summary judgment motion, that evidence must, nevertheless, conform to the requirements of Rule 56(e) and be admissible at trial. Welch v. Houston County Hosp. Bd., 502 So. 2d 340 (Ala. 1987)."

Dunaway v. King, 510 So. 2d 543, 545 (Ala. 1987). Finally,

"[t]he contents of an affidavit filed in support of, or in opposition to, a motion for summary judgment must be asserted upon personal knowledge of the affiant, must set forth facts that would be admissible in evidence, and must show affirmatively that the affiant is competent to testify to the matters asserted. These requirements are mandatory. Arrington v. Working Woman's Home, 368 So. 2d 851, 854 (Ala.1979); Oliver v. Brock, 342 So. 2d 1, 4 (Ala. 1976)."

Crawford v. Hall, 531 So. 2d 874, 875 (Ala. 1988).

Although Assurance attempted to support its contention in its summary-judgment motion that Mejia did not have a driver's license at

1200462

the time of the accident with Van de Water's affidavit, that affidavit did not comply with the requirements of Rule 56(e), as set forth above. In her affidavit, Van de Water primarily relied on an unofficial copy of the accident report and a screenshot of a purported database search to conclude that Mejia did not have a driver's license at the time of the accident. However, neither the copy of the unofficial accident report nor the copy of the screenshot was sworn or certified, as required by Rule 56(e), Ala. R. Civ. P. Also, many of the other allegations included in Van de Water's affidavit about attempts to ascertain whether Mejia had a valid driver's license at the time of the accident are based on actions that, by her admission, were taken by other people instead of by her.

"[T]he attached documents did not conform to the requirements of Rule 56(e), Ala. R. Civ. P., which states that '[s]worn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.' (Emphasis supplied.) See, Osborn v. Johns, 468 So. 2d 103 (Ala. 1985) (counter-affidavit restating allegations and not accompanied by certified copies of documents referred to in affidavit insufficient to preclude summary judgment); Guess v. Snyder, 378 So. 2d 691 (Ala. 1979) (counter-affidavit with unsworn letter attached insufficient to raise factual issue to preclude summary judgment). See, also, Ala. R. Civ. P. 44(a)(1); United States v. Dibble, 429 F.2d 598, 602 (9th Cir. 1970) ('a writing is not authenticated merely by attaching it to



1200462

an affidavit' and '[a]n official record is authenticated by the testimony of a witness who knows and attests to the facts stated in Rule 44 of the Federal Rules of Civil Procedure').

"Moreover, much of what [Van de Water] stated in her affidavit was not even mentioned in the uncertified documents attached to the affidavit or in any affidavit or document that is a part of the record on appeal. ... [S]he must have relied on further, unspecified sources for her 'understanding' of the facts. Under Welch v. Houston County Hospital Bd., 502 So. 2d 340 (Ala. 1987), such an affidavit is inadmissible."

Crawford, 531 So. 2d at 875.

Further, the unofficial copy of the accident report constituted inadmissible hearsay.

"Alabama courts have acknowledged the general principle that police reports, whether of accidents or other events, may be excluded as hearsay. See Gardner v. Williams, 390 So. 2d 304, 307 (Ala. Civ. App. 1980) (noting that 'the reports of investigating officers are not ordinarily admissible as they are deemed hearsay'); Nettles v. Bishop, 289 Ala. 100, 105, 266 So. 2d 260, 264 (1972) (noting the apparent general rule that 'the report of an investigating officer is not admissible in evidence as being hearsay'); and Vest v. Gay, 275 Ala. 286, 290, 154 So. 2d 297, 300 (1963) (acknowledging 'the settled rule in our jurisdiction that the reports of investigating officers are not admissible in evidence, as being hearsay')."

1200462

Crusoe v. Davis, 176 So. 3d 1200, 1203 (Ala. 2015)(footnote omitted). Also, in Mainor v. Hayneville Telephone Co., 715 So. 2d 800, 801-02 (Ala. Civ. App. 1997), the Court of Civil Appeals explained:

"Mainor contends that the trial court erred in admitting into evidence certified copies of four Alabama Uniform Accident Reports. One of the reports concerned the accident at issue; the other three concerned prior accidents involving Mainor. The accident reports were admitted over Mainor's objections.

"Both at trial and on appeal, Mainor argued that the admission of the accident reports violated § 32-10-11, Ala. Code 1975, which provides that police accident reports are inadmissible in any civil or criminal trial arising out of an accident. The statute provides:

"'All accident reports made by persons involved in accidents or by garages shall be without prejudice to the individual so reporting and shall be for the confidential use of the director [of the Department of Public Safety] or of other state agencies having use for the records for accident prevention purposes; except, that the director may disclose the identity of a person involved in an accident when such identity is not otherwise known or when such person denies his presence at such accident. No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident; except that the department shall furnish upon demand of any person who has, or claims to have made such a report, or upon demand of any court, a certificate showing that a specified

accident report has or has not been made to the director solely to prove compliance or a failure to comply with the requirement that such a report be made to the director.'

"§ 32-10-11, Ala. Code 1975 (emphasis added).

"In their brief to this court, Wood and Hayneville Telephone cite Rule 101, Ala. R. Evid., which provides that the recently adopted Rules of Evidence govern proceedings in the courts of Alabama. That rule, they argue, shows that 'the clear and unambiguous intent of the Alabama Supreme Court in promulgating the Alabama Rules of Evidence is that the Rules shall be deemed, for all purposes, to have superseded any prior cases or statutes which are in conflict, in any way, directly or indirectly,' with the Rules of Evidence. However, the Rules of Evidence themselves tell us otherwise.

"Rule 402, Ala. R. Evid., provides in pertinent part that, 'All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or that of the State of Alabama, by statute, by these rules, or by other rules applicable in the courts of this State.' In his book Gamble's Alabama Rules of Evidence, § 402 (1995), Dean Gamble cites § 32-10-11 as an example of a statute that specifically excludes evidence that would otherwise be admissible.

"Section 32-10-11 provides that no Alabama Uniform Accident Report shall be used as evidence in any civil or criminal trial arising out of an accident. The statute does not allow for an exception that would be applicable in this case. Therefore, we hold that the trial court erred in admitting the police accident reports."

1200462

See also Stevens v. Stanford, 766 So. 2d 849, 852 (Ala. Civ. App. 1999)(holding that an accident report did not "set forth evidence that would be admissible at trial").

Assurance offered the unofficial copy of the accident report to establish that Mejia did not have a valid driver's license at the time of the accident because the investigating officer used a code for "Not Applicable" in the blank where Mejia's driver's license number was to be recorded. We question whether that code meant that Mejia did not have a driver's license or was used simply because the responding officer was not able to determine whether Mejia actually had a driver's license. However, we need not resolve that question because, based on the authorities cited above, the accident report constituted hearsay and was not admissible to support Assurance's motion for a summary judgment.

Finally, the screenshot of the purported database search, which indicated that "there were no results found for driver's licenses for people named BERNARDINO FRANCISCO MEJIA born on 2/22/1988 in the United States," constituted inadmissible hearsay. Although Assurance stated that the database was named TLOxp TransUnion and made the

1200462

bare assertion that that database was reputable, it did not offer any evidence to authenticate the screenshot or to establish its relevance and reliability. It did not make any attempt to establish what type of organization TLOxp TransUnion was, where the organization was located, who was in charge of the organization, who had access to the database, what type of software the database used, the sources of the information included in the database, the extent of the search capabilities of the database, the accuracy of the database, or whether the database included driver's licenses from every state in the United States and every country in the world. Assurance also did not indicate who had conducted the database search and did not include any explanation for including the middle name "Francisco" in its search. At best, the screenshot constituted hearsay and was not admissible to support Assurance's motion for a summary judgment.

For these reasons, Assurance did not produce substantial admissible evidence to establish that Mejia did not have a valid driver's license at the time of the accident and therefore did not shift the burden of proof to

1200462

James. Accordingly, the trial court erred in granting Assurance's motion for a summary judgment.

Conclusion

For the above-stated reasons, we reverse the trial court's judgment and remand this case for proceedings that are consistent with this opinion.

**REVERSED AND REMANDED.**

Bolin, Sellers, and Stewart, JJ., concur.

Parker, C.J., concurs in the result.