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Jun 29 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No: 2014-CP-45-00132

Appellate Case No: 2021-000835

South Carolina Farm Bureau Ins. Co, Plaintiff,
v.

Marion L. Driggers, Shiralee Driggers, Tammy D.
Floyd, Estate of Arthur McKenzie, Arthur McKenzie
a/k/a Arther McKenzie, The Travelers Home and Marine
Insurance Company, The United States of America acting
by and through Its agency, The Internal Revenue Service,
and The South Carolina Tax Commission, Defendants,

Of Whom Marion L Driggers is Appellant and The Travelers
Home and Marine Insurance Company is the Respondent.

***SOUTH CAROLINA FARM BUREAU'S RETURN
TO TRAVELER'S MOTION TO STRIKE***

Travelers has moved the Court to strike South Carolina Farm Bureau's (Hereinafter, "SCFB") Initial Brief and Designation in the captioned case. SCFB hereby makes Return to this Motion and asks that the same be denied.

Travelers claims that because SCFB was not a listed Respondent in the appeal, that it is not allowed to participate in the briefing for the case. Essentially, Travelers claims that Farm Bureau lacks standing to file a brief and designation in this case. To support this claim, Travelers points to the fact that certain signatures in its prior filing alternately reference SCFB by name or as an Appellant. Travelers then says that this shows that SCFB knew that it could not file a brief in the case. That is patently false.

The confusion in signatures arose because SCFB was uncertain as to how it should reference itself in the case. The caption of the Initial Brief by Mr. Driggers, the Appellant, called SCFB "Plaintiff-Appellant" and designates Mr. Driggers as "Defendant-Appellant." When the undersigned's office began drafting the Initial Brief, there was uncertainty as to this designation. SCFB is the Plaintiff in the underlying lawsuit, and it is the Appellant in another appeal arising from the same lawsuit and pending before this Court as Case No. 2021-000494. Because SCFB was the Plaintiff-Appellant in 2021-000494 but had not filed a Notice of Appeal in this action, 2021-000835, the undersigned's associate called the Court of Appeals manager for 2021-000835 and left a message asking for clarification on this issue. Counsel did not get guidance by way of a return telephone call, unless counsel somehow missed the message, but counsel understood that staff was likely busy due to the Covid backlog and/or that perhaps this was an issue as to which no guidance would be provided. At the time of the referenced call, counsel was partway through the drafting process, and decided to reference SCFB by name, pending any further or alternate instructions. Apparently, counsel did not edit all references in the filing.

SCFB contends that it does have standing to file this brief.

Standing refers to a "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." *Black's LawDictionary* 1413 (7th ed. 1999). "Standing is . . . that concept of justiciability that is concerned with whether a particular person may raise

legal arguments or claims." 1A C.J.S. *Actions* § 101 (2005). It concerns an individual's "sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id.*

Powell v. Bank of America, 379 S.C. 437, 444 (S.C. Ct. App. 2008)

Standing is comprised of three elements, to wit: (1) An injury in fact; (2) A causal connection between the injury and the conduct complained of; and (3) It is likely that the injury will be redressed by a favorable decision. *Id.*, citing *Smiley v. South Carolina Dep't of Health Env't'l Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)) To have standing, a party must be a real party in interest who has a real, material interest as opposed to a nominal or technical interest. *Ex parte Morris*, 367 SC 56, 62, 624 SE2d 649, 652 (2006).

In the present case, SCFB is the Plaintiff that brought this action, and it has a pending appeal against Travelers as to the grant of Summary Judgment to Travelers relative to SCFB's claims and as to the grant of Interpleader and dismissal of Travelers. Further, Mr. Driggers is the named insured on SCFB's policy and has a loss payee interest in the Travelers policy, insuring Mckenzie as the named insured. Both policies cover the same, subject property and there is a *pro rata statute* issue. Mr. Driggers intended to collect from Travelers, and the failure of Travelers to pay Mr. Driggers was responsible for his delay in filing the claim against SCFB, and for any claim from this loss to be filed as to SCFB. (See: 2021-000494) Clearly, the Appellant, Mr. Driggers, expected SCFB's participation in this appeal since the caption of his Initial Brief noted SCFB as a "Plaintiff-Appellant."

SCFB has standing to participate in this appeal and this Court should so hold. If, for any reason the Court finds that SCFB does not otherwise possess such standing or rights, SCFB is informed and believes, and asks that the Court allow its brief as *amicus*.

Respectfully Submitted,

/s/ J. Dwight Hudson

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Dated: June 29, 2022

**Attorney For Plaintiff, South Carolina
Farm Bureau Insurance Company**

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APPEAL FROM WILLIAMSBURG COUNTY

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Case No: 2014-CP-45-00132

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South Carolina Farm Bureau Ins. Co, Plaintiff
v.

Marion L. Driggers, Shiralee Driggers, Tammy D.
Floyd, Estate of Arthur McKenzie, The Travelers
Home and Marine Insurance Company, The
United States of America acting by and through
Its agency, The Internal Revenue Service, and
The South Carolina Tax Commission, Defendants,

Of Which Marion L. Driggers is Appellant and The Travelers
Home and Marine Insurance Company is the Respondent.

***PROOF OF SERVICE OF DESIGNATION BY SOUTH CAROLINA
FARM BUREAU INS. CO.'s RETURN TO TRAVELERS
MOTION TO STRIKE***

I certify that on June 29, 2022, I served South Carolina Farm Bureau Ins. Co.'s RETURN TO TRAVELERS MOTION TO STRIKE *on* counsel as noted below and as established by the copy of email service enclosed herewith.

1st J. Dwight Hudson

J. Dwight Hudson (SCB# 2753)
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Dated: June 29, 2022

Attorney For Appellant

Counsel: By e-mail as noted below, directed to the address registered with AIS:

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Attorney for IRS

Ms. Tasha B. Thompson
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tasha.thompson@schousing.com

Attorney for SC Tax Commission

From: mgraham hudsonlawoffice.com
Sent: Wednesday, June 29, 2022 1:15 PM
To: Norton, Mariel; epritchard@pritchardlawgroup.com; Daryl J. Corbin Esq. (corbinlawfirm@corbinlawsc.com); Conits, George (USASC); 'Tasha.Thompson@schousing.com'; Reese Boyd III
Cc: Cathy Plocinik; Kelly M. Turek, Esq.; Jill Corbin; Daryl Corbin; Rosa Raspaldo
Subject: RE: 2021-000835 SC Farm Bureau vs. Marion L. Driggers, et al.
Attachments: Return by FB.pdf

Counselors:

Enclosed and served today, June 29, 2022, is South Carolina Farm Bureau's RETURN to Travelers Motion to Strike in the above referenced matter. The same will be subsequently e-filed with the Court of Appeals, along with a forwarding letter and a Proof of Service of the enclosures, showing service by this email. We will also copy you with the e-filing.

With best regards,

J. Dwight Hudson, Esq.

By: Mary Anne Graham, Esq.

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ADMITTED IN S.C. and N.C.*
United States Supreme Court*
U.S. Court of Appeals 4th Circuit**
U.S. District Court – South Carolina**
U.S. District Court – North Carolina*
(Eastern, Middle and Western Districts)
S.C. Supreme Court**
N.C. Supreme Court*
S.C. Court of Appeals**
N.C. Court of Appeals*

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June 29, 2022
Via Email

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SC Court of Appeals

The Hon. Jenny Abbott Kitchings
Clerk, SC Court of Appeals
PO Box 11629
Columbia, SC 29211

Re: SC Farm Bureau Mutual Ins. Co. v. Marion L. Driggers, et. al.
Appellate Case No: 2021-000835

Dear Ms. Kitchings:

Enclosed for filing are the following:

1. Appellant's Return to Motion To Strike
2. Proof of Service of the Same

By copy of this letter, the enclosures are served as per the Proof of Service.

With best regards, I remain

J. Dwight Hudson, Esq.

J. Dwight Hudson, Esq.

JDH: mag

Enclosure(s): as stated

cc: **Per Proof of Service**