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Jul 06 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
Circuit Court Judge

Case No.: 2014-CP-45-00132
(Court of Appeals Case No.: 2021-000835)

South Carolina Farm Bureau Ins. Co. Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, 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 Services 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.

**RESPONDENT THE TRAVELERS HOME AND MARINE INSURANCE
COMPANY’S REPLY TO SOUTH CAROLINA FARM BUREAU INS. CO.’S
RETURN TO RESPONDENT’S MOTION TO STRIKE**

Respondent The Travelers Home and Marine Insurance Company (“Respondent”) files this Reply pursuant to Rule 240(f), SCACR to South Carolina Farm Bureau Ins. Co.’s (“Farm Bureau”) June 29, 2022 Return to Respondent’s Motion to Strike.

Farm Bureau asserts in its Return that Appellant’s Initial Brief called Farm Bureau “Plaintiff-Appellant,” prompting its confusion and the filing of an Initial Brief and Designation of Matter in an appeal in which it is not a party. Respondent has no knowledge

of the alleged communications Farm Bureau’s counsel may have had or attempted with the Court to seek guidance on its status as an appellant. Nevertheless, Farm Bureau did not file a notice of appeal in this matter to trigger any such status, irrespective of how a caption identified it. Moreover, as this Court is well aware, the day after Appellant’s Initial Brief and Designation of Matter were filed, the Clerk notified Appellant’s counsel of the deficiency in the caption, directing counsel to correct the caption in its final brief to the following:

South Carolina Farm Bureau Ins. Co., Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a 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 whom Marion L. Driggers is the Appellant and The Travelers Home and Marine Insurance Company is the Respondent.

(Letter – Exhibit A). This correspondence from the Court of Appeals clears up any confusion regarding whether Farm Bureau was an appellant in this matter and was available for Farm Bureau’s review on the South Carolina Appellate Case Management System.

Farm Bureau focused its Return on standing. It is well established that “[o]nly a party aggrieved by an order, judgment, or sentence may appeal. Rule 201, SCACR; *see* Rule 72, SCRCR; *see also* S.C. Code Ann. § 18-1-30 (2014) (‘Any party aggrieved may appeal in the cases prescribed in this title.’).” JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 131 (3d ed. 2016). It has also been found “that there are no material distinctions between the requirements of establishing standing under general standing principles and the requirements to appeal pursuant to Rule 201(b), SCACR.” *Id.*

There are three ways to establish standing under general standing principles: “(1) through the rubric of ‘constitutional standing’; (2) under the “public importance” exception; or (3) by statute.” *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012). Farm Bureau argues that it has constitutional standing. To establish constitutional standing, Farm Bureau must prove: “(1) [Farm Bureau] suffered an ‘injury in fact’; (2) there must be a casual connection between the injury and the conduct complained of; and (3) it must be likely, as opposed to merely speculative, that the injury will be ‘redressed by a favorable decision.’” *Joseph v. S.C. Dep’t of Labor, Licensing, and Regulation*, 417 S.C. 436, 449, 790 S.E.2d 763, 770 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). A real party in interest is one with a real, actual, material, or substantial interest in the subject matter of an action rather than one with only a nominal, formal, or technical interest with the action. *See Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994). The party seeking to establish standing carries the burden of demonstrating each of the three required elements. *See Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

Farm Bureau claims to have an *interest* in the problems alleged by Appellant Marion L. Driggers because “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.” Farm Bureau’s Return, p. 3. Yet, a mere interest is not enough where South Carolina requires a particularized injury to meet the elements of standing. There is no personal, individual harm to Farm Bureau that has been asserted and any alleged connection claimed by Farm Bureau in its Return is too tenuous to meet the elements of standing. Appellant’s appeal seeks redress from summary judgment as to his claims of bad

faith, breach of contract, and civil conspiracy against Travelers, and, as such, there is no injury to Farm Bureau that could possibly be redressed with a favorable decision for Appellant on these issues. Appellant has every right under his policy with Farm Bureau to make a claim, irrespective of any alleged relationship he claims to have with Travelers and/or Travelers' named insured. The alleged pro rata issues Farm Bureau asserts in its Initial Brief and Return relate to a separate appeal (Court of Appeals Case No.: 2021-000494), and Appellant's alleged expectation of Farm Bureau's participation in this appeal based on an error in his caption does not create standing. Farm Bureau has not met its burden of proving that it has standing to file an Initial Brief and Designation of Matter in this appeal, and Respondent's Motion to Strike should be granted.

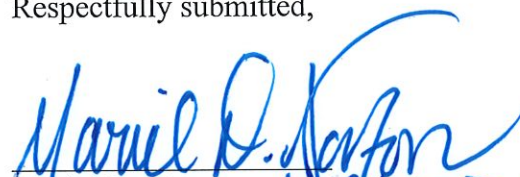
Farm Bureau concludes its Return by requesting that its Initial Brief and Designation of Matter be allowed as *amicus*. An *amicus curiae* brief "may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court." Rule 213, SCACR. Additionally, an *amicus* brief "shall be limited to argument of the issues on appeal as presented by the parties." Rule 213, SCACR; *see James v. Anne's Inc.*, 390 S.C. 188, 193, 701 S.E.2d 730, 732 (2010). A motion for leave to file an *amicus curiae* brief shall "identify the interest of the applicant and shall state the reasons why the brief of an *amicus curiae* is desirable." *Id.* The Court has considered issues raised for the first time in an *amicus* brief but only when they concern a "matter of significant public interest." *Ex Parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011). This exception is applied narrowly and under only appropriate circumstances. *See State v. Langford*, 400 S.C. 421, 433, 735 S.E.2d 471, 477 (2012) ("[W]e have little trouble concluding that who decides

when criminal defendants in this State should be tried is a matter of significant public interest as envisioned by *Brown*.”).

Farm Bureau failed to follow Rule 213, as there has been no proper motion submitted nor has this Court requested any such brief. Moreover, the brief submitted by Farm Bureau is not limited to the arguments of the issues on appeal as presented by Appellant and Respondent. Furthermore, there is no significant public interest in the current matter to warrant elevating Farm Bureau’s Initial Brief to an amicus brief in this appeal.

For the above reasons, Respondent requests that its Motion to Strike Farm Bureau’s Initial Brief and Designation of Matter be granted on the grounds that Farm Bureau does not have standing to participate in this appeal. Respondent also requests that Farm Bureau’s request for amicus status be denied.

Respectfully submitted,


Mariel D. Norton
SC Bar No.: 100198

by Susan DuBose
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File No.: 7746.1749
*Attorneys for Respondent The Travelers
Home and Marine Insurance Company
Columbia, South Carolina*

July 6, 2022

EXHIBIT A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
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1220 SENATE STREET
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May 24, 2022

Reese R. Boyd, III, Esquire
1110 London St.
Suite 201
Myrtle Beach SC 29577

Re: South Carolina Farm Bureau v. Marion Driggers
Appellate Case No. 2021-000835

Dear Counsel:

Upon reviewing your appellant's initial brief, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected when filing the appellant's final brief:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the caption must match exactly with the one given below.

South Carolina Farm Bureau Ins. Co., Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie, a/k/a 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 whom Marion L. Driggers is the Appellant and The Travelers Home and Marine Insurance Company is the Respondent.

Very truly yours,

V. Claire Allen

CLERK

cc: Mariel D. Norton, Esquire

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of Common Pleas

The Honorable Kristi F. Curtis
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Case No.: 2014-CP-45-00132
(Court of Appeals Case No.: 2021-000835)

South Carolina Farm Bureau Ins. Co. Plaintiff,

v.

Marion L. Driggers, Shiralee Driggers, Tammy D. Floyd, 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 Services 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.

PROOF OF SERVICE

I, Susan Drake DuBose, attorney at Baker, Ravenel & Bender, LLP, on behalf of Mariel D. Norton, Attorney for Respondent, hereby certify that, on this 6th day of July 2022, I have served the following with the foregoing Respondent The Travelers Home and Marine Insurance Company's Reply to South Carolina Farm Bureau Ins. Co.'s Return to Respondent's Motion to Strike with exhibit via electronic mail of same to counsel of record at the e-mail addresses shown below:

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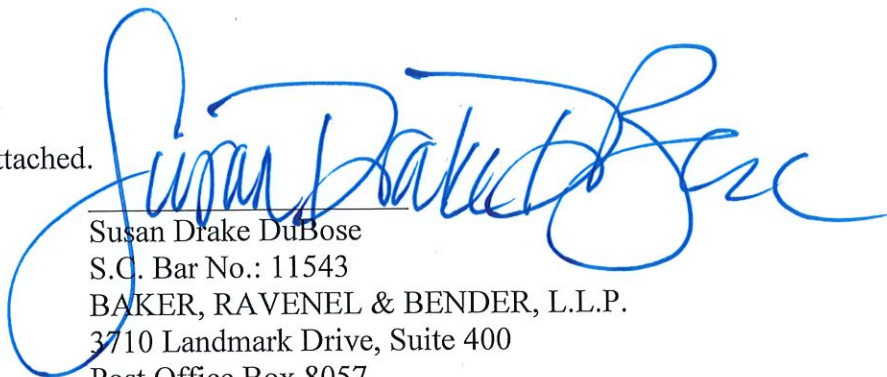
Vannie Williams, Jr., Esquire
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*Attorney for Audrey Graham, as PR
of the Estate of Arthur McKenzie*

A copy of the email serving same is attached.

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File No.: 7746.1749
*Attorneys for Respondent The Travelers
Home and Marine Insurance Company*
Columbia, South Carolina
July 6, 2022

DuBose, Susan

From: DuBose, Susan
Sent: Wednesday, July 06, 2022 10:01 AM
To: 'ctappfilings@sccourts.org'
Cc: 'reese@davisboydlaw.com'; 'hudsonlaw@hudsonlawoffice.com';
'corbinlawfirm@corbinlawsc.com'; 'geroge.conits@usdoj.gov';
'tasha.thompson@schousing.com'; 'williams.vannie@att.net';
'epritchard@pritchardlawgroup.com'; Norton, Mariel
Subject: RE: Appellate Case No.: 2021-000835 SC Farm Bureau vs. Marion L. Driggers, et al. of Whom Marion L. Driggers is the Appellant and The Travelers Insurance Company is the Respondent
Attachments: Letter to Court of Appeals from Mariel D. Norton re filing Reply to S.C. Farm Bureau's Return (01074249xA5D7B).pdf; Respondent's Reply to SC Farm Bureau Ins. Co.'s Return to Respondent's Motion to Strike (01074237xA5D7B).pdf

Dear Ms. Kitchings-

Attached please find correspondence from Mariel D. Norton, attorney for the Respondent in the above-referenced matter, and a copy of Respondent The Travelers Home and Marine Insurance Company's Reply to South Carolina Farm Bureau Ins. Co.'s Return to Respondent's Motion to Strike for filing in this case. By copy hereof, all counsel are being served with the same. A proof of service will follow separately. I appreciate your assistance in filing these documents. Please let me know if you have any questions or issues.

Sincerely,

Susan DuBose

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BAKER RAVENEL BENDER

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July 6, 2022

E-mail: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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Jul 06 2022

SC Court of Appeals

RE: South Carolina Farm Bureau Mutual Ins. Co., Appellant v. Marion L. Driggers, et al.
Of Which The Travelers Home and Marine Insurance Company is the Respondent
Appellate Case No.: 2021-000835
Our File No.: 7746.1749

Dear Ms. Kitchings:

Attached for filing in the above-referenced matter please find Respondent The Travelers Home and Marine Insurance Company's Reply to South Carolina Farm Bureau Ins. Co.'s Return to Respondent's Motion to Strike with attached exhibit.

By copy of this letter, the same is being served upon all counsel of record via electronic mail. The Proof of Service thereof via electronic mail will be filed separately.

If you have any questions concerning this letter, please do not hesitate to contact me.

Sincerely yours,


Mariel D. Norton
MDN/cdc
Enclosures

cc w/encl.:

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