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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2022-000669

Nationwide Mutual Fire Insurance Company Respondent.

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her
capacity as Personal Representative of the Estate of Christopher
Adam Timms, Deborah Timms, Defendants.

Of Whom,

Sharmin Christine Walls and Randi Harper are the Appellants.

INITIAL BRIEF OF RESPONDENT

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July 29, 2022

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TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal.....	1
Statement of the Case	1
Factual and Procedural Background	2
Argument	4
I. The Circuit Court correctly denied Defendant Walls’ and Harper’s § 34-31-20(B) Motion for Interest because no money judgment was entered in their favor in this declaratory judgment action.....	5
II. The Circuit Court correctly denied Defendants Walls’ and Harper’s Motion for Interest because the parties’ Stipulation and Agreement governs when and how much money Nationwide is to pay to Defendant Walls and Defendant Harper.....	7
III. Any arguments concerning South Carolina Code § 34-31-20(A) are not preserved for appellate review and are irrelevant.....	9
Conclusion	11

TABLE OF AUTHORITIES

Cases

<u>Casey v. Casey</u> , 311 S.C. 243, 245, 428 S.E.2d 714, 715 (1993)	10
<u>Dixie Bell, Inc. v. Redd</u> , 376 S.C. 361, 656 S.E.2d 765 (Ct. App. 2007).....	10
<u>Hopkins v. Hopkins</u> , 343 S.C. 301, 540 S.E.2d 454 (2000)	6
<u>Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC</u> , 414 S.C. 635, 780 S.E.2d 263 (Ct. App. 2015)	9
<u>In re Jamal G.</u> , 396 S.C. 158, 720 S.E.2d 62 (Ct. App. 2011).....	9
<u>QHG of Lake City, Inc. v. McCutcheon</u> , 360 S.C. 196, 600 S.E.2d 105 (Ct. App. 2004)	10
<u>Tilley v. Pacesetter Corp.</u> , 355 S.C. 361, 375–376, 585 S.E.2d 292, 299 (2003).....	10
<u>Town of Bennettsville v. Bledsoe</u> , 226 S.C. 214, 84 S.E.2d 554 (1954).....	10
<u>Vaughn Development, Inc. v. Westvaco Development Corp.</u> , 372 S.C. 578, 642 S.E.2d 757 (Ct. App. 2007).....	10
<u>Wilder Corp. v. Wilke</u> , 330 S.C. 71, 497 S.E.2d 731 (1998)	9

Statutes and Rules

South Carolina Code Ann. § 34-31-20	passim
South Carolina Code Ann. § 38-77-142	5

STATEMENT OF ISSUES ON APPEAL

- I. **Whether the Circuit Court correctly denied Defendants Walls' and Harper's § 34-31-20(B) Motion for Interest because no money judgment was entered in their favor in this declaratory judgment action.**

- II. **Whether the Circuit Court correctly denied Defendants Walls' and Harper's Motion for Interest because the parties' Stipulation and Agreement governs when and how much money Nationwide is to pay to Defendant Walls and Defendant Harper.**

STATEMENT OF THE CASE

Defendant Walls filed a "Motion for Interest on Judgment Per S.C. Code §34-31-20" in which Defendant Harper joined. These Defendants allege that Nationwide owes post-judgment interest pursuant to South Carolina Code § 34-31-20(B). That statute only permits interest to be awarded when a money judgment has been entered in favor of the party seeking interest. This case is a declaratory judgment action brought by Nationwide. When the Circuit Court entered judgment, only declaratory relief was granted. None of the counterclaims of any Defendants remained. The Circuit Court declared that certain policy exclusions were not enforceable to reduce or "step down" the Nationwide policy's liability coverage limits. No money judgment was entered in favor of any defendant. Therefore, Defendant Walls and Defendant Harper are not entitled to any post-judgment interest under South Carolina Code § 34-31-20(B).

Moreover, prior to declaratory judgment being entered, the parties entered into a Stipulation and Agreement, which dictates what amounts are due to Defendant Walls and Defendant Harper and when such amounts are due. These Defendants' Motion for Interest and subsequent appeal are in breach of that contractual agreement.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Declaratory Judgment Action

On March 4, 2009, Nationwide filed this declaratory judgment action seeking declarations as to: (1) the identity of the driver involved in the July 11, 2008 single vehicle accident; and (2) whether certain exclusions reduced the Nationwide policy's available liability limits for the accident. The Circuit Court determined that Kory Mayfield was the driver of the vehicle at the time of the July 11, 2008 accident. (August 29, 2011 Order). By Order dated February 26, 2016, the Circuit Court held that the exclusions were not enforceable and, consequently, the policy limits were not reduced by such exclusions. (February 26, 2016 Order, p. 5). This Court reversed that decision. (June 5, 2019 Court of Appeals Order). Certain Defendants then petitioned the South Carolina Supreme Court for a writ of certiorari. The Supreme Court granted the writ of certiorari. By 3-2 decision, the South Carolina Supreme Court reversed this Court's decision and held that the exclusions were not enforceable. (June 3, 2021 Supreme Court Order). No order was ever entered awarding a money judgment to Defendant Walls or Defendant Harper for \$100,000 or any other amount.

B. Stipulation and Agreement

On May 10, 2009, Nationwide, Defendant Walls, Defendant Harper and the other Defendants entered into a Stipulation and Agreement. (Stipulation and Agreement). Under the Stipulation and Agreement, the parties agreed to dismiss with prejudice any counterclaims against Nationwide and their claims against each other in other suits. (*Id.* at p. 3). This was done prior to the Circuit Court entering its declaratory judgment. (February 26, 2016 Order, p. 2); (June 3, 2021 Supreme Court Order, p.4 n.2).

The Stipulation and Agreement set forth certain amounts that would be paid based upon determinations of the declaratory judgment issues. (Stipulation and Agreement ¶¶ 1-4). The Stipulation and Agreement provides in pertinent part:

If Sharmin Walls is found to be a passenger and Nationwide[sp] prevails on the issue that the bodily injury coverage is reduced to \$25,000/\$50,000, Nationwide will pay her \$20,000 under the bodily injury coverage in exchange for a release of Korey Mayfield. If Sharmin Walls is found to be a passenger and the bodily injury coverage is determined to be \$100,000/\$300,000, Nationwide will pay her \$100,000 in exchange for a release of Korey Mayfield. If Sharmin Walls is found to be the driver, she would be barred from recovery under the bodily injury coverage of this policy.

If the bodily injury coverage is reduced to \$25,000/\$50,000, Nationwide will pay Randi Harper \$10,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls. If the bodily injury coverage is determined to be \$100,000/\$300,000, Nationwide will pay Randi Harper \$100,000 under the bodily injury coverage in exchange for a release of Korey Mayfield and Sharmin Walls.

WHEREFORE, the parties agree the payments set forth shall be made after a final decision in the above declaratory judgment action, **including appeal**, in the declaratory judgment action....

(*Id.* at pp. 2-3) (emphasis added).

C. Defendant Wall's Motion for Interest

Despite the parties contractually agreeing that Nationwide would not pay Defendant Walls or Defendant Harper \$100,000 until “after a final decision in the above declaratory judgment action, **including appeal**”, Defendant Walls’ filed a Motion with the Circuit Court seeking interest on such amount from February 26, 2016 through July 27, 2021. (Stipulation and Agreement, p. 3 (emphasis added)); (Def. Walls’ Mot. for Interest, Ex. 2). The final Supreme Court Order was not entered until June 3, 2021. (June 3, 2021 Supreme Court Order). As Defendant Walls acknowledges, the principal amount owed to her was \$80,000. (Def. Wall’s Mot. for Interest ¶ 3); (November 16, 2021 Circuit Court Order, p. 3 n.1). As Defendant Harper acknowledges, the

principal amount owed to her was \$90,000. (Appellants’ Br., p. 3). As Appellants’ Brief recognizes, Nationwide previously paid the amounts due under the Stipulation and Agreement with “interest from the date of the Supreme Court’s ruling until payment.” *See* (Appellants’ Br., p. 7 n.1). Thus, Nationwide fulfilled the terms of the Stipulation and Agreement.

On July 29, 2021, the Circuit Court held a hearing on Defendant Walls’ Motion. (November 16, 2021 Circuit Court Order, p. 1). One day before the hearing on such Motion, Defendant Harper’s counsel notified the Circuit Court that Defendant Harper joined in Defendant Walls’ Motion. (*Id.*) Defendant Harper did not file her own Motion, and her counsel did not appear at the hearing. (*Id.* at p. 3 n.1).

By Order dated November 16, 2021, the Circuit Court denied the Motion for Post-Judgment Interest. (*Id.* at p. 3). The Circuit Court held: “The contractual terms of the Stipulation and Agreement bar Defendants’ claims for post-judgment interest from before the Supreme Court’s final June 3, 2021 Order. However, even if such contractual terms did not bar Defendants’ claims for interest, South Carolina Code § 34-31-20 provides no basis for an award of interest in this case.” (*Id.* at p. 3).

ARGUMENT

Defendant Walls and Defendant Harper are not entitled to interest pursuant to South Carolina Code § 34-31-20(B) because no “money decree or judgment” was entered in their favor. Additionally, Defendants Walls and Harper are not entitled to interest because the terms of the parties’ Stipulation and Agreement governs when and how much money Nationwide is to pay to each Defendant. With respect to the Defendants’ arguments concerning South Carolina Code § 34-31-20(A) – the prejudgment interest statute – such arguments are irrelevant and were not preserved for appellate review.

I. The Circuit Court correctly denied Defendants Walls' and Harper's § 34-31-20(B) Motion for Interest because no money judgment was entered in their favor in this declaratory judgment action.

Defendant Walls' Motion alleges that she is due interest "pursuant to S.C. Code Ann. §34-31-20(b)". (Def. Walls' Mot. for Interest, pp. 1-2).¹ South Carolina Code § 34-31-20(B) states: "A **money decree or judgment** of a court enrolled or entered must draw interest according to law." S.C. Code § 34-31-20(B) (emphasis added). Here, the judgment of the Circuit Court was not a money decree or money judgment.

This is a declaratory judgment action only. When the Circuit Court entered judgment, none of Defendants' counterclaims remained. *See* (February 26, 2016 Order, p. 2 ("The defendants asserted various counterclaims that were settled prior to trial in exchange for the undisputed portion of Nationwide coverage....")); (June 3, 2021 Supreme Court Order, p.4 n.2). The only judgment entered was a declaration that the policy's exclusions reducing the liability coverage limits were unenforceable. *See* (February 26, 2016 Circuit Court Order, p. 9 ("The Court find that Defendants are entitled to coverage up to the full limits stated on the policy...Although the accident occurred while Mayfield was fleeing from a law enforcement officer and committing a felony, the step-down provisions violate § 38-77-142 and are unenforceable...." (emphasis added))); (June 3, 2021 Supreme Court Order (stating that sole issue presented is whether "Nationwide's felony and flight-from-law enforcement step-down provisions violate section 38-77-142(C)"))).

Thus, contrary to the Defendants' assertion before this Court, neither the Circuit Court's Order nor the Supreme Court's Order was a money judgment ordering Nationwide to pay \$100,000

¹ Defendant Walls' Motion contained a scrivener's error. Section 34-31-20 only contains subsections (A) and (B), not (b). *See* S.C. Code § 34-31-20.

to each of these Defendants. *See* (Appellants’ Br., pp. 1-2 (“The Honorable J. Cordell Maddox, Jr. issued his Order for judgment in the amount of \$100,000....The Supreme Court in its June 2021 ruling recognized the Order of the Circuit Court Ordered Nationwide to pay the Judgment in the amount of \$100,000.”)). The Circuit Court itself held that its own order was not a money judgment requiring Nationwide to pay \$100,000 to each of these Defendants. (November 16, 2021 Order, p. 4 (“Here, the judgment of the Court is not a money decree or money judgment.”)).

The Nationwide policy provides liability coverage for certain damages for which an insured is legally liable as a result of an auto accident. Defendant Walls and Defendant Harper never obtained a judgment against the at-fault driver, Korey Mayfield. Consequently, only under the Stipulation and Agreement – and pursuant to its terms – are these Defendants entitled to actual payment of the \$100,000 per person limit of bodily injury liability coverage. There is no “money decree or judgment of a court” as required for statutory post-judgment interest. *See* S.C. Code § 34-31-20(B).

The South Carolina Supreme Court has also recognized that a “money judgment” is a precondition to recovering post-judgment interest. *Hopkins v. Hopkins*, 343 S.C. 301, 307, 540 S.E.2d 454, 458 (2000) (“South Carolina Code Ann. § 34-31-20(B) (1987) states that money decrees and judgments of courts enrolled or entered shall draw interest...Prior to this opinion, Father received no money judgment; accordingly, he is not entitled to post-judgment interest.”). Contrary to the Defendants’ assertion in their Brief, the *Hopkins* case is not “entirely misleading in that the Family Court did not award any amount of money” but rather directly on point because the lower court here also did not award any amount of money in this declaratory judgment action. (Appellants’

Br., p. 4). Since there is no “money judgment” in their favor, Defendant Walls and Defendant Harper are not entitled to post-judgment interest under South Carolina Code § 34-31-20(B).²

Contrary to Appellants’ “Question Presented” and repeated use of the phrase “sum certain,” South Carolina Code § 34-31-20(B) does not require merely a “sum certain” for post-judgment interest to be awarded. S.C. Code § 34-31-20(B); *see* (Appellants’ Br., pp. 1, 2, 5, 6 (repeating the phrase “sum certain” ad nauseam)). The statute requires a “money decree or judgment of a court” in Defendants’ favor. S.C. Code § 34-31-20(B).³ Here, Defendants do not meet this pre-requisite for post-judgment interest. There was no “money decree or judgment” in their favor. Therefore, Appellants are not entitled to any post-judgment interest under South Carolina Code § 34-31-20(B).

II. The Circuit Court correctly denied Defendants Walls’ and Harper’s Motion for Interest because the parties’ Stipulation and Agreement governs when and how much money Nationwide is to pay to Defendant Walls and Defendant Harper.

The contractual terms of the Stipulation and Agreement state that payment of \$100,000 to Defendant Walls and Defendant Harper was not required to be made until “after a final decision in the above declaratory judgment action, **including appeal...**” (Stipulation and Agreement, p. 3 (emphasis added)). Therefore, no interest on the amounts due began to accrue until the Supreme

² Contrary to Appellants’ argument in their Brief, Appellants did not have to unequivocally waive the right to post-judgment interest because they never had a right to post-judgment interest. (Appellants’ Br., p. 3). Appellants never met the statutory requirement for post-judgment interest – obtaining a “money decree or judgment of a court” in their favor. They did not obtain a money judgment against the at-fault driver. They did not obtain a money judgment against Nationwide. All they got in this declaratory judgment action were declarations that the policy’s step-down provisions were not enforceable. Consequently, they never had any right to post-judgment interest in the first place.

³ Moreover, there was no “sum certain” before the South Carolina Supreme Court entered its judgment reversing this Court’s decision. The entire purpose of the Stipulation and Agreement, declaratory judgment action, and the appeal was to determine what amount Nationwide would pay to these Defendants.

Court's final decision was entered on June 3, 2021. Nationwide paid interest on the contractual amounts due from June 3, 2021 until the date of its payments of such amounts. (November 16, 2021 Circuit Court Order, p. 4); (Appellants Br., p. 7 n.1). Consequently, Defendants have no additional claims for interest, including Defendant Walls' claim for interest beginning on February 26, 2016. *See* (Def. Walls' Mot. for Interest, Ex. 2 (seeking interest on \$80,000 from February 26, 2016 through July 27, 2021)).

In their Brief, Appellants take the inconsistent positions that: (1) the declaratory judgment was a "money decree" because of the Stipulation and Agreement; and (2) the Stipulation and Agreement "is not relevant to the matter before the Court" and should be ignored. *Compare* (Appellants' Br., p. 4 ("Combined with the stipulation of Nationwide that they would pay Walls and Harper \$100,000 each, less amounts already paid, the declaratory judgment action becomes, in effect, a money decree.)) *with* (Appellant's Br., p. 3 ("The 'Stipulation', referred to by Nationwide dated May 1, 2009 more than 7 years before the judgment of the Court had no relation to the 'interest' requirement of the Statute and is not relevant to the matter before the Court.")). Contrary to these inconsistent arguments, the Stipulation and Agreement is the only thing that grants these Defendants a right to any money from Nationwide, and such right is a contractual right subject to all the terms of that contract. Without the Stipulation and Agreement, these Defendants are not entitled to any money from Nationwide because they never obtained a judgment against the allegedly at-fault driver. The Nationwide insured, Korey Mayfield, was not "legally liable" to pay damages to them as a result of the auto accident. The Defendants dismissed their tort actions against him. (Stipulation and Agreement, p. 3). Under the terms of the Stipulation and Agreement, these Defendants received as consideration an agreement that they did not have to obtain a judgment against Mayfield to recover liability coverage. (*Id.* at pp. 1, 3). In exchange,

they agreed to wait for payment until “after a final decision in the above declaratory judgment action, **including appeal...**” (*Id.* at p. 3 (emphasis added)). These Defendants are now attempting to alter the terms of the contract, after having already received the benefit of the bargain. As the Circuit Court correctly found, the Stipulation and Agreement controls the parties’ rights and obligations.

III. Any arguments concerning South Carolina Code § 34-31-20(A) are not preserved for appellate review and are irrelevant.

Curiously, Appellants’ Brief makes repeated mention of South Carolina Code § 34-31-20(A) – the pre-judgment interest statute – and cites to cases concerning pre-judgment interest. (Appellants’ Br., pp. 1-2, 5). To the extent that these Defendants are arguing in their Brief that they are entitled to interest under South Carolina Code § 34-31-20(A), they did not preserve that issue for review and that section does not provide a right to interest under these facts.

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 655, 780 S.E.2d 263, 274 (Ct. App. 2015) (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). Arguments raised for the first time on appeal are not preserved for review. *In re Jamal G.*, 396 S.C. 158, 163, 720 S.E.2d 62, 64 (Ct. App. 2011). According to Defendant Walls’ Motion, in which Defendant Harper joined, such Motion sought an order awarding interest “pursuant to S.C. Code Ann. §34-31-20(b).” (Def. Walls’ Mot. for Interest, pp. 1-2). There is no mention of section (A) in such Motion. (*Id.*). In her argument at the hearing on the Motion, Defendant Walls’ counsel referred to section (B) twice and made no mention of section (A). (June 20, 2022 Hearing Transcript). According to their own Motion to Reconsider, it was also premised on § 34-31-20(B). (Mot. to Reconsider, p. 2 (“This Motion for Reconsideration is based upon facts that the Court overlooked,

and failed to recognize and give consideration to the ‘plain meaning’ of S.C. Code Ann. §34-31-20(b) which states as follows....”). Therefore, these Defendants have not preserved for appellate review any argument that they are entitled to interest under South Carolina Code § 34-31-20(A).

Moreover, section (A) is the pre-judgment interest statute and has no bearing on recovery of post-judgment interest. *See Dixie Bell, Inc. v. Redd*, 376 S.C. 361, 366, 656 S.E.2d 765, 768 (Ct. App. 2007) (quoting *Vaughn Development, Inc. v. Westvaco Development Corp.*, 372 S.C. 578-79, 642 S.E.2d 757, 758-59 (Ct. App. 2007)) (stating S.C. Code § 34-31-20(A) is the “governing statute” for pre-judgment interest); *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 206, 600 S.E.2d 105, 109 (Ct. App. 2004) (“Section 34–31–20(A) of the South Carolina Code of Laws provides the statutory basis for prejudgment interest.”); *Casey v. Casey*, 311 S.C. 243, 245, 428 S.E.2d 714, 715 (1993) (“[S]ubsection (A) provides for pre-judgment interest in specified cases. Subsection (B) provides for post-judgment interest.”) (citations omitted).

Additionally, a party that does “not request pre-judgment interest in its pleadings” cannot be awarded pre-judgment interest. *Dixie Bell, Inc.*, 376 S.C. at 367, 656 S.E.2d at 768 (“Triple Crown and its principals claim the trial court erred in awarding Dixie Belle pre-judgment interest on the \$100,000 jury verdict because Dixie Belle did not request pre-judgment interest in its pleadings. We agree.”); *Town of Bennettsville v. Bledsoe*, 226 S.C. 214, 219, 84 S.E.2d 554, 556 (1954); *Tilley v. Pacemaker Corp.*, 355 S.C. 361, 375–376, 585 S.E.2d 292, 299 (2003) (“This Court requires parties to plead for pre-judgment interest in order for it to be recovered. If no request for pre-judgment interest is made in the pleadings, it cannot be recovered on appeal.”) (citations omitted). Neither of these Defendants’ Answers included a request for pre-judgment interest. (Walls’ Answer); (Harper’s Answer). Therefore, any arguments Appellants included concerning South Carolina Code § 34-31-20(A) and pre-judgment interest are irrelevant.

CONCLUSION

For the above-stated reasons, the Circuit Court's Order should be affirmed. The Circuit Court correctly denied Defendants Walls' and Harper's § 34-31-20(B) Motion for Interest because they did not obtain the statutory pre-requisite for post-judgment interest – a “money decree or judgment” in their favor. S.C. Code § 34-31-20(B). The Circuit Court correctly held that its own prior order in this declaratory judgment action was not a money decree or judgment but merely a declaration that the policy's step-down provisions were unenforceable.

Moreover, the Circuit Court correctly denied Defendant Walls' and Harper's Motion because the parties' Stipulation and Agreement governs when and how much money Nationwide is to pay to Defendant Walls and Defendant Harper. Apart from that agreement, the Defendants are not entitled to any amounts under the Nationwide policy because they never obtained a judgment against the allegedly at-fault driver. Therefore, Nationwide respectfully requests that the Court affirms the Circuit Court's Order denying post-judgment interest.

Respectfully submitted,

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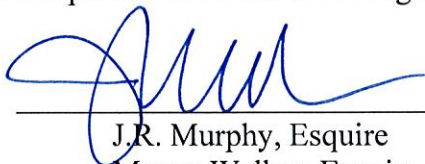
Of Whom,

Sharmin Christine Walls and Randi Harper are theAppellants.

CERTIFICATE

I, J.R. Murphy, Esquire, attorney for Respondent, certify that the Initial Brief of Respondent complies with the South Carolina Supreme Court Order of August 13, 2007.

July 28, 2022



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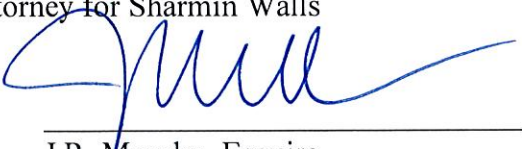
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