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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
Trial Case No.: 2009-CP-04-00907

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

FINAL BRIEF OF APPELLANTS

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QUESTION PRESENTED

1. **Whether the Trial Court erred in failing to award interest on the judgment for a sum certain awarded February 29, 2016 as mandated by the plain meaning of SC Code Ann §34-31-20.**

STATEMENT OF THE CASE

The Honorable J. Cordell Maddox, Jr. issued his Order for judgement in the amount of \$100,000.00 by Order of the Tenth Judicial Circuit on February 29, 2016. (R. pp. 11–20). Following numerous appeals, the Supreme Court of South Carolina issued its Order on June 3, 2021, (R. pp. 31-49) affirming the Order of Judge Maddox, for the sum certain of \$100,000.00, which had been awarded on February 29, 2016.

Sharmin Walls and Randi Harper filed their Motion and Notice of Motion for Interest on the Judgement, pursuant to the provisions of S.C. Code Ann. §34-31-20, on June 30, 2021. (R. pp. 66-99). The Honorable J. Cordell Maddox, Jr. issued his Order November 16, 2021, denying the Motion for Interest. (R. pp. 50-55).

Walls and Harper filed their Motion and Supplemental Motion to reconsider, alter or amend on November 23, 2021. (R. pp. 110-113). A Motion hearing was held on March 2, 2022, (R. pp. 146-154) and Judge Maddox filed his Order denying the Motion for Reconsideration on April 22, 2022. (R. p. 56).

Walls and Harper filed and served their Notice of Intent to Appeal on May 17, 2022. (R. pp. 57-58).

ARGUMENT

S.C. Code Ann. §34-31-20 Ann. (A) states that . . . “in all cases wherein any sum or sums of money shall be ascertained and, being due, **shall** (emphasis added) draw interest according to law. . . .” S.C. Code Ann. §34-31-20(B) 1987, states that money decrees and judgments of Court enrolled or entered “**must**” [emphasis added] draw interest. The “plain meaning” of S.C. Code Ann. §34-31-20(B) which states as follows, is not subject to interpretation or construction:

“A money decree or judgement of a Court enrolled or entered **MUST** (emphasis added) draw interest according to law”

The Supreme Court in its June 2021 (R. pp. 31-49) ruling recognized that the Order of the Circuit Court Ordered Nationwide to pay the Judgment in the amount of \$100,000.00.

“Thus, the circuit court held that Walls, Harper, and Timms’ estate were entitled to recover \$100,000 per person pursuant to the liability limits in Walls’ policy”. Nationwide Mutual Fire Ins. Co. v Walls 433 S.C. 206, 858 S.E. 2d 150 (2021). (R. p. 36).

It is submitted that the Circuit Court in its April, 22, 2022 Order overlooked or misapprehended the Rules of Statutory Construction when construing the terms as set forth in the above statute and failed to apply the following rules of statutory interpretation:

“Under the rules of statutory interpretation, use of words such as ‘shall’ or ‘must’ indicates the legislature’s intent to enact a mandatory requirement.” Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002). Because the Legislature’s use of mandatory language is unambiguous, this Court has no right to impose another meaning. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” (citation omitted)). Richland Cty. v.

S.C. Dep't of Revenue, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018).”

The judgment of the Supreme Court confirmed that the February 29, 2016 Circuit Court Order, (R. pp. 11-20) ordered that Nationwide pay a “sum certain “of money in the amount of \$100,000.00 which equaled “full coverage”. Nationwide Mutual Fire Insurance Co., v Walls 433 S.C. 206, 858 S.E. 2d 150 (2021).

Nationwide was given credit for the \$20,000.00 previously paid to Appellant Walls and \$10,000.00 paid to Appellant Harper, however, pursuant to the Statute, interest accrued from the date of the judgment of the Circuit Court, contrary to the assertions made by Nationwide and adopted by the Circuit Court Order dated April 22, 2022. The “Stipulation”, referred to by Nationwide dated May 1st, 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. See Carolina Care Plan v United Health Care Services, Inc. 361 S.C. 555. 606 S.E. 2d 758 (Ct. App. 2002). where the Court stated “the law in South Carolina is that Courts do not enforce a contract which is violative of public policy, **statutory law**, or provisions of the Constitution” (emphasis the Appellants). It is further submitted that in order for interest under the Statutory mandate of our legislature to be waived, such waiver would have to be unequivocal and clearly established by facts and a definitive statement so that an unequivocal intent to relinquish the known right established by the Statute would then be in place.

“Waiver is the voluntary and intentional relinquishment of a known right.” Provident Life and Accident Insurance Co. v. Driver 317 S.C. 471, 451 SE 2d 924 (Ct. App. 1994).

The only way for Nationwide to protect itself against “interest” on the judgment amount would have been by the payment of the judgment into court pursuant to Rule 67, SCRCF. See, Small v Pioneer Mach., Inc. 330 SC 62, 65 496 SE2d 884, 886 (CT. App. 1998), where the Court held:

“Post-judgment interest . . . accrues on all judgments until the judgment amount has been properly deposited with the court pursuant to Rule 67 SCRCF.”

In its Brief filed at the Motion Hearing, Nationwide refers to a Family Court case, Hopkins v. Hopkins 540 S.E. 2d, 454, 458 (2000) which is entirely misleading in that the Family Court judgment did not award any amount of money, and is not germane to the issue.

“Prior to this opinion, Father received no money judgment”. . . Hopkins, *supra* at p.458.

It is an alternate reality for Nationwide to take the position that the judgment of the Circuit Court on February 29, 2016 is not entitled to interest. Nationwide argues that because the underlying case arose out of a declaratory judgment action, there was no “money judgment or decree” as required by South Carolina Code § 34- 31-20(B). However, the underlying declaratory judgment action addressed specifically whether Nationwide was required to pay the stated limits of \$100,000.00 each to Walls and Harper, or the stepped down amounts that the Supreme Court ultimately invalidated. The Circuit Court ruled on February 29, 2016 that Nationwide had to pay the stated limits, \$100,000.00 to each of Walls and Harper. Combined with the stipulation of Nationwide that they would pay Walls and Harper \$100,000.00 each, less amounts already paid, the declaratory judgment action becomes, in effect, a money decree. The Court

erred by interpreting in isolation that a declaratory judgment action is not an action for a money judgment or decree, without also considering the it in the context of stipulations of the parties, which was to require the payment of money.

No judgments are ever mandated to be paid until an appeal is final, whether the judgement is for one dollar or one million dollars. Nationwide's argument is specious. Nationwide cannot reasonably argue that, if in fact, they had not appealed the February 29, 2016 judgment of the Circuit Court, it would not have been required to pay the sum of \$100,000.00 as was found by the Circuit Court in the Order of February 29, in the Declaratory Judgment action. The only reason that it did not have to pay the \$100,000.00, is that Nationwide filed an appeal, which it lost. The Circuit Court ordered the payment of \$100,000.00, a sum certain, on the date of the Judgment. Nationwide had the right under SCRCP 67 to deposit the money in Court and protect itself from paying interest on the judgment, but it chose not to do so and is now attempting to circumvent the Statute.

The South Carolina Court of Appeals, in Dixie Bell, Inc. v Redd, 656 S.E.2d 765, 376 S.C. 361 (S.C. App. 2007) noted that prejudgment interest is allowed on a claim of liquidated damages, which it equated to a sum certain. "[T]he amount is usually a sum certain, or at least the amount is capable of ascertainment by computation." Lewis v. Congress of Racial Equality, 275 S.C. 556, 274 S.E.2d 287 (1981)..." Dixie Bell, Inc. v. Redd, 656 S.E.2d 765, 376 S.C. 361 (S.C. App. 2007). at 560, 274 S.E.2d at 289. Black's Law Dictionary defines liquidated damages, a sum certain, as "[a]n amount contractually stipulated" in contrast to unliquidated damages which are "[d]amages that . . . cannot be determined by a fixed formula,

so they are left to the discretion of the judge or jury." Black's Law Dictionary 395-97 (7th ed.1999). Liquidated damages "are damages the amount of which has been made certain and fixed either by the act and agreement of the parties or by operation of law to a sum which cannot be changed by the proof." 22 Am.Jur.2d Damages § 489 (2003). "They are also defined as damages the amount of which has been ascertained by judgment or by the specific agreement of the parties or which are susceptible of being made certain by mathematical calculation from known factors." Id. "In general, damages are unliquidated where they are an uncertain quantity, depending on no fixed standard, referred to the wise discretion of a jury, and can never be made certain except by accord or verdict." Id.

Here, the amount of damages on February 29, 2016 was very clearly and very simply calculated. Once the Court ordered that Nationwide was responsible for the \$100,000 face value of the policy, there was a stipulation that Appellant Walls would receive \$100,000 less the \$20,000 already paid and that Appellant Harper would receive \$100,000 less the \$10,000 already paid. The \$80,000 and \$90,000 amounts owed became clear by judgment and stipulation on February 29, 2016.

"[I]nterest at the post-judgement rate does not begin to accrue until a judgment is entered in a sum certain." Chambers v. Pingree case, 334 S.C. 349, 513 SE 2d 369 (Ct. App. 1999).

On February 29, 2016, (R. pp. 11-20) the Circuit Court entered judgement for the full amount of coverage which was defined in the Order and in the policy as \$100,000.00. Nationwide is given credit in that it paid \$20,000.00 per

stipulation of the parties. Interest is owed on the sum certain amounts at the legal rate from February 29, 2016, the date of the Circuit Court's ruling, until June 3, 2021, the date the South Carolina Supreme Court affirmed the Circuit Court's February 29, 2016 Order.¹


CONCLUSION

For the reasons stated, Appellants ask the Court to overrule the opinion of the Circuit Court and award the Statutory interest as set forth in the Motion and Exhibits, and mandated by S.C. Code Ann §34-32-20.

Respectfully submitted,

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¹ After the Supreme Court's Order of June 3, 2021 affirming the Circuit Court, Nationwide paid the judgment amounts and interest from the date of the Supreme Court's ruling until payment.

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CERTIFICATE OF COUNSEL

The undersigned certify that this Final Brief complies with Rule 211(b), SCACR.



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