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SC Court of Appeals

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

Case No.: 2021-000835

South Carolina Farm Bureau Mutual 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 whom Marion L. Driggers is the Appellant and The Travelers Home and Marine
Insurance Company is the Respondent.**

REPLY BRIEF OF DEFENDANT-APPELLANT MARION L. DRIGGERS

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October 13, 2022

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FACTS IN REPLY

As was stated in Appellant's Initial Brief, this matter stems from a complicated real estate transaction between and among, Arthur McKenzie and Tammy Floyd, Marion L. Driggers and Shiralee Driggers, whereby McKenzie was responsible for maintaining a policy of insurance in favor of Leroy Driggers and Shiralee Driggers as a condition of the sale. (See Order of Judge M.D. Shuler, Williamsburg County Common Pleas matter, dated July 10, 1996). Without the necessary insurance on the property, as required by the Court's Order, McKenzie had no ownership interest in the property. Additionally, and as an additional measure of protection for their interest in the subject property, Marion and Shiralee Driggers took out a policy with Farm Bureau Insurance Company to protect the value of their ownership interest. McKenzie's failure to notify Travelers of the Driggers ownership interest in the property led Driggers to file a claim with Farm Bureau for the loss sustained as a result of a November 26, 2009 fire at the property.

While the lower court denied Farm Bureau's Motion for Summary Judgment as discovery had not been completed, the court in turn granted the Motion for Summary Judgment filed by Travelers, again prior to the completion of discovery. (Order of The Honorable Kristi F. Curtis dated March 4, 2021, granting Summary Judgment for Travelers, and Order denying Summary Judgment for Farm Bureau). Travelers thereafter settled the McKenzie claim, and \$115,140.00 was deposited with the Court of Common Pleas for Williamsburg County, based on Travelers' counter-claim for interpleader.

ARGUMENT

- I. **The Trial Court erred by granting summary judgment where (a) discovery has not been completed, and (b) additional inquiry into the facts of this case is necessary before any claims of Appellant/Defendant Marion L. Driggers may be summarily disposed of.**

Respondent argues that the trial court did not err in granting Travelers' Motion for Summary Judgment, and further opines that Appellant's Notice of Appeal was not timely filed and served. On March 17, 2021, Appellant timely filed a Motion for Reconsideration of the Circuit Court's March 4, 2021 Order granting Travelers' Motion for Summary Judgment. On June 25, 2021, the lower Court denied Mr. Driggers' Motion for Reconsideration. The copy sent to Mr. Driggers via U.S. Mail was received by him on July 8, 2021, and his appeal to this Court, filed on August 4, 2021 (27 days later), was therefore timely. South Carolina Appellate Court Rules require that a party must serve and file his notice of appeal within thirty (30) days of "receipt of written notice of entry of the order" appealed from. *See* Rule 203, SCACR. Here, Appellant made a good faith effort to have the initial Notice of Appeal served by sending a copy to the only point of contact that he had for the Respondent Travelers, that being the contact information for Traveler's counsel in the lower court proceedings. This Court has previously ruled, in response to a Motion to Dismiss filed by the Respondent Traveler's, that it is "undisputed that Appellant - *pro se* at the time - sent timely notice of this appeal to Respondent via email and . . . Respondent acknowledged receipt. . . ." (*See* Order of December 10, 2021, denying Respondent's Motion to Dismiss.) Appellant's Subsequent Amended Notices of Appeal were appropriately served on all parties via US Mail as provided in the Rules.

II. The lower Court erred by granting Interpleader “by consent,” and releasing the Defendant Travelers Home and Marine Insurance Company from further liability from all claims, where the record reflects that all Parties did not consent to the release of Travelers by such Interpleader.

Respondent argues that the trial court did not err in granting Travelers’ motion for interpleader, and that the Appellant is “over-simplifying” matters and “amalgamating” hearings in support of its arguments. *See* Respondent’s Initial Brief, at pp. 24-27.

The mere fact that the motion of Travelers for Interpleader to pay funds into court was ruled on as a “consent” motion is reason to remand this matter back to the Circuit Court, where there is no evidence that Appellant ever consented to the ruling (*See* 9/17/20) Transcript, at p. 54). As was indicated in Appellant’s initial brief, the transcript of September 17, 2020 does not contain any testimony indicating that the parties consented to a grant of Interpleader and full release of Travelers. Rather, the parties agreed to allow the substitution of the Estate of Arthur McKenzie for Mr. McKenzie individually, in light of Mr. McKenzie’s passing. (9/17/20 Transcript at p. 14). Defendant-Appellant Driggers specifically asked the Court, at the September 17, 2020 hearing, if Travelers was not going to be released from this lawsuit and the Court confirmed that “[t]hey’re going to pay that money into court” and that no ruling would be made on the motion for summary judgment of Travelers at that time. (*See* 9/17/20 Transcript, at p. 58). (Emphasis supplied). However, and notwithstanding this exchange with the Parties from the bench and on record, the Court subsequently issued an Order, granting the requested Interpleader, and further providing that “Travelers is

hereby dismissed from this action with prejudice.” (See Orders of March 30, 2021, and April 19, 2021).

The lower court’s finding in favor of Travelers on the interpleader was not proper as alleged by Respondent. Rather, the lower Court failed to consider S.C. Code Ann. 38-75-20 in agreeing to interpleader on behalf of Travelers. The fact that Travelers did not pay the full policy limits of the McKenzie policy is an issue that should have been, and now needs to be, addressed by the Circuit Court. While Rule 22, SCRCP allows for “[a] party potentially exposed to double or multiple liability . . . [to] obtain interpleader”, Travelers should have been required to deposit the full amount of the policy limits with the Court and not the \$115,140.40 remaining after the payment of legal expenses by McKenzie.

CONCLUSION

For these reasons set forth herein, together with those stated in Appellant’s Initial Brief, Appellant respectfully requests that this Court reverse the appealed-from orders of the trial court below, and remand this matter to the trial court for further proceedings.

Respectfully submitted,

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and

**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,**

Of Whom,

**The Travelers Home and Marine
Insurance Company is the,**

Defendant-Respondent.

PROOF OF SERVICE

I certify that on the 13th day of October, 2022, I served the Reply Brief of Defendant-Appellant and Designation of Matter on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure as follows:

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