

RECEIVED

Jan 18 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2022-000703

Progressive Northern Insurance Company, Respondent,

v.

Gloria Oliver, Richard Prothro, and Sharon Prothro, Defendants,
Of Whom Gloria Oliver is the Appellant.

FINAL BRIEF

s/John R. Moorman
J. Thomas McElveen, III
John R. Moorman
Bryan Law Firm of SC, L.L.P.
Post Office Box 2038
Sumter, South Carolina 29151
(803) 775-1263
Attorneys for Appellant

TABLE OF CONTENTS

Table of Authorities	i
Statement of Issue on Appeal	1
Statement of the Case	1
Standard of Review	5
Facts	5
Argument	7
Conclusion	13

TABLE OF AUTHORITIES

CASES

Auto Owners Insurance Company v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008).....6, 11, 12, and 13

Goldston v. State Farm Mut. Auto. Ins. Co., 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004).....5

Gunnels v. American Liberty Ins. Co., 251 S.C. 242, 161 S.E.2d 822 (1968).....10

Nationwide Insurance Company of America v. Knight, 433 S.C. 371, 858 S.E.2d 633 (2021).....3 and 13

Neumayer v. Philadelphia Indem. Ins. Co., 427 S.C. 261, 831 S.E.2d 406 (2019).....5

S.C. Farm Bureau Mut. Ins. Co. v. Kennedy, 398 S.C. 604, 730 S.E.2d 862 (2012).....5

Town of Summerville v. City of N. Charleston, 378 S.C. 107, 662 S.E.2d 40 (2008).....5

Unisun Insurance Company v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000)..... 10, 11, and 13

United Services Automobile Association v. Pickens, 434 S.C. 60, 862 S.E.2d 442 (2021).....3 and 12

Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 705 S.E.2d 432 (2011).....5

Williams v. Gov't Employees Ins. Co. (GEICO), 409 S.C. 586, 762 S.E.2d 705 (2014).....5

STATUTE

S.C. Code Ann. § 38-77-30.....7, 11, and 12

STATEMENT OF ISSUE ON APPEAL

- I. **DID THE LOWER COURT ERR BY GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT AND THEREBY FINDING THAT NO GENUINE ISSUE OF MATERIAL FACT EXISTED AS TO WHETHER APPELLANT, AN INNOCENT GUEST PASSENGER, WAS ENTITLED TO UNINSURED MOTORIST COVERAGE UNDER POLICY NUMBER 55178995, ISSUED BY RESPONDENT, FOR INJURIES SUFFERED BY APPELLANT IN A MOTOR VEHICLE COLLISION ON JULY 24, 2016?**

STATEMENT OF THE CASE

On July 19, 2018, Appellant filed a Summons and Complaint in the Sumter County Court of Common Pleas naming Richard Prothro and Sharon Prothro as defendants (Gloria D. Oliver vs. Richard Prothro and Sharon Prothro, Case No.: 2018-CP-43-1323) in a tort action underlying the instant declaratory judgment action.

Richard Prothro and Sharon Prothro were served on August 3, 2018. On September 4, 2018, an Answer was filed on behalf of Richard Prothro and Sharon Prothro in the underlying tort action.

On December 5, 2019, Appellant perfected service upon Respondent as uninsured motorist carrier through the South Carolina Department of Insurance, pursuant to S.C. Code Ann. § 38-77-150.

An Answer was filed on behalf of Respondent on December 16, 2019 in the underlying tort action.

Respondent filed the instant declaratory judgment action on January 23, 2019, alleging, in part, that Respondent's automobile insurance policy number 55178995, issued to Sharon Prothro, did not provide any coverage for claims arising out of the July 24, 2016 automobile collision, and perfected personal service upon Appellant on March 16, 2019.

Appellant filed a timely Answer to Respondent's Complaint in the instant declaratory judgment action on May 15, 2019.

On September 13, 2019, Respondent filed a Motion for Summary Judgment, and filed a Memorandum in Support of its Motion for Summary Judgment on October 21, 2019, along with exhibits.

On September 11, 2020, Appellant filed a Memorandum in Opposition to Respondent's Motion for Summary Judgment, along with exhibits.

A hearing on Respondent's Motion for Summary Judgment was held before the Honorable Kristi F. Curtis, Circuit Court Judge, on September 14, 2020 via WebEx. Arguments were presented at the hearing by Sarah E. Caiello, Esquire on behalf of Respondent and by J. Thomas McElveen, III, Esquire for Appellant. Following the hearing, the matter was taken under advisement by the lower court.

On October 6, 2020, the attorneys for the parties were notified that Respondent's Motion for Summary Judgment was denied.

On October 12, 2020 and on behalf of Respondent, J.R. Murphy, Esquire contacted counsel for Appellant with the proposal that, based upon the lower court's denial of Respondent's Motion for Summary Judgment and in the interest of judicial economy, counsel for Appellant should file a Cross-Motion for Summary Judgment to which the October 6, 2020 ruling would be applied by consent on behalf of Appellant and Respondent.

This proposal was presented by counsel for Respondent and counsel for Appellant at a status conference with the Honorable Kristi F. Curtis which was conducted via WebEx on October 23, 2020, at which time all parties present consented to having the lower court's October 6, 2020 ruling apply to a Cross-Motion for Summary Judgment to be filed on behalf of Appellant.

Appellant's Cross-Motion for Summary Judgment was filed on July 12, 2021, along with a Memorandum in Support of her Cross-Motion for Summary Judgment and supporting exhibits as previously referenced herein; a proposed Order Granting Defendant (Appellant) Gloria Oliver's Cross-Motion for Summary Judgment was submitted the following day, on July 13, 2021.

On July 28, 2021, Sarah E. Caiello, Esquire, counsel for Respondent, sent an e-mail (R. pp. 397-398) requesting that the lower court hold its October 6, 2020 ruling in abeyance, citing the fact that the Supreme Court of South Carolina had recently affirmed a South Carolina Court of Appeals decision which had been previously relied upon by Respondent in support of its Motion for Summary Judgment: Nationwide Insurance Company of America v. Knight, 433 S.C. 371, 858 S.E.2d 633 (2021).

Just over two hours later, counsel for Appellant responded with an e-mail summarily distinguishing the facts of the instant case and the cases previously relied upon in support of Appellant's position from the Supreme Court of South Carolina's decision in Knight (R. pp. 399-401).

On August 20, 2021, J.R. Murphy, Esquire sent an e-mail to the trial judge, "prior to the entry of an Order from your Honor in hopes of avoiding a Motion to Reconsider (R. pp. 402-403)," again advising of the Supreme Court of South Carolina's opinion in the previously mentioned Knight case, and also advising of the Supreme Court's affirmation of another Court of Appeals decision in United Services Automobile Association v. Pickens, 434 S.C. 60, 862 S.E.2d 442 (2021).

Several hours later, counsel for Appellant responded with another e-mail distinguishing the facts of the instant case and the cases previously relied upon in support of Appellant's

position from the Supreme Court of South Carolina's decisions in Knight and Pickens (R. pp. 404-406).

On August 20, 2021, counsel for Appellant also responded via e-mail addressing the effect of the Supreme Court of South Carolina's opinion in Pickens after receiving a request from the lower court to do so via e-mail a few hours earlier on that same date (R. pp. 407-409).

During the October 25, 2021 term of the Court of Common Pleas for Sumter County, the tort action underlying the instant declaratory judgment action (Gloria D. Oliver vs. Richard Prothro and Sharon Prothro, Case No.: 2018-CP-43-1323) was called for a jury trial, and a jury was selected by the parties. Prior to the start of trial, a settlement was reached pursuant to the terms of a written Memorandum of Understanding which was executed on behalf of the parties on October 31, 2021 and which included terms and conditions of settlement that are dependent upon the ultimate outcome of the instant declaratory judgment action.

On January 4, 2022, J.R. Murphy, Esquire sent a letter requesting another status conference to discuss the issues with the trial judge on behalf of Respondent (R. pp. 410-411).

On January 4, 2022, counsel for Appellant sent a letter to the trial judge in response to the letter from J.R. Murphy, Esquire which was received earlier on that same day (R. pp. 412-413).

On January 10, 2022, the parties received instructions from the trial court to forward any other information to the trial court within ten (10) days.

Respondent filed a Supplemental Memorandum in Response to Request for Additional Briefing on January 17, 2022; Appellant filed a Supplemental Memorandum in Opposition to Plaintiff Progressive Northern Insurance Company's Motion for Summary Judgment and in Support of Defendant Gloria Oliver's Cross-Motion for Summary Judgment on January 18, 2022.

On March 8, 2022, an Order was signed and entered by the Honorable Kristi F. Curtis, Circuit Court Judge, granting summary judgment in favor of Respondent.

Appellant filed a Motion to Reconsider on March 15, 2022, which was denied via a Form 4 Order signed and entered on April 25, 2022.

As a result of the lower court's ruling, Appellant filed a Notice of Appeal on May 23, 2022 appealing the ruling which granted summary judgment to Respondent.

STANDARD OF REVIEW

“Because declaratory judgment actions are neither legal nor equitable, the standard of review depends on the nature of the underlying issues.” Goldston v. State Farm Mut. Auto. Ins. Co., 358 S.C. 157, 166, 594 S.E.2d 511, 516 (Ct. App. 2004). “When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law.” Williams v. Gov't Employees Ins. Co. (GEICO), 409 S.C. 586, 593, 762 S.E.2d 705, 709 (2014) (quoting S.C. Farm Bureau Mut. Ins. Co. v. Kennedy, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012)).

When parties file cross-motions for summary judgment, the issue is decided as a matter of law. Neumayer v. Philadelphia Indem. Ins. Co., 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019) (citing Wiegand v. U.S. Auto. Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)).

“Further, the interpretation of a statute is a question of law, which we review de novo.” Neumayer, 427 S.C. at 265, 831 S.E.2d at 408 (citing Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).

FACTS

On July 24, 2016, Appellant was riding as a guest passenger in a 1996 Ford Contour automobile which was owned by Sharon Prothro and being operated by Richard Prothro, and which was insured by Respondent Progressive Northern Insurance Company under policy

number 55178995. This incident occurred in the parking lot of the Wal-Mart Neighborhood Market located at or near 615 Bultman Drive in Sumter, South Carolina. Richard Prothro, who was operating the automobile while under the influence of alcohol and/or intoxicating substances and while under suspension of his driver's license, recklessly drove the automobile in reverse at a high rate of speed, struck a natural area of the parking lot, collided with two trees, and struck multiple vehicles in the parking lot before finally coming to a stop. Appellant sustained bodily injury as a result of this incident.

The South Carolina Department of Motor Vehicles Form "FR-10" Notice of Requirement and the South Carolina Traffic Collision Report Form generated by the investigating officers with the City of Sumter Police list Richard Prothro as the driver of the 1996 Ford automobile, Sharon Prothro as its owner, and Respondent as the insurance company providing automobile insurance coverage.

Shortly after receiving notice of Appellant's liability claim, Respondent issued a letter dated September 26, 2016 denying the liability claim (R. p. 111). In a January 24, 2017 letter (R. pp. 112-113), counsel for Appellant requested a written response from Respondent confirming Respondent's denial of the claim as well as the grounds on which Respondent denied Appellant's claim as the liability insurance company providing coverage on the vehicle involved in the July 24, 2016 collision.

In a letter dated February 6, 2017 (R. p. 114), Respondent stated that "no coverage would be provided for any claim for damages against any named insured" due to the fact that Richard Prothro was an excluded driver.

In reply, counsel for Appellant submitted an "Uninsured Motorist Claim / Demand" dated January 8, 2018 (R. pp. 115-116) which gave reference to the Supreme Court of South Carolina's ruling in Auto Owners Insurance Company v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008) and

pointed out to Respondent that since Appellant was a guest passenger of driver Richard Prothro, and since Respondent had previously denied Appellant's liability claim, Richard Prothro was thereby rendered an uninsured motorist for purposes of liability coverage as it pertained to the July 24, 2016 collision.

In a January 16, 2018 letter, (R. p. 117), Respondent also denied Appellant's uninsured motorist claim, prompting Appellant to file the underlying tort action (Gloria D. Oliver vs. Richard Prothro and Sharon Prothro, Case No.: 2018-CP-43-1323) which was followed by the instant declaratory judgment action filed by Respondent.

ARGUMENT

The facts, evidence, and testimony in the underlying tort action related to the instant declaratory judgment action dictate that Appellant was a guest passenger in the 1996 Ford Contour which was insured by Respondent, owned by Sharon Prothro, and being driven by Richard Prothro at the time of the July 24, 2016 wreck, even by the admission of Respondent's named insured, Sharon Prothro.

S.C. Code Ann. § 38-77-30(7) provides that “[i]nsured means the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies *and a guest in the motor vehicle to which the policy applies* or the personal representative of any of the above [emphasis added].”

On December 2, 2019, six depositions were taken in connection with the situation subject of the instant action. The deposition of Appellant as the Plaintiff in the underlying tort action, (R. pp. 118-168) and the depositions of Richard Prothro and Sharon Prothro as Defendants in the underlying tort action (R. pp. 169-254 and R. pp. 255-336) were obtained, as well as depositions

of Appellant, Sharon Prothro, and Richard Prothro in the declaratory judgment action filed by Respondent (R. pp. 337-350, R. pp. 351-380, and R. pp. 381-396).

On December 2, 2019, Appellant testified that she did not have a driver's license nor a vehicle, and that she relied upon others for transportation (R. p. 346, line 24-p. 347, line 15). She testified that she knew Richard Prothro, but did not know Sharon Prothro (R. p. 137, lines 23-25, R. p. 162, line 15-p. 163, line 3). She testified that on the morning of the July 24, 2016 collision, Richard Prothro visited her home along with Appellant's uncle, and that she was going to make breakfast for them when she realized that she was missing some ingredients required to prepare the meal (R. p. 136, line 17-p. 137, line 17). She testified that Richard Prothro agreed to drive her to the Wal-Mart Neighborhood Market to get the things she needed, and that she had finished her shopping when the collision subject of the previously referenced underlying tort action occurred (R. p. 138, line 9-p. 139, line 12). Appellant testified that she understood the 1996 Ford Contour involved in the wreck which was insured by Respondent to belong to Richard Prothro, that Richard Prothro had said that the vehicle was his, that she had observed him driving it in the past, and that she had never spoken with Sharon Prothro about the automobile (R. p. 163, lines 4-21, R. p. 164, lines 5-17, and R. p. 346, lines 3-5). Further, Gloria Oliver stated that she had never received any indication that there might not be insurance coverage on the vehicle as of July 24, 2016 (R. p. 164, line 18-p. 166, line 12 and R. p. 345, line 14-p. 346, line 21).

On December 2, 2019, Richard Prothro testified that he had not had a driver's license in ten years and that his license had originally been suspended due to driving under the influence conviction(s) (R. p. 186, line 12-p. 187, line 24, R. p. 384, line 23-p. 385 line 4, and R. p. 385, lines 19-24), but that he continued to drive a vehicle insured by Respondent some 168 times between April 2, 2009 (the date on which Respondent contends that Richard Prothro was listed

as an excluded driver on automobile insurance policy number 55178995) and July 24, 2016 (R. p. 188, lines 2-22, and R. p. 248, line 3-p. 249, line 11). Richard Prothro testified that he had ready access to keys to the vehicle by virtue of the fact that the keys were typically left on the dresser in his and Sharon Prothro's bedroom, and that Sharon Prothro was aware that he was driving over the course of this period roughly one-third of the time (R. p. 212, line 19-p. 213, line 23, R. p. 217, lines 11-15, R. p. 218, lines 8-17, and R. p. 249, lines 12-23). Richard Prothro testified that he was consuming alcohol the evening prior to the July 24, 2016 wreck, and that he had also consumed a half pint of vodka within the three-hour period immediately preceding the wreck (R. p. 231, line 22-p. 234 line 1, and R. p. 235, lines 5-12). He testified that Sharon Prothro was aware that he was consuming alcohol on the evening prior to the wreck, and that she was aware that he was driving the 1996 Ford Contour on the morning of the July 24, 2016 wreck (R. p. 213, line 24-p. 214, line 5, R. p. 216, lines 9-12, and R. p. 234, lines 14-16). Richard Prothro testified that he did not believe that Gloria Oliver would have any way to know that he was an excluded driver under Respondent's policy in question, and that he did not think that Gloria Oliver should have asked him if he was a covered driver prior to getting into the 1996 Ford Contour on the morning of July 24, 2016 (R. p. 222, line 17-p. 223, line 1 and R. p. 392, line 6-p. 393, line 4).

On December 2, 2019, Sharon Prothro testified that she was aware that Richard Prothro's driver's license had been suspended for over ten years, but that he continued to drive and that when he was driving the 1996 Ford Contour, she was aware of it. She agreed that Richard Prothro had driven on some 168 occasions between April 2, 2009 and July 24, 2016 (R. p. 288, lines 3-25, R. p. 290, lines 4-8, R. p. 291, lines 13-16, R. p. 292, line 22-p. 293, line 15, R. p. 295, lines 5-16, R. p. 296, lines 11-17, and R. p. 316, lines 1-16). Sharon Prothro testified that

the keys to the vehicle were not hidden some place in the Prothro's house, but, rather, they remained in the same place most of the time (R. p. 294, line 11-p. 295, line 4, R. p. 295, lines 17-21, and R. p. 299, lines 11-17). She testified that she was aware that Richard Prothro had been drinking alcohol the night before the July 24, 2016 collision and during the morning of the collision, and that she believed him to be under the influence of alcohol when he left the Prothro's residence around 9:00 a.m. or 10:00 a.m. on the morning of the wreck (R. p. 298, line 6-p. 299, line 7, and R. p. 311, lines 16-20). Nonetheless, Sharon Prothro testified that she did nothing to prevent Richard Prothro from taking the 1996 Ford Contour on the morning of the July 24, 2016 wreck other than telling him to stop (R. p. 300, lines 14-25, and R. p. 311, lines 21-23). Sharon Prothro testified that she believed Gloria Oliver to have been a guest passenger in her automobile at the time of the July 24, 2016 collision (R. p. 374, lines 15-18), and that Gloria Oliver would have no way to know that Richard Prothro was an excluded driver pursuant to her automobile insurance coverage with Respondent which was applicable on the date of the collision (R. p. 309, line 18-p. 310, line 16, R. p. 327, lines 15-21 and R. p. 372, line 19-p. 374, line 14).

As previously mentioned, Respondent denied Appellant's liability claim on the basis of a policy exclusion. Therefore, the 1996 Ford Contour was deemed uninsured, at-fault motorist Richard Prothro was deemed an uninsured driver, and Appellant's resulting claim was deemed an uninsured motorist claim.

Citing Gunnels v. American Liberty Ins. Co., 251 S.C. 242, 247, 161 S.E.2d 822, 824 (1968), the Supreme Court of South Carolina held in Unisun Insurance Company v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000) that the uninsured motorist statute "is remedial in nature, enacted for the benefit of injured persons, and is to be liberally construed so that the purpose

intended may be accomplished.”

In granting Respondent’s Motion for Summary Judgment, the Court reasoned that because an excluded driver was operating the vehicle on the date of the wreck subject of the instant action, the exclusion extended to all forms of coverage in the policy – which included uninsured motorist coverage for an innocent guest passenger such as Appellant.

However, the lower court ignored the opinion which is most factually analogous to the instant action, Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008). In Auto Owners Ins. Co. v. Rollison, the Supreme Court of South Carolina reversed a ruling from the circuit court that a commercial general liability policy did not provide coverage for the underlying motor vehicle collision as a matter of law because that policy contained an exclusion for bodily injury arising out of the use of the automobile. In Rollison, the Supreme Court opined, in part, that *a passenger can only rely on the driver’s representations regarding his status as a permissive user, and that a determination of whether a passenger qualifies as a “guest” under S.C. Code Ann. § 38-77-30(7) must be viewed from the passenger’s perspective.* Rollison, at 611, 489-490; the Court also pointed out that according to Unisun, “an invited passenger of a non-permissive driver may, but not necessarily, qualify as a ‘guest’ *for the purposes of uninsured motorist coverage* [emphasis added].” Id., at 611, 490.

Further, the Rollison opinion states that, “We believe that to define ‘guest’ otherwise would lead to an absurd result which would require a passenger to specifically inquire whether the driver either owned the vehicle or had permission from the named insured to drive the vehicle. *Clearly, such an interpretation would be contrary to the intention of the Legislature as well as the remedial purpose and inclusive nature of the uninsured motorist statute* [emphasis added].” Id., at 612, 490. Requiring or imposing a duty upon an innocent guest passenger such as

Gloria Oliver, along with any of the countless number of innocent guest passengers in South Carolina under the same or similar circumstances, to make specific inquiries as to whether or not a host driver is listed on a vehicle's policy as an excluded driver would be equally absurd, and the South Carolina General Assembly chose to require no such inquiry or investigation of an insured in the fourth category of § 38-77-30(7) – a guest passenger such as Gloria Oliver.

The Supreme Court of South Carolina's extension of uninsured motorist coverage to a *guest* passenger despite an exclusion for bodily injury arising out of the use of the vehicle which was contained in the underlying policy in Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008) was roundly ignored in the lower court's ruling, which instead relied upon two more recent opinions of the Supreme Court of South Carolina in Nationwide Insurance Company of America v. Knight, 433 S.C. 371, 858 S.E.2d 633 (2021) and United Services Automobile Association v. Pickens, 434 S.C. 60, 862 S.E.2d 442 (2021).

Appellant takes exception to the notion in the lower court's Order filed March 8, 2022 that the question of whether she was an innocent guest passenger at the time of the collision is irrelevant; rather, it is a glaring and critical distinction between the Rollison opinion and the opinions in Knight and Pickens.

In stark contrast to the facts in Rollison, these more recent cases which were cited in the lower court's order do not involve innocent and/or unknowing guest passengers, nor do they explicitly overturn or reverse the Supreme Court of South Carolina's logic and holding in Rollison as it pertains to uninsured motorist coverage being extended to guest passengers due to the notions that one who is a "guest" at the invitation of the driver has, by implication, the consent of the named insured, that a guest has the consent of the named insured unless he or she has knowledge to the contrary, that a passenger can only rely on the driver's representations

regarding his status as a permissive user, and that a determination of whether a passenger qualifies as a 'guest' under the statute must be viewed from the passenger's perspective. Rollison, at 611, 489.

The evidence and testimony in this case and in the underlying tort action overwhelmingly dictate that on the morning of July 24, 2016, Appellant was riding as a guest passenger in the 1996 Ford Contour insured by Respondent by virtue of the invitation and permission of Richard Prothro, whom Appellant reasonably believed to be in rightful possession (and even ownership) of the automobile, whom she believed had the authority to allow her to ride in the vehicle, and whom she had absolutely no way of knowing was a purported excluded driver under the Respondent's automobile insurance policy which covered the vehicle. Affirming the lower court's Order would impose an absurdly burdensome duty upon countless innocent guest passengers in South Carolina – many of whom must rely on others for transportation – by requiring them to ask a litany of questions of countless host drivers and to demand production and inspection of an applicable automobile insurance policy prior to stepping into any automobile as a guest passenger, while also requiring them to possess beyond a rudimentary understanding of South Carolina automobile insurance law and/or applicability of an automobile insurance policy's coverage. By granting Respondent's Motion for Summary Judgment and thereby declining to extend uninsured motorist coverage to innocent guest passengers such as Appellant, the lower court's Order produces precisely the same absurd result previously prohibited by the South Carolina Supreme Court in the Unisun and Rollison opinions.

CONCLUSION

It is clear from the evidence and the testimony of the parties in the present declaratory judgment action and in the underlying tort action and viewing the evidence and all reasonable

inferences in the light most favorable to Appellant that there is more than a mere scintilla of evidence in which a trial judge or jury could infer that Appellant was an innocent guest passenger in the 1996 Ford Contour automobile insured by Respondent when she was injured in the July 24, 2016 wreck, and that Appellant was an eligible insured for uninsured motorist coverage.

Therefore, Appellant requests that the Court reverse the lower court's ruling granting Respondent's Motion for Summary Judgment, that Respondent's named driver exclusion shall not prevent Appellant, an innocent guest passenger, from recovering uninsured motorist coverage provided by Respondent under policy number 55178995, and that the Court find that the uninsured motorist coverage provided by Respondent pursuant to policy number 55178995 is applicable to claims for damages sustained by Appellant as a result of the automobile collision which occurred on July 24, 2016.

Respectfully submitted,

January 18, 2023

s/John R. Moorman
J. Thomas McElveen, III
John R. Moorman
Bryan Law Firm of SC, L.L.P.
Post Office Box 2038
Sumter, South Carolina 29151
(803) 775-1263
Attorneys for Appellant

RECEIVED

Jan 18 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2022-000703

Progressive Northern Insurance Company, Respondent,

v.

Gloria Oliver, Richard Prothro, and Sharon Prothro, Defendants,
Of Whom Gloria Oliver is the Appellant.

CERTIFICATE OF COMPLIANCE

This is to certify that Appellant's Final Brief complies with Rule 211(b), SCACR.

January 18, 2023

s/John R. Moorman
J. Thomas McElveen, III
John R. Moorman
Bryan Law Firm of SC, L.L.P.
Post Office Box 2038
Sumter, South Carolina 29151
(803) 775-1263
Attorneys for Appellant

RECEIVED

Jan 18 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Case No. 2022-000703

Progressive Northern Insurance Company, Respondent,

v.

Gloria Oliver, Richard Prothro, and Sharon Prothro, Defendants,
Of Whom Gloria Oliver is the Appellant.

PROOF OF SERVICE

I certify that I have served the within Final Brief of Appellant on Progressive Northern Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on January 18, 2023, addressed to its attorneys of record, Wesley B. Sawyer, Esquire, John R. "J.R." Murphy Esquire, and Sarah E. Caiello, Esquire at P.O. Box 6648, Columbia, South Carolina 29260, and email to jrmurphy@murphygrantland.com, wsawyer@murphygrantland.com, and scaiello@murphygrantland.com.

I further certify that all parties required by Rule to be served have been served.

January 18, 2023

s/John R. Moorman
J. Thomas McElveen, III
John R. Moorman
Bryan Law Firm of SC, L.L.P.
Post Office Box 2038
Sumter, South Carolina 29151
(803) 775-1263
Attorneys for Appellant

