RECEIVED
Mar 30 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

---

Appellate Case No. 2022-001455

---

Crystal Webb, Appellant,

v.

Dana Thomas Slaughter, Respondent.

---

# REPLY BRIEF OF APPELLANT

---

Brett L. Stevens (SC # 73830)
P.O. Box 5290
Columbia, South Carolina 29250
Phone: (803) 587-8506
Email: brett@brettstevenslaw.com

Julio A. Rossington (SC #73905)
1317-M N. Main Street #140
Summerville, South Carolina 29483
Phone: (843) 261-1114
Email: julio.rossington@rossingtonlaw.com
Attorneys for Appellant

## TABLE OF CONTENTS

Table of Authorities……. 3

Clarification of Facts…… 4

Reply Arguments:

1. Progressive should be bound by the default judgment because it has failed to file a Brief or otherwise contest the relief Appellant has requested……..……. 4

2. Respondent is not entitled to a satisfaction of judgment until the case has ended pursuant to the plain terms of the Covenant not to Execute; thus, satisfaction of the judgment is only appropriate if the Court finds that Progressive is bound by the Default Judgment…….. 5

3. Appellant did not thwart Progressive's right to a jury trial; rather, Progressive waived that right by failing to object or otherwise request a jury trial at any time prior to or during the damages hearing…… 6

Conclusion…… 7

## TABLE OF AUTHORITIES

CASES

*In the Care and Treatment of Corley*, 365 S.C. 252, 616 S.E.2d 441 (2005)…….. 6

*Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 747 S.E.2d 178 (2013)…….. 5

*State v. Tessnear*, 257 S.C. 290, 185 S.C.2d 611 (1971)…… 4

RULES

Rule 208, SCACR…… 4

Rule 213, SCACR……. 4

## CLARIFICATION OF FACTS

In Respondent's Statement of the Case, Respondent indicates on page 7 that "Counsel for the Defendant was not noticed of or included in the hearing and did not attend the [damages] hearing." However, at the time of the damages hearing, Counsel for Progressive had been substituted as Counsel (Orders to Substitute Counsel), and it is clear from the record that Counsel for Progressive was on notice of the damages hearing because Counsel appeared at that hearing.

## REPLY ARGUMENTS

### 1. Progressive should be bound by the default judgment because it has failed to file a Brief or otherwise contest the relief Appellant has requested.

The South Carolina Appellate Court rules provide that where a responsive brief is not filed, the Court may take such action as it deems proper. Rule 208(a)(4), SCACR; *see also State v. Tessnear*, 257 S.C. 290, 295, 185 S.C.2d 611, 613 (1971) (stating the Court has the right to give the proper weight to the failure to file a responsive brief and take such action in each case that may be justified). Although Progressive is not technically a party to this action, Counsel for Progressive was timely served with the Notice of Appeal and Initial Brief, and Progressive clearly participated in the underlying action and has an interest in the outcome of this appeal. Despite that, Counsel for Progressive has failed to file a Brief, request leave of Court to file a an Amicus Brief in accordance with Rule 213, SCACR, or join Respondent's Brief in accordance with Rule 208(6), SCACR. Respondent has made arguments on behalf of Progressive in its Brief to this Court; however, Appellant asserts that Respondent is not the proper party to assert such arguments as Respondent and Progressive have different interests in the case. Accordingly, Appellant asks the Court to find that Progressive is bound by the default judgment.

**2. Respondent is not entitled to a satisfaction of judgment until the case has ended pursuant to the plain terms of the Covenant not to Execute; thus, satisfaction of the judgment is only appropriate if the Court finds that Progressive is bound by the Default Judgment.**

The Covenant not to Execute, paragraph 4, specifically provides:

> 4. That furthermore, Crystal Webb and Ronald Webb covenants and promises that if they should attain a judgment against Dana Thomas Slaughter, they will not execute said judgment against Dana Thomas Slaughter or Government Employees Insurance Company and that, **upon a final determination of whether any excess liability insurance coverage or underinsured motorist benefits will be paid, Crystal Webb, Ronald Webb, and their attorney, Julio Rossington, will cause the judgment to be marked and entered as satisfied.**

(Emphasis added) (Covenant not to Execute).

Whether underinsured motorist benefits will be paid and to what extent is clearly still an at issue in this case because Progressive has previously taken the position that it is not bound by the default judgment, and Appellant takes the position that either Progressive is bound by the default judgment or the case should be remanded for a trial as to damages. Under either scenario, there has been no final determination of whether any underinsured motorist benefits will be paid in accordance with the plain terms of the Covenant not to Execute. *See Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 747 S.E.2d 178, 183-84 (2013) (Covenants not to Execute are contracts, and their plain and unambiguous language should be given full force and effect). Accordingly, based on the plain language of the Covenant not to Execute, Respondent is not entitled to have the judgment marked satisfied at this time. Thus, the trial judge erred in marking the judgment satisfied unless this Court finds that Progressive is bound by and required to pay the judgment.

### 3. Appellant did not thwart Progressive's right to a jury trial; rather, Progressive waived that right by failing to object or otherwise request a jury trial at any time prior to or during the damages hearing.[1]

Respondent contends Appellant "thwarted" Progressive's right to a jury trial. However, as is clear from the record, Appellant took no steps to thwart Progressive's rights. Rather, Progressive waived its rights by failing to object and/or request a jury trial in the eight months between the time Progressive was served and the damages hearing.

As has been previously stated, Appellant requested a damages hearing on April 6, 2021, before Progressive responded to the Complaint and requested a jury trial. (Motion for Damages Hearing). Progressive was served with the Complaint on March 25, 2021, and answered on April 23, 2021. (Progressive's Answer). At the time Progressive answered the Complaint, the request for a damages hearing had already been filed. At no time between March 25, 2021 and December 28, 2021, at which Progressive filed its Motion to Reconsider, did Progressive ever request the motion for damages be withdrawn and/or object to the motion hearing being held as a bench trial. In fact, Appellant filed a memorandum on November 19, 2021, through counsel, in support of the request for damages, and Progressive did not file a Memorandum in Reply. (Memorandum). Rather, the only evidence in the entire record that Progressive ever desired a jury trial in this matter is as follows: (1) On the face of its Answer, Progressive typed "Jury Trial Demanded," and in its Motion to Reconsider filed on December 28, 2021, after the damages hearing, Progressive argued its right to a jury trial had not been protected. Progressive had a duty to object and/or request the jury trial at some point prior to or during the damages hearing to preserve that issue for appeal; however, no objection or request was made thereby waiving the right to contest that issue on appeal. *See, i.e., In the Care and Treatment of Corley,* 365 S.C.

[1] As noted in Argument 1, Appellant asserts Respondent is not the proper person to assert this argument on behalf of Progressive.

252, 616 S.E.2d 441 (2005) (stating constitutional issues must be raised to and ruled on by the trial judge in order to be preserved for appellate review).

Unlike the cases cited by Respondent, Progressive was on notice of this case for eight months prior to the damages hearing. Progressive was substituted as counsel in the underlying case by two orders dated June 30, 2021 and August 4, 2021. (Substitution Orders). Progressive was on notice of the damages hearing, appeared at the damages hearing, was represented by counsel at the damages hearing, was given an opportunity to call and question witnesses and present evidence. Progressive did not object to the mode of trial or request a jury trial. Accordingly, Progressive implicitly consented to moving forward in the case with a bench trial. In the alternative, if the Court finds Progressive did not waive its right to a jury trial, Appellant requests the Court remand to the circuit court for a jury trial as to damages.

## CONCLUSION

For the reasons stated herein, the Court should reverse the trial judge's ruling and find either that Progressive is bound by the default judgment or remand for a jury trial as to damages.

Respectfully Submitted:

March 30, 2023

s/ Brett L. Stevens

Brett L. Stevens (SC # 73830)
P.O. Box 5290
Columbia, South Carolina 29250
Phone: (803) 587-8506
Email: brett@brettstevenslaw.com

Julio A. Rossington (SC #73905)
1317-M N. Main Street #140
Summerville, South Carolina 29483
Phone: (843) 261-1114
Email: julio.rossington@rossingtonlaw.com
Attorneys for Appellant

RECEIVED
Mar 30 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

---

Appellate Case No. 2022-001455

---

Crystal Webb, Appellant,

v.

Dana Thomas Slaughter, Respondent.

---

**CERTIFICATE OF SERVICE**

---

I, Brett L. Stevens, Attorney for the Appellant, certify to the Court that on this 30th day of March, 2023, I served a copy of Appellant's Initial Reply Brief in the above-referenced case, by serving the same by electronic delivery:

Thomas H. Milligan, Esq.
Email: tom@milliganlawfirm.com
Attorney for Respondent

William J. Blount, Esq.
Email: wblount@grsm.com
Attorney for Respondent

Jeffrey M. Crudup, Esq.
Email: jcrudup@clarksonwalsh.com
Attorney for Progressive Northern Insurance Company

March 30, 2023

s/ Brett L. Stevens

Brett L. Stevens (SC # 73830)
P.O. Box 5290
Columbia, South Carolina 29250
Phone: (803) 587-8506
Email: brett@brettstevenslaw.com

Brett Stevens <brett@brettstevenslaw.com>

# Webb v. Slaughter, 2022-001455: Appellant's Reply Brief

**Brett Stevens** <brett@brettstevenslaw.com> Thu, Mar 30, 2023 at 9:56 AM
To: Tom Milligan <tom@milliganlawfirm.com>, wblount@grsm.com, Jeff Crudup <jcrudup@clarksonwalsh.com>
Cc: Julio Rossington <julio.rossington@rossingtonlaw.com>

Dear all,

Please see attached Appellant's Initial Reply Brief in the above-referenced case, which I hereby serve upon you.

Sincerely,
Brett Stevens

Brett L. Stevens
Stevens Law, LLC
P.O. Box 5290
Columbia, South Carolina 29250
(803) 587-8506





**23 3 27 Reply Brief of Appellant.pdf**
141K