RECEIVED
Jul 16 2024
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-000069

First Acceptance Insurance Company, Inc……..……Respondent,

v.

Tamasha Floyd, individually and as guardian ad litem of Jayvon G, a minor under the age of eighteen (18) years of age; Harry C. Brown, as Special Administrator of the Estate of Kevin M.; Elsa Velasquez Ferro; Gerald Washington; and Vincent Williams……. Defendants,

Of Whom,

Tamasha Floyd, individually, is the……. Appellant.

RESPONDENT'S FINAL BRIEF

Wesley B. Sawyer, Esquire (S.C. Bar No. 100229)
Murphy & Grantland, P.A.
PO Box 6648
Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for Respondent First Acceptance Insurance Company, Inc.

Other Counsel of Record:

Clifford Bush, III
J. Andrew Smith
Law Office of Clifford Bush, III, LLC
28 Old Jericho Road
Beaufort, SC 29906
cbush@lawofficeofcbushiii.com
drew@lawofficeofcbushiii.com
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number

CASES

STATUTES

STATEMENT OF ISSUE ON APPEAL

I. Whether the Circuit Court properly enforced a named driver exclusion to preclude coverage for a single-vehicle accident caused by the excluded driver.

INTRODUCTION

Carlos Morazan signed a Named Driver Exclusion naming his son Kevin[1] as an excluded driver. When Kevin was 17 years old, he drove without a license and caused a single vehicle accident, injuring Appellant Jayvon G. Appellant filed suit against Kevin's estate, and Respondent First Acceptance Insurance Company, Inc. ("First Acceptance") filed this declaratory judgment action to enforce the Named Driver Exclusion. After a bench trial, the Circuit Court enforced the exclusion as written and held Appellant's claims arising out the automobile accident are excluded.

The Named Driver Exclusion satisfies every requirement of South Carolina's excluded driver statute. Section 38-77-340 expressly authorizes the exclusion of coverage while a natural person designated by name operates a vehicle as long as the form is approved by the Department of Insurance, names the excluded driver, and the named insured declares the excluded driver either has turned in his license or has other insurance. The Circuit Court correctly found each requirement satisfied here.

On appeal, Appellant argues for the first time that the Named Driver Exclusion identifies someone other than Kevin. However, Appellant admitted in her Answer that "[t]he Policy declarations describe Kevin M.'s driver status as 'Excluded'"; and that Kevin was operating the vehicle at the time of the single car collision. (R. pp. 29 ¶ 14, 32 ¶ 31, Compl.); (R. pp. 80 ¶ 16, 82 ¶ 33, Floyd's Ans.); (R. p. 176, line18-p. 168, line 14, Trial Tr.). Appellant failed to present any evidence to the contrary at trial.

[1] Because Kevin was a minor at the time of his death, his last name has been redacted and/or omitted. *See* Rule 41.2(a)(2), SCRCP.

This Court must affirm the Circuit Court's factual determinations if there is any supporting evidence in the record. The Circuit Court relied on the admissions on record and the facts presented at trial and found: "The Kevin listed on the Named Driver Exclusion form is Carlos Morazan's son, who was driving the subject vehicle at the time of the accident." (R. p. 10). This finding is supported by record evidence. The insurance application required Carlos Morazan to list all residents of his household age 14 or older, and in response to that directive, Morazan disclosed himself, his wife, and Kevin – a resident who was 14. (R. pp. 8-9). Kevin's date of birth listed on the policy documents had the correct day and month of birth, but an incorrect year.[2] (R. p. 8). Additionally, "no party presented evidence that Carlos Morazan knew any other Kevin with the same last name or the same day and month of birth." (R. p. 10 n.5).

Appellant makes a public policy argument that this Court should not enforce the named driver exclusion because Carlos Morazan allegedly provided inaccurate information in the Named Driver Exclusion form. However, Appellant never presented any evidence at trial that the statement in the Named Driver Exclusion was false – i.e., that at the time of the application, there was no other insurance policy insuring Kevin. More importantly, Appellant cannot rely on public policy to avoid the Named Driver Exclusion. While a previous version of the statute may have produced a different result, the General Assembly amended the named driver exclusion statute so that the party who enjoys the reduced premium from a named driver exclusion also bears the consequence of any misrepresentations in the named driver exclusion form.

[2] The application also had the correct day and month of birth for Carlos Morazan's wife, but an incorrect year. (R. p. 117, lines 1-4; p. 181, line 25-p.182, line 1).

STATEMENT OF FACTS

The parties agreed to participate in a bench trial before the Circuit Court. (R. p. 99, line 7-p.101, line 8; p. 103, line 23-p. 104, line 3). First Acceptance called Joe Schlechta as a witness. (R. p. 126, line 22-p. 127, line 1). Appellant did not object to any of Mr. Schlechta's testimony. First Acceptance also presented stipulations, exhibits, admissions in the pleadings, and responses to requests for admission. Appellants did not call any witness and presented no factual evidence. When called upon to present their case, they informed the Court that the defense rested. (R. p. 191, lines 3-10). The facts below come from Mr. Schlechta's testimony, the admissions on record, and exhibits submitted to the Court.

I. Carlos Morazan applies for an automobile insurance policy and chooses to exclude Kevin from coverage.

On February 26, 2016, Carlos Morazan applied in person for a personal auto policy with First Acceptance at its Beaufort agency. (R. pp. 201-215, Policy Application); (R. p. 140, lines 7-18, Trial Tr.). As part of the application process, the agent would ask preliminary questions to determine whether the insured qualified for coverage, including drivers, vehicles, requested coverages, etc. (R. p. 129, line 19-p.130, line 13). The information provided by the applicant would then be put into an application for coverage. (*Id.*).

Without objection, the Court admitted the application into evidence. (R. p. 131, lines 10-19). In 2016, First Acceptance required applicants to disclose all persons age 14 or older who lived with the applicant. (R. p. 133, line 2-p.134, line 10, Trial Tr.); (R. pp. 201-215, Policy Application). In fact, the application includes multiple areas requiring the applicant to list all residents of the household who are 14 or older. (R. p. 201-215, Policy Application); (R. p. 132, line 7-p. 134, line 10, Trial Tr.). The reason for this question is obvious: First Acceptance wants to know who is or may become of driving age during the policy period.

In 2016, First Acceptance did not have access to any database that would have disclosed Kevin as a resident of Carlos Morazan's household. (R. p. 135, lines 3-10). Instead, First Acceptance relied on the applicant to provide information regarding household residents. (R. p. 147, lines 13-16). In response to the questions in the application regarding household residents, Carlos Morazan disclosed his wife Joseline Velasquez and his son Kevin. (R. p. 201). Morazan provided incorrect dates of birth for both Joseline and Kevin. In both cases, he provided the correct day and month of birth, but the incorrect year of birth. *Compare* (R. p. 105, lines 10-17, Trial Tr.) *with* (R. p. 201, Policy Application).

Carlos Morazan chose to exclude Kevin from the policy. As a result, the application and policy declarations describe Kevin[3] as "excluded" under the "Driver Information" section. (R. p. 201, Policy Application); (R. p. 29 ¶ 14, Compl.); (R. p. 80 ¶ 16, Floyd Ans.); (R. p. 217, Policy). As part of the policy application, Carlos Morazan executed a form SCC-307 "Named Driver Exclusion" (hereinafter the "Named Driver Exclusion"). (R. p. 205). The Named Driver Exclusion states in pertinent part:

> In consideration of the premium charged, I, the named insured on my insurance policy, hereby authorize the person(s) listed below to be excluded from my insurance policy. This means that the Company shall not be liable for damages, losses or claims arising out of the operation or use of the automobile described in the policy or any other automobile whether or not such operation or use was with the express or implied permission of its owner, while said automobile is being driven or operated by the following named person(s). This exclusion includes any claim for damages made against you, a family member or any other person or organization that is vicariously liable for an accident or loss arising out of the operation of your covered auto or non-owned auto by the excluded driver(s).

[3] Kevin's last name has been omitted from the exhibits. (R. p. 131, line 22-p.132, line 3). However, the Court received unredacted copies at trial listing Kevin's full name. The parties did not dispute that the names are the same.

(*Id.*). The Named Driver Exclusion endorsement lists Kevin as the excluded driver. (*Id.*). At trial, the parties stipulated that this form was approved by the Department of Insurance prior to the date of the policy application. (R. p. 104, line 21-p. 105, line 9). The Named Driver Exclusion endorsement provided the correct day and month for Kevin's date of birth, but the incorrect year. It also described his relationship as "employee." (R. p. 205). This information was provided by Carlos Morazan. (R. p. 134, line 17-p. 135, line 15). Appellant did not present any evidence that Carlos Morazan knew any other Kevin with the same last name or the same day and month of birth. (R. p. 10 n. 5).

At trial, Appellant never contended that the information on the Named Driver Exclusion form referred to someone other than Kevin. Instead, counsel for Appellant repeatedly argued that the year of birth was a "mistake" and that First Acceptance would not have issued the named driver exclusion if it had the correct year of birth on the application.[4] However, Mr. Schlechta confirmed that Kevin either had to be included or excluded on the policy because he was a resident of the household and 14 or older. (R. p. 133, lines 2-19; p. 151, lines 4-9).

II. Carlos Morazan electronically signs the insurance application, including the Named Driver Exclusion form.

In 2016, all First Acceptance agencies utilized Docusign to electronically sign policy applications. (R. p. 141, lines 16-21). Agency computer monitors sat on swivels, which allowed the agent to turn the computer monitor to Carlos Morazan. The desk had a separate mouse for Carlos Morazan to use, and he clicked to electronically sign each signature space on the application. (R. p. 139, line 9-p. 140, line 6). Docusign prompted Carlos Morazan to each signature line for his review and electronic signature. (R. p. 138, lines 12-25).

[4] Appellant's counsel argued at trial: "The bottom line is, a 14-year-old in our state cannot drive. This is a mistake on their policy. This is their fault. They should have put in the right date of birth. They should have determined the date of birth." (R. p. 169, lines 11-15).

If, and only if, the insured completes all the necessary signatures for the policy application, then DocuSign creates a Certificate of Completion. (R. p. 138, line 23-p.139, line 8). The Court admitted into evidence the Certificate of Completion as part of the insurance application, confirming that Carlos Morazan properly completed the signatures on the application, including the Named Driver Exclusion. (R. p. 131, lines 10-21; p. 139, lines 1-8); (R. pp. 201-211, Policy Application with DocuSign Certificate of Completion). First Acceptance also verified Carlos Morazan's identity by obtaining a copy of his license. (R. p. 141, line 22-p.143, line 11); (R. p. 215, Morazan License).

III. Relying on the application, First Acceptance issues a policy excluding coverage when a vehicle is operated by Kevin.

First Acceptance issued a personal auto policy, Policy No. CSSC 000095310, to Carlos Morazan (hereinafter the "Policy"). (R. pp. 216-256). The Policy "AGREEMENT" states, "This policy is issued and renewed in reliance upon the truth and accuracy of the representations made in the **application** for this insurance. . .." (R. p. 222, Policy); (R. p. 148, lines 7-23, Trial Tr.).

In accordance with Carlos Morazan's execution of the Named Driver Exclusion, the Policy includes a named driver exclusion endorsement. (R. p. 217). It provides in pertinent part:

> Notwithstanding any other provision of the agreement and in consideration of the premium charged for this policy, it is agreed that no coverage is afforded for any claim or **loss** arising from an **accident** when the **insured auto** . . . is being driven, operated, or under the control of, either with or without the express or implied permission of the **named insured** or **owner**, by those persons specifically listed by **you** on **your** application . . . as an excluded driver. . . .
>
> No Uninsured Motorist Coverage or Underinsured Motorist Coverage will be provided under this policy to anyone while the **insured auto** or any other **auto** to which the terms of this policy are extended is being driven or operated by the excluded driver(s).

(R. p. 252). The terms of the Policy exclude all coverage when a vehicle is operated by Kevin. (R. pp. 230, 237, 243, 252).

By its express terms, the Named Driver Exclusion remained in effect for all renewals, reinstatements, replacement, or changes to the Policy: "I understand that this agreement will be binding and will apply to and remain in effect for this policy term and all future renewals, reinstatements, replacement policies, or any changes in my policy unless I notify First Acceptance Insurance Company, Inc. in writing to amend the policy. The provisions of this endorsement supersede and excludes from the policy any contrary provision(s)." (R. p. 205). The Policy was renewed with these same terms through the date of the accident at issue. (R. p. 143, line 19-p.144, line 25; p. 145, lines 10-20, Trial Tr.); (R. pp. 216-256, Policy). At each and every renewal, First Acceptance mailed a copy of the policy declarations to Carlos Morazan. (R. p. 145, lines 21-23). At no time before the accident did First Acceptance receive any request from Carlos Morazan to remove the Named Driver Exclusion. (R. p. 146, lines 9-14).

IV. Kevin drives a vehicle and causes an auto accident.

On May 14, 2020, Appellant filed suit in the Beaufort County Court of Common Pleas against Harry Brown, as Special Administrator for the Estate of Kevin M., and Elsa Ferro, Civil Action No. 2020-CP-07-0175 (the "Underlying Complaint"). The Underlying Complaint alleges that on September 25, 2018 Kevin was driving the 2004 Ford Expedition with Jayvon Garrett as a passenger when the vehicle ran off of the road, collided with a mailbox, and overturned. (R. p. 93 ¶¶ 10-11).[5] The Underlying Complaint alleges that Jayvon Garrett sustained injuries in the accident. (R. p. 95 ¶ 15). Additionally, in her Answer in this case, Appellant admitted that Kevin was driving the 2004 Ford Expedition at the time of the accident. (R. p. 32 ¶ 31, Compl.); (R. p. 82 ¶ 33, Floyd Ans.).

[5] Jayvon Garrett was a minor at the time of the accident. He is now an adult.

Appellant alleges Kevin was unlicensed at the time of the accident. (R. p. 96 ¶ 23). At the time of the accident, Kevin was 17 years old. The parties stipulated at trial to the date and year of his birth. (R. p. 105, lines 10-16). He passed away in the accident. (R. p. 121, lines 21-22).

STATEMENT OF THE CASE

First Acceptance filed its Summons and Complaint for Declaratory Judgment on August 25, 2020. (R. pp. 25-34). On September 8, 2020, Appellant filed an Answer. (R. pp. 79-83). The parties agreed to a bench trial, which took place before the Honorable Jocelyn Newman on September 5, 2023.

As noted above, First Acceptance presented its case via Requests for Admission, stipulations, live testimony, exhibits, and admissions contained in Appellant's Answer. At the end of First Acceptance's case in chief, Appellant moved for a directed verdict, which the Circuit Court denied. (R. p. 191, lines 1-4). Appellant chose not to present any evidence. (R. p. 191, lines 3-10). As a result, First Acceptance made its own directed verdict motion. The Circuit Court held that it was granting the directed verdict in favor of First Acceptance but that it also would have factually ruled in favor of First Acceptance. (R. p. 196, lines 14-22). On September 11, 2023, the Circuit Court entered a Form 4 Order finding in favor of First Acceptance and requesting a proposed order pursuant to Rule 25, SCRCP. (R. pp. 22-24).

On December 7, 2023, the Circuit Court issued an Order in favor of First Acceptance, holding that the Named Driver Exclusion was enforceable to preclude all coverage under the Policy for the September 25, 2018 auto accident. (R. p. 4). The Circuit Court set forth extensive findings of fact based on the "stipulations of the parties, the exhibits submitted, and the testimony of Joe Schlechta." The Findings of Fact included, among others:

- Carlos Morazan applied for the policy in person at a First Acceptance agency located in Beaufort, South Carolina.

- When a customer would come into the agency, the agent would speak with the customer and gather information about the customer's vehicles, household, etc. Relying on the information provided by the customer, the agent would prepare a quote for coverage.

- If the customer agreed with the quoted price, then the agent and the customer would begin the application process. The agent would take information provided by the customer and input that information into the computer system.

- Once the information is complete, a DocuSign envelope with the full insurance application and accompanying documents is emailed. When the customer is remote, the DocuSign envelope is emailed to the customer. When the customer is in person – as was the case here – the DocuSign envelope is emailed to the agent.

- Using the customer's computer mouse, Carlos Morazan was prompted to select a font for his electronic signature and then prompted by DocuSign through each and every signature line in the application.

- During the process, Carlos Morazan could scroll up and down. If at any point in the process Carlos Morazan saw any errors in the application, he could notify the agent to have the issues corrected.

- Carlos Morazan electronically signed each required signature by clicking the mouse at each appropriate signature space.

- First Acceptance obtained a copy of Carlos Morazan's license, confirming that he was the person who was signing the application.

- When all signatures have been properly obtained, DocuSign creates a Certificate of Completion. The Certificate of Completion is only created if the signature process is properly completed.

- The application submitted as an exhibit at trial includes the DocuSign Certificate of Completion, confirming that all signatures were completed. The DocuSign Envelope also contains a unique Envelope ID, which is stamped at the top of each page that made up part of the DocuSign Envelope, i.e. the application.

- The first page of the application signed by Carlos Morazan identified three individuals under "Driver Information," including Carlos Morazan, Kevin, and Joseline Velasquez.

- The "Driver Information" listed Kevin's "Driver's License" status as "Excluded."

- At all points throughout the application, Kevin's day and month of birth are correct, but the year of birth is incorrect.

- All information in the application comes from the applicant.

- First Acceptance did not have access to a database in 2016 that would have revealed Kevin as a member of Carlos Morazan's household. Therefore, the only source of information about Kevin would have been Carlos Morazan.

- The application includes a section titled: "UNDERWRITING QUESTIONS – MUST BE COMPLETED." This section includes the question: "Have all members of household 14 years and older been disclosed on this application? If no, please explain." Carlos Morazan responded "Yes."

- The application also includes a section titled: "APPLICANT'S STATEMENT – READ BEFORE SIGNING." As part of this section, Carlos Morazan stated, "I also certify that all persons age 14 or over who live with me have been reported to the Company."

- The DocuSign Envelope also included the initial declarations page for Policy CSSC000095310. The declarations page listed "Endorsements made part of this policy at time of issue," which included "NAMED DRIVER EXCLUSION" form number SCC-102.

- As part of the DocuSign Envelope, Carlos Morazan signed a Named Driver Exclusion form identified by Form Number SCC-307 ed. May 2010.

- Form SCC-307 ed. May 2010 was approved by the Director of the Department of Insurance or his designee.

- The Named Driver Exclusion form identified Kevin as the excluded driver. As with the other portions of the application, the Named Driver Exclusion form lists the correct day and month of Kevin's birth, but the incorrect year. The Named Driver Exclusion describes Kevin as an "Employee."

- The Kevin listed on the Named Driver Exclusion form is Carlos Morazan's son, who was driving the subject vehicle at the time of the accident.

- Even if Carlos Morazan had provided the correct year of birth for Kevin, the Policy would have included the Named Driver Exclusion.

- In the Named Driver Exclusion form, there is an "X" place beside the statement: "An appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be excluded."

- The Named Driver Exclusion form also includes the following declaration: "I further declare that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles, or (2) an appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be excluded."

- Carlos Morazan electronically signed the Named Driver Exclusion on February 26, 2016, as part of the DocuSign Envelope.

- The declarations page in effect on the date of the accident listed a 2004 Ford Expedition with VIN ending in 9832. The declarations page listed Kevin as one of the individuals under "Driver Information" and listed his status as "Excluded." The declarations page also identified Form SCC-102 NAMED DRIVER EXCLUSION as being one of the endorsements making up the policy. The declarations page does not show any comprehensive or collision coverage in effect for the 2004 Ford.

- Pursuant to the terms of the Policy, the insurance "contract includes the Declarations Page, Endorsements, the Application, the Personal Auto Policy, and all attachments." Thus, the Named Driver Exclusion form signed as part of the insurance application was part of the subject insurance contract.

- The Policy also states: "This policy is issued and renewed in reliance upon the truth and accuracy of the representations made in the application for this insurance."

- Between the date of the application and the date of the accident, Carlos Morazan did not contact First Acceptance in writing to request that the Named Driver Exclusion be removed from the Policy.

- On September 25, 2018, Kevin drove the 2004 Ford Expedition with Jayvon as a front seat passenger when a single vehicle accident occurred.

- As a result, Tamasha Floyd, individually and as guardian ad litem for Jayvon, filed suit against Harry Brown as the Special Administrator for the Estate of Kevin and against Elsa Ferro. Floyd did not file suit against Carlos Morazan.

(R. pp. 6-12).

The Circuit Court evaluated each requirement of South Carolina's excluded driver statute, confirming that the Named Driver Exclusion signed by Carlos Morazan satisfied each and every requirement. (R. pp. 14-16). The Circuit Court also considered and ultimately rejected Appellant's argument that Kevin could not be excluded. (R. pp. 16-17). Appellant argued that the statute does not allow the exclusion of a 14-year-old because a 14-year-old cannot drive or get insurance. The Circuit Court rejected this argument because the insured can satisfy the statute by declaring that the excluded person has turned in his license – i.e., that he cannot drive. (*Id.*). Likewise, the Circuit

Court rejected Appellant's argument that a 14-year old cannot have insurance because the statutory definition of insured automatically includes resident relatives.[6] (R. p. 17) (citing S.C. Code § 38-77-30(7)). Moreover, the Circuit Court held that the plain language of the statute only requires that the "named insured declares in the agreement" that either the excluded driver has turned in his license or has other insurance. (R. p. 18) (citing S.C. Code § 38-77-340). Both from a plain reading of the statute and a review of the statutory history, the Circuit Court held that the insurance company is not required to verify the accuracy of the named insured's declaration. (R. pp. 18-19).

The Defendants did not file any post-trial motions. This appeal followed.

STANDARD OF REVIEW

"When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *State Farm Mut. Auto. Ins. Co. v. Goyeneche,* 429 S.C. 211, 217, 837 S.E.2d 910, 913 (Ct. App. 2019) (citation omitted). "In an action at law, tried without a jury, the appellate court's standard of review extends only to the correction of errors of law." *Smith v. Auto-Owners Ins. Co.*, 377 S.C. 512, 515, 660 S.E.2d 271, 272 (Ct. App. 2008) (citation omitted). When a determination is one of fact, the appellate court "will not disturb the circuit court's ruling if the record contains any evidence supporting it." *Id.* (citation omitted).

[6] The Circuit Court also noted that Appellant failed to present any testimony from any insurance expert or other witness to show that insurance for Kevin was not commercially available. (R. p. 17, n.7).

ARGUMENT

I. The Circuit Court properly applied the plain language of South Carolina Code § 38-77-340 by enforcing the Named Driver Exclusion, and the Circuit Court's ruling comports with the statute's legislative history.

A. The Named Driver Exclusion here satisfies every requirement of South Carolina Code § 38-77-340.

South Carolina courts enforce insurance contracts just like any other contract—that is, contracts are enforced as written. *Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 170, 594 S.E.2d 511, 518 (2004). Courts "must enforce, not write, contracts of insurance and . . . give policy language its plain, ordinary and popular meaning." *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 318, 440 S.E.2d 367, 369 (1994). The Circuit Court found the insurance contract excluded Kevin and that Kevin was operating the vehicle at the time of the accident. The contract language is clear: "it is agreed that no coverage is afforded for any claim . . . arising from an accident when the insured auto . . . is being driven . . . by . . . an excluded driver." (Policy, p. 31). Thus, when the insurance contract is applied as written, coverage does not apply.

South Carolina's named driver exclusion statute expressly permits named driver exclusions. This statute protects the parties' freedom of contract. *See United Services Auto. Ass'n v. Pickens*, 434 S.C. 60, 65, 862 S.E.2d 442, 444 (2021) ("freedom of contract affords parties the ability to enter into such exclusions . . .."). The statute provides:

> Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name. The agreement, when signed by the named insured, is binding upon every insured to whom the policy applies and any substitution or renewal of it. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be

> authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code Ann. § 38-77-340. Thus, under the terms of the statute, an excluded driver form is valid and enforceable when: (1) the form has been approved by the South Carolina Department of Insurance; (2) the endorsement names the excluded driver; and (3) the named insured declares that either the named excluded driver has turned in his license to the DMV or the named excluded driver has an appropriate policy of liability insurance. The Circuit Court correctly found each of these elements is satisfied here.

The first element is satisfied because the parties stipulated that the Department of Insurance approved First Acceptance's Named Driver Exclusion form before its use in this transaction in February 2016. (R. p. 104, line 21-p.105, line 9).

The second requirement is satisfied because Kevin[7] is named as the "Excluded Driver" on the Named Driver Exclusion. (R. p. 205). Carlos Morazan disclosed Kevin in response to questions in the policy application asking to identify all household residents age 14 or older, and the policy lists the correct day and month of birth for Kevin, albeit the incorrect year. No party presented evidence that Carlos Morazan knew any other Kevin with the same last name, much less any such person who lived with him and had the same birthday. Thus, the Circuit Court had sufficient evidence to conclude as a factual matter that the Kevin listed in the application and Named Driver Exclusion was Carlos Morazan's son, who was driving at the time of the accident.

The third element is satisfied because Carlos Morazan marked the space declaring: "An appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be excluded." (R. p. 205). Later in the same form,

[7] The exclusion lists Kevin's full name. Appellant's belated argument that there were two "Kevins" is not preserved. This issue is addressed below in Section II.

he stated: "I further declare that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles; or (2) an appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be executed." (*Id.*).

The Circuit Court correctly held "each and every element of § 38-77-340 is satisfied." (R. p. 16). Carlos Morazan and First Acceptance agreed that coverage would not apply while Kevin – a natural person designated by name – operated a vehicle. They confirmed this agreement on a form approved by the Department of Insurance, and Carlos Morazan – the named insured – declared in the agreement that Kevin had other applicable insurance. Therefore, the exclusion satisfies the plain language of the statute and must be enforced.

B. Appellant's public policy arguments attempting to avoid the exclusion ignore both the plain language of the statute and the statutory history.

Appellant argues that the Named Driver Exclusion is unenforceable because Carlos Morazan's declaration was untrue and Kevin was only 14 at the time Carlos Morazan signed the agreement. As an initial matter, Appellant's argument ignores the fact that Kevin was 17 when he took his mother's keys and drove without a license, causing the subject accident. However, even ignoring that Kevin was of driving age and unlicensed when the accident occurred, Appellant's arguments overlook: (1) the lack of evidence that Carlos Morazan's declaration was false; (2) the "clear and unambiguous" language of the statute; and (3) the history of the statute.

i. Appellant failed to present any evidence that Morazan's declaration was false.

Carlos Morazan declared in the Named Driver Exclusion form that Kevin had other insurance. (R. p. 205). No party presented any evidence at trial that this statement was untrue. Instead, Appellant makes the argument – with no factual support – that it was impossible for Kevin to have other insurance. As the Circuit Court noted, Appellant presented no evidence to this effect.

(R. p. 17, n.7). Appellant did not present any expert testimony showing that insurance would have been unavailable to Kevin. In fact, by statute, Kevin would be a statutory insured under any other insurance policy issued to a resident relative of his household. *See* S.C. Code § 38-77-30(7) (defining "insured" to include resident relatives).

ii. The plain language of the named driver exclusion statute only requires the named insured's declaration that the excluded driver has turned in his license or has other insurance.

South Carolina law is clear: "It is axiomatic that statutory interpretation begins (and often ends) with the text of the statute in question." *Smith v. Tiffany*, 419 S.C. 548, 555, 799 S.E.2d 479, 483 (2017). "Absent an ambiguity, there is nothing for the court to construe, that is, a court should not look beyond the statutory text to discern its meaning." *Id.* "Thus, if the words are unambiguous, we must apply their literal meaning." *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 716 S.E.2d 877, 881 (2011) (citations omitted).

The Circuit Court correctly held the language of § 38-77-340 is "clear and unambiguous." (Dec. 7, 2023 Order, p. 16); *see, e.g., Thao v. Nationwide Affinity Ins. Co. of Am.*, 2018 WL 2971784 (D.S.C. June 13, 2018) ("The relevant language of section 38-77-340 is clear and unambiguous."). By its plain terms, "no natural person may be excluded unless ***the named insured declares*** in the agreement that" either the excluded person's license has been turned in to the DMV (i.e., he cannot legally drive) or that the excluded person has other insurance. S.C. Code § 38-77-340 (emphasis added). Carlos Morazan made the required declaration. He checked the space stating: "An appropriate policy of liability insurance (or other security) as may be authorized by law has been properly executed in the name of the person to be excluded." (R. p. 205). He also declared: "I further declare that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles, or (2) an appropriate policy of liability insurance (or other

security) as may be authorized by law has been properly executed in the name of the person to be excluded." (*Id.*). Thus, the Named Driver Exclusion satisfies the plain language of the statute.

Like Appellant here, the named insured in *Thao* argued that a named driver exclusion could not apply to his excluded wife because she had never had a license in the first place and, as such, she could not have turned her license in to the DMV. *Thao*, 2018 WL 2971784 at *3. Judge Quattlebaum rejected this argument. Relying on the plain terms of the statute – which only required the insured's declaration – the District Court found the "exclusion is enforceable so long as the named insured makes the declaration." *Id.*

Similarly, Judge Anderson rejected arguments by an insured that the insurer is required to confirm the veracity of an insured's declaration in the excluded driver form. *See United Financial Cas. Co. v. Bostic*, 782 F. Supp. 2d 179, 181 (D.S.C. 2011).

The Circuit Court did what the law requires – it applied the statute according to its plain terms. The statute requires the insured's declaration, and it is undisputed here that Carlos Morazan made the required declaration when he signed the Named Driver Exclusion. As the District Courts held in *Thao* and in *Bostic*, that is all the statute requires.

iii. The legislative history confirms that insurers are not required to verify the veracity of the named insured's declarations in the excluded driver form.

Because the statute is clear and unambiguous, the Court need not resort to statutory construction. However, the statutory history confirms that the General Assembly made a conscious decision to only require the named insured's declaration in the excluded driver form.

"South Carolina's appellate courts 'have long acknowledged the presumption that in adopting an amendment to a statute, the legislature intended to change the existing law." *Thao*, 2018 WL 2971784, *4 (quoting *Key Corporate Capital, Inc. v. City of Beaufort*, 373 S.C. 55, 644 S.E.2d 675, 678 (2007)). In a prior version of the statute, the insurer **was** required to take steps to

verify the truth of this declaration. Once the insured elected to exclude a driver, the statute previously required the insurance agent to "determine that the necessary driver's license has been delivered to the Department of Public Safety or that a policy of insurance or security . . . is in effect before submitting the application for exclusion of a named driver." 1996 Act no. 459, § 63. Thus, the General Assembly previously placed the burden on the insurer to confirm the insured's representations. In fact, the insurance company even had to obtain an affidavit from the Department of Public Safety confirming that the excluded person either had other insurance or had turned in his or her license. *Id.*

However, the General Assembly amended the statute in 2005 to remove these requirements. *See Thao*, 202018 WL 2971784 at *4 ("The 2005 amendment removed both of these requirements. . . . Under the new version, the named insured (not the agent or carrier) need only declare that the excluded person turned his or her license in or has other insurance."). Below is a mark-up of the statute, showing the General Assembly's revisions, with added words underlined and deleted words stuck through:

> However, no natural person may be excluded unless the named insured declares in the agreement that (1) ~~his~~ the driver's license of the excluded person has been turned in to the Department of ~~Public Safety~~ of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded. ~~The agent of the insurer writing the policy of insurance excluding a named driver shall determine that the necessary driver's license has been delivered to the Department of Public Safety or that a policy of insurance or security described in item (2) of this section is in effect before submitting the application for exclusion of a named driver. The Department of Public Safety shall furnish to the agent an affidavit either stating that the necessary driver's license has been delivered to it or certifying that a policy of insurance or security described in item (2) of this section is in effect.~~

Compare 1996 Act No. 459, § 63 *with* 2004 Act No. 241, § 8, eff January 1, 2005 (the current version of § 38-77-340). Thus, the General Assembly chose to shift the burden with respect to

named driver exclusions from the insurer to the named insured. This shift makes sense. After all, the insured is the one who benefits from the reduced premium, and the insured is presumably in a better position to ensure that the excluded person does not drive a covered auto or has other applicable insurance.

As the District Court explained in *Thao*, "the South Carolina General Assembly determined that the enforceability of the exclusion was based on the content of the declaration rather than the truth of the content of the declaration." *Thao*, 2018 WL 2971784 at *4. "As applied to this case, the South Carolina General Assembly amended the former named driver exclusion statute from requiring as a factual matter that an excluded driver was unlicensed or had other insurance to, under the current statute, only requiring a declaration from the named insured to that effect." *Id.* By arguing that the Court should require as a factual matter that Kevin either had other insurance or had turned in his license to the DMV, Appellant asks this Court to revert back to a prior version of the statute. But this Court must apply the current version of the statute and honor the General Assembly's decision that the insured, not the insurer, must bear the risk of a false statement.

C. The Named Driver Exclusion Endorsement applies to preclude all coverage under the Policy for the accident at issue.

"An insurance policy is a contract between the insured and the insurance company, and the terms of the policy are to be construed according to contract law." *Butler v. Travelers Home & Marine Ins. Co.*, 433 S.C. 360, 366, 858 S.E.2d 407, 410 (2021). By the plain terms of the Named Driver Exclusion and the Policy language, First Acceptance "shall not be liable for damages, losses or claims" arising out of the operation of any vehicle by Kevin. The exclusion applies to all

coverage, including liability,[8] uninsured motorist,[9] and underinsured motorist[10] coverage. (R. p. 230 ¶ 27; p. 237 ¶ 10; p. 252). This language follows the statutory language, which states that "coverage under such a policy of liability insurance ***shall not apply*** while the motor vehicle is being operated by" the excluded driver. S.C. Code § 38-77-340 (emphasis added). Moreover, the exclusion "is binding upon every insured to whom the policy applies," including the driver, passengers, and the named insured. S.C. Code § 38-77-340.

In *Lincoln General*, this Court recognized the competing interests between the MVFRA and the excluded driver statute:

> The legislature has determined that for all vehicles registered in South Carolina, at least minimal coverage is necessary to protect the public. ***However, the legislature has also determined that coverage under such a policy of liability insurance shall not apply while a named driver is operating the vehicle so long as the remaining statutory requirements are satisfied.*** As in *Barlow*, the named driver endorsement "***is not inhibited by***" ***the MVFRA's public policy because it constitutes separately approved public policy***. While the MVFRA protects the public, the named driver exclusion statute protects, in limited situations, the right of the parties to make their own contract.

406 S.C. at 546-47, 753 S.E.2d at 443-44 (internal quotations and citations omitted) (emphasis added). "An insurer has the right to restrict liabilities to injuries inflicted while the motor vehicle is being driven by a certain person, provided such restriction is not in contradiction of some statutory inhibition or public policy." *South Carolina Ins. Co. v. Barlow*, 301 S.C. 502, 506, 392 S.E.2d 795, 797 (1990) (enforcing named driver exclusion).

---

[8] *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 753 S.E.2d 437 (Ct. App. 2013) (applying named driver exclusion to mandatory minimum limits of liability coverage).

[9] *Pickens*, 434 S.C. 60, 862 S.E.2d 442 (applying named driver exclusion to uninsured motorist coverage).

[10] *Nationwide Ins. Co. of Am. v. Knight*, 433 S.C. 371, 858 S.E.2d 633 (2021) (applying named driver exclusion to underinsured motorist coverage).

The South Carolina Supreme Court recently enforced the named driver exclusion in two separate cases, holding in one case that "the public policy set forth in section 38-77-340 is to promote the sort of policy provision in issue in this case, and nothing in section 38-77-340 prevents [an insurer] from enforcing the policy provision" that excludes "all coverage under the policy" when an excluded driver operates a vehicle. *Knight*, 433 S.C. at 380, 858 S.E.2d at 637.

The Supreme Court again applied the named driver exclusion to mandatory coverage in *Pickens*. In that case, the named insured passenger sought uninsured motorist coverage when their vehicle was hit by a John Doe, hit-and-run motorist. At the time of the collision, the named insured's excluded driver son was driving her vehicle. The Supreme Court held the exclusion applied, even though the accident was caused by someone other than the excluded driver. The Supreme Court held that the exclusion voids **all** coverage when the excluded driver operates a vehicle: "USAA asserts the exclusion voids all coverage while the named driver operates the covered vehicle. We agree with USAA." *Pickens*, 434 S.C. at 64, 862 S.E.2d at 444.

As the Supreme Court recognized in *Knight*, "the power to exclude coverage in an insurance policy derives not from any statute, but from the right all parties have to contract for coverage or to exclude coverage. Statutory expressions of public policy are merely limits on the power to exclude coverage." 433 S.C. at 380, 858 S.E.2d at 637. In this case, the only limitation the General Assembly placed on named driver exclusion was the requirement that the exclusion be placed on a form approved by the Department of Insurance and include a declaration by the named insured that the excluded driver has turned in his license or has other insurance. Those requirements have been met here. Therefore, the Named Driver Exclusion applies as written, and the Policy does not provide coverage for any claims arising out of the accident. As the Supreme Court held in *Knight* and *Pickens*, as this Court held in *Barlow* and *Lincoln General*, and as the

District Courts held in *Thao* and *Bostic*, the exclusion applies to all coverage under the policy – mandatory and voluntary. Thus, the Circuit Court properly held that the Policy provides no coverage for claims arising out of the September 25, 2018 accident.

II. Appellant's arguments to the contrary are without merit.

A. Appellant's argument that there are two different Kevins is not preserved, and there is evidence in the record supporting the Circuit Court's factual findings.

Appellant's newly-raised argument that the Kevin listed on the Named Driver Exclusion is not the same Kevin who was driving at the time of the accident is not preserved for appeal and is without merit. Appellant argued repeatedly at trial that the incorrect information on the Named Driver Exclusion and application was a "mistake," not that it referred to someone else. *See, e.g.*, (Trial Tr. 72:11-18) ("This is a mistake on their policy. . . . They should have put in the right date of birth."); (Trial Tr. 95:6-8) ("they had the wrong information on the policy. If they put the right information on it, they never would have asked for an excluded-driver provision . . .."). Appellant's argument that the date of birth was a "mistake" or "wrong" admits that the contracting parties were referring to Kevin. Otherwise, the incorrect year of birth would not be a "mistake" or "wrong."

Even if Appellant had raised this issue at trial, there was ample evidence from which the Circuit Court concluded that the Kevin identified by Carlos Morazan in response to a request to identify household relatives is Carlos Morazan's son.

i. Appellant's argument that there are two Kevins was never raised to the Circuit Court and cannot be raised for the first time on appeal.

"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." *Malloy v. Thompson*, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). Appellant argues for the first time on appeal that the Kevin listed on the Named Driver Exclusion endorsement is a different person from the Kevin that

was driving the vehicle at the time of the accident. (Appellant's Br. pp. 7-16). This argument is not preserved for appeal. At trial, Appellant acknowledged that the date of birth on the Named Driver Endorsement was a "mistake," meaning the parties were referring to Carlos Morazan's son, but that they had the incorrect year of birth on the application.[11] Appellant repeatedly argued that the parties could not legally agree to exclude Kevin because he was 14, but Appellant never argued to the Circuit Court that there were two Kevins – one listed on the exclusion and different one driving the subject vehicle. (R. p. 169, lines 11-15). To the contrary, Appellant admitted in her Answer that "Kevin M." was listed as excluded in the insurance application and was the person driving at the time of the accident.[12] (R. p. 29 ¶ 14; p. 32 ¶¶ 26, 31, Compl.) (R. p. 80 ¶ 16; p. 81 ¶¶ 26, 28, Floyd's Ans.); (R. p. 167, line 18-p.168, line 14, Trial Tr.).

The preservation rule "prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case." *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 441-42, 526 S.E.2d 716, 724 (2000). The rule applies equally to issues and arguments:

> The losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established

[11] Despite her newly-raised argument before this Court, Appellant admits in her opening brief that she contended to the Circuit Court that the date of birth and description of Kevin as an employee on the policy was a "mistake." (Appellant's Br. p. 5) ("Appellant argued that the mistake of the insurance agent in the application and exclusion should not be held against a third-party passenger injured in an automobile accident.").

[12] Elsa Velasquez, who did not appeal the Circuit Court's Order did note the incorrect date of birth and incorrect description of Kevin as an "employee" in the application, but she did so in a baseless argument that the Named Driver Exclusion Endorsement was not created until after the subject accident. (R. p. 124, line 20-p. 125, line 3). The Circuit Court rejected this contention, finding that Carlos Morazan identified his son and signed the Named Driver Exclusion form as part of the application process. Appellant never raised this argument at trial and has not raised this claim on appeal.

> preservation requirement that the losing party generally must both present his ***issues and arguments*** to the lower court and obtain a ruling before an appellate court will review those ***issues and arguments*****.**

Id. (emphasis added). The purpose of the rule is to ensure the lower court had an opportunity "to rule properly after it has considered all relevant facts, law and arguments." *Id.*

At trial, Appellant never argued that the Kevin disclosed on the insurance application was different from the Kevin who was driving at the time of the accident. Appellant did not file any post-trial motions. Appellant's failure to raise this novel claim prior to or at trial constitutes a waiver of this argument.[13] *See Cox v. South Carolina Educ. Lottery Comm'n*, 441 S.C. 209, 217-18, 893 S.E.2d 342, 346-47 (Ct. App. 2023) (holding arguments raised for the first time on appeal are not preserved for appellate review).

ii. The Circuit Court's finding that the Kevin listed on the application was the Kevin who was driving at the time of the accident is supported by facts in the record.

The Circuit Court found: "The Kevin listed on the Named Driver Exclusion form is Carlos Morazan's son, who was driving the subject vehicle at the time of the accident." (R. p. 10 ¶ 30). This factual finding cannot be disturbed on appeal unless it is without *any* evidence supporting it.

[13] Appellant's arguments regarding reformation highlight the lack of preservation of these issues. Appellant is correct that First Acceptance did not seek to reform the agreement <u>because</u> no party disputed the fact that Kevin was the person named in the exclusion. Had Appellant attempted to take this position, then First Acceptance would have been able to seek a reformation ruling from the trial court. Given that the Circuit Court held that Kevin was the excluded driver, there is little doubt that the Circuit Court would have granted that reformation. For example, counsel for the co-defendant argued at one point that there was not a meeting of the minds. (R. p. 183, lines 6-14). In response, Respondent noted that a lack of meeting of the minds would mean that there is no insurance contract in the first instance. (R. p. 188, lines 5-10). When the Circuit Court began to agree on that point, counsel for the co-defendant withdrew that argument. (R. p. 196, line 15-p. 198, line 25). On the other hand, Appellant failed to ever raise this new and novel argument to the Circuit Court. Therefore, the Circuit Court was never given an opportunity to address the argument.

Smith, 377 S.C. at 515, 660 S.E.2d at 272. The Circuit Court heard ample evidence to find the excluded Kevin was the Kevin driving at the time of the accident.

At trial, Mr. Schlechta testified that all information about household residents comes from the policy applicant. (R. p. 134, line 1-p. 135, line 2). He testified that in 2016 First Acceptance did not have access to a database that would have revealed Kevin as a member of Carlos Morazan's household and that the only source of information about Kevin would have been Carlos Morazan. (R. p. 135, lines 3-10).

The parties agree that Kevin, who was driving at the time of the accident, is Carlos Morazan's minor son. (R. p. 135, lines 11-24; p. 188, lines 12-16); (Appellant's Br., pp. 5, 7, ("The 'Kevin [M.]' driving the listed vehicle, covered by The Policy, on the date of the accident is a minor child of Carlos Morazan…."). Based on the parties' stipulation, Kevin was 14 when Carlos Morazan applied for the policy. (R. p. 105, lines 10-16, Trial Tr.); (R. p. 4, December 7, 2023 Order). Therefore, Carlos Morazan was required to disclose his son Kevin on the policy application. (R. pp. 202, 206 (requiring him to disclose all members of his household 14 years and older)). Carlos Morazan only disclosed one Kevin on the policy application. *See* (R. pp. 201-211, Policy Application). This evidence supports the factual finding that the Kevin listed on the application – in response to questions requiring the disclosure of household residents 14 or older – is Carlos Morazan's son – who at the time of the application was 14 and a resident of the household.

Additionally, the parties stipulated to Kevin's month and day of birth. (R. p. 105, lines 10-16, Trial Tr.); (R. p. 4, December 7, 2023 Order). The policy application describes the same month and day of birth for Kevin. *Compare* (R. p. 105, lines 10-16, Trial Tr.) *with* (R. p. 201, Policy

Application). Appellant did not present any evidence that Carlos Morazan knew two Kevins[14] with the same day and month of birth – something that would be highly unlikely. This evidence supports the factual conclusion that the form merely listed an incorrect year of birth, given that it had the correct name and correct day and month of birth.

In two places in the policy application, Carlos Morazan certified that the excluded Kevin was a person aged 14 or older who lived with him. (R. pp. 201-202, 206) (certifying that "all members of household 14 years and older have been disclosed on this application" and "I also certify that all persons age 14 or over who live with me have been reported to the Company"). No party presented evidence that Carlos Morazan lived with another Kevin with the same last name, same day of birth, and same month of birth as his son who was involved in the accident. *See* (R. p. 10 n.5).

Even Appellant conceded throughout trial that the parties were all referring to the same Kevin, but the application included "mistakes" regarding Kevin's year of birth. Appellant's counsel argued to the Circuit Court that Kevin's date of birth on the policy was a "mistake on their policy. This is their fault. They should have put in the right date of birth. They should have determined the date of birth." (R. p. 169, lines 12-18). Appellant later argued that the parties put the "wrong information on the policy" and that had they "put the right information on it, they never would have asked for an excluded-driver provision." (R. p. 192, lines 6-10; p. 193, lines 6-14). Thus, even Appellant conceded throughout trial that the parties were all referring to the same

[14] Again, the application listed Kevin's full name. Thus, Appellant appears to suggest that Carlos Morazan knew two people with the same first and last name that had the same day and month of birth, but different birth years.

Kevin, but the application included mistakes regarding Kevin's year of birth. Consequently, there is evidence which reasonably supports this factual finding, and it cannot be disturbed on appeal.[15]

The standard on review is whether "the record contains any evidence" supporting the Circuit Court's findings. The record here bears ample evidence.

B. Appellant's reformation argument is not preserved for appellate review and is not a proper basis for denying enforcement of the exclusion.

To the extent Appellant argues that Named Driver Exclusion is not enforceable unless it is reformed to include Kevin's correct date of birth, this argument is likewise not preserved for appellate review. (Appellant's Br., pp. 13-16) (arguing that "without reformation of the information in the Excluded Driver Endorsement and declaration, Kevin Morazan, the driver in the motor vehicle collision that injured Jayvon Garrett on September 18, 2018, is not excluded from coverage in The Policy")). Appellant's counsel did not argue at trial that the Named Driver Exclusion was unenforceable unless First Acceptance moved for reformation. In fact, the words "reform" and "reformation" do not appear anywhere in the trial transcript. *See* (R. pp. 98-200, Trial Tr.). Moreover, the Circuit Court's Order does not rule on this argument, and Appellant did not file any post-trial motions. *See* (R. pp. 3-21, December 7, 2023 Order). Consequently, this issue is not preserved for appellate review.

Furthermore, even if this issue were preserved, Appellant's argument fails on the merits. In *Pickens*, the insured signed an excluded driver form with the wrong last name on the form. 434 S.C. at 62, 862 S.E.2d at 443 (listing "Kevin S. Pickens" as the excluded driver when the named insured's son was "Kevin Simms"). The insurer sought enforcement of this named driver exclusion

[15] Carlos Morazan was present at trial. (R. p. 102, lines 9-12). Had Appellant truly believed that there were two Kevins, then Appellant could have easily called Mr. Morazan to the stand to try to establish that fact.

with the wrong last name on the form. The South Carolina Supreme Court did not require the insurer to first seek reformation of the named driver exclusion. Rather, it allowed the insurer and insured to agree that the named insured's son was the person intended to be excluded. *Id.* at 62–63 n. 3-4, 862 S.E.2d at 443 n. 3-4. The Court then enforced the named driver exclusion as to the named insured's son. *Id.* at 67, 862 S.E.2d at 445.

Here, the Circuit Court found that the Kevin listed on the Named Driver Exclusion form is Carlos Morazan's son, who was driving the subject vehicle at the time of the accident, and the parties stipulated to his correct date of birth. (R. pp. 4, 10 ¶ 30, December 7, 2023 Order); (R. p. 105, lines 10-16, Trial Tr.). Therefore, reformation of the Named Driver Exclusion before enforcement is unnecessary and not a proper basis to deny its enforcement.

CONCLUSION

For the above-stated reasons, the Circuit Court's ruling in favor of First Acceptance should be affirmed. The Named Driver Exclusion satisfies every requirement of South Carolina Code § 38-77-340. By its plain language, it excludes all coverage under the Policy when Kevin is operating a vehicle. There is evidence in the record supporting the Circuit Court's finding that Carlos Morazan signed the Named Driver Exclusion naming Kevin and that Kevin was driving at the time of the accident. Therefore, First Acceptance respectfully requests that the Court affirm.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/Wesley B. Sawyer
Wesley B. Sawyer, Esquire
S.C. Bar No. 100229
PO Box 6648
Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for Respondent First Acceptance

Columbia, South Carolina
July 16, 2024

RECEIVED
Jul 16 2024
SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-000069

First Acceptance Insurance Company, Inc……..……Respondent,

v.

Tamasha Floyd, individually and as guardian ad litem of Jayvon G, a minor under the age of eighteen (18) years of age; Harry C. Brown, as Special Administrator of the Estate of Kevin M.; Elsa Velasquez Ferro; Gerald Washington; and Vincent Williams……. Defendants,

Of Whom,

Tamasha Floyd, individually, is the……. Appellant.

PROOF OF SERVICE

I certify that I have served Respondent's Final Brief on Appellant, Tamasha Floyd, by electronic mail addressed to her attorneys of record as follows:

Clifford Bush, III
J. Andrew Smith
Law Office of Clifford Bush, III, LLC
28 Old Jericho Road
Beaufort, SC 29906
cbush@lawofficeofcbushiii.com
drew@lawofficeofcbushiii.com
Attorneys for Appellant

s/Wesley B. Sawyer
Wesley B. Sawyer, Esquire
(S.C. Bar No. 100229)
Murphy & Grantland, P.A.
PO Box 6648
Columbia, South Carolina 29260
(803) 782-4100
wsawyer@murphygrantland.com
Attorneys for Respondent First Acceptance Insurance Company, Inc.

July 16, 2024