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Aug 01 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge

Gregory Muxlow and Charlotte MuxlowAppellants,

v.

Scottsdale Insurance Company; South Wind Ranch Holdings, LLC;
Ronald Hakala; and Ashley BlackRespondents.

Appellate Case No. 2022-000576

PETITION FOR REHEARING

Pursuant to SCACR Rule 221(a), Petitioners respectfully move for rehearing or *en banc* review so the ruling of the Court of Appeals may be corrected to adhere to existing law, or in the alternative, so the ruling may be clarified.

This Court dismissed Petitioners appeal on July 24, 2024 “as moot because of this court’s affirmance of summary judgment in the underlying action.” Petitioners respectfully submit that the Court of Appeals should not have dismissed their appeal for at least three reasons.

First, a Petition for Certiorari will be filed in the underlying action, and that case has not been fully disposed of. “Declaratory judgment actions seeking determination of insurance coverage issues are routinely allowed to proceed even while the underlying litigation regarding liability is

ongoing.” *State Farm Fire & Cas. Co. v. Wade*, No. 12-CV-0148-CVE-PJC, 2012 WL 2524859 (N.D. Okla. June 29, 2012) (citing *State Farm Fire & Casualty Co. v. Mhoon*, 31 F.3d 979 (10th Cir.1994) (“we see no reason why the declaratory judgment action should not have proceeded” while the underlying action was ongoing). Because a justiciable controversy still exists, the appeal should not have been dismissed. *Holden v. Cribb*, 561 S.E.2d 634 (Ct. App. 2002).

Second, Petitioners believe the affirmance of the underlying action was in error. Petitioners respectfully submit that, should the Supreme Court determine that the Trial Court erred in dismissing their action on the grounds that the Trial Court’s decision directly conflicts with *Kitchen Planners, LLC v. Friedman*, 892 SE2d 297 (2023), they should not be punished by losing their right to have obligations, rights, and statuses of the parties determined pursuant to *S.C. Code* § 15-53-20, which should have been liberally construed. Indeed, Petitioners moved to combine both appeals, and that motion was denied.

Finally, dismissal of the appeal deprives Petitioners of the constitutional right to a jury trial. The underlying action is still going on, through the appellate process, and the monetary amount at issue is more than twenty dollars¹ – whether that amount is calculated by whether an insurance company must provide coverage, whether any amount is collectable, the ultimate amount paid, or some combination of the three. The Uniform Declaratory Judgment Act itself states “all existing rights to jury trials are hereby preserved.” *S.C. Code Ann.* § 15-53-90. (See *Curtis v. Loether*, 415 U.S. 189 (1974); *Parsons v. Bedford*, 3 Pet. 433 (1830); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962) and *Hepner v. United States*, 213 U.S. 103 (1909)). Dismissal of this appeal and affirmance

¹ Petitioners submit they have a right to a jury trial under the constitutions of South Carolina and the United States. Although the Seventh Amendment has not been fully incorporated against the states, it is clear that the framers intended to guarantee the right to a jury trial in all courts, not just federal courts, and Petitioners preserve this issue for appellate review.

of the grant of summary judgment in the underlying action mean Petitioners' constitutional rights, including their rights under the Equal Protection Clause, their Due Process right to a fair trial, and jury trial guarantees in both constitutions, have been violated. Petitioners respectfully submit the Court should correct these and other errors or hear the case *en banc*.

Conclusion

Petitioners respectfully request that the Court of Appeals alter its ruling and reverse the Trial Court's decision, have an oral argument, or hear the case *en banc*. In the alternative, Petitioners requests that the Court of Appeals' ruling clarify its ruling to address the substantive reasons for allowing the Trial Court's decision, which conflicts with the plain language of the Uniform Declaratory Judgments Act, *Baird v. Charleston County*, 511 S.E.2d 69 (1999), and much other authority. Petitioners rely on and incorporate the law and authority cited herein, all submissions with the Court of Appeals in this action and the underlying action, and other authority which may be applicable moving forward.

Respectfully submitted,

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July 31, 2024

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PROOF OF SERVICE

I certify that on this date, July 31, 2024, I filed the foregoing Petition for Rehearing with the South Carolina Court of Appeals via electronic filing, to ctappfilings@sccourts.org. A copy was also served on Respondents via electronic service, addressed to the attorney of record below by email:

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