

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Commons Pleas

J.C. Nicholson Jr., Circuit Court Judge

Case No. 2009-CP-10-2604

State Farm Insurance Companies,..... Appellant,

v.

Marvin Lee Robertson, Daniel Parks, individually, and as Father and GAL for Joseph [REDACTED] F [REDACTED], and Joseph [REDACTED] F [REDACTED], individually, and by and through His GAL, Defendants, Of Whom

Daniel Parks, individually, and as Father and GAL for Joseph [REDACTED] F [REDACTED], and Joseph [REDACTED] F [REDACTED], individually, and by and through His GAL are,..... Respondents.

NOTICE OF APPEAL

RECEIVED

DEC 11 2013

SC Court of Appeals

State Farm Insurance Companies appeals the order of the Honorable J.C. Nicholson Jr., dated October 25, 2013. Appellant received written notice of entry of this order on October 28, 2013.

Respectfully submitted,

November 18, 2013



Eugene P. Corrigan III
CORRIGAN & CHANDLER LLC
PO Box 547

Other Counsel of Record:

Stephen L. Brown, Esquire
Catherine H. Chase, Esquire
YOUNG CLEMENT RIVERS LLP
P.O. Box 993
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ATTORNEYS FOR APPELLANT STATE
FARM INSURANCE COMPANIES

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Daniel Parks, individually, and as Father and GAL for Joseph [REDACTED] F [REDACTED], and Joseph [REDACTED] F [REDACTED], individually, and by and through His GAL are,..... Respondents.

PROOF OF SERVICE

I certify that I have served the foregoing **NOTICE OF APPEAL** on Daniel Parks, individually, and as Father and GAL for Joseph [REDACTED] F [REDACTED] and Joseph [REDACTED] F [REDACTED] individually, and by and through His GAL, by depositing a copy of it in the United States Mail, postage prepaid, on November 18, 2013, addressed to their attorneys of record, Stephen L. Brown and Catherine H. Chase, Young Clement Rivers, LLP, P.O. Box 993, Charleston SC 29402.

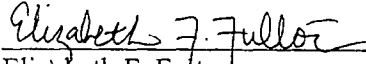
[SIGNATURE PAGE TO FOLLOW]

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November 18, 2013


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ATTORNEYS FOR APPELLANT STATE
FARM INSURANCE COMPANIES

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

STATE FARM INSURANCE)
COMPANIES,)

CASE NO. 2009-CP-10-2604

PLAINTIFF,)

vs.)

MARVIN LEE ROBERTSON, JR.,)
DANIEL PARKS, INDIVIDUALLY)
AND AS FATHER AND GAL FOR)
JOSEPH [REDACTED] F [REDACTED] AND JOSEPH)
[REDACTED] F [REDACTED], INDIVIDUALLY, BY)
AND THROUGH HIS GAL,)

IN THE MATTER OF JOSEPH [REDACTED])
F [REDACTED])

DEFENDANTS.)

ORDER

FILED
2013 OCT 25 PM 3:29
JULIE J. ARMSTRONG
CLERK OF COURT

Jan

This is a declaratory judgment action filed pursuant to S.C. Code Ann. § 15-53-10. State Farm Insurance Companies ("State Farm") is represented by Eugene P. Corrigan III of Corrigan & Chandler LLC. Defendants Daniel Parks, both individually and as Father and Guardian ad litem for Joseph [REDACTED] F [REDACTED], a minor, and Joseph [REDACTED] F [REDACTED], individually, by and through his Guardian ad litem, (collectively hereinafter "the Parks Family"), are represented by Stephen L. Brown and Catherine H. Chase of Young Clement Rivers, LLP.

On October 11, 2012, the Court held a trial on this matter. On April 9, 2013, the Court filed an order granting the declaratory judgment. The Parks Family defendants timely filed a motion to reconsider on April 22, 2013. A hearing on the Parks Family's motion to reconsider was held on September 3, 2013.

FINDINGS OF FACT

Mr. Parks hired an attorney, Marvin Lee Robertson¹, ("Mr. Robertson") to handle a personal injury claim on behalf of his minor son, Joey, against Ben and Mary Myers. In April 2003, when Joey was a toddler, he was bitten on the face by a dog owned by Mr. and Mrs. Myers. Mr. and Mrs. Myers were insured by State Farm. Mr. Robertson negotiated a settlement of \$75,000.00 (seventy-five thousand dollars) with a State Farm claims representative. State Farm referred the matter to the law firm of Grimbball & Cabaniss, LLC to prepare the minor settlement documents and a minor settlement release. The settlement funds were sent to Mr. Robertson, along with the documents needed to obtain a court-approved settlement as required by S.C. Code Section 62-5-433. When forwarding the settlement funds to Mr. Robertson, State Farm's counsel specifically noted that the settlement draft "should not be negotiated in any manner until [she] receive[s] back from [Mr. Robertson] the signed and filed Order for Approval of Settlement, Certificate of Appointment of Conservator and the executed Release." (Defs. Ex. 2 - 6/10/05 Letter from Ms. Martin to Mr. Robertson.) State Farm's counsel previously forwarded a Petition for Approval of Minor Settlement, Order for Approval of Settlement, Petition for Appointment of Conservator to Mr. Robertson. (Defs. Ex. 1 - 6/1/05 Letter from Ms. Martin to Mr. Robertson.) Mr. Parks signed an authorization for Mr. Robertson to receive the settlement money on his behalf. He also signed a contingency fee agreement with Mr. Robinson wherein the attorney's fee was to be one third of the recovery. The amount going to Mr. Parks for Joseph should have been \$50,000 if Mr. Robinson had not diverted the funds.

¹ Mr. Robertson is in default in this matter.

On July 26, 2005, the \$75,000.00 settlement draft was negotiated by State Farm's bank, Suntrust Bank. (Defs. Ex. 3 – 6/8/05 State Farm check # 527 459 782 Q.)² On December 19, 2005, State Farm's counsel wrote Mr. Robertson inquiring about the status of the Order of Approval of Settlement, Certificate of Appointment of Conservator, and Release, which were previously sent to him. (Defs. Ex. 4 – 12/19/05 Letter from Mr. Corrigan to Mr. Robertson.)

Mr. Robertson returned a signed release to State Farm's counsel but avoided concluding the minor settlement. A hearing to approve the \$75,000.00 settlement of the minor's claim was never held, and no court has approved this settlement. On October 4, 2006, State Farm's counsel thanked Mr. Robertson for forwarding the original executed release and asked to be informed when the hearing on the Approval of the Settlement would take place. (Defs. Ex. 5 – 10/4/06 Letter from Mr. Corrigan to Mr. Robertson.) On May 1, 2007, State Farm's counsel wrote Mr. Robertson noting that "it has been nearly two years since this case was settled, but that we have not received copies of the necessary minor settlement papers" and again asked about the status of this matter. (Defs. Ex. 6 – 5/1/07 Letter from Mr. Corrigan to Mr. Robertson.)

On November 28, 2007, over two years after sending the first set of settlement documents and more than two years after the \$75,000 settlement draft was negotiated, State Farm's counsel forwarded Mr. Robertson yet another Petition for Approval of Minor Settlement, Order for Approval of Minor Settlement, and Petition for Appointment of Conservator. (Defs. Ex. 7 – 11/28/07 Letter from Mr. Corrigan/Ms. Waring to Mr. Robertson.) They requested that these documents be updated and verified within 10 days. (Id.) Also on November 28, 2007, State Farm's counsel copied Mr. Robertson on a letter to the Charleston County Clerk of Court allegedly filing the original Petition for Approval of Minor Settlement and Order for Approval of

² Nothing in the record indicates counsel for State Farm was aware the settlement draft had been negotiated. Likewise, nothing in the record indicates State Farm ever advised its counsel that the draft had been negotiated.

Minor Settlement along with the filing fee and requested, by copy of the letter to Mr. Robertson, that Mr. Robertson supply the necessary information to effectuate a proper settlement. (Defs. Ex. 8 – 11/28/07 Letter from Mr. Corrigan/Ms. Waring to Clerk of Court.)

On January 3, 2008, State Farm's counsel wrote Mr. Robertson to thank him for "dropping off the documents from 2006 which indicate that [Mr. Robertson] filed a Petition," but State Farm's counsel noted that no case number was provided. (Defs. Ex. 9 – 1/3/08 Letter from Mr. Corrigan to Mr. Robertson.) State Farm's counsel stated that his understanding was that Mr. Robertson was going to leave Mr. Corrigan's office and find a judge to sign the order. (Id.) State Farm's counsel noted that he still had not received a signed order. (Id.)


On February 22, 2008, Mr. Robertson was placed on Interim Suspension by the Supreme Court of South Carolina. On March 5, 2008, State Farm's counsel wrote to Nicholas Clekis, Esquire, inquiring about the status of the settlement funds and suggested that arrangements be made to have new documents executed given the change in circumstances. (Defs. Ex. 11 – 3/5/08 Letter from Mr. Corrigan/Ms. Waring to Mr. Clekis.) On April 1, 2008, State Farm's counsel wrote Mr. Clekis inquiring again about the status of the settlement funds. (Defs. Ex. 12 – 4/1/08 Letter from Mr. Corrigan/Ms. Waring to Mr. Clekis.) On July 8, 2008, Mr. Clekis advised State Farm's counsel that he received the Parks Family's file from Mr. Robertson but no funds were in the file or Mr. Robertson's trust account and that he was ethically bound to notify the Office of Disciplinary Counsel. (Defs. Ex. 13 – 7/8/08 Letter from Mr. Clekis to Mr. Corrigan.) Mr. Clekis advised that he had taken no action on the file and never made an appearance on behalf of the Parks Family. (Id.) He advised that he was awaiting further

direction from the Office of Disciplinary Counsel. On June 15, 2009, Mr. Robertson was disbarred.³ The Lawyer's Fund for Client Protection paid the Parks Family \$40,000.

State Farm filed this declaratory judgment action seeking an order that its obligations under this claim have been fully satisfied.

FINDINGS OF LAW

I. STATE FARM HAS NOT FULLY SATISFIED ITS OBLIGATIONS UNDER THE CLAIM.



The amount at issue was \$75,000.00 and resulted from a toddler being bitten on the face by a dog. The South Carolina Legislature has enacted a statute to provide a procedure for the settlement of claims in favor or against minors or incapacitated persons. S.C. Code Ann. § 62-5-433. The procedure for the settlement of claims in favor of or against minors as set forth in S.C. Code Ann. § 62-5-433(B) states in part that “[t]he settlement of any claim over twenty-five thousand dollars in favor of or against any minor . . . must be effected on his behalf in the following manner.” The South Carolina Code of Laws then states that “[i]f upon consideration of the petition and after hearing the testimony as it may require concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated person, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, to receive the money or

³ In the Matter of Robertson, Op. No. 26670 (S.C. Sup. Ct. filed June 15, 2009) (Shearouse Adv. Sh. No. 26 at 45). Mr. Robertson admitted to various counts of misconduct, including:

In June 2005, respondent admits he received a \$75,000 settlement check. He admits he negotiated the check but did not disburse the client's share of the funds to the client. Respondent admits he failed to safeguard the funds and that the funds were not available on deposit in his trust account at the time of his February 22, 2008 interim suspension.

Id. at 48. See also Defs. Ex. 14 – Op. No. 26670 (Matter IX).

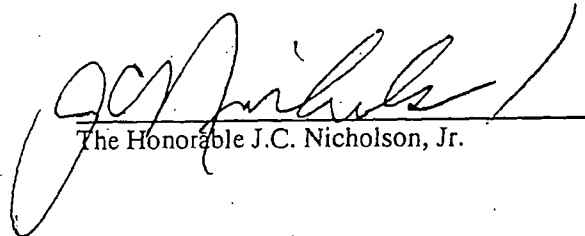
personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person.” S.C. Code Ann. § 62-5-433(B)(2). In Anderson v. South Carolina Electric Commission, the Supreme Court stated that “when a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning.” 397 S.C. 551, 557, 725 S.E.2d 704, 707 (2012). Therefore, applying a literal meaning of S.C. Code Ann. 62-5-433(B)(2), the Court finds that Defendant was not entitled to the settlement funds until such time as the court approved the settlement in favor of the minor Defendant.

Based on the foregoing,

IT IS THEREFORE ORDERED, ADJUDGED and DECREED:

- (1) That the Court must have issued its order approving the settlement in favor of the minor Defendant prior to the issuance of any settlement funds; and
- (2) That Plaintiff State Farm Insurance Companies’ obligations under the claim of minor Defendant Joseph [REDACTED] F [REDACTED] have not been satisfied.

AND IT IS SO ORDERED!


The Honorable J.C. Nicholson, Jr.

Charleston, South Carolina

10/23, 2013

CORRIGAN & CHANDLER LLC

ATTORNEYS AT LAW

Eugene P. Corrigan III
(843) 577-5450 (direct)
rick@corriganchandler.com

REPLY TO:
P.O. Box 547
Charleston, SC 29402

December 6, 2013

VIA U.S. MAIL

The Honorable Jennie Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
1015 Sumter St.
Columbia, SC 29211

Re: *State Farm Insurance Companies, v. Marvin Lee Robertson, et. al*
Appellate Case No. 2013-002518

Dear Ms. Kitchings:

Pursuant to the instructions contained in Deputy Clerk V. Claire Allen's letter dated December 3, 2013, and my associate's follow up telephone conversation with Elizabeth Carter in your office, please find enclosed herewith redacted copies of Appellant State Farm's *Notice of Appeal, Proof of Service*, and *Order* being challenged on appeal.

If there is any further action that we need to take to correct any deficiencies, please do not hesitate to contact me.

By copy of this letter, we are serving opposing counsel of record with a copy of the same.

With highest professional regards, I am

Sincerely yours,



Eugene P. Corrigan III

EPC:eff

Enclosures

cc: Stephen L. Brown, Esquire
Catherine H. Chase, Esquire

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