

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Rhonda Renee Thompson,

Plaintiff,

vs.

Jarad Dakota Greenwood, Elizabeth Ann Boyd
Montgomery, Ravii Glover, Individually and
as Owner of Transportation Nanny, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
Civil Action No.: 2024-CP-04-01164

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SC Court of Appeals

-AND-

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

Rhonda Renee Thompson,

Plaintiff,

vs.

Progressive Northern Insurance Company,
Berkshire Hathaway Homestate Insurance
Company, Transportation Nanny, LLC, Ravii
Glover, Individually and as Owner of
Transportation Nanny, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
Civil Action No.: 2025-CP-04-00412

**ORDER GRANTING BERKSHIRE HATHAWAY HOMESTATE INSURANCE
COMPANY'S MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court upon Defendant Berkshire Hathaway Homestate Insurance Company's ("BHHIC") Motion for Summary Judgment as to Plaintiff Rhonda Renee Thompson's ("Plaintiff") Complaint for Declaratory Judgment. The Court has reviewed BHHIC's

Motion and supporting Memorandum, Plaintiff's Memorandum in Opposition, the exhibits and evidence submitted by the parties, including the BHHIC Policy, and the applicable law. On August 18, 2026, this Court heard the arguments of counsel. For the reasons set forth below, the Court finds that Plaintiff's Mitsubishi was neither a specifically described covered auto nor a temporary substitute auto under the BHHIC Policy. Accordingly, BHHIC's Motion for Summary Judgment is granted.

BACKGROUND AND FACTS

This is a consolidated motor vehicle accident and insurance coverage action. Plaintiff filed a first amended complaint against Jarad Dakota Greenwood, Elizabeth Ann Boyd Montgomery, Ravii Glover ("Glover"), Individually and as Owner of Transportation Nanny, LLC ("Nanny LLC"), and Nanny LLC, for injuries she allegedly sustained in an April 9, 2024, automobile accident ("Tort Lawsuit¹"). Plaintiff subsequently filed a Declaratory Judgment Complaint against, *inter alia*, BHHIC, Glover, and Nanny LLC, seeking a declaration "whether Berkshire Hathaway provides any coverage for Ms. Thompson, including under any applicable policies held by Nanny LLC."

At the time of the accident, Plaintiff was operating her personal Mitsubishi while transporting two children from school to home on behalf of Nanny LLC. Compl. ¶¶ 2, 15; Thompson Dep. 23:17-24:6. Plaintiff was stopped at a traffic light when her vehicle was struck from behind by a vehicle operated by Jarad Greenwood. Compl. ¶¶ 15-19.

BHHIC issued Business Auto Policy No. 02 APM 038258-01 to named insured Nanny LLC for the policy period August 21, 2023 through August 21, 2024 ("Policy"). Policy at 4-5. Under the Covered Autos Liability Coverage provision, BHHIC agreed to pay "all sums an

¹ *Thompson v. Greenwood*, C/A No. 2024-CP-04-01164.

‘insured’ legally must pay as damages because of ‘bodily injury’ or ‘property damage’ to which this insurance applies, caused by an ‘accident’ and resulting from the ownership, maintenance or use of a covered ‘auto.’” *Id.* at 9.

The Policy determines covered autos according to the covered auto symbols shown in the Declarations. *Id.* at 5, 8. The liability and underinsured motorist (“UIM”) coverages at issue are subject to Symbol 7. *Id.* at 5. Symbol 7 means “Specifically Described ‘Autos’” and applies only to “those ‘autos’ described in Item Three of the Declarations for which a premium charge is shown.” *Id.* at 8. The Schedule of Covered Autos identifies only one vehicle, a 2021 Kia Telluride, VIN 5XYP3DHC5MG182385. *Id.* at 7.

Plaintiff’s Mitsubishi is not identified on the Schedule of Covered Autos. *See Id.*; Thompson Dep. 60:9-24. Plaintiff acknowledged that Symbol 7 applies to autos described in the Declarations, that the Schedule identifies only the Kia Telluride, and that her Mitsubishi was not a scheduled auto under the Policy. Thompson Dep. 57:16-61:9. Plaintiff further confirmed that the Kia was not involved in the April 9, 2024 accident. Thompson Dep. 66:8-16.

The Policy contains a limited extension of Covered Autos Liability Coverage for certain temporary substitute vehicles. It provides, “Any ‘auto’ you do not own while used with the permission of its owner as a temporary substitute for a covered ‘auto’ you own that is out of service because of its: a. Breakdown; b. Repair; c. Servicing; d. Loss; or e. Destruction.” Policy at 9. The terms “you” and “your” refer to the named insured, Nanny LLC. *Id.* at 5, 8.

Plaintiff admitted that she owned the Mitsubishi. Thompson Dep. 73:14-21; 74:13-17; 86:13-15. She further testified that it was a requirement of her work for Nanny LLC that she use her personal automobile for pickups and deliveries, and that Nanny LLC did not provide her a vehicle for that purpose. Thompson Dep. 30:13-31:13.

When specifically asked whether the scheduled Kia was out of service because of breakdown, repair, servicing, loss, or destruction, Plaintiff testified that she did not know. Thompson Dep. 104:19-105:1. Plaintiff identified no evidence that the Kia was out of service for any of the reasons enumerated in the Policy.

STANDARD OF REVIEW

Rule 56(c) provides that summary judgment shall be entered when the pleadings, depositions, answers to interrogatories, admissions, and affidavits demonstrate there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. In considering a motion for summary judgment, the Court views the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Law v. S.C. Dep't of Corr.*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006).

The South Carolina Supreme Court has clarified that the proper inquiry under Rule 56 is whether the evidence creates a genuine issue of material fact, rather than whether the nonmoving party can identify a mere scintilla of evidence. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 463-64, 892 S.E.2d 297, 301 (2023). Summary judgment is appropriate where a party fails to make a sufficient showing on an essential element for which that party bears the burden of proof. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007).

A declaratory judgment action concerning insurance coverage is an action at law. When the material facts are undisputed, whether an insurance policy provides coverage is a question of law for the Court. *Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 163-64, 594 S.E.2d 511, 514 (Ct. App. 2004).

DISCUSSION AND CONCLUSIONS OF LAW

Insurance policies are contracts and must be construed according to contract principles, giving the policy language its plain, ordinary, and popular meaning. *Auto Owners Ins. Co. v. Rollison*, 378 S.C. 600, 606, 663 S.E.2d 484, 487 (2008). An insurer's obligation is defined by the policy itself and cannot be enlarged through judicial construction. *S.C. Farm Bureau Mut. Ins. Co. v. Wilson*, 344 S.C. 525, 530, 544 S.E.2d 848, 850 (Ct. App. 2001). Although exclusions are construed against the insurer when ambiguous, a court must read the policy as a whole and may not create ambiguity by isolating a phrase from the rest of the policy. *Benjamin*, 415 S.C. at 144, 781 S.E.2d at 14.

The Policy at issue does not provide liability coverage for every automobile used in Nanny LLC's business. Rather, liability coverage is limited by the covered auto symbol selected in the Declarations. Policy at 5, 8-9. Here, that symbol is Symbol 7, which applies only to specifically described autos. *Id.* at 5, 8. The only specifically described automobile is the 2021 Kia Telluride. *Id.* at 7.

It is undisputed that Plaintiff was operating her Mitsubishi rather than the scheduled Kia when the accident occurred. Thompson Dep. 23:17-24:6; 60:9-24; 66:8-16. Plaintiff's Mitsubishi, therefore, does not qualify as a specifically described covered auto. The remaining question is whether the Mitsubishi nevertheless became a covered auto under the Policy's temporary substitute provision. The Court finds that it did not.

For the temporary substitute provision to apply, the evidence must establish that the Mitsubishi was being used as a temporary substitute for the covered Kia and that the Kia was "out of service" because of breakdown, repair, servicing, loss, or destruction. Policy at 9. These

requirements are part of the affirmative coverage grant and are not exclusions from otherwise applicable coverage.

South Carolina law places the initial burden of establishing coverage upon the party seeking coverage. “[T]he initial burden to prove that a loss is covered under an insurance policy is on the insured,” after which the burden shifts to the insurer to prove an applicable exclusion. *Ex parte Builders Mut. Ins. Co.*, 431 S.C. 93, 102, 847 S.E.2d 87, 92 (2020) (citing *Gamble v. Travelers Ins. Co.*, 251 S.C. 98, 103, 160 S.E.2d 523, 525 (1968)). Accordingly, because Plaintiff relies upon the temporary substitute provision as the basis for treating her otherwise unscheduled Mitsubishi as a covered auto, Plaintiff bears the burden of producing evidence sufficient to establish the requirements of that provision.

Plaintiff argues that BHHIC did not affirmatively prove that the Kia was available or in service on April 9, 2024, including by producing maintenance, repair, service, dispatch, or similar records. The Court finds that argument incorrectly allocates the burden of proof. BHHIC was not required to affirmatively prove that the Kia was operational in order to negate a coverage provision Plaintiff bears the burden of establishing. Once the absence of evidence supporting this essential coverage requirement was demonstrated, Plaintiff was required to produce evidence sufficient to create a genuine issue of material fact as to whether the Policy’s temporary substitute requirements were satisfied. See *Hansson*, 374 S.C. at 357, 650 S.E.2d at 71. Plaintiff did not make that showing.

When asked whether the Kia was out of service because of breakdown, repair, servicing, loss, or destruction, Plaintiff testified: “I don’t know.” Thompson Dep. 104:19-105:1. She also testified that she never used the Kia during her tenure with Nanny LLC. Thompson Dep. 104:19-105:1. There is no testimony, affidavit, maintenance record, repair record, service record, or other evidence establishing that the Kia was withdrawn from service for any reason identified in the

temporary substitute provision of the Policy. Plaintiff's lack of knowledge concerning the Kia's status does not constitute affirmative evidence that the Kia was out of service. Nor does it permit the Court to infer that the Kia must have been unavailable because its actual status is unknown. Such a conclusion would be based upon speculation rather than evidence.

Plaintiff's reliance upon *Zurich American Insurance Co. v. Tolbert* does not alter this conclusion. In *Zurich*, there was affirmative evidence that the scheduled vehicle required servicing and could not be driven, thereby creating an evidentiary basis for finding the vehicle was "out of service." *Zurich Am. Ins. Co. v. Tolbert*, 378 S.C. 493, 496, 662 S.E.2d 606, 607 (Ct. App. 2008), aff'd, 387 S.C. 280, 692 S.E.2d 523 (2010). Here, Plaintiff has produced no comparable evidence. Rather, the only evidence concerning the enumerated reasons is Plaintiff's testimony that she does not know whether any of them existed. Thompson Dep. 104:19-105:1.

The record also contains no evidence that the Mitsubishi was being used temporarily in substitution for the Kia. Plaintiff testified that use of her personal automobile was a job requirement when making pickups and deliveries for Nanny LLC. Thompson Dep. 30:13-31:1. She further testified that Nanny LLC did not provide her with a vehicle and dictated that she use her own vehicle. Thompson Dep. 31:2-13. Plaintiff was operating that same personal Mitsubishi in accordance with this regular arrangement when the accident occurred. Thompson Dep. 23:22-24:6; 30:13-31:13. These facts establish that the Mitsubishi was Plaintiff's regular vehicle for performing her transportation duties. They do not permit a reasonable inference that the Mitsubishi was temporarily replacing the Kia because the Kia had been withdrawn from service. The fact that the Mitsubishi was being used for Nanny LLC's business does not itself satisfy the Policy's temporary substitute requirements.

As *Nationwide Mutual Insurance Co. v. Douglas* recognizes, the scheduled vehicle need not necessarily be completely disabled or physically incapable of operation for temporary substitute coverage to apply, but the vehicle must nevertheless have been withdrawn from normal use and the other automobile must actually be serving as its temporary substitute. 273 S.C. 243, 246, 255 S.E.2d 828, 830 (1979). There is no evidence from which a reasonable factfinder could make those findings here.

Accordingly, even when viewing the evidence and all reasonable inferences in Plaintiff's favor, the Court finds no genuine issue of material fact concerning covered auto status. Plaintiff's Mitsubishi was not a Symbol 7 specifically described auto, and Plaintiff has not produced evidence from which a reasonable fact-finder could conclude that it qualified as a temporary substitute for the scheduled Kia under the Policy. Policy at 5, 7-9; Thompson Dep. 57:16-61:9; 104:15-105:1.

The same threshold determination disposes of Plaintiff's claim for UIM coverage under the BHHIC Policy. The applicable South Carolina UIM endorsement provides coverage for bodily injury sustained by an "insured" and, where the named insured is a limited liability company, defines an insured to include a person occupying a covered auto or qualifying temporary substitute. Policy at 28. Plaintiff testified that she was occupying the Mitsubishi at the time of the accident, not the scheduled Kia. Thompson Dep. 103:24-104:18. Because the Mitsubishi was neither a scheduled covered auto nor a qualifying temporary substitute, Plaintiff does not qualify for UIM coverage under the Policy arising from the April 9, 2024 accident.

BHHIC asserted several additional and independent grounds for summary judgment, including that Ravii Glover does not independently qualify as an insured under the Policy; that the Employee Indemnification and Employer's Liability exclusion bars coverage; that the Workers' Compensation exclusion bars coverage; and that the alleged failure to procure workers'

compensation insurance does not constitute a covered accident resulting from the ownership, maintenance, or use of a covered auto. Because the Court's determination regarding covered auto status independently disposes of Plaintiff's claims against BHHIC, it is unnecessary for the Court to reach these alternative grounds. Those arguments are therefore deemed moot for purposes of BHHIC's Motion for Summary Judgment, and the Court expresses no opinion concerning their merits.

CONCLUSION

For the foregoing reasons, the Court finds there is no genuine issue of material fact that Plaintiff's Mitsubishi was not a covered auto under BHHIC Policy No. 02 APM 038258-01 and did not qualify as a temporary substitute for the scheduled 2021 Kia Telluride. Plaintiff has failed to satisfy the threshold requirement of covered auto status necessary to establish liability or UIM coverage under the Policy for the April 9, 2024 accident.

IT IS THEREFORE ORDERED that Defendant Berkshire Hathaway Homestate Insurance Company's Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED that BHHIC Policy No. 02 APM 038258-01 does not afford liability coverage for Plaintiff's claims arising from the April 9, 2024, accident because Plaintiff's alleged injuries did not result from the ownership, maintenance, or use of a covered auto or qualifying temporary substitute auto. Accordingly, BHHIC has no duty to defend or indemnify Plaintiff with respect to claims arising from the April 9, 2024 accident. To the extent BHHIC has been providing a defense under a reservation of rights, it may withdraw that defense, as no coverage is afforded under the Policy for the accident at issue.

IT IS FURTHER ORDERED that Plaintiff is not entitled to underinsured motorist coverage under BHHIC Policy No. 02 APM 038258-01 arising from the April 9, 2024, accident because she was not occupying a covered auto or qualifying temporary substitute auto.

IT IS FURTHER ORDERED that BHHIC's remaining alternative grounds for summary judgment are deemed moot and are not reached by the Court.

AND IT IS SO ORDERED.

R. Lawton McIntosh
Circuit Court Judge
Tenth Judicial Circuit

August __, 2026
Anderson, South Carolina



Anderson Common Pleas

Case Caption: Rhonda Renee Thompson VS Progressive Northern Insurance
Company , defendant, et al
Case Number: 2025CP0400412
Type: Order/Summary Judgment

S/R. LAWTON McINTOSH

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