

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No. 2007-CP-23-6453

RECEIVED

MAR 27 2014

SC Court of Appeals

Douglas Earl Stiltner and Christine Rene Stiltner Appellants,

v.

USAA Casualty Insurance Company.....Respondent.

RETURN TO PETITION FOR REHEARING

Respondent USAA Casualty Insurance Company hereby submits a Return to Appellants' Petition for Rehearing pursuant to Rule 221 of the South Carolina Appellate Court Rules. USAA respectfully requests the Petition be denied based on the arguments in its brief and on the following.

- I) APPELLANTS' PETITION FOR REHEARING SHOULD BE DENIED BECAUSE IT SIMPLY REHASHES ARGUMENTS ALREADY CONSIDERED BY THIS COURT.**

According to Rule 221(a), SCACR, a Petition for Rehearing is the means by which a losing party presents "the points supposed to have been overlooked or misapprehended by the court." As noted by the South Carolina Supreme Court, "The purpose of a petition for rehearing is not to present points which the lawyers for the

losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Kennedy v. S. Carolina Ret. Sys., 349 S.C. 531, 532, 564 S.E.2d 322 (2001). The arguments presented by Appellants simply "rehash" arguments this Court has already considered. In fact, pages 9-11 of their Brief and pages 3-5 and 8 of their Reply Brief detail the exact arguments which are now repeated in the Petition. South Carolina precedent discouraging such repetition is well-established. See, e.g., Arnold v. Carolina Power & Light Co., 168 S.C. 163, 167 S.E. 234 (1933) (discouraging the filing of Petitions for Rehearing which "contain nothing but a 'rehash' of what the losing party has already said before, matters which the court has already considered well and disposed of."). Because this Court has already considered and ruled upon the arguments presented in the Petition, the request for Rehearing should be denied.

II) APPELLANTS' OWN TESTIMONY IS EVIDENCE RENE STILTNER ACTED WITHIN THE SCOPE OF HER AUTHORITY WHEN SHE REJECTED UIM COVERAGE.

Denial of the Petition is also warranted by the standard of review applicable to this action and relied upon by this Court in its Order: "In an action at law tried by a judge without a jury, the appellate court will correct any error of law, but it must affirm the trial court's factual findings unless no evidence reasonably supports those findings." Frazier v. Smallseed, 384 S.C. 56, 61, 682 S.E.2d 8, 11 (Ct. App. 2009); see also Nationwide v. Prioleau, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct. App. 2004) ("the trial judge's factual findings will not be disturbed on appeal unless a review of the record reveals there is no evidence which reasonably supports the judge's findings.").

Appellants disagree with the trial court's reliance on several events that may explain Doug Stiltner's decision to drop UIM coverage including the Stiltners' marriage, move, purchase of new vehicles, and change in liability limits. However, they fail to acknowledge the Stiltners' own testimony as evidence supporting the finding that Rene acted within the scope of her authority when she signed the form rejecting UIM coverage.

Doug testified that Rene was authorized to make automobile insurance decisions that did not change his coverage. (R.p.89.) Doug admitted that he could not say that the form Rene signed and faxed to USAA changed his coverage because he did not know whether UIM coverage had already been dropped from his policy as a result of a phone call he made or any other action he may have taken. (R.p.90.) Likewise, Doug testified that if Rene was conforming the UIM offer form to changes he had made, that would have been within the scope of the permission he had given her. (R.p.91.) Rene similarly testified that she had authority to conduct insurance transactions that did not change Doug's coverage. (R.pp.102-03.) She further testified that it would not have been her intention to change anything about the policy when she submitted the UIM offer forms to USAA. (R.p.104.) In Rene's deposition testimony she emphasized that she would not have rejected UIM coverage if that decision would have changed the policy. (R.pp.110-12.)

Relying on the Stiltners' testimony, the trial court held: "Plaintiffs have previously admitted that Mrs. Stiltner's actions did not change the existing coverage on the policy at the time she rejected UIM coverage." (R.p. 13.) The Stiltners testimony establishing Rene's authority to act as her husband's agent more than satisfies the "any

evidence" standard of review applicable to this action and warrants denial of the Petition for Rehearing.

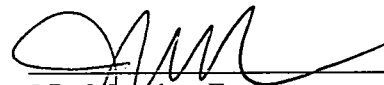
III) THE AGENCY PRINCIPLES UPON WHICH THIS COURT'S ORDER IS BASED COMPLY WITH SOUTH CAROLINA INSURANCE LAW.

Appellants contend that this Court's Order essentially endorses USAA's practice of allowing spouses to conduct business on the named insured's insurance policy in contravention South Carolina insurance law. This is far-fetched. The Order affirming the declaratory judgment in USAA's favor is based on long established rules of agency including the rule that "it may be possible for a spouse to reject UIM coverage if he or she does so as an agent authorized to act on the applicant's behalf." Allstate Ins. Co. v. Estate of Hancock, 345 S.C. 81, 87 n.4, 545 S.E.2d 845, 848 n.4 (Ct. App. 2001). This Court's Order requires evidence of an agency relationship between spouses which is a far cry from failing to follow South Carolina law.

For these reasons as well as the reasons previously presented in USAA's Brief, USAA respectfully requests denial of the Petition for Rehearing.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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March 27, 2013

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PROOF OF SERVICE

I certify that I have served the Respondent's Return to Petition for Rehearing on Douglas Earl Stiltner and Christine Rene Stiltner by depositing a copy of it in the United States Mail, postage prepaid, on March 27, 2014, addressed to their attorney of record, Blake A. Hewitt, Esquire, P.O. Box 7965, Columbia, South Carolina 29202 and Bryan D. Ramey, Esquire, P.O. Box 51600, Piedmont, South Carolina 29673.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



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SC Court of Appeals

HAND DELIVERED

Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1015 Sumter Street (29201)
P.O. Box 11629
Columbia, SC 29211

Re: Douglas Earl Stiltner and Christine Rene Stiltner vs. USAA Casualty Insurance Company
Civil Action No.: 2007-CP-23-6453
Appellate Case No.: 2012-212493
Claim No.: 9555218-3-4250-06
ALIS No.: 2007-10998
Date of Loss: 03/25/07
Our File No.: 3250-0290

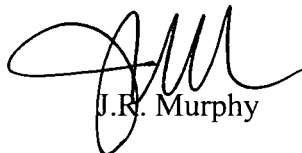
Dear Ms. Kitchings:

Enclosed please find herewith for filing with the Court the original and nine (9) copies of Respondent's Return to Petition for Rehearing in the above-referenced matter. I would appreciate your filing the original and returning three clocked copies to me by individual delivering same.

By copy of this letter I am serving same on opposing counsel.

With warm personal regards, I am

Sincerely yours,



J.R. Murphy

JRM/sb

Enclosures

cc: Blake A. Hewitt, Esquire
Bryan D. Ramey, Esquire
Bill Sproull, Esquire (via email)

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