

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

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APR 03 2014

SC Court of Appeals

Douglas Earl Stiltner and
Christine Rene Stiltner, Appellants,

v.

USAA Casualty Insurance Company, Respondent.

REPLY

This reply is filed pursuant to Rule 240(f) of the Appellate Court Rules.

As the Stiltners openly acknowledged in their petition, they understand and respect this Court's decision against their appeal. However, the Stiltners continue to believe strongly that their arguments *are* valid and that this case should be reversed. They offer the following brief points in reply to USAA's return.

- i. This Court should not deny the petition on the grounds that it is repetitive. The appellate court rules actually *require* a party to "rehash" his or her arguments before seeking cert.

USAA's return posits that the Stiltners' petition for rehearing is improper because it repeats arguments that the Stiltners have made previously. To support this proposition,

USAA cites the Supreme Court's decisions in *Kennedy v. South Carolina Retirement System* and *Arnold v. Carolina Power & Light Company*.

Both of these cases involved rehearing in the Supreme Court. Neither case involved rehearing in the Court of Appeals. This is more than a semantic difference.

The difference matters because as this Court is aware, a party *must* petition the Court of Appeals for rehearing before asking the Supreme Court to grant certiorari. Under Rule 221(b), SCACR, this Court will remit a case after 15 days if no petition for rehearing is filed, and under Rule 226(d)(1), SCACR, a cert. petition must contain a certification as to the dates the petition for rehearing was made and ruled upon. The Supreme Court has articulated that the potential issues which are available on cert. are limited to the issues that were raised to the Court of Appeals in the petition for rehearing. See *Doe ex rel. Roe v. Orangeburg Cty. Sch. Dist. No. 2*, 335 S.C. 556, 561 n.8, 518 S.E.2d 259, 261 n.8 (1999). This is in accordance with Rule 242(d)(2), SCACR, which limits the issues in a cert. petition to the issues from the petition for rehearing.

The principle case that USAA is citing—*Arnold*—was decided 46 years before South Carolina had the modern court of appeals.¹ The appellate court rules did not exist until later. Not only is the Stiltner's petition appropriate, it is a necessity for seeking further review.

- ii. The Stiltner's petition is accurate when it states that USAA's method of doing business does not conform to South Carolina law.

With the utmost respect for USAA, it is hard to see how there can be any legitimate debate on this point. In pertinent part, footnote 4 of USAA's merits brief reads:

¹*Arnold* was decided in 1933. See 168 S.C. 163, 167 S.E. 234. This Court was originally created in 1979. See *State ex rel. Riley v. Martin*, 274 S.C. 106, 262 S.E.2d 404 (1980).

... Being comprised primarily of military families, USAA is in the business of trusting spouses to handle insurance matters while the named insured is deployed. Because insurance paperwork cannot timely follow men and women in uniform moving around the world, USAA relies on the agency authority of named insureds' spouses in handling insurance matters and assuring that USAA fulfills its purpose of insuring military families. Accordingly, USAA regularly accepts insurance forms completed by the named insured's spouse.

(Brief of Respondent, p.10).

This is not argument. These are USAA's own words. USAA says that because it serves military people, it views spouses as agents and relies on spouses to be agents, regardless of whether there is any factual justification for doing so. How is this not open defiance of South Carolina law? South Carolina law says that spouses are *not* agents just because they are married, and USAA says that because it primarily serves military people (and there is no evidence in the record of this), it treats all spouses *as* agents just because they are married. USAA cannot have it both ways. Either it follows the law, or it does not.

The problem with this business practice—other than the fact that it violates the law—is that it leads to disputes like the present case. Most instances of ignoring the law might go unnoticed, but in the cases where compliance with the law becomes a material issue, the insurance company has to scramble to find (or manufacture) some after-the-fact reason to justify a course of conduct that was clearly unlawful at the time. There would be no need for this lawsuit—there would be no need to depose Mr. and Mrs. Stiltner and discuss this fictional “implied” authority to keep the policy's coverage the same—if USAA had just insisted on dealing with the named insured or secured a representation from the named insured that his spouse was his agent. The decision in favor of USAA rewards conduct

which the law should discourage. With the utmost respect for USAA, it is hard to see how this point is in dispute.

- iii. The Stiltners do not know when UIM was dropped from Doug's policy. Even USAA's attorney acknowledged this at trial.

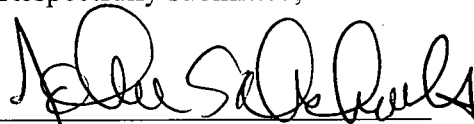
The Stiltners do not know what actions dropped UIM from Doug's policy. USAA's attorney acknowledged this during trial. See (R.p.118, lines 9-10). The Stiltners can neither admit nor deny that Rene's actions changed Doug's coverage. This is blind guessing.

Any suggestion that Doug admitted his wife possessed agency authority distorts the record. Doug said that he always handled the family's insurance. To find to the contrary, the court would have to discredit Doug's testimony. No court has done this.

The Stiltners' submit that the point from their merits briefing remains valid. There is no way to decide what actions dropped UIM from Doug's policy; the only way to pick is to guess. No reasonable fact finder could find that USAA carries its burden of proof, and the trial court's reasoning is openly incorrect. For the reasons stated here and in the petition, this Court should withdraw its opinion and reverse.

April 3, 2014

Respectfully submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served counsel for the Respondent with a copy of the *Reply to Return to Petition for Rehearing* by mailing copies of the same by United States Mail with first class postage prepaid to the following address:

J.R. Murphy, Esquire
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April 3, 2014



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April 3, 2014

VIA HAND DELIVERY

The Honorable Jenny Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Stiltner v. USAA Casualty Insurance Co.
Case Tracking No: 2012-212493

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven (7) copies of *Appellant's Reply to Return to Petition for Rehearing* in reference to the above matter. I have also enclosed a proof of service of this document on counsel for the Respondent. Please return the additional filed copy to me via our courier.

Thank you for your attention to this matter. If you need any additional information, please to not hesitate to contact me.

Sincerely,

Erin Bridges

Paralegal to Blake A. Hewitt

BLUESTEIN, NICHOLS, THOMPSON
& DELGADO, LLC

/emb

Enclosures

cc: J.R. Murphy, Esquire
Bryan D. Ramey, Esquire