THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Circuit Court Judge

Opinion No. 27381
Filed April 9, 2014

Joshua Bell ..... Petitioner,

v.

Progressive Direct Insurance Company ..... Respondent.

RETURN TO PETITION FOR REHEARING

J. R. Murphy, Esquire
Ashley B. Stratton, Esquire
MURPHY & GRANTLAND, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Respondent

Other Counsel of Record:
Gene M. Connell, Esquire
Kelaher, Connell & Connor, P.C.
P.O. Drawer 14547
Surfside Beach, SC 29587
Attorneys for Petitioner

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Circuit Court Judge

Opinion No. 27381 Filed April 9, 2014

Joshua Bell ..... Petitioner,

v.

Progressive Direct Insurance Company ..... Respondent.

RETURN TO PETITION FOR REHEARING

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

I) BASED ON EX PARTE USAA, THE POLICY IS NOT AMBIGUOUS AND REMANDING THE CASE IS UNWARRANTED.

This Court held Ex parte United Services Automobile Association, 365 S.C. 50, 614 S.E.2d 652 (Ct.App.2005), directly applies to the facts of this case and forecloses a finding of ambiguity. Bell v. Progressive Direct Ins. Co., Op. No. 27381 (S.C. Sup. Ct. filed Apr. 9, 2014) (Shearouse Adv. Sh. No. 14 at 74). The Court need look no further for a basis for denying Petitioner's request for Rehearing.

The threshold issue in this case is whether listing Bell as a "driver" and "household resident" creates an ambiguity. Only when this issue is answered in the affirmative can the doctrine of reasonable expectations be considered. Even then, the doctrine is confined by longstanding interpretive rules and fairness principles and does not create a substantive right. Bell at 77. According to this Court, "Thus, while we now hold that reasonable expectations may be used as another interpretive tool, the doctrine cannot be used to alter the plain terms of an insurance policy." Bell at 78. The trial court held the policy is not ambiguous as a matter of law. (R.pp.5, 6.) The Court of Appeals affirmed, holding the fact that "household resident" is undefined does not render the policy ambiguous. Bell v. Progressive Direct Ins. Co., Op. No. 2011-UP-242 (S.C. Ct. of App. filed June 23, 2011) (unpublished opinion). This Court also affirmed, holding there is "no doubt" Petitioner was not a "named insured" on the policy and finding the policy unambiguously forecloses UIM coverage to Petitioner. Bell at 75. Because there is no genuine issue as to any material fact that the policy is not ambiguous, the doctrine of reasonable expectations has no bearing on this case and there is no basis for remanding this case for a new trial.

There is also no basis for considering Louisiana case law, as Petitioner posits, when Ex parte USAA is directly applicable. In Ex parte USAA, listing the claimant as an "operator" and failing to define "operator" did not render the policy ambiguous. Ex parte USAA, 365 S.C. at 55, 614 S.E.2d at 654. Similarly, listing Bell as a "driver" and "household resident" and failing to define "household resident" does not render the Progressive policy ambiguous. In the absence of an ambiguity, Petitioner is not entitled to a trial on the doctrine of reasonable expectations.

II) BASED ON THE PLAIN AND UNAMBIGUOUS TERMS OF THE POLICY, BELL IS NOT ENTITLED TO UIM COVERAGE.

Denying UIM coverage to Bell is not an oppressive result when he is not listed as a "named insured" in the policy. As noted by this Court, UIM coverage was only available to either "a person or persons shown as a named insured on the Declarations Page" and "the spouse of a named insured if residing in the same household." Bell at 75.

When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used. USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008). Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning. Id. A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Lindsay v. Lindsay, 328 S.C. 329, 340, 491 S.E.2d 583, 589 (Ct. App. 1997).

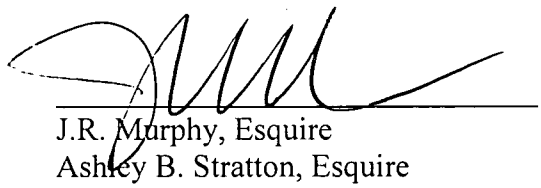
Contrary to Petitioner's assertion, Bell has not been denied coverage for which he paid. The premium on the policy was based on Bell being listed as a driver and household resident and only Sarah Severn being listed as a named insured. Despite the fact Bell did not understand what being an additional driver[1] on the policy meant, he is bound by the plain and unambiguous terms of the policy.

[1] Bell was listed as a driver and household resident on the policy. He testified he did not understand what it meant to be an additional driver on the policy. (R.p.130.) This Court stated Bell did not have an understanding of what it meant to be a listed as a "household resident". Bell at 78, n. 8. Misunderstanding being listed as a driver versus misunderstanding being listed as a household resident is a distinction without difference when the point is what Bell expected with respect to coverage by adding himself to Severn's policy.

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

Respectfully submitted,

MURPHY & GRANTLAND, P.A.



J.R. Murphy, Esquire
Ashley B. Stratton, Esquire
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorneys for Respondent

Columbia, South Carolina
April 28, 2014

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Circuit Court Judge

Opinion No. 27381
Filed April 9, 2014

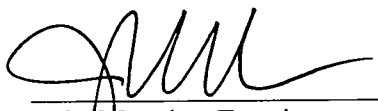
Joshua Bell ..... Petitioner,

v.

Progressive Direct Insurance Company ..... Respondent.

PROOF OF SESRVICE

I certify that I have served the Return to Petition for Rehearing on Petitioner, Joshua Bell, by depositing a copy of it in the United States Mail, postage prepaid, on April 28, 2014, addressed to his attorney of record, Gene M. Connell, Esquire, P.O. Drawer 14547, Surfside Beach, SC 29587.



J. R. Murphy, Esquire
Ashley B. Stratton, Esquire
MURPHY & GRANTLAND, P.A.
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Respondent