IN THE STATE OF SOUTH CAROLINA

In the South Carolina Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2011-CP-42-02965
Appellate Case No. 2013-000923
Op. No. 2014-UP-270 (S.C. Ct. App. filed June 30, 2014)

Progressive Northern Insurance Company ..... Petitioner,

v.

Stanley K. Medlock, Corey K. Medlock and The Standard Fire Insurance Company, ...Defendants,

Of Whom

Stanley K. Medlock and Corey K. Medlock.....Respondents.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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I. Respondent failed to acknowledge the *addition* of a second named insured to an existing policy is not identical or even similar to the substitution of one named insured for a wholly new named insured.

Respondent opposes the Petition for Writ of Certiorari by repeatedly arguing that the case of McDonald v. South Carolina Farm Bureau, 336 S.C. 120, 518 S.E.2d 624 (S.C. App. 1990), *cert denied* (2000), is factually identical and therefore controlling. However, the facts at issue in McDonald are fundamentally different from those in the present case. Moreover, the language from McDonald relied upon by Respondent was mere *dicta* and begs for clarification from this court.

The Court of Appeals in McDonald dealt with a case where the existing named insured was deleted from the policy entirely and a different individual was *substituted* as the new and sole named insured. In determining that the new "named insured" was entitled to an offer of additional uninsured motorist coverage and optional underinsured motorist coverage, the Court of Appeals stated that all new named insureds were entitled to receive an offer of the optional coverage. The Court did not clarify whether this meant one individual for each policy (the universe of all new named insureds who would apply for all policies issued in South Carolina) or each named insured on every single policy. Nonetheless, the Court of Appeals below relied upon McDonald without providing any clarification on this important question. To the extent that the Court of Appeals below read McDonald to hold that every named insured on a policy of insurance must separately receive a meaningful offer of optional coverage, the facts at issue in McDonald did not necessitate such a broad holding and the plain language of South Carolina Code § 38-77-350 contradicts such a broad ruling.

The issue of whether an insurance carrier is required to offer every single named insured on an individual policy the opportunity to accept or reject optional UM and UIM coverage has been raised but never decided by an appellate court in South Carolina. As such, the issue is clearly novel. Moreover, the issue is important and likely to repeat itself in the future, especially in connection with couples who become married and "merge" their existing insurance coverages into a single policy, or when one spouse chooses to be added to the other's existing policy. Therefore, this Court should accept the case and give clear guidance as to whether or not more than one individual must be presented with an offer of optional UM and UIM coverage on a policy that is issued to multiple named insureds. Furthermore, this Court should follow the various other jurisdictions by clarifying that the addition of a second named insured, such as a son or a newlywed spouse, is a mere change to the policy and does not constitute the creation of a new policy. Despite Respondents' arguments, the McDonald case did not involve these issues and the Court of Appeals in Nationwide Mutual Insurance Company v. Prioleau, 359 S.C. 238, 597 S.E.2d 165 (Ct. App. 2004) and Hancock did not rule on these issues.

II. Respondent incorrectly asserts that the legislative intent behind § 38-77-350 was to protect the insured.

Respondent repeatedly states that the purpose of § 38-77-350 is to protect the insureds. However, a closer review of the stated purpose of the adoption of § 38-77-350 clearly shows that its purpose was to reduce insurance claims. When the court considers the adoption of § 38-77-350 in response to this court's holding in State Farm Mutual Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987), it is clear that the General Assembly intended to provide more protection, not less, to insurance carriers who follow the stated statutory requirements for making offers of optional UM and UIM

coverage. The General Assembly's recent revisions to §38-77-350 in response to holdings of this Court highlight the underlying purpose of the statute.

The statutes specifically granted a conclusive presumption, a rather drastic remedy, in favor of insurance carriers who follow the statutory framework. Moreover, the statute grants an exemption from the meaningful offer requirement for any subsequent policy changes. This Court should clarify whether the addition of a second named insured where the original named insured who received the meaningful offer and chose to reject coverage remains the first named insured on the policy is a "change" that entitles Progressive and other carriers in similar situations to rely upon an otherwise meaningful offer made and vehicle rejection signed by a person who remains a named insured on the policy.

The history of § 38-77-350 plainly reveals the General Assembly's intent to reduce reformation claims and to provide insurers with a mechanism by which they can safely rely upon the insurance applicant's rejection of optional coverage without fear of a subsequent reformation of the policy. In 1987, this Court's decision in Wannamaker established the standard for a meaningful offer under §38-77-160 and held that a policy may be reformed if the carrier fails to make a meaningful offer. In response, the General Assembly enacted §38-77-350, which largely adopted the Wannamaker factors, and established a safe harbor for insurance carriers to follow in order to be protected from reformation actions. Grinnell Corp. v. Wood, 389 S.C. 350, 356, 698 S.E.2d 796 (2010) (noting that the General Assembly enacted § 38-77-350 in response to Wannamaker).

In Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005), this Court again interpreted §38-77-350 and held that the conclusive presumption of §38-77-

350(B) only applied if the applicant personally marked the selection or rejection of coverage on the form. Once again, the General Assembly responded by amending §38-77-350 to clarify that the form could be completed by an agent, as long as the applicant personally signs the form confirming his or her rejection of optional coverage. See 2006 S.C. Laws Act 395 (H.B. 4622). In doing so, the "General Assembly effectively reversed the Floyd decision." S.C. Dep't of Ins. Bulletin No. 2006-03.

In light of the legislative history of § 38-77-350, Respondent's argument that the statute was enacted solely for the public's protection fails to withstand any scrutiny. The General Assembly enacted § 38-77-350 and has continued to amend the statute to ensure that insurance companies like Progressive have a mechanism by which they can make an offer of optional coverage and rely upon that one offer in all of the subsequent dealings with the insurance policy. As it stands, the Court of Appeals' holding strips the statute of this clear – and plainly stated – purpose.

The refusal to accept this case and reverse the decision of the Court of Appeals would effectively penalize Progressive for providing the Medlocks with an appropriate policy that saved them money and afforded greater protection to Corey Medlock at the same time. As Respondents concede in their brief, state law required Corey – as the owner of the motorcycle – to insure the vehicle. Although the vehicle would be insured without Corey listed as a named insured, naming him as a named insured entitled him to notice of cancellation, which would help ensure that he remained in compliance with South Carolina law.[1] When the Medlocks advised their local agent that Corey had

[1] Respondents make much of the fact that Corey's relationship in the policy changed when he became a named insured because he became entitled to certain rights, such as receiving a notice of cancellation. Progressive has never taken the position that Corey's position did not change when he became the named insured. However, §38-77-350(C) specifically addresses whether a new offer is required when the policy

purchased a motorcycle, the agent correctly added the vehicle to the existing policy. Of course, the basis for adding the vehicle to the existing policy rather than obtaining a separate policy was to provide a financial benefit to the Medlocks. By adding the vehicle to his father's policy Corey and his father received a multi-vehicle discount and reduced the effective premium for both vehicles on the policy.

In addition, listing Corey Medlock as the second named insured allowed him to avoid any argument by Progressive that his father lacked an insurable interest in the motorcycle if Stanley Medlock had remained the only named insured on the policy. As such, Corey Medlock would receive the benefit of any collision or comprehensive coverage on the motorcycle and would be entitled to notice of any cancellation so that he could maintain insurance for protection of his property and comply with the mandatory liability coverage required under the South Carolina law. Had Progressive merely added the vehicle, the Medlocks admittedly would have no claim for UIM coverage and could have even faced a situation where a collision or comprehensive claim may have been denied.

Respondent's contentions that Progressive should be punished by reformation of the policy because it somehow unilaterally made him a named insured reveals the duplicity of his argument and the injustice of the Court of Appeals' holding. Progressive protected Corey by making him a named insured - something for which he paid no additional consideration and, by his own arguments in his brief, something of which he had no knowledge. Corey never asked to be a named insured. Therefore, he was

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"changes." By the plain terms of the statute, no new offer was required for what Respondents themselves have described as a "change." If an insured adds a second vehicle, the terms of the policy and its application have changed, but Respondents concede that this would not require a new offer. The same rule applies to the addition of a second named insured.

apparently completely content with a policy that conformed to the terms to which his father agreed when he first purchased the policy. Those terms included his father's rejection of optional coverage. Nonetheless, he argues that because Progressive protected him by adding him as a named insured, the policy that his father purchased should be reformed to provide UIM coverage, despite his apparent contentment with his father's decision-making. Rather than supporting his position, these facts highlight Progressive's reasonableness in relying upon the statutory protections of § 38-77-350(C) and the prior written rejection of optional coverage by Corey's father, who was and remained the named insured on the policy who handled insurance matters on his family's behalf.

III. Any minor differences between contractual obligations and benefits for named insureds versus qualifying insureds are immaterial to the issue before the Court.

Respondents' recitation of legal rights and obligations of a named insured is misplaced.[2] Although the changes are all minor, Progressive has never taken the position that the change making Corey Medlock a second named insured did not change the policy. However, § 38-77-350(C) provides that no new offer is required when the policy is "changed." All Respondents have accomplished by recounting the changes is to highlight Progressive's key point: This was a change to an existing policy, not the creation of a new policy. None of the changes outlined by Respondent explain why the policy issued to Stanley Medlock naming Corey as a listed driver should be treated as ceasing to exist when Corey was merely added on a second named insured on that policy.

The issue that Progressive asks this Court to accept and rule upon involves the interpretation of the applicable statute. In that regard, the General Assembly used the

[2] The record reveals that Corey Medlock did not pay Progressive directly for any premium due on the policy; he acknowledged that he simply reimbursed his father for the amounts attributed to the motorcycle. **R.** 54, ¶ 8.

term "changes." The question before the Court is not whether Corey's status "changed." Both sides concede this point. The issue is whether §38-77-350(C) allowed Progressive to rely upon the pre-existing written rejection of optional coverage when this "change" took place. A plain reading of the statute confirms that Progressive had every right to rely upon the prior offer and this Court's clarification on this important issue is sorely needed.

IV. This Court should grant certiorari to clarify the meaning of the term "applicant" as used by the General Assembly in § 38-77-350.

The General Assembly requires use of the offer form for an "applicant," in singular form, to describe the person to which a meaningful offer of optional UM and UIM coverage must be made. The statutory language should be interpreted to require that only one person must receive a meaningful offer for any policy of automobile insurance issued in South Carolina. This is consistent with the plain language of the statute and the purpose for enacting § 38-77-350 to reduce claims and grant new, broader protections to insurance companies in connection with the meaningful offer requirement of § 38-77-160 and Wannamaker. Therefore, this Court should clarify whether every individual named insured on each policy issued in South Carolina must receive an offer optional coverages or whether one person, the individual named insured who is the "applicant" and may receive the offer, execute a rejection of optional coverage that is binding on all other insureds, including any additional named insureds. That issue has never been decided by an appellate court in South Carolina and because of its novelty, the likelihood of repetition and the importance for consumers and the insurance industry alike, this Court should grant the Petition for Writ of Certiorari, request additional briefing and reverse the decision of the Court of Appeals.

Respectfully submitted,

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February 5, 2015

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PROOF OF SERVICE

I certify that I have served the Reply in Support of Petition for Writ of Certiorari on Stanley K. Medlock, Corey K. Medlock and the Standard Fire Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on February 5, 2015, addressed to their attorneys of record:

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February 5, 2015

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Re: Progressive Northern Insurance Company vs. Stanley K. Medlock, Corey K. Medlock and The Standard Fire Ins. Co.
Civil Action No.: 2011-CP-42-02965
Appellate Case No.: 2013-000923
Claim No.: 10-5041541
Date of Loss: 10/09/10
Our File No.: 1115-2016

Dear Mr. Shearouse:

Enclosed please find herewith for filing with the Court the original and ten (10) copies of a Reply to Return to Petition for Writ of Certiorari in the above-referenced matter. I would appreciate your filing the originals and returning the 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: Brian A. Martin, Esquire
William P. Davis, Esquire