

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

CLERK'S OFFICE OF THE COURT OF COMMON PLEAS
ANDERSON SC

2015 APR - 7 A 11: 06

United Auto Insurance Company,
Plaintiffs,

CASE NO.: 2014-CP-04-0850

COMMON PLEAS AND
GENERAL SESSIONS

v.

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION

Willie Freeman, Michael Craft,
Kimberly L. Sanford, and Antonio Craft,
Defendants.

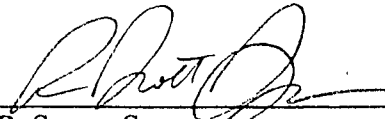
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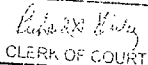
SC Court of Appeals

After careful consideration of the record and the able argument and filings of Counsel, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Plaintiff's Motion, pursuant to Rule 59, SCRCP, ¹ is DENIED.

AND, IT IS SO ORDERED.


R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Anderson, South Carolina
April 6, 2015

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CLERK OF COURT

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
MAR 16 2015) C/A NUMBER: 14-CP-04-850

United Auto Insurance Company, *Richard D. Harty*
CLERK OF COURT

Plaintiff,

vs.

Willie Freeman, Michael Craft, Kimberly
L. Sanford and Antonio Craft,

Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

COMMON PLEAS AND
GENERAL SESSIONS

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ANDERSON SC

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I. INTRODUCTION

This matter came before the Court on Plaintiff's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure during the February 2, 2015 Anderson County Non-Jury term of Court. Attorney George V. Hanna, IV appeared on behalf of United Auto Insurance Company ("UAIC"). Attorney Donald L. Smith appeared on behalf of Defendants Willie Freeman and Michael Craft. Defendants Kimberly Sanford and Antonio Craft are in default and did not make an appearance. After carefully considering the arguments of counsel for UAIC, the arguments of counsel for Willie Freeman and Michael Craft, the affidavit of Robert Gibbs, the exhibits presented at trial, the various pleadings filed in the case, the submissions of both parties and the relevant case law, I hereby GRANT Plaintiff's Motion for Summary Judgment.

II. STATEMENT OF FACTS

At oral argument the parties stipulated to the following pertinent facts:

1. UAIC issued policy # SCU 000693514 ("the Policy") to Defendant Kimberly L. Sanford as named insured a policy of automobile liability insurance with effective dates of January

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3, 2013 to July 3, 2013, which provided bodily injury liability coverage for one (1) vehicle, a 1997 Ford Crown Victoria, in the amount of \$25,000/\$50,000.

2. That Defendant Kimberly L. Sanford paid her first month's premium on January 3, 2013 at the time the Policy was issued.

3. UAIC sent a bill to Defendant Kimberly L. Sanford for the second month's premium on January 9, 2013.

4. UAIC then sent a cancellation notice to Defendant Kimberly L. Sanford on January 22, 2013, stating that the policy would be cancelled if the premium was not received on or before February 3, 2013.

5. That Defendant Kimberly L. Sanford failed to pay the premium for the second month before the due date of February 3, 2013.

6. That on February 13, 2013 Antonio Craft was operating the aforementioned 1997 Ford Crown Victoria on Tribble Street in the Anderson, South Carolina when his vehicle allegedly struck Defendants William F. Freeman and Michael Craft, who were pedestrians.

7. That Defendant Kimberly L. Sanford made an additional payment on February 14, 2013 at 11:21 AM.

III. CONCLUSIONS OF LAW

Plaintiff presented evidence at the motion hearing that the notice of cancellation mailed on January 22, 2013 met all the requirements of South Carolina Code § 38-77-120 and Defendants Willie Freeman and Michael Craft did not challenge this evidence. Therefore, as a threshold matter, I find as a matter of law that Plaintiff's notice of cancellation dated January 22, 2013 met all the requirements of South Carolina Code § 38-77-120.

In addition, Plaintiff contends that it was permissible to cancel the policy within the first 60 days because this cancellation met the requirements of South Carolina Code § 56-10-

245

280(A)(4). Specifically, the policy had remained in effect for at least 30 days and was being cancelled for nonpayment of premium. Defendants Willie Freeman and Michael Craft challenged this contention at the hearing, arguing that South Carolina Code § 56-10-280(A)(4) prohibits an insurance carrier from cancelling an insurance policy within the first 60 days for nonpayment of premiums for at least 30 days after the premium is due. Under the Plaintiff's interpretation of the statute the policy was cancelled for nonpayment on February 3, 2013 at 12:01 AM. Under Defendants Willie Freeman and Michael Craft's interpretation of the statute the policy could not be cancelled until March 5, 2013 at 12:01 AM. Therefore, the issue presented to the court is to interpret the meaning of South Carolina Code § 56-10-280(A)(4) and then apply that meaning to the undisputed facts of the case. The specific statutory language at issue is as follows:

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. A contract or policy of insurance remains in effect at least sixty days notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect cancellation on behalf of the insured. However, a contract or policy may be canceled within the first sixty days only under one or more of the following circumstances: (4) the insured fails to pay when due the premium for the policy, an installment of the premium, or an installment payment under a premium service contract. The contract or policy of insurance must remain in effect for at least thirty days.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Id.* at 233, 509 S.E.2d at 262 (citing *Paschal v. State Election*

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Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992).

The court finds that the language of South Carolina Code § 56-10-280(A)(4) is plain and unambiguous. This section clearly evidences the legislature's intent that a policy of automobile insurance issued in compliance with the Financial Responsibility Act can only be cancelled during the first 60 days for four enumerated reasons, including the nonpayment of premiums when due. A policy that is cancelled for nonpayment of premiums must remain in effect for at least 30 days. The Court finds that the plain and unambiguous meaning of this provision is that a policy of automobile insurance can be cancelled for nonpayment of premium on the 31st day. This is exactly what happened in this case.

The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd. *Ray Bell Constr. Co. v. School Dist. of Greenville Co.*, 331 S.C. 19, 501 S.E.2d 725 (1998).

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.

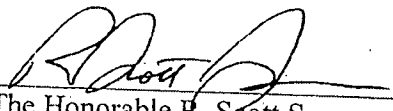
Id. (citing *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994)). The interpretation urged by Defendants Willie Freeman and Michael Craft leads to a result that is plainly absurd. Based on the undisputed facts, the policy was issued on January 3, 2013. The premium for the second months had to be received on or before February 3, 2013. Therefore, according to Defendants Willie Freeman and Michael Craft's interpretation of the

statute, the policy could not be cancelled until March 5, 2013 at 12:01 AM. In other words, they are urging this court to hold that the statute prohibits an insurer from cancelling a policy for nonpayment of premiums for a period of 60 days. This result is plainly absurd in that it requires the court ignore the fact that a cancellation for nonpayment of premiums is one of the four enumerated reasons listed in the statute wherein it is permissible for an insurer to cancel a policy within the first 60 days. If the legislature had intended the result urged by Defendants Willie Freeman and Michael Craft, it would have listed only the first three reasons and not ever mentioned nonpayment of premiums as an exception.

CONCLUSION

The court finds that the Plaintiff properly cancelled the Policy on February 3, 2013 at 12:01 AM and that the Policy was not reinstated until February 14, 2013 at 11:21 AM. Therefore, there is no coverage available for the accident of February 13, 2013. For the foregoing reasons, the Plaintiff's Motion for Summary Judgment is hereby GRANTED.

AND IT IS SO ORDERED.


The Honorable R. Scott Sprouse
Presiding Judge

Waltham, SC

3-16, 2015

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ANDERSON SC
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COMMON PLEAS AND
GENERAL SESSIONS

FORM 11
LETTER ORDERING TRANSCRIPT FROM COURT REPORTER

April 17, 2015

Renee Tollison
Post Office Box 4321
Anderson, SC 29622

RECEIVED
APR 20 2015
SC Court of Appeals

RE: Willie Freeman, Michael Craft, Kimberly Sanford & Antonio Craft v.
United Auto Insurance Company
C.A. No.: 2014-CP-04-0850

Dear Ms. Tollison:

On February 2, 2015, the above case was tried before the Honorable R. Scott Sprouse, Circuit Court Judge, in Anderson County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire record.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Sincerely,



Donald L. Smith, Esquire
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
Attorney for Appellants

cc: George A. Hanna, Esquire
Howser, Newman & Besley, LLC
PO Box 12009
Columbia SC 29211

FORM 7
PROOF OF SERVICE OF LETTER ORDERING TRANSCRIPT FROM COURT REPORTER

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-0850

Willie Freeman, Michael Craft,
Kimberly Sanford and Antonio Craft,

Appellants,

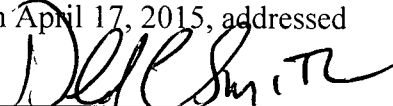
v.

United Auto Insurance Company,

Respondent.

PROOF OF SERVICE

I certify that I have served a Letter Ordering Transcript from Court Reporter by depositing a copy of it in the United States Mail, postage prepaid, on April 17, 2015, addressed to Renee Tollison, PO Box 4221, Anderson SC 29622.


Donald L. Smith, Esquire
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
Attorney for Appellants

Other Counsel of Record:
George A. Hanna, Esquire
Howser, Newman & Besley, LLC
PO Box 12009
Columbia SC 29211

RECEIVED
APR 20 2015
SC Court of Appeals

FORM 9
LETTER TO CLERK OF LOWER COURT
FILING NOTICE OF APPEAL

April 17, 2015

The Honorable Richard Shirley
100 S. Main Street
Anderson County Courthouse
Anderson SC 29624

RE: Willie Freeman, Michael Craft, Kimberly Sanford and Antonio Craft v. United
Auto Insurance Company
Case No.: 2014-CP-04-0850

Dear Mr. Shirley:

Please find enclosed a Notice of Appeal and Proof of Service for same which I
have filed in the above-captioned case.

Sincerely,



Donald L. Smith, Esquire
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
Attorney for Appellants

Other Counsel of Record:
George A. Hanna, Esquire
Howser, Newman & Besley, LLC
PO Box 12009
Columbia SC 29211

**FORM 7
PROOF OF SERVICE LETTER TO CLERK OF LOWER COURT FILING NOTICE OF
APPEAL**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-0850

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SC Court of Appeals

Willie Freeman, Michael Craft,
Kimberly Sanford and Antonio Craft,

Appellants,

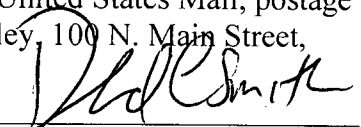
v.

United Auto Insurance Company,

Respondent.

PROOF OF SERVICE

I certify that I have served the Letter to Clerk of Lower Court Filing Notice of Appeal upon the Honorable Richard Shirley by depositing a copy of it in the United States Mail, postage prepaid, on April 17, 2015, addressed to The Honorable Richard Shirley, 100 N. Main Street, Anderson SC 29624.


Donald L. Smith, Esquire
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
Attorney for Appellants

Other Counsel of Record:
George A. Hanna, Esquire
Howser, Newman & Besley, LLC
PO Box 12009
Columbia SC 29211

ATTORNEY OFFICE OF DONALD SMITH

122 N. Main St.
Anderson SC 29621
attorneydonaldsmith@gmail.com

Donald L. Smith, Esquire

Telephone: (864) 642-9284
Facsimile: (864) 642-9285

April 17, 2015

George V. Hanna, IV, Esquire
Howser, Newman & Besley, LLC.
P.O. Box 12009
Columbia SC 29211


**RE: Willie Freeman, Michael Craft, Kimberly Sanford and Antonio Craft
v. United Auto Insurance Company
C.A. No.: 2014-CP-04-0850**

Dear Mr. Hanna:

Please find enclosed a copy of the Notice of Appeal, Letter Ordering Transcript from Court Reporter and Letter to Clerk of Lower Court Notice of Filing Appeal as well as, a Proof of Service for each in the above-referenced matter.

If you should have any questions regarding this correspondence, please do not hesitate to contact me.

With highest regards, I remain
Very truly yours,


Donald L. Smith
DLS/kn
Enclosures

RECEIVED
APR 20 2015
SC Court of Appeals

FORM 7
PROOF OF SERVICE OPPOSING COUNSEL NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No. 2014-CP-04-0850

Willie Freeman, Michael Craft,
Kimberly Sanford and Antonio Craft,

Appellants,

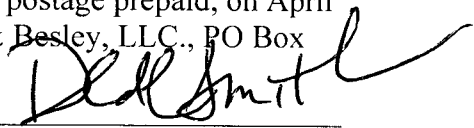
v.

United Auto Insurance Company,

Respondent.

PROOF OF SERVICE

I certify that I have served a copy of the Notice of Appeal, Letter Ordering Transcript from Court Reporter and Letter to the Clerk of Lower Court upon the opposing counsel, George V. Hanna, Esquire by depositing a copy of it in the United States Mail, postage prepaid, on April 17, 2015, addressed to George A. Hanna, Esquire, Howser, Newman & Besley, LLC., PO Box 12009, Columbia SC 29211.


Donald L. Smith, Esquire
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
Attorney for Appellants

RECEIVED

APR 20 2015

SC Court of Appeals