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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
WILLIE JORDAN,)
)
Plaintiff,)
)
vs.)
)
JANE DOE,)
)
Defendant.)
)
)
)

SC Court of Appeals
IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-40265

ORDER GRANTING DEFENDANT
MOTION FOR SUMMARY
JUDGMENT

2015 APR 28 PM 4: 01
JEANNETTE W. MCGIBRIDE
C.C.P. & C.P.
RICHLAND COUNTY
FILED

This matter comes before this Court on Defendant Doe's Motion for Summary Judgment. This is a Jane Doe uninsured motorist case pursuant to S.C. Code Ann. § 38-77-170. Defendant asserts Plaintiff has failed to comply with the statutory requirements for bringing this claim. Specifically, Defendant contends Plaintiff failed to comply with S.C. Code Ann. § 38-77-170(2) and (3).

The Supreme Court held in Hart v. Doe, 261 S.C. 116, 198 S.E.2d 526 (1973) that the burden of proof in an uninsured motorist claim was on the plaintiff to prove, by a preponderance of the evidence, the negligence of the uninsured motorist and that her injuries were caused by the unknown vehicle.

The issue of interpretation of a statute is a question of law for the court. Univ. of S. Cal. v. Moran, 365 S.C. 270, 275, 617 S.E.2d 135, 137 (Ct.App.2005). The cardinal rule of statutory interpretation is to determine the intent of the legislature. Bass v. Isochem, 365 S.C. 454, 459, 617 S.E.2d 369, 377 (Ct.App.2005). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. McClanahan

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v. Richland County Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). "Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy." S.C. Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989). The legislature's intent should be ascertained primarily from the plain language of the statute. State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct.App.2004). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. Durham v. United Cos. Fin. Corp., 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998).

S.C. Code Ann. § 38-77-170 sets out the strict requirements to file suit under an uninsured motorist provision of an insurance policy when the owner or operator of motor vehicle allegedly causing injury or damage is unknown. Strict compliance with the statute has been required in previous John Doe cases. For example, in Morehead v. Doe, 324 S.C. 559, 479 S.E.2d 817 (Ct.App.1996), the plaintiff did not report the accident to the appropriate police authority until eight months after the accident. The Court of Appeals ruled the belated report did not satisfy §38-77-170(1), reasoning that: "[t]he report to a police authority must be made, as the statute requires, 'within a reasonable time' ... she had no right of action unless she reported the accident to an appropriate police authority within a reasonable time." Id. at 562-63, 479 S.E.2d at 818-19.

In the present case, Plaintiff was required to meet the requirements of statute prior to filing this suit. The evidence and testimony revealed that Plaintiff willfully failed to comply with subsection (3) requiring him to act to determine the identity of the vehicle and driver involved.


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Hart is the only case that has discussed this portion of the statute. In Hart, the plaintiff was injured and remained in her vehicle for 20-30 minutes. The unknown driver also remained on the scene until the plaintiff was taken to the hospital. The plaintiff failed to attempt to ascertain the unknown driver's identity or ask her passengers or the ambulance driver to do the same. The court held this failure amounted to negligence as a matter of law and barred her from recovery.

In this case, Plaintiff was aware of the existence of video tapes and security footage from the location of the accident yet he did not act to recover that evidence—or even choose to view the evidence. Plaintiff failed to follow up with the store manager to determine the identity of the driver. Police were dispatched the following day when Plaintiff presented to the hospital but Plaintiff shut down their investigation into the matter by instructing them not to pursue charges.

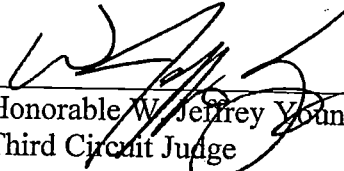
Due care required Plaintiff to actually seek out the footage from the store in order to ascertain the identity of the driver. Plaintiff failed to do so. Simply informing police officers one day later that there may be footage is not sufficient to meet the high burden of the statute. Additionally, instructing those same officers not to pursue the case negates any benefit that could be obtained from their investigation. Plaintiff's own actions resulted in a failure to obtain the identity of the vehicle and/or driver. These actions constitute negligence pursuant to S.C. Code Ann. § 38-77-170(3). For that reason, Plaintiff's claim is barred and Defendant's motion should be granted.

CONCLUSION

 For all the foregoing reasons, I find that Plaintiff failed to comply with S.C. Code Ann. § 38-77-170(3). Plaintiff willfully acted to stop the police officers from ascertaining the identity of the vehicle and the driver of the vehicle. And Plaintiff failed to take any steps on his own to

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ascertain the identity of the vehicle and the driver of the vehicle. Plaintiff was, therefore, negligent as a matter of law in failing to exercise due care to ascertain the identity of the vehicle and the driver of the vehicle involved in this accident. Therefore, Defendant's motion is GRANTED¹.


Honorable W. Jeffrey Young
Third Circuit Judge

Sumter, South Carolina

17 April, 2015

¹ While not the basis for my ruling, the evidence and testimony in this case also show that Plaintiff failed to obtain an affidavit from any party—let alone a proper party—until more than four years after the accident and almost one year after filing the Complaint.

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 Defendant.)

IN THE COURT OF COMMON PLEAS

IN THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-40-1654

CERTIFICATE OF SERVICE

I certify that on this date, I have served a copy of the Form 4 Order Denying Plaintiff's Motion for Reconsideration in this action on counsel of record by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Pamela R. Mullis, Esquire
 Mullis Law Firm
 Post Office Box 7757
 Columbia, South Carolina 29202
Attorney for Plaintiff

November 5, 2015

Date



Michelle D. Laliberte

Legal Assistant to Andrew L. Richardson, Jr.