

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

RECEIVED

NOV 23 2015

SC Court of Appeals

Case No. 2014-CP-04-850

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

Appellants,

vs.

United Auto Insurance Company,

Respondent,

INITIAL BRIEF OF RESPONDENT

George V. Hanna, IV
Trevor P. Eddy
HOWSER, NEWMAN & BESLEY, L.L.C.
1508 Washington Street
P.O. Box 12009
Columbia, SC 29211
(803) 758-6000
(803) 758-4445 (*facsimile*)
ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 2

ARGUMENT 3

1. *The Circuit Court Was Correct In Finding That United Complied With §38-77-120...* 5

2. *The Circuit Court Was Correct In Finding That United Complied with §56-10-280.....* 7

CONCLUSION 8

TABLE OF AUTHORITIES

<i>Cases cited</i>	<i>Page</i>
<i>Nationwide Mut. Ins. Co. v. Prioleau</i> , 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct.App.2004).....	3
<i>S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E Underwriters Risk Retention Group</i> , 347 S.C. 333, 554 S.E.2d 870(Ct.App.2001).....	3
<i>Mid-State Auto Auction of Lexington, Inc. v. Altman</i> , 324 S.C. 65, 476 S.E.2d 690(1996).....	3
<i>Shealy v. Doe</i> , 370 S.C. 194, 634 S.E.2d 45(Ct. App. 2006).....	3
<i>Wade v. Berkeley County</i> , 348 S.C. 224, 559 S.E.2d 586 (2002).....	3
<i>Eagle Container Co., LLC v. County of Newberry</i> , 366 S.C. 611, 622 S.E.2d 733(Ct. App. 2005) (cert. granted January 31, 2007).....	3
<i>Catawba Indian Tribe of South Carolina v. State</i> , 372 S.C. 519 642 S.E.2d 751 (2007).....	3
<i>Vaughn v. Bernhardt</i> , 345 S.C. 196, 547 S.E.2d 869(2001).....	3
<i>Mun. Ass'n of S.C. v. AT & T Communications of S. States, Inc.</i> , 361 S.C. 576, 606 S.E.2d 468 (2004).....	3
also <i>Miller v. Doe</i> , 312 S.C. 444, 441 S.E.2d 319 (1994).....	4
<i>Jones v. State Farm Mut. Auto. Ins. Co.</i> , 364 S.C. 222, 612 S.E.2d 719 (Ct. App. 2005).....	4
<i>State v. Landis</i> , 362 S.C. 97, 606 S.E.2d 503(Ct. App. 2004).....	4
<i>Stephen v. Avins Const. Co.</i> , 324 S.C. 334, 478 S.E.2d 74 (Ct. App. 1996).....	4
<i>Bayle v. South Carolina Dept. of Transp.</i> , 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).....	4
<i>Hitachi Data Sys. v. Leatherman</i> , 309 S.C. 174, 420 S.E.2d 843 (1992).....	4
<i>Smith v. South Carolina Ins. Co.</i> , 350 S.C. 82, 564 S.E.2d 358 (Ct. App. 2002).....	4
<i>South Carolina Farm Bureau Mut. Ins. Co. v. Mumford</i> , 299 S.C. 14, 382 S.E.2d 11 (Ct. App. 1989).....	4
<i>State v. Morgan</i> , 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002).....	4
<i>Collins Music Co., Inc. v. IGT</i> , 365 S.C. 544, 619 S.E.2d 1(Ct. App. 2005).....	5
<i>TNS Mills, Inc. v. South Carolina Dep't of Revenue</i> , 331 S.C. 611, 503 S.E.2d 471(1998).....	5
<i>Unisun Ins. Co. v. Schmidt</i> , 339 S.C. 362, 529 S.E.2d 280 (2000).....	5
<i>Kiriakides v. United Artists Communications, Inc.</i> , 312 S.C. 271, 440 S.E.2d 364 (1994).....	5
<i>Hinton v. South Carolina Dept. of Prob., Parole and Pardon Servs.</i> , 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004).....	5
<i>Doe v. Roe</i> , 353 S.C. 576, 578 S.E.2d 733 (Ct. App. 2003).....	5
<i>Vietzen v. Victoria Auto. Ins. Co.</i> , 2014-Ohio-749, 9 N.E.3d 500.....	6
<i>Stringer v. State Farm Mut. Auto. Ins. Co.</i> , 386 S.C. 188, 687 S.E.2d 58 (Ct. App. 2009).....	6

STATEMENT OF ISSUES ON APPEAL

1. **The Circuit Court Was Correct In Granting Respondent's Motion for Summary Judgment.**
 - A. **The Circuit Court's Decision Regarding Respondent's Compliance with §38-77-120 Was Not Controlled By An Error Of Law And Is Supported By The Facts**
 - B. **The Circuit Court's Decision Regarding Respondent's Compliance with §56-10-280 Was Not Controlled By An Error Of Law And Is Supported By The Facts**

STATEMENT OF THE CASE

The Respondent, United Auto Insurance Company, (hereinafter "United"), commenced this action against Appellants, Willie Freeman and Michael Craft, (hereinafter "Appellants") and Defendants, Kimberly L. Sanford¹ and Antonio Craft², in the Anderson County Circuit Court on April 29, 2014. *Complaint (April 29, 2014)*. The Complaint sought declaratory judgment that an automobile policy issued by United did not provide liability insurance coverage to any person with a claim or potential claim arising out of a February 13, 2013 accident; and that, United owed no duty of defense and/or indemnity to Antonio Craft and Sanford. Appellants filed an Answer on May 20, 2014. *Answer on Behalf of Defendant (May 20, 2014)*. United filed a motion for summary judgment on December 4, 2014, alleging that United had complied with the applicable statutory law in cancelling the automobile insurance policy on February 3, 2013 and therefore that the policy was not in effect on February 13, 2013. *United's Motion for Summary Judgment (December 4, 2014)*.

¹ Please note that Kimberly L. Sanford never appeared in the underlying litigation or United's declaratory judgment action, and, upon information and belief, is not a party to this appeal.

² Please note that Antonio Craft never appeared in the underlying litigation or United's declaratory judgment action, and, upon information and belief, is not a party to this appeal.

A hearing on United's motion was held before the Honorable R. Scott Sprouse, Circuit Court Judge, on February 9, 2015, in Anderson. After taking the matter under advisement, Judge Sprouse issued an Order finding for United that the automobile insurance policy was properly cancelled on February 3, 2013 and therefore not in force on February 13, 2013. *Judgment and Final Order (March 6, 2015)*. Thereafter, Appellants filed a Notice of Appeal to the Circuit Court. *Notice of Civil Appeal (April 17, 2015)*. This appeal followed.

STATEMENT OF FACTS

UAIC issued policy # SCU 000693514 ("the Policy") to Kimberly L. Sanford as named insured a policy of automobile liability insurance with effective dates of January 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. Kimberly L. Sanford paid her first month's premium on January 3, 2013 at the time the Policy was issued. UAIC sent a bill to Defendant Kimberly L. Sanford for the second month's premium on January 9, 2013. UAIC then sent a cancellation notice to 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. Kimberly L. Sanford failed to pay the premium for the second month before the due date of February 3, 2013.

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 Appellants William F. Freeman and Michael Craft, who were pedestrians.

Kimberly L. Sanford made an additional payment to United on February 14, 2013 at 11:21 AM.

ARGUMENT

The determination of coverage under an insurance policy is an action at law. Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct.App.2004). On appeal, The Court is limited to determining whether the trial court based its ruling on an error of law or on a factual conclusion without evidentiary support. S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E Underwriters Risk Retention Group, 347 S.C. 333, 338, 554 S.E.2d 870, 873 (Ct.App.2001).

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006). The first question of statutory interpretation is whether the statute's meaning is clear on its face. Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622, 622 S.E.2d 733, 738 (Ct. App. 2005) (cert. granted January 31, 2007).

When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this Court has no right to impose another meaning. Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519 642 S.E.2d 751 (2007); *see* Vaughn v. Bernhardt, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001). "[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Mun. Ass'n of S.C. v. AT & T Communications of S. States, Inc.,

361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004); *see also* Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) ("In determining the meaning of a statute, the terms used therein must be taken in their ordinary and popular meaning, nothing to the contrary appearing.").

The legislature's intent should be ascertained primarily from the plain language of the statute. Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005) (citing State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 506 (Ct. App. 2004); Stephen v. Avins Const. Co., 324 S.C. 334, 339, 478 S.E.2d 74, 77 (Ct. App. 1996)). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Bayle v. South Carolina Dept. of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct. App. 2001)). The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Hitachi Data Sys. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. Smith v. South Carolina Ins. Co., 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 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." South Carolina Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989).

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002). "Statutes, as a

whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." Collins Music Co., Inc. v. IGT, 365 S.C. 544, 550, 619 S.E.2d 1, 3 (Ct. App. 2005) (quoting TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998)). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)). A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. See Hinton v. South Carolina Dept. of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004); Doe v. Roe, 353 S.C. 576, 580, 578 S.E.2d 733, 735-36 (Ct. App. 2003).

1. The Circuit Court Was Correct In Finding That United Complied with §38-77-120.

In §38-77-120, the legislature set out the five requirements by which an insurer for automobile polices may issue a notice of cancellation. The Circuit Court Judge found that United's Notice of Cancellation, dated January 22, 2013, complied with these five requirements. On appeal, Appellants challenge only the timeliness requirement of §38-77-120(a)(2). This requirement states that a notice of cancellation must be mailed no less than 15 days in advance of the date of cancellation. Appellants torture the plain language of §38-77-120 to give meaning to the statute not intended by the legislature.

Appellants aim to show that §38-77-120 was intended to require that insurers can't issue a notice of cancellation for 15 days *after* a premium is due, in effect requiring that all automobile insurers in the state provide 15 days of free coverage to every insured who fails to pay premiums. Appellants stretch for this interpretation with the citation to a single Ohio case based on Ohio law and Ohio statutes. The Ohio Court of Appeals began their analysis of this particular case with the finding that the notice requirement in the corresponding Ohio statute was ambiguous. Vietzen v. Victoria Auto. Ins. Co., 2014-Ohio-749, ¶ 16, 9 N.E.3d 500, 504.

No South Carolina court has ever found §38-77-120 to be ambiguous. In fact, there are dozens of South Carolina Court of Appeals and Supreme Court cases in which §38-77-120 was referenced, interpreted and cited without any indication of ambiguity.³ It would be folly to, after years of successful jurisprudence, to declare that which has been the clear and unambiguous terms of the statute to have suddenly become murky and ambiguous.

Moreover, the Court of Appeals has addressed this very issue in the matter of Stringer v. State Farm Mut. Auto. Ins. Co., 386 S.C. 188, 192, 687 S.E.2d 58, 60 (Ct. App. 2009). In Stringer, the insured had purchased an automobile policy from an insurer. The insurer sent a notice of cancellation to the insured indicating that a premium payment was due 15 days from the date of the notice and that if the insured did not pay his premium by that date, the insurance policy would be cancelled on said date. The insured

³ See for example Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 229 612 S.E.2d 719, 726 (Ct.App.2005); Hiott v. Guaranty Nat'l Ins. Co., 329 S.C. 522, 531, 496 S.E.2d 417, 426 (Ct.App.1997); South Carolina Farm Bureau Mut. Ins. Co. v. Courtney, 342 S.C. 271, 536 S.E.2d 689 (Ct.App.2000); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct.App.1999); Auto Now Acceptance Corp. v. Catawba Ins. Co., 351 S.C. 377, 570 S.E.2d 168 (2002)

failed to pay his premium, his policy was cancelled and he was involved in an automobile accident shortly thereafter. While the Court focused its analysis on the issue of contract interpretation, it did not balk at the concept that an insurance policy for automobile coverage could be cancelled with a notice issued before the due date / cancellation date of the premium and the cancellation was upheld.

The facts of Stringer closely mirror those of the instant case. Both insured's were provided notice of cancellation for failure to pay premiums 15 day in advance of the ultimate due date / cancellation date. Both insureds failed to pay premiums by that date and were both in accidents shortly thereafter. As in Stringer, this Court should find that failure to pay premiums under notice of cancellation, in compliance with the 15 day notice requirement of §38-77-120, is an effective cancellation of the subject insurance policy.

2. The Circuit Court Was Correct In Finding That United Complied with §56-10-280.

Appellants once more attempt to torture the plain meaning of a statute in their argument that §56-10-280 requires an insurer not cancel a policy for at least thirty days after a missed payment if within the first sixty days of the policy. §56-10-280(A)(4) provides that a policy of insurance may be canceled within the first sixty days when the insured fails to pay the premium when due and that the policy must remain in effect for at least thirty days. Appellants contend that the last term is ambiguous and should be interpreted to require that the policy stay in force for another 30 days.

The plain language of the statute allows that during the first 60 days of a new insurance policy, an insurer may cancel a policy for the failure of an insured to pay

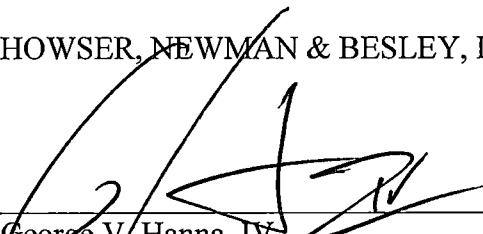
premiums. The statute limits this right to cancel for failure to pay premiums by requiring that the policy stay in force for at least 30 days. The Legislature could have added the term "an additional" 30 days if that was their intent. That the Legislature simply stated, "the contract or policy of insurance must remain in effect for at least thirty days" indicates that the policy need only be in force *in total* 30 days. The term "at least" indicates that the intent of the Legislature was to ensure that every policy would have to be in force for the first 30 days despite issues with payments of premiums. This goal serves the public policy, which Appellants reference, in favor of insurance coverage for automobile insurance risks. There is no need to torture the language of the statute to effectuate an additional 30 days of coverage after an insured has failed to make a premium payment.

CONCLUSION

The Circuit Court properly found that United had complied with all applicable statutes in the cancellation of the relevant insurance policy. The Circuit Court, therefore, properly found that there was no policy which could provide coverage to Appellants. Appellants have been unable to show that §38-77-120 or §56-10-280 provided an additional 15 days or 30 days, respectively, of free coverage to insureds that failed to pay their premiums when due. Instead, §38-77-120 simply requires that an insurer issue a notice of cancellation 15 days *in advance* of the date of cancellation. Additionally, §56-10-280 simply requires that during the first 60 days of a policy, an insurer may cancel the policy for nonpayment of premiums after the first 30 days. United has clearly complied with the plain terms of these unambiguous statutes.

Therefore, for the foregoing reasons Respondent respectfully requests that the Court uphold the Circuit Court's grant of Summary Judgment in favor of United and dismiss this Appeal. In addition, the Respondent would ask the Court to affirm for any other reason appearing in the record as provided by Rule 220(c).

HOWSER, NEWMAN & BESLEY, L.L.C.



George V. Hanna, IV
Trevor P. Eddy
1508 Washington Street
P.O. Box 12009
Columbia, SC 29211
(803) 758-6000
(803) 758-4445 (*facsimile*)
Attorneys for Respondent

November 21, 2015

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

RECEIVED
NOV 23 2015
SC Court of Appeals

Case No. 2014-CP-04-850

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

Appellants,

vs.

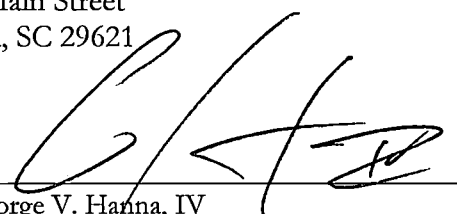
United Auto Insurance Company,

Respondent,

PROOF OF SERVICE

I hereby certify that I served one copy of the **INITIAL BRIEF OF RESPONDENT**, by depositing it in the United States Mail, postage prepaid, on November 23, 2015 addressed to the counsel for Appellant, as follows:

Donald L. Smith
122 N. Main Street
Anderson, SC 29621


George V. Hanna, IV
Trevor P. Eddy
HOWSER, NEWMAN & BESLEY, L.L.C.
1508 Washington Street
P.O. Box 12009
Columbia, SC 29211
(803) 758-6000
(803) 758-4445 (*facsimile*)
Attorneys for Respondent



**HOWSER, NEWMAN
& BESLEY, LLC**

Attorneys and Counselors at Law

Post Office Box 12009
Columbia, SC 29211
www.hnblaw.com

November 23, 2015

Columbia Office
1508 Washington Street
Columbia, SC 29201
Telephone 803.758.6000
Fax 803.758.4445
Toll Free 866.207.6209

Charleston Office
215 East Bay Street
Suite 303
Charleston, SC 29401
Telephone 843.216.6940
Fax 843.216.6942
Toll Free 877.216.6970

R. Davis Howser
James P. Newman, Jr. <
William G. Besley <
Benjamin D. McCoy ^
Kelley Shull Cannon †
Andrew E. Haselden <
George V. Hanna, IV *
Michal Cooper Jones
Kylie L. Keesley ^
Albert Richard Pierce, Jr. *
James P. Sullivan
Justin P. Novak
Jeffrey I. Silverberg
Trevor P. Eddy ‡
M. Claire Hall
Sarah Rand-McDaniel

< Certified Circuit Court Mediator
^ Certified Circuit Court Mediator and Arbitrator
† Certified Circuit Court Arbitrator
* Also Admitted in North Carolina
‡ Also Admitted in Maryland

RECEIVED

NOV 23 2015

SC Court of Appeals

HAND DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk – South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Willie Freeman v. United Auto Insurance Company
Appellate Case No.: 2015-000811
Our File No.: 479-534

Dear Ms. Kitchings:

We represent United Automobile Insurance Company in the above-captioned matter. Please allow this letter to serve as my motion to allow the late filing of the Initial Brief of Respondent. It is my understanding that our previous payment of \$25.00 in support of our motion for an extension will be applied to this motion.

In addition, enclosed for filing in the above-referenced action are:

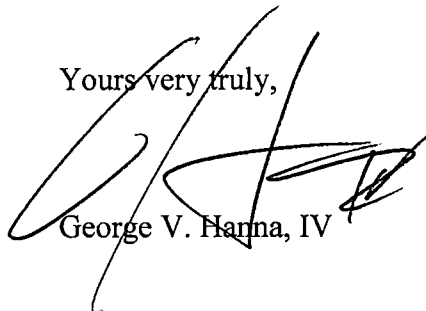
1. The original and one copy of the *Initial Brief of Respondent* and his *Proof of Service*; and
2. The original and one copy of *Respondent's Designation of Matter to be Included in the Record of Appeal* and its *Proof of Service*.

By copy of this letter, I am hereby serving the Pro Se Appellant with a copy of these filings. Please return any extra clocked-in copies of these documents to me via our courier.

Thank you for your attention in this matter. If you should have any questions or comments regarding this correspondence, please do not hesitate to contact me.

With kind regards, I am

Yours very truly,

A handwritten signature in black ink, appearing to read "G. Hanna, IV". The signature is stylized with large, sweeping loops and a prominent vertical stroke.

George V. Hanna, IV

GVH/dph

Enclosures

cc: Donald L. Smith (w/encls.)