The State of South Carolina
In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-000788

JUAN MICHAEL RAMIREZ, Appellant,

v.

PROGRESSIVE NORTHERN INSURANCE COMPANY, Respondent.

Reply Brief of Appellant

Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331

Attorney for Appellant

Table of Contents

Table of Authorities

Cases

Statutes

ARGUMENT

1. Respondent's claim that years of precedent supports its argument is humbuggery.

Respondent argues Michael Ramirez, "is attempting to interpret the clear language in S.C. Code Ann. § 38-77-160 in a way that the language has never before been construed." It asserts Ramirez is, "ignoring years of South Carolina case law construing that very section." (Respondent's Brief at 4) Respondent's claim that years of South Carolina precedent supports its argument sounds powerful—like the Wizard of Oz did in the movie based on L. Frank Baum's book. Surely a litigant which claims that years of precedent exists would cite at least one supporting case. But if you look behind the curtain all you find is a timid little man who admits he is a humbug.

Respondent cited three cases in its Brief. But they do not help its argument. To the contrary, they demolish it. First, there was Garris v. Cincinnati Ins. Co., 280 S.C. 149, 311 S.E.2d 723 (1984). (Respondent's Brief at 2). The two Class II insured litigants in Garris were attempting to stack coverages for multiple vehicles on two policies. One policy had two vehicles and one four. The Garris Court ruled the insureds could not stack and were eligible to, "only recover benefits on one vehicle with the coverage." Garris, 280 S.C. at 156. Here, Ramirez seeks coverage on only the one vehicle under Respondent's policy.

Next, there was Firemans Ins. Co. v. State Farm Auto. Ins. Co., 295 S.C. 538, 370 S.E.2d 85 (1993). (Respondent's Brief at 2 and 3) Mullins (the insured in Firemans Ins. Co.) was a Class II insured who had already collected the uninsured coverage on one vehicle

under a State Farm policy. Mullins made a second claim against his own policy with Firemans Insurance Company which insured three vehicles. Firemans Insurance Company tendered the coverage for one of the vehicles ($35,000). Mullins, however, sought to stack coverage on all three vehicles listed in the policy, $35,000 each ($105,000). The Supreme Court ruled that Mullins was, "only entitled to $35,000 uninsured coverage as set forth in the policy." Firemans Ins. Co. , 295 S.C. at 546. Thus, Firemans Ins. Co. shows that even when a Class II insured has collected coverage on another automobile insurance policy, the second automobile insurance company must still pay the coverage, "on any one of the vehicles with the excess or underinsured coverage." Id.

Finally, Respondent cited Brown v. Continental Ins. Co., 315 S.C. 393, 434 S.E.2d 270 (1993). (Respondent's Brief at 2 and 3) In Brown, Continental Insurance Company provided insurance on two cars under one policy. It provided for $100,000 of uninsured and underinsured coverage on both vehicles covered by the policy. Brown was a Class II insured. Continental Insurance Company paid Brown the full coverage on one vehicle, $200,000. Brown filed suit and attempted stack coverages for both vehicles ($400,000). Brown lost his stacking claim. But the decision confirmed a Class II insured is nevertheless eligible to collect the coverage on one vehicle insured by a policy.

None of the three cited cases help Respondent. The closer one examines these three cases, the more Respondent's argument melts away.

2. Section 38-77-160 is aimed at individual automobile insurance companies that write policies, and not the whole automobile insurance industry.

Respondent makes a bold statement accusing Ramirez of "ignoring the plain language" of Section 38-77-160. (Respondent's Brief at 4) Respondent does not clearly explain how Ramirez ignores it. But Respondent quoted two cases which themselves quoted an isolated sentence from the statutory provision: "If none of the insured's or named insured's vehicles is involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with the excess or underinsured coverage." S.C. Code Ann. § 38-77-160. Respondent must be arguing this sentence is written in favor of the whole automobile insurance industry. Respondent is apparently claiming that the Legislature intended to limit the amount of Class II UIM coverage that the automobile insurance industry may provide to, "only one of the vehicles." If so, that is an unsound reading of the Statute that makes no sense in context of the statutory purpose and intent. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.")

One, Respondent's interpretation is inconsistent with Section 38-77-20: "This chapter is to be liberally construed in order to achieve its purposes." S.C. Code Ann. § 38-77-20. The statute is not designed to benefit the automobile insurance industry. Rather, the purpose of automobile insurance is to insure the people from automobile risk. See S.C. Code Ann. § 38-77-10.

Two, Section 38-77-160 is included under Article 3 titled, "Mandate to Write and Insurance Coverage." The

> ARTICLE 3
>
> Mandate to Write and Insurance Coverage

Title confirms our Legislature's intent is to instruct individual automobile insurance companies about mandatory coverages which must be written into every automobile insurance policy issued.

Three, the clear language of the rest of Section 38-77-160 confirms its provisions are aimed at individual automobile insurance companies and the policies they write.

> Automobile insurance carriers shall offer, at the option of the insured, uninsured motorist coverage up to the limits of the insured's liability coverage in addition to the mandatory coverage prescribed by Section 38-77-150. Such carriers shall also offer, at the option of the insured, underinsured motorist coverage up to the limits of the insured liability coverage to provide coverage in the event that damages are sustained in excess of the liability limits carried by an at-fault insured or underinsured motorist or in excess of any damages cap or limitation imposed by statute.

S.C. Code Ann. § 38-77-160 (emphasis added). By referencing a carrier's "offer," the text of the statute refers to an individual insurance company. The statutory language makes no sense when one reads "carriers" in the plural as if referring to the whole automobile insurance industry. How does the automobile insurance industry make an offer to an individual insured? That the legislature intended "carriers" in the singular is made clear by the following clause, "at the option of the insured," which is singular.

Finally, the Article is not intended to confer some kind of nebulous obligation (or benefit) upon the whole automobile insurance industry. Respondent's interpretation of "carriers" in the plural makes no sense when read in context with the Sections related to Section 38-77-160. "In ascertaining the intent of the Legislature, a court should not focus

on any single section or provision but should consider the language of the statute as a whole." Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). For example, Section 38-77-150(A) provides, in part, as follows:

> No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140.

S.C. Code Ann. § 38-77-150 (emphasis added); see also S.C. Code Ann. § 38-77-140 ("No automobile insurance policy or contract may be issued or delivered unless it contains a provision . . . .") Section 38-77-160 follows the same thread. The phrase "one of the vehicles with excess or underinsured coverage" means "in the carrier's policy" not "in the carriers' policies" as Respondent apparently contends.

3. Appellant never abandoned his argument that factual issues remained and he was entitled to discovery.

Respondent asserts Appellant's counsel "admitted that the facts were not in dispute and that the trial court had enough to rule on."[1] (Respondent's Brief at 4-5) The transcript, however, does not support Respondent's interpretation.

> I think what he's [Respondent's Counsel] saying is that they've admitted most of my allegations. There's not really any dispute about what we've been talking about today. And, therefore, you have enough to rule on.

(R. p. 56) (emphasis added). Counsel for Ramirez was just paraphrasing *Respondent's argument* in response to an inquiry by the trial judge about the Rule 12 standard of review.

(R. p. 55) A fair reading of the hearing transcript confirms that at no point did Appellant abandon his Rule 56(f) argument. (R. pp. 23-63)

CONCLUSION

For the foregoing reasons, the Court must reverse the Order in favor of Ramirez on the issue of his $25,000 UIM coverage, and remand the case to the Circuit Court for further proceedings on the relief sought including costs, attorney's fees, and prejudgment interest.

September 14, 2015

Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, SC 29607
(864) 235-1331

Attorney for Appellant

[1] This does not mean, however, the trial court could not have ruled in favor of Ramirez. It had enough Respondent admissions in the pleadings to rule in Ramirez's favor on the issue of his portable $25,000 of UIM coverage.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-000788

Juan Michael Ramirez,

Appellant,

v.

Progressive Northern Insurance Company,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Brief of Appellant and Reply Brief of Appellant comply with Rule 211(b), SCACR.

September 22, 2015

Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, South Carolina 29607
(864) 235-1331
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-000788

Juan Michael Ramirez,

Appellant,

v.

Progressive Northern Insurance Company,

Respondent.

PROOF OF SERVICE

I certify that I have served the Brief of Appellant and Reply Brief of Appellant on Progressive Northern Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on September 22, 2015, addressed to its attorney of record, Bradley L. Lanford, Post Office Box 8057, Columbia, South Carolina 29202.

September 22, 2015

Edwin L. Turnage
HARRIS & GRAVES, P.A.
812 Laurens Road
Greenville, South Carolina 29607
(864) 235-1331
Attorney for Appellant