

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

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SC Court of Appeals

Alison Renee Lee, Circuit Court Judge

Case No. 2014-001867

Sabrina D. Davis,

Appellant,

v.

Bankers Life and Casualty Company,

Respondent.

FINAL BRIEF OF APPELLANT

Sabrina D Davis
P.O. Box 334
Greenville, SC 29602
Pro Se Litigant

Sarah Day Hurley
Turner Padgett Graham & Laney
P.O. Box 1509
Greenville, SC 29602
Attorney for Respondent

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Statement of Issue on Appeal

South Carolina Section 15-9-270 does not give insurance companies the right to declare ineffective service of process if an alternative method of service was accepted by the company.

Does the circuit court have the right to force a party to re-file a complaint and incur additional filing fees when a prior ruling by the South Carolina Supreme Court shows that the Director of the Department of Insurance is not entitled to any pleadings?

Statement of the Case

Willie M Godley purchased a life insurance policy from Bankers Life and Casualty Company that had a death benefit of \$10,000 on December 17, 2012. On March 30, 2013, Mr. Willie M Godley died suddenly and Bankers Life and Casualty Company contested the policy and refused to pay the benefit on the grounds that Mr. Godley had misrepresented his health condition. Sabrina D. Davis, the beneficiary of the policy issued a complaint against Bankers Life and Casualty Company seeking actual and punitive damages in the amount of \$40,000 filed with the Greenville County Court of Common Pleas on February 14, 2014 and mailed a copy by priority mail to Bankers Life and Casualty Company on February 19, 2014 to Bankers Life and Casualty Company, 10 Patewood Dr, Ste 450, Greenville SC 29615. According to the affidavit supplied by Bankers Life and Casualty Company general manager Brandon G Kennedy, the compliant was actually placed in his hands on February 21, 2014. On March 24, 2014 Bankers Life and Casualty Company's attorney, Sarah Day Hurley filed a motion to dismiss due to ineffective service because South Carolina Rules of Civil Procedure 12(b) (4) and (5) were not adhered to. On April 7, 2014 the summons was filed and a copy was mailed to the defendant's attorney, which was received by Sarah Day Hurley on April 10, 2014. The motion hearing was held on May 20, 2014. The Defendant's attorney presented to the court South Carolina Section 15-9-270 as the only valid service upon an insurance company. The motion to dismiss for ineffective service was granted to the defendant. Plaintiff filed a motion for reconsideration using arguments used in *White*

Oak Manor v. Lexington . The motion was denied on July 29, 2014.

Argument

S.C. Code 15-9-270 does not give insurance companies the right to declare ineffective service of process if an alternative method of service was accepted by the company

According to *White Oak Manor v. Lexington*, S.C. Code 15-9-270 is not the exclusive method of valid service upon an insurance company, the South Carolina Supreme Court agreed that the statute seem to ignore settled principles that parties can agree to alternative means of service or waive service altogether. 394 S.C. 375, 711 S.E.2d 38(Ct.App.2011). Under the mail acceptance rule or the posting rule, Bankers Life and Casualty Company accepted the complaint as a corporation that was delivered by priority mail on February 20, 2014. In the affidavit, Brandon G Kennedy (the general manager of Bankers Life and Casualty) acknowledged that the complaint was given to him on February 21, 2014 (Record on Appeal pp 8-9). Bankers Life and Casualty Company did not specify what method of service was acceptable or was not acceptable. This oversight does not give the circuit court or Bankers Life and Casualty Company free reign to use S.C. Code 15-9-270 by default or as a scapegoat to declare a complaint that was received and in the general manager's possession for over 30 as invalid service. The circuit court cannot overlook the fact that Bankers Life and Casualty Company accepted another method of service and provided proof of service that the complaint was received (Record on Appeal pp 6-15). The US Supreme Court will accept a writ of certiorari place in the mail three days prior to the filing deadline and any rejections must be accompanied by a letter of rejection and an explanation of the rejection. Bankers Life and Casualty Company never provided any rejection of the complaint that was received by its office on February 21, 2014. The circuit court cannot make S.C. Code 15-9-270 the exclusive means of service on an insurance company in the event no particular method of service is listed nor does the statute permit the courts to take away valid process of service when the parties have accepted an alternative method of service. Bankers Life and Casualty Company was served as a

corporation and accepted service as a corporation. The motion issued by Bankers Life and Casualty Company brought forth two issues concerning the complaint. The first issue stated that the complaint was not mailed certified mail; and, the second issue stated that the summons was not present with the complaint. South Carolina Rules of Civil Procedure Rule 3(a)(2) allows 120 days for compliance for service of process. The Bankers Life and Casualty Company's affidavit that was submitted to the circuit court provides proof of service and the summons was mailed to Bankers Life and Casualty Company's attorney via certified mail. The summons remained in Bankers Life and Casualty Company's attorney possession for over 30 days before she announced during the motion hearing that she was not authorized to receive the summons. Once again the mail acceptance rule is brought to the heart of this issue. If Bankers Life and Casualty Company's attorney was not authorized to accept the summons, a rejection letter that stated the summons was being rejected; and, the summons was supposed to be returned to Ms. Davis. The circuit court did not dismiss this case because of lack of personal jurisdiction, but dismissed because of S.C.Code 15-9-270. Since the summons was accepted, the complaint was in compliance with SCRPC 3(a)(2) and the dismissal granted by the circuit court was issued in error.

Does the circuit have the right to force a party to re-file a complaint and incur additional filing fees when a prior ruling by the South Carolina Supreme Court shows that the Director of the Department of Insurance is not entitled to any pleadings?

As was argued before the South Carolina Supreme Court in *White Oak Manor v. Lexington*, there is no evidence that supports the Director of the Department of Insurance having any rights to receive copies of any pleadings 394 S.C. 375, 382, 715 S.E.2d 383, 387 (Ct.App.2011). What right does the circuit court has to place an undue burden on Ms. Davis to pay an additional \$160.00 to re-file her case when the South Carolina Supreme Court agrees that there is no evidence that supports the Director of the Department of Insurance as having any rights to receive any pleadings? The circuit court has proof that

Bankers Life and Casualty Company received the complaint and the summons. The sole purpose of the complaint and summons is to obtain jurisdiction and to notify the defendant of the action so that the Defendant has an opportunity to appear and defend, *State v. Sanders*, 118 S.C. 498, 502-03, 110 S.E. 808,810(1920).

Conclusion

Bankers Life and Casualty Company has admitted to the court that the complaint was received and has provided the date the complaint was actually placed in the general manager's hands. Bankers Life and Casualty Company's attorney has admitted the summons was received. Service upon Bankers Life and Casualty Company was not ineffective because Bankers Life and Casualty was provided the opportunity to appear and defend itself. One last issue I think the Appeals Court needs to address is the simple solution the circuit court judge could have provided to solve this entire case. Instead of suggesting that Ms. Davis pay an additional \$160 and re-file this case, why not order Ms. Davis to obtain two copies of her filed complaint and submit those to the Director of the Department of Insurance?