

Defendant's Proposed Order

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2009-CP-04-00907

Nationwide Mutual Fire Insurance Company,
Plaintiff,

vs.

Sharmin Christine Walls, Randi Harper,
Wendy Timms in her capacity as Personal
Representative of The Estate of Christopher
Adam Timms, Deborah Timms,

Defendants.

ORDER

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SC Court of Appeals

This matter comes before me on the motion of Nationwide Mutual Fire insurance Company to alter or amend the judgment rendered by the court on August 18, 2014 and filed with the Anderson County Clerk of Court on August 20, 2014. A hearing was held on this motion on Friday, March 6, 2015. Appearing on behalf of the Plaintiff was J.R. Murphy, Esquire. Appearing on behalf of the Defendants were Michael F. Mullinax, III, Esquire and J. Kirkman Moorhead, Esquire. Attorney Chip Howard joined in the arguments on behalf of the Defendants but did not personally attend the hearing. After reviewing the record in this case and hearing the able arguments of counsel, the court hereby grants the motion in part and denies it in part and substitutes this Order for the prior Order entered in the case.

PROCEDURAL HISTORY

On March 4, 2009, Nationwide Mutual Fire Insurance Company (Nationwide) filed this declaratory judgment action against the defendants seeking a declaration that a flight from law enforcement and a felony exclusion in a policy issued to Sharmin Walls applied to an accident that occurred on July 11, 2008. Nationwide also sought a declaration that Korey Mayfield was

the operator of the vehicle at the time of the accident. The defendants asserted various counterclaims that were settled prior to trial in exchange for the undisputed portion of Nationwide's coverage of \$50,000 per accident. Defendants also reached settlements with another automobile insurer, Safe Auto, which provided an additional \$50,000 of liability coverage for Korey Mayfield's liability. Also, Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident. The Court found Mayfield was the driver of the vehicle at the time of the accident and entered an Order of Summary Judgment on that issue on August 29, 2011. The Court held a bench trial on September 12, 2013. The only issue remaining at trial was the application of the flight from law enforcement exclusion and felony exclusion to the Nationwide policy.

UNDISPUTED FACTS

Prior to trial, the parties submitted a Stipulation of Fact and Nationwide submitted an Exhibit List to which all parties stipulated the admissibility of the exhibits. Therefore, many of the facts are undisputed. In addition, the court viewed the dash cam video of the highway patrolman.

On July 11, 2008, Randi Harper, Christopher Timms, and Sharmin Christine Walls were passengers in a Chevrolet Lumina owned by Walls and operated by Korey A. Mayfield travelling in a southerly direction on South Carolina Highway 81 just north of Masters Boulevard in Anderson County. South Carolina State Trooper Travis Wilson observed the vehicle crossing the yellow line and going approximately 12 miles an hour over the speed limit. At that time, Trooper Wilson decided to pull the car over and activated his blue lights.

Mayfield went from the far left lane (81 is a four-lane road) to the far right turning lane and disregarded the stop signal, continuing down 81 South. Trooper Wilson gave chase. The

evidence in the record established that Sharmin Walls and the passengers all demanded that Mayfield stop the vehicle. While driving on 81 South, Trooper Wilson's vehicle reached speeds of 109 miles per hour. Mayfield then turned left off of 81 South onto Fred Dean Road. In order to keep up with the Mayfield vehicle on Fred Dean Road, Trooper Wilson's vehicle reached speeds exceeding 95 miles per hour. Mayfield then turned right onto Flat Rock road and left onto Leatherdale Road and, in the process, disregarded multiple stop signs.

After Mayfield turned left onto Leatherdale Road, Trooper Wilson received instructions to terminate the pursuit, which he did. The Mayfield vehicle was out of sight before Trooper Wilson turned off his sirens and blue lights. Trooper Wilson then proceeded down Leatherdale Road to ensure that Mayfield made it safely through several upcoming curves

Approximately one mile from where Trooper Wilson terminated the chase, Mayfield lost control of the vehicle and ran off the road in a single-car accident. Tragically, Timms was killed in the accident and Walls, Harper, and Mayfield each sustained serious bodily injuries. The time between when Trooper Wilson terminated the chase and his arrival at the scene of the accident was approximately 1 minute and 27 seconds. At the time that Mayfield lost control of the vehicle, he was travelling a minimum speed of 72 miles per hour. The speed limit on that portion of Leatherdale Road was 35 miles per hour.

Pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970), Korey Mayfield pled guilty to and was convicted of reckless homicide – a felony – as a result of this accident. Mayfield was found to be the driver of the vehicle by an Order of Summary Judgment in this case on August 29, 2011.

Nationwide issued an automobile liability policy number 61-39-M 424 728 09-11-08 to Sharmin Walls that was in effect on the date of the accident. The policy provides stated limits of

coverage of \$100,000 per person and \$300,000 per occurrence for liability coverage. As to the liability coverage only, the policy provides the following exclusions:

- B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

* * *

6. **Bodily injury or property damage** caused by:

- a) **You;**
- b) **a relative;** or
- c) **anyone else while operating your auto;**

- (1) while committing a felony; or
- (2) while fleeing a law enforcement officer.

In this action, Nationwide seeks a declaration that these exclusions apply. Because Nationwide does not dispute that the policy provides the State minimum \$25,000 per person and \$50,000 per accident limits for bodily injury liability, Nationwide has already paid \$50,000 collectively to the defendants. Therefore, only the remaining amount is in dispute.

FINDINGS OF FACT

A. Mayfield was still fleeing from law enforcement at the time of the accident.

Although the above-stated facts are all undisputed, the parties at trial did dispute whether Mayfield was still "fleeing a law enforcement officer" at the time the accident occurred. The Court finds that Mayfield was still fleeing law enforcement at the time of the accident because his course of conduct and manner of driving continued up until the time of the crash.

At Mayfield's criminal trial, Harper testified that the last thing she remembered prior to the accident was that she looked back "and the cop was right there." Likewise, Mark Yost – who witnessed the accident – stated that Mayfield was still travelling at a high rate of speed at the time of the accident and that Trooper Wilson arrived shortly afterwards.

The damage to the vehicle was severe and the Greenville County Sheriff's Office Accident Reconstruction Team determined that Mayfield was "traveling a MINIMUM speed of 72 miles per hour" at the time of the accident, emphasizing that the actual speed of vehicle at the time that Mayfield lost control was actually higher. That is over twice the posted speed limit of 35 miles per hour. The Court finds, after reviewing the chase video, timeline, and other evidence, that Mayfield was still fleeing from Trooper Wilson at the time of the accident even though Trooper Wilson had terminated the chase a mile earlier.¹

B. The accident occurred when Mayfield was committing a felony.

Korey Mayfield was convicted of reckless homicide as a result of this accident. South Carolina Code Annotated § 56-5-2910 states in pertinent part: "A person who is convicted of, pleads guilty to, or pleads nolo contendere to reckless homicide is guilty of a felony"

LEGAL ANALYSIS

Even though the Court finds that the accident occurred while Mayfield was fleeing from law enforcement and in the commission of a felony, the court finds that the exclusions violate South Carolina public policy, and therefore these exclusions are unenforceable based upon the Supreme Court's recent holding in Williams v. Government Employees Insurance Company (GEICO), 409 S.C. 586, 762 S.E.2d 705 (2014).²

Generally, "[i]nsurers have the right to limit their liability and to impose whatever conditions they desire upon an insured, provided they are not contravening a statute or public policy." Hansen v. United Services Auto. Assoc., 350 S.C. 62, 71-72, 565 S.E.2d 114, 118 (Ct.

¹ Smith v. State Farm Mut. Auto. Ins. Co., 122 Ga. App. 430, 177 S.E.2d 195 (Ct. App. 1970) (holding that a driver was still fleeing from law enforcement even though the accident occurred after the pursuing officer had lost sight of the fleeing car).

App. 2002) (citation omitted). Nationwide contends that the felony and flight from law enforcement provisions comport with public policy because the exclusions do not exclude all coverage, but instead reduce the amount of coverage to South Carolina's minimum statutory limits.

Although Nationwide has called the flight from law enforcement and felony provisions "exclusions," the Supreme Court in Williams, held that such provisions are better referred to as "step-down provisions." Williams, 409 S.C. at 592 n.2, 762 S.E.2d at 708. The Supreme Court held that such step-down provisions violate South Carolina Code § 38-77-142. Id. at 607, 762 S.E.2d at 716-17 ("We find this provision is in direct contravention to the prohibition set forth in section 38-77-142.").

The declaratory judgement action brought by Nationwide seeks to avoid payment of damages under the so-called "Flight From Law Enforcement Exclusion". The Defendant's position is that this clause is unenforceable and not applicable to the factual situation before this Court on the following basis:

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- 1) Such clause is unconscionable.
- 2) The language contained in the Nationwide policy is ambiguous and must be construed in favor of the insured and coverage up to the maximum limits purchased by Walls should be awarded.
- 3) The facts at issue preclude the application of the Nationwide exclusion to this matter and Walls should be awarded full damages.

The South Carolina Courts have held that where an insurance policy contains an internal inconsistency, created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured, the policy is to be rendered ambiguous, and the Court

² The Supreme Court's decision in Williams came out after the trial in this matter and constitutes an intervening change in the law.

must resolve that ambiguity in favor of the insured. Isle of Palms Pest Control v. Monticello Ins. Co. 319 S.C. 12, 459 SE2d 318, (CT App 1994). A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages, and terminology as understood in the particular business. Hansen v. United States Auto Ass'n. 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

It is also the law of this State that conflicting terms in an insurance policy create ambiguity and are construed liberally in favor of the insured and strictly against the carrier, Super Duper, Inc. v. PA. Nat'l Mutual Cas. Co. 683 S.C. 2d 792 (2009).

South Carolina Courts have long held that the purpose of insurance is to protect the insured, who takes out the policy and pays for it. Gentry v. Yorkshire Insurance Co., Ltd. 192 S.C. 125, 5 S.E. 2d 565 (S.C. 1939).

Where language used in an insurance contract is ambiguous, or where it is capable of two reasonable interpretations, that construction which is most favorable to the insured, will be adopted. Hansen v. USAA 350 S.C. 62, 565 S.E. 2d 114 (Ct. App. 2002).

The purpose of the South Carolina Financial Responsibility Law is to provide benefits and protection against the peril of injury or death caused by an insured. It, therefore, permits an insured to protect himself against damages in excess of that required by the minimum limits coverage which in this case, was a choice intentionally and voluntarily exercised by Sharmin Walls.

The limitation language in the Nationwide policy is unconscionable in the context of the facts of this case. Walls purchased this policy of insurance with coverage of \$100,000.00 per person, and it was nowhere made clear in the policy, that the coverage that she purchased and paid for would be reduced in the event of certain circumstances. One circumstance was "fleeing a police officer". However, the only rational reading of the this provision of the policy would

make it applicable only to the "insured purchaser" being guilty of such conduct. ***Based upon the facts of the case before me, the driver of this vehicle was in fact and under definitions, approved in numerous cases in this state, a "non-permissive driver".***

Walls, the owner of the automobile and purchaser of the insurance as well as the remaining passengers were totally innocent, and to deprive them of this coverage based on the "step-down", in my opinion, is unconscionable and this clause as applied to the facts of this case is void as against public policy. Therefore, the Court finds that the limiting language does not apply to Defendant's as an innocent insured under the Nationwide policy .

If Nationwide is allowed to escape liability for the increased coverage intentionally purchased by Walls to protect herself, then the insurance company is taking a premium and denying the insured the protection which she sought. If it is allowed to do so, it will be against precedent set by this Court in the case of Unison Insurance Company v. Schmidt 339 S.C. 362, 529 S.E. 2d, 280 (2000)

when in an uninsured motorist case the Court case stated as follows:

"We do not believe, however, the legislature intended an otherwise insured passenger to lose coverage when an unauthorized driver takes the wheel. The construction of the statute urged by respondent [insurance carrier] would relieve the carrier of responsibility when a named insured is the victim of a car-jacking. We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intent." See Schmidt supra.

It is clear that the step-down provision violates the public policy of this State and the law of this State, as is set forth in the case of Williams , supra.

"Any endorsement, provision... included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this Section is void."

S.C. Code Ann. §38-77-142(c).

The Court in *Williams, supra*, stated:

“the purpose of the Motor Vehicle Financial Responsibility Act (MVFRA), contained in Title 56 of the South Carolina Code, is to give greater protection to those injured through the negligent operation of automobiles. [*Williams, supra* 409 S.C. at 599, 762 S.E.2d at 712.].

“Public policy considerations include not only what is expressed in State Law, such as the Constitution and the Statutes, and decision of the Courts, but also a determination whether the Agreement is capable of producing harm, such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare...”

“Therefore, once the face amount of coverage is agreed on, it may not be . . . limited by conflicting policy provisions that effectively retract this stated coverage. Any other interpretation of S.C. Code §38-77-142(c) would render this Section useless, and the General Assembly is presumed not to perform useless acts...”

Sharmin Walls purchased this policy, and the testimony in evidence shows Such clause was not set out in bold print or otherwise made apparent to Walls in the insurance policy

Therefore, Nationwide’s flight from law enforcement and felony step-down provisions violate this State’s public policy as stated in South Carolina Code § 38-77-142 and are unenforceable.

CONCLUSION

The Court finds that Defendants are entitled to coverage up to the full limits stated on the policy, subject to a reduction for amounts already paid by Nationwide. Although the accident occurred while Mayfield was fleeing from a law enforcement officer and committing a felony, the step-down provisions violate § 38-77-142 and are unenforceable pursuant to the Supreme Court’s holding in *Williams v. GEICO*.

It is so ORDERED.

rcb

J. Maddox
The Honorable J. Cordell Maddox, Jr.

Date: 2/26/16

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