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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DARLINGTON)

CIVIL ACTION NO. 2014-CP-16-0792

State Farm Mutual Automobile Insurance Company,)

Plaintiff,)

v.)

**ORDER DENYING
DEFENDANTS' MOTION TO
ALTER OR AMEND JUDGMENT**

Beverly Goyeneche, David R. Gray, III and Amanda Goyeneche (a/k/a Amanda Goyeneche -Gray), individually and as Parent and Natural Guardian of [REDACTED] S.G.)

Defendants.)

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SC Court of Appeals

This matter comes before the Court upon a Motion filed by Defendants Goyeneche on June 15, 2015 to Alter or Amend the Order Granting Declaratory Judgment to the Plaintiff denying coverage filed June 1, 2015. A hearing was held on December 15, 2015 on Defendants' Motion. Appearing on behalf of Plaintiff State Farm was Jonathan M. Robinson, Esquire. Appearing on behalf of Defendants Goyeneche were John Nichols, Esquire and Karl Smith, Esquire. No one appeared on behalf of Defendant Gray. For the reasons stated herein below, the Court denies Defendants' Motion to Alter or Amend.

Defendant's Motion to Alter or Amend requests the court "...alter or amend its Order of June 1, 2015 to find in favor of coverage for the death of the infant". The Defendants cite the following grounds in support of the Motion to Alter or Amend:

1. The Court's Order denies the Defendants' grounds for insurance coverage under the existing vehicular policies of the Plaintiff. The Court further found that the death of the minor did not arise out of the ownership, maintenance or use of the vehicle.
2. The Court based the ruling on State Farm Fire and Casualty Company v. Aytes,

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322 S. C. 30, 503 S.E. 2d 744 (1998), which sets forth a three (3) pronged test for determining coverage. The Order ignored the case law presented by the Defendants to support their argument or the Order failed to fully explain why said cases and arguments are different from the facts set forth in the present case.

3. The stipulated facts further failed to set forth the details of the "use" of the vehicle by the Defendant driver during the lunch hour while the infant was still present in the vehicle and ignored the fact that the infant's transportation to the daycare facility had never ceased. The Defendants request the Court reopen it's judgment, take additional testimony or evidence, amend its findings of fact and conclusion of law or make new findings and conclusions and direct entry of a new judgment.

The grounds stated in Number 1 above are simply a restatement of the court's findings which the Court affirms for the reasons stated in the Order Granting Declaratory Relief in Favor of Plaintiff.

The grounds stated in Number 2 above allege the Court based its ruling on State Farm Fire & Cas. Co. v. Aytes, 332 S.C. 30, 503 S.E.2d 744 (1998). Aytes sets out the test adopted by the South Carolina Supreme Court for determining whether a claim arises out of the ownership, maintenance or use of a vehicle. Therefore, the Court's reliance on Aytes does not constitute an error of law. Defendant also alleges the Court ignored the case law presented by Defendants and that the Court failed to fully explain why said cases and arguments are different from the facts set forth in the present case. However, the contrary is present in the text of the Order. On pages 7-8, the Court specifically addresses the case law cited by Defendants, explaining that while cases from foreign jurisdictions may be considered, they have no precedential value (as admitted in Defendants Memorandum of Law, p.5). The Court did not ignore Defendant's cited foreign cases and arguments; it simply ruled that they were not consistent with South Carolina law inasmuch as they did not include the application of the three part test found in State Farm Fire & Cas. Co. v. Aytes, 332 S.C. 30, 503 S.E.2d 744 (1998).


In the final grounds listed for which relief is requested, Defendants assert "The stipulated facts further failed to set forth the details of the "use" of the vehicle by the Defendant driver during the lunch hour while the infant was still present in the vehicle and ignored the fact that the infant's transportation to the daycare facility had never ceased". When counsel enter into an agreed stipulation of fact as a basis for decision by the court, both sides will be bound by such agreed stipulation, and the court will not go beyond such stipulation to determine the facts upon which the case is to be decided. Crossmann Communities of N. Carolina, Inc. v. Harleysville Mut. Ins. Co., 411 S.C. 506, 520-21, 769 S.E.2d 453, 460-61 (Ct. App. 2015) (internal citations omitted). As acknowledged by the parties, the facts of loss were stipulated and the parties agreed to submit the case on briefs, Stipulated Facts, the insurance policy, and the deposition testimony of the parties. No evidence was presented at the motion hearing to indicate otherwise. The issue before the Court is whether policy of automobile insurance issued to victim's parents and grandmother provided motor vehicle coverage for claims relating to the death of minor **S.G.** **[REDACTED]** who was left in her father's unattended parked vehicle for more than seven hours. Applying the Aytes test, this claim does not arise out of the ownership, maintenance or use of a vehicle and, therefore, is excluded from coverage.

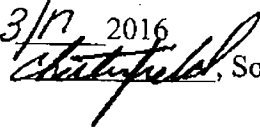
At the hearing, Defendants Goyeneche also argued that the Court erred in finding that the minor was resident on only the mother Amanda Goyeneche. This issue was not timely raised in Defendants' Motion to Alter or Amend Judgment. Hatfield v. Hatfield, 327 S.C. 360, 489 S.E.2d 212 (S.C.App. 1997) (Issue of whether stock husband inherited from his former wife before he remarried was transmuted into marital property was not preserved for review, where wife filed motion for reconsideration of family court order awarding stock to husband, but did

not specifically raise transmutation issue). Furthermore, the evidence contained in the Stipulated Facts, deposition testimony, and policy information support this Court's finding that the minor was a resident relative of the mother's household for the reasons stated in the Order denying coverage.

For the reasons stated herein and heretofore, Defendants' Motion to Alter or Amend is DENIED.

AND IT IS SO ORDERED


The Honorable Paul M. Burch
Judge of the Fourth Judicial Circuit

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