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 GRANTING DECLARATORY JUDGMENT IN FAVOR OF PLAINTIFF**
)	(Denial of Coverage)
Beverly Goyeneche, David R. Gray, III and Amanda Goyeneche (a/k/a Amanda Goyeneche -Gray), individually and as Parent and Natural Guardian of S.G. [redacted],)	
Defendants.)	

Automobile insurer filed declaratory judgment action to determine 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. who was left in her father's unattended parked vehicle for more than seven hours. The Plaintiff seeks a declaratory judgment that the insurance policies which are delineated herein below do not provide coverage for the claims relating to the death of S.G.. The Defendants have counterclaimed for declaratory judgment seeking to extend coverage for the death of S.G. [redacted]. The parties further seek a Declaratory Judgment as to which household the minor was considered a resident relative as contemplated by Plaintiff's policy. The parties stipulated to the facts of loss and submitted to the court a Stipulation of Facts and State Farm Policy 9840a, which were entered into evidence. A factual dispute exists as to whether the minor was a resident relative of the father, the mother, or both. While the Plaintiff and Defendant Gray contend that the minor was a resident of the mother, Defendants Goyeneche contend the minor

qualifies as a resident relative of both the mother and father. Depositions of the Defendants were taken on the issue of the minor's residency. The deposition testimony of David R. Gray, III, Amanda Goyeneche, and Beverly Goyeneche was admitted into evidence without objection. Counsel for Plaintiff and for Defendants Goyeneche presented briefs and oral arguments. Counsel for Defendant Gray did not participate in oral arguments or submit briefs.

For the reasons set forth below, the court grants Declaratory Judgment in favor of Plaintiff and finds the death of the minor did not arise out of the ownership, maintenance or use of a vehicle and therefore, the claims arising therefrom are excluded from coverage.

FINDINGS OF FACTS

The court adopts the parties stipulated facts of loss which are as follows:

1. Plaintiff is an insurance company organized and existing under the laws of one of the states of the United States of America and is authorized to and does conduct business in the State of South Carolina.

2. Defendant Beverly Goyeneche is the mother of Amanda Goyeneche and grandmother of S.G. and is a citizen and resident of Darlington County, South Carolina.

3. Defendants David R. Gray, III and Amanda Goyeneche individually and as Parents and Natural Guardians of S.G., are citizens and residents of Darlington County, South Carolina. Amanda Goyeneche is the proper name of the Defendant "Amanda Goyeneche-Gray" and is a property party to this action and consents to the jurisdiction and venue of this court.

4. The events described herein below which give rise to this Complaint occurred on May 8, 2014 at Carolina Printing Sports and Trophy located at 618 S. Fifth Street, Hartsville,

Darlington County, South Carolina.

5. This action is being brought pursuant to South Carolina Code Ann. § 15-53-10, *et seq.* and Rule 57 of the South Carolina Rules of Civil Procedure.

6. This court has jurisdiction over the parties hereto and the subject matter hereof and that venue is proper in Darlington County, South Carolina.

7. On or about February 28, 2014, Plaintiff issued a policy of insurance, bearing Policy Number 4891-309-40, to Defendant David R. Gray, III insuring a 2011 Ford F150 pickup. Said policy was effective from February 28, 2014 to August 28, 2014 and provided Liability and Underinsured coverage of S25,000 each person; S50,000 each accident; and $25,000 property damage.

8. On or about October 30, 1998, Plaintiff also issued to a policy of insurance bearing Policy Number C483241E to Defendant Amanda Goyeneche, insuring a 2013 Wrangler. Said policy was effective from April 30, 2014 to October 30, 2014 and provided Liability and Underinsured coverage of $50,000 each person; $100,000 each accident; and $25,000 property damage.

9. On or about September 27, 2004, Plaintiff also issued to a policy of insurance bearing Policy Number 1003667A to Beverly Goyeneche insuring a 2004 Impala. Said policy was effective from March 27, 2014 to September 27, 2014 and provided Liability and Underinsured coverage of $50,000 each person; $100,000 each accident; and $25,000 property damage.

10. On or about June 3, 2008 Plaintiff also issued to a policy of insurance bearing Policy Number 1772085A to Beverly Goyeneche insuring a 2007 C1500. Said policy was

effective from December 3, 2013 to June 3, 2014 and provided Liability and Underinsured coverage of $50,000 each person; $100,000 each accident; and $25,000 property damage.

11. State Farm policies of insurance provide coverage to insured persons subject to the terms, definitions, exclusions, and other limitations of the policies.

12. Among the terms and conditions of the relevant State Farm policies denominated above, it provides that the automobile insurance policies issued by the Plaintiff only provides insurance coverage for those bodily injuries and property damage caused by an accident and arising out of the ownership, maintenance or use of the insured automobile, and otherwise subject to the terms of the policy. Relevant portions of the policies include but are not limited to the following:

THIS POLICY

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3. *We* agree to provide insurance according to the terms of this policy:

   b. unless otherwise stated in "EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS" on the Declarations Page, in reliance on the following statements:

   (1) The named insured shown on the Declarations Page is the sole owner of *your car*.

DEFINITIONS

Owned By means:

1. owned by;
2. registered to; or
3. leased, if the lease is written for a period of 31 or more consecutive days, to.

LIABILITY COVERAGE

Insured means:

1. *you* and *resident relatives* for:

   a. the ownership, maintenance, or use of:

   (1) *your car;*

   b. the maintenance or use of:

(1) *a non-owned car*; or
(2) a *temporary substitute car*;

Insuring Agreement

1. ***We*** will pay:

a. damages an ***insured*** becomes legally liable to pay because of:

(1) bodily injury to others; and

(2) damage to property

caused by an accident that involves a vehicle for which that ***insured*** is provided Liability Coverage by this policy;

UNDERINSURED MOTOR VEHICLE COVERAGE

This policy provides Underinsured Motor Vehicle Coverage if "W" is shown under "SYMBOLS" on the Declarations page.

Additional Definitions
Insured means:

1. *you*;
2. ***resident relatives***;
3. any other ***person*** *while* ***occupying*** or using:
   a. ***your car***;
   with the expressed or implied consent of ***you***; and
4. any ***person*** to the extent he or she may recover damages under a state wrongful death statute because of death of an ***insured*** under 1., 2., or 3. above

Underinsured Motor Vehicle means a ***motor vehicle*** the ownership, maintenance, and use of which is either;

1. insured or bonded for bodily injury and property damage liability at the time of the accident; or
2. the ***insured's*** damages exceed any damages cap or limitation imposed by statute.

Insuring Agreement

We will pay damages for ***bodily injury*** and ***property damage*** an ***insured*** is legally entitled to recover from the owner or driver of an ***underinsured motor vehicle***. The ***bodily injury*** must be sustained by an ***insured***. The ***bodily injury*** and ***property damage*** must be caused by an accident that involved operation, maintenance, or use of an ***underinsured motor vehicle***.

13. Defendant Amanda Goyeneche has presented a claim damages in which she alleges that her daughter S.G. died in an unattended parked 2011 Ford F150 vehicle on May 8, 2014 (hereinafter "loss") insured by Plaintiff and owned by David R. Gray, III.

14. Minor S.G. died in an unattended parked 2011 Ford F150 vehicle on May 8, 2014 (hereinafter "loss") insured by Plaintiff and owned by Defendant David R. Gray, III.

15. Defendant David R. Gray, III was to deliver his 13-month-old daughter S.G. to daycare the morning of the loss but failed to do so.

16. The minor S.G. was left unattended in the back seat of the above described vehicle while it was parked and with the ignition off from approximately 9:30 a.m. to approximately 1:00 p.m. and from approximately 2:30 p.m. to 5:15 p.m. on the day of loss.

17. The minor S.G. was left unattended in the back seat of the above described vehicle while it was parked and with the ignition off from approximately 1:15 p.m. to approximately 2:15 p.m. on the day of loss.

18. The minor S.G. was pronounced dead at approximately 5:50 p.m. from complications related to hyperthermia.

19. Defendant Amanda Goyeneche has presented a claim for bodily injury under the liability coverage and underinsured coverage of the insurance policies referenced hereinabove arising from the death of S.G. on May 8, 2014.

20. The minor S.G. was found unresponsive in Defendant David

R. Gray, III's vehicle while it was turned off and unoccupied by any other persons.

The court further finds that the preponderance of evidence establishes that the minor lived with her mother and grandmother at 1112 Salem Road, Hartsville, SC (hereinafter "mother's household"). The father's admissions, the manner in which the minor was documented as a resident of the mother's household, and the brief and irregular visits with the father leads to the conclusion that the minor was a resident relative of only the mother's household.

STANDARD OF REVIEW

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. An action to determine coverage under an insurance policy is an action at law. Auto-Owners Ins. Co. v. Horne, 356 S.C. 52, 586 S.E.2d 865 (Ct. App. 2003) see also Smith v. Auto-Owners Ins. Co., 377 S.C. 512, 660 S.E.2d 271 (Ct. App. 2008).

LAW AND ANALYIS

An insured is legally entitled to recover damages arising out of the "ownership, maintenance, or use" of an insured vehicle. S.C. Code Ann. § 38-77-140. The Supreme Court has established a three-part test to determine whether an injury arises out of the "ownership, maintenance, or use" of a motor vehicle. The party seeking coverage must show (1) a causal connection exists between the vehicle and the injury, (2) no act of independent significance breaks the causal link between the vehicle and the injury, and (3) the vehicle was being used for transportation purposes at the time of the injury. State Farm Fire & Cas. Co. v. Aytes, 332 S.C. 30, 503 S.E.2d 744 (1998).

In support of extending coverage in the present case, Defendants cite several cases from foreign jurisdictions which involve similar facts. As noted by the Defendants, cases cited from

foreign jurisdictions have no precedential value but may be considered to the extent not in conflict with South Carolina law. However, the cases cited by Defendants are not consistent with South Carolina law. The analysis and conclusions in these cases do not include the application of the three part test adopted in Aytes and are, therefore, not determinative of the outcome of this case.

Causal Connection

The first element of the Aytes test requires a causal connection to exist between the vehicle and the injury. "In this context, causal connection means: (a) the vehicle was an 'active accessory' to the assault; and (b) something less than proximate cause but more than mere site of the injury; and (c) that the 'injury must be foreseeably identifiable with the normal use of [the vehicle].'" State Farm Mut. Ins. Co. v. Bookert, 337 S.C. 291, 523 S.E.2d 181 (1999) (citing Aytes, 332 S.C. at 33, 503 S.E.2d at 745–46); see also Peagler v. USAA Insurance Company, 368 S.C. 153, 161, 628 S.E.2d 475, 479 (2006); Doe v. South Carolina State Budget & Control Bd., 337 S.C. 294, 297, 523 S.E.2d 457, 458 (1999); Wausau Underwriters Ins. Co. v. Howser, 309 S.C. 269, 422 S.E.2d 106 (1992). "The required causal connection does not exist when the only connection between an injury and the insured vehicle's use is that fact that the injured person was an occupant of the vehicle when the [injury] occurred." Aytes, 332 S.C. at 33, 503 S.E.2d at 745–46(internal citations omitted).

The three part test established in Aytes arises out of a factual situation in which Mr. Aytes forcibly took the keys from a female and drove her to a remote area where he exited the vehicle and attempted to kill her. While standing outside of the vehicle, Aytes fired into the passenger side of the vehicle hitting the passenger in the foot. The court concluded:

There was not a causal connection in this case as the vehicle was not an active

> accessory, nor was it being used for transportation at the time of the injury. Further, if there was a causal link, it was broken when the assailant exited the vehicle. The only connection between the car and the injury is the fact that Dawson was sitting in the car when she was shot. Therefore, we do not find Dawson's injuries resulted from the ownership, maintenance, or use of her vehicle.
>
> 332 S.C. at 32–35, 503 S.E.2d at 745–46.

In the present case, Defendants argue that the vehicle was an active accessory to the minor's death because the vehicle itself was the producing cause of the onset of hyperthermia and that the hyperthermia was the culmination of excessive heat inside the vehicle. Plaintiff, on the other hand, contends that the minor, S.G. died from hyperthermia, which was a result of exposure to extreme temperatures produced by atmospheric conditions because she was left unattended in a vehicle. Although, the vehicle was the site of her untimely death, no evidence has been presented that the death was caused by anything but hyperthermia.

Other cases which have held that the vehicle was an active accessory to the injury involved situations in which the *operation* of the vehicle was an essential part of the injury (see Wausau Underwriters Ins. Co. v. Howser, 309 S.C. 269, 422 S.E.2d 106 (1992) (finding coverage where only through use of his vehicle was the assailant able to closely pursue victim, thereby enabling him to carry out pistol assault) and Home Ins. Co. v. Towe, 314 S.C. 105, 441 S.E.2d 825 (1994) (injuries sustained by a victim when he was struck by a bottle thrown by a passenger in a passing car were covered where "the use of the automobile placed [assailant] in the position to throw the bottle at the sign and the vehicle's speed contributed to the velocity of the bottle increasing the seriousness of [victim's] injuries.)). Here, no evidence has been presented in this case that the

vehicle was an active accessory to the death. This court is bound by the facts in evidence. Ex parte Morris, 367 S.C. 56, 624 S.E.2d 649 (2006) (holding "It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence"). Additionally, while the transport of children is certainly a foreseeable use of the vehicle, the negligent act of deserting of a small child in the vehicle for an extended period of time is not.

Act of Independent Significance

Even if the court were to determine that a causal connection exists between the vehicle and the minor's death, it was broken by an act of independent significance. See Aytes, 332 S.C. at 35, 503 S.E.2d at 746 ("[I]f there was a causal link, it was broken when the assailant exited the vehicle."); Doe v. South Carolina State Budget & Control Bd., 329 S.C. 214, 219, 494 S.E.2d 469, 471 (1997), aff'd, 337 S.C. 294, 523 S.E.2d 457 (1999) ("Even if we were to hold that Appellants had satisfied the first prong of the test and had demonstrated a causal connection between the vehicle and the injury, we believe Roberson's assaults of Appellants were acts of independent significance which broke the causal chain."); Wright, 337 S.C. at 427, 523 S.E.2d at 476 ("[T]he assault of the gunmen broke any causal connection between the vehicle and Rogers' injury because it arose from an act of independent significance.").

Defendants argue that Wausau Underwriters Ins. Co. v. Howser, 309 S.C. 269, 422 S.E.2d 106 (1992) provides a basis for this court to conclude that Defendant Gray's conduct was not an independent act of significance which broke the causal link. Defendants' reliance on Wausau is misplaced. Wausau involved a shooting that occurred during a *vehicular chase*. Defendants contend that if the purposeful act in Wausau did not break the causal link, then Defendant Gray's negligent act could not break the causal link. "In analyzing whether an injury arose out of the ownership, maintenance, or use of a vehicle, 'no distinction is made as to

whether the injury resulted from a negligent, reckless, or intentional act.'" Peagler v USAA Ins. Co. 368 S.C. at 160, 628 S.E.2d at 479 (2006) citing Home Ins. Co. v. Towe, 314 S.C. 105, 107, 441 S.E.2d 825, 827 (1994); Wright v. North Area Taxi, Inc., 337 S.C. 419, 424, 523 S.E.2d 472, 474 (Ct.App.1999). In the case sub judice, it is stipulated that the driver, Defendant Gray, turned off the ignition and left the vehicle unattended in a parking lot. The unattended vehicle was not occupied by anyone other than the minor decedent for seven hours and fifteen minutes. Abandoning the minor was an act of negligence attenuated from the use of the vehicle. Defendant Gray's desertion of the minor was an act of independent significance thereby breaking any causal link between the vehicle and the death of the minor. Just as our courts have determined the causal link was broken when an assailant exited the vehicle and committed an assault, so to was the causal link broken when Defendant Gray exited his vehicle and abandoned his 13 month old child for more than seven hours. The act of abandoning a child is not vehicular conduct.

Transportation Limitation

Even if a causal connection existed and that there was no act of independent significance that broke the causal connection, the third element of the Aytes test—that the vehicle be used for transportation at the time of the injury—is not satisfied. See Canal Ins. Co. v. Insurance Co. of North America, 315 S.C. 1, 431 S.E.2d 577 (1993) ("We now construe § 38-77-140 and define "use of a motor vehicle" as limited to transportation uses.). In Canal, the Court declined to extend coverage wherein a truck crane lifted a condenser onto the roof of respondent's building. While lifting the condenser, the crane became unbalanced and tipped over, crashing into the building. In requiring that the use be limited to transportation uses, the court adopted the definition used in Continental Western Ins. Co. v. Klug, 415 N.W.2d 876 (Minn.1987), a case

upon which the Court relied in Wausau. See also Classified Ins. Corp. v. Vodinelich, 368 N.W.2d 921 (Minn.1985) (coverage not mandated where auto used by insured to commit suicide in garage and her children were accidentally asphyxiated in the home). "Such a construction of § 38-77-140 is consistent with legislative intent to mandate coverage for the benefit of the public since it encompasses those uses foreseeable to the parties to an automobile insurance policy." Canal Ins. Co. v. Insurance Co. of North America, 315 S.C. at 4-5, 431 S.E.2d at 579-580 (1993).

Since 1993 our courts have required that a vehicle be used for transportation purposes in order to fall within the "use and operation" definition found in statute and insurance policies. Our courts have since held a parked vehicle, even when occupied, does not meet the third requirement of Aytes if the vehicle is not being used for transportation at the time of injury. In Doe v. South Carolina State Budget and Control Bd,. et al, 337 S.C. 294, 523 S.E.2d 457 (1999) a police officer forced individuals to have sex with him in his parked vehicle in order to avoid arrest. The Court held the claimants could not meet the Aytes requirements inasmuch as the cruiser was not being used for transportation at the time of the assaults, it was not an "active accessory", and the petitioners' acceptance of Roberson's offers were acts of independent significance which broke any causal link. Id.

It is stipulated that Defendant Gray turned off the ignition, exited the vehicle, and left the minor in the unattended vehicle for seven hours and fifteen minutes. It is further stipulated that minor died in the unattended parked vehicle from complications relating to hyperthermia. At the time of the minor's death the vehicle was admittedly parked and unattended for an extended period of time. Therefore, the vehicle was incapable of being used for transportation purposes and as such fails to satisfy the "use for transportation requirement" of the Aytes test.

CONCLUSION

The preponderance of evidence establishes that the minor was a resident relative of only the mother's household. Furthermore, the death of the minor [redacted] S.G. did not arise out of the "ownership, maintenance, or use" of a motor vehicle and therefore is excluded from coverage of the State Farm policies. Therefore, the Plaintiff has no duty to defend or indemnify any party relating to the death of the minor [redacted] S.G..

AND IT IS SO ORDERED

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

June 1, 2015
Chesterfield, South Carolina