

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2016-000987

Randall Dixon, Appellant,

v.

Nationwide Property & Casualty
Insurance Company, Respondent.

INITIAL BRIEF OF APPELLANT

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a. DEFENDANT WAS NOT REQUIRED TO OFFER UIM COVERAGE TO ALL NAMED INSUREDS.

b. AGENCY RELATIONSHIP BETWEEN HUSBAND AND WIFE ALLOWED WIFE TO REJECT UIM COVERAGE ON BEHALF OF HUSBAND.

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STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err in ruling reformation of insurance policy to include UIM coverage was not proper in the following particulars:

- A. Defendant was not required to offer UIM coverage to all named insureds.
- B. Agency relationship between husband and wife allowed wife to reject UIM coverage on behalf of husband.

STATEMENT OF THE CASE

This lawsuit was filed March 6, 2014. It was filed as a declaratory judgment action to determine an issue of coverage regarding an automobile insurance policy issued to Randall Dixon and Jessica Dixon. The issue of UIM coverage came into controversy after Mr. Dixon was seriously injured in a car wreck September 7, 2013 in Anderson County.

The Defendant filed an answer denying coverage. A trial was held on June 18, 2015 before the Honorable J. Cordell Maddox. After the hearing, Judge Maddox took the matter under advisement. On April 19, 2016, Judge Maddox issued his Order denying Plaintiff's request to reform said policy to include UIM coverage. On May 4, 2016, Mr. Dixon served his Notice of Appeal from the lower court Order.

STATEMENT OF FACTS

On September 7, 2013, the Plaintiff-Appellant was in an automobile accident in Anderson County in which he was operating a 2003 Suzuki motorcycle. The accident was caused by another vehicle attempting to make a left turn, failing to the yield right of way, and turning in front of Plaintiff-Appellant's motorcycle causing the accident. Prior to the accident in June of 2013, the Plaintiff-Appellant had received a notice that the insurance on the Suzuki motorcycle had lapsed. (TR p. 11). Plaintiff-Appellant then contacted his insurance agency and was told by the agency that they would get the insurance "straightened out." (TR p. 11). At the time of this conversation, Plaintiff-Appellant was working as a long haul truck driver and not available to sign any documents. (TR p. 12). Plaintiff-Appellant then called the agency and asked if his spouse could sign on his behalf (TR p. 28). After the agency informed Plaintiff-Appellant she could do so, Plaintiff-Appellant's spouse then went to the insurance agency and signed a UIM rejection form signing the documents in his name.

After Plaintiff-Appellant's accident, Defendant denied Plaintiff-Appellant's claim in a letter to Plaintiff-Appellant's spouse in which the

Defendant stated: "There is no coverage for the loss under your policy."
(TR p. 42-43). Despite this language and both Randall and Jessica Dixon
being listed as named insureds, the Defendant has maintained Jessica
Dixon was not a named insured and was the implied agent of her husband
when signing the UIM rejection form.

ARGUMENTS

Did the lower court err in ruling reformation of insurance policy to include UIM coverage was not proper in the following particulars:

- A. Defendant was not required to offer UIM coverage to all named insureds.

In this case, both Randall and Jessica Dixon are listed as named insureds on the insurance policy in question. Additionally, Defendant's letter rejecting the UIM claim was specifically addressed to Mrs. Dixon.

The first paragraph of the letter reads:

"Dear Ms. Dixon:
We've reviewed available information for this underinsured motorist bodily injury claim and have determined there is no coverage for the loss under your policy." [Emphasis added.] (Plaintiff's Exhibit #1.)

It is clear by the terms of the insurance contract and the conduct of the Defendant that both Randall and Jessica Dixon were named insureds under the contract.

South Carolina Code Ann. §38-77-350 provides the form insurers must use when offering UIM coverage. Insurers are required to use this form for all "new applicants." South Carolina Code Ann. §38-77-350(A).

Lastly, if all “named insureds” complete this form, a presumption exists that the insured made an informed selection. South Carolina Code Ann. §38-77-350(B). In the case of McDonald v. South Carolina Farm Bureau Ins. Co., 336 S.C. 120 (1999), 518 S.E.2d 624, the insurer argued that because the injured party was not a “new applicant” and therefore not a new “named insured,” it was not required to offer UIM coverage. However, the South Carolina Court of Appeals rejected this argument stating:

We see no inconsistency in the term “new applicant” in Section 38-77-350(A) and “insured” in Section 38-77-160. Clearly, the legislature intended for insurers to afford all named insureds the opportunity to accept or reject UIM coverage.

In the case at bar, it is clear by the documents and the conduct of the Defendant that the Defendant considered both Randall and Jessica Dixon “named insureds,” despite their argument to the contrary. Therefore, in accordance with McDonald, the Defendant was required to produce a rejection form for all “named insureds”, both Randall and Jessica Dixon.

B. Agency relationship between husband and wife allowed wife to reject UIM coverage on behalf of husband.

The trial court in its ruling has relied on the South Carolina Court of Appeals decision in Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238 (2004), 597 S.E.2d 165. In Prioleau, the Court held that the husband was authorized on behalf of the wife to reject UIM coverage under the theory of implied agency. Even though both parties were named insureds under the policy, the Court found an implied agency relationship existed and therefore the insurer was not required to offer both parties UIM coverage. The Court in its reasoning cited Crystal Ice Co. Of Columbia v. First Colonial Corp., 273 S.C. 306, 309, 257 S.E.2d 496, 498 (1979) stating:

The law creates the relationship of principal and agent if the parties, in the conduct of their affairs, actually place themselves in such a position as requires the relationship to be inferred by the courts, and if, from the facts and circumstances of this particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding a denial by the alleged principal, and whether or not the parties understand it to be an agency. Id.

In the case at bar, Defendant has argued that Jessica Dixon is not a named insured. This is an important distinction because in Prioleau, both parties were named insureds and therefore one named insured was allowed

to sign on behalf of the other named insured where an agency relationship existed. (The trial court did not make an express finding of fact regarding Jessica Dixon's status as named insured.) However, in the present case, the Defendant argued during the entire trial that despite Jessica Dixon being listed on the policy as named insured, she was not in fact a named insured. It would be illogical to argue as Defendant has here that on one hand Jessica Dixon was not a named insured, but on the other hand argue she was a named insured in order to rely on Prioleau and an implied agency relationship.


Furthermore, the trial transcript shows only that Randall Dixon asked his wife to sign a form for him in order to reinstate a lapsed insurance policy. There is no evidence in the records that the couple discussed why the wife was signing on the Plaintiff's behalf, what she was signing, or what effect her signature would have on the subject policy.

CONCLUSION


Insurers are required to offer UIM coverage to all named insureds and the Defendant failed to do so. Additionally, to adopt the Defendant's argument in this case, the Court would be creating public policy that would allow an insurer to deny UIM coverage without providing any rejection forms signed by any named insureds. Because such a ruling would be a clear violation of the applicable statutes, case law, and the intent of the legislature, the subject policy should be reformed to include UIM coverage.

Respectfully submitted,

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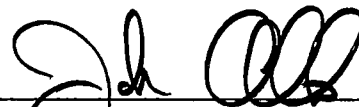
v.

Nationwide Property & Casualty
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CERTIFICATE OF COUNSEL

I certify that this designation contains no matter which is irrelevant

to the appeal.



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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant, Designation of Matter to be Included in the Record on Appeal with Certificate of Counsel on Nationwide Property & Casualty Insurance Company by depositing a copy in the United States Mail, postage prepaid, on November 14, 2016, addressed to their attorney of record, J. R. Murphy, Esq., Murphy & Grantland, Post Office Box 6648, Columbia, South Carolina 29260.



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SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of the South Carolina Court of Appeals
PO BOX 11629
Columbia, SC 29211

RE: Randall Dixon vs. Nationwide Property & Casualty Insurance Company
Case No.: 2016-000987

Dear Ms. Kitchings:

Please find attached for filing the Initial Brief of Appellant in the above case. Also attached are the following:

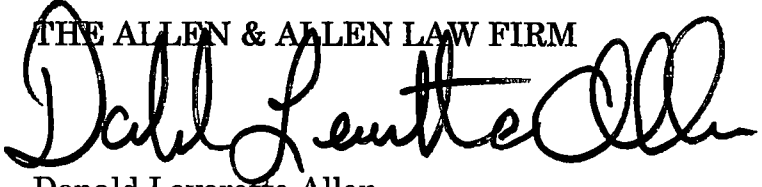
1. One (1) copy of the Initial Brief of Appellant;
2. The Appellant's Designation of Matter to be Included in the Record on Appeal and one (1) copy; and
3. An original Certificate of Service (Appellant's Designation of Matter to be Included in the Record on Appeal) and one (1) copy.

Please return a certified copy of each of the above documents to me in the enclosed self-addressed stamped envelope.

By copy of this letter, I am serving opposing counsel with a copy of the Initial Brief of Appellant, Designation of Matter to be Included in the Record on Appeal and the Proof of Service and one (1) copy.

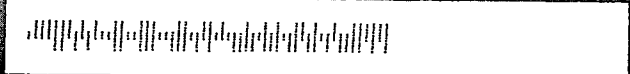
Thank you for your assistance in this matter.

Sincerely yours,

THE ALLEN & ALLEN LAW FIRM

Donald Leverette Allen

DCA/rs

xc: J. R. Murphy, Esq.



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