

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
Case No: 2016-CP-26-798

South Carolina Farm Bureau Mutual )  
Insurance Company, )  
 )  
Plaintiff, )

vs. )

Order Granting Plaintiff's Motion  
For Summary Judgment

Michael David Harrelson, Devora )  
Harrelson, Kevin Duke, and )  
Government Employees Insurance )  
Company, )  
 )  
Defendants. )

**RECEIVED**

APR 10 2017

**SC Court of Appeals**

This matter came before the Court pursuant to a properly noticed and scheduled hearing of a Motion for Summary Judgment made by the Plaintiff, South Carolina Farm Bureau Mutual Insurance Company. The parties submitted memoranda and a properly noticed and scheduled hearing took place on February 27, 2017 during which counsel offered oral argument. After reviewing the record, the memoranda, the exhibits and evidence and after considering the argument(s) of counsel and South Carolina law, I find that this motion should be granted.

Based upon all the evidence, including the memoranda and the arguments of counsel, on December 21, 2012 Defendants Harrelson and Defendant Duke separately traveled to a Wal-Mart where Duke operated his vehicle in an aggressive manner before both parties stopped and exited their vehicles. Subsequently, a physical altercation occurred during which, for some amount of time, Mr. Harrelson was pinned against Duke's car by Duke.

Defendants Harrelson filed suit, seeking recovery from Defendant Duke for various alleged injuries via claims against the involved automobile insurance carriers: (1) The liability carrier for named insured, Defendant Duke, Government Employees Insurance Company (GEICO); and (2) The underinsured carrier for named insureds, Defendants Harrelson, South Carolina Farm Bureau Mutual Insurance Company (SCFB). That lawsuit is captioned as follows: "Michael David Harrelson and Devora Harrelson vs. Kevin Duke." It is presently pending in the Horry County Court of Common Pleas and is or was assigned civil action number 2015-CP-26-6601.

Both carriers filed separate actions pursuant to the Uniform Declaratory Judgment Act as set forth in S.C. Code Ann. Section 15-53-10 et seq. In its action, SCFB seeks an Order declaring that: (A) It has no duty or obligation to defend any civil action arising out of or on in any way related to the underlying physical altercation, including the presently pending lawsuit and therefore, counsel retained by SCFB in that action be relieved; (B) Its policies do not provide coverage for any claims arising out of or in any way related to the underlying physical altercation; (C) It has no obligation to pay any claims related to or arising out of the underlying physical altercation and (D) That no person or entity has any rights, now or in the future, in any capacity, either as insured, claimant, or judgment creditor, under the subject SCFB insurance policies as a result of the underlying physical altercation.

After discovery and depositions, SCFB moved for Summary Judgment.

#### Summary Judgment Standard

The circuit court should grant summary judgment when the evidence shows "there is no genuine issue as to any material fact and that the moving party is entitled to [\*8] a judgment as a matter of law." Rule 56(c), SCRCP. An appellate court "reviews the grant of a summary judgment motion under the same standard as the [circuit] court." Montgomery v. CSX Transp., Inc., 376 S.C. 37, 47, 656 S.E.2d 20, 25 (2008). "When determining if any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light

most favorable to the non-moving party." *Id.* To defeat a motion for summary judgment, a plaintiff must show "a genuine issue of material fact exists for each essential element of the plaintiff's claim." Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). Fay v. Total Quality Logistics, 2017 S.C. App. LEXIS 25, Opinion 5471 (Ct. App, March 1, 2017)

#### Findings of Fact and Conclusions of Law

To establish an injury 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. Peagler v. USAA Ins. Co., 368, SC 153, 628 SE2d 475.). "The key focus is on the extent of the role, if any, the vehicle played in causing the injuries or damage, or whether a particular activity is a covered use as required by statute or a policy provision." Peaglar at 160, 628 SE2d at 479 (2006). Use of a motor vehicle is defined as and limited to transportation uses. Canal Ins. Co. v. Ins. Co. of N. America, 315 SC 1, 4, 431 SE2d 577, 579 (1993).

There is a separate three-part test for the determination whether a causal connection exists to satisfy the first element. A causal connection exists when:

- (a) The vehicle was an "active accessory" to the injury;
- (b) The vehicle was something less than the proximate cause but more than the mere site of the injury; and
- (c) The injury was foreseeably identifiable with the normal use of the vehicle.

Id. at 479.

Based upon the deposition testimony, the memoranda and the argument of counsel, viewing the facts in the light most favorable to the individual parties opposing this motion, the Court finds that the injuries alleged by Harrelson flowed from and were caused by a physical dispute that

occurred after the Duke vehicle ceased being used for transportation. It is undisputed that Mr. Duke exited his vehicle and then became involved in a physical conflict with Mr. Harrelson that caused the injuries. For the sake of this motion, the court considers that, as the Harrelsons contend, Duke blocked in their vehicle, revved his engine, flashed his lights, and generally drove in an aggressive manner. Regardless, none of that caused the subject injuries. The injuries were caused from a fight or physical altercation that occurred after Duke exited his vehicle. Even given that for part of the altercation Duke pinned Harrelson against Duke's car, this made the car part of the scene or site of the incident and not the cause of the injuries. The injuries were caused by the physical altercation. Given these facts, and considering the evidence and all reasonable inferences to be drawn therefrom, the subject injuries did not arise out of the ownership, maintenance or use of a motor vehicle within the meaning of South Carolina statutory and common law, including that cited above.

Summary Judgment is proper when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Brandt v. Gooding, 368 S.C 618, 630 S.E.2d 259 (2006). To defeat a motion for summary judgment, a plaintiff must show "a genuine issue of material fact exists for each essential element of the plaintiff's claim." Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). Fay v. Total Quality Logistics, 2017 S.C. App. LEXIS 25, Opinion 5471 (Ct. App, March 1, 2017) In this case, I find that there are no genuine issues of material fact not before the Court concerning the circumstances of this accident and that the moving party is entitled to judgment as a matter of law within the meaning of Rule 56, *SCRCP*.

NOW THEREFORE, IT IS ORDERED THAT the Motion for Summary Judgment filed by the plaintiff, South Carolina Farm Bureau Mutual Insurance Company is granted and:

(A) SCFB has no duty or obligation to defend any civil action arising out of or on in any way related to the underlying physical altercation, including the presently pending lawsuit and therefore, this Court ORDERS that counsel retained by SCFB in that action is **HEREBY RELIEVED**;

(B) SCFB's insurance policies do not provide coverage for any claims arising out of or in any way related to the underlying physical altercation, including the presently pending lawsuit ;

(C) SCFB has no obligation to pay any claims related to or arising out of the underlying physical altercation, including the presently pending lawsuit, and

(D) No person or entity has any rights, now or in the future, in any capacity, either as insured, claimant, or judgment creditor, under the subject SCFB insurance policies as a result of the underlying physical altercation, including the presently pending lawsuit.

**AND IT IS SO ORDERED.**

---

The Honorable Benjamin H. Culbertson  
PRESIDING JUDGE, 15<sup>th</sup> Judicial Circuit

Dated: \_\_\_\_\_



Horry Common Pleas

**Case Caption:** South Carolina Farm Bureau Mutual Insurance Company VS Michael David Harrelson , defendant, et al  
**Case Number:** 2016CP2600798  
**Type:** Order/Summary Judgment

Presiding Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2017-03-27 14:51:31 page 6 of 6

ELECTRONICALLY FILED - 2017 Mar 28 3:21 PM - HORRY - COMMON PLEAS - CASE#2016CP2600798