

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF HORRY
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP2600798

South Carolina Farm Bureau Mutual Insurance Company	Government Employees Insurance Company	Michael David Harrelson Kevin Duke	Devora Harrelson Government Employees Insurance Company
--	---	---------------------------------------	---

PLAINTIFF(S)	DEFENDANT(S)
Submitted by: Clerk of Court	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.

- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);

- Rule 43(k), SCRPC (Settled); Other: _____

- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;

- Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____

- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

- Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION
Government Employees Insurance company

Defendant's Motion for Summary Judgment is Granted.

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

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 3/13/17

FILED
 HORRY COUNTY
 17 MAY 12 AM 11:23
 CLERK OF COURT

RECEIVED
 MAY 12 2017
 SC Court of Appeals

Benjamin H. Culbertson

Circuit Court Judge - Hon. Benjamin H. Culbertson

2148

Judge Code

2/27/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

John Dwight Hudson PO Box 70218 2513 North Oak St, Ste 210 Myrtle Beach, SC 29572

Gene McCain Connell Jr. PO Drawer 14547 Surfside Beach, SC 29587

John Elliott Rogers II The Ward Law Firm, P.A. PO Box 5663 Spartanburg, SC 29304

William Henry Monckton VI 1300 Professional Dr., Ste.102 Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Copy of Order/ _____
filed 3/2/17 mailed to all
parties not in default on 3/2/17
Initials RS

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF HORRY
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER **2016CP2600798**

South Carolina Farm Bureau Mutual Insurance Company	Government Employees Insurance Company	Michael David Harrelson Kevin Duke	Devora Harrelson Government Employees Insurance Company
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PLAINTIFF(S) _____ DEFENDANT(S) _____

Submitted by: Clerk of Court

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

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IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

Plaintiff's Motion for Summary Judgment is Granted.

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

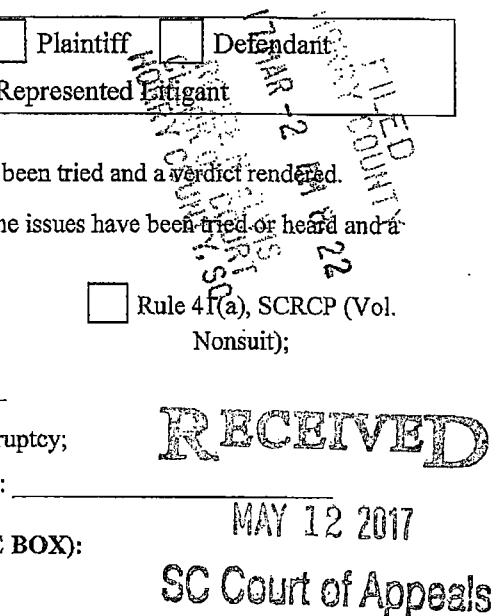
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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Benjamin H. Culbertson

Circuit Court Judge - Hon. Benjamin H. Culbertson

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Myrtle Beach, SC 29577

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Natalie Dahl

Renee N. Elvis - Clerk of Court

Court Reporter:

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parties not in default on 3/2/17
Initials JS

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
South Carolina Farm Bureau Mutual)
Insurance Company,)
)
Plaintiff,)
)
v.)
)
Michael David Harrelson, Devora)
Harrelson, Kevin Duke, and Government)
Employees Insurance Company,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

ORDER GRANTING DEFENDANT
GOVERNMENT EMPLOYEES INSURANCE
COMPANY'S MOTION FOR
SUMMARY JUDGMENT

C.A. NO.: 2016-CP-26-798

RECEIVED

MAY 12 2017

SC Court of Appeals

This matter came before me on February 27, 2017 for argument on Defendant Government Employees Insurance Company's ("GEICO") Motion for Summary Judgment.¹ Counsel for all parties was present, and submitted memoranda of law, exhibits, and oral argument. GEICO seeks an Order granting Summary Judgment on its declaratory judgment claim against Michael David Harrelson and Devora Harrelson ("Harrelsons"), and Kevin Duke ("Duke").

STANDARD OF REVIEW

Summary judgment is proper when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issue of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000).

FINDINGS OF FACT

¹ GEICO's declaratory judgment action, C.A. No.: 2016-CP-26-424, was consolidated with this matter by Consent Order filed on May 5, 2016.

On December 21, 2012, the Harrelsons and Duke were involved in an altercation in a Wal-Mart parking lot in Myrtle Beach, South Carolina. The Harrelsons filed a negligence action styled Michael David Harrelson and Devora Harrelson v. Kevin Duke, C.A. No.: 2015-CP-26-6601. GEICO, Duke's liability carrier, brought this action seeking a declaration that it owed no duty to defend or indemnify or otherwise provide any coverage under Duke's policy to either the Harrelsons or Duke because, in pertinent part, the facts giving rise to the allegations did not arise out of the ownership, maintenance, or use of an automobile.

Taken in the light most favorable to the nonmoving parties, the facts are as follows for purposes of this summary judgment motion:

Michael Harrelson was waiting in an aisle of the Wal-Mart parking lot for another car to vacate a parking space close to the store. Devora Harrelson exited her vehicle, retrieved a cart, and moved to the end of the parking aisle to wait on her husband. Duke pulled up behind Michael Harrelson, who was stopped. Duke blinked his lights, blew his horn, slammed on his brakes, and revved his engine. Michael Harrelson then pulled into the parking space he was waiting for.

According to Devora Harrelson, Duke then pulled up behind the Harrelson car. Duke cursed at her. Michael Harrelson walked around the back of Duke's car. The Harrelsons responded to Duke. Duke then exited his vehicle and engaged in an altercation with Michael Harrelson. At one point, Duke pinned Harrelson against the back of his car.

The altercation took place outside of Duke's vehicle. Duke's car was stationary during the altercation and was not being used for transportation. Duke left in his vehicle after the altercation.

FINDINGS OF LAW

Under South Carolina law, an automobile insurance policy must provide coverage for the insured against "loss from liability imposed by law for damages arising out of the ownership, maintenance, or use of" the insured motor vehicle subject to applicable coverage limits. S.C. Code Ann. § 38-77-140. GEICO's policy contains a provision for the required statutory coverage.

An injury arises out of the ownership, maintenance, or use of a motor vehicle, for purposes of automobile insurance, if (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 at the time of the injury. Peagler v. USAA Ins. Co., 368 S.C. 153, 159, 628 S.E.2d 475, 478 (2006).

The causal connection test is satisfied if (1) the vehicle was an active accessory to the assault, (2) the vehicle was something less than the proximate cause and something more than the mere site of the injury, and (3) the injury must be foreseeably identifiable with the normal use of the vehicle. State Farm Mut. Auto. Ins. Co. v. Bookert, 337 S.C. 291, 293, 523 S.E.2d 181, 182 (1999).

In State Farm Fire & Cas. Ins. Co. v. Aytes, 332 S.C. 30, 503 S.E.2d 744 (1998), the South Carolina Supreme Court held that there was no causal connection between a vehicle and the injuries sustained by the insured where the assailant drove the victim in the insured vehicle to another location, exited the vehicle, and shot her. The court held that the victim's mere presence in the insured vehicle when she was shot did not make the required causal connection, the vehicle was not an active accessory to the attack, the use of a vehicle to transport an assailant to the scene of an assault was merely incidental, and the assailant's conduct was remote from the type of conduct that is reasonably

foreseeable with the normal use of a vehicle. Id. at 33-34, 503 S.E.2d at 745-746; see also Doe v. South Carolina State Budget and Control Bd., 329 S.C. 214, 494 S.E.2d 469 (Ct. App. 1997)(holding that the situs of an injury is not necessarily a causal link even though it is connected spatially to the harm).

Under these standards, the injuries alleged by the Harrelsons did not arise out of the ownership, maintenance, or use of Duke's vehicle.

First, there was no causal connection between the alleged injuries and Duke's vehicle. None of the alleged injuries occurred while any of the parties were travelling in the GEICO-insured vehicle. Duke parked and exited the vehicle prior to the altercation. Even assuming as true Plaintiffs' testimony that at one point Duke blocked the Harrelson vehicle in its space and pinned Michael Harrelson against his vehicle during the fight, a vehicle is not causally connected to an injury by being the mere site of an injury.

Second, even if Duke's vehicle had been causally connected to the assault, any causal connection with the vehicle was broken when Duke exited the vehicle and had an altercation with the Harrelsons.

Third, even if there was a causal connection that was not broken, Duke's vehicle was not being used for transportation at the time of the altercation. The record plainly reflects that the physical altercation took place outside of Duke's parked vehicle.

I therefore find that:

- (1) no genuine issue of material fact exists regarding the facts relevant to GEICO's coverage question;

- (2) neither Michael and Devora Harrelson nor Kevin Duke are entitled to recover under the GEICO policy that insured Duke's vehicle at the time of the December 21, 2012 Wal-Mart parking lot altercation; and
- (3) GEICO is entitled to summary judgment as to its declaratory judgment action as a matter of law.

IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Judge, Fifteenth Judicial Circuit

Dated: March 17, 2017



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

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

MAY 12 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." Peagler 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 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, 15th 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

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER 2016-CP-26-798

South Carolina Farm Bureau)
Mutual Insurance Company,)

Plaintiff,)

ORDER DENYING MOTIONS
FOR RECONSIDERATION¹

vs.)

Michael David Harrelson, *et al.*,)

Defendants.)

RECEIVED

MAY 12 2017

SC Court of Appeals

Before the court are the following motions brought by the defendants Michael David Harrelson and Devora Harrelson:

1. Motion for Reconsideration dated 3/24/2017 and filed 3/27/2017 seeking reconsideration of this court's order filed 3/17/2017 granting summary judgment to the defendant Government Employees Insurance Company;
2. Motion for Reconsideration dated 4/4/2017 and filed 4/5/2017 seeking reconsideration of this court's order filed 3/28/2017 granting summary judgment to the plaintiff.

Governmental Employees Insurance Company is the automobile liability carrier for the defendant Kevin Duke. South Carolina Farm Bureau Mutual Insurance Company is the underinsured carrier for the defendants Michael David Harrelson and Devora Harrelson.

¹ These motions are decided without oral arguments.

Although the defendants argue that the court failed to address a number of issues, all relate to whether or not *South Carolina Farm Bureau Mutual Insurance Company v. Mumford*, 299 S.C. 14, 382 S.E.2d 11 (1989) is controlling in this case. In *South Carolina Farm Bureau v. Mumford*, the South Carolina Court of Appeals reversed the lower court's ruling that South Carolina Farm Bureau Mutual Insurance Company did not provide coverage for its insured's intentional acts in causing a vehicular accident when the insured intentionally crashed her car into another vehicle in an attempt to commit suicide. The insured's policy contained an exclusion for intentional acts. In reversing the lower court's decision, the Court of Appeals ruled that the mandate of the *South Carolina Financial Responsibility Act* requiring coverage of all liability arising from the ownership, maintenance or use of the insured vehicle covered intentional acts and, therefore, supersedes the terms of the insurance contract excluding such coverage.

The undisputed facts in this case are that the defendant Kevin Duke parked his vehicle, exited his vehicle and got into a physical altercation with the defendant Michael David Harrelson. None of the alleged damages arose out of the ownership, maintenance or use of Kevin Duke's vehicle. Therefore, neither the liability coverage nor underinsured coverage apply. Both carriers are entitled to summary judgment.

NOW, THEREFORE, it is hereby

ORDERED that the Motion for Reconsideration dated 3/24/2017 and filed 3/27/2017 seeking reconsideration of this court's order filed 3/17/2017 granting summary judgment to the defendant Government Employees Insurance Company is **DENIED**; it is further

ORDERED that the Motion for Reconsideration dated 4/4/2017 and filed 4/5/2017 seeking reconsideration of this court's order filed 3/28/2017 granting summary judgment to the plaintiff is **DENIED**.

AND IT IS SO ORDERED.

May 3, 2017
Georgetown, SC

Benjamin H. Culbertson
Presiding Judge



Horry Common Pleas

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

Presiding Judge

s/Benjamin H. Culbertson, Judge Code 2148