THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM Anderson COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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S.C. SUPREME COURT

Appellate Case No. 2018-000061

United Auto Insurance Company,

Respondent,

vs.

Willie Freeman, Michael Craft, Kimberly L. Sanford and Antonio Craft,

Petitioner,

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Respondent, United Auto Insurance Company, (hereinafter "United"), commenced this action against Appellants, Willie Freeman and Michael Craft, (hereinafter "Appellants") and Defendants, Kimberly L. Sanford[1] and Antonio Craft[2], in the Anderson County Circuit Court on April 29, 2014. R. pp. 9-12. The Complaint sought declaratory judgment that an automobile policy issued by United did not provide liability insurance coverage to any person with a claim or potential claim arising out of a February 13, 2013 accident; and that, United owed no duty of defense and/or indemnity to Antonio Craft and Sanford. Appellants filed an Answer on May 20, 2014. R pp. 13-15 United filed a motion for summary judgment on December 4, 2014, alleging that United had complied with the applicable statutory law in cancelling the automobile insurance policy on February 3, 2013 and therefore that the policy was not in effect on February 13, 2013. R. pp. 16-18.

A hearing on United's motion was held before the Honorable R. Scott Sprouse, Circuit Court Judge, on February 9, 2015, in Anderson. After taking the matter under advisement, Judge

[1] Please note that Kimberly L. Sanford never appeared in the underlying litigation or United's declaratory judgment action, and, upon information and belief, is not a party to this appeal.

[2] Please note that Antonio Craft never appeared in the underlying litigation or United's declaratory judgment action, and, upon information and belief, is not a party to this appeal.

Sprouse issued an Order finding for United that the automobile insurance policy was properly cancelled on February 3, 2013 and therefore not in force on February 13, 2013. R. pp. 1-6. Thereafter, Appellants filed a Notice of Appeal to the Circuit Court. R. pp. 109-110. Appellants filed a brief in support of their appeal. R. pp. 112-120. United filed a brief in response to the appeal. R. pp. 122-132 The Court of Appeals then affirmed the decision of the Circuit Court, per curiam, via an unpublished opinion filed November 1, 2017, without oral argument. Appellants then filed for rehearing, which was subsequently denied by Order dated December 14, 2017. This Petition for Writ of Certiorari followed.

ARGUMENT

The determination of coverage under an insurance policy is an action at law. Nationwide Mut. Ins. Co. v. Prioleau, 359 S.C. 238, 241, 597 S.E.2d 165, 167 (Ct.App.2004). On appeal, The Court is limited to determining whether the trial court based its ruling on an error of law or on a factual conclusion without evidentiary support. S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E Underwriters Risk Retention Group, 347 S.C. 333, 338, 554 S.E.2d 870, 873 (Ct.App.2001).

The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006). The first question of statutory interpretation is whether the statute's meaning is clear on its face. Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622, 622 S.E.2d 733, 738 (Ct. App. 2005) (cert. granted January 31, 2007).

When a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and this Court has no right to impose another meaning. Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519 642 S.E.2d 751 (2007); *see* Vaughn v. Bernhardt, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001). "[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Mun. Ass'n of S.C. v. AT & T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004); *see also* Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994) ("In determining the meaning of a statute, the terms used therein must be taken in their ordinary and popular meaning, nothing to the contrary appearing.").

The legislature's intent should be ascertained primarily from the plain language of the statute. Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005) (citing State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503. 506 (Ct. App. 2004); Stephen v. Avins Const. Co., 324 S.C. 334, 339, 478 S.E.2d 74, 77 (Ct. App. 1996)). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Bayle v. South Carolina Dept. of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 740 (Ct. App. 2001)). The language must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Hitachi Data Sys. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)). The court's primary function in interpreting a statute is to ascertain the intent of the General Assembly. Smith v. South Carolina Ins. Co., 350 S.C. 82, 87, 564 S.E.2d 358, 361 (Ct. App. 2002). "Once the legislature has made [a] choice, there is no room for the courts to

impose a different judgment based upon their own notions of public policy." South Carolina Farm Bureau Mut. Ins. Co. v. Mumford, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989).

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002). "Statutes, as a whole, must receive practical, reasonable, and fair interpretation, consonant with the purpose, design, and policy of lawmakers." Collins Music Co., Inc. v. IGT, 365 S.C. 544, 550, 619 S.E.2d 1, 3 (Ct. App. 2005) (quoting TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998)). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. Jones, 364 S.C. at 230, 612 S.E.2d at 723 (citing Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)). A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law. *See* Hinton v. South Carolina Dept. of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004); Doe v. Roe, 353 S.C. 576, 580, 578 S.E.2d 733, 735-36 (Ct. App. 2003).

1. The Court of Appeals Was Correct In Upholding The Circuit Court's Finding That United Complied with §38-77-120.

In §38-77-120, the legislature set out the five requirements by which an insurer for automobile polices may issue a notice of cancellation. The Circuit Court Judge found that United's Notice of Cancellation, dated January 22, 2013, complied with these five requirements. On appeal, Appellants challenge only the timeliness requirement of §38-77-120(a)(2). This requirement states that a notice of cancellation must be mailed no less than 15 days in advance of

the date of cancellation. Appellants torture the plain language of §38-77-120 to give meaning to the statute not intended by the legislature.

Appellants aim to show that §38-77-120 was intended to require that insurers can't issue a notice of cancellation for 15 days *after* a premium is due, in effect requiring that all automobile insurers in the state provide 15 days of free coverage to every insured who fails to pay premiums. Appellants stretch for this interpretation with the citation to a single Ohio case based on Ohio law and Ohio statutes. The Ohio Court of Appeals began their analysis of this particular case with the finding that the notice requirement in the corresponding Ohio statute was ambiguous. Vietzen v. Victoria Auto. Ins. Co., 2014-Ohio-749, 9 N.E.3d 500, 504.

No South Carolina court has ever found §38-77-120 to be ambiguous. In fact, there are dozens of South Carolina Court of Appeals and Supreme Court cases in which §38-77-120 was referenced, interpreted and cited without any indication of ambiguity.[3] It would be folly to, after years of successful jurisprudence, to declare that which has been the clear and unambiguous terms of the statute to have suddenly become murky and ambiguous.

Moreover, the Court of Appeals has addressed this very issue in the matter of Stringer v. State Farm Mut. Auto. Ins. Co., 386 S.C. 188, 192, 687 S.E.2d 58, 60 (Ct. App. 2009). In Stringer, the insured had purchased an automobile policy from an insurer. The insurer sent a notice of cancellation to the insured indicating that a premium payment was due 15 days from the date of the notice and that if the insured did not pay his premium by that date, the insurance policy would be cancelled on said date. The insured failed to pay his premium, his policy was cancelled and he was involved in an automobile accident shortly thereafter. While the Court

[3] See for example Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 229 612 S.E.2d 719, 726 (Ct.App.2005); Hiott v. Guaranty Nat'l Ins. Co., 329 S.C. 522, 531, 496 S.E.2d 417, 426 (Ct.App.1997); South Carolina Farm Bureau Mut. Ins. Co. v. Courtney, 342 S.C. 271, 536 S.E.2d 689 (Ct.App.2000); Shealy v. Doe, 370 S.C. 194, 199, 634 S.E.2d 45, 48 (Ct. App. 2006); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct.App.1999); Auto Now Acceptance Corp. v. Catawba Ins. Co., 351 S.C. 377, 570 S.E.2d 168 (2002)

focused its analysis on the issue of contract interpretation, it did not baulk at the concept that an insurance policy for automobile coverage could be cancelled with a notice issued before the due date / cancellation date of the premium and the cancellation was upheld.

The facts of Stringer closely mirror those of the instant case. Both insured's were provided notice of cancellation for failure to pay premiums 15 day in advance of the ultimate due date / cancellation date. Both insureds failed to pay premiums by that date and were both in accidents shortly thereafter. As in Stringer, this Court should find that failure to pay premiums under notice of cancellation, in compliance with the 15 day notice requirement of §38-77-120, is an effective cancellation of the subject insurance policy.

2. The Court of Appeals Was Correct in Upholding The Circuit Court's Finding That United Complied with §56-10-280.

Appellants once more attempt to torture the plain meaning of a statute in their argument that §56-10-280 requires an insurer not cancel a policy for at least thirty days after a missed payment if within the first sixty days of the policy. §56-10-280(A)(4) provides that a policy of insurance may be canceled within the first sixty days when the insured fails to pay the premium when due and that the policy must remain in effect for at least thirty days. Appellants contend that the last term is ambiguous and should be interpreted to require that the policy stay in force for another 30 days.

The plain language of the statute allows that during the first 60 days of a new insurance policy, an insurer may cancel a policy for the failure of an insured to pay premiums. The statute limits this right to cancel for failure to pay premiums by requiring that the policy stay in force for at least 30 days. The Legislature could have added the term "an additional" 30 days if that was their intent. That the Legislature simply stated, "the contract or policy of insurance must remain in effect for at least thirty days" indicates that the policy need only be in force *in total* 30 days.

The term "at least" indicates that the intent of the Legislature was to ensure that every policy would have to be in force for the first 30 days despite issues with payments of premiums. This goal serves the public policy, which Appellants reference, in favor of insurance coverage for automobile insurance risks. There is no need to torture the language of the statute to effectuate an additional 30 days of coverage after an insured has failed to make a premium payment.

CONCLUSION

The Court of Appeals properly upheld the decision of the Circuit Court that United had complied with all applicable statutes in the cancellation of the relevant insurance policy. Therefore, there was no policy which could provide coverage to Appellants. Appellants have been unable to show that §38-77-120 or §56-10-280 provided an additional 15 days or 30 days, respectively, of free coverage to insureds that failed to pay their premiums when due. Instead, §38-77-120 simply requires that an insurer issue a notice of cancellation 15 days *in advance* of the date of cancellation. Additionally, §56-10-280 simply requires that during the first 60 days of a policy, an insurer may cancel the policy for nonpayment of premiums after the first 30 days. United has clearly complied with the plain terms of these unambiguous statutes.

Therefore, for the foregoing reasons Respondent respectfully requests that the Court deny Appellant's Petition for Writ of Certiorari.

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PROOF OF SERVICE

I hereby certify that I served one copy of the **RETURN TO PETITION FOR WRIT OF CERTIORARI,** by depositing it in the United States Mail, postage prepaid, on February 2, 2018 addressed to the Petitioners, as follows:

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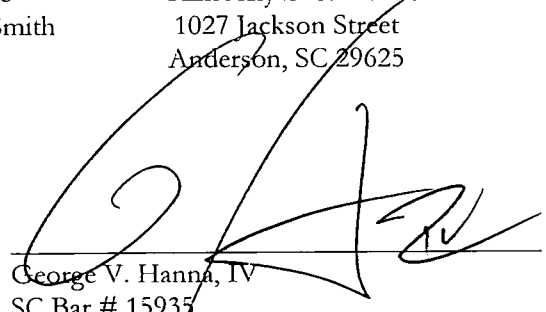

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