

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Roger E. Henderson, Circuit Judge

Case No. 2014-CP-16-1027

James Lee Williams, Personal Representative
Of the Estate of Mary Frances Williams,Respondent

Vs.

South Carolina Farm Bureau Mutual Insurance Company.....Appellant

INITIAL BRIEF OF APPELLANT

RECEIVED

OCT 02 2018

SC Court of Appeals

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QUESTIONS PRESENTED

QUESTION ONE

DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT FOR WILLIAMS BECAUSE THE PHRASE “DESIGNED FOR USE ON THE PUBLIC ROADS” IS NOT AMBIGUOUS UNDER THE FACTS OF THIS CASE AND THE ATV IS CLEARLY NOT DESIGNED FOR USE ON THE PUBLIC ROADS.

QUESTION TWO

DID THE LOWER COURT ERR IN FAILING TO GRANT SUMMARY JUDGMENT TO SCFB AS THE ONLY EVIDENCE BEFORE THE COURT WAS THAT THE ATV WAS NOT DESIGNED FOR USE ON PUBLIC ROADS.

STATEMENT OF THE CASE

Respondent, James Williams, (Williams) as Personal Representative of the Estate Mary Frances Williams, brought this suit on an automobile insurance contract issued by Appellant South Carolina Farm Bureau Mutual Insurance Company (SCFB) seeking to recover Uninsured Motorist Insurance Benefits arising from a motor vehicle accident involving negligent operation of an All-Terrain Vehicle (ATV). The Complaint was filed December 19, 2014. SCFB answered denying the material allegations of the Complaint and specifically denying that the ATV was an uninsured vehicle under the SCFB policy. The South Carolina Farm Bureau Mutual Insurance Company policy defines “A Motor Vehicle” as follows:

10. Motor vehicle means a self propelled vehicle or trailer designed for use on public roads.

A motor vehicle does not include:

- a. tractor engines;
- b. road rollers;
- c. farm tractors;
- d. tractor cranes;
- e. power shovels;
1. well drillers;
- g. electric trolleys; or
- h. vehicles designed to operate on rails or crawler treads.

The case came before Judge Roger Henderson of the Darlington County Court of Common Pleas on November 28, 2017 on cross motions for summary judgment by the parties. Judge Henderson granted summary judgment in favor

of Williams by order dated January 18, 2018 and received by SCFB on January 29, 2018. SCFB filed a motion to alter or amend the judgment on February 8, 2018. Judge Henderson denied the motion to alter or amend by order dated July 23, 2018 and received by SCFB on July 24, 2018. SCFB served it Notice of Appeal on August 22, 2018.

ARGUMENT

QUESTION ONE

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR WILLIAMS BECAUSE THE PHRASE “DESIGNED FOR USE ON THE PUBLIC ROADS” IS NOT AMBIGUOUS UNDER THE FACTS OF THIS CASE AND THE ATV IS CLEARLY NOT DESIGNED FOR USE ON THE PUBLIC ROADS.

Williams has the burden of proof in establishing coverage under the insurance policy. The complaint alleges that the at-fault vehicle was an ATV (paragraph 5) and that the policy defined a motor vehicle as a “self-propelled vehicle or trailer designed for use on the public roads.” (paragraph 7) Section 38-77-30 (9) of the South Carolina Code of Laws defines Motor Vehicle as a “self-propelled vehicle which is designed for use upon a highway....”

I. DESIGNED FOR USE ON PUBLIC ROADS

Defendant submitted the affidavit of Don Miller. (Affidavit of Miller) Mr. Miller has worked for many years selling motorcycles and ATVs. His affidavit establishes that ATVs are not designed for use on public roads and that the operator’s manual for the ATV states that it is not designed for use on public roads. The manual contains warnings that the ATV is not to be used on public roads. An ATVs high center of gravity and low pressure tires mean they are likely to tip over or go out of control on pavement. (Affidavit of Miller) The manual warns that the design features of the ATV make it dangerous to use, both on paved surfaces and dirt roads. SCFB also submitted the report of the South Carolina Highway Patrol MAIT team (exhibit). The report establishes that the

ATV was a 2006 Kawasaki and Mr. Miller identified it as a Brute Force model and identified the warning from the owner's manual.

An all terrain vehicle (ATV), also known as a quad, quad bike, three wheeler, or four wheeler, is defined by the American National Standards Institute (ANSI) as a vehicle that travels on low pressure tires, with a seat that is straddled by the operator, along with handlebars for steering control. As the name implies, it is designed to handle a wider variety of terrain than most other vehicles.

The MAIT team report shows the 2006 ATV was not licensed for use on the public highways of South Carolina.

The 2006 ATV was not equipped for legal use on the public highways of South Carolina.

The ATV is unambiguously not designed for use on public roads as it incorporates design features incompatible with road use.

II. AMBIGUITY

The trial court held that the phrase "designed for use on public roads" was ambiguous. The court incorrectly applied the rules of contract interpretation to create an ambiguity and conflate "designed for use on public roads" with "capable of being driven on public roads".

Contracts of insurance, like other contracts, should be interpreted according to general rules of construction and the language employed is to be understood in its plain, ordinary and popular sense. *Gambrell v. Travelers Ins. Cos.*, 280 S.C. 69, 310 S.E.2d 814 (1983); *Helton v. St. Paul Fire and Marine Ins. Co.*, 286 S.C. 220, 332 S.E.2d 776 (Ct.App.1985). [298 S.C. 407] "Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract." *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975). "[I]n

construing an insurance contract, all of its provisions should be considered, and one may not, by pointing out a single sentence or clause, create an ambiguity." *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976). "A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one." *Gordon Farms, Inc. v. Carolina Cinema Corp*, 294 S.C. 158, 160, 363 S.E.2d 235, 236 (Ct.App.1987).

Universal Underwriters Ins. Co. v. Metropolitan Property and Life Ins. Co., 298 S.C. 404, 380 S.E.2d 858 (S.C. App., 1989)

The Court's interpretation of "designed for use on public roads" as meaning "capable of being operated on public roads" makes the "designed for" language use meaningless, and is not a reasonable construction of the language of the policy or statute. On this issue the Court cited *Crider v. Zurich Ins. Co.*, 474 S.E.2d 89, 222 Ga.App. 177 (Ga. App., 1996) That case was about sovereign immunity and a general liability policy, not a motor vehicle liability policy. In *Pate v. Turner County*, 291 S.E.2d 400, 162 Ga.App. 463 (Ga. App., 1982) it was held that a vehicle which was required to be driven on earth rather than pavement was not a motor vehicle under Georgia law. Both *Gov't Emps. Ins. Co. v. Kralick*, 12 FCDR 143, 313 Ga.App. 492, 722 S.E.2d 107 (Ga. App., 2012) and *Mason v. Allstate Ins. Co.*, 680 S.E.2d 168, 298 Ga. App. 308 (Ga. App., 2009) conclude that ATVs are motor vehicles designed principally for recreational use off public roads. It is worth noting that *American Family Mut. Ins. Co. v. Peck*, 169 S.W.3d 563 (Mo, 2005) cited by the lower court in its order actually involved a homeowner's insurance policy that only provided coverage if the ATV was considered to be designed principally for recreational use off public roads. The actual dispute was whether or not New York required the ATV to be registered. By the lower court's standard, a propeller driven airplane would qualify since it is

capable of being driven on a roadway. The Court incorrectly found the policy language to be ambiguous.

QUESTION TWO

THE TRIAL COURT ERRED IN FAILING TO GRANT SUMMARY JUDGMENT TO SCFB AS THE ONLY EVIDENCE BEFORE THE COURT WAS THAT THE ATV WAS NOT DESIGNED FOR USE ON PUBLIC ROADS.

As argued above, SCFB produced evidence that the ATV was not designed for use on public roads. Because the ATV was not designed for use on public roads it did not qualify as a motor vehicle as defined by the SCFB policy and the South Carolina Insurance Code. Williams failed to meet his burden of setting forth facts which would establish coverage under the policy and the Court erred in failing to grant SCFB summary judgment.

CONCLUSION

SCFB produced evidence that the ATV involved in this accident was not designed for use on public roads and was unsuitable and dangerous for such. The SCFB insurance policy and the definition of “motor vehicle” in the S.C. insurance code are unambiguous. The Trial Court erred in granting summary judgment to Respondent and failing to grant Judgment to Appellant.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louis D. Nettles", with a long horizontal flourish extending to the right.

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October 1, 2018

The Honorable Jenny Abbott Kitchings
Clerk, The South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Williams as PR v. South Carolina Farm Bureau Mutual Insurance Co
2014-CP-16-1027
Appellate Case: 2018-001546

Dear Ms. Kitchings;

Enclosed please find a copy of Appellant's Initial Brief along with the Designation of Matters to be included in the Record on Appeal and a Certificate of Service..

With kind regards, I am,

Yours very truly,

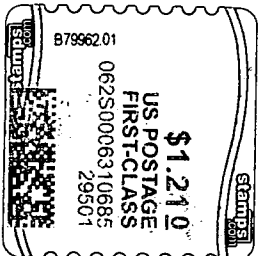

Louis D. Nettles

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cc: William E. Hopkins, Jr. Esq
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