

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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OCT 30 2018

S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Benjamin H. Culbertson, Circuit Court Judge

CASE NO.: 2018-001679

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

vs.

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

OF WHOM:

Michael David Harrelson and Devora Harrelson are..... Petitioners
and
Government Employees Insurance Company is.....Respondent

RESPONDENT GOVERNMENT EMPLOYEES INSURANCE COMPANY'S RETURN TO
PETITIONERS' PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Appellants have petitioned for a writ of certiorari to the Court of Appeals based on a number of questions presented regarding the application of specific case law. For the reasons set forth herein, Respondent Government Employees Insurance Company (“GEICO”) submits that these questions do not merit review, and that the Court of Appeals did properly interpret, apply, and/or distinguish the relevant law in this case.

STATEMENT OF THE CASE/FACTS

South Carolina Farm Bureau Mutual Insurance Company (“SCFB”) brought this action against Defendants Michael David Harrelson, Devora Harrelson, Kevin Duke, and Government Employees Insurance Company (“GEICO”) seeking a declaration that SCFB has no liability to pay any claims arising from a December 21, 2012 altercation between Defendants Harrelson and Defendant Duke. (R. p. 41). GEICO sought a similar coverage declaration in its companion case, GEICO v. Harrelson, et al., C.A. No.: 2016-CP-26-424; to wit, that neither Kevin Duke, Michael David Harrelson, nor Devora Harrelson have any valid claims for coverage from GEICO in the form of a legal defense, indemnity, or insured damages under the insurance policy issued to Kevin Duke by GEICO related to an underlying tort action styled Harrelson v. Duke, C.A. No.: 2015-CP-26-6601. (R. pp. 23, 27). The SCFB and GEICO actions were consolidated for discovery and trial by consent order dated May 5, 2016. (R. p. 21). GEICO moved for summary judgment in these consolidated matters. (R. p. 58).

The matter came before the Circuit Judge Benjamin Culbertson for a hearing on February 27, 2017. (R. p. 94). Judge Culbertson granted the summary judgment motions of both SCFB and GEICO. (R. pp. 5, 11, 17, 19). Michael and Devora Harrelson petitioned for reconsideration on

March 27, 2017. (R. p. 90). Judge Culbertson denied this motion, and a similar motion filed with respect to SCFB, by order dated May 3, 2017. (R. p. 1). This appeal followed. On June 27, 2018, the Court of Appeals' affirmed the lower court's decision. On August 16, 2018, the Court of Appeals denied Petitioners' Petition for Rehearing. This Petition followed.

On December 21, 2012, Kevin Duke, Michael Harrelson, and Devora Harrelson were involved in an altercation in a Wal-Mart parking lot in Myrtle Beach, South Carolina. While the parties testified to notably different versions of the encounter, these factual issues were not determined by the lower court, and do not preclude summary judgment. The facts as agreed by the parties patently exclude coverage under the GEICO policy.

According to Devora Harrelson, on Friday, December 21, 2012, just before 6 p.m., she and her husband Michael went to Wal-Mart. (R. pp. 131-133). Very few parking spots were available, and they decided to wait for a spot close to the door. Mrs. Harrelson got out of the car while her husband waited on the customer to vacate the spot. (R. p. 133). She rolled a shopping cart to the front of the parking row when she heard a car horn. (R. p. 134). She turned and observed a car behind her husband's car, beeping its horn and flashing its lights. (R. p. 135).

Michael Harrelson testified that once his wife got out of the car, Mr. Duke drove up behind him, flashed his lights, revved his engine, and slammed on the brakes close to the rear of his car. (R. pp. 216-217). At that point, the customer occupying the space Mr. Harrelson was waiting for pulled forward, and Michael Harrelson pulled into that spot. (R. pp. 135, 217).

According to Mrs. Harrelson, Mr. Duke pulled up behind Mr. Harrelson's car after Mr. Harrelson pulled into the parking spot. (R. p. 137). Michael Harrelson exited his car and walked to where she was standing. (R. p. 138).

According to Mrs. Harrelson, Mr. Duke exited his vehicle and punched Mr. Harrelson. (R. pp. 139, 218). She confirmed that Mr. Duke's vehicle was in park, and that he took several steps outside his vehicle to reach and strike Michael Harrelson. (R. p. 139). Mr. Harrelson confirmed that Mr. Duke had parked his vehicle and was completely out of his vehicle when he struck him. He also confirmed that Mr. Duke was not using his vehicle for transportation during the altercation, and he did not use the car to hit Mr. Harrelson. (R. p. 219).

Mrs. Harrelson testified that Michael Harrelson "did not get anywhere near Mr. Duke's car," but stood beside her. (R. p. 140). According to Mrs. Harrelson, "Michael was pushing back at him. And they ended up walking with the force back over towards his [Duke's] car." (R. pp. 140-141). She stated that Mr. Duke then pinned Mr. Harrelson against the back of his car and continued to try to hit his face from behind. (R. p. 141). Mr. Duke got back into his car and drove away after Mrs. Harrelson called 911. (R. p. 146).

Mrs. Harrelson admitted the following facts in her deposition: (1) all of the altercation took place outside of Kevin Duke's vehicle; (2) Mr. Duke's car was stationary during the altercation; (3) Mr. Duke's actions were intentional; and (4) Mr. Duke's car was not being used for transportation when the altercation occurred. (R. pp. 146-148). Specifically, she testified that "it would be almost impossible for him to be driving a vehicle and beating somebody on the outside of it all at the same time. So it couldn't have been transporting him at the time." (R. p. 163).

Mr. Harrelson agreed that Mr. Duke's actions were not foreseeable in the normal use of a vehicle. (R. p. 224). He claimed that Mr. Duke used his vehicle as a "weapon" because he allegedly pinned him against it and hit him, but he agreed that he was not using it for transportation. (R. p. 224). He also agreed that Mr. Duke's actions were intentional. (R. p. 251).

All parties agreed that the video evidence submitted of the three Wal-Mart security videos were accurate representations of the incident. (R. pp. 149-150, 153-154, 222-223, 282, 284, 287). The videos established the following: (1) Mr. Duke never used his vehicle to touch or block the Harrelsons' vehicle, (2) the Harrelsons approached the driver's side of Mr. Duke's vehicle – the side opposite their car - while Mr. Duke was still inside; (3) after they approached, Mr. Duke parked, exited his vehicle, and an altercation ensued, completely outside Mr. Duke's vehicle, and not involving Mr. Duke's vehicle; and (4) the entire incident from Mr. Duke exiting his car to alighting and closing the door to his car again lasted approximately 30 seconds.

ARGUMENT

I. The Court of Appeals' Opinion Complied with Rule 220(b), SCACR.

Rule 220(b), SCACR requires the Court of Appeals to address every point distinctly raised in the appeal that is necessary to the decision to be stated in the opinion, with the reason for the decision thereon. The Court of Appeals' decision comports with this rule by setting forth the Court's ruling on both GEICO and Farm Bureau's liability under the Motor Vehicle Financial Responsibility Act, S.C. Code Ann. § 56-9-10, et seq. and/or under S.C. Code Ann. § 38-77-140(A). These determinations are accompanied by citation to specific supporting case law, and parentheticals setting forth the holdings of these cases that support the Court's affirmation. There is no merit to Petitioners' argument that the Court of Appeals' opinion did not comply with Rule 220. In fact, Petitioners' own Petition for Writ of Certiorari acknowledges the various specific grounds determined by the Court of Appeals by citing and appealing the same to this Court.

II. The Court of Appeals Properly Applied the Summary Judgment Standard, and Properly Applied the Law to the Facts of this Case.

The trial court properly found, the Court of Appeals properly affirmed, that neither Michael and Devora Harrelson are entitled to recover under the GEICO policy that insured Mr. Duke's vehicle at the time of the December 21, 2012 Wal-Mart parking lot altercation.

Petitioners have sought to twist the plain language of the law and the undisputed facts of this case to create a complicated issue that simply does not exist.

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. (R. p. 345).

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 Wausau Underwriters v. Howser, 309 S.C. 269, 422 S.E.2d 106 (1992) - which Petitioners continue to tout in support of their coverage claim - the court held that the vehicle in question was an active accessory to a gunshot injury that occurred when a person fired the shot

from one moving vehicle into another. The court emphasized that this was not a case where the assailant merely used the vehicle to travel to the site of the assault, or where the assault happened to be in a stationary vehicle while committing the assault. Rather, the gunshot was the culmination of an ongoing assault in which the vehicle played an essential role in chasing down the victim. Compare, Bookert, 337 S.C. at 293, 523 S.E.2d at 182 (1999) (holding that a pedestrian’s injuries from gunshots fired from inside a vehicle were not causally connected to the vehicle, and therefore did not arise from the ownership, maintenance, or use of a vehicle).

Here, the parties have all admitted and the record is clear that none of the injuries occurred while any of the parties were travelling in the GEICO-insured vehicle. The record is equally clear that Mr. Duke parked and exited the vehicle prior to the altercation. There was no car chase. The facts are clearly distinguishable from Wausau. Even assuming as true Petitioners’ testimony that Mr. Duke pinned Mr. Harrelson against his vehicle at some point during the fight, the law is clear that a vehicle is not causally connected to an injury by being “the mere site” of an injury. Wausau, 309 S.C. at 273, 422 S.E.2d at 108 (“The causation required is . . . something more than the vehicle being the mere site of the injury.”); 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).

Further, even if Mr. Duke’s vehicle had somehow been causally related to the assault, there is no question in the record that **it was not being used for transportation at the time of the altercation.** First, Mr. Duke testified that he parked the car and got out to confront Mr. Harrelson in the parking lot after being threatened. (R. p. 274). Second, the Harrelsons both confirmed that all of the altercation took place outside of Kevin Duke’s vehicle, and that his vehicle was parked during the altercation and not being used for transportation when the altercation occurred. (R. pp.

146-148, 163, 224). Mr. Harrelson also testified that he did not believe Mr. Duke's actions were foreseeable in the normal use of a vehicle. (R. p. 224). To round out this overwhelming evidence, the video evidence submitted herewith bears out these facts, and the parties agree that it is an accurate representation of the events of the evening of December 21, 2012. (R. pp. 149-150, 153-154, 222-223, 282, 284, 287, 374).

Finally, the cases of South Carolina Farm Bureau Mutual Ins. Co. v. Mumford, 299 S.C. 14, 382 S.E.2d 11 (1989) and State Farm Mutual Ins. Co. v. Moorer, 330 S.C. 46, 496 S.E.2d 875 (Ct. App. 1998), contrary to Appellants' urging, are inapposite.

Mumford specifically held that the automobile liability insurance coverage statute "draws no distinction between intentional acts and negligent acts of the insured." Rather, it mandates coverage for all liability imposed by law under § 38-77-140. This section specifically provides that "[a]n automobile insurance policy may not be issued or delivered in this [s]tate . . . unless it contains a provision insuring the persons defined as insured against loss from the liability imposed by law for damages **arising out of the ownership, maintenance, or use of [the] motor [vehicle].**" (emphasis added). South Carolina Farm Bureau Mutual Ins. Co. v. Mumford, 299 S.C. 14, 17-18 382 S.E.2d 11, 13 (1989). GEICO's position has and continues to be that the damages caused by Kevin Duke did not arise out of the ownership, maintenance, or use of his vehicle. His intent was irrelevant.

GEICO has never, and does not now, rely upon the fact that Mr. Duke's acts were intentional to shield it from coverage. It makes no argument that intentional acts are excluded from its liability coverage. However, the mere fact that Mr. Duke's acts were intentional does not mandate coverage either, as Petitioners seem to urge. They still must meet the standard that the act

– whether accidental or intentional – arose from the ownership, maintenance, or use of a vehicle. As detailed fully herein, they did not meet this test, and cannot recover under the GEICO policy.

CONCLUSION

The trial court properly construed the facts of record in the light most favorable to the nonmoving parties, and found that there is no evidence of the legally-required causal connection between Mr. Duke’s vehicle and the Harrelsons’ alleged injuries. Mr. Duke’s vehicle was parked and the entire altercation took place outside of the vehicle. As much as Petitioners seek to complicate this case with respect to GEICO’s coverage, it is not complex at all. A fight that occurred after both parties voluntarily alighted from their vehicles simply does not meet the well-established standard for an action arising out of the ownership, maintenance, or use of a vehicle under South Carolina law. GEICO submits that the trial court therefore properly granted summary judgment in its favor, and the Court of Appeals properly affirmed this decision. GEICO requests that the Supreme Court dismiss this Petition.

Respectfully submitted,


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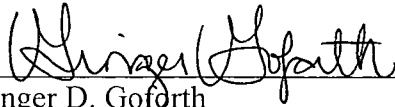
Michael David Harrelson and Devora Harrelson are..... Petitioners
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PROOF OF SERVICE

The undersigned hereby certifies that the Respondent, Government Employees Insurance Company's Return to Petition for Writ of Certiorari to the Court of Appeals was served upon all parties of record on October 26, 2018 by depositing copies of the same via process service and/or United States mail, postage affixed, to the following address:

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