



The South Carolina Court of Appeals

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November 16, 2018

The Honorable Renee Elvis
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: Donna Jensen v. Matthew B. Wiseman
Lower Court Case No. 2014CP2602463
Appellate Case No. 2015-002095

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Thomas C. Brittain, Esquire
Susan Taylor Wall, Esquire
Mary Madison Brittain Langway, Esquire

George M. Hearn, Jr., Esquire
Henry Wilkins Frampton, IV, Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Donna Jensen, Appellant,

v.

Matthew B. Wiseman and Peoples Underwriters, Inc.,
Respondents.

Appellate Case No. 2015-002095

Appeal From Horry County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2018-UP-401
Heard June 6, 2018 – Filed October 31, 2018

AFFIRMED

George M. Hearn, Jr., of Hearn & Hearn, PA, of
Conway; and Mary Madison Brittain Langway and
Thomas C. Brittain, both of The Brittain Law Firm, P.A.,
of Myrtle Beach; all for Appellant.

Henry Wilkins Frampton, IV and Susan Taylor Wall,
both of Gordon & Rees LLP, of Charleston, for
Respondents.

An implied undertaking may be shown if: (1) the agent received consideration beyond a mere payment of the premium, (2) the insured made a clear request for advice, or (3) there is a course of dealing over an extended period of time which would put an objectively reasonable insurance agent on notice that his advice is being sought and relied on.

Id. (citations omitted).

Jensen presented no evidence that she sought Wiseman's advice in procuring the Policy—Jensen merely stated she trusted Wiseman because he was a "professional." *See Houck v. State Farm Fire & Cas. Ins. Co.*, 366 S.C. 7, 16, 620 S.E.2d 326, 331 (2005) (holding insurance agent did not owe a duty to the insured because "the record is simply devoid of any such evidence" showing the insured made "a clear request for advice"). "A request for 'full coverage,' 'the best policy,' or similar expressions does not place an insurance agent under a duty to determine the insured's full insurance needs, to advise the insured about coverage, or to use his discretion and expertise to determine what coverage the insured should purchase." *Trotter*, 297 S.C. at 472, 377 S.E.2d at 347. Likewise, there is no evidence of an ongoing relationship between Jensen and Wiseman such that Wiseman should have been on notice that Jensen sought and relied on his advice. Wiseman first reached out to Jensen in April 2010, a little over one year before the accident, and Wiseman and Jensen communicated only briefly about the Policy.

Until the circuit court sua sponte raised the question of the existence of Jensen's "insurable interest," Jensen presented no evidence that she informed Wiseman or the Agency that the Daycare Buses were titled in both Jensen's name and the Daycare's name. Prior to procuring the Policy, the Daycare had insurance coverage through Progressive; all Progressive policies listed the Daycare as the named insured. The commercial insurance application, which Jensen signed to procure the Policy, listed the Daycare as the named insured. The application provided a space to list "additional interests" in the Daycare Buses. No such information was provided. Although the application specifically asked whether "any vehicles [were] not solely owned by and registered to the applicant," no response was given. At her deposition, Jensen initially claimed the Daycare Buses were titled in her and her husband's names. However, when Respondents asked Jensen if the Daycare Buses were titled in her name, she responded, "I'd have to look. I know my name is attached to everything, but I don't know how it's titled."

name of the Daycare and that worker's compensation insurance would provide the coverage applicable to a workplace injury such as Jensen's. Although the Agency offered workers compensation coverage, "Jensen was not interested in purchasing worker's compensation insurance through [the Agency]." Finally, Powell averred that based on his forty-two years in the insurance industry and his review of the relevant documents, it was his opinion "to a reasonable degree of certainty under the standards applicable to independent insurance agents, that [Respondents] complied with the standard of care in placing insurance for the Daycare and did not breach any duty." Jensen did not provide a contradictory opinion or other expert testimony addressing the standard of care or duty question.

As Jensen failed to present a "mere scintilla" of evidence to support her assertion that Wiseman undertook to advise her—either expressly or impliedly—or that Wiseman or the Agency otherwise had—or breached—any duty to advise her to list herself individually on the commercial Policy, the circuit court properly granted summary judgment.

The circuit court's grant of summary judgment is

AFFIRMED.

HUFF, GEATHERS, and MCDONALD, JJ., concur.