

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

The Honorable John C. Hayes, III
Circuit Court Judge

Case No. 2011-CP-46-00021

State Farm Fire and Casualty Respondents,
Phyllis Paden-Adams and Alonzo Adams. Appellants.

APPELLANTS' REPLY BRIEF

August 7, 2012

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TABLE OF CONTENTS

Table of Authorities	ii
I. The Adams did not waive or abandon any arguments that this court need consider.	2
II. State Farm’s arguments concerning alternative sustaining grounds are without merit and should be entirely disregarded in the interest of justice.	4
Conclusion	5

TABLE OF AUTHORITIES

CASES

Dowling v. Home Buyers Warranty Corp., II, 303 S.C. 295, 400 S.E.2d 143 (1991)3

I'On, LLC v. Town of Mount Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) 4

4836-1516-7247, v. I

REPLY TO RESPONDENTS' BRIEF

Appellants believe that they have adequately set forth their arguments on appeal in Appellants' Initial Brief, and will not repeat those arguments in this reply brief. Appellants do, however, take this opportunity to reply briefly to the Respondents' arguments.

I. The Adams did not waive or abandon any arguments that this court need consider.

Despite State Farm's best efforts to muddy the waters, this appeal concerns a very narrow issue - did the trial court err when it determined, as a matter of law, that Ms. Adams could not recover UIM benefits solely because the vehicle which caused her injuries "was not 'being used for transportation purposes at the time of [her] injury.'"? (R. p. 12). State Farm attempts to distract this court from Judge Hayes' candid and legitimate criticism of Aytes and Peagler by, in essence, re-arguing its entire motion for summary judgment on appeal. State Farm conveniently ignores the fact that the trial court initially ruled *against* State Farm, when it found "there are genuine issues of material fact relative to whether or not under their policy the Defendants are entitled to underinsured motorist coverage" (R. p. 7). In order to reach that finding, the trial court must have determined that there was sufficient evidence in the record to create a material issue of fact as to whether:

- there was a causal connection between the vehicle and the injury;
- no act of independent significance broke the causal link between the vehicle and the injury; and
- the vehicle was being used for transportation purposes at the time of the accident.

On reconsideration, the trial court only reversed itself on a single factor – applying Aytes, it determined that Ms. Adams could not recover UIM benefits because the vehicle which

allegedly caused the accident “was not ‘being used for transportation purposes at the time of the injury’” (R. p. 12). In so ruling, the court made clear that it felt the judicially-established test expressed in Aytes was “wrongly” decided. Id. n. 1.

State Farm’s suggestions that Ms. Adams has somehow “abandoned” arguments on appeal, or that the record provides additional sustaining grounds for the trial court’s decision mischaracterizes the record, the procedural posture, and the findings below. As the non-moving party defending a motion for summary judgment, Ms. Adams was not required to prove each of the elements that would entitle her to UIM coverage under her policy. Dowling v. Home Buyers Warranty Corp., II, 303 S.C. 295, 297-98, 400 S.E.2d 143, 144 (1991). Rather, Ms. Adams was entitled to have State Farm’s motion for summary judgment denied by merely showing the existence of factual issues which, *if resolved in Ms. Adams’ favor*, would entitle her to UIM benefits under her policy. Id.

The trial court did not grant summary judgment to State Farm after finding no issue of material fact existed as to whether there was a causal connection between the underinsured vehicle and Ms. Adams’ injury. Nor did the trial court grant summary judgment because it found no issue of fact as to whether an act of independent significance broke the causal link between vehicle and injury. Rather, as its orders make clear, the trial court granted summary judgment *despite* the presence of those disputed factual issues. The *only* reason the trial court granted summary judgment to State Farm was because the vehicles that caused Ms. Adams’ injuries “were not being used for transportation purposes at the time of her injury.” (R. p. 12). In so ruling, the trial court applied a test with which it clearly did not agree. *See* R. pp. 5; 12 n.1. State Farm’s “shotgun” approach on appeal is merely an attempt to obfuscate the real issue before this court.

II. State Farm's arguments concerning alternative sustaining grounds are without merit and should be entirely disregarded in the interest of justice.

An appellate court should consider a respondent's arguments for additional sustaining grounds only when the court is convinced that it would be proper and fair to do so. I'On, LLC v. Town of Mount Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 724 (2000). An appellate court should disregard arguments concerning additional sustaining grounds when the court believes it would be unwise or unjust to consider those arguments. Id.

As evidenced by the fact that the trial court issued three orders attempting to address the same legal issue and completely reversed itself in the process, this case does not present a straightforward summary judgment analysis. Furthermore, given the limited factual findings and the fact that the trial court itself acknowledged that the record was not fully developed when State Farm sought summary judgment, this court should decline State Farm's invitation to affirm the trial court through additional sustaining grounds. I'On at 420, 526 S.E.2d at 724 (R. p. 5).

The net effect of the trial court's three orders is a candid and legitimate criticism that a literal application of the Aytes test simply does not apply to the facts of this negligence case. In fact, the clear message of the trial court's orders seems to be that all of the elements to survive summary judgment under Aytes were met, with the only exception being the last prong concerning the timing of the tortious use of the vehicle. In fact the Court implied, if not directly stated, had the third prong in Aytes focused on the use of the vehicle at the time of the tortious conduct rather than the resulting injury, summary judgment in favor of State Farm never would have been granted:

It appears the instant fact pattern has not been addressed in South Carolina. As noted in its previous order [September 24, 2001 Order

Denying Summary Judgment], the Court feels the Aytes test wrongly focuses on the time of the injury, not the time of the tortious conduct. The facts of this case are very distinct from the assault cases which led to the formation of the Aytes test. By focusing on the time of the injury the Aytes test positively precludes underinsured motorist coverage for accidents which arise out of the use, maintenance or ownership of a vehicle, so long as the vehicle responsible for the accident is not being used for transportation at the time of the injury.

(R. p. 12 n.1; *see also* R. P. 7). For the reasons stated above, the Adams respectfully request that this court restrict its review and analysis to the factual determinations and legal issues squarely addressed by the trial court in its written opinions.

CONCLUSION

For the reasons set forth in Appellants' principal brief, the Adams submit the trial court erred in holding they were ineligible to receive UIM benefits as a matter of law. This court should reverse the trial court's determination and remand this case for trial.

August 6, 2012.



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
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The Honorable John C. Hayes, III
Circuit Court Judge

Case No. 2011-CP-46-00021

State Farm Fire and Casualty Respondents,

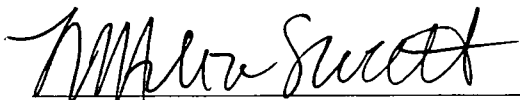
Phyllis Paden-Adams and Alonzo Adams. Appellants.

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens & Ballou, LLC certifies that the Appellants' Final Reply Brief was served upon other counsel of record by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

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August 7, 2012



L. Melia Sweatt

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
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The Honorable John C. Hayes, III
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Case No. 2011-CP-46-00021

State Farm Fire and Casualty Company Respondents,

vs.

Phyllis Paden-Adams and Alonzo Adams. Appellants.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Reply Brief complies with Rule 211(b).

August 7, 2012.



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August 7, 2012

VIA FEDERAL EXPRESS

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RE: *State Farm Fire and Casualty Company vs. Phyllis Paden-Adams
and Alonzo Adams*
C/A No.: 2011-CP-46-00021

Dear Ms. Kitchings:

I have enclosed the original and fifteen (15) copies each of Appellant's Final Brief, Appellant's Final Reply Brief and Record on Appeal in connection with the above-referenced matter. The Briefs have Proofs of Service included as well. Please file the original, fourteen copies and return one clocked copy of each to me in the envelope I have enclosed.

By copy of this letter, I am serving Appellant's Final Brief and Appellant's Final Reply Brief upon other counsel of record as evidenced by the enclosed Proofs of Service.

Thank you for your assistance in this matter.

Sincerely,


L. Melia Sweatt
Paralegal

/lms

Enclosures

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