IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal From Anderson County
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate (Court of Appeals) Case No. 2016-000679

Nationwide Mutual Fire Insurance Company, Respondent

v.

Sharmin Christine Walls, Randi Harper, Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms, Deborah Timms, Defendants

Of whom, Sharmin Christine Walls, Randi Harper and Wendy Timms in her capacity as Personal Representative of the Estate of Christopher Adam Timms, are the Petitioners.

Appellate Case No.: 2019-001596

PETITIONER'S BRIEF ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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STATEMENT OF ISSUES ON APPEAL

Whether the plain meaning and Legislative Pronouncement set forth in S.C. Code Ann. §38-77-142 (c) and Williams v Gov't Emp. Ins. Co. (GEICO) 409 SC 586, 762 S.E. 2nd 705 (2014) established the precedent to make void Nationwide's attempt to reduce the coverage stated in the declaration page of the policy.

STATEMENT OF THE CASE

This appeal arises out of a one vehicle automobile accident involving Korey Mayfield as a driver. Mayfield was driving a Chevrolet Lumina insured by Nationwide and owned by Respondent Sharmin Walls. Walls, Christopher Timms, and Randi Harper were passengers in the vehicle when State Trooper Travis Wilson observed Mayfield crossing the yellow line and speeding. Trooper Wilson activated his blue lights. Mayfield ultimately lost control of the vehicle and ran off the road in a single-car accident that caused Timms' death, and severe injuries to Walls and Harper.

The Nationwide policy insuring the Chevrolet Lumina provided liability limits of $100,000 per person and $300,000 per accident. However, the policy included a step-down provision limiting the coverage to the statutory minimum limits for automobile liability coverage if the insured driver was (1) fleeing a law enforcement officer or (2) in the commission of a felony. "(App. p. 34-37).

Nationwide tendered the minimum limits required by the South Carolina Financial Responsibility Act, a total of $50,000 to the Petitioners here. Nationwide then filed this declaratory judgment action seeking a declaration applying the commission of a felony and flight from law enforcement exclusions.

The case came before the Honorable J . Cordell Maddox, Jr. for a bench trial on September 12, 2013.

On August 18, 2014, the Circuit Court entered an Order in favor of Petitioners and against Nationwide (App. pp. 15-21). The Circuit Court found that Mayfield was a non-permissive user of the vehicle and, therefore, Petitioners were entitled to uninsured motorist coverage (App. p. 20).

On August 26, 2014, Nationwide served a Motion to Alter or Amend the August 18 Order. (App. pp. 87-88, 89-114). In particular, Nationwide argued that the Petitioners had failed to raise the issue of Mayfield's non-permissive use in their pleadings, and that Petitioners were precluded from seeking uninsured motorist coverage because they had previously recovered liability payments. (App. p. 90). Nationwide also argued that the Order misapplied South Carolina law, failed to make the key factual determinations of whether Mayfield was fleeing from law enforcement at the time of the accident and / or committing a felony, and made factual determinations that were not supported by the record (App. pp 92-96, 107-108).

The Circuit Court held a hearing on Nationwide's Motion to Alter or Amend on March 6, 2015. At the hearing Petitioners withdrew their contention that the uninsured motorist coverage applied. (App. p. 127 ln. 10-14). The Circuit Court found that Mayfield was fleeing from law enforcement at the time of the accident. (App. p. 126, lines12-17) and consequently entered an Order, on February 26, 2016, finding Mayfield was fleeing from law enforcement at the time of the accident and that his conduct constituted a felony. (App. p.9).

The Circuit Court ruled in favor of the Petitioners, based on the Supreme Court's recent decision in Williams v. Government Employees Insurance Company 409 S. C. 586, 762 S.E. 2d 705 (2014), which held that any provision in an automobile liability policy issued in South Carolina that reduces coverage from the amounts stated in the

declarations page of the policy is void and violates public policy because it is in direct contravention of the mandates set forth in South Carolina Code Ann. §38-77-142(c). (App. p. 10-14).

Nationwide appealed the Circuit Court's ruling to the Court of Appeals. The Court of Appeals held oral argument on October 3, 2018 and issued its ruling on June 5, 2019. (App. pp. 345-354).

In its decision, the Court of Appeals distinguished this case from Williams, *supra*, saying that in Williams the clause in the policy reduced coverage to a class of persons at the time of the issuance of the policy, while in the instant case coverage was only reduced as a result of conduct of the insured at a later time. The Court of Appeals further found that the step-down provision was not violative of public policy, reasoning, in part, that an insurer may exclude voluntary coverage for intentional acts.

After the Petitioners' Request for Rehearing was denied on August 22, 2019, the Petitioners timely filed a Petition for Certiorari with the South Carolina Supreme Court. The Petition for Writ of Certiorari was granted by the Supreme Court on February 12, 2020.

STATEMENT OF FACTS

The facts of this case were largely stipulated at trial. Walls owned a Chevrolet Lumina insured by Nationwide (App. p. 207). The policy provided liability limits of $100,000 per person, $300,000 per accident. (App. p.207). However, the policy contained an exclusion that applied to any coverage in excess of the State's mandatory minimum limits if bodily injury occurred while an insured was fleeing from law enforcement or committing a felony;

"B. This coverage does not apply, with regard to any amounts above the minimum limits required by the South Carolina Financial Responsibility Law as of the date of the loss, to:

6. Bodily injury or property damage caused by:
(a) you;
(b) a relative; or
(c) anyone else while operating your auto;
(1) while committing a felony; or
(2) while fleeing a law enforcement officer "

(App. pp 221-222).

On July 11, 2008, Walls, Mayfield, Harper and Timms had been at Walls' residence when they left as a group with Mayfield driving Walls' Chevrolet Lumina (App. pp 250-252). Trooper Travis Wilson observed the vehicle on South Carolina Highway 81 in Anderson, crossing the yellow line and going approximately 12 miles an hour over the speed limit. (App. pp. 112-114). Trooper Wilson decided to pull the vehicle over and activated his blue lights. (App. p. 112). Mayfield refused to stop and accelerated away from the Trooper. While driving down Highway 81 South, Trooper Wilson's vehicle reached speeds of 109 miles per hour in an effort to keep up with the Lumina (App. p 112-113).

After several turns on secondary roads, Trooper Wilson received instructions to terminate the pursuit, which he did. (App. p. 113). However, by the time Trooper Wilson deactivated his siren and blue lights, the Lumina was out of sight. (App. p 113).

Approximately a mile down the road, Mayfield lost control of the Lumina and ran off the road in a single vehicle accident. (App. p 113). Trooper Wilson came upon the scene within a minute-and-a-half of terminating the chase. (App. p 113). The Greenville

County Accident Reconstruction Team investigated and determined that Mayfield was traveling a minimum of 72 miles per hour when he lost control. (App. p 113). The speed limit on that portion of Leatherdale Road was 35 miles per hour (App. p 113). Timms died as a result of the accident, and Mayfield, Walls and Harper each sustained serious injuries.

Mayfield was charged with and ultimately pled guilty pursuant to North Carolina v. Alford 400 U.S. 25, 91 S.C. 160 (1970), to reckless homicide, a felony. (App. p 114). The Circuit Court made a factual determination that Mayfield was fleeing a law enforcement officer at the time of the accident (App. p 8). The Circuit Court based it's factual determination on damage to the vehicle, the speed of the vehicle at the time of the accident, the dash cam video, witness statements, and the timeline (App. pp 8-9). Even though Trooper Wilson had terminated the chase, the Circuit Court found that Mayfield's unlawful course of conduct and manner of driving continued up until the time of the crash.

Nationwide agreed to tender its $50,000 of undisputed liability coverage, which the Petitioners accepted. (App. pp 257-267); Furthermore, Mayfield had excess liability coverage under a policy of insurance issued by State Auto. State Auto also tendered its liability limits of $50,000. (App. pp. 24-26,27-30). Then, Nationwide filed a declaratory judgment action seeking application of the felony and "flight from law enforcement exclusions." (App. pp.37-43).

The Petitioners do not contest that Mayfield was fleeing law enforcement and committing a felony at the time. They maintain, however, that regardless of the language of the policy limiting coverage when an insured is fleeing law enforcement or

committing a felony, the step-down provision is void and violates public policy pursuant to South Carolina Code Ann. §38-77-142(c). (App. pp 10-14), and Williams, *supra*.

STANDARD OF REVIEW

"A suit for declaratory judgement is neither legal nor equitable, but is determined by the nature of the underlying issue." Felts v. Richland County 303 S.C. 354, 356, 400 S.E. 2d 781, 782, (1991). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." S.C. Farm Bureau Mut. Ins. Co. v. Kennedy 398 S.C. 604, 610, 730 S.E. 2d 862, 864 (2012) (citation omitted). "In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them" Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co., 395 S.C. 40, 46-47, 717 S.E. 2d 589, 592 (2011) (citation omitted); accord Townes Assocs. v. City of Greenville 266 S.C. 81, 86, 221 S.E. 2d 773, 775 (1976). See Williams v. Government Employees Ins. Co. (GEICO) 409 S.C. 586, 762 S.E. 2d 705 (2014). "However, an appellate court may make its own determinations on questions of law and need not defer to the trial court's rulings in this regard." Kennedy 398 S.C. at 610, 730 S.E.2d at 864. "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facrs." UWDW Props. V City of Sumter, 342 S.C. 6, 10, 353 S.E.2d 631, 632 (2000).

ARGUMENT

It is respectfully submitted that the Court of Appeals overlooked the specific holdings in the Williams case which exhaustively reviewed the law of this state and other states, and concluded that the statutory provision as set forth in S.C. Code Ann. §38-77-142(c) mandatorily voided any provision seeking to limit or reduce coverage to the named insured (Walls). The Court in Williams made **two specific rulings**.

First, it ruled that the clear terms of §38-77-142 (c) were controlling of this state's public policy and that the step-down provision conflicted with §38-77-142(c) and was therefore invalid and void, and that no policy may limit or reduce the coverage required by this section and if any attempt was made to do so, it was void... Williams at page 714.

. . ."We find the clear terms of section 38-77-142 are controlling of this state's public policy and justify the result we reach today." Williams, *supra*, at p. 716.

"The cardinal rule of statutory construction is for a court to ascertain the intent of the legislature and to give it effect. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed.1992). If a statute's language is plain, unambiguous, and conveys a clear meaning "the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey,* 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). This plain meaning rule ensures a court will not change the meaning of an unambiguous statute. *Id.*" Knotts v. S.C. Dep't of Nat. Res., 348 S.C. 1, 10, 558 S.E.2d 511, 516 (2002).

Second, the Court ruled that in addition to the above, the provision in Williams as to family members was arbitrary, capricious and injurious to the public good; the Court stating " **that in addition** [emphasis added] to allow an insurer to determine the extent to which an injured party can recover within the insured's policy coverage,

based solely on a familial relationship, is arbitrary, capricious and injurious to the public good".... See Williams at page 717.

The Court of Appeals focused solely on the Second basis for the ruling and ignored the plain meaning of the statute and Williams.

The Court of Appeals, in its opinion, further attempted to buttress its decision based upon S.C. Code §56-9-20. This view is similar to the dissenting opinion in Williams which was expressly rejected by the Supreme Court, and the Supreme Court by its majority decision in Williams, in footnote 8 made clear that §56-9-20, was limited to the MVFRA and thus, " had no bearing on the application of **other** [emphasis added] motor vehicle laws, such as §38-77-142, or the related consideration of our state's public policy" . (footnote 8, Williams at page 717)

We contend that the public policy of this state expressed by the Legislature, in §38-77-142 (c) prevents the insurer from reducing the coverage from the amount stated in the policy, which in this case was $300,000.00, to the statutory minimum limit required by §38-77-142(a), which was $25,000.00 per person for bodily injury the policy period at issue.

In Williams, the Supreme Court stated as follows:

> "The PR's contend the public policy of this state, as evidenced in §38-77-142, prevents an insurer from reducing the amount stated in the policy, which here was $100,000, to the statutory minimum limit required by the §38-77-140 (A), which was 15,000 per person for bodily injury during the policy period at issue. **We agree.** [emphasis added] See Williams, at page 712.

The Williams Court further specifically found and concluded as a matter of law as follows:

> "Finally, Subsection (c) provides that no policy provision may limit or reduce the coverage required by this section, which refers to §38-77-142, or it is void". See Williams, at page 714.

The Supreme Court further stated that insurance companies could not limit or reduce liability coverages below the amount provided in §38-77-142(c) and held that the face amount of the coverage was relevant, not the statutory minimum limits as set forth in §38-77-140. Williams, at page 714.

The Supreme Court was particularly focused on the manner in which automobile insurance was marketed, and recognized that the General Assembly in its specific language contained in §38-77-142(c) specifically included language to prevent step-down provisions such as appears in the Nationwide policy. The Court of Appeals has failed to recognize this distinction and has failed to follow the precedent of the Williams case, *supra*.

S.C. Code Ann. §38-77-142(c) is an unambiguous statement by the General Assembly of this State and the plain meaning of this statute must be enforced as was done in the Williams case, *supra*. Walls, the named insured, purchased the 100,000/300,000 limits. The Petitioners were essentially innocent victims of a "car-jacking". If the law is to be changed, that is for the Legislature, not the Court of Appeals. If the precedent set by Williams is to be overruled, it is the province of the Supreme Court of this State, not the Court of Appeals.

The personal representatives in Williams argued that public policy was violated by the provision in Williams on the basis that (1) the family step-down provision was in contravention of §38-77-142(c); and (2) that the provision is capable of producing harm such that its enforcement would be contrary to the public interest or manifestly injurious to the public welfare.

The Williams Court found that the provision violated public policy on both bases and thus was void. Id. at 717. It should be noted, however, the provision was found to be void on the basis of *either* violation *individually*, and did not require that both bases be present to invalidate the provision.

S. C. Code Ann. §38-77-142(c) forecloses Nationwides's right to a step-down in coverage.

"(c) Any endorsement, provision, or rider attached to or included in any policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section is void. S.C. Code Ann. §38-77-142(c) (2002)."

The Williams Court found that S.C. Code Ann. §38-77-142(c) prohibits reduction of the liability limits stated in the declarations page of the policy through the use of a policy step-down provision. The language set forth below effectively answers and negates Nationwide's argument as to "within the coverage/within the limits". The Declaration Page of the Walls policy is essentially the same as that referenced in the Williams case. (Walls Nationwide Policy, App. p.207)

"In viewing the plain wording of §38-77-142, we find subsections (A) and (B) require a policy for liability insurance to contain a provision insuring the named insureds and permissive users against liability for damage incurred "within the coverage of the policy". Subsection (B) additionally contains a provision regarding notice that states the mere failure to turn over a motion or complaint will not void coverage. Finally, subsection (c) provides that no policy provision may limit *or reduce* the coverage required by *this section* which refers to section 38-77-142, or else it is void.

We think it is significant that §38-77-142 provides insurers must provide liability coverage to insureds "within the coverage of the policy" and may not limit or reduce liability coverage in the policy below the amount provided *in this section* meaning §38-77-142. Thus, it is the face amount of the coverage that is relevant under §38-77-142, not the statutory minimum limits of liability coverage set forth in §38-77-140, which are not even mentioned in the statute".

Therefore, once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage (emphasis added). Any other interpretation of §38-77-142(c) would render the section useless, and the General Assembly is presumed not to perform useless acts. See

Denene, Inc v. City of Charleston, 352 S.C. 208, 212, 574 S.E. 2d 196, 198 (2002). ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something." (Citing *TNS Mills, Inc. v. S.C. Dept. Of Rev* 331 S.C. 611, 503 S.E. 2d 471 (1998). After agreeing on a policy with $100,000 in stated liability coverage for the named insureds, GEICO should not be permitted to subsequently reduce it with what it deems an "exclusion" in the policy.

Williams vs. Gov't Employees Ins. Co. (GEICO), 409 S.C. 586, 604 762 S.E. 2d 705, 715 (2014) (Emphasis the Petitioners').

The Williams case is directly on point with the case now before the Court. Nationwide issued a policy to Sharmin Walls providing a face amount of coverage of 100,000/300,000 split limits liability coverage in the declarations page of the policy. The Appellant's step-down provision conflicts with the liability limits stated in the declarations and purports to effectively retract the stated coverage. This is precisely the actions that the Williams Court found to be prohibited.

The step-down provision is this case violates public policy because it violates the mandates of S.C. Code Ann. §38-77-142(c) as interpreted by the Supreme Court in Williams. The provision is therefore void.

"A provision that is against public policy is void *ab initio* and, because it is deemed legally never to have come into existence, it is incapable of being enforced by courts. 16 Richard A. Lord, *Williston on Contracts* §49:12 (4th Ed. 2000). We see no reason to depart from this procedure here, as suggested in the concurrence/dissent, as it would be a hollow victory indeed for the prevailing parties if we were to enforce the offending provision here and restrict relief to prospective cases only. Where courts have found insurance provisions to be void against public policy, there have, as a matter of course, refused to give any effect to those provisions in the appeals before them. See generally *Lewis v. W. Am. Ins. Co.,* 927 S.W. 2d 829, 836 (Ky. 1996); *Watters v. Dairyland Ins. Co.* 50 Ohio App 2d 106, 361 N.E. 2d 1068 (1976); *Ryan vs. Knoller* 695 A. 2d 990 (R.I. 1997)"

Williams v. Gov't Employees Ins. Co. (GEICO) 409 S.C. 586, 608, 762 S.E. 2d 705, 717 (2014).

The step-down provision should be found to be *void ab* initio, and Petitioners, therefore, are entitled to have the policy construed in the absence of the step-down provision. Thus, the applicable policy limits are $100,000/$300,000.

The Court of Appeals in its Order filed June 5, 2019, (App. p. 345) ignored the plain meaning of the language contained in South Carolina Code § 38-77-142 (c) and the holding set forth in Williams v. Gov't Emp. Ins. Co.(GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014) . The Court of Appeals distinguished this case from Williams, *supra*, saying that "[u]nlike the step-down provision in *Williams*, however, Nationwide's policy exclusions do not simultaneously reduce the insured's voluntary coverage. Instead, the exclusions are only triggered in the event that an insured seeks coverage for injuries sustained while engaging in certain acts." (App. p 352).

However, the Supreme Court's finding in Williams, *supra*, citing SC Code Ann. §38-77-142(c), makes clear that "*any* endorsement, provision, or rider attached to or included in any policy of insurance *which purports or seeks* to limit or reduce the coverage afforded by the provisions required by this section is void." Williams, *supra* at page 715. (emphasis the Petitioners').

There is simply no temporal distinction or contingency for conduct, such as injury caused by recklessness versus simple negligence, that escapes the restrictions on reduction of coverage established in SC Code §38-77-142(c). SC Code §38-77-142(c) and Williams v. Gov't Emp. Ins. Co.(GEICO), 409 S.C. 586, 762 S.E. 2nd 705 (2014) control the disposition of the so-called "step-down" provision at issue in the case before the Court, and invalidate and make void that step-down provision. Therefore, Nationwide should be required to provide the $100,000/$300,000.00 coverage set forth in the declaration page of the policy.

CONCLUSION

For the reasons stated above, the holding by the Honorable Cordell Maddox should be upheld on the basis that the step-down provisions contained in the Nationwide Policy violate S.C. Code §38-77-142 (c) and are unenforceable pursuant to the Supreme Court's holding in Williams v. Government Employees Insurance Company, 409 S.C. 586, 762 S.E. 2nd 705 (2014).

Respectfully submitted,

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Appellate Case No.: 2019-001596
Lower Court Case No.: 2009-CP-04-00907

PROOF OF SERVICE

I certify that I have served a copy of Petitioner's Brief and Appendix, on behalf of the Petitioners, Sharmin Christine Walls and Randi Harper (submitted jointly by Michael F. Mullinax and J. Kirkman Moorhead) on the Respondent, Nationwide Mutual Fire Insurance Company, and all counsel of record, by depositing a copy of my request in the United States Mail, postage prepaid, on March 18, 2020, addressed as follows:

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