STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	C/A NO.: 2016-CP-26-05356
Progressive Northern Insurance Co., Plaintiff,	
vs.	**ORDER DENYING DEFENDANTS' MOTION TO ALTER, AMEND AND/OR RECONSIDER THE ORDER AND JUDGMENT IN FAVOR OF THE PLAINTIFF**
Brandon Lawrence and Ashley Outlaw, Defendants.	

This matter came before the Court on June 16, 2020 for a remote hearing on Defendant Brandon Lawrence's ("Lawrence") Motion to Alter, Amend, and/or Reconsider this Court's Order and Judgment in favor of Progressive Northern Insurance Co. ("Progressive") entered November 28, 2017. Jeffrey E. Johnson appeared remotely on behalf of Lawrence and William Davis appeared remotely on behalf of Progressive. For the reasons set forth below, Defendant Lawrence's motion is hereby DENIED.

FACTUAL BACKGROUND

This matter was decided on undisputed facts previously submitted to the Court and set forth in the November 27, 2017 Order. Defendants Ashley Outlaw ("Outlaw") and Lawrence resided in the same home from 2008 to 2013 along with their children. Both contributed funds toward purchasing the home. Outlaw handled the couple's bills and the insurance needs of the household.

Lawrence owned a 2004 Big Dog Chopper motorcycle. On August 19, 2009, Outlaw obtained a South Carolina motorcycle policy issued by Progressive to cover the motorcycle. Lawrence expressly permitted and was aware of Outlaw's procurement of the policy. The policy

application indicated that Outlaw was listed as "Married" and as an "Insured," and Lawrence was listed as "Married" and "Spouse." Both were listed as named insureds under the policy.

On September 5, 2009, Outlaw, on behalf of herself and Lawrence, filled out and signed the application form and rejected the optional UIM coverage offered. The premium was paid by Outlaw, who was then reimbursed by Lawrence. Regarding Outlaw's rejection of the UIM coverage, Lawrence testified at trial that he "assumed" the UIM coverage would be purchased but clarified that he did not expressly ask Outlaw to do so. Lawrence further stated that he asked Outlaw to purchase insurance coverage for his motorcycle and that she had his permission to do so. He also acknowledged he never read the policy.

On May 13, 2013, Lawrence was involved in an accident in Surfside Beach while operating the insured motorcycle. Lawrence filed suit against the alleged at-fault driver and has settled with her liability carrier on a Covenant Not to Execute. Progressive filed this declaratory judgment action seeking a declaration that a meaningful offer of UIM coverage was made to Lawrence because he specifically appointed Outlaw as his agent for purposes of obtaining the policy and he is bound by her rejection. A non-jury trial was held on October 18, 2017 during which the parties submitted the matter based on the depositions of Defendants, live testimony of Lawrence, and arguments by counsel. This Court rendered judgment in favor of the Plaintiff in the Order and Judgment dated November 28, 2017. Defendant Lawrence timely filed a Motion to Alter, Amend, and/or Reconsider the November 28, 2017 Order and Judgment on December 08, 2017. A remote hearing on Defendants' motions occurred June 16, 2020.

STANDARD OF REVIEW

Under Rule 59(e), "a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented." *Elam v. S.C. Dep't of*

Transp., 361 S.C. 9, 21, 602 S.E.2d 772, 778–79 (2004). "If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a Rule 59(e) motion or an appellate court may later determine the issue or argument is not preserved for review." *Id.* 361 S.C. at 25, 602 S.E.2d at 781. "An issue may not be raised for the first time in a motion to reconsider." *Johnson v. Sonoco Prod. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (citing *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct.App.1999)).

ANALYSIS

In his motion, Lawrence essentially asserts two arguments: (1) the UIM coverage rejection form was insufficient under South Carolina law because it contained only one signature line when there were two named insureds, and (2) there was no indication from Defendant Ashley Outlaw's signature on the rejection form that she was signing on behalf of Lawrence. These issues were previously raised and ruled on in the Court's November 28, 2017 order and judgment. Having reconsidered those issues, this Court concludes that they are without merit.

1. **This Court has previously determined the rejection form was sufficient (and Progressive's offer of UIM was meaningful), and Lawrence has failed to raise any points of fact or law meriting reconsideration of this issue.**

Lawrence contends that the UIM rejection form featured only one signature line despite the fact that Progressive was aware of Lawrence and Outlaw's unmarried status and knew that Lawrence was a named insured. Lawrence further points out that Progressive should have made clear in the form whether both named insureds were to sign or whether the signature of one would be effective as to both. Lawrence claims that, since the form featured only one line, then it is reasonable to assume that Outlaw's signature was only a rejection as to her. Lawrence further points out that the form would have been clearer if it had stated the names of the signees rather

than simply designating, "signature of named insured." Lawrence contends that, as noted on the form, the absence of his signature on the rejection requires UIM coverage be automatically added onto the policy (at least as to him), under S.C. Code § 38-77-350(E). Lawrence posits that the November 28, 2017 order fails to address the arguments relating to the form's singular signature line[1].

However, this court's order contains an analysis dedicated to the sufficiency of Progressive's offer of UIM coverage. The order specifically addressed the above arguments:

> Lawrence argues that Progressive failed to comply with § 38-77-350 because it did not require that Lawrence sign the form, and that Progressive's offer of UIM coverage was therefore ineffective. However, South Carolina courts have repeatedly and expressly stated that it is not necessary to comply with Section 38-77-350 in order to make a meaningful offer as long as the Wannamaker requirements are met. *See Ray v. Austin*, 388 S.C. 605, 698 S.E.2d 208 (2010); *Grinnell Corp. v. Wood*, 389 S.C. 350, 357, 698 S.E.2d 796, 799 (2010); *Antley v. Nobel Ins. Co.*, 350 S.C. 621, 633, 567 S.E.2d 872, 879 (Ct. App. 2002) *overruled on other grounds by Sweetser v. S.C. Dep't of Ins. Reserve Fund*, 390 S.C. 632, 703 S.E.2d 509 (2010); *McDowell v. Travelers Prop. & Cas. Co.*, 357 S.C. 118, 123, 590 S.E.2d 514, 517 (Ct. App. 2003); *Croft v. Old Republic Ins. Co.*, 365 S.C. 402, 618 S.E.2d 909 (2005).

(Order p. 12). It is immaterial that the form only had one signature line rather than two. First, no authority has been presented by plaintiff's counsel suggesting that S.C. Code § 38-77-350 *requires* a signature line for each named insured. The statute is silent as to the number of signature lines required in the form. Rather, the statute simply states that, "If this form is signed by the named insured . . . it is conclusively presumed that there was an informed, knowing selection of coverage

[1] Lawrence also pointed out at the hearing that the legislative history of S.C. Code § 38-77-350 indicates the statute was amended in 2006 and in 2013, dates subsequent to authority cited by plaintiff's counsel and this Court. However, a review of the legislative history indicates that the changes are immaterial to this Court's analysis. Namely, the current version of the statute does not contain an explicit requirement that Lawrence's signature was required. Moreover, Lawrence has not articulated how these amendments alter this Court's conclusion that S.C. Code § 38-77-350 is not the exclusive method in which an insurer may make a meaningful offer of UIM coverage.

. . . ." S.C. Code § 38-77-350(B). There is no dispute that the form was signed by a named insured (Outlaw). Further, this Court, as explained in the November 27, 2017 order, has found that Outlaw signed this form on behalf of herself and Lawrence. Lawrence has not produced any factual evidence disputing this finding nor any legal precedent demonstrating this finding is in contravention of the statute.

Moreover, Lawrence's argument ignores the well-established rule that section 38-77-350 does not provide the exclusive method for making an effective offer of UIM coverage. The South Carolina Supreme Court set forth four factors in *State Farm Mutual Auto. Ins. Co. v. Wannamaker* (291 S.C. 518, 521, 354 S.E.2d 55, 556 (1987)) for determining whether a UIM offer is sufficiently meaningful[2]. This Court ruled that Progressive's offer met the four *Wannamaker* factors where: 1) the offer was a form sent by mail; 2) the specific split limits were plainly set forth on the form; 3) the form contained two paragraphs explaining the nature of UIM coverage that were virtually identical to the paragraphs on the form promulgated by the South Carolina Department of Insurance; and 4) the form advised that an additional premium would be required for the additional UIM coverage. (Order p. 11). Lawrence has not offered any new facts nor law meriting a determination that this ruling was erroneous. Therefore, the Court reaffirms its original conclusion

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"(1) [T]he insurer's notification process must be commercially reasonable, whether oral or in writing;

(2) [T]he insurer must specify the limits of optional coverage and not merely offer additional coverage in general terms;

(3) [T]he insurer must intelligibly advise the insured of the nature of the optional coverage; and

(4) [T]he insured must be told that optional coverages are available for an additional premium."

See Wannamaker, supra.

that Progressive's form made a meaningful offer of UIM coverage under the *Wannamaker* standards and the provisions of S.C. Code § 38-77-350.

Moreover, Lawrence's focus on the number of signature lines is misplaced in light of Outlaw's status as an agent for Lawrence as further explained below.

2. **Lawrence's argument that it was unclear that Outlaw was signing on behalf of Lawrence is unavailing where she has been established to have been acting as his agent.**

Lawrence argues that it was unclear, based on the sole signature line alone, whether Outlaw's signature was on behalf of herself or Lawrence. He essentially argues that the burden should have been on Progressive, who knew Lawrence and Outlaw did not share a surname, to ensure its form included two signatures: one for Outlaw and one for Lawrence. He also points out that both Lawrence and Outlaw were named insureds, but only one signature line was provided. He concludes that this ambiguity prevents the Court from determining that Lawrence rejected the UIM coverage through Outlaw's signature.

This argument fails to account for Outlaw's status as Lawrence's agent. Lawrence's position assumes that South Carolina law *requires* a signature by each named insured for a rejection of UIM coverage to be effective to each. He does not distinguish the case of *Nationwide Mutual Insurance Co. v. Prioleau*, (359 S.C. 238, 243, 597 S.E.2d 165, 168 (Ct. App. 2004)) which this Court relied on in concluding that Lawrence rejected the UIM coverage through his agent, Outlaw. In *Prioleau*, the Court of Appeals was faced with similar facts: a spouse went to an insurance agency; he signed up for automobile coverage for himself and his wife; both were listed as named insureds; but only the husband signed the rejection form for UIM coverage. *Id* at 240, 597 S.E.2d at 166-67. The court in *Prioleau* held that the spouse's rejection of UIM coverage was

binding on the non-signing spouse under the law of agency. *Id.* at 244, 597 S.E.2d at 168. The *Prioleau* court reached this conclusion despite the fact that the husband was the sole signee of the rejection even though the policy listed both him and his wife as named insureds. *Id*

This Court's ruling is supported by the factual findings that: Lawrence testified in his deposition and at trial that he knew Outlaw was getting insurance; that he asked her to do so; and that she had his permission to do so. Further, Outlaw testified that she was getting the policy pursuant to Lawrence's wishes; that she obtained quotes which she took to Lawrence; and that Lawrence decided to obtain the Progressive policy. (Order pp 7-8.). The record is replete with evidence that Outlaw was acting as an agent for Lawrence. Lawrence has not offered any evidence in contradiction of this conclusion.

Likewise, Lawrence has not offered sufficient legal authority indicating Outlaw could not be Lawrence's agent as a matter of law. In his motion to reconsider, he cites to an Alabama case, *Progressive Specialty Ins. Co. v. Gore.* (1 So.3d 996 (Ala. 2008)), for the proposition that Outlaw's signature could not be binding on Lawrence essentially because the form did not make clear in what capacity Outlaw was signing. *Gore* is not binding authority and is readily distinguishable. There, Jeanette Gore purchased an automobile policy which listed her husband, Gerald, as the sole named insured but listed her as a "driver." 1 So.3d at 997. Gerald was not present during the application process. *Id.* During the purchase, Jeannette rejected an offer of UM coverage by signing in her own name. *Id.* Jeannette was later injured and sought UM coverage, which was denied by Progressive on the grounds UM coverage had been rejected. *Id.* The Alabama Supreme Court noted that: "[under] well-established Alabama case law, any purported rejection or waiver of UM coverage by one who is not the **named insured** is invalid." *Id.* at 998 (citations omitted) (emphasis added). The court rejected Progressive's contention that Jeanette was acting as Gerald's

agent and concluded that the Alabama UM statute plainly stated that *only* the named insured could reject UM coverage. *Id.* The court noted that, because Jeanette, a non-named insured, signed her own name, there was only evidence that she was rejecting UM coverage as to herself (because she did not sign in Gerald's name). *Id.* at 999.

As noted, the critical difference between *Gore* and the present case is that Outlaw and Lawrence were *both* named insureds. This Court is bound by the South Carolina decision in *Prioleau* which noted: "[the husband] alone signed the form, rejecting the UIM coverage. Nationwide, however, listed both [husband and wife] as the named insureds." 359 S.C. at 240, 597 S.E.2d at 167. Nowhere in *Prioleau* was it suggested that an agent must sign in the name of the non-signing party in order for that rejection to be binding. Indeed, the facts of *Prioleau* do not indicate that the husband signed the rejection in any person's name other than his own. Critically, the decision makes no reference to *multiple* signatures being required despite there being *multiple* name insureds.

Here, Outlaw and Lawrence were both named insureds, and she alone procured the policy with Lawrence's express permission. As in *Prioleau*, Progressive was not required to obtain the signatures of both named insureds in order for Outlaw's rejection to be binding on Lawrence. Nor was it required to craft the form in a way to make it clear in what capacity Outlaw was signing. To the extent *Gore* noted that Alabama law required the signing spouse to sign the non-signing spouse's name, the South Carolina Court of Appeals in *Prioleau* did not state that there is an equivalent requirement in South Carolina. Rather, the *Prioleau* court simply determined that the signing spouse was doing so as an agent, and, therefore, the agent's actions were binding on the principal under South Carolina law. It would be illogical for the procurement of the policy to be binding as to Lawrence but not the rejection. Lawrence cannot escape this basic logic that if Outlaw

could procure coverage as his agent, then she could reject coverage as his agent. Lawrence has not set forth any new facts or law indicating this conclusion was erroneous.

CONCLUSION

NOW THEREFORE, for the forgoing reasons, Defendant Lawrence's Motion to Alter, Amend, and/or Reconsider this Court's Order and Judgment in favor of Progressive is hereby, **DENIED.**

AND IT IS SO ORDERED.

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Horry Common Pleas

Case Caption: Progressive Northern Insurance Co VS Brandon Lawrence , defendant, et al

Case Number: 2016CP2605356

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127