THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alex Kinlaw, Jr., Circuit Court Judge

Appellant Case No. 2019-001644
Case No. 2018-CP-23-02782

Bristol West Preferred Insurance Company,.....Respondent,

v.

Lemore Young, James E. Young, Darius Jerard Allen and
Latusa Nicole Reid,.....Defendants,

Of Whom Lemore Young is the Appellant.

INITIAL BRIEF OF APPELLANT

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II. Did the Court improperly conclude that neither South Carolina law nor public policy require that the Policy be reformed to add UM coverage for passenger, Lemore Young?

III. Did Appellate Lemore Young, as an insured, receive a meaningful offer of UM coverage and was that coverage properly declined by the Appellant?

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STATEMENT OF THE CASE

The facts underlying the case at bar involve a collision that took place on February 9, 2014. Appellant, Lemore Young, was a passenger in the car driven by his brother, Defendant James E. Young, when another vehicle struck the car in which Appellant was a passenger. Said collision occurred on Chalmers Road in the County of Greenville, State of South Carolina. The at-fault driver, Defendant Darius Jerard Allen [hereinafter "Defendant Allen"], was driving a vehicle

owned by Defendant Latusa Nicole Reid [hereinafter "Defendant Reid"] at the time of the collision.

The insurance company for the at-fault driver was Direct General Insurance Agency and Appellant Young filed an insurance claim with them to recover for the injuries he suffered in the above-referenced vehicle collision. Defendant Reid owned the policy in question at the time of this collision. Direct General Insurance Agency denied Appellant's claim, asserting that Defendant Reid's policy lapsed for nonpayment of initial premium on January 23, 2014.

As a result of Direct General Insurance Agency's denial, Appellant sought coverage through Bristol West's policy, under the owner's name, James E. Young. Bristol West has denied coverage, alleging that Defendant James Young did not have uninsured motorist coverage on his policy. Bristol West's Michigan insured driver, Defendant James Young, is licensed and resides in the state of Michigan and his automobile insurance policy is issued under Michigan law regarding coverage requirements. The facts above created a justiciable controversy as to whether Bristol West is required to cover the insurance claims brought by Appellant arising from the collision on February 9, 2014.

The matter came before the Court of Common Pleas in Greenville County for a non-jury trial on August 22, 2019 on a Declaratory Judgement Action filed by the Plaintiff. (Complaint). The court Ordered that the policy does not provide any UM coverage and neither South Carolina Law nor public policy require the policy to be reformed. (Amended Order).

STANDARD OF REVIEW

"Declaratory judgment actions are neither legal nor equitable and, therefore, the standard of review depends on the nature of the underlying issues." *Judy v. Martin*, 381 S.C. 455, 458, 674

S.E.2d 151, 153 (2009). "When the purpose of the underlying dispute is to determine whether coverage exists under an insurance policy, the action is one at law." *Crossmann Cmtys. of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 46, 717 S.E.2d 589, 592 (2011). "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." *Id*. at 46–47, 717 S.E.2d at 592 (quoting *Auto Owners Ins. Co. v. Newman*, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009)). "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 facts." In re *Estate of Boynton*, 355 S.C. 299, 301, 584 S.E.2d 154, 155 (Ct. App. 2003) (quoting *WDW Props. v. City of Sumter*, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000)). "In such cases, the appellate court owes no particular deference to the trial court's legal conclusions." *Id*. at 301–02, 584 S.E.2d at 155 (quoting *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth*., 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999)).

ARGUMENT

I. The Court improperly concluded that the automobile policy did not provide UM coverage under the language of the policy regarding coverage deemed granted by out-of-state statutes.

In the Declaratory Judgement Action filed by the Plaintiff and brought before the Court for a non-jury trial on August 22, 2019, the Court improperly concluded that the automobile policy did not provide UM coverage under the language of the policy regarding coverage deemed granted by out-of-state statutes. (Amended Order p. 3).

Defendant James Young's Michigan issued personal auto policy in part F "General Provisions", "Coverage Deemed Granted by Out-of-State Statute", clearly states that:

> If an accident to which this policy applies occurs in any state or providence other than the one in which your covered auto is principally garaged, and ***if a statute of that state or providence that is applicable to us deems out-of-state automobile or motor vehicle policies issued by us to provide particular forms or limits of coverage not provided for in this policy when your covered auto is involved in an accident in that state, then for purposes of that accident only, we will interpret your policy as providing the minimum coverage deemed to be provided,*** *at the minimum amounts permitted by law*, and subject to the exclusions set forth in any coverage part of this policy, to the fullest extent permissible by law." (emphasis added) (Plaintiff's Exhibit 1 - Michigan Auto Policy, page 42-43).

The accident in the current case occurred on Chalmers Road in the County of Greenville, State of South Carolina. S.C. Code Ann §38-77-150 states that:

> No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140. ***The uninsured motorist provision also must provide for no less than twenty-five thousand dollars' coverage for injury*** to or destruction of the property of the insured in any one accident but may provide an exclusion of the first two hundred dollars of the loss or damage. The director or his designee may prescribe the form to be used in providing uninsured motorist coverage and when prescribed and promulgated no other form may be used. (emphasis added).

South Carolina law further outlines in S.C. Code Ann §56-9-353 and §56-9-560 :

> SECTION 56-9-353. No policy or bond shall be effective under Sections 56-9-351 and 56-9-352 unless issued by an insurance company or surety company licensed and authorized by the South Carolina Department of Insurance to do business in this State***, except that if the motor vehicle was not registered in this State or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond or the most recent renewal thereof,*** the policy or bond shall not be effective under Sections 56-9-351 and 56-9-352 unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Department of Motor

> Vehicles to accept service on its behalf of notice of process in any action upon the policy or bond arising out of the accident. ***Every policy or bond must be subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than twenty-five thousand dollars because of bodily injury to or death of one person in any one accident***, and subject to this limit for one person, to a limit of not less than fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. (emphasis added).
>
> SECTION 56-9-560. Certificate of insurance as proof; certificate furnished by nonresident; effect of default by unauthorized insurer.
>
> The nonresident owner of a motor vehicle not registered in this State may give proof of financial responsibility by filing with the Department of Motor Vehicles written certificates of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in the certificate is registered or, if the nonresident does not own a motor vehicle, then in the state in which the insured resides, provided the certificate otherwise conforms with the provisions of this chapter, and the ***Department shall accept it upon condition that the insurance carrier complies with the following provisions with respect to the policies certified***:
>
> (1) The insurance carrier shall execute a power of attorney authorizing the Department to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this State; and
>
> ***(2) The insurance carrier shall agree in writing that the policies shall be construed to conform with the laws of this State relating to the terms of motor vehicle liability policies issued in this State.*** (emphasis added).

In the current case, Defendant Reid owned the liability policy at the time of the collision. Direct General Insurance Agency denied Appellant Lemore Youngs's liability claim, asserting that Defendant Reid's policy lapsed for nonpayment of initial premium on January 23, 2014. Since liability was denied under Defendant Reid's policy, uninsured coverage of the Defendant James Young's vehicle would typically apply. Under South Carolina statues, UM coverage is required.

Being that Defendant James Young's policy is issued out of Michigan, UM is considered elective coverage, and was declined by James Young. (Plaintiff's Exhibit 3). Had he elected to purchase the UM, the policy outlines the coverage offered as follow:

> If you pay us the premium when due for this coverage, we will pay for damages and insured person is legally entitled to recover from the owner or operator of the uninsured motor vehicle because of bodily injury sustained by an uninsured person, caused by an accident, and arising out of ownership, maintenance or use of the uninsured motor vehicle. We will pay under Part C only after the limits of lability under all liability policies applicable to an uninsured motor vehicle have been exhausted by payment of judgements or settlements. (Plaintiff's Exhibit 1 - Michigan Auto Policy, pp. 21-22).

Michigan's insurance code does not outline requirements of UM coverage as it is not mandatory under Michigan's No-Fault Insurance laws. Michigan is one of a few No-Fault Insurance states in the United States. As opposed to requiring an insured to carry UM coverage, Michigan requires all policies include Personal Injury Protection [hereinafter "PIP"]. Under PIP coverage, the insurer is liable for personal protection benefits without regard to fault for "bodily injury" and "accidental bodily injury". MCL 500.3105.

In *Thompson v. Continental Insurance Companies*, 351 S.E2d 904,905 291 S.C. 47 (Ct. App 1986) in discussing the rules of contract construction, the Court explains that, "Insurance policies are subject to general rules of contract construction . We must enforce, not write, contracts of insurance and we must give policy language its plain, ordinary and poplar meaning". The policy expressly lays out that in a wreck like the one in the case at hand, which involved an out of state contract, that the law of that state should apply. South Carolina mandates uninsured motorist coverage be given when the motor vehicle at issue has liability coverage. S.C. Code §38-77-150 provides that "No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist

provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle". S.C. Code Ann §56-9-353 lays out the requirement that a policy issued in another state must conform to a limit of not less than twenty-five thousand dollars coverage because of bodily injury. The plain language of the Bristol West policy in part F "General Provisions", "Coverage Deemed Granted by Out-of-State Statute", confirms that if a state requires the policy to reform, the insurer "will interpret your policy as providing the minimum coverage deemed to be provided." (Plaintiff's Exhibit 1 - Michigan Auto Policy, page 42-43). "The foremost rule in interpreting an insurance contract is to give effect to the intent of the parties as shown by the language of the contract itself." *Dorman v. Allstate Ins. Co.*, 332 S.C. 176, 178, 504 S.E.2d 127,129 (Ct. App. 1998). In this case, the motor vehicle insured by the policy has liability coverage and the plain language of the policy validates that uninsured motorist coverage should be given and this Court should reform the Michigan issued UM policy up to South Carolina minimum coverage.

II. The Court improperly concluded that neither South Carolina law nor public policy require that the policy be reformed to add UM coverage for passenger, Lemore Young because as an insured, he did not receive a meaningful offer of UM coverage and the coverage was not properly declined by the Appellant.

According to S.C. Code Ann. §38-77-30 (7) 2002, in laying out the definition of insured:

> ***"insured" means*** the named insured and, while resident of the same household, the spouse of any named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured the motor vehicle to which the policy applies and ***a guest in the motor vehicle to which the policy applies*** or the personal representative of any of the above." (emphasis added)

Here, Lemore Young was invited by his brother, James Young, to ride in his motor vehicle. In *Auto Owners Ins Co. v. Rollison*, 663 S.E.2d 484, 489, 378 S.C. 600 (S.C. 2008) the Court held that: "Generally speaking a guest is one who takes a ride in a car driven by another person, merely for his or her own pleasure or on his or her own business, and without making any return or conferring any benefit on the operator thereof". The Court goes on to state that "a passenger can only rely on the driver's representation regarding his status as a permissive user. Thus, a determination of whether a passenger qualifies as a "guest""*(Id* at 489). According to case law, Lemore Young was considered a guest in his brother, Defendant James Young's, vehicle and thus was a guest and/or permissive occupant of the vehicle and is under the statutory definition of insured. In *Auto Owners*, the Court specified that a guest is one of the types of insureds and is deserving of their own analysis. It goes on to explain that a passenger who qualifies as a guest should have their own status as an insured. " A review of the plain language of the statute reveals that a guest " is listed independently as a person who constitutes an "insured". As we interpret the statute, a person in the fourth category of "insured" need only have the statue of a "guest" to qualify as an "insured" (*supra* at 489). Considering the fact, that as a guest passenger, Appellant Lemore Young meets the statutory definition of insured, the issue then becomes did he as an insured, receive a meaningful offer of UM coverage and was that coverage properly declined by the Appellant.

Appellant's counsel argued at trial that it was the Appellant's perspective that he was covered under Defendant James Young's policy, with the understanding that South Carolina law mandates UM coverage. (Transcript p.12)

At trial and in their Complaint, Respondent's counsel relied up *Newton v. Progressive Northwestern Ins. Co.,* 347 S.C. 271, 276-277, 554 S.E.2d 437, 440 (S.C. Ct. App. 2001), arguing

that the court found that the UM coverage was optional under Newton's Georgia issued policy and that Newton made an affirmative rejection of the coverage. (Transcript pp.12-14; Complaint p. 3). Appellant's position in this case is certainly very different from Newton's. The Appellant was not afforded the opportunity as an insured as defined in *Rollins*, to make an affirmative rejection of coverage. Respondent's went on to rely upon the *Newton* interpretation of S.C. Code Ann §38-77-150. (Transcript p. 14). As outlined in Appellant's previous argument, the plain language of the policy regarding requirements for compliance of the statues of other states, the requirements of S.C. Code Ann §56-9-353, and the fact that the Appellant "insured" as defined in *Rollins* and §38-77-30 (7) 2002, did not make an affirmative rejection of coverage, prove that Bristol West's Michigan issued policy should be reformed.

The South Carolina legislature highlights the importance of covering risk in three of its four declared purposes of Chapter 77-38 and orders the liberal construction of statutes within this section to ensure that those purposes can be achieved. S.C. Code Ann. § 38-77-10. A liberal construction of the relevant UM statutes to meet the legislature's stated objects would extend the benefit of coverage to the largest possible class and resolve any doubts in favor of the injured party. It would also serve public policy by ensuring that more passengers are covered by insurance policies and protected from risk.

III. The Court errored in its interpretation of the policy's coverage as a result of the Respondent's omission of information about Bristol West's Michigan No-Fault Automobile Insurance Policy's mandatory Personal Injury Protection [hereinafter "PIP"] coverage in accordance with Michigan's No-Fault Insurance statues that serves a similar purpose as South Carolina's mandatory UM coverage.

At trial Respondent's counsel provided a description of the policy, an explanation identifying the policy was a Michigan issued policy, and an explanation of Defendant James Young's rejection of UM coverage under Bristol West's Michigan issued policy. (Transcript pp. 9 - 11). Counsel for the Respondent also explained that Michigan law governs the policy and that under Michigan law, UM coverage is optional. (Transcript 9-10). In leaning on Michigan's governance of Bristol West's policy, the Court was not made fully aware of how vastly different a Michigan issued automobile policy is. Defendant James Young's Michigan issued policy is a true No-Fault Insurance policy. As described for Michigan consumers in a publication from Michigan's Department of Insurance and Financial services,

> NO-FAULT INSURANCE is required by law in Michigan. Every owner of a car must buy certain basic coverages in order to get license plates. It is against the law to drive or let your car be driven without no-fault insurance.
>
> If you have an auto accident, no-fault insurance pays for your medical expenses, wage loss benefits, replacement services, and the damage you do to other people's property. It does not matter who caused the accident.
>
> 1. Personal Injury Protection (PIP)
> If you are hurt in an auto accident, ***this part of your no-fault policy will pay all reasonably necessary medical expenses with no maximum limit***. It will also pay up to 85% of the income you would have earned if you had not been hurt, for up to three years. However, the amount that you would be paid for lost income is limited and the limit is revised annually. (emphasis added).

Michigan Department of Insurance and Financial Services (DIFS). (2019, Oct., p. 2). The publication goes on to further explain Michigan's mandatory Personal Injury Protection (PIP) coverage:

> The personal injury protection coverage of your no-fault policy also ***covers anyone who does not have a no-fault policy and is hurt as a passenger*** or pedestrian in an accident involving your car. It will also cover a motorcyclist who is hurt in an accident involving your car. (emphasis added).

Michigan Department of Insurance and Financial Services (DIFS). (2019, Oct., p. 3).

Michigan No-Fault Insurance statutes do not specifically address UM coverage. According to the language of the Michigan statutes regarding mandatory No- Fault PIP coverage, it essentially appears to take the place of South Carolina's mandatory UM coverage, as it covers all bodily injury without regard to fault. Based on Michigan's coverage model, PIP coverage could be perceived as the equivalent to South Carolina's At-Fault mandatory UM coverage model. MCL 500.3105(1-2) requires that " Under personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle..." and that "Personal protection insurance benefits are due under this chapter without regard to fault." MCL 500.3111 further requires that,

> ***Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state***, if the accident occurs within the United States, its territories and possessions, or Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, the spouse of a named insured, a relative of either domiciled in the same household, or an occupant of a vehicle involved in the accident, if the occupant was a resident of this state or ***if the owner or registrant of the vehicle was insured under a personal protection insurance policy or provided security approved by the secretary of state under section 3101(5***). (emphasis added).

Keeping in mind that Michigan is a No-Fault state, MCL 500.3131(1) states:

> (1) Residual liability insurance shall cover bodily injury and property damage which occurs within the United States, its territories and possessions, or in Canada. ***This insurance shall afford coverage equivalent to that required as evidence of automobile liability insurance under the financial responsibility laws of the place in which the injury or damage occurs.*** In this state this insurance shall afford coverage for automobile liability retained by section 3135.

The Court errored in its interpretation of the policy's coverage as a result of the Respondent's omission of information about Bristol West's Michigan No-Fault Automobile Insurance Policy's mandatory Personal Injury Protection coverage. In making his ruling, Judge Kinlaw articulated that,

> 1 And so, I would make a finding that, based on what's
> 2 been presented before me, I think that the Newton case is on
> 3 point. I find that there was no uninsured coverage and
> 4 based on the rejection obviously in the policy by the
> 5 insured. And I think - - I think the Section 38-77-30
> 6 obviously was relied upon by Mr. Smith on behalf of his
> 7 client but I'm inclined to disagree.

(Transcript p. 29, lines 1-7)

In regards to the PIP coverage of Michigan's No-Fault Insurance statues that serves a similar purpose as South Carolina's mandatory UM coverage, had the Court been aware of the parallel coverage, it is reasonable to conclude it may have ruled differently, finding that coverage was available to the Appellant. To date, the Appellant has received no compensation for the injuries he sustained in the accident.

CONCLUSION

Thus, for the reasons set forth more fully above, Defendant, Lemore Young, would ask this Honorable Court to reverse the lower Court's decision.

Respectfully Submitted,

s/Brian Smith

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PROOF OF SERVICE

I certify that on this September 23, 2020, I have served the Initial Brief of Appellant and Designation of Matter on the Respondent's counsel of record via electronic service to the email address listed below:

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September 23, 2020
Greenville, SC

s/Brian T. Smith

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