

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

C/A No. 2021-CP-02-00274

Ex parte: James Monroe Elliott, Sr., as personal representative of the estate of Tamesha Singletary,

Petitioner,

[AMENDED PROPOSED] ORDER

v.

RECEIVED

In re: Petition for approval of wrongful death claim settlement for the estate of Tamesha Singletary, by and through its personal representative, James Monroe Elliott, Sr.

MAY 03 2021

SC Court of Appeals

THIS MATTER APPEARS before the Court upon motion of Movant / Intervenor Lashelle Burnett (“Burnett”). Burnett seeks to intervene in an action filed by Petitioner James Monroe Elliott, Sr. (“Petitioner”), as personal representative of the estate of Tamesha Singletary, seeking the approval of a wrongful death settlement between Petitioner and Progressive Northern Insurance Company (“Progressive”). The court denies Burnett’s motion.

Background facts

Petitioner’s daughter, Tamesha Singletary, was killed on April 3, 2020 when she was struck by a passing tractor trailer on I-20 West operated by Ray Dennis Russell and owned by Hansen Pallet Company. At the time of her death, Ms. Singletary was assisting Burnett whose vehicle was stranded off the side of the road after having run out of gas. Burnett was inside her vehicle and witnessed Ms. Singletary being struck by the tractor trailer as Singletary was filling Burnett’s vehicle with gas.

Both Petitioner and Burnett made claims against the tractor trailer owner and operator’s liability insurer, Progressive. In response, Progressive offered to tender the policy limits of one

million dollars (\$1,000,000.00) to Petitioner and Burnett, provided they could agree to an allocation of the funds. Petitioner and Burnett did not agree on an allocation of those proceeds. Burnett then filed a negligence action against the tractor-trailer's owner and operator and that case is currently pending in Orangeburg County. *See Burnett v. Russell*, C/A 2020-CP-38-01473 (Orangeburg County Common Pleas).

After Petitioner and Burnett did not agree on an allocation, Petitioner sent a demand letter to Progressive seeking the policy limits for the Singletary estate's claims. Progressive then tendered its policy limits of one million dollars in liability coverage to Petitioner. At the hearing on Burnett's motion, counsel for Hansen Pallet and Ray Russell affirmed that Progressive agreed to a settlement for the policy limits with Petitioner. Petitioner accepted Progressive's offer and the parties voluntarily agreed to settle the case pending the court's approval of the settlement as reasonable. Petitioner filed this action seeking approval of the settlement on February 8, 2021. Burnett filed the motion to intervene on February 10, 2021.

Burnett claims she possesses a property interest in the one million dollar policy limits, and that approval of this settlement will impair her ability to protect that interest. She seeks to intervene in the settlement approval to object to the settlement. The court heard argument on Burnett's motion on March 29, 2021 at which counsel for Petitioner, Burnett, and Hansen Pallet and Ray Russell were present.

Analysis

1. Rule 24, SCRCF standard

Under Rule 24, SCRCF, a person has a right to intervene in an action "when the applicant claims an interest relating to property or transaction which is the subject of the action and he is so situated that disposition of the action may as a practical matter impair or impede his ability to

protect that interest.” Rule 24(a)(2), SCRCF. Rule 24 also permits intervention when an applicant’s “claim . . . and the main action have a question of law or fact in common.” Rule 24(b)(2). However, in determining whether an applicant can intervene the court must consider “whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”

Further, when intervention as a matter of right is sought, the person seeking intervention must have standing to intervene. *See Bailey v. Bailey*, 312 S.C. 454, 458 (1994); *see also Ex Parte Government Employee’s Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699, 702 (2007). A real party in interest must have a “real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.” *Ex Parte GEICO*, 644 S.E.2d at 702. The interest must be more than merely attenuated or “contingent.” *See Ex parte Builders Mut. Ins. Co.*, 431 S.C. 93, 99 (2020) (quoting *Restor-A-Dent Dental Labs., Inc. v. Certified Alloy Prods., Inc.*, 725 F.2d 871, 874 (2d Cir. 1984)). In addition, in order to intervene the applicant must demonstrate that without intervention, disposition of the action may impair or impede her ability to protect her interest. She must also demonstrate that her interest is not adequately represented by another party to the action.

2. Burnett lacks standing to intervene

Burnett asserts that she has a property interest in the one million dollars in liability insurance coverage that Progressive has voluntarily offered to Petitioner. She also argues that court approval of the settlement between Progressive and Petitioner will impair her rights to an unstated portion of the insurance coverage.

Petitioner asserts that Burnett has no real property interest in his settlement with Progressive and, thus, Burnett lacks standing to intervene in his petition to have the court approve the settlement. The court agrees.

Burnett is not a real party in interest and lacks standing to intervene. Burnett lacks a real, actual, material or substantial interest in the subject matter of the action. Here Petitioner and Progressive seek to have their settlement approved. Petitioner and Progressive voluntarily agreed to settle Petitioner's claims as a result of arms-length negotiations. Burnett is not a party to the settlement. This is a matter between Petitioner and Progressive, not Burnett.

If Burnett has any interest in this action, it is, at best, remote or contingent as Burnett does not have a judgment in her state court action and is currently litigating her claim against Progressive's insureds. Burnett has no legal entitlement to the liability insurance proceeds at issue. Progressive made a determination to offer the limits of its liability coverage to Petitioner. Should Burnett succeed in her state court action she has recourse against the defendants or potentially Progressive if its decision to settle with Petitioner was in error. As such, Burnett also fails to demonstrate that disposition of this action would impair or impede her rights. The interest she seeks to protect – to secure relief in her claim against the tractor trailer owner and operator – is being adequately pursued in her state court action.

Burnett's motive in intervening is to preserve liability coverage for her own claims. But our courts hold that a mere interest in the financial implication of an action is insufficient to confer standing for purposes of intervention. For example, in *Ex parte GEICO*, GEICO sought to intervene in a family court action where the petitioner sought a declaration of common law marriage because it would impact the petitioner's ability to stack additional undersinsured coverages as a Class I insured. 644 S.E.2d at 700. GEICO had previously denied the petitioner's

claim because he was not a spouse or resident relative of his alleged common law wife. The Supreme Court affirmed the trial court's finding that GEICO lacked standing to intervene noting:

GEICO has no real interest in whether Cooper and Goethe have a valid common law marriage. GEICO's interest is in the financial implications of the family court's decision, which is peripheral to the subject matter before the court. This interest is insufficient to warrant GEICO's intervention in Cooper's family court action under Rule 24(a)(2), SCRCP.

Ex parte GEICO, 644 S.E.2d at 702.

Burnett similarly lacks a sufficient interest in Petitioner's action to have a settlement approved – her concern is the financial implication of Petitioner's settlement. That is not enough. Burnett has the opportunity and right to pursue her claims and is doing so. That is the forum for Burnett to protect her right to recover on her injury claims.

3. Permissive intervention would serve no purpose and prejudice Petitioner

Burnett also claims she should be permitted to intervene because her claim shares common questions of law or fact with this action. The court disagrees.

This is an action to approve a wrongful death settlement. The facts of the underlying crash, or legal questions impacting any party's liability for that crash, are not at issue in this action except to the extent they provide a context for the proposed settlement. The factual and legal issues here have no bearing on, and will not prejudice, Burnett's ability to pursue her claims in her pending lawsuit. Intervention by Burnett would, however, delay or prejudice Petitioner and Progressive's ability to have the court approve a settlement to which they voluntarily agreed. Permitting Burnett to intervene for the sole purpose of objecting to the reasonableness or fairness of the settlement between Petitioner and Progressive would serve no useful purpose. Burnett's objection has no bearing on the question of whether the settlement agreed to by Petitioner and Progressive is fair and reasonable to Petitioner under the circumstances.

Conclusion

Because Burnett lacks standing and a real property interest in the subject matter of this action, and because the rights she claims are adequately protected by her pending state court suit arising from the same crash, intervention is not warranted under Rule 24, SCRCP. Burnett's motion to intervene is denied.

Clifton B. Newman
Circuit Court Judge

_____, 2021
Kingstree, South Carolina



Aiken Common Pleas

Case Caption: James Monroe Elliott Sr. , plaintiff, et al VS Ray Dennis Russell ,
defendant, et al
Case Number: 2021CP0200274
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127