

ORIGINAL

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS**

Alexander S. Macaulay, Circuit Court Judge

OPINION No. 2013-UP-084 (S.C. Ct. App. Filed Feb. 20, 2013)

DENISE S. BOWENPetitioner,

vs.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,Respondent.**

PETITION FOR A WRIT OF CERTIORARI

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S.C. SUPREME COURT

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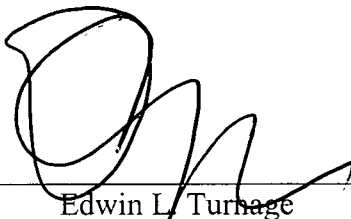
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CERTIFICATE OF COUNSEL

I am counsel for Petitioner, Denise Bowen. This certifies that a Petition for Rehearing was made and finally ruled upon by the Court of Appeals.

Dated: April 15, 2013



Edwin L. Turnage
Attorney for Petitioner

QUESTIONS PRESENTED

1. Was Petitioner denied due process because the Court of Appeals failed to follow Rule 220 of the South Carolina Appellate Court Rules requiring decisions be supported by reasons.
2. Should the South Carolina automobile insurance statutory definition of “resident relative” be broadly construed to include relatives living in more than one domicile?

STATEMENT OF THE CASE

On or about June 18, 2010, Petitioner Denise Bowen (hereinafter “Bowen”) filed a Summons and Complaint seeking declaratory relief that Larry Thrasher’s automobile insurance policy covered her as a “resident relative” insured entitled to underinsured motorist coverage.

On or about July 12, 2010, Bowen filed an Amended Summons and Amended Complaint seeking the same declaratory relief.

On or about September 20, 2010, Respondent State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”) filed an Answer to the Amended Complaint, denying Bowen’s claim, and asserting a Counter-Claim seeking a judgment that Bowen was not insured by Thrasher’s policy.

On or about September 22, 2010, Bowen filed a Reply.

On or about October 28, 2010, Bowen filed a Motion for Summary Judgment. On or about November 19, 2010, State Farm filed a Motion for Summary Judgment. On October 17, 2011, the Court issued an Order denying Bowen’s motion and granting summary judgment to State Farm Mutual Automobile Insurance Company. Contemporaneously, the trial court issued a Judgment in favor of Respondent.

On November 15, 2011, Bowen timely filed her Notice of Appeal.

On February 20, 2013, the Court of Appeals issued a two-page Unpublished Opinion No. 2013-UP-084. On or about March 6, 2013, Bowen filed a Petition for Rehearing. On March 20, 2013, the Court of Appeals denied Bowen's Petition for Rehearing.

ARGUMENT

This case involves a question about the scope of South Carolina's mandatory underinsured motorist coverage for resident relative family members. The insured in this case, Mr. Larry Thrasher, bought underinsured motorist coverage for his family.

Underinsured motorist coverage is important to South Carolina families because it protects them from the financial risk of being in a motor vehicle accident with a person who lacks sufficient liability coverage to pay all of the hospital bills and other damages caused by a collision. Because state minimum only requires legal drivers purchase liability coverage of \$25,000 per person, underinsured motorist coverage is becoming increasingly important to the families in the State of South Carolina as the cost of medical treatment escalates. State Farm, the Respondent, is the largest automobile insurance company in the United States. Nationally, one of every five cars in the United States is insured by State Farm. (State Farm company website: (<http://www.statefarm.com/aboutus/company/profile>)).

The legislature mandated that all automobile insurance companies offer South Carolina driver's underinsured motorist coverage for their "resident relative" family members. However, State Farm's policy contains a provision that limits the underinsured motorist coverage of resident relatives to those whose "primary" residence is with the named insured. Thus, the State Farm policy excludes resident relatives from underinsured motorist coverage when the family members do not "primarily" live with the named insured. If the State Farm policy limitation is permitted to remain intact as written, the underinsured motorist coverage for tens of thousands of South Carolina citizens will be lost. As indicated below, the trial court upheld the State Farm

policy provision and no appellate court has yet reviewed the trial court's ruling on this important issue.

1. **BOWEN HAS BEEN DENIED DUE PROCESS OF LAW.**

The case arises from a January 16, 2010, motor vehicle collision. Denise Bowen was severely injured in the crash. (R. p. 55). The record is undisputed. On the date of the crash, Bowen was living with her father, Larry Thrasher, who was dying of throat cancer. (R. p. 96). After the wreck, Bowen continued to live with her father, watching him to make sure he did not choke to death, on a daily basis, up until April 10, 2010. (R. p. 107).¹ Despite the undisputed record, the trial court ruled in favor of State Farm finding that the, "undisputed evidence establishes the plaintiff did not reside with her father on the day of the accident." (R. p. 10). This erroneous finding of fact was material and central to the determination of whether Bowen was a "resident relative" of Thrasher, and therefore, covered by his automobile insurance policy.

Bowen carried the case up on appeal, hoping to have an appellate court review this incorrect finding of fact. The Court of Appeals received briefing and conducted oral argument. But it ruled summarily on the issue, "the trial court properly granted summary judgment to State Farm." (§ 3) The Court of Appeals provided no reason why Bowen's appeal of the trial court's factual error was denied.

Rule 220 of the South Carolina Appellate Court Rules promises litigants that every decision rendered by the appellate court on the important points will be supported by reasons. Rule 220 was implemented to protect the litigant's Constitutional due process rights. See S.C. Const., Art. 1, § 3 ("The privileges and immunities of citizens of this State . . . under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law") . Rule 220 guarantees due process because it forces the

¹ Thrasher faced grave danger due to his breathing tube frequently becoming clogged. He needed Bowen to live with him, in part, to make sure he did not choke to death. (R. pp. 67, and 79-80).

appellate court to fairly examine a party's points on appeal. It precludes the appellate court from eluding a party's central point of error. However, the Court of Appeals did not follow the procedural rules.

Similarly, Bowen challenged State Farm's insurance policy's resident relative exclusion of coverage on public policy grounds. The Court of Appeals February 20, 2013, Unpublished Opinion did not consider the public policy question because it allegedly was, "not preserved for review." (¶ 3) The unpublished order incorrectly said, "[t]his issue was neither raised to nor ruled upon by the trial court." (¶ 3)

However, the trial court did rule on the public policy question. Its Order stated, "The issue of whether a person may be a resident of two households seems to have only been addressed in cases, or at least the vast majority of cases, involving a minor child in a divorced or separated parent scenario." (Record 9) Later in the same Order, the trial court said, "[T]here is no authority in South Carolina supporting the proposition that an emancipated adult can be a resident of two households for the purpose of seeking recovery of UIM benefits." (Record 10)

The resident relative public policy issue was the central question of the case and appeal. A fair review of Bowen's appeal is required by both Rule 220 of the South Carolina Appellate Court Rules, and the Article 1, Section 3 of the Constitution.

2. THIS CASE INVOLVES A NOVEL AND IMPORTANT QUESTION OF PUBLIC POLICY;
WHO ARE COVERED RESIDENT RELATIVES UNDER SOUTH CAROLINA'S
AUTOMOBILE INSURANCE STATUTE?

The question of whether a “resident relative” may have more than one domicile is one that has not been specifically ruled upon by South Carolina appellate courts. See Buddin v. Nationwide Mutual Insurance Company, 250 S.C. 332, 157 S.E.2d 633 (1967); Auto Owners Ins. Co. v. Home, 356 S.C. 52, 586 S.E.2d 865 (Ct. App. 2003). Resident relative status is an important coverage issue because it potentially affects automobile underinsured motorist insurance (UIM) coverage for numerous classes of South Carolina families including children away from home in college, sailors, soldiers or marines in boot camp, judges on extended circuit duty, or adult children caring for seriously-ill, elderly parents on a frequent or long term basis.

The State Farm policy limits UIM coverage to a relative who “resides primarily with you.”

Relative – means a **person** related to **you** or **your spouse** by blood, marriage or adoption who resides primarily with you. . . .

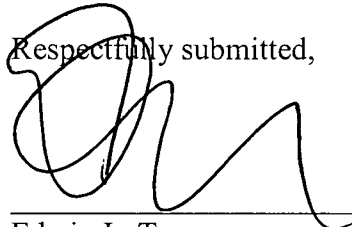
(R. p. 163). The South Carolina automobile insurance statute defines “insured” to include both the insured person or persons named in a policy and “while resident of the same household, the spouse of any named insured and relatives of either.” S.C. Code Ann. § 38-77-30 (definitions). Unlike State Farm’s policy, the Legislature’s statutory definition of insured does not limit resident relatives to a “primary” residence. Thus, the State Farm policy violates public policy and improperly excludes coverage of resident relatives living in secondary domiciles. “[A]ny limiting language in an insurance contract which has the effect of providing less protection than made obligatory by the statute is contrary to public policy and is of no force and effect.” See Ferguson v. State Farm Mut. Ins. Co., 261 S.C. 96, 100, 198 S.E.2d 522 (1973); see also

Nationwide Mut. Ins. v. Howard, 288 S.C. 5, 339 S.E.2d 501 (1985). The limiting language of State Farm's policy must be declared void and in opposition to South Carolina public policy.

CONCLUSION

For the foregoing reasons, Petitioner prays that the Supreme Court will grant Certiorari, hear this matter, and then reverse the trial court order and remand with instructions that it issue summary judgment in Petitioner's favor.

Respectfully submitted,



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Dated: April 15, 2013


CERTIFICATE OF SERVICE

Jennifer McGee says that she is the Paralegal for the Attorney for the Petitioner, with offices at Greenville, South Carolina, and that on April 19, 2013, she mailed in a sealed envelope, postage prepaid, a copy of Petition for WRit of Certiorari and Appendix to:

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