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Feb 18 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Appellate Case No. 2019-000367

Desa Ballard and Desa Ballard P.A.,
d/b/a Ballard & Watson

Appellants,

v.

Admiral Insurance Company and Adele R. Pope,
individually and as Special Administrator of the
Estate of Gloria Corley,

Respondents.

**RESPONDENT ADMIRAL INSURANCE COMPANY'S MOTION AND
MEMORANDUM FOR ENLARGEMENT OF TIME TO ARGUE OR,
ALTERNATIVELY, FOR USE OF ALL OF RESPONDENT'S ALLOTTED TIME FOR
ORAL ARGUMENT**

Respondent Admiral Insurance Company ("Admiral"), by and through its undersigned counsel, hereby moves for an enlargement of time to argue or, in the alternative, that Admiral be allowed to use the entire oral argument time allotted to the Respondents. In support of its Motion, Admiral would show as follows:

SUMMARY

By letter dated February 1, 2022, the Court allocated Appellant fifteen (15) minutes for oral argument (opening and reply) and “Respondent” ten (10) minutes for oral argument. As shown by the above caption, there are currently three Respondents: (1) Admiral Insurance Company; (2) Adele Pope, individually (“Pope”); and (3) Adele Pope, as Special Administrator of the Estate of Gloria Corley (the “Estate”). Via email communications among counsel, the other two Respondents have requested four (4) of the ten (10) minutes assigned to “Respondent” for oral argument, leaving Admiral only six (6) minutes for oral argument. The sole order on appeal is the Circuit Court’s “Order Granting Defendant Admiral Insurance Company’s Motion for Judgment on the Pleadings.” (Notice of Appeal). The sole issues on appeal relate to the duties of the parties to an Admiral insurance contract – an insurance contract to which Pope and the Estate are not parties. (R. pp. 9-10).

Prior to entering the Order at issue in this appeal, the Circuit Court separately granted Pope’s and the Estate’s Motion to Dismiss them as parties. (R. pp. 23-28). That separate, written Order has not been appealed. Consequently, Pope and the Estate were not parties to this case when it was appealed.

Because the issues before this Court on appeal relate to an insurance dispute between Appellants and Admiral over a contract to which the other Respondents are not parties, Admiral respectfully requests that either: (a) the three Respondents collectively be allotted fourteen (14) minutes for oral argument so that Admiral has a full ten (10) minutes for oral argument; or (b) Admiral be allowed to use the entire ten-minute oral argument time allotted to the Respondents.

FACTUAL AND PROCEDURAL BACKGROUND

Desa Ballard and Desa Ballard P.A., d/b/a Ballard & Watson filed a declaratory judgment action in the Richland County Court of Common Pleas, styled as: Desa Ballard and Desa Ballard P.A., d/b/a Ballard & Watson v. Admiral Insurance Company, Monitor Liability Managers, Mendes & Mount LLP, Adele R. Pope, individually and as Special Administrator of the Estate of Gloria Corley, Civil Action No. 2018-CP-32-01743 (hereinafter the “Declaratory Judgment Action”).¹ (R. pp. 93-112). In that action, the plaintiffs sought a declaration “that the insurer defendants’ policy obligates them to provide a defense to the claim until and unless the Plaintiffs consent to permit them to pursue settlement” and injunction relief to prevent the insurer defendant “from taking action in violation of the contractual obligation to defend.” (R. p. 94).

On May 21, 2018, Defendants Adele R. Pope (“Pope”) and the Estate of Gloria Corley (the “Estate”) filed a Motion to Dismiss on the basis that no relief was sought against these Defendants. (R. pp. 182-194). On November 14, 2018, the Circuit Court held a hearing on this Motion. (R. p. 23). By Order signed February 15, 2019 at 2:42 p.m., the Circuit Court granted these Defendants’ Motion, finding that this action “is a dispute between an insured and the insured’s insurance carrier” and dismissing Ms. Pope and the Estate from the action. (R. pp. 23-28).

On May 31, 2018, Defendant Admiral Insurance Company filed a Motion for Judgment on the Pleadings. (R. pp. 208-11). By Order signed February 15, 2019 at 3:17 p.m., Judge Walton J. McLeod granted Admiral’s Motion for Judgment on the Pleadings. (R. pp. 7-22). Plaintiffs then

¹ Thereafter, the action was transferred to Lexington County and renumbered with the case number shown above. (R. pp. 3-6). By agreement of the parties, Defendants Monitor Liability Managers and Mendes & Mount LLP were dismissed with prejudice. (R. pp. 206-07, Stipulation of Dismissal with Prejudice).

filed a Notice of Appeal appealing only the Circuit Court's Order granting Admiral's Motion for Judgment on the Pleadings and attaching only that Order to the Notice of Appeal. (Notice of Appeal). That appeal is currently pending before this Court.

The Plaintiffs did not appeal the Circuit Court's granting of Pope's and the Estate's Motion to Dismiss. *See* (Notice of Appeal). However, despite no longer being parties to the Declaratory Judgment Action, Pope and the Estate filed initial respondents' briefs on August 5, 2019. On October 10, 2019, Appellants filed a motion to remove Pope and the Estate as respondents since they were no longer parties to the Declaratory Judgment Action. On February 5, 2020, the Court filed a one-page Order denying Appellants' Motion without explanation. Consequently, there remains three (3) Respondents to this appeal despite Admiral being the only remaining defendant in this case.

ARGUMENT

Pursuant to Rule 218 of the South Carolina Appellate Court Rules, the length of time allotted for oral argument is determined by the Court, and the Clerk is to notify all parties of the time allotted. Rule 218(c), SCACR. The only Order being appealed granted Admiral's Motion for Judgment on the Pleadings. (Notice of Appeal). The only issues being appealed concern the duties of the parties to an Admiral insurance contract. (R. pp. 7-22). Pope and the Estate are not parties to that insurance contract. (R. pp. 7-8). Moreover, Pope and the Estate were no longer parties to this case when the Circuit Court judge entered the Order being appealed. (R. pp. 23-28). Therefore, Pope and the Estate should not have any authority to speak on the issues in this appeal, and it would be inequitable to allow them to divert oral argument time from the real Respondent-in-interest, Admiral. Consequently, Admiral respectfully requests that the Court enlarge the time allotted to Respondents for oral argument to fourteen (14) minutes, so that Admiral may have a

full ten (10) minutes for oral argument. Alternatively, Admiral respectfully requests that the Court allot Admiral the entire ten (10) minutes assigned to Respondents for oral argument.

Oral argument should aid the Court in resolving the issues on appeal and not be used as a vehicle for raising extraneous issues. *See* Rule 215, SCACR. As to the Order and issues on appeal, Admiral is the only Respondent with an interest in such matters. Therefore, out of all of the Respondents, Admiral's oral argument is most likely to aid the Court in resolving the issues on appeal. On the other hand, Respondents Pope and the Estate are not parties to the insurance contract. In fact, Pope and the Estate's underlying Motions to Dismiss before the Circuit Court did not address the insurance contract, and Pope and the Estate did not raise any arguments during the portion of the hearing before the Circuit Court on Admiral's Motion for Judgment on the Pleadings. (R. pp. 313-347). Therefore, Admiral respectfully requests that it be allowed to use all of Respondent's allotted time for oral argument or that Respondents be allotted fourteen (14) minutes for oral argument so that Admiral may have a full ten (10) minutes for oral argument.

CONCLUSION

For the foregoing reasons, Admiral respectfully requests that the Court grant its Motion for Enlargement of Time to Argue, allocating Admiral ten (10) minutes for oral argument and the other Respondents four (4) minutes, collectively. Alternatively, Admiral respectfully requests that the Court allocate to Admiral the entire ten (10) minutes of oral argument time allotted to Respondents.

MURPHY & GRANTLAND, P.A.



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**Attorneys for Respondent Admiral Insurance
Company**

Columbia, South Carolina
February 18, 2022

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Appellants,

v.

Admiral Insurance Company and Adele R. Pope, individually and as Special Administrator of
the Estate of Gloria Corley

Respondents.

PROOF OF SERVICE

I certify that I have served upon Respondent Adele R. Pope, Individually and as Special Administrator of the Estate of Gloria P. Corley and Appellants via Counsel of Record Respondent Admiral Insurance Company's Motion and Memorandum for Enlargement of Time to Argue or, Alternatively, for Use of All of Respondent's Allotted Time for Oral Argument by emailing a copy of same to their counsel, addressed as follows, on February 18, 2022.



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SC Court of Appeals

Via Email Only

Honorable Jenny Abbott Kitchings
SC Court of Appeals Clerk of Court
Calhoun Building
1220 Senate Street
Columbia, SC 29201

Re: Desa Ballard and Desa Ballard, P.A. d/b/a Ballard & Watson, Appellants v. Admiral Insurance Company, Respondent
Civil Action No.: 3:17-cv-02916-DCC-SVH
C/A No.: 2017-CP-40-05628
Appellate Case No.: 2019-000367
Insured: Desa Ballard
Claim No.: 36218
Our File No.: 1575-0022

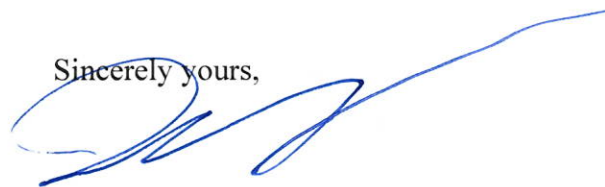
Dear Ms. Kitchings:

Enclosed herewith for filing please find Admiral Insurance Company's Motion and Memorandum for Enlargement of Time to Argue or, Alternatively, for Use of All of Respondent's Allotted Time for Oral Argument and Proof of Service in the above-referenced matter.

By copy of this letter to opposing counsel, I am serving the same upon them this date.

With kind regards, I am

Sincerely yours,



Wesley B. Sawyer

WBS/dlb

CC: Ronald L. Richter, Jr., Esquire
Scott M. Mongillo, Esquire
Eric S. Bland, Esquire
Adam Tremaine Silvernail, Esquire
Adele J. Pope, Esquire