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Feb 17 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERELEY COUNTY
Court of Common Pleas

Jennifer McCoy, Circuit Court Judge

Case No. 2021-001183

Joe Clemons,

Appellant,

v.

Peggy H. Pinnell Agency, Inc., Peggy H. Pinnell Insurance
Agency, Inc., State Farm Life Insurance Company,
(jointly and severally liable),

Respondents.

APPELLANT'S INITIAL BRIEF
(AMENDED)

s/Joe Clemons
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STATEMENT OF ISSUES ON APPEAL

1. Whether, after Appellant made known to the court of his demand for his case to be decided by a jury, it was error for the court to deny him the right to have the jury evaluate the evidence presented and render a verdict.
2. Whether, in light of Appellant's repeated and incessant claims that transcripts were altered or did not accurately reflect actual court proceedings, it was error, and thus detrimental to Appellant's case, to proceed to trial without conducting a thorough review of the transcript audio upon his request.

STATEMENT OF THE CASE

On February 15, 2019, Appellant filed his action with Berkeley County Court of Common Pleas; his eight claims against Respondents included fraud, breach of contract, negligence. On March 20, 2019, Responded answer to deny all claims and asked that the action be dismissed. From a February 12, 2020 hearing, the court granted summary judgment on Appellant's unfair trade practices claim. His remaining claims survived.

After reviewing ORDERS, Appellant voiced objections to the accuracy of hearing transcripts, and made them the basis for his February 16, 2021 Motion For Relief From Judgment, *Rule 60(b)*, specifically, that transcripts did not reflect judicial rulings. There, and on April 16, 2021, he moved for judicial review of audio recordings pursuant to South Carolina Court Reporter's Manuel, pp 19.20.***

A jury was empaneled and on August 23-24, 2021 his matter was heard. Respondent testified that Appellant had signed the document in her presence acknowledging acceptance of the policy without the waiver. Appellant's wife testified that Respondent took her signature from another document and used to alter "Exhibit 4" to make it appear she had signed it.

After the case was presented to the jury, Respondent counsels moved for Directed Verdict as to remaining causes., w2hich the Court GRANTED. The Court then informed Appellant of his right to file post-trial motions and/or appeal under South Carolina Rules of Civil Procedure and South Carolina Appellate Court Rules. Appellant's appeal followed.

STATEMENT OF THE FACTS

Appellant is and has been a multi-policy holder with Respondent insurance agency for more than thirty (30) years, and with Respondent agent for more than twenty-five (25) years. On May 21, 2010, on agent's offer, Appellant bought a policy which converted his existing term life policy into a fifteen (15) year pay life policy for (\$250,000.00). During discussions, Respondent Agent notified Appellant of a *waiver of premium disability* (hereinafter "WPD") provision, which Appellant requested be included with the new policy, during the 2010 transaction.

At that time, Respondent Agent advised Appellant that she could not include the WPD without approval from Respondent State Farm. On June 7, 2010, Respondent State Farm notified Respondent Agency that Appellant was ineligible for the WPD he had applied for on May 21, 2010. This included a printout cost for the 15-year policy applied for on May 21, 2010, with an alternative to accept it without the WPD clause. On July 6, 2010, outside Appellant's presence and absent his knowledge or consent, Appellant alleges Respondent Agent affixed his signature to a form accepting the policy without the provision. Appellant claims he had no information on the WPD matter, until on or about March 16, 2017 when he met with Respondent Agent to file a disability claim pursuant to his Social Security total disability determination. It was then that Respondent Agent informed Appellant that his May 2010 policy had been issued without the WPD clause. Appellant thought it strange that the 10-year lifetime \$150,000 policy he bought in 2016 included the *waiver*, and the May 2010 did not, especially that when it was Respondent Agent who assured that the WPD was included in the 2016 policy. On neither occasion, had Appellant been identified disabled Prior to May 2017, Respondent gave Appellant no notice about the denial of the WPD to his 2010 policy, nor offered him an alternative option until March 16, 2017.

ARGUMENT

“A directed verdict may be properly granted only when "there are no controverted issues of fact upon which reasonable minds could differ." *Clark v. J.M. Benson Co., Inc.*, 789 F.2d 282, 285 (4th Cir.1986). When reviewing a grant of a directed verdict, all facts and reasonable inferences must be viewed in the light most favorable to the non-moving party. *Mays v. Pioneer Lumber Corp.*, 502 F.2d 106, 108 (4th Cir.197), cert. denied, 420 U.S. 927 (1975). *Drew v. Food Lion, Inc.*, 940 F.2d 652 (4th Cir. 1991)” - verdict vacated and remanded for a new trial.

Here, as in *Drew*, Appellant was denied the option of having the jury reach a verdict on evidence which could have been decided in his favor.

"It is the jury, not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable. * * * That conclusion, whether it relates to negligence, causation or any other factual matter, cannot be ignored." *Tennant v. Peoria & P. U. Ry. Co.*, 1944, 321 U.S. 29, 64 S.Ct. 409, 412, 88 L.Ed. 520. Also see *Pierce v. Ford Motor Co.*, 4 Cir. 1951, 190 F.2d 910, and *Doggett v. Atlantic Holding Corp.*, 4 Cir. 1956, 239 F. 2d 156. *Grooms v. Minute-Maid*, 267 F.2d 541 (4th Cir. 1959).

Appellant contends that had the court reviewed transcript audio recordings, the results would have been different.

PRAYER

For reasons outlined above, Appellant asks this Court to VACATE the court's Directed Verdict and remand this matter for a new trial to allow a jury to reach a verdict.

s/Joe Clemons

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Respondents.

PROOF OF SERVICE
(AMENDED)

Appellant hereby certifies that copies of his Initial Brief and Designation of Matter are filed
and served electronically, this 17th day of February 2022 to

Appellate Court Administration
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