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STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER | CIVIL ACTION NO: 2019-CP-43-00105

Progressive Northern Insurance Company,

Plaintiff,

v.

Gloria Oliver, Richard Prothro and Sharon Prothro,

Defendant.

ORDER

RECEIVED
May 23 2022
SC Court of Appeals

The above-referenced matter came before the Court upon Progressive Northern Insurance Company's ("Progressive") Motion for Summary Judgment. The Court heard arguments on the Motion via videoconference on September 14, 2020. Appearing on behalf of the Plaintiff was Sarah E. Caiello, Esquire. Appearing on behalf of Defendant Gloria Oliver was J. Thomas McElveen, III, Esquire.[1] After the hearing, the Court indicated it would deny Progressive's Motion and that its ruling would also include a finding of uninsured motorist coverage for the Defendant Oliver. However, because Oliver had not filed her own dispositive motion at the time of the hearing on Progressive's Motion, the parties agreed to allow Oliver to file her own motion, after which the Court would enter its written decision. Oliver then filed her Motion for Summary Judgment on July 12, 2021, with a proposed Order also submitted through the electronic filing system with the Clerk of Court.

After Oliver submitted her Motion, but before this Court had an opportunity to issue a written decision, the South Carolina Supreme Court rendered a decision in the case of *United Services Auto. Ass'n v. Pickens*, 434 S.C. 60, 862 S.E.2d 442 (Aug. 11, 2021). Progressive

[1] The Court entered default against Defendants Richard Prothro and Sharon Prothro on April 25, 2019. Because these Defendants are in default, the judgment herein shall apply equally to them as to Defendant Oliver.

submitted this case decision to the Court as supplemental authority. The parties then both submitted a series of emails to the Court addressing the impact of the *Pickens* decision.

The case appeared on the non-jury roster meeting held on January 10, 2022, after which the Court requested the parties to submit additional briefing on the issue. Counsel for both parties appeared at the roster meeting.

After reviewing the record, legal memoranda and hearing the able arguments of counsel, the court finds that Progressive is entitled to judgment in its favor. Therefore, the Court enters judgment in favor of Progressive for the reasons set forth below.

Progressive issued an automobile liability policy to its named insured Sharon Prothro. As the named insured, Sharon Prothro made the decision to execute a form titled "**Named Driver Exclusion Election**" naming Richard Prothro as an excluded driver. The form was approved by the South Carolina Department of Insurance in accordance with South Carolina Code § 38-77-340. In the form, Sharon Prothro declared that Richard's license had been turned in to the DMV. The form stated: "No coverage is provided for any claim arising from an accident or loss involving a motorized vehicle being operated by an excluded person." (emphasis added). The parties do not dispute the validity of the form or its execution. The sole question before the Court is the legal effect of the exclusion on Gloria Oliver's claim for uninsured motorist coverage.

Progressive's Named Driver Exclusion endorsement states in plain and unambiguous terms that Progressive "will not provide coverage for any claim arising from an accident or loss involving a motorized vehicle being operated by that excluded driver." Gloria Oliver's claim arises from an accident or loss involving a motorized vehicle operated by Richard Prothro—the excluded driver. Therefore, according to the plain terms of the contract entered into between Progressive and its named insured, no coverage applies to Gloria Oliver's claims.

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Gloria Oliver argues that the named driver exclusion renders the vehicle uninsured, thus entitling her to uninsured motorist ("UM") coverage. She then argues that the named driver exclusion cannot apply to a UM claim of a guest passenger.

The Supreme Court in *Pickens* specifically addressed whether a named driver exclusion applies to claims for UM coverage of passengers in the vehicle operated by the excluded driver, holding: "We hold the reasoning expressed in *Knight* applies equally here: **where the parties agree to exclude coverage when a named driver is operating a vehicle, <u>that exclusion extends to all forms of coverage in the policy</u>**." 434 S.C. at 65, 862 S.E.2d at 445 (emphasis added). After acknowledging that South Carolina Code § 38-77-150(A) mandates UM coverage in all automobile insurance policies, the Supreme Court held: "[h]owever, excluding a named driver from all forms of coverage—even mandatory coverage—is permitted by section 38-77-340 and therefore does not violate section 38-77-150." *Id.* at 66, 862 S.E.2d at 445. Thus, the Supreme Court in *Pickens* held that a named driver exclusion applies to <u>all</u> coverage under the policy, including what would otherwise be mandatory UM coverage.

Oliver argues that she must be provided UM coverage because she was a guest passenger, thus making her a statutory insured under South Carolina Code § 38-77-30. *See* S.C. Code § 38-77-30(7) (defining "insured" to include "any person who uses with the consent . . . of the named insured the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies . . .."). However, the opening line of South Carolina Code § 38-77-340 explicitly states that the exclusion applies "Notwithstanding the definition of 'insured' in Section 38-77-30 . . .." Moreover, the agreement, "when signed by the named insured, is binding upon **every insured to whom the policy applies** and any substitution or renewal of it." S.C. Code Ann. § 38-77-340 (emphasis added). In *Pickens*, the Supreme Court relied on this very language to hold that

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the public policy behind the UM statute could not be used to override the effect of the named driver exclusion. 434 S.C. at 66-67, 862 S.E.2d at 445 ("We believe section 38-77-340 expressly answers that argument . . ..").

The parties do not dispute that Prothro was an excluded driver operating the insured vehicle at the time of the accident. Therefore, in the words of the statute and the Supreme Court in *Pickens*, the excluded driver endorsement "is binding upon *every insured* to whom the policy applies." S.C. Code § 38-77-340 (emphasis added); *Pickens*, 434 S.C. at 66–67, 862 S.E.2d at 445. Therefore, Oliver is not entitled to any coverage, whether liability or UM coverage, that would otherwise exist under the Progressive policy but for the operation of the insured vehicle by an excluded driver.

The plain language of the statute, as interpreted by the Supreme Court in *Pickens*, leaves no room for Oliver's arguments to the contrary. The question of whether she was an innocent guest passenger is irrelevant. The sole question is whether the excluded driver was operating the vehicle at the time of the collision. Because he was, the exclusion applies.

In fact, this case presents an even more compelling argument for non-coverage than *Pickens*. In *Pickens*, the vehicle was struck by a John Doe motorist. Although the excluded driver may have been driving at the time of the collision, he was not at fault in causing the collision. In contrast, it is undisputed that Richard Prothro caused the accident in this case—while drunk and while operating without a license. If Oliver could simply shift Progressive's exposure from liability coverage over to UM coverage, then the entire purpose of the excluded driver statute would be defeated. As the Supreme Court has repeatedly held, the purpose of the statute is to provide "the named insured the opportunity to pay lower premiums when a bad driver would otherwise be included within the policy . . .." *Pickens*, 434 S.C. at 67, 862 S.E.2d at 445 (citations omitted). If Progressive could be forced to pay for damages caused by the excluded driver's

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operation of the vehicle under the UM provisions of the policy, then the statutory goal is defeated. Instead of charging less money on premiums, Progressive could simply take the increased liability premium for Richard Prothro being an insured and charge that increased premium as UM coverage. There would be no savings, and the statutory goal would not be met. Therefore, the facts in this case are even more compelling than those at issue in *Pickens*.

At its heart, Oliver's argument is one of public policy. She stresses the burden a passenger would face if they had to ask the driver whether the driver was insured before agreeing to ride in his or her vehicle. However, the Supreme Court in *Nationwide Insurance Company of America v. Knight*, 433 S.C. 371, 585 S.E.2d 633 (2021), held that courts cannot use public policy to override the plain terms of an insurance contract. In *Knight*, an estate sought underinsured motorist ("UIM") coverage for a motorcyclist hit by a drunk driver. The motorcyclist had UIM coverage on the motorcycle, but he was listed as an excluded driver on his wife's Nationwide policy. The estate argued Nationwide's named driver exclusion violated public policy to the extent it applied to UIM coverage. The Supreme Court disagreed, holding: "To be clear, this Court has no authority to invalidate an automobile insurance policy provision simply because we believe it is inconsistent with our own notion of 'public policy.'" 858 S.E.2d at 635. "Rather, the General Assembly establishes the public policy relating to automobile insurance and enacts statutes to let the public and the courts know what that policy is." *Id.* Therefore, "[w]hen an insured challenges a policy provision on the ground the provision violates public policy, the Court's authority is limited to determining whether the policy provision violates a statute." *Id.* In other words, if application of the named driver exclusion to UM coverage here does not violate a statute, then the named driver exclusion must be enforced according to its plain terms. As the Supreme Court held in *Pickens*: "where the parties agree to exclude coverage when a named driver is operating a vehicle, that

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exclusion extends to all forms of coverage in the policy." 434 S.C. at 65, 826 S.E.2d at 445. Therefore, "denial of UM coverage to [an insured] did not violate section 38-77-340." *Id.* Because the exclusion does not violate any statute, Oliver cannot use a general notion of public policy to overcome the plain language of the exclusion.

Based on the above, this Court finds that Progressive is entitled to summary judgment in its favor.

IT IS SO ORDERED.

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The Honorable Kristi F. Curtis

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Sumter Common Pleas

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Type:	Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762