SUPREME COURT OF SOUTH CAROLINA

Cain v. Nationwide Property and Casualty Insurance Co., 378 S.C. 25

661 S.E.2d 349 (2008) · No. No. 26491 · Decided May 12, 2008

SUMMARY

The Supreme Court of South Carolina affirmed the denial of uninsured motorist proceeds to Delmore Cain under S.C. Code § 15-78-190. The court held that recovery under the statute remains subject to the terms and statutory definitions governing uninsured and underinsured motorist coverage, and Cain could not recover because the government vehicle was underinsured rather than uninsured and his policy excluded underinsured motorist coverage.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Beatty; Chief Justice Toal; Justice Moore; Justice Waller; Acting Justice Diane Schafer Goodstein
JURISDICTION	South Carolina
DECIDED	May 12, 2008
DOCKET	No. 26491
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cain brought a declaratory judgment action seeking uninsured motorist proceeds for damages remaining after settlement of his Tort Claims Act claim against Richland County. The circuit court ruled for Nationwide, and Cain appealed; the South Carolina Court of Appeals certified the case to the South Carolina Supreme Court.
STANDARD OF REVIEW	De novo review of statutory interpretation and the interpretation of the insurance policy; the material facts were undisputed.
PRECEDENTIAL VALUE	Published South Carolina Supreme Court opinion; precedential.
PARTIES	Delmore Cain v. Nationwide Property and Casualty Insurance Company

TOPICS

insurance coverage · uninsured motorist · statutory interpretation · declaratory judgment · municipal liability

PRACTICE AREAS

insurance law | motorist insurance coverage | statutory interpretation | declaratory judgment | governmental tort liability

QUESTIONS PRESENTED

1. Whether South Carolina Code section 15-78-190 independently required Nationwide to compensate Cain for damages exceeding the Tort Claims Act cap, regardless of the statutory and policy definitions of uninsured and underinsured vehicles.
2. Whether Cain could recover under the uninsured motorist provisions of his Nationwide policy when the government dump truck had liability coverage greater than the statutory minimum but less than Cain's damages, making it an underinsured rather than uninsured vehicle.

HOLDINGS

1. Section 15-78-190 does not create an independent entitlement to compensation for all damages exceeding the Tort Claims Act cap. Recovery remains subject to the statutory definitions and the terms of the plaintiff's uninsured or underinsured motorist policy.
2. Cain could not recover under the Nationwide uninsured motorist coverage because the dump truck was an underinsured vehicle, not an uninsured vehicle, and Cain had expressly declined underinsured motorist coverage.

KEY QUOTATIONS

> *"Thus, by enacting section 15-78-190, the Legislature assured that an insurance company could not cite the "exclusive civil remedy" portion of section 15-78-20 to deny payment from the plaintiff's uninsured or underinsured motorist coverage where recovery pursuant to the Tort Claims Act was insufficient."* (378 S.C. at 31)

> *"Because recovery under section 15-78-190 is subject to the requirements in his policy, Cain failed to meet the definitions and cannot recover."* (378 S.C. at 32-33)

FACTUAL BACKGROUND

On April 21, 2003, Cain was seriously injured when a Richland County dump truck crossed the center line and struck the vehicle in which he was riding. Richland County's vehicle had liability insurance exceeding the statutory minimum, but Cain's damages exceeded the $300,000 Tort Claims Act cap; Cain received $300,000 from Richland County and $40,000 in underinsured motorist benefits under another policy. Cain's Nationwide policy provided uninsured motorist coverage but no underinsured motorist coverage, and the parties stipulated that his damages exceeded $370,000.

PROCEDURAL HISTORY

After Cain settled his underlying claim against Richland County for the $300,000 Tort Claims Act cap and received $40,000 in underinsured motorist benefits under another policy, he sought additional benefits under his

Nationwide uninsured motorist coverage. The circuit court denied relief, concluding that the dump truck was not an uninsured vehicle under the policy or applicable insurance statutes and that section 15-78-190 did not entitle Cain to recovery. The Court of Appeals certified the appeal to the Supreme Court of South Carolina, which affirmed.

DISPOSITION

affirmed

CASES CITED

- Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000)
- New York Times Co. v. Spartanburg County School District No. 7, 374 S.C. 307, 649 S.E.2d 28 (2007)
- Ray Bell Construction Co. v. School District of Greenville County, 331 S.C. 19, 501 S.E.2d 725 (1998)
- Kennedy v. South Carolina Retirement System, 345 S.C. 339, 549 S.E.2d 243 (2001)
- Steinke v. South Carolina Department of Labor, Licensing, & Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999)

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