

SUPREME COURT OF SOUTH CAROLINA

United Services Automobile Association v. Pickens

Opinion No. 28050 (S.C. Aug. 11, 2021) · No. Appellate Case No. 2020-000439 · Decided August 11, 2021

SUMMARY

The South Carolina Supreme Court held that a named-driver exclusion authorized by South Carolina Code section 38-77-340 may exclude uninsured motorist coverage, as well as other forms of coverage, while the designated driver operates the vehicle. Because Belinda Pickens had signed an exclusion naming Kevin Simms and Simms was operating the vehicle when she was injured, the court affirmed the denial of her uninsured motorist claim.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Hearn; Chief Justice Beatty; Justice Kittredge; Justice Few; Justice James
JURISDICTION	South Carolina
DECIDED	August 11, 2021
DOCKET	Appellate Case No. 2020-000439
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a circuit court order granting USAA's motion for summary judgment and denying Pickens's cross-motion in a declaratory judgment action concerning entitlement to uninsured motorist coverage. The South Carolina Supreme Court certified the case for review under Rule 204(b), SCACR.
STANDARD OF REVIEW	Cross-motions for summary judgment are decided as a matter of law, and statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Belinda Pickens v. United Services Automobile Association

TOPICS

uninsured motorist

insurance coverage

declaratory relief insurance

statutory interpretation

preservation of error

PRACTICE AREAS

insurance law

automobile insurance

uninsured motorist coverage

declaratory judgment

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether South Carolina Code section 38-77-340 permits a named driver exclusion to preclude uninsured motorist coverage for an insured passenger injured while the excluded driver was operating the vehicle.
2. Whether the exclusion violates section 38-77-150's requirement that automobile insurance policies contain uninsured motorist coverage.

HOLDINGS

1. When the insured agrees to exclude coverage while a named driver operates the vehicle, the exclusion extends to all forms of coverage under the policy, including uninsured motorist coverage.
2. A named driver exclusion authorized by section 38-77-340 may exclude uninsured motorist coverage notwithstanding section 38-77-150's requirement that automobile policies contain uninsured motorist coverage.
3. Pickens's argument that the policy language itself applied only to liability coverage was unpreserved because the circuit court did not rule on it and Pickens did not file a Rule 59(e) motion.

KEY QUOTATIONS

“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, that exclusion extends to all forms of coverage in the policy.”

“However, 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.”

FACTUAL BACKGROUND

Belinda Pickens was injured while riding as a passenger in her insured 1997 Chevrolet, which was being operated by her son, Kevin Simms. Pickens's automobile policy provided liability, personal injury protection, uninsured motorist, and underinsured motorist coverage, but she had signed a named driver exclusion covering Simms while operating the insured vehicle. Pickens sought uninsured motorist benefits, and USAA denied the claim because Simms was the excluded driver; the parties stipulated that Simms was driving when the accident occurred and had separate insurance.

PROCEDURAL HISTORY

USAA filed a declaratory judgment action after denying Pickens's claim for uninsured motorist coverage. On cross-motions for summary judgment, the Richland County circuit court ruled for USAA, holding that the named driver exclusion authorized by section 38-77-340 applied to uninsured motorist coverage and did not

violate public policy. Pickens appealed, and the Supreme Court of South Carolina certified the case for its review and affirmed.

DISPOSITION

affirmed

CASES CITED

- Neumayer v. Philadelphia Indemnity Insurance Co., 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019)
- Wiegand v. U.S. Automobile Association, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)
- Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)
- Nationwide Insurance Co. of America v. Knight, 428 S.C. 451, 835 S.E.2d 538 (Ct. App. 2019), *aff'd*, Op. No. 28028 (S.C. Sup. Ct. filed May 12, 2021)
- I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)
- Lincoln General Insurance Co. v. Progressive Northern Insurance Co., 406 S.C. 534, 541, 753 S.E.2d 437, 441 (Ct. App. 2013)
- Lovette v. U.S. Fidelity & Guaranty Co., 274 S.C. 597, 600-01, 266 S.E.2d 782, 784 (1980)
- Nationwide Mutual Insurance Co. v. Erwood, 373 S.C. 88, 644 S.E.2d 62 (2007)
- Unisun Insurance Co. v. Schmidt, 339 S.C. 362, 529 S.E.2d 280 (2000)

OPINION

PER CURIAM.

THE STATE OF SOUTH CAROLINA In The Supreme Court United Services Automobile Association, Respondent, v. Belinda Pickens, Appellant. Appellate Case No. 2020-000439 Appeal from Richland County Robert E. Hood, Circuit Court Judge Opinion No. 28050 Heard May 25, 2021 – Filed August 11, 2021 AFFIRMED Richard C. Alexander and Terence Covington Wise, both of Shelly Leeke Law Firm, LLC, of North Charleston, and Thomas J. Rode, of Thurmond Kirchner & Timbes, PA, of Charleston, for Appellant.

John Robert Murphy and Wesley Brian Sawyer, both of Murphy & Grantland, PA, of Columbia for Respondent. JUSTICE HEARN: This case requires us to determine whether Section 38-77-340 of the South Carolina Code (2015) permits a named driver exclusion that precludes uninsured motorist (UM) coverage to a passenger injured in an accident involving an unknown driver.

We hold that it does. FACTS After sustaining injuries in a vehicle driven by her son, Kevin Simms, Petitioner Belinda Pickens sought UM coverage through her policy with Respondent United Services Automobile Association (USAA). At the time of the accident, Pickens's policy covered five vehicles, including the 1997 Chevrolet involved in the accident.

The policy included liability, personal injury protection (PIP), UM, and underinsured motorist (UIM) coverage.¹ Pickens also executed a named driver exclusion titled, "VOIDING AUTOMOBILE INSURANCE WHILE NAMED PERSON IS OPERATING CAR."

The named driver exclusion stated in part: In consideration of the continuation of this policy in force by the Company at the rate applicable because of this endorsement, it is hereby agreed that with respect to such insurance as is afforded under this policy, including any obligation to defend, the Company shall not be liable for damages, losses or claims arising out of the operation or use of the automobile described in the policy or any other automobile to which the terms of the policy are extended, whether or not such operation or use was with the express or implied permission of its owner, while said automobile is being driven or operated by the following named person: KEVIN S. PICKENS² Pickens signed and dated the exclusion and indicated Simms had obtained his own policy of insurance.

Pickens's declarations page also contained a provision that stated, "****COVERAGES EXCLUDED WHEN ANY VEHICLE OPERATED BY KEVIN SIMMS****." USAA denied Pickens's claim and initiated a declaratory judgment action asserting she was not entitled to UM coverage because Simms, the excluded driver, was operating the vehicle at the time of the accident. Both parties filed motions for summary judgment.

Pickens asserted that section 38-77-340 applied solely to 1 Coverage included limits of \$100,000 per person for bodily injury, \$200,000 per accident for bodily injury, and \$50,000 per accident for property damage for liability, UM, and UIM coverage. ² The parties agree they intended to list Kevin Simms as the excluded driver. liability insurance. USAA argued the endorsement excluding all forms of coverage was expressly authorized by section 38-77-340, and to allow Pickens to recover UM in this case would create a "perverse incentive" for policyholders to exclude all members of their households.³ After a hearing on the cross-motions for summary judgment, the circuit court granted USAA's motion and denied Pickens's.

Citing the court of appeals' decision in *Nationwide Insurance Co. of America v. Knight*, 428 S.C. 451, 835 S.E.2d 538 (Ct. App. 2019), *aff'd*, Op. No. 28028 (S.C. Sup. Ct. filed May 12, 2021) (Shearouse Adv. Sh. No. 16), the circuit court held the excluded driver endorsement was not limited to liability coverage, but also applied to UM coverage, particularly given that UM was not sold as standalone coverage.

The circuit court further held that to permit Pickens to recover UM limits after having signed an exclusion naming Simms as an excluded driver would violate public policy. Lastly, the circuit court found *Knight* was applicable, and section 38-77-340 permitted the exclusion of UM coverage. Pickens appealed to the court of appeals, and this Court certified the case for its review pursuant to Rule 204(b), SCACR.

ISSUE Did the circuit court err by interpreting section 38-77-340 to exclude Pickens's claim for uninsured motorist coverage as a matter of law? STANDARD OF REVIEW When parties file cross-motions for summary judgment, the issue is decided as a matter of law. *Neumayer v. Philadelphia Indem. Ins. Co.*, 427 S.C. 261, 265, 831 S.E.2d 406, 408 (2019) (citing *Wiegand v. U.S. Auto.*

Ass'n, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)). "Further, the interpretation of a statute is a question of law, which we review de novo." *Neumayer*, 427 S.C. at 265, 831 S.E.2d at 408 (citing *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). DISCUSSION 3 The parties also entered into a stipulation and agreement, noting, inter alia, the exclusion form should have listed Kevin Simms rather than Kevin Pickens as Pickens's excluded resident relative, Pickens was a passenger in her 1997 Chevrolet covered by her policy, and Simms was operating the vehicle at the time Pickens was injured.

Pickens argues section 38-77-340 applies only to liability coverage, and any exclusion permitted by the statute excludes coverage in relation to the named driver and not the policyholder.⁴ USAA contends section 38-77-340 allows exclusions on all forms of coverage under a liability policy, including UM coverage. Further, USAA asserts the exclusion voids all coverage while the named driver operates the covered vehicle.

We agree with USAA. Section 38-77-340, titled "Agreement to exclude designated natural person from coverage," states in full: Notwithstanding the definition of "insured" in Section 38-77-30, the insurer and any named insured must, by the terms of a written amendatory endorsement, the form of which has been approved by the director or his designee, agree that coverage under such a policy of liability insurance shall not apply while the motor vehicle is being operated by a natural person designated by name.

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. However, no natural person may be excluded unless the named insured declares in the agreement that (1) the driver's license of the excluded person has been turned in to the Department of Motor Vehicles or (2) an appropriate policy of liability insurance or other security as may be authorized by law has been properly executed in the name of the person to be excluded.

S.C. Code Ann. § 38-77-340 (2015). ⁴ Pickens also asserts the policy language of the exclusion refers to only liability coverage. USAA contends that argument is unpreserved. While it is arguable whether Pickens actually raised this argument during the hearing before the circuit court, it is clear the court did not rule on the policy exclusion's language.

Accordingly, because Pickens did not file a Rule 59(e), SCRCP motion, it is unpreserved. *l'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("If the losing party

has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appeal review....

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments."). In *Knight*, this Court held section 38-77-340 did not prohibit the exclusion of UIM coverage. Op. No. 28028 (S.C. Sup. Ct. filed May 12, 2021) (Shearouse Adv. Sh. No. 16 at 20). There, *Knight*, individually and as representative of her deceased husband's estate, attempted to recover UIM limits under her policy through Nationwide.

Id. at 20-21. However, *Knight* had executed an exclusion naming her husband as an excluded driver and providing "all coverages in your policy are not in effect while Danny Knight is operating any motor vehicle." *Id.* at 20. When *Knight's* husband died in a motorcycle accident, she attempted to recover UIM coverage under her insurance policy, but Nationwide denied the claim, relying on the named driver exclusion.

Id. at 20-21. *Knight* argued the General Assembly intended that section 38-77-340 allow exclusions for only liability coverage, not UIM. *Id.* at 26. This Court disagreed, noting that freedom of contract affords parties the ability to enter into such exclusions, and section 38-77-340 permits the exclusion of UIM coverage. *Id.* at 26-27. Like *Knight*, *Pickens* entered into an agreement with USAA naming *Simms* as an excluded driver.

Pickens also verified that *Simms* had sufficient coverage under his own, separate policy as required by statute. See S.C. Code Ann. §§ 38-77- 140, -150 (2015). 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, that exclusion extends to all forms of coverage in the policy.

The exclusion at issue specifically applies to "such insurance as is afforded under this policy," and provides that USAA will not be liable when *Simms* is operating a vehicle described in the policy. Accordingly, USAA's denial of UM coverage to *Pickens* did not violate section 38-77-340.

We recognize that subsection 38-77-150(A) requires all insurance policies to include UM coverage: "No automobile insurance policy or contract may be issued or delivered unless it contains a provision by endorsement or otherwise, herein referred to as the uninsured motorist provision, undertaking to pay the insured all sums which he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle, within limits which may be no less than the requirements of Section 38-77-140."

S.C. Code Ann. § 38-77-150(A) (2015). However, 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. Indeed, liability coverage is also mandatory, and *Pickens* does not suggest that it cannot be excluded under section 38-77-340. *Pickens* also argues that to allow

USAA to exclude UM coverage here defeats the purpose of UM, particularly if the uninsured motorist at fault in this case was an unknown driver rather than Simms.⁵ We believe section 38-77-340 expressly answers that argument by stating: "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 (2015) (emphasis added). Ultimately, under this outcome, the statute's purposes—providing the named insured the opportunity to pay lower premiums when a bad driver would otherwise be included within the policy and protecting the motoring public by requiring the excluded driver to either surrender his driver's license or be insured under his own policy—are accomplished.

See *Nationwide v. Knight*, Op. No. 28028 (S.C. Sup. Ct. filed May 12, 2021) (Shearouse Adv. Sh. No. 16 at 25-26); *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 541, 753 S.E.2d 437, 441 (Ct. App. 2013) (citing *Lovette*, 274 S.C. at 600, 266 S.E.2d at 783).

As the circuit court noted, no liability coverage would have been afforded to a third party had Simms been at fault, and thus, it would violate public policy to allow Pickens to recover UM when she was the person who executed the exclusion yet knowingly allowed Simms to drive her vehicle. CONCLUSION For the foregoing reasons, we affirm the circuit court. ⁵ Pickens relies on the Court's holdings in *Nationwide Mutual Insurance Co. v. Erwood* and *Unisun Insurance Co. v. Schmidt* for the proposition that UM is personal and portable, and coverage should be evaluated from Pickens's perspective rather than be dependent on whether Simms was insured.

Erwood, 373 S.C. 88, 644 S.E.2d 62 (2007); *Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000). Although those cases hold that a policyholder's UM coverage could not be limited simply because she was a passenger on her husband's motorcycle—a vehicle not covered under her policy—when she was injured (*Erwood*, 373 S.C. at 90-92, 644 S.E.2d at 63-64) and that a permissive passenger could not lose her status as an insured for purposes of UM coverage when a non-permissive driver was behind the wheel (*Schmidt*, 339 S.C. at 368, 529 S.E.2d at 283), those cases did not involve an agreed-upon named driver exclusion and are therefore inapposite.

Similarly, while Pickens insists this Court's decision in *Lovette* stands for the proposition that the named driver statute is intended to apply to those other than the named insured, that case is distinguishable because the policyholder listed himself as the excluded driver, and the Court held insurance would never have existed under the driver's own policy.

Lovette v. U.S. Fidelity & Guar. Co., 274 S.C. 597, 600-01, 266 S.E.2d 782, 784 (1980). AFFIRMED. BEATTY, C.J., KITTREDGE, FEW and JAMES, JJ., concur.

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