Cited
As of: Jan 31, 2009

American Mutual Fire Insurance Company of Charleston, Inc. and State Automobile Insurance Company, of whom American Mutual Fire Insurance Company of Charleston, Inc., is Respondent, v. Aetna Casualty & Surety Company, Appellant

No. 23319

Supreme Court of South Carolina

303 S.C. 301; *400 S.E.2d 147*; *1991 S.C. LEXIS 16*

November 15, 1990, Heard
January 21, 1991, Filed

PRIOR HISTORY: [***1] Appeal from Greenville County; Jonathan Z. McKown, Judge.

DISPOSITION: AFFIRMED.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellant insurer sought review of an order of the trial court (South Carolina) that granted respondent insurer judgment on the pleadings in respondent's action that sought to have appellant declared the primary insurer for respondent's insured and its employee for a car accident in which the employee was a permissive user of appellant insured's vehicle.

OVERVIEW: Appellant issued an automobile insurance policy to a car dealership. An employee of the used car shop, who was insured by respondent, was a permissive user of a vehicle owned by the car dealership when he collided with another vehicle, injuring two others. Respondent commenced an action that sought to declare appellant the primary insurer for the employee and the used car shop. Appellant contended that its policy with the car dealership excluded liability coverage for an individual using a covered vehicle while working at the business of servicing automobiles. Respondent alleged that the exclusion was invalid. The trial court granted respondent's motion for judgment on the pleadings. The court affirmed the order of the trial court. The court held that the exclusion invalidly attempted to avoid liability coverage for the permissive user of a covered vehicle, which *S.C. Code Ann. § 38-77-30(6)* defined as an insured. The court overruled two cases to the extent that they were inconsistent with this opinion.

OUTCOME: The court affirmed an order that granted respondent judgment on the pleadings in its action that sought to have appellant declared as the primary insurer for the used car shop and its employee who, while a permissive user of a vehicle owned by appellant's insured, collided with another vehicle.

LexisNexis(R) Headnotes

Insurance Law > Motor Vehicle Insurance > Coverage > General Overview

[HN1] *S.C. Code Ann. § 38-77-140* (1989) provides that no liability insurance policy shall be issued unless it contains a provision insuring the persons defined as insured.

Insurance Law > Motor Vehicle Insurance > Vehicle Use > Permissive Users > Implied Permission

[HN2] *S.C. Code Ann. § 38-77-30(6)* (1989) defines "insured" to include any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies.

Insurance Law > Motor Vehicle Insurance > Exclusions > General Overview
Insurance Law > Motor Vehicle Insurance > Vehicle Ownership > Automobile Dealers
Torts > Transportation Torts > General Overview
[HN3] Certain statutes, such as *S.C. Code Ann. §§ 38-77-220, 56-9-20(7)(c)* (1989) provide specific exemptions which may be properly included in an automobile liability policy, thus giving rise to a strong inference that no other exceptions are intended.

Insurance Law > Motor Vehicle Insurance > Exclusions > General Overview
[HN4] To the extent *Stanley v. Reserve Insurance Co., 238 S.C. 533, 121 S.E.2d 10 (1961)* and *American Fire & Casualty Co. v. Surety Indemnity Co., 246 S.C. 220, 143 S.E.2d 371 (1965)* are inconsistent with this opinion, they are overruled.

COUNSEL: Robert P. Foster, of Foster, Gaddy, Foster & Fortson, of Greenville, for Respondent American Mutual Fire Insurance Company.

N. Heyward Clarkson, Jr., and C. Stuart Mauney, of Rainey, Britton, Gibbes & Clarkson, of Greenville, for Appellant.

JUDGES: Gregory, C.J. Harwell, Finney, Toal, JJ., and Littlejohn, A.A.J., concur.

OPINION BY: GREGORY

OPINION

[*302] [**148] This appeal is from an order granting respondent judgment on the pleadings. We affirm.

Appellant (Aetna) issued an automobile insurance policy to Fairway Ford which was in effect during October 1987. On October 31, 1987, Joe Woodward was a permissive user of a vehicle owned by Fairway Ford when he collided with another vehicle injuring two others. Respondent (American Mutual) was the automobile insurance carrier for Joe Woodward's employer, Woodward's Used Cars and Cleanup Shop. [*303] At the time of the accident, Joe Woodward was acting within the scope of his employment.

American Mutual commenced this action seeking to have Aetna declared the primary insurer for Joe Woodward and Woodward's Used Cars and Cleanup [***2] Shop. Aetna defended on the ground its policy with Fairway Ford excluded liability coverage for an individual using a covered vehicle "while working in the business of servicing automobiles." American Mutual moved for judgment on the pleadings alleging the exclusion was invalid. This motion was granted and Aetna appeals.

In *Farmland Mutual Insurance Co. v. Jim Moore Cadillac-Oldsmobile, Inc., 283 S.C. 33, 320 S.E.2d 719 (Ct. App. 1984)*, the Court of Appeals held the same exclusion at issue here was invalid because it contravened S.C. Code Ann. §§ 56-9-820 and -810(2) (1976), now codified at *§§ 38-77-140* and -30(6) (1989) respectively. [HN1] *Section 38-77-140* provides no liability insurance policy shall be issued "unless it contains a provision insuring the persons defined as insured." [HN2] *Section 38-77-30(6)* defines "insured" to include "any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies." The Court of Appeals concluded the exclusion invalidly attempted to avoid liability coverage for the permissive user of a covered vehicle defined by the statute as an insured.

Further, in its earlier decision on this issue, [***3] *Pennsylvania National Mutual Casualty Insurance Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct.App. 1984)*, the Court of Appeals noted that [HN3] certain statutes provide specific exemptions which may be properly included in an automobile liability policy, thus giving rise to a strong inference that no other exceptions were intended. *See e.g., S. C. Code Ann. §§ 38-77-220* (1989) and 56-9-20(7)(c) (Supp. 1989) (policy need not insure liability for injury to employee engaged in operation, maintenance, or repair of covered vehicle).

We adopt the reasoning of *Farmland* and *Pennsylvania National* which is consistent with prior decisions of this Court. *See American Mutual Fire Insurance Co. v. Southland Motors, Inc., 279 S.C. 101, 302 S.E.2d 854 (1983)*; *Jordan v. Aetna Casualty* [*304] *& Surety Co., 264 S.C. 294, 214 S.E.2d 818 (1975)*. [HN4] To the extent *Stanley v. Reserve Insurance Co., 238 S.C. 533, 121 S.E.2d 10 (1961)*, and *American Fire & Casualty Co. v. Surety Indemnity Co., 246 S.C. 220, 143 S.E.2d 371 (1965)*, are inconsistent with this [***4] opinion, they are overruled. The judgment of the circuit court is

AFFIRMED.