Case Brief: *Whitmire v. Southern Farm Bureau Life Insurance Co.*[*]

INTRODUCTION

When presiding over a diversity case, the U.S. Court of Appeals for the Fourth Circuit must "apply the governing state law."[1] Importantly, North Carolina does not have a procedure through which federal courts can certify questions to the Supreme Court of North Carolina.[2] Thus, for diversity cases involving North Carolina law, federal courts cannot seek guidance from the state's highest court regarding the appropriate application of a law or the appropriate methodology to use when interpreting a statute. Instead, federal courts must do their best to predict how the Supreme Court of North Carolina would rule if faced with the same question.

In a recent case, *Whitmire v. Southern Farm Bureau Life Insurance Co.*,[3] the Fourth Circuit interpreted a North Carolina statute to determine whether a life insurance company had complied with the statutory notice requirement for canceling a policy.[4] While the topic was notably "mundane,"[5] the case provided an opportunity for the Fourth Circuit to consider the appropriate methodological approach to employ when interpreting North Carolina statutes. The divided panel produced a published opinion, concurrence, and dissent, each presenting a distinct understanding of the Supreme Court of North Carolina's approach to statutory interpretation. Ultimately, the majority applied a purposive approach and interpreted the statute in a way that favored the position of the defendant life insurance company.[6] In light of the holding and varied opinions, the case provides useful guidance for North Carolina practitioners faced with statutory questions of first impression in federal diversity cases.

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1. Stahle v. CTS Corp., 817 F.3d 96, 99–100 (4th Cir. 2016). This application often requires the court to consider how the state's highest court would rule were it to decide the case. *See id.* at 100.

2. Jason A. Cantone & Carly Giffin, *Certified Questions of State Law: An Empirical Examination of Use in Three U.S. Courts of Appeals*, 53 U. TOL. L. REV. 1, 4 (2021). In fact, North Carolina is "the only state never to have enacted such a procedure." Eric Eisenberg, Note, *A Divine Comity: Certification (At Last) in North Carolina*, 58 DUKE L.J. 69, 71 (2008).

3. 52 F.4th 153 (4th Cir. 2022).

4. *See id.* at 155.

5. *Id.* at 166 (Richardson, J., dissenting).

6. *See id.* at 160–61 (majority opinion).

FACTS OF THE CASE

Plaintiff-appellant, Robert Whitmire, filed this suit after his claim for benefits on his wife's life insurance policy was denied by defendant-appellee, Southern Farm Bureau Life Insurance Company ("Farm Bureau").[7] Mr. Whitmire's wife, Susan Whitmire, was insured continuously by Farm Bureau from May 23, 2005, until January 27, 2017.[8] Throughout most of this coverage period, Ms. Whitmire resided in Goldsboro, North Carolina, with her husband.[9] In May 2016, the Whitmires separated; Ms. Whitmire moved to Rock Hill, South Carolina, and notified the United States Postal Service via a change-of-address form.[10] Farm Bureau was subsequently notified of this change by the Postal Service, which prompted Farm Bureau to mail letters to both addresses—in Goldsboro and Rock Hill—to inform Ms. Whitmire that it had updated her address in its records.[11] Receiving no response to either letter, Farm Bureau began mailing policy notifications exclusively to Ms. Whitmire's South Carolina address, rather than to her former North Carolina address.[12] Ultimately, after mailing multiple notices regarding payment deadlines, missed payments, and an impending policy lapse, the policy officially lapsed on January 27, 2017.[13] Ms. Whitmire passed away in March 2017, thus prompting Mr. Whitmire to file the life insurance claim that was at issue in this case.[14]

Farm Bureau denied Mr. Whitmire's claim for benefits and justified its denial based on the policy's lapse due to nonpayment.[15] However, Mr. Whitmire argued that he was still entitled to the benefits because Farm Bureau had not complied with North Carolina's statutory notice requirement.[16] Specifically, Mr. Whitmire focused on the statute's requirement that notice of cancellation be mailed "to the person whose life is insured . . . at his or her last known post-office address in this State."[17] Because the phrase, "this State," clearly refers to North Carolina, Mr. Whitmire argued that the mailing of the cancellation notices to his wife's updated address in South Carolina was not statutorily compliant.[18]

7. *See id.* at 157.
8. *See id.* at 156–57.
9. *See id.* at 156. Throughout this period, Mr. Whitmire consistently paid the policy's bills on behalf of Ms. Whitmire. *See id.*
10. *See id.*
11. *See id.*
12. *See id.* at 156–57.
13. *See id.*
14. *See id.* at 157.
15. *See id.*
16. *See id.*
17. *Id.* at 155, 158 (quoting N.C. GEN. STAT. § 58-58-120).
18. *Id.* at 157, 159.

Noting a "dearth of North Carolina caselaw citing, let alone interpreting," the statute at issue, the district court surveyed caselaw, treatises, and similar cases in other states to inform its holding.[19] Interpreting the statute, the district court concluded that it should give more weight to the term "last known" than to the clause "in this State."[20] The court emphasized that "[a] contrary reading would elevate form over substance" and "would place [Farm Bureau] in a worse position than an insurer who sent notice to an address it knew to be outdated."[21] Based on this interpretation of the statute, the district court denied Mr. Whitmire's motion for summary judgment and granted Farm Bureau's motion for summary judgment.[22]

LEGAL ISSUES AND OUTCOME

On appeal, the Fourth Circuit was tasked with determining how to construe the language of section 58-58-120 of the General Statutes of North Carolina regarding notice requirements for life insurance cancellation.[23] Despite acknowledging that the statute's use of "in this State" unambiguously refers to North Carolina, the majority applied a purposive approach to hold that literal compliance with the statute was not required.[24] To support this conclusion, the majority cited caselaw which showed that North Carolina courts have applied an interpretive approach of purposivism for decades.[25] It also quoted a recent decision from the Supreme Court of North Carolina in which the court held that "the reason and purpose of the law shall control" in those instances when "applying a literal reading to the text of a statute 'contravene[s] the manifest purpose of the Legislature.'"[26]

Given this approach, the majority opted to look beyond the plain language of the statute in order to identify the contested statute's purpose according to its text and title.[27] In doing so, the majority determined that the purpose of the statute "is to ensure that life insurance companies doing business in North

19. Whitmire v. S. Farm Bureau Life Ins. Co., 538 F. Supp. 3d 591, 603–07 (E.D.N.C. 2021), *aff'd*, 52 F.4th 153 (4th Cir. 2022).

20. *Id.* at 607.

21. *Id.*

22. *Id.* at 608.

23. *Whitmire*, 52 F.4th at 155.

24. *See id.* at 155, 158–60. The purposive approach is "premised on the view that legislation is a purposive act, and judges should construe statutes to execute that legislative purpose." ROBERT A. KATZMANN, JUDGING STATUTES 31 (2014). "When the [statute's] text is ambiguous, a court is to provide the meaning that the legislature intended. In that circumstance, the judge gleans the purpose and policy underlying the legislation and deduces the outcome most consistent with those purposes." *Id.* at 31–32.

25. *Whitmire*, 52 F.4th at 157–58.

26. *Id.* at 158 (alteration in original) (quoting State v. Rankin, 371 N.C. 885, 889, 821 S.E.2d 787, 792 (2018)).

27. *Id.* at 157.

Carolina provide their insureds with notice before canceling their policies for nonpayment."[28] Importantly, the majority held that interpreting the statute literally—as advocated by Mr. Whitmire—would contravene this purpose because it "would not put [the insured] on notice at all," but rather would send their notice to an address where they plainly do not reside.[29] Referring to Mr. Whitmire's argument for a literal reading as "poppycock," the majority cautioned that such a "rigidly literal reading" of the statute would burden insurers and prompt "nonsensical notice policies" that could produce the potentially unintended consequence of eliminating communication to out-of-state insureds altogether.[30]

Interestingly, while the concurrence agreed with the ultimate result, it was skeptical of the majority's purely purposive approach, asserting that "the purpose cannot contradict the text."[31] Rather than advocating for a specific approach to statutory interpretation, the concurrence was persuaded that this case would come out the same way "[w]hether one views the statute through the lens of textualism, pragmatism, or purposivism."[32] The concurrence was therefore more focused on the facts and circumstances of the case than on the appropriate method of statutory interpretation. Ultimately, the concurrence concluded that Farm Bureau was not "an insurer conniving to terminate coverage," but rather had fulfilled its obligations regarding cancellation notifications.[33] Thus, the concurrence agreed that Mr. Whitmire was not entitled to damages based on the denial of his claim.[34]

Fiercely disagreeing with the majority, the dissent advocated for a textualist approach, asserting that "the statute's 'inflexible' language" reflects a "clear statutory instruction" that must be followed.[35] The dissent concluded that the statutory language at issue was not ambiguous, and therefore—per North Carolina precedent—needed to be "implemented according to the plain meaning of its terms."[36]

Analyzing the phrase "this State," the dissent determined that "the statute's plain language requires that notice be mailed to the insured's last known address in North Carolina," and therefore Farm Bureau did not comply.[37] In response to the majority opinion, the dissent argued that the majority's purposive approach effectively deleted the words "in this State" and

28. *Id.* at 158–59.
29. *Id.* at 159.
30. *See id.* at 159–60.
31. *Id.* at 161 (Wilkinson, J., concurring).
32. *Id.* at 162.
33. *See id.*
34. *See id.*
35. *Id.* (Richardson, J., dissenting).
36. *Id.* at 163–64 (quoting Lunsford v. Mills, 367 N.C. 618, 623, 766 S.E.2d 297, 301 (2014)).
37. *Id.*

disregarded the statute's plain meaning.[38] The dissent also questioned the statutory purpose identified by the majority, asserting that the legislature may have legitimately intended to only protect and provide for notification of North Carolinians, not those who move out of state.[39]

Acknowledging the potential implications of a purely textual interpretation, the dissent made three points that responded to the majority's concern about the impact of a literal reading of the statute on insurers.[40] First, it addressed the concern about burdening insurers and prompting wasteful mailings by noting that the legislature could monitor the impact and change the law as needed.[41] Second, it speculated about ways insurers could minimize mailings while remaining compliant, given that the law "does not affirmatively require notices be sent to all insureds."[42] And finally, it suggested that insurers might be able to seek permission from insureds to waive the in-state mailing requirement.[43]

IMPLICATIONS

Considering the ultimate interpretation of this life insurance statute, it is important for insurers and insureds alike to be aware of their obligations and to adjust their expectations for communication. According to this decision, insurers can mail cancellation notices to last known addresses outside of North Carolina. That said, there is still a possibility that the North Carolina legislature will disagree with the Fourth Circuit's interpretation of its statute and opt to amend it to provide even more clarity regarding expectations and notification requirements for policy cancellations. Moreover, the Supreme Court of North Carolina may choose to hear a case involving the same issue and could interpret the statute differently.[44]

With respect to the broader implications of this case, the majority opinion suggests that, even when the text is clear and seemingly unambiguous, the court will still employ a purposive approach to statutory interpretation. While the dissent's reliance on *Lunsford v. Mills*[45] and other North Carolina cases presents

38. *See id.* at 164.

39. *See id.* at 164–65.

40. *See id.* at 165.

41. *See id.*

42. *See id.* at 165–66 ("For example, insurers could send the out-of-state insured a bill further in advance (perhaps with an incentive for prompt payment) and then send the § 58-58-120 notice only if they are not paid before the five-day mark. Or insurers might be able to wait until the original due date, and if no payment is received, voluntarily push back the due date by a few days and send the § 58-58-120 notice at least five days before this new due date. Or, if all this is too much trouble, they could simply wait the year before ending coverage.").

43. *See id.* at 166.

44. *See* Eisenberg, *supra* note 2, at 76 ("Because the supreme court is the final arbiter of state law, its decision will always be 'correct' . . . .").

45. 367 N.C. 618, 766 S.E.2d 297 (2014).

a noteworthy argument in favor of pure textualism,[46] the purposive approach appears to be the most appropriate when considering all existing precedent. As suggested by the majority's use of the phrase "poppycock," this is an instance in which a literal interpretation would lead to the "absurd results" cautioned against in other North Carolina cases.[47] Thus, to avoid absurdity, the purpose of the statute must ultimately control.

Still, the dissent concluded by cautioning that "North Carolinians should take heed of the Majority's free-flowing, strong purposivism, for tomorrow's decision might not be so mundane."[48] While the dissent did not provide further explanation beyond this cautionary statement, it suggests concern that the majority's purposive approach to statutory interpretation could lead to "re-writing statutes based on some sense of equity or imagined purpose," even when "the statutory language is unambiguously clear."[49]

Given this sensitivity to the purposive approach, and the conflicting conclusions regarding North Carolina's preferred method of statutory interpretation, North Carolina practitioners should expect a variety of challenges to their arguments regarding statutory interpretation. Specifically, practitioners must be prepared to identify if and how the purpose of a statute is ambiguous, as well as how a textual interpretation may produce absurd results. Moreover, practitioners must consider how a statute's true purpose might be effectuated depending on the method of statutory interpretation that is utilized.

Finally, this published opinion provides a persuasive authority for future Fourth Circuit litigants to cite when arguing in favor of a purposive interpretation of a North Carolina statute on a matter of first impression.[50]

46. *See Whitmire*, 52 F.4th at 163–64 (Richardson, J., dissenting).

47. *See, e.g.*, State v. Rankin, 371 N.C. 885, 893, 821 S.E.2d 787, 794 (2018) (incorporating a subdivision of a criminal statute as part of the legal definition of the crime of littering in order to avoid the absurd result of "enabl[ing] a trash collector to be criminally charged for doing his or her job and forced to demonstrate his or her innocence by proving an affirmative defense at trial"); State v. Jones, 367 N.C. 299, 306, 758 S.E.2d 345, 350 (2014) (construing the criminal identity theft statute to avoid the absurd result that "the Legislature intended for individuals to escape criminal liability simply by stating or signing a name that differs from the cardholder's name").

48. *Whitmire*, 52 F.4th at 166 (Richardson, J., dissenting).

49. *Id.*

50. Note that while this is a published opinion, it should not be relied on as binding precedent in favor of taking a purely purposive approach to interpreting North Carolina statutes. While the concurrence agreed in the result, its rationale for doing so was far narrower and did not endorse the purposive approach to statutory interpretation as forcefully as the majority. *See supra* notes 31–32 and accompanying text. Accordingly, the fragmented panel necessitates the application of the narrowest grounds doctrine, which means that the "position taken by those Members who concurred in the judgments on the narrowest grounds" constitutes the holding of the court. Marks v. United States, 430 U.S. 188, 193 (1977) (quoting Gregg v. Georgia, 428 U.S. 153, 169 n.15 (1976)). Applied here, the holding against Mr. Whitmire remains, and the specific interpretation of "in this State" is precedential for any future challenges to notice brought under section 58-58-120. But, regarding North Carolina's

Notably, the opinion also demonstrates why North Carolina would benefit from finally adopting a certification procedure. While the Fourth Circuit reached the most sensible conclusion here, it could have more efficiently and permanently resolved the case by certifying a question about the interpretation of section 58-58-120 to the Supreme Court of North Carolina.[51]

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approach to statutory interpretation, the concurrence's less definitive assessment, which endorses a combination of textualism and purposivism, constitutes the holding. *Whitmire*, 52 F.4th at 161 (Wilkinson, J., concurring) ("Where the disposition of a case can be reasonably but not definitively grounded in the text of the statute itself, it is fair to turn to the question of the statute's purpose. But the purpose cannot contradict the text. The text after all is the specific means the legislature chose to implement the statute's general purpose, and the consideration of that purpose without those means of implementation would be a hollow exercise. Here, as Judge Wynn['s majority opinion] rightly explains, text and purpose can be seen to act in tandem, and that harmony leads to the best resolution of this case.").

51. *See* Eisenberg, *supra* note 2, at 75–77 (arguing that "reliev[ing] federal courts of the necessity of predicting unsettled North Carolina law" would promote efficiency and provide an accurate and definitive answer for litigants and judges alike).

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