IN THE SUPREME COURT OF THE
STATE OF FLORIDA,

51,427

DAWN MARIE REID, by her next
friend MARGARET HENSHALL,

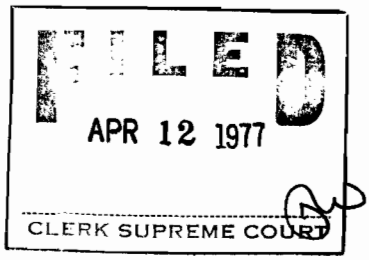
Petitioner,

vs.

STATE FARM FIRE AND CASUALTY
COMPANY, a foreign corporation,

Respondent.

...../



PETITIONER'S

BRIEF ON

JURISDICTION

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C A S E S C I T E D

STATEMENT OF THE CASE AND FACTS

Plaintiff, a minor, filed her complaint against her sister, who was driving the family car, owned by the father, and the company which wrote the liability insurance on the automobile (and other defendants) in 1975 . Plaintiff alleged an automobile collision occured in which she was injured due to the negligence of the sister, PAMELA ANNE REID, and others. The company which carried insurance on the family car, STATE FARM, filed an answer alleging a defense based on an allegedly applicable exclusion as follows:

"Exclusions-section 1

"This insurance does not apply under:

"(h) Coverage A, to bodily injury to any insured or any member of the family of an insured residing in the same household as the insured;"

The plaintiff filed a reply stating that the alleged exclusion was null and void because of conflict with the Florida statutes. State Farm moved for summary judgment. The owner of the Reid car (the father of the two girls) duly filed an affidavit to the effect that he has been a resident of the state of Florida for the past several years; that the Reid car was registered in the state of Florida at all times; that he was required to have personal injury protection under the "Florida Automobile Reparations Reform Act"; and that he purchased a State Farm Insurance Policy to comply with the Florida law in regard to the Financial Responsibility Act. Nevertheless the trial judge granted a partial summary judgment in favor of State Farm, holding that a said exclusion was valid.

Subsequently the trial judge dismissed Count 2 of the Second Amended Complaint with prejudice. Count 2 alleged that plaintiff was entitled to the uninsured motorist protection of the policy. Count 2 stated:

"Plaintiff states that she was insured within the meaning of a policy of insurance issued by Defendant State Farm Fire and Casualty Company to Donald Reid, her father, in full force and effect on the date of the accident which is the basis of this suit and in which Plaintiff DAWN MARIE REID was severely injured; that the said accident resulted directly from the negligence of the operator of the vehicle in which Plaintiff was a passenger, which vehicle was described in said insurance policy and was owned by Donald Reid, the expressly named insured in said policy and driven by his daughter PAMELA ANNE REID, with the owner's express or implied knowledge and consent.

Subsequent to the date of the accident above described, said insurance company in writing denied that there was any liability coverage thereunder. Therefore, by virtue of the uninsured motor vehicle coverage of the said policy, Plaintiff is entitled to recover under coverage U the limits afforded by the said policy, to wit, $10,000, together with interest, cost and attorney's fees for her counsel in bringing this action and prosecuting this claim. The plaintiff became a permanent paraplegic as a result of said collision; therefore if the total of all the maximum insurance coverage covering each and every known vehicle involved in said collision were collected by Plaintiff it would still be far inadequate to compensate Plaintiff, a minor, for her damages. Assuming the correctness of the Partial Summary Judgment entered by this court in this cause on or about March 8, 1976, Defendant State Farm Fire and Casualty Company has provided no bodily injury liability insurance for its insured, PAMELA ANNE REID, and the limits of bodily injury liability are therefore less than the limits applicable to the injured person provided under the uninsured motorist coverage in said policy issued by Defendant State Farm Fire and Casualty Company.

"WHEREFORE, Plaintiff demands judgment in the amount of $10,000 against Defendant STATE FARM FIRE AND CASUALTY COMPANY, together with interest, costs and attorney's fees."

The uninsured motorist provision of the policy in question (page 10 and 11 of the policy) provides:

"To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle because of bodily injury sustained by the insured, caused by accident and arising out of the ownership, maintenance or sue of such uninsured motor vehicle."

"Insured--The unqualified word 'insured' means:
(1) the first person named in the declarations and if a resident of his household, his spouse and the relatives of either;
"Uninsured Motor Vehicle--means:
(1) a land motor vehicle with respect to the ownership, maintenance or use of which there is in at least the amounts specified by the financial responsibility law of the state in which the described motor vehicle is principally garaged, no bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such vehicle, or with respect to which there is a bodily injury liability bond or insurance policy applicable at the time of the accident but the company writing the same denies that there is any coverage thereunder or is or becomes insolvent; or...

"But the term uninsured motor vehicle shall not include:
(i) a vehicle defined herein as an insured motor vehicle."

The dispute arose from an automobile collision which took place on or about the 19th day of July, 1975, in which plaintiff, a minor, was severely injured while riding as a passenger in a family automobile driven by her sister, Pamela Anne Reid, and owned by her father, Donald Reid. The policy in question was originally issued on December 17, 1974, later renewed and was admittedly in force and effect on the date of the collision.

Appeals were duly taken to the district court of appeal from both rulings but that court upheld the trial judge.

ARGUMENT

FIRST POINT

MAY AN AUTOMOBILE LIABILITY INSURANCE POLICY OBTAINED IN ORDER TO COMPLY WITH THE FLORIDA LAW BE NARROWED BY THE INSURER THROUGH EXCLUSIONS WHICH DEFEAT THE PURPOSE OF THE LAW?

What is the purpose of the law? It is obviously to make sure that any member of the public injured through the fault of a Florida sutomobile driver be financially protected by means of liability insurance (or its equivelant). It is equally obvious

that that purpose would be defeated if the family exclusion in question were upheld in the instant case.

In Markris v. State Farm Mut. Auto. Ins. Co., 267 So. 2d 105 (Fla. 3d DCA 1972) the case was heard in the trial court in 1971 (see footnote, 267 So. 2d 106). The appellate court declared:

"These cases support the proposition that once an automobile liability policy is certified as proof of financial responsibility for the future under the Florida Financial Responsibility Law, it becomes an insurance policy for the benefit of the public using the highways of this State. Therefore, it may not contain exclusions which destroy the effectiveness of the policy as to any substantial segment of that public. It follows that to find State Farm's employee exclusion provision a valid provision, would be to limit the efficacy of the certified policy, so that all persons who were injured while the employee was driving the car would be without remedy. This result is in derogation of the Florida Financial Responsibility Law and is therefore against the public policy of the State of Florida."

Certainly children of auto owners (who would probably outnumber the auto owners themselves) are a "substantial segment of that public."

In Mullis v. State Farm Mut. Auto. Ins. Co., 252 So. 2d 229 (Fla., 1971) the court declared:

"Automobile liability insurance coverage obtained in order to comply with or conform to the Financial Responsibility Law, F.S. chapter 324, F.S.A., after an insured's first accident, cannot be narrowed by the insurer or carrier through exclusions contrary to the law. For example, the combined rationale of Howard v. American Service Mutual Insurance Company Fla. App., 151 So. 2d 682, 8 A.L.R. 3d 382; Phoenix Assur. Co. of N.Y. v. Bankers and Shippers Ins. Co., Fla. App., 202 So. 2d 122, and Bankers and Shippers Ins. Co., of New York v. Phoenix Assur. Co., Fla., 210 So. 2d 715, is that after a first accident an automobile owner complying with the Financial Responsibility Law may not have excluded from his automobile liability policy, coverage for those operating the insured automobile with his permission, contrary to F.S. section 342.151 (1) (a), F.S.A.

"The same is true as to uninsured motorist coverage obtained pursuant to the financial responsibility law's counterpart, Section 627.0851, as will be demonstrated by authorities hereinafter cited."

In 1971, certain Florida statutes were passed, effective January 1, 1972. Before then insurance was not required until one had an accident. Then his driver's license was suspended until he had an insurance policy "certified." Lynch-Davidson Motors v. Griffin, 182 So. 2d 7 (Fla. 1966). Now, (and at the time of the accident in the instant case) when one goes to get his inspection sticker he is required by Section 325.19 (7) to "present to the inspector evidence of insurance as defined in S. 324.021." And the definitions in S. 324.021 are (emphasis added):

"(7) PROOF OF FINANCIAL RESPONSIBILITY--That proof of ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $15,000 because of bodily injury to, or death of, one person in any one accident; subject to said limits for one person, in the amount of $30,000 because of bodily injury to, or death of, two or more persons in any one accident; and in the amount of $5,000 because of injury to or destruction of property of others in any one accident.

"(8) MOTOR VEHICLE LIABILITY POLICY--Any owner's or operator's of liability insurance furnished as proof of financial responsibility pursuant to S. 324.031, insuring said owner or operator against loss from liability for bodily injury, death and property damage arising out of the ownership, maintenance or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of S. 324.151, issued by any insurance company authorized to do business in this state."

"324.031 The operator or owner of a vehicle may prove his financial responsibility by:

(1) Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in S. 324.021(8) and S. 324.151, or...

"324.151...

(a) An owner's liability insurance policy shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby granted and shall insure the owner named therein and any other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner, against loss from the liability imposed by law for damage arising out of the ownership, maintenance, or use of such motor vehicle or motor vehicles..."

So it is apparent if not obvious that to hold since 1972 that the family exclusion in the instant case is valid in regard to a

first accident, second accident or any other sequence of accidents flies directly in the face of the principles of law laid down in the Mullis and Markris cases.

SECOND POINT

MAY THE UNINSURED MOTORIST PROVISION OF AN AUTOMOBILE LIABILITY INSURANCE POLICY ISSUED IN FLORIDA SET UP AN EXCLUSION WHICH HAS THE EFFECT OF DENYING COVERAGE TO A PERSON COVERED--AND INJURED BY THE DRIVER OF A VEHICLE COVERED--BY THE POLICY CONTAINING SUCH UNINSURED MOTORIST PROVISION?

The conflict here is admitted in this case, by the fourth district court in its opinion, with the case of Lee v. State Farm Mut. Auto. Ins. Co., 339 So. 2d 670 (Fla. 2d DCA 1976) (see the last page of the district court's opinion). Lee said there could be no exceptions to uninsured motorists coverage.

Also, in Mullis v. State Farm Mut. Auto. Ins. Co., supra., 252 So. 2d 229 (Fla,, 1971) a family exclusion similar to although not identical with that in the instant was involved. This court held that neither primary coverage nor uninsured motorist coverage could be defeated because the policy "narrowed" it through such an exclusion. Through Justice Ervin this court also said (l.c. 238):

"Richard Lamar Mullis, (the minor son) is insured under the State Farm policies purchased by Shelby Mullis (the father)... Richard Lamar Mullis is...covered by uninsured motorist liability protection issued pursuant to Section 627.0851 whenever or wherever bodily injury is inflicted upon him by the negligence of an uninsured motorist. He would be covered thereby whenever he is injured while walking, or while riding in motor vehicles, or in public conveyances, including uninsured motor vehicles (including Honda motorcycles) owned by a member of the first class of insureds. Neither can an insured family member be excluded from such protection because of age, sex, or color of hair, Any other conclusion would be inconsistent with the intention of Section 627.0851. It was enacted to provide relief to innocent persons who are injured through the negligence of an uninsured motorist; it is not to be "whittled away" by exclusions and exceptions.

"The statute requires that uninsured motorist coverage be included in all policies delivered or issued for delivery in Florida for the benefit of those insured thereunder. The only exception permitted by the statute is 'where any insured named in the policy shall reject the coverage.' The named insured here did not reject the statutory coverage.

"The decision of the District Court of Appeal is quashed..."

To the same effect see: Garcia v. National Union Fire Ins. Co., 196 So. 2d 12 (Fla. 3d DCA 1967); First National Ins. Co. of America v. Devine, 211 So. 2d 587 (Fla. 2d DCA 1968); Johns v. Liberty Mutual Fire Ins. Co., 337 So. 2d 830 (Fla. 2d DCA); Davis v. U. S. F. & G., 172 So. 2d 485 (Fla. 1st DCA 1965); and Standard Acc. Ins. Co. v. Gavin, 184 So. 2d 229 (Fla. 1st DCA 1966).

CONCLUSION

This brief has been limited to discussion of jurisdiction only. The above cases show without question there is direct conflict. The instant decision of the district court and any other Florida decisions which tend to conflict with the reported cases above cited also tend to create confusion and lack of uniformity in the law. For the above reasons this court should assume jurisdiction, remove the confusion and produce greater uniformity.

Respectfully submitted,

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I hereby certify that a copy hereof was furnished by mail this 11 day of April 1977, to James O. Driscoll, Attorney for Respondent.

Attorney