IN THE SUPREME COURT OF FLORIDA

51,427

DAWN MARIE ~~RIED~~ Reid, by her next friend MARGARET HENSHALL,

Petitioner,

vs.

STATE FARM FIRE AND CASUALTY COMPANY, a foreign corporation,

Respondent,

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioner, Dawn Marie ~~Ried~~ Reid, presents this, her petition for a writ of certiorari and states:

(1) Petitioner seeks to have reviewed a decision of the District Court of Appeal, Fourth District, dated the 18 day of March, 1977, and filed in the records of said District Court on the 18 day of March, 1977, in Minute Book 39, Page 267.

(2) This petition is presented under and pursuant to Article 5, Section 4, of the Florida Constitution, and Rule 4.5c of the Florida Appellate Rules.

(3) This petition is accompanied by the decision petitioner seeks to have reviewed, and a supporting brief.

(4) The following are the facts of the case:

Dawn Marie Ried sought review of two summary final judgments. Pleading alternatively, she had sought judgment against State Farm Fire and Casualty Company for injuries received by her as a passenger in an automobile driven by her sister, owned by her father, and insured by State Farm. Separate appeals were consolidated in the district court. The first appeal challenged a provision of the policy which excludes liability coverage for injury of a family member residing in the same household as the insured. In the second appeal, appellant contended that if there is no primary coverage by reason of the family-household exclusion, she was covered by the uninsured motorist provision of the policy.

(5) On the forgoing facts the district court was first presented with the following point of law: 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?

On this point of law the district court of appeal, Fourth District, held in the affirmative where the exclusion involved was the family exclusion.

(6) This same point of law was involved in Mullis v. State Farm Mutual Auto Insurance Company, 252 So. 2d 229 (Fla. 1971); and in Markris v. State Farm Mut. Auto Ins. Co., 267 So. 2d 105 (Fla. 3rd DCA 1972). In Mullis this, the Supreme Court of Florida, 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 insured's first accident, can not be narrowed by the insurer or carrier through exclusions contrary to the law." The Markris case is to the same effect.

Since those cases arose, the law has been changed and it is no longer required to have a first accident and have a policy then "Certified" in order for the mandate of the statute regarding insurance coverage to be invoked. On January 1, 1972, certain new statutes went into effect which required an insurance policy (or the equivalent) even though no first accident had taken place. Florida statutes, Sections 325.19 (7). Applying the principle of the law laid down in Mullis v. State Farm, supra, and Markris v. State Farm, supra, to the instant case and the present statutes, there is a direct conflict between those cases and the instant case.

(7) The second point of law with which the district court of appeal was presented was the following: 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 INNOCENTLY INJURED BY THE DRIVER OF A VEHICLE COVERED BY THE INSURANCE POLICY CONTAINING SUCH UNINSURED MOTORIST PROVISION? On this point of law the district court answered in the affirmative.

(8) This same point of law was involved, as the district court acknowledged in its opinion, in Lee v. State Farm Mutual Auto Insurance Company, 339 So. 2d 670 (Fla. 2d DCA 1976) (and in other cases cited in the Lee decision). In Lee v. State Farm, supra, the court declared: "The purpose of the (uninsured motorist) statute is to provide liability coverage to innocent parties, and a

provision in the policy providing exceptions and/or exclusions not authorized by the statute are not enforceable." In the instant case the district court of appeal declared that "there is an underlying conflict" between the instant case and the Lee case, although factually there were some distinctions in some of the details.

This same principle that exclusion in uninsured motorist coverage will not be upheld unless expressly authorized by statutes, was enunciated in Mullis v. State Farm, supra; Garcia v. National Union Fire Ins. Co., 196 So. 2d 12 (Fla. 3rd 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 1976); 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). The reported cases cited are in direct conflict with the instant case. Because of the reasons and authorities set forth in the petitioner's brief, it is believed that this court should so rule and assume jurisdiction.

WHEREFORE, petitioner requests this Court to grant a writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed, and granting such other and further relief as shall seem right and proper to the Court.

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Certificate of Service.

I do certify that a copy hereof has been furnished to James O. Driscoll by mail, this 11th day of April, 1977.

Attorney