IN THE SUPREME COURT OF FLORIDA

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Petitioner,

Vs. Case NO. 65,656

SHERAN PORR, individually,
and as Personal Representative
of the Estate of Robert Ray Ward,

Respondent.
_____/

ANSWER BRIEF OF RESPONDENT,
SHERAN PORR,
ON JURISDICTION

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An appeal from the First District Court of Appeal
Case No. AO-289

TOPICAL INDEX

CITATION OF AUTHORITIES

PRELIMINARY STATEMENT

The Petitioner, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, will be referred to as "STATE FARM INSURANCE COMPANY". The Respondent, SHERAN PORR, individually and as Personal Representative of the Estate of ROBERT RAY WARD, a minor, will be referred to as "SHERAN PORR" and her deceased son, ROBERT RAY WARD, shall be referred to as "ROBERT WARD". References to the Appendix shall be designated as "App.-Page No. ". Uninsured Motorist coverage will be designated as UM coverage.

STATEMENT OF THE FACTS IN CASE AS IT APPLIED TO JURISDICTION

(a) Facts

Robert Ward, deceased, was the minor son of Sheran Porr and lived with her prior to his death at all times material herein. At all times material herein, Sheran Porr owned three vehicles and three separate insurance policies, each of which separately insured one of the vehicles.

On August 9, 1981, Sheran Porr permitted one Glenn Spradlin, to drive Sheran Porr's truck, one of the vehicles insured under one of the three separate insurance policies. Glenn Spradlin was unrelated to either Sheran Porr or Robert Ward by either blood or marriage. On that date, Glenn Spradlin did negligently operate the vehicle in an extremely careless manner by driving at high speeds and going off the roadway. When the vehicle left the road, control of the vehicle was lost and it overturned numerous times. Unfortunately, the minor Robert Ward was a passenger in the vehicle with Glenn Spradlin and both Robert Ward and Glenn Spradlin were killed in the crash. Glenn Spradlin was uninsured at the time he caused his own death and the death of the minor Robert Ward. (App.-A)

One small correction might be noted to the District Court of Appeal's factual statement. The District Court of Appeal

indicated that Glenn Spradlin was "a friend of Robert's" and that the accident caused "the death of both young men". There are no allegations supportive of this form of factual statement, as opposed to a fact premise wherein Glenn Spradlin might be presumed to be an adult male much older than the deceased minor, Robert Ward.

The mother Sheran Porr had three separate automobile insurance policies, each with its own separate uninsured motorist coverage (hereinafter UM coverage) on the three different vehicles owned by Sheran Porr. The truck involved in the fatal crash was not alleged to be the family car. All three policies on the three different vehicles were issued by State Farm Insurance Company and contained identical provisions. (App.-A-1,2).

When claim was made under the liability portion of the insurance policy, State Farm Insurance Company denied liability for the uninsured, negligent driver, Glenn Spradlin under the liability coverage of the policy. State Farm Insurance Company stated that the policy provided that there would be no liability coverage for bodily injury to "Any insured or any member of an insured's family residing in the insured's household" (App.-A-3,9,10).

While State Farm Insurance Company's Jurisdictional Brief

avoids mentioning it, there was no such household member exclusion clause in the three identical UM coverage sections of the three policies. In applicable part, the UM coverage provided that State Farm Insurance Company would pay damages for bodily injury an insured was entitled to collect "from the owner or driver of an uninsured motor vehicle." (App.-A-15) (emphasis supplied). Glenn Spradlin was a completely uninsured driver. State Farm Insurance Company further neglected to mention the complete definition of an uninsured motor vehicle in the policy, which was further defined as:

> "A land motor vehicle, the ownership, maintenance, or use of which is:
>
> . . .
>
> b. insured or bonded for bodily injury liability at the time of the accident; but
>
> . . .
>
> (3) The insuring company denies coverage or is or becomes insolvent. . ." (emphasis supplied) (App.-A-15).

The State Farm Insurance Company policy lastly also provided that an uninsured motor vehicle does not include a land motor vehicle which is "insured under the liability coverage of this policy" (emphasis supplied) (App.-A-15).

(b) Holding of First District Court of Appeal:

1. That Sheran Porr could not recover for the death of her son under the uninsured motorist coverage provided by the policy issued on the vehicle driven by the uninsured, unrelated Glenn Spradlin and involved in the crash.

2. That Sheran Porr could recover under the uninsured motorist coverage on the two vehicles not involved in the crash that resulted in the death of her son.

3. That the two policies of insurance providing UM coverage on the two vehicles not involved in the fatal accident would be stacked.

Sheran Porr rejects State Farm Insurance Company's suggestion that the holdings in paragraphs 2 and 3 above conflict with any other case decisions so as to merit jurisdiction of this Honorable Court.

It is noted at the outset that Sheran Porr has separately appealed the District Court's holding that Sheran Porr could not recover under the UM coverage on that insurance policy for the truck involved in the crash wherein both the negligent, uninsured driver and Sheran Porr's minor son were killed. However, for purposes of this brief as to the separate two insurance policies covering two other vehicles not involved in the fatal crash, Sheran Porr will appropriately not address that issue.

ARGUMENT

The First District Court of Appeal's holding that the mother Sheran Porr could collect the insurance benefits she had purchased from State Farm Insurance Company under the separate automobile insurance policies sold to her by State Farm Insurance Company for the two vehicles not involved in the accident wherein her minor son was killed while a passenger is not in conflict with any other cases decided by this Court or other Courts of Appeal. Conflicts sufficient to invoke the Supreme Court's jurisdiction must be express and in direct conflict with the decision of another District Court or of the Supreme Court and can only exist by one of two ways:

(1) The announcement of a rule of law which conflicts with a rule previously announced by the Supreme Court or another district, or

(2) The application of a rule of law to provide a different result in a case which involves substantially the same facts of a prior case.

Mancini v. State, 312 So. 2d 732 (Fla. 1975); Rule 9.030 (a)(II)(A)(iv). A review of the facts of the instant case and the law and rationale of earlier decisions demonstrates that the holding complained of does not meet the jurisdictional requisites for Supreme Court review of the issues complained of by State Farm Insurance Company.

POINT I

THE FIRST DISTRICT'S HOLDING IS NOT IN CONFLICT WITH REED V. STATE FARM FIRE AND CASUALTY COMPANY, 353 SO. 2D 1172 (FLA. 1977) IN PROVIDING THAT THE MOTHER SHERAN PORR CAN RECOVER INSURANCE BENEFITS WHICH SHE PURCHASED FROM THE SELLER STATE FARM ON THE TWO SEPARATE INSURANCE POLICIES COVERING TWO VEHICLES NOT INVOLVED IN THE FATAL AUTOMOBILE ACCIDENT WHEREIN AN UNINSURED, UNRELATED, NEGLIGENT DRIVER WAS RESPONSIBLE FOR HER MINOR SON'S DEATH.

The First District Court in the instant case held that recovery was permissable under the UM provisions of the two separate policies insuring Sheran Porr's two other vehicles which were not involved in the truck crash killing her son. At the same time, the First District held that Sheran Porr could not recover under the UM coverage of the separate policy issued on the truck.

Clearly, the District Court has followed the result in the Supreme Court's decision in Reed in making the distinction between an insurance policy issued on the vehicle involved in the crash and separate insurance policies issued on other vehicles. Indeed, in Reed, the Supreme Court itself makes that distinction when discussing Lee v. State Farm Mutual Automobile Insurance Company, 339 So. 2d 670 (Fla. 2nd DCA 1976). The Supreme Court noted that in Lee there were three separate policies owned by family members residing in the same household. Recovery through the policy covering the accident vehicle was denied, while recovery for UM protection on the two separate policies covering two other vehicles not involved in the accident was allowed.

The ruling in Reed also specifically indicates that Reed is

to be strictly construed as an exception to the widely recognized legislative general rule that "an insurer may not limit the applicability of UM protection". (Reed at 1173). Thus, the specific Reed exception where the family car was involved and was the same car as the insured car under the same insurance policy was permitted. That particular exception was permitted because the Court felt that otherwise the family household exclusion of the liability section would be nullified as to that particular policy itself. The family household exclusion clause had been upheld on the rationale that it was to avoid collusive claims and overfriendly lawsuits between family members. That policy rationale of the Court in Reed, however, does not void the legislative general rule, nor give carte blanche authority to insurance carriers to override the UM legislation through their policies by limiting the applicability of the statutorily delineated UM protection whenever and wherever the insurance company might desire. The Courts have long rejected that attitude by insurance carriers and it is only when the strongest countervailing policy reasons come into play that exceptions to the general rule are permitted. In the instant case, the same Lee reasoning for recognizing the general rule applies, a fortiori. In the instant case, the truck is nowhere shown to be the family vehicle and the negligent driver was not even a family member by either blood or marriage, negating the idea of any collusive lawsuit. As both the driver and the minor child were killed, the assumption of a collusive suit is an absurdity. In the instant case, separate insurance policies were involved

and the very definition by the insurance policy itself of an UM vehicle included a vehicle on which the insurance carrier had denied liability coverage and only denied UM coverage on vehicles insured under "this" policy. If three different insurers had issued the same three separate policies, it is doubtful there would ever have been any question raised. It would indeed be anachronistic thinking in today's time of easy read policies to tell an insured that she could not recover under coverage sold to her by an insurance company contrary to Florida's legislative UM Law because a clause of the liability coverage somehow crept through to the UM coverage and then into other policies in a way that only lawyers can possibly hope to fathom.

Because the instant fact situation is far more supportive of the result reached in Lee and completely nullifies any of the rationale that supported the Reed "exception to the general rule" that an insured may not limit the applicability of legislative UM coverage, certiorari jurisdiction is not proper as no conflict exists.

POINT II

THE FIRST DISTRICT'S DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN NEW HAMPSHIRE INSURANCE GROUP V. HARBACH, 439 SO. 2ND 1383 (FLA. 1983).

The Supreme Court in Harbach was involved in the interpretation of Fla. Stat. 627.4132, (Supp. 1976). The date of the accident in the instant case was August 9, 1981. In 1980, Fla.

Stat. 627.4132 was amended to provide as follows:

> ". . .this section does not apply:
>
> (1) to uninsured motorist coverage."
> (emphasis supplied)

As the legislature has now spoken and said expressly that section 627.4132 does not apply to UM coverage, the logic of Harbach that section 627.4132 affects a proper interpretation of legislatively delineated UM coverage under section 627.727 has now been appropriately legislatively voided.

As the intent of the amendment to section 627.4132 was obviously to return to prior case law, the case decisions of Mullis v. State Farm Mutual Automobile Insurance Company, 252 So. 2nd 229 (Fla. 1971), Salas v. Liberty Mutual, 272 So. 2nd 1 (Fla. 1972), Travelers Indemnity v. Powell, 206 So. 2nd 244 (Fla. 1st DCA 1968), Hodges v. National Union, 249 So. 2nd 679 (Fla. 1971), are all again directly applicable and all recognize the general rule that insurance carriers may not limit statutorily delineated UM coverage.

Regardless of the ultimate scope of 627.727, the Harbach decision is still inapplicable to our 1981 accident as the Supreme Court expressly stated: "It is important to note that our decision is of limited applicability since this statute (627.4132) was amended in 1980 to omit reference to uninsured motorist protection." Id at 1385.

POINT III

THE FIRST DISTRICT'S HOLDING WAS NOT IN CONFLICT WITH THE HOLDINGS CITED BY PETITIONER.

State Farm Insurance argues that UM coverage may not be stacked. This argument is error because the legislature amended Fla. Stat. 627.4132 in 1980 to state that "this section does not apply: (1) to uninsured motorist coverage." (emphasis supplied).

CONCLUSION

The Honorable Supreme Court should not accept jurisdiction to review the decision of the District Court relating to the holdings that the mother Sheran Porr could recover the benefits she paid premiums for under the legislatively delineated UM coverage sold to her by the insurance carrier on the two separate insurance policies for the two vehicles not involved in the crash that resulted in the death of her minor son and the uninsured, unrelated negligent driver. Sheran Porr had certainly done all that she reasonably should do to protect herself against the negligent conduct of an uninsured driver through the purchase of legislatively delineated UM insurance. The policy language of the two separate insurance policies indicated specifically that UM benefits would be provided if the insuring company denied liability coverage on the accident vehicle, as happened here. It is frankly unconscionable that the insurance carrier will accept premiums and then deny benefits, especially in the very teeth of the strong public policy legislative general rule that insurance carriers may not limit the applicability of statutorily delineated UM protection.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Answer Brief of Respondent has been furnished to W. C. O'Neal, P. O. Drawer O, Gainesville, FL 32602, Attorney for Petitioner, by ~~mailing~~ HAND DELIVERY this 31st day of August, 1984.

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