O/G 10-28-86

IN THE SUPREME COURT OF THE STATE OF FLORIDA

MARVENE GLEAVES and
JAMES GLEAVES,

Petitioner,

v.

WESTERN WORLD INSURANCE
COMPANY,

Respondent.

CASE NO. : 68,328

DISTRICT COURT OF
APPEAL, 5TH DISTRICT
NO. 85-219

PETITIONER'S BRIEF

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STATEMENT OF THE CASE

Gleaves and her husband sued, among others, Herndon Ambulance Co., Western World Ins. Co. (the medical malpractice carrier), the driver and the attendant. (R-637-644, 6490, 656) Trial was held on December 18-21, 1984. The Trial Court held, as a matter of law, that if Herndon was liable to the Gleaves, it was for the negligence of its employees as medical personnel. (R-532) Verdict was returned in favor of Gleaves and Western World appealed. (R-376)

The main issue on appeal was that of privity; however the District Court made their decision on the issue of whether an exclusion in the policy (liability that is covered by standard auto liability policies) would apply. The Fifth District Court of Appeal reversed the trial court's decision, holding that the injury to Gleaves arose out of the use of the vehicle and, therefore, the policy exclusion applied and there was no coverage to Herndon. The Court based their decision on the recent case of Government Employees Insurance Company v. Novak, 453 So9.2d 1116 (Fla. 1984).

STATEMENT OF THE FACTS

On January 4, 1978, Petitioner, Marvene Gleaves, was permanently injured after a series of physical confrontations with Ollie Mae Hill, a black paranoid schizophrenic woman on the campus of the University of Central Florida (R-180).

On that date, Gleaves was on duty as a registered nurse at the Student Health Center. (R-1668). She was called upon to assist the campus police officers in subduing Ms. Hill, who had suddenly begun exhibiting bizarre and violent behavior at the school. (R-168-171). Ms. Hill had removed all of her clothing and had been running naked all over the campus, attempting to destroy property. The campus police had requested Mrs. Gleaves, as a nurse, to bring a sheet to cover her. Mrs. Gleaves and another nurse followed Ms. Hill to the school's information booth. (R-168-171).

At the booth, Mrs. Gleaves attempted to calm the woman by speaking to her soothingly. (R-171-175). However, despite these efforts, Ms. Hill continued to exhibit bizarre and destructive behavior. She even began assaulting Mrs. Gleaves, forcefully removing her stethoscope from her neck. She also removed a pen from Mrs. Gleaves' pocket and threatened to stab her in the face with it. (R-171-176). At one point, the woman picked up a chair over her head and threatened Mrs. Gleaves with it by saying she was going to

kill Mrs. Gleaves. (R-173).

Eventually, Mrs. Gleaves calmed Ms. Hill by promising her that if she would get dressed, Mrs. Gleaves would accompany her to the hospital. (R-175-76). Hill complied and exited the information booth with Mrs. Gleaves. (R-176-177).

While Mrs. Gleaves had been in the booth attempting to calm the woman, the ambulance had arrived from the Defendant, Herndon Ambulance Company, ("Herndon") with the Defendant Driver, Marshall Kersey and the Defendant attendant, William Scalla. The ambulance crew had exited the vehicle, leaving the doors open and the engine running. (R-178). When Mrs. Gleaves and the disturbed woman exited the information booth, the attendant immediately assisted Ms. Hill and Mrs. Gleaves into the ambulance. (R-177). The attendant did not get into the back of the ambulance with them and the driver was not in the ambulance. (R-178). After the attendant closed the back door of the ambulance, with the women inside, the disturbed woman immediately bolted to the front of the ambulance and was attempting to get the vehicle in gear. (R-178). It should be noted that the appellate court incorrectly stated that Ms. Hill started the ambulance. Mrs. Gleaves tried to exit the back of the ambulance, but, since she could not locate the recessed door handle, resolved to try to exit through the front passenger door. (R-178-179). As Mrs. Gleaves was doing this, she

realized she was not going to be able to complete her exit before the woman got the vehicle in motion. (R-179). Mrs. Gleaves then snatched the keys from the ignition and, using her left hand, attempted to throw the keys out of the open driver's door. (R-180). Mrs. Gleaves' arm was, at that moment, extended between the woman's back and the driver's seat. Ms. Hill leaned back, pinning Gleaves' arm in that position. (R-180-182). Ms. Hill then forcefully knocked Mrs. Gleaves to the floor of the ambulance, causing extensive injury to Mrs. Gleaves' shoulder and arm. (R-180-182). After the attendant had assisted in getting Mrs. Gleaves off of the floor, the ambulance proceeded to the hospital. During the ride to the hospital, Ms. Hill continued to be destructive and active. (R-183). She stripped the sheets off of the stretcher in the ambulance and ripped all of the paper out of the EKG machine. (R-184). She ripped and tore everything that was loose and tried to get out of the back door. (R-184). Finally, she tried to break the windows out of the ambulance. (R-184).

During the ride, the disturbed woman again assaulted Mrs. Gleaves in the ambulance by attempting to remove the rings from Mrs. Gleaves' fingers (R-186). Mrs. Gleaves stated that the attempts to do so were so violent that she sustained puncture wounds to her fingers and

Gleaves had to have the attendant's assistance in prying the woman loose. (R-186).

As a result of the injuries sustained in this incident, Mrs. Gleaves has had to leave the nursing profession. (R-443, 450-452).

SUMMARY OF THE ARGUMENT

Mrs. Gleaves received permanent injuries while struggling in an ambulance with Ollie Mae Hill, a paranoid schizophrenic woman. At the time of the accident Ms. Hill was engaged in one of a long series of deranged outbursts caused by her mental disorder. These unpredictable outbursts began long before the ambulance arrived and continued even after Mrs. Gleaves was injured. The Court thus found applicable a clause in the Western malpractice policy excluding accidents covered by a standard automobile liability policy. However, because the facts in Novak differ significantly from the instant case, the appellate court misapplied the law.

In Novak, this court held that the standard automobile insurance "usage" clause required some nexus between the vehicle and the event causing the injury. In this case the fact that an assailant shot an automobile occupant because of his desire to ride in the car provided this nexus. Since Novak the Supreme Court and several district courts have reiterated this motivational test in assault cases.

Ms. Hill's outburst was triggered by her mental illness, not by the use of the ambulance. Her outbursts had begun long before the ambulance arrived. The ambulance was merely the site of her attack, which is not sufficient

to meet the nexus test.

Florida law provides that liability policies are to be construed liberally to provide broad coverage to the insured. In the instant case Western World seeks to defeat coverage under their malpractice policy by broadly construing the liability policy. Finally, Western World presented no evidence at trial that Mrs. Gleaves' injuries fell within the usage clause of the automobile liability policy.

Western World's malpractice insurance policy specifically states that it covers all persons injured by the negligence of the insured. No privity relationship between the insured and the injured party is required under this policy, nor under Florida law. Mrs. Gleaves, as a resonably foreseeable bystander to the ambulance attendants' negligence, was covered under the policy.

POINT ON APPEAL (A)

MARVENE GLEAVES' INJURIES DID NOT FALL WITHIN THE "USE" COVERAGE OF THE AUTOMOBILE LIABILITY POLICY.

Mrs. Gleaves received permanent injuries while struggling in an ambulance with Ollie Mae Hill, a paranoid schizophrenic woman. (R-180) At the time of the accident Ms. Hill was engaged in one of a long series of deranged outbursts caused by her mental disorder. These unpredictable outbursts began long before the ambulance arrived and continued even after Mrs. Gleaves was injured. (R-168-71) Nonetheless, the Fifth District Court of Appeals, relying on Government Employees Insurance Company vs. Novak, 453 So. 2d 1116,(Fl. 1984) concluded that Mrs. Gleaves' injuries arose from the use of the ambulance. The Court thus found applicable a clause in the Western malpractice policy excluding accidents covered by a standard automobile liability policy. However, because the facts in Novak differ significantly from the instant case, the appellate court misapplied the law.

In Novak, this court addressed the meaning of the standard policy clause "arising out of the ownership, maintenance or use of the motor vehicle." (Id.,at 1118) There a stranger approached an automobile driver as she prepared to drive from her residence. The stranger asked for a ride, and when refused, fatally shot the driver. The

assailant pulled the driver from her car, got in, and drove away. Subsequently the deceased's father sought personal injury protection benefits under the insurance policy covering this automobile.

The Novak court reiterated the "arising out of" clause should be construed liberally to provide broad coverage for the insured. Nonetheless, some "nexus" between the motor vehicle and the event causing the injury must exist. (Id.,at 1119) The proper inquiry is whether the attack arose out of, or flowed from the use of the vehicle. The Court concluded that the nexus was established in this particular case by the assailant's motivation in "obtaining a ride in or possession of the motor vehicle." (Id.,at 1119)

In the case at bar, the appellate court stated that "it seems apparent that the injury to Gleaves arose from the use of the motor vehicle (Gleaves and Hill struggling within the vehicle for control of the key") just as much as the injury to Novak, who was shot from outside the vehicle by a person seeking to gain control of the vehicle." 481 So. 2d 557 (Fla. App 5 Dist, 1986),p.559. This opinion overlooks that, unlike the Novak assailant, Ollie Mae Hill was not motivated to attack Mrs. Gleaves by the use of the ambulance. While the Novak assailant sought out the car, Ms. Hill had to be persuaded to enter the ambulance. (R-175) Once inside, her outburst was one of many spontaneous, unpredictable outbursts caused by her peranoid schizophrenia.

These episodes began long before the ambulance arrived, continued during her ambulance ride, and culminated only after Ms. Hill was sedated in her hospital seclusion. (R-168-71, 49-51)

Ms. Hill's psychiatrist, Dr. Suarez, diagnosed her as a paranoid schizophrenic and stated that she was behaving unpredictably and suffering auditory hallucinations. (R-49) Dr. Suarez explained that during auditory hallucinations patients hear imaginary voices telling them to engage in awful kinds of behavior. (-R-51) This diagnosis is consistent with eye witness testimony that Ms. Hill was flailing about wildly, removing her clothes, and threatening people, both before and after the injury to Mrs. Gleaves. ("R"-116,132-34,150-51,168-75) No evidence suggests the ambulance triggered Ms. Hill's schizophrenic attacks. If Ms. Hill was "motivated" by anything, it was her medical condition.

In Novak, and more recently, in Hernandez v. Protective Casualty Insurance Company, 473 So. 2d 1241 (1985), this Court upheld the Fifth District Court of Appeals decision in Reynolds v. Allstate Insurance Company. 400 So. 2d 496 (Fl. 5thDCA 1981). Reynolds involved an automobile driver who was struck and rendered unconscious by an assailant hiding in the back seat. The assailant then drove the victim's car several miles and ejected him from the vehicle. The Court, in rejecting PIP coverage, stated

that no coverage exists if an automobile is merely the "site of an injury or that the injury occurs incidentally to its use." Id.,at 497, quoting General Accident Fire And Life Assur. Corp. Ltd. v. Appleton, 355 So. 2d 1261 (Fla. 4th DCA) Instead, there must be a causal connection or relation between the two.

In the instant case the ambulance was merely one site of Ms. Hill's outburst. The first site was the University of Central Florida campus where she ran about naked, prancing and darting between cars. (R,168-71) The second site was the information booth, where she flailed about, threatened bystanders, attempted to pull an air conditioning unit from the wall, and exposed herself through a window. (R,171-76) The third site was the ambulance, where her mental disorder triggered her rush to the front of the ambulance, her destruction of various medical supplies, her attempts to escape out the window and to further assault Mrs. Gleaves. (R,183-86)

Since Novak, this Court and several District Courts of Appeal have construed the "nexus" test in determining whether automobile liability coverage exists where an automobile driver is assaulted. In every one of these cases the Court has based its decision upon whether the motor vehicle was a motivating force behind the assault. In cases where the vehicle was the mere site of an attack, or where

it was merely involved incidentally, the Courts have found no liability coverage.

In Allstate Insurance Company v. Famigletti, 459 So. 2d 1149 (Fla.4th DCA 1981) the Fourth District Court of Appeal found no PIP coverage existed. There the injured parties, Mr. & Mrs. Burch, had a running feud with their neighbors, the Famiglettis. Several violent confrontations occurred over the course of several months. Finally, one day as the Burchs drove from their house, Mr. Famigletti shot them with a machine gun from the roadside. The Court held that Mr. Famigletti had intended to harm the Burchs before the shooting. Merely because they were in their automobile during this particular incident did not provide a sufficient nexus between the assault and the use of the car.

Like Famigletti, the instant case involves a series of singularly motivated incidents, one of which happened to occur in a motor vehicle. In both cases the fact that the outbursts preceeded any involvement of the motor vehicles demonstrates that the triggering force for the behavior was not related to the vehicles.

In Doyle v. State Farm Mutual Auto Insurance Company, 464 So. 2d 1277 (1985) the Third District Court of Appeal also looked to the assailant's motivation. There, Mr. Doyle was exiting his automobile at his home driveway when an armed assailant approached him and requested money. As Doyle reached for his wallet the assailant shot him. The

Court distinguished these facts from those in Novak on grounds that the assailant's shooting was not motivated by his desire to obtain Doyle's car. Like the case at bar, the motivating mechanism was not related to the vehicle. Although Ms. Hill's outburst included an attempt to engage the ambulance into gear, absolutely no evidence indicates this action was anything other than a wildly irrational outburst caused by her schizophrenic condition.

The Second District Court of Appeal also relies on the assailant's motivation to determine whether automobile liability coverage exists in assault cases. In Allstate Insurance Company v. Gillespie, 455 So. 2d 617 (1984) Mr. Gillespie became enraged over the manner in which another driver, Mr. Stewart was handling his automobile. While Stewart was stopped in his car at a red light, Gillespie approached him on foot and assaulted him. During the altercation Stewart produced a revolver and, while struggling over the gun, accidently shot Gillespie. The Court found that liability coverage existed because the manner in which Stewart drove his car "precipitated and lead to Gillespie's attack on Stewart." In the instant case, Ms. Hill's medical condition, not the ambulance, precipitated and led to her behavior which injured Mrs. Gleaves.

Finally, in Hernandez v. Protective Casualty Insurance Company, 473 So. 2d 1241 (1985), this Court reiterated that an assailant's motivation in an assault

determines whether the nexus test is met. There, Mr. Hernandez was stopped in his car and arrested by police for an alleged traffic violation. During the arrest . Hernandez was injured. After specifically affirming the Reynolds holding that no automobile liablity coverage exists when the vehicle is merely the site of the injury or involved incidentally, the Court held that the manner in which Hernandez used his vehicle motivated the actionscausing his injury. The forceful arrest which may have directly caused the injury did not break the link between Hernandez's use of his vehicle and his injuries.

The Hernandez Court referred to several assault cases in which no PIP coverage was found. Citing Feltner v. Hartford Accident And Indemnity Company, 336 So. 2d 142 (1976) as an example, the Court explained that there provocation for the assault was not connected with the use of the vehicle. Likewise, in the case at bar, the "provocation" for Ollie Hill's outburst existed long before the ambulance arrived.

In Novak, and Hernandez, this Court reiterated that the purpose behind liberally interpreting liability usage clauses is to provide broad coverage to the insured. In the instant case, however, Western World seeks a liberal construction of the liability usage clause in order to prevent coverage to the insured. Western World, in actuality, seeks a broad application of its exculpatory

clause. Such exculpatory clauses have consistently been narrowly construed on grounds that the insurer writes the policy and has greater bargaining power than the insured. The courts in each of the cases cited above liberally construed the usage clauses for the benefit of the insured; appellant knows of no cases where courts have applied this liberal construction to deny coverage to the insured. Michigan Mutual Liability Company v. Mattox, 173 So. 2d 754 (Fl. 1st DCA 1965); A.R. Kickliter v. National Union Fire Insurance, 188 So. 2d 872 (Fl. 1st DCA 1966)

The case at bar also differs from Novak in that it concerns coverage under a liability policy rather than PIP insurance. In Lasky v. State Farm Insurance Company, 296 So. 2d 9, (Fla. 1974) this court emphasized the broad coverage inherent in PIP insurance. The Lasky court concluded that one legislative objective of PIP insurance was to assure that persons injured in autombile accidents would receive some economic aid in order to meet medical expenses. While petitioner acknowledges that automobile liability policies have also been broadly construed, they are not legislatively created policiesdesigned to guaranty payments.

Western World submitted no evidence whatsoever at trial suggesting Gleaves' injuries fell within the use coverage of the liability policy. The only theory of liability upon which evidence was presented at the trial

below was malpractice. An emergency care expert, Dwight Ponsell, testified extensively as to proper standards of emergency patient care. Mr. Ponsell concluded that the person in charge of caring for the patient was negligent in not maintaining contact with the patient. ("R"-244) No portion of his testimony is directed toward the negligent use of the ambulance itself.

Applying all of the evidence presented at trial to the language of the insurance policies, the trial court concluded as a matter of law that any negligence of Herndon and its employees arose from their actions as medical personnel rather than from their loading, unloading, or driving the ambulance. ("R"-532) Joining in the motion for directed verdict on this issue were Herndon and employees, William Scalla and Marshall Kersey. ("R"-529) This holding, of course, did not prohibit the jury from concluding that Herndon had not been negligent.

The wording of the Western World insurance policy was plain and ambiguous. It stated that it would provide coverage to "<u>any person</u> injured through the rendering or failure to render professional services properly". (See Appendix) Based upon the evidence presented at trial and the wording of the Western policy, Judge Kaney correctly concluded that reasonable minds could not conclude that this accident fell within the liability coverage.

MRS. GLEAVES' INJURIES FELL WITHIN WESTERN WORLD'S MALPRACTICE INSURANCE POLICY

Although the Fifth District Court of Appeals did not address the question of whether Mrs. Gleaves' injuries fell within Western World's malpractice policy, resolution of this issue is necessary to conclude all coverage questions.

Western World's malpractice policy assumes responsibility on behalf of Herndon Ambulance Company for "all sums which the insured shall become legally obligated to pay as damages because of injury to any person arising out of the rendering or failure to render during the policy period, professional services by one of the insured's ambulance drivers or ambulance attendants...."See appendix (emphasis supplied) Where the language of an insurance policy is plain and unambiguous, the policy will be enforced as it is written. State Liquor Stores No. 1 vs. U.S. Fire Insurance Company, 243 So.2d 228 (Fla. 1st DCA 1971). Despite this clear language, Western World argued in their initial brief that their policy did not cover Mrs. Gleaves because she was not in privity of contract with Herndon Ambulance Company.

Malpractice actions may be brought on breach of contract, or, as in the instant case, negligence theory. Privity is not an element of a cause of action for negligence, even where it is based upon a contractual obligation. Navajo Circle, Inc. vs. Development Concepts Corporation, 373 So. 2d 689, 691 (Fla. 2nd DCA 1969) (No privity required for condominum owner and association to make out cause of action against architect and

contractor).In Navajo Circle, Inc. vs. Development Concepts Corporation, the Second District Court of Appeals reiterated that in negligence cases the existence of a contract between a plaintiff and defendant is not an exclusive test of whether a duty of care exists. Instead, a foreseeably injured party may maintain an action against the allegedly negligent performer even though he is not in privity with that performer. See alsoGallichio vs. Corporate Group Service, Inc., 227 So. 2d 519(Fla. 3rd DCA 1969) (Injured worker may bring action against company hired by his employer to make safety inspections).

Navajo relied chiefly upon the Florida Supreme Court's opinion in A. R. Moyer, Inc. vs. Graham. There, the Court discussed extensively the privity requirement in professional negligence cases. The supreme court concluded that the extent of a professional duty is best defined by the foreseeabilty of injury consequent upon breach of that duty.

In the instant case, although Herndon was not initially dispatched to transport Mrs. Gleaves, they owed her a duty to exercise reasonable care for her safety from the moment they escorted her into the ambulance with the schizophrenic patient. The evidence at trial shows that, at that point, the risk of injury to Mrs. Gleaves was foreseeable. Dwight Ponsell, an expert in emergency medical service procedures, testified that the ambulance driver's

duty was to maintain control over the ambulance at all times while the ambulance attendant had a duty to maintain contact with and control over the patient at all times. He concluded that their negligence caused the injury to Mrs. Gleaves. (R-245-246,250-51)

As authority for their argument that privity is required in malpractice cases, Western World cites several medical and legal malpractice cases. Two of these cases, Wilhelm v. Traynor, 434 So. 2d 1011 (Fla. 5th DCA 1983), Pet. For Rev. Denied, 444 So. 2d 418 (1984) and Homemakers, Inc. v. Gonzales, 400 So. 2d 965 (Fla.1981), involve statute of limitation problems. Neither case even addresses a privity requirement in malpractice cases. Likewise, Reinhart v. Seaboard Coastline Railroad Company, 422 So. 2d 41 (Fla. 2nd DCA 1982), also cited by Western World, involves evidentiary requirements and makes no mention of privity.

Western World also relies on Weiner v. Moreno, 271 So. 2d 217 (Fla. 3rd DCA 1973) in which the Third District Court of Appeal held that a plaintiff must prove that he has employed an attorney before bringing a negligence action against that attorney. More recently, however, the Third District has held that an attorney who prepares a will has a duty to a third party, the beneficiary, as well as the testator-client. Lorraine v. Grover, Ciment, Weinstein And

Stauber, 467 So. 2d 315 (Fla. 3rd DCA 1985); DeMaris v. Asti, 426 So. 2d 1153 (Fla. 3rd DCA 1983).

In McAbee v. Edwards, 340 So. 2d 1167 (Fla. 4th DCA 1976) the Fourth District Court of Appeal discussed extensively why attorneys have a duty to beneficiaries under a will. The Court stated that determining whether a professional is liable to a third person not in privity is a matter of policy that involves balancing the extent to which a transaction was intended to effect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injuries, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, and the public policy of preventing future harm. The Court noted that when an attorney writes a will he realistically and in fact assumes a relationship, not only with the client, but also with the client's intended beneficiaries. Likewise, the Court pointed out that public policy requires an attorney to exercise his position of trust and superior knowledge responsibly so as not to injure persons whose rights and interests are certain and foreseeable.

Applying the McAbee criteria to the instant case it becomes clear that the ambulance attendants owed Mrs. Gleaves a duty of care. While the ambulance was initially dispatched for Ms. Hill, the attendants allowed Mrs. Gleaves

to assist them and even escorted her and the patient into the ambulance. At that point Mrs. Gleaves, like the testimentary beneficiaries, became inextricably involved in the transaction.

Moreover, Dwight Ponsell's testimony established that harm to Mrs. Gleaves was foreseeable by the attendants. There is no doubt that Mrs. Gleaves suffered injuries, which the jury concluded proximately resulted from the attendants' negligence. Finally, public policy requires that ambulance attendants exercise their position of trust and superior knowledge responsibly so as not to allow foreseeable injury to third parties such as Mrs. Gleaves.

Finally Western relies heavily upon another Third District Court of Appeals decision, Greenwald v. Grayson, 189 So. 2d 204 (Fla. 3rd DCA 1966). There a married couple employed a doctor to examine a child they were considering adopting. The parents brought actions in negligence and contract against a physician who failed to discover a latent medical problem in the child. The trial court directed a verdict for the doctor on the negligence claim. The Third District upheld the trial judge's decision on grounds that no physician-patient relationship existed.

The instant case, moreover, does not involve a physician-patient relationship. Doctors treat patients for injuries. Ambulance attendants, on the other hand, principally transport people inside their ambulance. The

attendants in the instant case not only allowed Mrs. Gleaves inside their ambulance, but also escorted her there. The attendants were aided in their transporting of Ms. Hill by Mrs. Gleaves' presence in their vehicle. Western World drafted and charged Herndon premiums for a malpractice policy based on the nature of an ambulance attendant's job. Their resulting policy covers all persons injured by the attendants negligence.

Western World was free to include a provision in their policy limiting coverage to persons in privity with the insured. They chose not to do so. Because Western World was the drafter of the policy its coverage should be construed broadly. Tropical Park, Inc. vs. U.S. Fidelity And Guaranty Company, 357 So. 2d 253 (Fla. 3rd DCA 1978). Here the trial court properly applied this rule of law and found that coverage existed.

Western World argues in its initial brief that the privity of contract requirement applies because it is embodied in the limitation of action statute governing professional malpractice actions. Florida Statute 95.11(4)(a) 1979. According to Western World, because this is an action for professional malpractice the policy embodies a privity requirement. This interpretation is inaccurate.

This statute contains only the requirement that professional malpractice actions be brought within two years

from the date in which the cause of action is discovered or should have been discovered. The second and final sentence of the statute simply limits application of the two-year limitation to those cases where the plaintiff is in privity with the professional period. In no way does this establish privity as a requirement in professional malpractice actions.

Florida Statutes 624.605(1)(k) define malpractice insurance as:

> Insurance against legal liabililty of the insured, and against loss, damage, or expense incidental to a claim of such liability, arising out of the death, injury, or disablement of <u>any person</u> or arising out of damages to the economic interest of <u>any person</u>, as the result of negligence in rendering expert, fiduciary, or professional service. (emphasis supplied)

Nowhere in the statute does the legislature limit malpractice coverage to those in privity with the professional. For this reason and the reasons above Petitioner respectfuly submits that Marvene Gleaves falls within that class of persons afforded coverage by the Western World malpractice policy. Florida law does not preclude her from recovering under the policy simply because she was not the patient to be transported by the ambulance company. The fact remains that she was injured through the ambulance attendants failure to render professional services properly. The trial court's decision below should be allowed to stand.

CONCLUSION

Based on the foregoing arguments and authorities cited therein, the Petitioner respectfully requests that this Honorable Court reverse the decision of the District Court of Appeals and reinstate the judgement of the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Mail to: SID WHITE, Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida, 32301, and to SHARON LEE STEDMAN, ESQUIRE, Post Office Box 1271, Orlando, Florida, 32802, and to ROBERT BONNER, ESQUIRE, 605 E. Robinson Street, Orlando, Florida, 32801, this ____ day of July, 1986.

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