

IN THE SUPREME COURT OF
THE STATE OF FLORIDA

WESTERN WORLD INSURANCE
COMPANY,

DOCKET NUMBER: 68,328

Respondent,

PETITION TO INVOKE
DISCRETIONARY JURISDICTION
TO REVIEW A DECISION OF THE
FIFTH DISTRICT COURT OF
APPEAL

v.

MARVENE GLEAVES and
JAMES GLEAVES,

Petitioners.

FILED
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FEB 28 1968

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

BRIEF ON JURISIDITION ON BEHALF OF PETITIONERS,
MARVENE GLEAVES AND JAMES GLEAVES

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STATEMENT OF THE FACTS

On January 4, 1978, the Petitioner, MARVENE GLEAVES, was permanently injured after a series of physical confrontations with a mentally disturbed 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"-168). She was called upon to assist the campus police officers in subduing a black, female student who had suddenly begun exhibiting bizarre and violent behavior at the school. ("R"-168-171). This mentally disturbed student 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 the woman. Mrs. Gleaves and another nurse followed the woman 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, the woman continued to exhibit bizarre and destructive behavior and even began assaulting Mrs. Gleaves, by forcefully removing from Gleaves's neck her stethoscope and removing a pen from Gleaves's pocket and threatening and trying to stab Gleaves 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 got the woman to calm down and, since the woman had began to get agitated at the thought of being taken by ambulance to the hospital, Mrs. Gleaves promised the woman that if she would get dressed, Mrs. Gleaves would accompany her to the hospital. ("R"-175-176). The woman dressed 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 the woman into the ambulance and assisted Mrs. Gleaves into the ambulance, also. ("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 to 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). Mrs. Gleaves tried to exit the back of the ambulance, but, since she would not locate the recessed door handle, resolved to try to exit through the front passenger

door. ("R"-178-179). As 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). 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's arm was, at that moment, extended between the woman's back and the driver's seat. The woman leaned back, pinning Gleaves' arm in that position. ("R"-180-182). The woman then forcefully knocked Mrs. Gleaves to the floor of the ambulance, causing extensive injury to Mrs. Gleaves's 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, the disturbed woman continued to be destructive and active. ("R"-183). She stripped the sheets off 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). She tried to break the windows out of the ambulance. ("R"-184).

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

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, 649, 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 Gleaveses, 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, 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. (See DCA opinion in the Appendix) The Court based their decision on the recent case of Government Employees Insurance Company v. Novak, 453 So.2d 1116 (Fla. 1984).

Gleaves is now petitioning the Supreme Court to exercise its discretionary jurisdiction to review decisions of the district courts that expressly and directly conflict with decisions of other district courts of appeal or the Supreme Court.

SUMMARY OF ARGUMENT

There are several recent cases concerning injuries occurring in automobiles that are cases that were decided after the Supreme Court decision in Government Employees Insurance Company v. Novak, 453 So.2d 1116 (Fla. 1984).

The Petitioners submit that the Fifth District Court of Appeal had relied on the Novak and that the Novak case was factually dissimilar to the instant situation. There are several conflicting district court of appeal decisions in this area and the Petitioners submit that the factual situation in the instant case is more similar to the cases that hold that situations such as in the instant case do not fall within the common insurance clause of "injuries arising out of the ownership, maintenance or use of the vehicle." The instant factual situation shows that the injury that occurred to Mrs. Gleaves just happened inside the ambulance and was not an injury arising out of the use of the vehicle.

POINT ON APPEAL

WHETHER THE SUPREME COURT HAS JURISDICTION TO REVIEW A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL THAT EXPRESSLY AND DIRECTLY CONFLICTS WITH OPINIONS OF OTHER DISTRICT COURTS OF APPEALS, THE FLORIDA SUPREME COURT AND EVEN THE FIFTH DISTRICT COURT OF APPEAL ON THE QUESTION OF INSURANCE COVERAGE.

POINT I

The Supreme Court has discretionary jurisdiction to review decisions of a District Court of Appeal that expressly and directly conflicts with opinions of other District Courts of Appeal or the Supreme Court.

Art. V, Section 3(b)(3), Fla. Const. The instant case involves an opinion of the Fifth District Court of Appeal that expressly and directly conflicts with opinions of the Third District Court of Appeal, the Supreme Court and even another opinion of the Fifth District Court of Appeal. For the reasons stated below, the Petitioners, MARVENE GLEAVES and JAMES GLEAVES (Plaintiffs below), respectfully request that this Honorable Court exercise its discretionary jurisdiction and review the decision of the Fifth District Court of Appeal rendered on January 16, 1986. (See Appendix.)

One of the cases that conflicts with the instant case is Allstate Insurance Company v. Famigletti, 459 So.2d 1149 (Fla. 4th DCA 1981). In that case, the Court found that there was no coverage under the injured parties' personal injury protection automobile policy. The injured parties, Mr. & Mrs. Burch, had had a running feud with their neighbors, the Famiglettis. Several violent confrontations had taken place during the period of approximately eight months (including physical assault, gunfire and threats). On January 26, 1982, the Burches left their house in their car on their way to work and Mr. Famigletti stepped out from behind the tree on the edge of the road with a machinegun and attempted to "massacre" his neighbors.

The Fourth District Court of Appeal held that Mr. Famigletti had intended to hurt the Burches before and that the mere fact that they happened to be in their automobile at the time of this particular incident did not provide a sufficient nexus between the assault and the use of the car to find coverage under the PIP policy.

Another case which conflicts with the instant decision is Doyle v. State Farm Mutual Automobile Insurance Company, 464 So.2d 1277 (Fla. 3rd DCA 1985). The Court there, also, stated that there was an insufficient nexus between the situation and the use or ownership of the automobile and denied coverage. Mr. Doyle was exiting his automobile at his home driveway and an unknown assailant carrying a gun approached him and requested money. As Doyle was reaching for his wallet, the assailant shot him several times.

Interestingly enough, the Fifth District Court of Appeals' opinion in Reynolds v. Allstate Insurance Company, 400 So.2d 496 (Fla. 5th DCA 1981) also conflicts with the instant decision by the Fifth District Court of Appeal. (It is important to note that the Supreme Court in the Novak case continued to recognize the viability of the Reynolds case.) In Reynolds, coverage was denied as the situation did not arise out of the use of the vehicle and the vehicle was merely the situs of the injury. In Reynolds, Mr. Reynolds had entered his automobile and an unidentified assailant, lurking in the back seat, struck and injured Mr. Reynolds, rendering him unconscious. The assailant then drove the automobile several miles from the place of the assault and then forcefully ejected Mr. Reynolds from the vehicle causing him further injury.

Unlike the Novak case, the instant case does not contain a situation where the control of the vehicle was an issue. In the instant case, the disturbed woman had assaulted and threatened and physically attacked Mrs. Gleaves several times before, and after, the incident which caused her injury. ("R"-171-227). The fact that the injury did occur inside the ambulance is of no consequence since the disturbed woman was obviously deranged at the time of this accident, as evidenced by her prior and subsequent behavior with Mrs. Gleaves, was only intent upon being disruptive and hurting Mrs. Gleaves. Therefore, as with the cases above, there is an insufficient nexus between this type of injury and what is arising out of the ownership, use or maintenance of the vehicle.

In Gibson v. Avis Rent-A-Car System, Inc., 386 So.2d 520 (Fla. 1980), this Honorable Court recognized that it had discretionary jurisdiction to review a case when a district court of appeal had misapplied the law by relying on a decision which involved a situation materially at variance with the one under review. Petitioners respectfully submit that this is, indeed, what the Fifth District Court of Appeal has done. They have relied on the Novak case, which involves a person who is specifically requesting to have control of the vehicle and this is not the situation in the instant case. As stated in his dissenting opinion in Pena v. Allstate Insurance Company, 463 So.2d 1256 (Fla. 3rd DCA 1985), Chief Judge Schwartz points out the pitfalls in determining coverage based on the subjective intent of various deranged persons. Petitioners agree with his opinion in that regard and

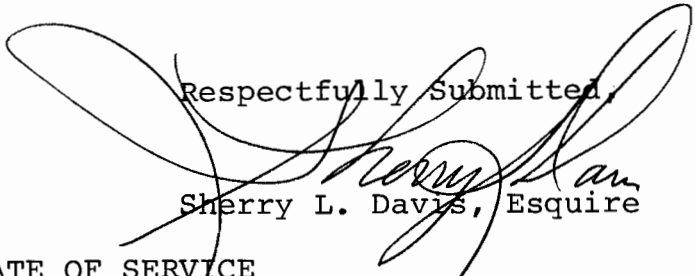
submit that the instant situation was one where the automobile was merely the situs of the injury and that, since this injury did not arise out of the ownership, use or maintenance of the vehicle, the policy exclusion that is at issue in this case should not apply.

For the reasons stated above, the Petitioners respectfully request that this Court exercise its discretionary jurisdiction to review the opinion of the Fifth District Court of Appeal since it is conflict with these other decisions.

CONCLUSION

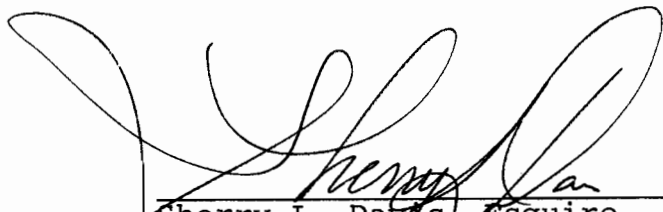
Since the Fifth District Court of Appeal inappropriately relied on the case of Government Employees Insurance Company v. Novak, 453 So.2d 1116 (Fla. 1984). that this Honorable Court should exercise its discretionary jurisdiction to review the decision since it conflicts with other decisions of this Court and of other district courts of appeal.

Respectfully Submitted,


Sherry L. Davis, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 24th day of February, 1986, to Sharon Lee Steadman, Esquire, RUMBERGER, KIRK, CALDWELL, CABANISS & BURKE, P.A., 11 E. Pine Street, Orlando, Florida 32801.


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