IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,743

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ON REVIEW OF CERTIFIED QUESTIONS OF GREAT PUBLIC IMPORTANCE FROM THE FOURTH DISTRICT COURT OF APPEAL



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JOSEPHINE STURIANO

Plaintiff, Petitioner,

v.

MARTIN BROOKS, as Guardian Ad Litem of the Estate of Vito Sturiano, Deceased

Defendant, Respondent.

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# REPLY BRIEF OF PETITIONER JOSEPHINE STURIANO

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## PREFACE

This Reply Brief is submitted on behalf of JOSEPHINE STURIANO, the Plaintiff, in response to the Brief submitted by Defendant, MARTIN BROOKS, as Guardian Ad Litem of the Estate of Vito Sturiano, Deceased. In this Brief, as in the Initial Brief of Petitioner, the parties will be referred to by name or as Plaintiff and Defendant. Reference to the record on appeal will be by "R."

I.

THE LEX LOCI CONTRACTUS RULE SHOULD NO LONGER GOVERN THE RIGHTS AND LIABILITIES OF THE PARTIES IN DETERMINING THE APPLICABLE LAW ON AN ISSUE OF INSURANCE COVERAGE, THEREBY PRECLUDING CONSIDERATION BY THE FLORIDA COURTS OF OTHER RELEVANT FACTORS, SUCH AS THE SIGNIFICANT RELATIONSHIP BETWEEN FLORIDA AND THE PARTIES AND/OR THE TRANSACTION.

The Defendant contends that this Court should not be progressive and take the logical step forward and adopt the significant relationship standard as enunciated in the Restatement (Second) of Conflict of Laws §188 (1971) thereby putting to rest the outmoded doctrine of lex loci contractus. The Defendant contends that there is a clear distinction between a tort action and a "contract action" requiring a different rule to be established as to each, and that this Court should not now adopt the significant relationship test in contract actions as it did in tort actions. See Bishop v. Florida Specialty Paint Company, 389 So.2d 999 (Fla. 1980). This argument is clearly fallacious.

Defendant's Answer Brief stresses that when parties enter into a contractual relationship, they do so with the intention of establishing a binding agreement with respect to their rights and obligations. Further, the Defendant suggests that a party's "justifiable expectation" regarding his contract rights is constitutionally protected. Those alleged "justifiable expectations" would, according to the Defendant, mechanically apply so as to preclude Plaintiff from recovery under the GEICO insurance policy in this case in accordance with the archaic doctrine of lex

loci contractus. Even using Defendant's argument, the insurers (GEICO'S) justified expectations would have been for its insured (STURIANO) to leave the state of contracting (New York) especially in today's migratory transient society.

It is respectfully submitted that by adopting the significant relationship test enunciated in the Restatement (Second) of Conflict of Laws, that this Court will, indeed, protect the justifiable expectation of the Plaintiff and all other residents of Florida who have had their original roots in other states and who frequently, even though living in Florida, have maintained their insurance policies issued from those other states, anticipating that they will be covered and protected under Florida law if they are involved in an automobile accident in the State of Florida.

The Defendant's suggestion that this Court continue to give effect to the mechanical lex loci contractus doctrine under the pretense that a party's justifiable contractual expectation should govern the result is an invitation for this Court to continue to apply a legal maxim which is totally outdated and unwarranted in today's society.

The Appellee's Brief correctly points out that at the time the GEICO insurance policy was issued, the Plaintiff and her spouse resided in New York and their vehicle was garaged in New York (R 270-305). The Appellee also points out that there was nothing in the policy to suggest any intention by either the insuror or the insured

that New York law would not continue to govern the contract. What the Appellee conveniently fails to point out is that the insurance policy was issued in New York in 1979, some six (6) years prior to the accident. Since 1979, the Sturianos have resided and established their domicile in the State of Florida. In fact, the place of performance, location of the subject matter of the contract, and domicile and residence of the insured, all dictate that Florida law should govern. While it is true that nothing in the policy suggests that New York law would not continue to govern the contract, the converse is equally true. Further, it is not the insurance policy itself which governs the choice of law, rather, all the standards set forth in Restatement (Second) Conflict of Laws §6 and §188 (1971), must be taken into account. Those standards provided:

> 3. §6 Choice-of-Law Principles
>
> (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
>
> (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include:
>
> (a) the needs of the interstate and international systems,
>
> (b) the relevant policies of the forum,
>
> (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
>
> (d) the protection of justified expectations,

(e) the basic policies underlying the particular field of law,

(f) certainty, predictability and uniformity of result, and

(g) ease in the determination and application of the law to be applied.

Once the state having the most significant relationship is identified, in this case, the State of Florida, the law of that state is then applied to resolve the particular issue. Turning now to the factors set forth in Sections 188 and 6 of the Restatement (Second) Conflict of Laws, it is crystal clear that Florida law should have been applied in determining that JOSEPHINE STURIANO was entitled to recovery under the GEICO insurance policy.

In fact, the laws of the State of New York, the location of the execution of the GEICO insurance policy would also allow JOSEPH STURIANO to recover. Under the Conflict of Laws theory known as the doctrine of "Renvoi," the Court of the forum in determining the question before it, must take into account the whole law of the other jurisdiction, including not only the local laws of such other jurisdiction, but also its rules as to conflict of laws, and then apply the law as to the actual question which the rules of the other jurisdiction prescribe. Under New York Conflicts of Law, New York courts would utilize the substantial relationship test in applying its choice of law. See Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954). Clearly, under the substantial relationship test, Florida substantive law would allow JOSEPHINE STURIANO to recover.

The doctrine of lex loci contractus, a remnant of a non-migratory age, is no longer a sound rule of law. This Court cannot and should not continue a pattern of "benign neglect" in refusing to adequately protect its citizens by adopting the significant relationship test now with resounding authority. We now live in an era when people are moving from place to place frequently, and are transitory in nature. The law is not a moribund dead dinosaur, but is rather a vital, breathing, moving, living thing which must flow with the times for the benefit of those to whom it applies.

Finally, Appellee contends that even if this Court should apply the significant relationship test as enunciated in the Restatement (Second) Conflict of Laws §188 (1971), the outcome of this action would not be changed. This is so, according to the Appellee, because New York has the most significant relationship to the transaction. Nothing could be further from the truth! The only two factors set forth in Section 188 (2) of the Restatement (Second) Conflict of Laws which relate to New York are the place of contracting and negotiation of the contract. The remaining three and the most important factors set forth in Section 188, the place of performance, the location, the subject matter of the contract, and the domicile and residence of the parties all clearly point to the State of Florida.

What the Appellee's argument ignores is that §188(2) provides that all the contacts are to be evaluated according to their relative importance with respect to the

particular issue. The fact that the STURIANOS had spent eight months of each year in the State of Florida since 1979, that their vehicle was garaged in the State of Florida, and that they were domiciled in Florida, all point to a determination that utilizing the standards set forth in §188 should allow the STURIANOS to recover.

In summary, as is pointed out in Section 6, Choice-of-law Principles Restatement (Second) of Conflict of Laws (1971) a court must heed the needs of interstate commerce so as to protect its citizens. This Court has taken a firm stance in applying better, more modern standards of law so as to protect its citizens in numerous situations, for example, abrogating the doctrine of contributory negligence and accepting the doctrine of comparative negligence, see Hoffman v. Jones, 280 So.2d 431 (Fla. 1973), and the adoption of strict liability in tort, see West v. Caterpillar Tractor Company, Inc., 336 So.2d 80 (Fla. 1976). This state must now enter a new enlightened era joining its sister jurisdictions in adopting the significant relationship test set forth in the Restatement (Second) of Conflict of Laws §188 (1971). Indeed, if the citizens of this State are to be adequately protected by its laws, this Court must adopt the significant relationship test now with resounding authority.

Modern society has become a migratory transient society. A majority of Florida's residents are persons who have had their original roots in other states and who frequently have maintained their insurance policies issued

from those other states anticipating that they will be covered and protected under Florida law if they are involved in an automobile accident, in the State of Florida. To deny recovery to those individuals solely because of the harsh effect of the doctrine of lex loci contractus, would serve as a penalty to our newer citizens who might today form a majority of Florida's residents. Since this Court has already sounded the death knell for the doctrine of lex loci delicti, it is now high time that the Court adopt the modern significant relationship test and abrogate the doctrine of lex loci contractus.

II.

THE DOCTRINE OF INTERSPOUSAL IMMUNITY DOES NOT BAR AN OTHERWISE VALID CLAIM BY AN INJURED PASSENGER WHOSE NEGLIGENT SPOUSE DIED AS A RESULT OF THE ACCIDENT, WHERE THE CLAIM IS LIMITED TO THE AMOUNT OF INSURANCE COVERAGE, THE PLAINTIFF IS THE ONLY PARTY INTERESTED IN THE ESTATE AND A GUARDIAN AD LITEM IS APPOINTED.

Both parties to this Appeal agree that this Court should take the next logical step in line with its past opinions in dealing with interspousal immunity. The disagreement centers upon the Defendant's restrictive and outdated argument that the next logical step would be a determination of no liability in the present case. The Plaintiff's position is that the next logical step flowing from all of the cases viewed in the light of Dressler v. Tubbs, 435 So.2d 792 (Fla. 1983) and Ard v. Ard, 414 So.2d 1066 (Fla. 1982) should be a finding that the doctrine of

interspousal immunity does not apply in the facts of this case. The Defendant further contends that this Court's recent decisions in Snowten v. Snowten, 475 So.2d 1211 (Fla. 1985), Zimmerman v. Zimmerman, 478 So.2d 350 (Fla. 1985), and Roberts v. Roberts, 414 So.2d 190 (Fla. 1982), control the outcome of the present Appeal and mandate a determination that the doctrine of interspousal immunity applies to bar the present action. All three decisions cited by the Appellee are clearly distinguishable under the facts of this case.

First, in Snowten, supra, the plaintiff husband brought an action against the defendant wife and her insurance carrier alleging that the wife negligently struck the husband while operating the family vehicle. The trial court granted summary judgment in favor of the defendants based upon the interspousal immunity doctrine and the First District Court of Appeal affirmed that decision citing the Florida Supreme Court decision in Raisen v. Raisen, 379 So.2d 352 (Fla. 1979), but certified to the Florida Supreme Court as a question of great public importance whether the doctrine of interspousal immunity is waived to the extent of available liability insurance when an action is for a negligent tort.

This Court in Snowten, supra, answered the certified question in the negative, holding that the doctrine of interspousal immunity is not waived to the extent of available liability insurance in an action for a negligent tort when both spouses are living. This Court's

rationale was that the policy reasons traditionally advanced for preserving the doctrine of interspousal immunity, the legal unity of husband and wife, avoidance of marital disharmony, and avoidance of fraudulent and collusive claims had not lost their vitality and were applicable to the facts in Snowten, supra.

None of the policy considerations considered by this Court in Snowten, supra, (which were reiterated in Zimmerman, supra) are applicable in this action. First, there is no marital unit to preserve. Second, there is no chance of promoting marital disharmony. Third, with one spouse dead, there is no danger of collusive claims, since the only parties in interest are the Plaintiff (JOSEPHINE STURIANO) and the insurance company. Actually, none of the policy considerations which have traditionally been used to support interspousal immunity exist under the factual scenario of this litigation. In addition, the negligent spouse is dead. Finally, there are no children or adverse estate interests, as JOSEPHINE STURIANO is the sole heir of her husband. Further, a guardian ad litem has been appointed to represent the estate of the deceased spouse and no other public policy issue would be promoted by barring recovery to JOSEPHINE STURIANO, who would otherwise be entitled to compensation from an insurance carrier, which insured against negligent conduct by the automobile driver.

This Court's decision in Roberts, supra, should not change the result in this action. In Roberts, supra, this Court held that the doctrine of interspousal immunity

barred a suit by a widow against a deceased husband's estate for an intentional tort. This Court there rejected the modification of the interspousal immunity doctrine under those unique circumstances. In fact, the public policy rationale set for in Roberts, supra, mandates a finding by this Court that the doctrine of interspousal immunity should not apply under the unique factual circumstances of the present case. In Roberts, supra, this Court opined that to allow a tort claim against the decedent's spouse's estate would:

> ... only add a unique factor to probate of an estate which would not be allowable if the decedent party were living. This could adversely affect dependent family beneficiaries, particularly minor children. [Emphasis supplied] Id., at 191.

None of the public policy considerations set forth in Roberts, supra, are applicable to this case. This Court in Dressler, supra, set the stage for this case when it determined that the interspousal immunity doctrine did not apply in a wrongful death case because the wrongful death created a separate distinct right in a wife's survivors. This Court reasoned, in distinguishing Raisen, supra, that:

> Raisen was decided on the grounds that allowing such a suit would be disruptive of marital unity and harmony. Obviously, Raisen cannot be applied to the factual situation here. Husband and wife are dead. There is no suit between spouses, just as there is no longer any marital unit to preserve. [Emphasis supplied] Id. at 794.

Further, the STURIANOS do not have any dependent family beneficiaries and certainly no minor children. In

fact, JOSEPHINE STURIANO is the sole survivor of the decedent, VITO STURIANO. The fears set forth in Roberts, supra, have no applicability here.

Unlike the Appellee's suggestions, the Plaintiff is not seeking to have this Court carve out a "special exception" to its general nonliability rule in interspousal immunity cases so that recovery may be allowed where the negligent spouse is dead. In this case, there is no danger of promoting marital disharmony. The reason behind the doctrine of immunity has totally disappeared. The issue here is whether this Court will take the next logical step in line with its past opinions in order not to allow the harsh effect of the doctrine of interspousal immunity to bar a claim by an injured spouse when the facts and policy considerations that existed in promulgating the doctrine of interspousal immunity in the first place are not present. This Court's reasoning in Dressler, supra, cannot be construed so narrowly or restrictively so as not to waive interspousal immunity in wrongful death actions particularly those where none of the public policy considerations for the interspousal immunity defense exist.

The Fourth District Court of Appeal clearly and categorically accepted the Plaintiff's argument that none of the public policy considerations supporting interspousal immunity exist in this case, and followed the logical path outlined by this Court's prior opinions. In fact, this case vividly illustrates why the public policy considerations discussed in Ard, supra, and Raisen, supra, compel the

allowance of a suit for a deceased husband's negligence which, at the same time, show the irony of barring JOSEPHINE STURIANO'S suit. JOSEPHINE STURIANO, in the interest of preserving martial unity and harmony, accompanied her husband in their automobile when he insisted upon driving. He was negligent, caused an accident, and as a result, JOSEPHINE STURIANO is now a widow, bereft of the support which was Vito Sturiano's duty to provide. Recovery was limited to the proceeds of the insurance policy as it was in Ard, supra.

It is respectfully submitted that this Court did not "shut the door" to a spouse injured by a spouse regardless of the facts and lack of policy considerations, but rather, that the facts will dictate the results (just as this Court's decision in Dressler, supra, which is controlling, on the facts of this case), thereby permitting JOSEPHINE STURIANO to recover.

## CONCLUSION

Based upon the foregoing analysis, this Court must affirm the Fourth District Court of Appeal's decision that interspousal immunity does not apply where the policy considerations supporting interspousal immunity do not exist. However, this Court should reverse the Fourth District Court of Appeal's decision applying the lex loci contractus rule and adopt the modern significant relationship test enunciated in the Restatement (Second) of Conflict of Laws §188 (1971), so as to allow JOSEPHINE STURIANO to recover up to the $50,000.00 policy limits which were applicable to this case.

CERTIFICATE OF SERVICE

We hereby certify that a true and correct copy of the foregoing was furnished by mail this 6th day of March, 1987, to STEVEN BILLING, ESQ., Billing, Cochran & Heath, P.A., 888 S.E. 3rd Avenue, Suite 301, North Fort Lauderdale, Florida 33316, and to NANCY LITTLE HOFFMANN, ESQ., Nancy Little Hoffmann, P.A., 2929 East Commercial Boulevard, Fort Lauderdale, Florida 33308.

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