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IN THE SUPREME COURT OF FLORIDA

CASE NO. 72,870

THE SHELBY MUTUAL INSURANCE COMPANY OF SHELBY, OHIO,

Petitioner,

vs.

MARY LOU SMITH,

Respond nt.
_____/

ON PETITION FOR REVIEW FROM THE DISTRICT COURT OF APPEAL, FOURTH DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

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ARGUMENT

THE LOWER COURT ERRED IN CONSTRUING THE 1984 AMENDMENTS TO SECTION 627.727, FLORIDA STATUTES, TO REQUIRE UNINSURED MOTORIST COVERAGE TO STACK ABOVE A TORT-FEASOR'S LIABILITY COVERAGE WITHOUT SET-OFF WHERE A REVIEW OF THE PLAIN AND CLEAR LANGUAGE OF THE STATUTE AS WELL AS THE FACTS IN THIS CASE SHOWS THAT THERE WAS NO "UNINSURED MOTOR VEHICLE" IN THE FIRST INSTANCE, AS DEFINED AND REQUIRED BY § 627.727(3).

Nothing contained in the Respondent's brief on the merits changes the fact that the Fourth District Court of Appeal incorrectly resorted to a search for legislative history that was consistent with their belief as to what the legislature intended in its 1984 amendment of Section 627.727, Florida Statutes. The Respondent's selective discussion of the general rules on statutory construction ignores the plain text of Section 627.727. A review of the Respondent's arguments again shows that this Court should follow the First and Third District Courts **of** Appeal in the proper interpretation of the 1984 amendments.

The Respondent begins analysis of the proper construction of the 1984 amendments to Section 627.727, Florida Statutes by citing the general proposition that legislative intent controls statutory interpretation even where it is inconsistent with the literal language of the statute. See, e.g., State v. Webb, 398 So.2d 820 (Fla. 1981). Indeed, Respondent attempts to reconcile the Webb decision with this Court's cases of St.

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Petersburg Bank & Trust v. Hamm, 414 So.2d 1071 (Fla. 1982), and Heredia v. Allstate Ins. Co., 358 So.2d 1353 (Fla. 1978), which stand for the proposition that legislative intent is gleaned primarily from statutory language and that unambiguous statutes should be applied literally, by contending that literal interpretation governs unless legislative history overwhelmingly supports a contrary interpretation. Given some of the other rules of statutory construction ignored by the Respondent and their application to the instant case, however, the Respondent cannot support such an assertion.

For example, rules of statutory construction are useful only in cases of doubt and such rules should never be used to create such doubt, but only to remove it. State v. Egan, 287 So.2d 1 (Fla. 1973). Legislative intent must be determined primarily from the language of the statute. If the intent of the legislature is clear and unmistakable from the language used, it is a court's duty to give effect to that intent. In short, a statute is to be taken, construed, and applied in the form enacted. Blount v. State, 102 Fla. 1100, 138 So. 2 (1931).

Contrary to the suggestion of the Fourth District Court of Appeal, the 1984 amendments to Section 627.727, Florida Statutes, left unchanged the definition of an "uninsured motor vehicle". The statutory language very clearly states that the provisions of Section 627.727 only come into play in situations involving an "uninsured motor vehicle". The

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Respondent's efforts to ignore that simple fact does not hide this fatal flaw in her analysis. Simply stated, the Florida Legislature is assumed to have known the meaning of the words used and to have expressed their intent by the use of those words as found in Section 627.727(3), Florida Statutes. S.R.G. Corp. v. Dept. of Revenue, 365 So.2d 687 (Fla. 1978).

The Respondent's contention that this Court should ignore Section 627.727(3), Florida Statutes, also ignores other fundamental standards of statutory review. A statute is required to be construed in its entirety and effect must be given to every part of the provision under construction as well as every part of the statute as a whole. State v. Gale Distributors, Inc., 349 So.2d 150 (Fla. 1977); Wilensky v. Fields, 267 So.2d 1 (Fla. 1972). Where a section refers to some other section or where other sections may be applicable, the statutory provisions reflect light on each other and must be construed together to show legislative intent. Major v. State, 180 So.2d 335 (Fla. 1965); In Re: Opinion to Governor, 60 So.2d 321 (Fla. 1952); Ideal Farms Drainage District v. Certain Lands, 19 So.2d 234 (Fla. 1944).

Any fair review of the entire Section 627.727, Florida Statutes, as amended in 1984, quickly shows that the legislature continued to make the applicability of any substantial changes in subsections (1) and (2) conditioned upon a party first meeting the definitional requirements of subsection (3). Any other construction must include the assumption that the

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Florida Legislature directly and expressly enacted the 1984 amendments in conflict with the very definitional language which gave rise to the section's applicability. Such an interpretation gives little credit to the State's legislators and the legislative process.

The underlying proposition of the Respondent is that this Court should simply strike or delete from Section 627.727, Florida Statutes, the entire definitional section, even though doing so is repugnant to any proper interpretive analysis. In fact, the Respondent's contention that this Court should ignore an entire subsection in Section 627.727, Florida Statutes, diametrically conflicts with the proposition that courts should give each statute a field of operation as opposed to construing former statutory provisions as repealed by implication. Indeed, one of the cases on which the Respondent relies, Carawan v. State, 515 So.2d 161 (Fla. 1987), makes crystal clear that it is the obligation of the courts to adopt an interpretation that harmonizes two related statutory provisions so that effect is given to both. Carawan v. State, supra., 515 So.2d at 168, citing, Wakulla County v. Davis, 395 So.2d 540 (Fla. 1981); State ex rel. School Board of Martin County v. Dept. of Education, 317 So.2d 68 (Fla. 1975).

In the instant case, it is very easy and entirely proper for this Court, as did the First and Third District Courts of Appeal in United States Fidelity & Guaranty Co. v. Woolard, 523 So.2d 798 (Fla. 1st DCA 1988), and Marquez v. Prudential

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Property & Casualty Ins. Co., 534 So.2d 918 (Fla. 3d DCA 1988), to construe the 1984 amendments in harmony with Section 627.727(3) to give each provision a field of operation. While the 1984 amendments provided that uninsured motorist coverage would pay above liability insurance, entitlement to the statutory benefit depended upon an uninsured motorist situation first existing under subsection (3). It is only this construction that comports with proper analysis of the legislature's actions and harmonizes the statute as a whole.

Contrary to the Respondent's suggestion, nothing about such a construction necessarily runs contrary to the staff summary of the bills giving rise to the 1984 amendments. While the staff analysis does state that uninsured motorist benefits under Section 627.727 is not to be reduced by liability insurance benefits available from a tort-feasor, as amended, nothing about the discussion precludes the conclusion that entitlement is contingent upon meeting the definitional uninsured motorist requirement in subsection (3). Under such circumstances, this Court should not be misled into the belief that legislative history "overwhelmingly" supports the Respondent's interpretation.[1] In short, the staff summary is not

[1] The hypothetical example set forth in the staff summaries was one repeatedly referenced by the Respondent. It cannot be said that the existence of this hypothetical constitutes overwhelming evidence of legislative intent contrary to the plain and unambiguous text of the statute itself.

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inconsistent with the conclusion that definitional requirements still must be met before obtaining the benefits from the 1984 statutory changes.

The Respondent would also have this Court limit the operation and effect of Section 627.727, Florida Statutes, as amended in 1984, by looking to the title description of Chapter 84-41, Laws of Florida. It is well-settled, however, that a title cannot modify the operation or effect of a statute. Atlas Rock Co. v. Miami Beach Builders Supply Co., 89 Fla. 340, 103 So. 615 (1925). A title which is broader than the act cannot, however, be used to construe the act contrary to the plain and unambiguous language used therein. Leigh v. State, 298 So.2d 215 (Fla 1st DCA 1974); Merritt Square Corp. v. State Dept. of Revenue, 354 So.2d 143 (Fla. 1st DCA 1978). The bellwether of this Court's review of this issue must continue to be the very clear language of the statute itself.

Because of arguments such as that made by the Respondent, it is important to note that the Florida Legislature in 1988 acted to remove any doubt as to the meaning or proper interpretation of Section 627.727. While not controlling, this Court has the right and duty, in arriving at the correct meaning of a prior statute, to consider subsequent

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legislation.[2] In the instant case, subsequent legislation reenforces the fact that before one can qualify for any uninsured motorist rights, a defined "uninsured motor vehicle" must be involved. See, e.g., Woodard v. Pennsylvania National Mutual Ins. Co., 534 So.2d 716 (Fla. 1st DCA 1988) (1984 amendments to Section 627.727 did not change subsection (3)(b) requirement that the vehicle involved be shown to fall within the definition of an "uninsured motor vehicle".)

In summary, the Petitioner again submits that the First District Court's analysis in Woolard and Woodard as well as the Third District Court of Appeal's analysis in Marquez is proper, correct and consistent with the substantial body of statutory construction laws supporting such a result. Since the date of its enactment, the Florida uninsured motorist statute as consistently required that parties seeking the benefits thereof to meet the definitional prerequisites. That definition has remained unaltered throughout the existence of the uninsured motorist statute and any suggestion of the definitional section's repeal by implication should be rejected, particularly where that section can be harmonized with the modifications made to the substantive entitlements.

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[2] Ivey v. Chicago Insurance Co., 410 So.2d 494 (Fla. 1982); Gray v. Canada Dry Bottling Co. of Fla., 59 So.2d 788 (Fla. 1952).

The Respondent's position requires this Court to assume that the Florida Legislature made detailed changes to two of the three subsections in Section 627.727, Florida Statutes, without knowing it needed to change the very definitional language giving rise to the statute's applicability. Such a conclusion is strained, gives little credit to the legislature, and constitutes of nothing more than wishful thinking. Simply stated, the language of the statute is clear and its application in any given case easily discernible. Because the history of this statute plainly supports the analysis of the First and Third District Courts of Appeal, this Court should follow those decisions and reject the Fourth District Court of Appeal's desire to rewrite Section 627.727, Florida Statutes, to give a more a palatable result.

Reversal is warranted.

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CONCLUSION

Based upon the foregoing rationale and authority, the Petitioner respectfully requests this Honorable Court to reverse the ruling of the Fourth District Court of Appeal below and remand the cause with instructions to enter final judgment in favor of the Petitioner.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 7th day of April, 1989 to: PATRICK B. FLANAGAN, ESQ., 319 Clematis Street West Palm Beach, Florida 33401; WALTER JONES, ESQ., Kocha & Jones, P.A., Post Office Box 1427, West Palm Beach, Florida 33402; and PHILIP M. BURLINGTON, ESQ., Edna L. Caruso, P.A., Suite 4-B/Barristers Building, 1615 Forum Place, West Palm Beach, Florida 33401.

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