IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,318

JOANN PALACINO,

Petitioner/Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent/Defendant.

_____/

ON APPEAL FROM THE FLORIDA DISTRICT COURT OF APPEAL
FOURTH DISTRICT

ANSWER BRIEF OF RESPONDENT

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INTRODUCTION

This Court has accepted jurisdiction herein to review the decision of the Fourth District Court of Appeals which is said to conflict with the decision of the Fifth District Court of Appeals in Jernigan v. Progressive American Insurance Company, 501 So.2d 148 (Fla. 5th DCA 1987).

The Petitioner, JOANN DOWNS PALACINO, will be referred to throughout this Brief as either "Petitioner" or "PALACINO". The Respondent, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, will be referred to as "STATE FARM".

References to the Record on Appeal will be indicated by the symbol "(R.)"

All emphasis shall be supplied by the writer unless otherwise indicated.

STATEMENT OF THE CASE AND OF THE FACTS

At 1:45 p.m. on March 9, 1986, JOANN DOWNS PALACINO was injured in a one-car traffic accident on I-95 in Dade County. She was twenty-three years of age and the right front passenger of a 1982 Datsun 280 ZX. She was the registered title owner of the vehicle in which she was riding. A young man named Luis Carlos Guerrero was driving her Datsun at the time of the accident.

Prior to the accident the speed of the vehicle was estimated by witnesses to be between 70 and 80 MPH. A witness saw the driver extend his hands up through the open T-top of the vehicle. At that

point the vehicle went out of control striking a concrete barrier wall. Witnesses stated that prior to the accident the occupants appeared to be dancing.

Guerrero, who had a blood alcohol content of .16%, was ejected from the vehicle and was pronounced dead at the scene of the accident. PALACINO was also ejected and injured.

The Datsun was insured under a policy of automobile liability insurance issued by STATE FARM. That policy included coverage for uninsured motorist benefits. (R. 3).

The liability insuring agreements of the policy contained the following exclusion, known colloquially as the "household exclusion":

> When Coverage A Does Not Apply
> There is no Coverage ...
>
> 2. For any Bodily Injury To:
> ... c. Any Insured or any Member of an Insured's Family residing in the Insured's household.
>
> (R. 35)

Under the uninsured motorist part of the policy, the following restriction of benefits appears:

> An Uninsured motor vehicle does not include a land motor vehicle:
> 1. Insured under the liability coverage of this policy.
>
> (R. 35)

Since Guerrero had no automobile liability insurance coverage of his own, and since PALACINO was not able to make a claim against him under her own liability policy (because of the application of the "household exclusion"), she made claim for uninsured motorist benefits under that same policy. When this claim was denied by

STATE FARM, PALACINO filed an action in the Circuit Court of Broward County seeking a declaration of her rights under the policy and uninsured motorist benefits. (R. 1-2). She ultimately obtained a summary judgment in her favor wherein the Circuit Court found that she was entitled to uninsured motorist benefits under the rationale expressed in Jernigan vs. Progressive American Insurance Company, 501 So.2d 748 (Fla. 5th DCA 1987). (R. 54).

STATE FARM appealed, citing conflict with this Court's decision in Reid v. State Farm Fire and Casualty Company, 352 So.2d 1172 (Fla. 1977). The Fourth District Court reversed the lower court's summary judgment and remanded the matter with instructions to enter summary judgment in favor of STATE FARM. It felt, however, that the instant case is "factually indistinguishable" from Jernigan and certified its decision as expressly conflicting with Jernigan.

This Court accepted jurisdiction.

POINT ON APPEAL

THE DISTRICT COURT WAS CORRECT IN ACKNOWLEDGING THE CONTINUING VITALITY OF REID v. STATE FARM FIRE AND CASUALTY COMPANY AND HOLDING THAT THE PETITIONER WAS NOT ENTITLED TO UNINSURED MOTORIST BENEFITS IN THIS CASE.

SUMMARY OF ARGUMENT

This case is factually on all fours with this Court's decision

in Reid v. State Farm Fire and Casualty Company. That case, as this, involved a claim for uninsured motorist benefits under a policy of automobile insurance made by an insured or family member of an insured after that person was precluded from claiming under the liability coverage of the same policy by a valid "household exclusion". Reid stands for the proposition that uninsured motorist benefits are not recoverable in this situation. To allow a recovery would render the "household exclusion" a nullity. Jernigan v. Progressive American Insurance Company, which is said to be in conflict with the District Court's opinion in this case, is not conflicting in that it did not involve the application of a "household exclusion". The Jernigan court expressly exempts from its decision situations as found in Reid, and here, and is therefore not controlling or on point.

ARGUMENT

Contrary to the protestations of the Petitioner here, it is respectfully suggested that this case is factually indistinguishable from Reid v. State Farm Fire and Casualty Company, 352 So.2d 1172 (Fla. 1977), the landmark case affirmed in principle by this Court on several subsequent occasions. Allstate Insurance Company v. Boynton, 486 So.2d 552 (Fla. 1986); Allstate Insurance Company v. Dascoli, 497 So.2d 1 (Fla. 1986); and Florida Farm Bureau Insurance Company v. Government Employees Insurance Company, 387 So.2d 932 (Fla. 1980). Reid has been followed on multiple other occasions by the various districts. See, e.g., Allstate Insurance

Company v. Baker, 543 So.2d 847 (Fla. 4th DCA 1989), rev. denied, 554 So.2d 1167 (Fla. 1989); State Farm Mutual Automobile Insurance Company v. McClure, 501 So.2d 141 (Fla. 2d DCA 1987), rev. denied, 511 So.2d 299 (Fla. 1987); Simon v. Allstate Insurance Company, 496 So.2d 878 (Fla. 4th DCA 1986); Harrison v. Metropolitan Property and Liability Insurance Company, 475 So.2d 1370 (Fla. 2d DCA 1985); Curtin v. State Farm Mutual Automobile Insurance Company, 449 So.2d 293 (Fla. 5th DCA 1984); and Barlow v. Auto-Owners Insurance Company, 358 So.2d 1128 (Fla. 4th DCA 1978).

In Reid, Dawn Reid was injured while a passenger in an automobile driven by her sister, owned by her father, and insured by STATE FARM. There was in that STATE FARM policy, as here, an exclusion to liability insurance coverage for injuries sustained by an insured or family member of an insured living in the insured's household. Because of the applicability of the "household exclusion", Dawn Reid was precluded from recovering under her father's automobile liability insurance coverage.

When Dawn thereafter made a claim for the uninsured motorist benefits provided in that same policy, this Court gave effect to the very same restriction to uninsured motorist coverage as is found there. Dawn's father's policy, as here, provided that an "uninsured motor vehicle" may not be the vehicle defined in the policy as the insured motor vehicle.

This Court, there, held,

> ... the particular restriction on uninsured motorist coverage in the present case is not against public policy and is not void. To hold otherwise in this case would completely

nullify the family-household exclusion.

Reid, supra, at page 1174.

As seen, then Reid and this case are identical. In light of Petitioner's assertion that the reasoning behind the Reid decision is solid, Petitioner's Initial Brief on the Merits at page 8, it is somewhat difficult to understand the precise legal principle she is espousing. It is assumed it is either one of two: either the "household exclusion" of the liability coverage should not be given effect, or the restriction to uninsured motorist coverage approved in Reid should be declared invalid. Each of these propositions are fallacious and will be discussed separately:

THE HOUSEHOLD EXCLUSION

Apparently the Petitioner takes the position that since she was insured while riding as a passenger in her own vehicle while it was being operated by a friend, and not a family member, the "household exclusion" contained in the liability portion of her insurance policy should not apply.

The fallacy of this position is patent. If the "household exclusion" is not valid or applicable to these facts, then there would be no bar to her recovery from her friend (and STATE FARM) as he would qualify (as a permissive user) as an omnibus insured under her insurance policy. If this were the case, however, uninsured benefits would not be available here in that the limits of the liability coverage and of the uninsured motorist provisions in this policy are identical. See, Shelby Mutual Insurance Company v. Smith, 556 So.2d 393 (Fla. 1990).

The "household exclusion" however is applicable here to exclude liability coverage in a situation where a friend or other permissive user is driving the insured vehicle. This proposition has been accepted universally in Florida. Allstate Insurance Company v. Baker, supra; Porr v. State Farm Mutual Automobile Insurance Company, 452 So.2d 93 (Fla. 1st DCA 1984), rev. denied, 496 So.2d 816 (Fla. 1986); Curtin v. State Farm Mutual Automobile Insurance Company, supra; and Newman v. National Indemnity Company, 245 So.2d 118 (Fla. 3d DCA 1971). It evolves from the well-accepted view that, barring legislative prohibition, insurance policies may contain liability coverage exclusions to protect insurers against claims for injuries to persons falling within specified classes. Couch on Insurance 2d (Rev. Ed.) §45:510.

So-called "household exclusions" have been approved on policy grounds in this State for two reasons: to protect insurers from overly-friendly or collusive lawsuits, Reid, supra, and because insurance premiums are established in part by reference to potential exposure and may be lower where those most likely to be passengers in the automobiles are expressly excluded from coverage. Florida Farm Bureau Insurance Company v. Government Employees Insurance Company, supra.

The Petitioner cites no authority in support of the invalidity of the "household exclusion" in this case. It is submitted that its continuing validity in this state is beyond peradventure.

THE UNINSURED MOTORIST COVERAGE RESTRICTION

Since, as seen, the "household exclusion" is valid, the only other logical proposition that can be argued by the Petitioner is that the restriction on uninsured motorist coverage here should not be applied. That restriction provides that an "uninsured motor vehicle" under the policy cannot be the same vehicle defined in the policy as the insured motor vehicle.

The Amicus Curiae here cites to Mullis v. State Farm Mutual Automobile Insurance Company, 252 So.2d 229 (Fla. 1971), decided six years prior to Reid, as the "polestar" in determining the extent to which uninsured motorist coverage is to be provided (or restricted) in this State. Mullis recognized that uninsured motorist coverage was to be reciprocal to liability coverage and that it was to be provided to insureds to the extent that they would be entitled to liability coverage. C.f., Valiant Insurance Company v. Webster, 15 F.L.W. S405 (Fla. July 26, 1990).

However, as the court noted in Jernigan v. Progressive American Insurance Company, supra:

> The only break in the phalanx of cases requiring that uninsured motorist coverage parallel the theoretical liability coverage of the uninsured motorist has been the family member and fellow employee exclusions in cases involving one insurance policy on the automobile involved in the accident.
>
> 501 So.2d 748, 751 n.4.

The Jernigan court struck down an exclusion to uninsured motorist coverage when an insured was occupying an owned motor vehicle for which insurance was not provided. That case did not