

IN THE DISTRICT COURT OF APPEALS
OF THE STATE OF FLORIDA
FOURTH DISTRICT

FILED

STATE COURT

AUG 13 1990

CLERK OF COURT
[Signature]
Deputy Clerk

PATRICIA MICHELLE FRANK,
Plaintiff/Petitioner,

CASE NO. 76,338

vs.

DCA CASE NO. 89-0614

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant/Respondent.

AMENDED BRIEF ON JURISDICTION FOR PETITIONER
PATRICIA MICHELLE FRANK, ON APPEAL FROM ON ORDER OF
THE FOURTH DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE

That this is an action for recovery of uninsured motorist benefits by the Petitioner, Patricia Michelle Frank, against the Respondent, State Farm Mutual Automobile Insurance Company, resulting from an automobile accident on September 12, 1982, in Martin County, Florida. At the time of the accident, Michelle Frank was a passenger in her own vehicle being driven by Thomas O. Morgan, a non-relative.

On the basis of the Florida Supreme Court's decision in Reid vs. State Farm Fire & Casualty Co., 352 So. 2nd 1172 (1978), the Honorable Martha C. Warner, Circuit Judge, dismissed Count III of Appellant's Complaint seeking recovery for uninsured motorist benefits against the Respondent, State Farm Fire & Casualty Company. On February 7, 1989, the dismissal became part of the Final Judgment entered by the Circuit Court of the Nineteenth Judicial Circuit in and for Martin County, Florida.

On October 25, 1987, Notice of Appeal was filed in the Fourth District Court of Appeals seeking review of the Final Judgment denying the Petitioner's uninsured motorist benefits. On June 27, 1990, the Fourth District Court of Appeals affirmed the Final Judgment of dismissal on the basis and authority of its previously rendered decision of State Farm Mutual Automobile Insurance Co. vs. Palicino, 15 F.L.W. 1583 (Fla. 4th DCA June 13, 1990) (en banc). (See Appendix, Exhibit A.)

On July 13, 1990, a Notice of Appeal was filed with the Fourth District Court of Appeals seeking the discretionary jurisdiction of the Florida Supreme Court on the basis that the Fourth District Court

of Appeals' decision was expressly and in direct conflict with the decision of the Fifth District Court of Appeals in Jernigan v. Progressive American Insurance Company, 501 So. 2nd 748 (Fla. 5th DCA 1987) rev. denied, 513 So. 2nd 1062 (Fla. 1987).

STATEMENT OF FACTS

On September 12, 1982, Patricia Michelle Frank, was a passenger in a vehicle which she owned. The vehicle was insured by the Respondent, State Farm Mutual Automobile Insurance Company. On that date, the vehicle was being operated with her permission by a friend who was neither related nor resided with the Petitioner. Due to the negligence of that driver, a single-vehicle accident resulted wherein the Petitioner suffered serious and permanent injuries. At the time of the accident, there was a policy of insurance in force purchased by the Petitioner and issued by the Respondent providing liability limits in the sum of \$100,000.00 and uninsured motorist benefits also in the sum of \$100,000.00. Liability coverage was denied on the basis of exclusionary language within the policy of insurance and neither party took issue with that decision.

Petitioner, therefore, sought uninsured motorist benefits claiming that since there was no liability coverage attaching to the driver of her automobile under which she could collect, the driver was, in effect, uninsured. State Farm Mutual Automobile Insurance Company denied uninsured motorist coverage and suit was filed.

ISSUE PRESENTED

Whether the Supreme Court has jurisdiction to review the decision of the Fourth District Court of Appeal pursuant to Article V, §3(b)(3) of the Florida Constitution as that decision directly conflicts with the decision of the Fifth District Court of Appeal in Jernigan v. Progressive American Insurance Co., 501 So. 2nd 748 (Fla. 5th DCA 1987).

ARGUMENT

WHETHER THE SUPREME COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL PURSUANT TO ARTICLE V, §3(b)(3) OF THE FLORIDA CONSTITUTION AS THAT DECISION EXPRESSLY CONFLICTS WITH THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN JERNIGAN VS. PROGRESSIVE AMERICAN INSURANCE CO., 501 So. 2nd 748 (Fla. 5th DCA 1987.)

I. The decision of the Fourth District Court of Appeal in Patricia Michelle Frank vs. Thomas O. Morgan and State Farm Mutual Automobile Insurance Company was decided upon the authority of the Fourth District Court of Appeal's decision in Palicino. Both the Palicino and Frank decisions are clearly in conflict with the Fifth District Court of Appeal's decision in Jernigan. All three decisions applied substantially similar facts and the same rules of law to yield conflicting results. In each decision, the insured sought recovery of uninsured motorist benefits while being a passenger in their own automobile driven by a friend who was neither related nor resided with the claimant. The Fourth District Court of Appeals itself recognized the conflict in Palicino stating:

"Under identical facts in Barlow, 358 So. 2nd 1128, this court held no uninsured motorist coverage was available, citing Reid as authority. Until the supreme court clarifies whether Allstate v. Boynton has overruled Reid under these circumstances, we rely on our own precedent and Reid. In Brixius v. Allstate Ins. Co., 14 F.L.W. 2438 (Fla. 3rd DCA Oct. 13, 1989) the Second District has come to the same conclusion as we do here. As that

court did, we too certify conflict with Jernigan."
Palicino, at 1584.

As the decision at the case at bar was based upon the authority of the Fourth District Court of Appeal's decision in Palicino, it is clear, therefore, that conflict also exists with the decision rendered in Jernigan. The Florida Supreme Court therefore has discretionary authority under the Florida Constitution, Article V, §3(b)(3) to review this decision.

SUMMARY OF ARGUMENT

The Florida Supreme Court has discretionary jurisdiction to review the decision of the Fourth District Court of Appeal in Frank v. State Farm pursuant to Article V, §3(b)(3) of the Florida Constitution as the holding in this decision is in both express and direct conflict of another opinion of the District Court of Appeal, specifically Jernigan v. Progressive American Insurance Company.

CONCLUSION

The Petitioner, Patricia Michelle Frank, hereby requests this court to determine that it has jurisdiction to entertain this case on the merits and to exercise that jurisdiction.

DATED: August 10, 1990

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Amended Brief on Jurisdiction for Petitioner, Patricia Michelle Frank, on Appeal from an Order of the Fourth District Court of Appeal has been furnished by Federal Express to RICHARD C. SINGER, ESQUIRE, Kane & Williams, P.A., Attorney for Respondents, 1286 South Florida Avenue, Suite 1, Rockledge, Florida, 32955, this 10th day of August, 1990.

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