IN THE SUPREME COURT OF FLORIDA

CASE NO. **76,749**
Fourth District Case No. 89-0943
Seventeenth Judicial Circuit Case No. 88-12184 CZ

On discretionary review from
the District Court of Appeal,
Fourth District of Florida

DOROTHEA SMITH and
JACK SMITH, her husband,

Petitioners,

vs.

VALLEY FORGE INSURANCE COMPANY,
a foreign corporation,

Respondent.

BRIEF OF RESPONDENT

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and

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I N D E X

TABLE OF CITATIONS AND AUTHORITIES

TABLE OF CITATIONS AND AUTHORITIES (continued)

OTHER AUTHORITIES:

STATEMENT OF THE CASE AND FACTS

These are proceedings by plaintiffs, to review a certified question from the Fourth District Court of Appeal.[1] The trial court entered a summary judgment which determined that the Valley Forge insurance policy does not provide uninsured motorist coverage to Mrs. Smith, the wife of the named insured. Mrs. Smith allegedly received injuries from an accident which occurred while she was a passenger in the family owned vehicle insured by Valley Forge. At the time of the accident, the family owned vehicle was being driven by Mrs. Smith's daughter, Lori.

The Fourth District Court of Appeal upheld the family/household exception in the Valley Forge policy based on Reid v. State Farm Fire & Casualty Co., 352 So.2d 1172 (Fla. 1978). The Fourth District affirmed the Final Judgment concluding that the family exclusion in the Valley Forge policy precluded UM coverage for Mrs. Smith.

Valley Forge respectfully adopts the Statement of Case and Facts of the petitioners.

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[1]/ The Fourth District certified the following question:

> Where an insured under an automobile policy providing liability and uninsured motorist coverage is a passenger in the insured vehicle, being driven by an adult child not a resident of the household, who owns no vehicle and is uninsured, sustains injuries by virtue of the driver's negligence, is the injured party precluded from obtaining UM benefits under the holding of Reid v. State Farm Fire & Casualty Co., 352 So.2d 1172 (Fla. 1978)?

In this brief, petitioner, Dorothea Smith will be referred to as Mrs. Smith and respondent, Valley Forge Insurance Company will be referred to as Valley Forge. The parties will alternately be referred to as they stand before this court and as they stood in the court below.

The symbol "R" refers to the record on appeal. "A" refers to the supplemental record filed by petitioners in the Fourth District.

SUMMARY OF THE ARGUMENT

The trial court was correct in entering the "no coverage" summary judgment for the insurer. No uninsured motorist coverage should be provided to the mother of the driver of the motor vehicle for injuries sustained while the mother was occupying the family car.

Petitioners concede that the policy does not provide liability coverage to the daughter due to the family or household liability exclusion. Petitioners do not contest the validity of the family liability exclusion but argue that the reciprocal uninsured motorist provision is against public policy.

This Court has consistently upheld the family liability exclusion in insurance policies to exclude liability coverage to a family member and have further upheld uninsured motorist provisions which have the effect of restricting or excluding coverage to insureds who are injured by family members. See, e.g. Reid v. State Farm Fire & Casualty Co., 352 So.2d 1172, 1173 (Fla 1977); Ard v. Ard, 414 So.2d 1066, 1069 (Fla. 1982); Allstate Insurance Co. v. Dascoli, 497 So.2d 1 (Fla. 1980); Florida Farm Bureau Ins. Co. v. Government Employees Ins. Co., 387 So.2d 932 (Fla. 1980). Florida courts have validated the uninsured motorist restrictions because to do otherwise would "nullify the family exclusion in the liability coverage of the policy." Reid, supra at 1174.

The rationale for upholding the family exclusion applies with equal force to an accident caused by a member of the nuclear family of the insured who does not reside in the same household as the insured. The specific language in the Reid decision validated the family liability exclusion's applicability to the entire family and did not limit it to members of the insured's household.

In the absence of legislation prohibiting family exclusions and exceptions, an insurance company should have the right to restrict its coverage to avoid or limit the greater risk of "overly friendly" and collusive claims between family members. The uninsured motorist provision relied on by Valley Forge to preclude uninsured motorist coverage is not against public policy. The trial court was correct in entering summary judgment in favor of Valley Forge.

A R G U M E N T

THE "NO COVERAGE" SUMMARY JUDGMENT FOR THE INSURER IS PROPER. NO UNINSURED MOTORIST COVERAGE SHOULD BE PROVIDED TO THE MOTHER OF THE DRIVER OF THE MOTOR VEHICLE FOR INJURIES SUSTAINED WHILE SHE WAS OCCUPYING THE FAMILY CAR. THE FAMILY CAR IS NOT AN UNINSURED MOTOR VEHICLE UNDER THE SUBJECT POLICY AND THE POLICY RESTRICTION ON UNINSURED MOTORIST COVERAGE IS NOT AGAINST PUBLIC POLICY.

Petitioners Smith seek uninsured motorist coverage under the Valley Forge policy insuring the family owned motor vehicle for injuries which occurred while Mrs. Smith was a passenger in the family owned vehicle being driven by her 25 year old daughter.

Petitioners Smith concede that the policy does not provide liability coverage to the daughter for bodily injury to Mrs. Smith due to the family or household liability exclusion. Brief of Petitioners, pages 3, 7.[2] Petitioners do not challenge, in any way, the validity of the family liability exclusion but instead

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[2]/ The Valley Forge policy contains a family exclusion that liability coverage is not provided "for any person, for bodily injury to you or any family member." "You" is defined in the policy as the named insured in the declarations (Jack Smith) and a spouse if a resident of the same household (Mrs. Smith) (A. 5, 17). The uninsured motorist provisions excludes coverage for injuries caused by the family car and provides:

> However, "uninsured motor vehicle" does not include any vehicle or equipment:
>
> 1. Owned by or furnished or available for the regular use of you or any family member.

(A. 9).

argue that the reciprocal uninsured motorist provision is against public policy.

This Court has consistently upheld the family exclusion in insurance policies to exclude liability coverage to a family member who sustains bodily injury in an automobile accident. See, e.g., Reid v. State Farm Fire & Casualty Co., 352 So.2d 1172, 1173 (Fla. 1977); Florida Farm Bureau Insurance Company v. Government Employees Insurance Co., 387 So.2d 932, 934 (Fla. 1980); Ard v. Ard, 414 So.2d 1066, 1069 (Fla. 1982). See also Zipperer v. State Farm Mutual Ins. Co., 254 Fl.2d 853 (Fla. 5th Cir. 1958); Hall v. State Farm Mutual Auto Ins. Co., 514 So.2d 853 (Ala. 1987) (wherein the Alabama Supreme Court followed Reid v. State Farm); 46 ALR 3d 1061; 46 ALR 3d 1024.

In the seminal decision of Reid, this Court stated the policy reasons for upholding the validity of the family exclusion:

> It is generally accepted, in the absence of a statutory prohibition, that provisions of automobile liability insurance policies excluding from coverage members of the insured's family or household are valid. 46 A.L.R.3d 1024. This is also the rule in Florida. Newman v. National Indemnity Company, 245 So.2d 118 (Fla. 3d DCA 1971); see also Zipperer v. State Farm Mutual Automobile Ins. Co., 254 F.2d 853 (5th Cir. 1958). The reason for the exclusion is obvious: to protect the insurer from over friendly or collusive lawsuits between family members.

Later, in Florida Farm Bureau Ins. Co. v. Government Employees Insurance Co., supra at 934, this Court announced an additional policy reason for rejecting petitioner's contention that a liability exclusion for family members is against public policy:

> [W]e also note that insurance premiums may be established in part by reference to potential exposure to liability by insurance companies and may be lower where those most likely to be passengers in the automobile are expressly excluded from coverage.

This Court noted in its Florida Farm Bureau decision that it would continue "to hold family exclusion clauses valid, absent statutory prohibition." Id. See also Amica Mutual Ins. Co. v. Wells, 507 So.2d 750, 752 (Fla. 5th DCA 1987).

This Court and the district courts of appeal have consistently upheld uninsured motorist provisions which have the effect of restricting or excluding coverage to insureds who are injured by family members. See, e.g., Reid v. State Farm Fire & Casualty Co., supra at 1173; Allstate Insurance Co. v. Dascoli, 497 So.2d 1 (Fla. 1980) (wherein the Supreme Court approved Harrison v. Metropolitan & Liability Ins. Co., 475 So.2d 1370 (Fla. 2d DCA 1985) which involved the identical liability and uninsured motorist provisions presented in this case); Amica Mutual Ins. Co. v. Wells, supra; Allstate Insurance Co. v. Baker, 543 So.2d 847 (Fla. 4th DCA 1989).

The uninsured motorist provisions of the subject Valley Forge policy provide that a vehicle is not uninsured if it is "owned by or furnished or available for the regular use of you or any family member" (A. 18). Florida courts have validated identical or similar uninsured motorist restrictions because to do otherwise would "nullify" the family exclusion in the liability coverage of the policy. Reid v. State Farm Fire & Casualty co., supra at 1174; Allstate Insurance Co. v. Dascoli, supra; Allstate Ins. Co. v.

Baker, supra; Harrison v. Metropolitan Property, supra. The effect of the liability family exclusion in this case is to prevent the insured from recovering under her own liability policy. 46 A.L.R.3d 1061. As this Court pointed out in Reid, the uninsured motorist provision which prevents recovery to a family member is necessary to give full effect to the family liability exclusion.[3]

This Court specifically noted in Reid that as a general rule "an insurer may not limit uninsured motorist protection." Reid at 1173 citing, among other authorities, Mullis v. State Farm Mutual Ins. Co., 252 So.2d 229 (Fla. 1971). The Reid Court held, however, that an uninsured motorist exception which gives effect to the family liability exclusion is an exception to the general rule. In Amica Mutual Insurance Co. v. Wells, 507 So.2d 750, 752 (Fla. 5th DCA 1987) the district court stated that the public policy reasons for supporting the household exclusion have "equal weight" to the "strong policy of assuring protection to innocent victims

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[3]/ On this same issue, the Alabama Supreme Court noted:

> What availeth it to an insurance company to escape liability under the "household exclusion" clause and then finds [sic] itself caught in the net of the "uninsured motorist" clause? If the legislature, knowing the judicial policy of the courts of this state with reference to "household exclusion" clauses, had seen fit to make "uninsured motorist" coverage nullify, in practical effect, such "household exclusion" clauses, it surely would have done so when it adopted the "Uninsured Motorist Coverage" statute, supra.

Mathis v. Auto-Owners Insurance Company, 387 So.2d 166, 168 (Ala. 1980).

of automobile victims;" therefore "if such clauses are to be prohibited, it should be by act of the legislature and not the courts."

Petitioners apparently argue that the family exclusion is against public policy because the injuries to petitioner were caused by the negligence of her adult child who did not reside in the same household as Mrs. Smith. Petitioners offer no authority directly supporting this position. Indeed, petitioners' position is without merit for several reasons. The strong policy for upholding the household exclusion is to prevent "overly friendly or collusive" lawsuits between family members. Clearly, the rationale for upholding the family exclusion applies with equal force to an accident caused by a member of the nuclear family of the insured who does not reside in the same household as the insured. This Court's Reid decision upheld the liability household/family exclusion specifically stating that "provisions of automobile liability policies excluding from coverage members of the insured's family or household are valid." at 1173. By its own language the Reid decision validated the family liability exclusion's applicability to the entire family and did not limit it to members of the insured's household. Importantly, Reid cited to Newman v. National Indemnity Company, 245 So.2d 118 (Fla. 3d DCA 1971) as authority for the rule in Florida "that policies excluding from coverage members of the insured's family or household are valid." Reid at 1173. In Newman, the district court applied the family exclusion to a member of the household injured by the negligence of an

unrelated third party. Here, the application of the family exception to preclude uninsured motorist coverage to Mrs. Smith for injuries caused by the negligence of her daughter is not against public policy.

None of the cases relied on by petitioner bear any factual similarity to the present case: Bryan v. Government Employees Ins. Co., 545 So.2d 884 (Fla. 3d DCA 1989); Colonial Ins. Co. of California v. Van Halen, 528 So.2d 1374 (Fla. 3d DCA 1988) (citing Jernigan, infra); Jernigan v. Progressive Am. Ins. Co., 501 So.2d 748 (Fla. 5th DCA 1987); State Farm Mutual Auto Ins. Co. v. Workman, 421 So.2d 660 (Fla. 3d DCA 1982); Lee v. State Farm Mutual Auto Ins. Co., 339 So.2d 670 (Fla. 2d DCA 1976). None of the decisions, except Lee, involve bodily injuries to an insured caused by a relative of the injured insured as in the present case. The Jernigan plaintiff was injured by a friend and not a family member. Indeed, in Jernigan, the district court pointed out that the exclusion in the insurance policy was against public policy because it:[4]

> operates to deny the plaintiff coverage in a circumstance where he has been injured by the negligence of an unrelated operator of a vehicle to which no insurance is available. [at 752, emphasis supplied.]

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[4]/ The Jernigan court further noted:

> In the present case however the plaintiff was not injured by a family member ... thus, declaring the uninsured motorist exclusion invalid does not defeat any valid liability exclusion.

See Allstate Ins. Co. v. Baker, supra at 849-50 which criticizes the Jernigan decision. In contrast, in the present case, the enforcement of the reciprocal uninsured motorist provision is necessary to give effect to the family liability exclusion.

Workman, is also factually distinguishable. In Workman, the claimant's daughter was killed while driving another person's automobile. The claimant asserted that the owner of the vehicle was negligent and recovered the full liability coverage under another insurance policy issued to the owner of the car. The claimant next asserted a claim for uninsured/underinsured motorist coverage from his own State Farm policy for the remainder of his damages. The decedent was insured for liability coverage under the State Farm policy while driving the non-owned vehicle. State Farm denied uninsured motorist coverage based on a provision which excluded uninsured/underinsured coverage for a vehicle insured under the liability coverage. On these specific facts, the Third District held plaintiff was entitled to uninsured motorist benefits. Workman has no application here because: (1) the accident was caused by the negligence of an unrelated third party; and (2) the case involved two separate policies -- one from which plaintiff sought liability coverage and the other State Farm policy from which plaintiff sought uninsured motorist coverage.

In contrast, in this case, plaintiff was injured by the negligence of her "nuclear family". Furthermore, only one policy is involved in the present case which prohibits liability and uninsured motorist coverage for bodily injury received by an

insured while occupying the family vehicle. Like the facts in the Reid decision, the uninsured motorist provision in the present case is necessary to give full effect to the unchallenged family liability exclusion.

Similarly, the Lee decision, on which the plaintiff relies, involves two insurance policies. In Reid, this Court distinguished the facts in the Lee case from those in Reid stating:

> That decision may be distinguished factually from the present case because the "uninsured motor vehicle" which caused the injury in Lee was not the same vehicle as the "insured motor vehicle" named in the policy.

Reid at 1174. The Reid decision went on to point out that Lee is in conflict with Reid because it "appears to say that all restrictions on uninsured motorist coverage, without exception, are against public policy and are void." The Reid Court then held that the uninsured motorist provision involved in Reid is not against public policy because it gives effect to the family exclusion. For the same reasons enunciated in Reid, the Lee decision has no application to this case.

The Bryan v. Government Employees Insurance Company decision, on which plaintiff relies,has nothing to do with this case. First, the accident was caused by an unrelated third party. More important, as the Bryan court specifically noted, the case did not involve the family-household exclusion. Likewise, the Colonial Insurance Company of California v. Van Halen decision is of no import because it is a "per curiam affirmed" decision without any discussion of facts.

Petitioners also rely on this Court's decision in Allstate Insurance Company v. Boynton, 486 So.2d 552 (Fla. 1986). In that case this Court addressed the requirements for obtaining uninsured motorist coverage under the particular language of the Allstate policy. The Supreme Court did not directly address the validity of any liability household exclusion or reciprocal uninsured motorist restriction or exception. The Court found Reid v. State Farm, supra, inapplicable because the Boynton case involved two policies. Allstate Ins. Co. v. Boynton, supra at 555 n.5. Boynton does not, in any way, modify this Court's holding in Reid or its progeny.

Petitioners' brief is confusing because it erroneously intertwines liability and coverage issues. Brief of Petitioners, pages 10-12. Petitioners, in essence, argue that the family insurance coverage exclusion should only be applied to situations where there is a statutory or common law bar to liability such as interspousal immunity. The most obvious reason why petitioners' argument makes no sense is that there would be no need for a coverage exclusion or exception if there is no liability to the insured.[5] Petitioners apparently argue that the family exclusion should be rejected because family immunity has been abrogated to the extent of insurance coverage in this Court's Ard v. Ard, supra,

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[5]/ Petitioners argue that Reid and Dascoli are distinguished from the present case because each involved the family immunity. Brief of Petitioner, pages 10-11. The existence of a family immunity, however, played no role in the Supreme Court's opinions in the two cases.

decision. This, however, improperly mixes liability and coverage issues. This Court has always been careful to refrain from mixing coverage and liability issues. See, e.g., Florida Farm Bureau Insurance Company v. Government Employees Insurance Company supra at 933; Ard v. Ard, supra at 1069. In fact, in Ard v. Ard, this Court reaffirmed the validity of the family exclusion and specifically held that if a "parent is without liability insurance, or if the policy contains an exclusion clause for household or family members, then parental immunity is not waived ..." at 1067. This Court reiterated, later in the opinion, that "it is not against public policy for automobile insurance coverage to contain an exclusion clause as to family members." [emphasis supplied] at 1069.

In the present case, the liability and uninsured motorist coverage properly excepts from coverage the insurer's responsibility for bodily injury to a member of the named insured's household. Under the terms of the liability exclusion, the proper focus is on Mrs. Smith's relationship to the named insured (wife) and his household and not the status of the tortfeasor/daughter of petitioners. Therefore, petitioners' repetitive argument that the driver/tortfeasor was not subject to the family/household exclusion is simply wrong. Brief of Petitioners, page 11. The argument improperly focuses on the status of the tortfeasor and whether or not the tortfeasor is a resident relative of the named insured. Petitioners' argument is also in direct conflict with her admission earlier in the brief:

> The [Valley Forge] policy excludes liability coverage for injuries caused to the named insured or relatives residing in the household--"the family/household exclusion." (A. 17). Therefore, there was no liability coverage for Lori, both because she did not have her own policy and because her mother's policy did not provide liability coverage for injuries to her mother.

Brief of Petitioners, pages 2-3. Clearly, Mrs. Smith was subject to the family liability exclusion. Whether Mrs. Smith's driver/daughter was a member of petitioner's household has no relevance to this case. For the same reason it is of no import that Mrs. Smith's daughter has no insurance of her own. The only focus is on the status of passenger Smith who was a resident relative of the named insured. This status triggers the family exclusion and precludes her from receiving the benefit of liability and uninsured motorist coverage in this single-policy case.

Finally, petitioners argue that the consequences of affirming the Final Judgment in this case could be far reaching as it will discourage named insureds from allowing younger, more alert family members from driving their vehicles. If this is a concern to a named insured, he or she should purchase an insurance policy which does not contain a family liability exclusion and corresponding uninsured motorist restriction. Such policies do exist.

Clearly, in the absence of legislation prohibiting family exclusions and exceptions, an insurance company should have the right to restrict its coverage to avoid or limit the greater risk of "overly friendly" and collusive claims between family members. The uninsured motorist provision relied on by Valley Forge to

preclude uninsured motorist coverage is not against public policy as it is necessary to give effect to the valid liability exclusion. The trial court was correct in entering summary judgment in favor of Valley Forge.

CONCLUSION

Based on the foregoing argument and authorities, this Court is requested to approve the decision of the Fourth District Court of Appeal and affirm the Final Judgment entered below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the above and foregoing Brief of Respondent was mailed this 3rd day of January, 1991 to: SHARON L. WOLFE, ESQ., 700 Courthouse Tower, 44 West Flagler Street, Miami, FL 33130; and to DONNA B. MICHELSON, ESQ., 2250 Courthouse Tower, 44 West Flagler Street, Miami, FL 33130.

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