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IN THE SUPREME COURT OF FLORIDA

DEBRA S. HARTLAND,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY,

Respondent.

CASE NO. 77,659

ANSWER BRIEF OF RESPONDENT

OSBORNE, McNATT, SHAW, O'HARA,
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motion for summary judgment and denying petitioner's cross-motion. (2d R: 16-18.) On June 11, 1990, petitioner filed her notice of appeal. (2d R: 19.)

Initially, petitioner requested the First District Court of Appeal to review the trial court's order dismissing Counts II and III of her second amended complaint, the trial court's entry of summary judgment for Allstate as to Count I and the trial court's denial of petitioner's cross-motion for summary judgment as to Count I. Petitioner's brief in the First District Court of Appeal at Page 4, however, conceded that the trial court's dismissal of Count III was proper.

On February 26, 1991, the First District Court of Appeal issued its decision affirming the trial court's determination that petitioner's injuries were not covered under the uninsured motorist provisions of the relevant Allstate policy. Thereafter, on March 22, 1991, petitioner filed her notice to invoke this Court's discretionary jurisdiction. On September 23, 1991, this Court accepted jurisdiction and dispensed with oral argument.

SUMMARY OF ARGUMENT

The issue presented in this appeal has already been correctly decided by this Court in Brixius v. Allstate Insurance Company, 16 FLW S639 (Fla. 1991) when it upheld the family exclusion and uninsured motorist coverage exclusion in the Allstate policy. The exact same policy provisions are at issue in this case. The Allstate policy excluded coverage for "bodily injury to you or any resident of your household related to you by blood, marriage or

adoption." This Court and the District Courts have repeatedly upheld the validity of this household exclusion.

Since a valid household exclusion was applicable here, no uninsured motorist coverage was available under the Allstate policy as to which liability coverage was denied.

In this case, Allstate issued only one policy which provided coverage for two vehicles. Accordingly, the "same policy" analysis adopted by this Court and the District Courts should apply to prevent recovery of uninsured motorist benefits.

ARGUMENT

I. THIS COURT PROPERLY HELD, IN BRIXIUS v. ALLSTATE INSURANCE COMPANY CO., 16 FLW S639 (Fla. 1991), THAT THE UNAVAILABILITY OF LIABILITY INSURANCE COVERAGE DUE TO THE APPLICATION OF A VALID HOUSEHOLD EXCLUSION DOES NOT CREATE UNINSURED MOTORIST COVERAGE UNDER THE SAME POLICY AS TO WHICH LIABILITY INSURANCE COVERAGE HAS BEEN DENIED.

Petitioner's first point of error is based on her contention that this Court's decision in Brixius v. Allstate Insurance Co., 16 FLW S639 (Fla. 1991), was in error. Significantly, however, petitioner has raised no argument this Court has not already thoroughly considered in reaching its Brixius result. Those arguments remain as flawed now as they were when raised in Brixius.

A. A Valid Household Exclusion Was Applicable Here.

At the time of the accident at issue in this matter, the Allstate insurance policy issued to the Hartlands provided that it excluded coverage for "bodily injury to you or any resident of your household related to you by blood, marriage or adoption." Of course, petitioner is the Hartlands' daughter and resides in their

household. Accordingly, the household exclusion quoted above clearly and unambiguously precludes any liability coverage to petitioner under her parents' Allstate policy.

Try as she might to avoid it, petitioner cannot get around the fact that the only reason uninsured motorist coverage ever became an issue in this case was because of the existence and applicability of this valid household exclusion. Of course, this Court and the district courts have repeatedly upheld the validity of the household exclusion. See, e.g., Fitzgibbon v. Government Employees Insurance Co., 16 FLW S472 (Fla. 1991); Reid v. State Farm Fire & Casualty Co., 352 So.2d 1172, 1172-73 (Fla. 1977); Florida Farm Bureau Insurance Co. v. Government Employees Insurance Co., 387 So.2d 932, 934 (Fla. 1980); Simon v. Allstate Insurance Co., 496 So.2d 878, 879 (Fla. 4th DCA 1986); Newman v. National Indemnity Co., 245 So.2d 118, 118-19 (Fla. 3d DCA 1971).

While petitioner would have this Court believe there is some sort of distinction between situations where the tortfeasor/driver of the subject vehicle is a family friend as opposed to a family member, that is certainly not the case. Such an argument erroneously focuses on the status of the tortfeasor/driver rather than the status of the injured passenger. After all, by its clear terms, the household exclusion focuses on the injured party -- by precluding "bodily injury to you or any resident of your household related to you . . . ." Accordingly, since petitioner was the Hartland's daughter and a resident of their household, the household exclusion would apply to preclude coverage for her

injuries in this accident -- whether she, a family friend or an unrelated stranger was driving the subject vehicle.

Indeed, this Court's decision in Brixius, reaffirming the applicability of the household exclusion to situations where family friends are driving automobiles in which the named insured or a resident relative is injured as a passenger, was hardly unique. For years, Florida courts have upheld the household exclusion in this situation.

For example, in Newman, supra, the liability coverage exclusion applied to both family members and the "named insured." 245 So.2d at 119. Thus, the appellate court upheld the denial of liability coverage to both the husband (as named insured) and wife (as resident spouse), when they suffered injuries while riding as passengers in a vehicle driven by a family friend.

Similarly, in Gibson v. State Farm Mutual Automobile Insurance Co., 378 So.2d 875 (Fla. 2d DCA 1979), a liability exclusion barred coverage for "bodily injury to any insured or any member of the family of an insured residing in the same household as the insured." Id. at 876. Based on this exclusion, the court held that the named insured could not obtain coverage for injuries he suffered while riding as a passenger in his vehicle, which was being driven by an unrelated, permissive user. Id. at 876-77. See also Pierson v. National Insurance Association, 557 So.2d 227, 227-28 & n. 1 (Fla. 3d DCA 1990) (excluding liability coverage, based on a household exclusion, to owner of vehicle riding as a

passenger therein while vehicle was being driven by unrelated, permissive user).

In short, the household exclusion is equally applicable whether the driver/tortfeasor is a family member or a family friend. In fact, that exclusion applies whenever the named insured or a resident relative is, as here, seeking liability coverage under the relevant insurance policy.

Because the household exclusion was plainly applicable to preclude liability coverage here, the resolution of the uninsured motorist coverage issue becomes simple.

B. Because A Valid Household Exclusion Was Applicable Here, No Uninsured Motorist Coverage Was Available Under The Same Policy As to Which Liability Coverage Was Denied.

In Brixius, this Court not only upheld the household exclusion in a situation where a family friend as opposed to a family member was the driver/tortfeasor, but also held, interpreting identical uninsured motorist coverage provisions to those at issue here, that the applicability of the household exclusion did not trigger uninsured motorist coverage. That decision was wholly correct, and should not be reconsidered at this point.

As the Court will recall, in Brixius, the claimant made precisely the same argument as that made by petitioner here -- that in situations where a family friend as opposed to a family member was driving the subject vehicle at the time of the accident, uninsured motorist coverage should apply if the household exclusion is invoked. This Court properly rejected that argument, specifically noting that to permit recovery of uninsured motorist

benefits under the same policy as to which a valid household exclusion from liability coverage applied would completely nullify that exclusion. Indeed, in the course of its decision, this Court tacitly approved the decision appealed from herein, when it cited Hartland v. Allstate Insurance Co., 575 So.2d 290 (Fla. 1st DCA 1991) with approval. Brixius, 16 FLW at S640.

Brixius, of course, was wholly in accord with the Court's past precedent in this context. For example, in the seminal case of Reid v. State Farm Fire & Casualty Co., 353 So.2d 1172 (Fla. 1977), this Court first held that where, as here, a valid household exclusion applied, uninsured motorist coverage could not be triggered. The Court stated that the reason for this rule of law was that, otherwise, a valid household exclusion in the liability insurance context could be subverted through reliance on the same policy's uninsured motorist coverage provisions. Id, at 1173-74. Significantly, this Court, just a few months ago, specifically reaffirmed the vitality of Reid in Fitzgibbon v. Government Employees Insurance Co., supra.

Further, the Court has ruled on this issue in Allstate Insurance Company v. Dascoli, 497 So.2d 1 (Fla. 1986). There, an insured husband was injured while riding in an insured van driven by his wife. Allstate provided coverage under separate policies, both for the van operated at the time of the accident as well as another van owned by the Dascoli family. Allstate's policies excluded liability coverage for bodily injury claims of a named insured arising from use of the insured vehicle.

This Court upheld Allstate's provision prohibiting uninsured motorist coverage when the injury arose from the use of a vehicle owned by the insured. The Court held that uninsured motorist coverage was not available under either policy issued to the Dascolis for either of their vans. Dascoli is directly analogous to the present case, in which petitioner Deborah Hartland (1) was a passenger in an insured vehicle, which by definition cannot be an uninsured auto; and (2) was excluded from liability coverage as to that vehicle.

In Dascoli, this Court relied on Harrison v. Metropolitan Property & Liability Ins. Co., 475 So.2d 1370 (Fla. 2d DCA 1985). There, as here, the insured claimant had one automobile policy covering two vehicles. The policy contained a provision which stated that a vehicle is not uninsured if it is "a covered automobile." The Second District upheld this provision, and found no uninsured motorist coverage available under the policy issued to the Harrisons. The Court also concluded that the insureds were not entitled to uninsured motorist coverage on their second automobile, covered by the same policy, and not involved in the accident. 475 So.2d at 1371-72.

Similarly, in Allstate Insurance Co. v. Baker, 543 So.2d 847 (Fla. 4th DCA), rev. den., 554 So.2d 1167 (Fla. 1989), the insured was injured while riding as a passenger in a vehicle driven by a family friend. Moreover, in that case, as here, the Allstate household exclusion quoted above precluded liability insurance coverage. In light of the applicability of the household exclusion

to preclude liability insurance coverage, Judge Downey concluded that, under this Court's controlling Reid decision, uninsured motorist coverage was not available under the same policy as to which the household exclusion applied. 543 So.2d at 850.

Petitioner argues, however, that the Brixius analysis, and that of the rest of the above cases, should not be followed because the result will be to "allow insurers to create a policy of insurance which circumvents the legislative intent of uninsured motorist coverage. This Court has previously held that the purpose of uninsured motorist coverage is to protect persons who were injured or damaged by other motorists who in turn are not insured and cannot make whole the injured party." (Petitioner Br., P. 6.) This argument, however, has been rejected by Brixius, Dascoli, Harrison, Fitzgibbon and Baker.

Additionally, petitioner argues that the results in Brixius and this case are inappropriate, because they create a disincentive for insureds who have had too much to drink to become passengers in their own vehicles being driven by a designated driver. Petitioner argues that a disincentive exists because there will be no coverage for the insured.

That argument, however, is fallacious because, by its plain terms, the household exclusion will apply whether the insured is driving the vehicle herself, or whether she entrusts the vehicle to a designated driver. Either way, any bodily injury will be to the insured or resident relative, and, therefore, the household exclusion will apply. Thus, Brixius, and the decision appealed

from herein, create absolutely no disincentive to have a designated driver, because the presence of such a driver will have no impact on whether coverage is available to the insured.

II.ONLY ONE INSURANCE POLICY IS APPLICABLE HERE.

Obviously recognizing that her attempt to have this Court reconsider the long line of precedent discussed above would be unavailing, petitioner has asserted an alternative argument. She contends that, in fact, there are two insurance policies involved here rather than one. As a result, the "same policy" analysis adopted by all the above courts should not apply.

Rather, petitioner asserts, uninsured motorist coverage should be available here, as it was in Porr v. State Farm Mutual Automobile Insurance Co., 452 So.2d 93 (Fla. 1st DCA 1984), because separate policies are involved. While it is true that Porr allowed uninsured motorist coverage, in that case the household exclusion was applicable under one policy and uninsured motorist coverage was allowed under a physically separate policy. However, the Porr court also explicitly held that uninsured motorist coverage was not available under the same policy as to which the household exclusion applied.

Here, of course, there is only one policy; there are not two or more physically separate and distinct policies. Thus, Reid and all the other cases cited above clearly preclude uninsured motorist coverage.

Petitioner argues, however, that this Court's decision in Fireman's Fund Insurance Co. v. Pohlman, 485 So.2d 418 (Fla. 1986)

compels a different result. Yet, that case is wholly inapposite here.

Pohlman merely involved the question of whether provisions of Florida's stacking statute should be applicable to a vehicle added to a policy after the date of the enactment of that statute. The actual holding in Pohlman was simply that, because the contract to insure the new vehicle had been entered into after the effective date of the stacking statute, that statute should be applicable to the new vehicle. Thus, based on its holding, Pohlman is plainly inapplicable to this case.

In Pohlman, this Court did state, as dicta, that in a situation where a vehicle is added to the policy by endorsement during the policy period, a "separate" and "severable" contract might be created for purposes of stacking analysis. Nothing in this dicta, however, would suggest that where, as here, one policy is issued, insuring two vehicles, that policy somehow becomes two separate policies for purposes of the creation of uninsured motorist coverage.

Indeed, any such interpretation of Pohlman would be inconsistent with this Court's later decision in Dascoli, supra, which, as discussed above, expressly approved of the Second District Court of Appeal's decision in Harrison, supra. After all, in Harrison, as noted above, two vehicles insured by the same insurer under one policy were involved. Yet, the Second District held that the "same policy" analysis adopted by Reid and all the other cases cited above applied, and precluded uninsured motorist

coverage. Accordingly, Harrison obviously held that the very situation of one policy/two vehicles applicable here did not create two separate policies.

Simply stated, there was only one policy of insurance at issue here. Petitioner is attempting to recover uninsured motorist benefits under that policy even though, under the same policy, liability coverage is unavailable based on a valid household exclusion. Under Fitzgibbon, Brixius, Dascoli, Reid and all the other cases cited above, that is simply not permissible.

CONCLUSION

For all the foregoing reasons, respondent, Allstate Insurance Company, respectfully requests this Court to affirm the decision of the First District Court of Appeal appealed from herein in all respects.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to John S. Fagan, Esquire, 1035 LaSalle Street, Jacksonville, FL 32207, by U. S. Mail, this 4th day of November, 1991.

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