IN THE SUPREME COURT OF FLORIDA
On Discretionary Review of a Decision
Of The First District Court of Appeal
(Case No. 90-1789)

DEBRA S. HARTLAND,

Plaintiff-Petitioner,

v.

ALLSTATE INSURANCE COMPANY,

Defendant-Respondent.

CASE NO. 77,659

DEFENDANT-RESPONDENT'S JURSIDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

As a matter of clear Florida law, only those facts appearing in the opinion from which petitioner is seeking relief are relevant to a jurisdictional petition. Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). The Court may not examine the record to find conflict. Id.; Art. V, § 3(b)(3), Fla. Const. Here, plaintiff-petitioner Debra Hartland's ("plaintiff") jurisdictional brief violates Reaves by asserting facts beyond those set forth in the First District Court of Appeal's opinion below. The only facts relevant hereto, simply stated, are as follows.

Plaintiff was injured in an automobile accident while riding as a passenger in her own automobile. At the time of the accident, a friend of plaintiff was driving the subject automobile, with plaintiff's permission. Plaintiff, who was a resident of her parents' household at the relevant time, sued defendant-respondent, Allstate Insurance Company ("Allstate"), pursuant to the uninsured motorist coverage provisions of an insurance policy issued by Allstate to her parents. That policy designated both plaintiff's 1981 Plymouth automobile and her parents' 1981 Toyota automobile as insured vehicles thereunder.

Plaintiff sought uninsured motorist coverage benefits under her parents' policy with respect to her own and her parents'

automobiles. Both the trial court and the First District held that no such uninsured motorist benefits were due to plaintiff, because her parents' Allstate policy explicitly precluded uninsured motorist coverage where the vehicle in which the insured was riding at the time of the accident was listed as an insured vehicle by that policy. Plaintiff now attempts to invoke the jurisdiction of this Court based on an asserted conflict between the instant case and the Fifth District Court of Appeal's decision in Jernigan v. Progressive American Insurance Co., 501 So. 2d 748 (Fla. 5th DCA), rev. denied, 513 So. 2d 1062 (Fla. 1987).

SUMMARY OF ARGUMENT

The asserted "conflict" between Jernigan, supra, and the First District's decision here, is, in fact, non-existent. Here, as the First District noted, and as plaintiff now concedes, a valid household exclusion precluded liability insurance coverage. Consequently, in accordance with every prior relevant Florida precedent, including Jernigan, no coverage, liability or uninsured motorist, was available to plaintiff. Jernigan, by its own terms, did not involve a situation where a valid household exclusion barred liability insurance coverage under the policy at issue. In fact, Jernigan explicitly distinguished its situation from other cases involving household exclusions which precluded liability insurance coverage.

In any event, to the extent Jernigan can be construed as applicable to the instant situation, it is hopelessly in conflict with this Court's prior decisions, and is simply wrong in its assumptions. Accordingly, it does not provide a sufficient ground upon which to invoke this Court's jurisdiction.

ARGUMENT

I. THERE IS NO CONFLICT BETWEEN THE FIRST DISTRICT'S DECISION AND JERNIGAN.

The key fact in this case, which plaintiff completely ignores, is that bodily injury liability insurance coverage for plaintiff's injuries was denied pursuant to a valid household exclusion contained in her parents' Allstate policy. Plaintiff does not dispute the appropriate nature of this ruling, and in fact concedes that she has now dropped any claims for liability benefits under the policy. Yet, it is the presence of this valid household exclusion from liability insurance coverage that conclusively differentiates this case from Jernigan, supra.

The distinction between this type of case and Jernigan was fully explained by Judge Downey in the course of the Fourth District Court of Appeal's decision in Allstate Insurance Co. v. Baker, 543 So. 2d 847, 850 (Fla. 4th DCA), rev. denied, 554 So. 2d 1167 (Fla. 1989). There, as here, the insured party was injured while riding as a passenger in a vehicle driven by a friend. Moreover, in that case, as here, an Allstate household exclusion precluded liability insurance coverage. In light of

the applicability of the household exclusion to bar liability coverage, Judge Downey concluded that, under this Court's prior controlling decisions, such as Reid v. State Farm Fire & Casualty Co., 352 So. 2d 1172 (Fla. 1977); and Allstate Insurance Co. v. Dascoli, 497 So. 2d 1 (Fla. 1986), and the clear Allstate policy language, uninsured motorist coverage was not available under the same policy.

In the course of his decision, Judge Downey explicitly considered Jernigan, which, of course, the insured in Baker heavily relied upon, as does plaintiff here. However, Judge Downey recognized that Jernigan was inapposite because it did not involve a household exclusion. Baker, 543 So. 2d at 849-50. That simple fact resolves any purported conflict between Jernigan on the one hand and this case on the other.

Here, a valid household exclusion precluded any liability insurance coverage. Jernigan, by contrast, according to that court's own statement (501 So. 2d at 757), did not even deal with a household exclusion. Indeed, in the course of its ruling, the Jernigan court opined that its decision was actually consistent with this Court's Reid holding. Id. Thus, far from opining that Reid should be overruled, Jernigan, by its own terms, was wholly consistent with that case.

Any doubt as to the import of Jernigan is resolved by the fact that it expressly cited with approval the Fifth District's prior opinion in Curtin v. State Farm Mutual Automobile

Insurance Co., 449 So. 2d 293 (Fla. 5th DCA 1981), rev. dism'd, 496 So. 2d 815 (Fla. 1986). Jernigan, 501 So. 2d at 750, 751. In Curtin, the situation was again almost precisely the same as that in the present case. The resident son of the insured was injured while riding as a passenger in a car owned by his father, which was being negligently driven by a family friend. Curtin, 449 So. 2d at 293-94.

The father had three separate liability insurance policies on three different vehicles, including the one involved in the accident, all issued by State Farm. 449 So. 2d at 294. With respect to the policy insuring the vehicle in question, which contained a valid and enforceable household exclusion, the Curtin court held that, under Reid, no uninsured motorist coverage was available because there was a liability insurance policy on the car, albeit not available coverage. Id.

Jernigan did not purport to overrule this portion of Curtin. Indeed, the Jernigan court specifically cited Curtin with approval on this point. Jernigan, 501 So. 2d at 757. Accordingly, Jernigan leaves the basic holding of Curtin untouched -- a vehicle cannot be both insured and uninsured under the same policy when a valid household exclusion from liability coverage is applicable, even if a family friend, rather than a family member, is driving the relevant vehicle. See also Porr v. State Farm Mutual Automobile Insurance Co., 452 So. 2d 93, 93-94 (Fla. 1st DCA 1984), rev. dism'd, 496 So.

2d 816 (1986) (holding that, under Curtin, where a minor son was injured in an accident while riding in a truck owned by his father, but driven by a family friend, and the father had three policies, insuring three separate vehicles, including the truck involved in the accident, there was no liability or uninsured motorist coverage on the latter truck).

Put simply, it is clear from the authorities upon which the Jernigan court relied that it was in no way purporting to change settled Florida law with respect to the validity of household exclusions from liability coverage and the consequent validity of preclusions of uninsured motorist coverage under the same policy pursuant to which the liability coverage household exclusion applies. As the Jernigan court itself stated (501 So. 2d at 751), where, as here, to provide uninsured motorist coverage would defeat a "valid liability exclusion" under the same policy, no such coverage is available under that policy.

II. EVEN IF JERNIGAN COULD SOMEHOW BE READ AS IN CONFLICT WITH THE FIRST DISTRICT'S OPINION HERE, JERNIGAN WAS BASED ON A COMPLETE MISREADING OF THIS COURT'S DECISIONS, AND SHOULD NOT BE GIVEN ANY WEIGHT.

It is true that, at one point in its opinion, the Jernigan court suggested that the continuing vitality of Reid, supra had been put into question by this Court's subsequent decision in Allstate Insurance Co. v. Boynton, 486 So. 2d 552 (Fla. 1986). Specifically, the Jernigan court opined that Boynton may have disapproved Reid to the extent Reid held that a vehicle cannot

be both insured and uninsured under the same policy. To the contrary, however, Boynton, which did not even deal with a household exclusion and therefore is inapplicable in that context in any event, specifically noted that it was not disapproving Reid, but was simply distinguishing that case on its facts:

> In Reid, we held that a vehicle cannot be both an insured and uninsured vehicle under the same policy. The present case is distinguishable because it involves separate policies. Reid is inapplicable.

Boynton, 486 So. 2d at 555 n. 5 (emphasis in original).

Additionally, in Simon v. Allstate Insurance Co., 496 So. 2d 878 (Fla. 4th DCA 1986), the Fourth District Court of Appeal held that Boynton does not apply where, as here, only one policy is at issue. Simon, 496 So. 2d at 879. Thus, any reliance by Jernigan on Boynton for the concept that a vehicle can be both insured and uninsured under the same policy is totally misplaced. Boynton did not so hold, and in fact specifically stated the opposite.

The distinction between situations involving the same policy and those involving different policies is utterly sensible. If separate policies are involved, the invocation of uninsured motorist coverage under one of those policies cannot eviscerate a valid liability insurance coverage exclusion in the other policy. The liability exclusion under the one policy takes complete effect, barring liability insurance coverage or

any recovery thereunder, but, consequently, the uninsured motorist coverage of the different policy is invoked. That, of course, has no effect on the liability insurance exclusion in the first policy.

However, in the situation where only one policy is involved, a fortiori if uninsured motorist coverage is invoked the valid liability insurance exclusion is rendered nugatory. Thus, although under Boynton there is no reason to preclude uninsured motorist coverage under one policy simply because of the existence of a liability coverage exclusion in another policy, there is every reason to preclude uninsured motorist coverage where liability insurance coverage is excluded under that same policy. See also Baker, supra, 543 So. 2d at 850 (uninsured motorist coverage unavailable wherever its availability would defeat a valid liability insurance exclusion in the same policy). Cf., Jernigan, supra, 501 So. 2d at 751 (noting that its holding would not "defeat any valid liability exclusion").

Any other result would impermissibly lead to the total evisceration of the household exclusion, which this Court has repeatedly upheld based on its salutary purposes. See, e.g., Reid, supra, Dascoli, supra.

CONCLUSION

For all the foregoing reasons, defendant-appellee Allstate Insurance Company respectfully requests that this Court deny plaintiff-appellant's petition for review.

Respectfully submitted,

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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 16th day of April, 1991.

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