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SUPREME COURT OF FLORIDA

RICHARD CROSBY,

Petitioner

-v-

NATIONWIDE MUTUAL FIRE INSURANCE COMPANY,

Respondent.

CASE NO. 82,236

District Court of Appeal,
4th District - No. 92-3427

PETITIONER'S BRIEF ON THE MERITS

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PREFACE

The petitioner, RICHARD CROSBY, was the appellant below and will be referred to as "CROSBY". The respondent, NATIONWIDE MUTUAL FIRE INSURANCE COMPANY, was the appellee below and will be referred to as "NATIONWIDE".

The following symbol will be used: (R.__) - Record on appeal.

STATEMENT OF CASE AND FACTS

NATIONWIDE issued to one Kathryn Martin a policy of automobile insurance which contained uninsured motorist coverage. CROSBY, her son, was a resident member of her household. On December 4, 1990, CROSBY was involved in a motor vehicle accident while operating a motorcycle owned by him which was not insured under NATIONWIDE'S policy. As a result of the collision CROSBY sustained injuries. The motorist and vehicle causing these injuries were uninsured. (R.39-40)

CROSBY submitted an uninsured motorist claim to NATIONWIDE who denied same on the grounds, "the uninsured motorist insurance does not apply as follows: It does not apply to bodily injury suffered while occupying a motor vehicle owned by you or relative living in your household, but not insured for uninsured motorist coverage under this policy." (R.31)

A lawsuit was initiated by CROSBY and the parties entered into a joint stipulation of facts. (R.39-40) The parties each moved for summary judgment and on November 20, 1992, the trial court granted NATIONWIDE'S motion. (R.71) On November 25, 1992, a Notice of Appeal directed to the Order was filed. (R.72-73) Thereafter on December 3, 1992, a Final Judgment was entered. (R.75) On December 9, 1992, an Amended Notice of Appeal of Final Judgment was filed. (R.77)

On July 28, 1993, the 4th District Court of Appeal affirmed summary judgment in favor of NATIONWIDE, but certified a conflict with Nationwide Mutual Fire Insurance v Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), rev. granted No. 80,986 (Fla. Apr. 26, 1993). On August 13, 1993, CROSBY filed his Notice to Invoke Discretionary Jurisdiction of the Supreme Court.

SUMMARY OF ARGUMENT

CROSBY, as a resident member of his mother's household, was a Class I insured under NATIONWIDE'S policy. As such, he is entitled to uninsured motorist coverage even though NATIONWIDE would not have afforded liability coverage had the collision been CROSBY'S fault. The decision of the District Court of Appeal affirming the summary judgment in favor of NATIONWIDE was in direct conflict with Nationwide Mutual Fire Insurance v Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), rev. granted, No. 80,986 (Fla. Apr. 26, 1993).

ARGUMENT

ISSUE ON APPEAL

WHETHER CROSBY AS A CLASS I INSURED IS ENTITLED TO UNINSURED MOTORIST COVERAGE EVEN IF HE WOULD NOT HAVE BEEN ENTITLED TO LIABILITY COVERAGE HAD THE ACCIDENT IN QUESTION BEEN HIS FAULT.

NATIONWIDE successfully argued to the trial court that its policy language excluded uninsured motorist coverage because CROSBY would not have been afforded liability coverage had he been at fault. The same argument involving the same policy language was rejected in Nationwide Mutual Fire Insurance v Phillips, 609 So.2d 1385 (Fla. 5th DCA 1992), rev. granted, No. 80,986 (Fla. Apr. 26, 1993). Therein, the Court pointed out confusion has been created because of dicta contained in Valiant Ins. Co. v Webster, 567 So.2d 408 (Fla. 1990) which seems to imply if there is no liability coverage for a particular accident there would be no UMI coverage. This of course would be a dramatic departure from the holding of this court in Mullis v State Farm Mutual Auto. Ins. Co., 252 So.2d 229 (Fla. 1971). The argument that this court did not intend to recede from Mullis, supra, is reinforced by Florida Farm Bureau Cas. Co. v Hurtado, 587 SO.2d 1314 (Fla. 1991).

The decision of the 4th District Court of Appeal affirming the summary judgment in favor of NATIONWIDE is also in conflict

with its own decision in State Farm Fire & Casualty Company v Polgar, 551 So.2d 549 (Fla. 4th DCA 1989), which also rejected the liability coverage analysis suggested in Valiant, supra, and stated:

> "* * * Since appellee was a named insured under the policy, he is a Class I insured pursuant to Mullis v State Farm Mutual Auto. Ins. Co., * * * and is entitled to uninsured motorist protection insurance under the motor vehicle policy whenever and wherever bodily injury is inflicted upon him by a negligent uninsured motorist. This is so even though the automobile appellee occupied at the time of his injuries was not insured under the automobile liability endorsement to his business policy and would have afforded no liability coverage to appellee had he been the negligent party.

CONCLUSION

For the reasons set forth herein, it is respectfully requested this Honorable Court remand this case to the 4th District Court of Appeal with instructions to reverse summary judgment in favor of NATIONWIDE.

Respectfully submitted,

MICHAEL JEFFRIES, of
NEILL GRIFFIN JEFFRIES & LLOYD
CHARTERED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foreoing has been served upon GEORGE A. VAKA, ESQUIRE, Post Office Box 1438, Tampa, Florida 33601, by mail, this 2nd day of September, 1993.

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