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IN THE SUPREME COURT OF FLORIDA

CASE NO. : 83,242

FOURTH DISTRICT COURT OF APPEAL
CASE NO. : 93-0238

GOVERNMENT EMPLOYEES
INSURANCE COMPANY,

Petitioner,

vs.

WILLIAM J. DOUGLAS,

Respondent.

_____/

PETITIONER'S BRIEF ON THE MERITS

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INTRODUCTION

Throughout this Brief, the Petitioner, GOVERNMENT EMPLOYEES INSURANCE COMPANY, will be referred to as "GEICO" or as Petitioner. The Respondent, WILLIAM J. DOUGLAS, will be referred to as "DOUGLAS" or as Respondent. References to the Record on Appeal will be indicated by the symbol. "(R.)."

All emphasis, throughout this Brief, will be provided by the writer unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Until the middle of 1988, DOUGLAS owned three (3) motor vehicles which were insured with GEICO pursuant to automobile liability and uninsured motorist coverage (UM). (R. 19). At that time, DOUGLAS decided not to renew the policy covering his 1977 Toyota pick-up truck. Therefore, at the time of the accident giving rise to this action, in May of 1989, DOUGLAS had two vehicles insured by GEICO for both liability and UM coverage, and his Toyota pick-up truck, which was not insured by GEICO. (R. 19). That vehicle was, however, insured under a PIP-only policy with another insurance carrier. (R. 28, 29). After an accident which occurred while DOUGLAS was operating his pick-up, he made a claim for UM benefits against GEICO under the policies covering his other vehicles.

That claim was denied on the grounds that the pick-up truck was not insured under either of GEICO's policies. (R. 4).

The liability coverages of the GEICO policies in question contain the following provisions:

> "PERSON INSURED WHO IS COVERED:
> Section I applies to the following as insureds with regard to an owned auto:
> (1) You and your relatives;
> (2) Any other person using the auto with your permission. The actual use must be within the scope of permission;
> (3) Any other person or organization for his or its liability because of acts or omissions of an insured under one or two above.
> Section I applies to the following with regard to a non-owned auto:
> (1) You and your relatives when using a private passenger auto or trailer. Such use must be with the permission or reasonably believed to be with the permission of the owner and within the scope of that permission;
> (2) A person or organization, not owning or hiring the auto, regarding his or its liability because of acts or omissions of an insured under one above.
> The limits of liability stated in the declarations are our maximum obligations regardless of the number of insureds involved in the occurrence."
>
> (R. 35-36).

The liability section defines an owned auto as "...a vehicle described in this policy for which a premium charge is shown..." and a non-owned auto as "a private passenger auto...not owned by or furnished for the regular use of either you or a relative...". (R. 33-34).

The policies also contain a specific exclusion as to Uninsured Motorist coverage:

> "Bodily injury to an insured while occupying or through being struck by an underinsured or uninsured auto owned by an insured or a relative is not covered."
>
> (R. 45).

The vehicle DOUGLAS was occupying on the date of the accident, the Toyota pick-up truck, was an owned automobile not specifically covered by GEICO's liability or UM policies. Based on the above facts and specific insurance contract exclusions cited, GEICO denied UM coverage for the injuries allegedly sustained by DOUGLAS as a result of the motor vehicle accident involving his Toyota pick-up truck. (R. 4).

DOUGLAS filed a Declaratory Judgment action below asking for a judicial determination that he was entitled to uninsured motorist benefits from the policies covering the other vehicles that he owned. (R. 1-3). The trial judge granted DOUGLAS' Motion for Summary Judgment (and denied GEICO's Motion for Summary Judgment) on the coverage issue at a hearing on a stipulated set of facts. (R. 66).

GEICO filed its timely Notice of Appeal in the Fourth District Court of Appeal. (R. 69-70). The Fourth District affirmed the trial court's ruling and held that because GEICO failed to comply with the requirements of Florida Statute §627.727(9), UM coverage was deemed extended as a matter of law. For controlling authority, the Fourth District cited

Nationwide Mutual Fire Insurance Co. v. Phillips, 609 So. 2d 1305 (Fla. 5th DCA 1992), rev. granted, 620 So. 2d 761 (Fla. 1993); and, Carbonell v. Automobile Insurance Co. of Hartford, 562 So. 2d 437 (Fla. 3d DCA 1990).

This appeal followed. This Court accepted jurisdiction on May 5, 1994, based on the express and direct intradistrict conflict created by the Fourth District's opinion.

ISSUE ON APPEAL

WHETHER AN INSURER IS REQUIRED TO PROVIDE UNINSURED MOTORIST COVERAGE TO AN INSURED FOR DAMAGES SUSTAINED IN AN ACCIDENT INVOLVING AN OWNED AUTOMOBILE, NOT LISTED IN THE POLICY, WHEN THAT POLICY CONTAINS AN EXPRESS PROVISION EXCLUDING UM COVERAGE IN THAT CIRCUMSTANCE?

SUMMARY OF ARGUMENT

The issue presented by this appeal is straightforward. That is, must an insurance carrier provide uninsured motorist benefits to an insured while occupying an owned vehicle, not listed in the policy, in the face of an express provision excluding UM coverage under that circumstance.

This Court has long held that UM coverage is intended to provide the reciprocal of liability coverage required by the Financial Responsibility Law. Mullis v. State Farm Mutual

Automobile Insurance Co., 252 So. 2d 229 (Fla. 1971). The principle announced in Mullis was re-affirmed in Valiant Insurance Co. v. Webster, 567 So. 2d 408 (Fla. 1990), which re-emphasized that if the liability provisions of a policy do not apply to an accident, uninsured motorist coverage is not mandated. Just as in GEICO's policies here, the UM statute provides that the "persons insured" are those same persons required to be covered under the liability section of the policy.

Florida district courts have followed the rule that provides UM coverage only to insureds who are also covered by the liability provisions of the policy. See, Bolin v. Massachusetts Bay Insurance Co., 518 So. 2d 393 (Fla. 2d DCA 1987); Government Employees Insurance Co. v. Wright, 543 So. 2d 320 (Fla. 4th DCA), rev. denied, 551 So. 2d 464 (Fla. 1989).

This Court has, again, recently reiterated its holdings in Mullis and Valiant. In Nationwide v. Phillips, 19 FLW S157 (Fla. April 8, 1994); and World Wide Underwriters Insurance Company v. Welker, 19 FLW S153 (Fla. April 8, 1994), this Court held, under very similar factual settings, that Florida Statute §627.727(1) only requires an insurer to extend uninsured motorist coverage to the extent that liability coverage is made available. It is undisputed here that DOUGLAS was driving an owned vehicle which was not

listed as an insured vehicle under either his liability or UM coverage. Under GEICO's exclusionary clause, there was no UM coverage afforded to an insured operating a vehicle which was owned by that person, but not listed as a covered vehicle under the policy.

The Fourth District, here, held that because GEICO failed to comply with the provisions of §627.729(9), coverage must, nonetheless, be afforded to DOUGLAS. This logic is flawed because the requirements under that subsection do not apply generally to owned vehicles which are not insured under liability coverages. In reaching its decision, the Fourth District ignored the clear language of §672.727(1). The interpretation of subsection (9) of the UM statute by the Fourth District is, therefore, contrary to the language of the statute as a whole and the case law. In accordance, then, with the UM statute and this Court's opinions in Phillips and Welker, the opinion should be quashed and UM benefits should be denied to DOUGLAS under these circumstances.

ARGUMENT, POINT ON APPEAL

The legal issue before this Court is not complicated. The material facts are stipulated and undisputed. DOUGLAS was involved in a car accident while driving a vehicle which

was owned by him, but not listed as an insured vehicle in his GEICO policies. Those policies provided that neither liability nor UM coverage was to be afforded to owned, but uninsured, vehicles.

The resolution of the matter involves the construction of Florida Uninsured Motorist Statute, §627.727. The Fourth District held that UM coverage was available because GEICO failed to comply with the requirements of Florida Statute §627.727(9). Before delving into the requirements of subsection (9), however, an overview of the UM statute may be helpful.

The polestar decision regarding UM coverage was issued in Mullis v. State Farm Mutual Automobile Insurance Co., 252 So. 2d 229 (Fla. 1971). In Mullis, the son of the insured was injured by an uninsured motorist while operating a motorcycle owned, but not specifically insured by the insurer. The State Farm policy there contained an exclusion for any vehicle owned by the insured, but not insured. Id. at 231. This Court determined that the exclusion was contrary to Florida Statute §672.0851 (the previous UM statute). This Court, in finding UM coverage, stated:

> "...Uninsured Motorist Coverage prescribed by Section 672.0851 is statutorily intended to provide the reciprocal or mutual equivalent of automobile liability coverage prescribed by the Financial Responsibility Law...".

That is, this Court went on to explain that UM coverage must be afforded to individuals which would have been eligible for coverage under the provisions of the policy's liability coverages.

Twenty years later, this Court re-emphasized the position taken in Mullis. In Valiant Insurance Company v. Webster, 567 So. 2d 408 (Fla. 1990), it was noted that:

> "Since our decision in Mullis, the courts have consistently followed the principle that if the liability portions of an insurance policy would be applicable to a particular accident, the uninsured motorists provisions would likewise be applicable; whereas, if the liability provisions did not apply to a given accident, the uninsured motorists provisions of that policy would also not apply (except with respect to occupants of the insured automobile). e.g., Auto-Owners Insurance Co. v. Queen, 468 So. 2d 498 (Fla. 5th DCA 1985); Auto-Owners Insurance Co. v. Bennett, 466 So. 2d 242 (Fla. 2d DCA 1984); France v. Liberty Mutual Insurance Co., 380 So. 2d 1155 (Fla. 3d DCA 1980)."
>
> Valiant, at 410.

The "persons insured" under the UM statute, as this Court emphasized in Valiant, are those who are insured under the liability portions of the insurance policy. The Florida UM Statute, §627.727, must be read in para materia with Chapter 324 (the Florida Financial Responsibility Law). Florida courts have long read these statutes together to resolve UM coverage disputes. See, Fischer v. State Farm Mutual Automobile Insurance Co., 495 So. 2d 909 (Fla. 3d DCA 1986)

(interstices of UM statute are by legislative design to be filled by the more specific Financial Responsibility Law).

Florida courts have interpreted the UM statute in accordance with the Valiant and Mullis analysis. See, e.g., Government Employees Insurance Co. v. Wright, 543 So. 2d 320 (Fla. 4th DCA), rev. denied, 551 So. 2d 464 (Fla. 1989). Also, in Bolin v. Massachusetts Bay Insurance Company, 518 So. 2d 393 (Fla. 2d DCA 1987), the insured was driving a separately-insured car when he had an accident with an uninsured driver. The trial court denied coverage based on a provision which excluded UM coverage for injuries to an insured while occupying an owned vehicle, not insured under the policy. The Second District Court affirmed the trial court's holding. The analysis emphasized there was centered upon the definition of the term "persons insured" under the liability section of the Bolin policy. That language, as here, provided coverage with respect to owned vehicles to the named insured and resident relatives. Coverage for non-owned vehicles was limited to the named insured, resident relatives, or other persons or organizations with permission to use the vehicle. Mr. Bolin did not fall within the definition of persons insured under the liability section of his wife's policy since an "owned auto" was limited to those for which premiums had been paid. Additionally, liability coverage was not provided under the "non-owned" section

because the vehicle driven by Mr. Bolin was "owned" as defined by the policy language. Thus, since the policy did not provide liability coverage to Mr. Bolin, neither was UM coverage afforded.

The policy language found in the Bolin case tracks the policy language in the case sub judice. DOUGLAS does not qualify as a "person insured" because he was not driving an "owned" or "non-owned" vehicle under the language of the policy's definitions. There is no liability coverage available to DOUGLAS for this particular accident. Hence, the UM exclusion is not prohibited. Applying here the same analysis as used in Mullis, Valiant, and Bolin; since there is no liability coverage afforded DOUGLAS for his accident, then the UM exclusion is valid and not contrary to public policy.

More recently, this Court reaffirmed its ruling in Mullis and Valiant, in Nationwide Mutual Fire Insurance Co. v. Phillips, 19 FLW S157 (Fla. April 8, 1994); and Worldwide Underwriters Insurance Co. v. Welker, 19 FLW S153 (Fla. April 8, 1994). The facts of Phillips are virtually identical to the case herein. Mr. Phillips was operating a motorcycle which was owned by him, but not listed as an insured under his wife's policy, when he was involved in a motor vehicle accident with an uninsured motorist. Like the policy language in the case at bar, the Phillips policy also

contained a provision which excluded UM coverage to persons driving vehicles owned by them, but not listed under the UM policy.[1] Based on the reasoning stated in Welker, this Court, there, quashed the district court's opinion, finding that UM coverage was not available.

It should also be noted that in Phillips, like the case at bar, the issue does not involve compliance with the requirements of subsection (9).[2] An insurer's failure to comply with the statutory requirements of subsection (9) does not obviate the application of the UM statute as a whole or operate to provide coverage where coverage is not otherwise available. As a basis for its decision, the Court cited Welker, decided on the same day as Phillips.

In Welker, the issue, as stated by the court, was the following:

> "...whether an insurance company is required to provide uninsured motorist coverage to an insured for damages incurred in an accident involving a vehicle owned by the insured but not

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1 The policy exclusion in Phillips was virtually identical to the language in the UM exclusion herein, to wit: "... does not apply to bodily injury suffered while occupying a motor vehicle owned by you or a relative ... but not insured for Uninsured Motorist coverage under this policy".

2 Petitioner anticipates that Respondent will argue that the holdings in Mullis, Valiant and Bolin are inapplicable because they did not involve non-compliance with §627.727(9). However, this Court in Phillips did not address the non-compliance as a basis to extend coverage to the insured.

> listed in the policy when the policy contains express provisions excluding coverage for both liability and uninsured motorist coverage...".
>
> Welker, at S154.

This is the same issue as is presented by the present case. In finding that the exclusion was valid, this Court relied on Valiant and Mullis, and re-emphasized that UM coverage is meant to mirror the scope and availability of liability coverage. In conclusion, this Court found that:

> "...there is no requirement that the insurer provide uninsured motorist coverage to an insured for an accident involving a vehicle owned by the insured and not listed in the policy when the policy would not provide liability coverage to the insured had the insured been responsible for the particular accident".
>
> Welker, at S155.

In the present case, it is clear that DOUGLAS was not provided basic liability coverage under GEICO's policies while operating his own truck which was not insured under the policy. The Financial Responsibility Law does not require that an insurer provide greater coverage than is purchased by the insured. Therefore, the first part of the Mullis and Valiant analysis is fulfilled. That is, DOUGLAS is not insured under GEICO's liability sections. Therefore, the UM exclusion contained in GEICO's policy is clearly valid and enforceable.

One of the reasons, if not the only reason, the Fourth District affirmed the trial court's determination of coverage was GEICO's failure to comply with the requirements of subsection (9). In order to reach this conclusion, the Fourth District overlooked or misapprehended the explicit language of the UM Statute and numerous precedents concerning statutory construction.

Although the Florida UM Statute has withstood various amendments through time, the first sentence of the statute has remained the same for the last ten (10) years. Since 1984, that provision has read as follows:

> "627.727(1) No motor vehicle liability insurance policy shall be delivered or issued for delivery in this state with respect to any specifically-insured or identified motor vehicle registered or principally garaged in this state unless uninsured motor vehicle coverage is provided..."

The statute limits applicability of the UM statute to policies insuring specific vehicles. That is, only those specific vehicles carrying liability coverage are required to contain UM benefits. Rather than require an insurer to protect persons insured under any motor vehicle liability policy, under the present UM statute, coverage is limited to persons insured under liability policies covering specifically-insured or identified motor vehicles.

The 1984 amendment is another example of the Legislature's intent to make UM coverage the reciprocal of

liability coverage. It restricts which liability policies must provide UM coverage and also to whom UM coverage is afforded.

Florida Statute §627.727(9), was added to the UM statute in 1987. This subsection was not intended to alter the general provision set out in §627.727(1). It merely created an alternative, limited-form of UM coverage which could be elected by an insured under certain circumstances. An insured, under subsection (9), is able to choose, for a reduced premium, "non-stacking" UM coverage as limited form of coverage. Contrary to the Fourth District's opinion below, this subsection does not broaden the scope of UM coverage. It limits it. Under the Fourth District's analysis, since the requirements of subsection (9) were not met, the insurer must now provide UM coverage to all vehicles rather than, pursuant to §627.727(1), to "specifically-insured or identified motor vehicles" under the liability policy. Such an interpretation results in a conflict not only with the current case law, but also the clear intent and purpose of the UM Statute.

A court, when construing a statute, must give meaning to all the words chosen by the Legislature. See, Atlantic Coastline R.R. Co. v. Boyd, 102 So. 2d 709 (Fla. 1958). Likewise, it should be construed in its entirety, and its legislative intent gathered from the entire statute rather

than solely from one part. State v. Hayles, 240 So. 2d 1 (Fla. 1970). Moreover, provisions of the same Act must be harmonized and reconciled with other provisions of the same Act. See, Woodgate Development Corp. v. Hamilton Investment Trust, 351 So. 2d 14 (Fla. 1977). In other words, provisions of the same Act are to be read consistent with one another, rather than in conflict with one another.

Florida Statute §627.727(9) is merely an alternative, less-broad and less expensive form of UM coverage which is only offered to persons who are otherwise required to be insured for UM coverage pursuant to §627.727(1).

To justify a conclusion contrary to the case law, the Court below has attempted to rely upon a section of the statute, simply providing an alternative form of coverage, to create and require UM coverage for people that the Legislature has not intended to be provided coverage (i.e., persons not insured for liability coverage). This Court, should, consistent with Phillips and Welker, quash the decision of the Fourth District.

CONCLUSION

Based on the above and foregoing authorities cited, the Appellant respectfully requests this Court to quash and remand with instructions to the lower court to reverse the

Summary Judgment entered in favor of the Plaintiff, and direct the trial court to enter judgment on behalf of GEICO.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 31st day of May, 1994, to: CHRISTOPHER M. CANNON, ESQUIRE, 633 South Andrews Avenue, Box 14519, Fort Lauderdale, Florida 33302. Telephone: (305) 463-0585; and DANIEL D. DYKEMA, ESQUIRE, Young & Dykema, P.A., Suite 1730, 110 Tower, 110 S.E. Sixth Street, Fort Lauderdale, Florida 33301. Telephone: (305) 779-1105.

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