

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No.: SC10-_____
First DCA Case No.: 1D09-2595

KUTASHA P. SHAZIER;
TERCINA S. JORDAN; AVIS
RENT-A-CAR SYSTEM, LLC,
A FOREIGN LIMITED
LIABILITY CORPORATION;
JAMELIA A. CHANDLER;
CHRISTEEGIA A. PRICE;
THE ESTATE OF CAMELIA
Y. BYRD, LINDA JEAN
PARKER, WHITNEY
MARSHALL, TENISHA
MARSHALL, AND MONICA
STEELE,

Petitioners,

v.

GEICO INDEMNITY COMPANY,

Respondent.

PETITIONERS' BRIEF ON JURISDICTION

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TABLE OF CONTENTS

| | |
|---|-----|
| TABLE OF AUTHORITIES | iii |
| STATEMENT OF THE CASE | 1 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT | 3 |
| I. THE FIRST DISTRICT’S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT’S HOLDING IN <u>ROTH</u> | |
| CONCLUSION | 5 |
| CERTIFICATE OF SERVICE | 6 |
| CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS | 7 |

TABLE OF AUTHORITIES

Cases

| | |
|--|------------|
| <u>Roth v. Old Republic Insurance Company</u> , 269 So. 2d 3 (Fla. 1972) | 2, 3, 4, 5 |
| <u>Susco v. Leonard</u> , 112 So. 2d 832 (Fla. 1959) | 4 |

Constitutional Provisions, Statutes, and Rules

| | |
|------------------------------------|------|
| Art. V, § 3(b)(3), Fla. Const. | 2, 5 |
| Fla. R. App. P. 9.030(a)(2)(A)(iv) | 2 |

STATEMENT OF THE CASE

This proceeding arises from a trial court order granting a final summary judgment to the Petitioners.¹ (A. 2) That order was reversed by the First District Court of Appeal, in a decision that is in express and direct conflict with a decision of this Court.

The Respondent in this case, GEICO INDEMNITY COMPANY (hereinafter “GEICO”), filed a declaratory judgment action in Gadsden County against the Petitioners, after denying insurance coverage for a single-car wreck that occurred in Gadsden County on August 19, 2007. After both sides filed summary judgment motions, the trial court ruled in favor of the Petitioners’ position that the rental car involved in the wreck qualified as a “temporary substitute auto” under the lessee’s family automobile insurance policy with GEICO and thus insurance coverage obtained. (A. 1, 2) On appeal to the First District, the court reversed the trial court’s order. (A. 2) The court posited that the rental car company had the authority to define the scope of permissible use of the car and noted that the driver, Tercina S. Jordan, was not listed as an authorized driver. (A. 2) After concluding that “Jordan’s use of the rental car automatically revoked the permission granted to

¹ In the interests of judicial economy, this petition is brought on behalf of the injured passengers, Christeegia A. Price, Jamelia A. Chandler, Whitney Marshall, Tenisha Marshall, and the Personal Representative of the estate of the deceased sixteen year-old child, Camellia Y. Byrd. The subject petitioners are all similarly situated as to the issues raised herein. This petition is brought with the express authority and consent of counsel for all the above petitioners. Petitioner Monida Steele will be filing a Jurisdictional Brief as well.

Shazier by Avis[,]” the district court held that “the rental car did not qualify as a ‘temporary substitute auto’ and no coverage existed under the policy.” (A. 2)

The district court’s order denying rehearing was rendered on May 4, 2010 and the Petitioners’ notice of invoking this Court’s discretionary jurisdiction was timely filed on June 2, 2010. Thus, this case is properly before this Court. Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

SUMMARY OF ARGUMENT

The nub of the district court’s opinion is that since Kutasha P. Shazier was the only listed driver of the rental car, and Tercina S. Jordan was the driver of the car at the time of the wreck, no insurance coverage existed for the five seriously injured children and the family of the deceased child, Camellia Y. Bryd. This holding is in direct conflict with this Court’s caselaw that has been on the books for almost forty years.

In Roth v. Old Republic Insurance Company, 269 So. 2d 3 (Fla. 1972), this Court explained how vicarious liability attaches under the dangerous instrumentality doctrine, citing long-established precedent. This Court made clear that the owner and lessee’s insurance coverage under the financial responsibility laws covers the lessee’s permittee also, and that any holding to the contrary is against public policy irrespective of the specific provisions of any applicable rental car contract. The court below turned that holding on its head, instead reasoning

that the terms of the rental car contract cut off the flow of protection from Shazier to Jordan and thus no insurance coverage pertained, (A. 1, 2), for this catastrophic, single-car wreck. That holding expressly and directly conflicts with Roth.

This Court should exercise its jurisdiction to correct the conflict between the decision below and the decision of this Court.

ARGUMENT

I. THE FIRST DISTRICT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S HOLDING IN ROTH

In Roth v. Old Republic Insurance Company, 269 So. 2d 3 (Fla. 1972), this Court considered a case where the lessee of an automobile, Mr. Plax, was the only authorized driver per the rental car contract. Mr. Plax allowed Ronald Roth to drive the rental car, despite the fact that his name was not listed on the rental car contract and thus he was an unauthorized driver. Id. at 4. In short order, Mr. Roth ran over two elderly women, seriously injuring both and leading to one lady's eventual death. Id. While the plaintiffs and various defendants settled the tort claims, the insurers disagreed over who was liable for the monetary payouts. The trial judge ruled that Roth's insurer, State Farm, was primarily liable because Roth had not received the rental car company's permission in writing or by implied consent to drive the vehicle. Roth and State Farm appealed, and the Third District affirmed. Id.

On review, this Court surveyed its caselaw on the recent application of the dangerous instrumentality doctrine, focusing on the seminal case of Susco v. Leonard, 112 So. 2d 832 (Fla. 1959). Writing for the majority, Justice Ervin explained:

Susco recognizes that a bailee or lessee of a rented automobile, similarly as its owner, may permit another to operate it (and often does) and the latter's negligent operation of it renders the owner vicariously liable, together with his liability insurer, under the dangerous instrumentality doctrine, despite an agreement between the owner and the lessee to the contrary. See American Fire & Casualty Co. v. Blanton, Fla.App., 182 So.2d 36, text. 39. **A necessary legal corollary to this recognition in Susco is that the owner and the lessee's insurance coverage under financial responsibility (in this instance afforded by Old Republic) covers the lessee's permittee as well.** The terms of the Old Republic policy protect Roth because of the Financial Responsibility Law and the policy's conformance therewith, and cannot be varied by the collateral agreement between Yellow and Plax. It follows that Roth or his insurer, State Farm, does not legally have to pay accident claims either directly or by way of indemnification which Old Republic is primarily and specifically required to pay under the terms of its policy for the protection of Roth.

The Susco and Blanton cases recognize that in the very nature of modern automobile use a lessee of a rental car often has to turn the car over to car park, garage, or filling station personnel and others for temporary operation and that it would be unreasonable to negate the rental car agency's liability and its insurance coverage in case of accident because of the existence of a collateral or side agreement of the kind here involved. Often such permittees of rental car lessees temporarily driving rental cars would not be as fortunate as Roth and have the protection of their own personal auto liability insurance coverage, rendering it even more difficult for injured members of the public to recover their losses arising from the negligence of drivers of rental cars.

We believe that Plax's protection afforded by Old Republic for which he paid a premium necessarily inures to Roth, to whom Plax entrusted the motor vehicle; that the collateral or side agreement between Plax and Yellow Rent-A-Car for public policy reasons cannot vary, circumvent or intercept the flow of protection to Roth and injured members of the

public emanating from the Financial Responsibility Law which was confirmed by the terms of the policy issued by Old Republic.

Roth, 269 So. 2d at 6-7 (emphasis added).

Despite this clear holding in Roth, the district court below held that the linchpin of any coverage determination was the rental car company's permission to use its vehicle (A. 2).

By holding that the rental car contract trumps the "flow of protection" (from the lessee, Shazier, to the permittee, Jordan) demanded by public policy, the decision below expressly and directly conflicts with this Court's decision in Roth by announcing a contrary rule of law. Accordingly, Petitioners respectfully submit that this Court should exercise jurisdiction due to this clear express and direct conflict with Roth to correct the law in this state and re-affirm the public policy enunciated therein.

CONCLUSION

For the foregoing reasons, Petitioners respectfully submit that this Court has and should exercise jurisdiction to review the decision below under Article V, section 3(b)(3) of the Florida Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via regular United States Mail to R. Frank Myers, Esq., Pearson & Myers, P.A., 703 N. Monroe Street, Tallahassee, Florida 32303-6138, John S. Derr, Esq., Quintairos, Prieto, Wood & Boyer, P.A., 215 South Monroe Street, Suite 510, Tallahassee, Florida 32301-1804, James E. Messer, Jr., Esq., Fonvielle Lewis

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South Calhoun Street, Tallahassee, Florida 32301-1518, this ____ day of June,
2010.

CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that the herein Petitioners' Brief on Jurisdiction was
printed in 14-point Times New Roman font, in compliance with Fla. R. App. P.
9.210(a)(2).