In the Supreme Court of Florida

CASE NO.: SC10-116

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Petitioner,

v.

GILDA MENENDEZ, FABIOLA G. LLANES,
FABIOLA P. LLANES and ROGER LLANES,

Respondents.

DISCRETIONARY REVIEW FROM A DECISION OF THE
THIRD DISTRICT COURT OF APPEAL

JURISDICTIONAL ANSWER BRIEF OF RESPONDENTS FABIOLA G. LLANES, FABIOLA P. LLANES and ROGER LLANES

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STATEMENT OF THE CASE AND FACTS[1]

Gilda Menendez was the "named insured" in an automobile insurance policy issued by State Farm (App. 2). Menendez permitted her granddaughter Fabiola **G**. Llanes to use her vehicle. (App. 2).

While operating her grandmother's vehicle, Fabiola **G**. negligently collided with another auto, resulting in injuries to Fabiola P. Llanes and Roger Llanes, her parents ("parents"), who were passengers in the vehicle. At the time of the accident, Fabiola **G**'s parents lived in a different household from Menendez, the named insured. (App. 3).

Following the accident, the parents presented a claim against State Farm seeking to recover damages for bodily injuries under Menendez' Policy. (App. 2). State Farm denied coverage for the parents' injuries based on the policy's household exclusion, which provides:

> **When [Liability] Coverage A Does Not Apply**
>
> **There is no coverage: . . .**
>
> **2. for any bodily injury to: . . .**
>
> **c. any insured or any member of an insured's family residing in the insured's household.**

[1]References are to the appellate decision appended to this brief (App. 1-6). References to the Petitioner's Jurisdictional Brief appear as (Pet. J. Br. p. ___).

The parents argued that State Farm's exclusion either did not apply to them or was ambiguous because it was susceptible to more than one reasonable interpretation. The parents argued that the policy (1) excluded coverage for bodily injury to any "insured," (either the named insured Menendez or Fabiola **G.** Llanes who was a permissive user/omnibus insured) but (2) excluded coverage for members of an insured's family only if they lived in the same household as "the insured." The parents urged that this exclusion made a distinction between "an insured" and "the insured" and that "the insured" reasonably referred to "a **specific** insured," i.e. Menendez, the only named insured in the policy. The trial court agreed, and entered summary judgment against State Farm. (App. 2-4).

The Third District **affirmed**. It held that Menendez and Fabiola **G** were both insured "and the household exclusion bars any bodily injury claims asserted by them." (App. 5). However, the household exclusion was susceptible to more than one reasonable interpretation **as to the bodily injury claims asserted by the parents**. (App. 3-5) (emphasis added).

The Third District relied on well settled principles of policy interpretation which require ambiguous exclusionary clauses to be construed in favor of the insured. It concluded that this specific exclusion was ambiguous, because it was

equally reasonable for "**the** insured" to refer to a **specific** insured - the named insured (as posited by the respondents) as it was for **the** insured to include all insureds (as posited by State Farm). (App. 2-3).

State Farm seeks further review, urging that the Third District's decision conflicts with Reid v. State Farm Fire & Cas. Co., 352 So.2d 1172 (Fla. 1977) ("Reid") and Linehan v. Alkhabbaz, 398 So.2d 989 (Fla. 4th DCA 1981) ("Linehan").

SUMMARY OF THE ARGUMENT

There is no basis for review of the Third District's decision, where it does not involve "the same issue of law" as the cases cited for conflict. See Fla. Const. art. v § 3(b)(3).

In Kyle v. Kyle, 139 So.2d 885 (Fla. 1962), a district court ruled on the requisites to validity of a prenuptial agreement. The former husband sought further review, claiming the decision conflicted with language in one of this Court's prior decisions. This Court held that it had no jurisdiction, because the sole point raised in its prior decision "was whether the agreement was ambiguous." It did not address the validity of the agreement "because the question was neither raised...nor discussed in the decision." Id. at 887.

This case presents the converse situation. Reid and Linehan – the

ostensibly conflicting decisions – held that automobile household exclusions were valid, absent statutory abolition. Reid and Linehan did not address the ambiguity of the specific exclusion, because that issue was neither raised nor discussed in these decisions. Ambiguity was the sole basis for the Third District's decision.

As in Kyle, this Court has no conflict jurisdiction because the legal issues raised and resolved by these cases are different.

ARGUMENT

There is no "express direct conflict" between the Third District's decision (which finds a particular household exclusion ambiguous as applied to the facts) and the other cases cited (which addressed the validity of household exclusions); the cases raised and were decided on different legal issues.

This Court has discretionary jurisdiction to review decisions of district courts which expressly and directly conflict with a decision of another district court or this Court "on the same issue of law." Fla. Const. art. v, § 3(b)(3); Fla. R. App. Proc. 9.030(a)(2)(A)(iv).

The primary function of this provision is to stabilize the law by review of

decisions which are patently irreconcilable. Florida Power & Light Co. v. Bell, 113 So.2d 697, (Fla. 1959); see also Ansin v. Thurston, 101 So.2d 808, 811 (Fla. 1958) (limiting review to cases where there is a real and embarrassing conflict of opinion and authority between decisions).

"Decisional conflict" contemplates either the announcement of a rule of law which conflicts with a rule previously announced by this Court (or another district court) or the application of a rule of law to produce a different result in another decision of this Court (or another district court) involving substantially the same facts. Nielsen v. City of Sarasota, 117 So.2d 731 (Fla. 1960). When cases claimed to be in conflict are distinguishable in controlling factual elements, no express, direct conflict can arise. See e.g. Wilson v. Southern Bell Tel. & Tel. Co., 327 So.2d 220, 221 (Fla. 1976); Lynch v. Peoples Gas System, Inc., 267 So. 2d 81 (Fla. 1972) (no jurisdiction where the allegedly conflicting cases were based on different types of taxes). So too, there is no express direct conflict when the cases turn on different legal issues.

In Kyle v. Kyle, 139 So.2d 885 (Fla. 1962), a case on point, the Second District held that witnesses to the execution of an antenuptial agreement were necessary to establish its validity in a Florida court.

The husband sought further review, claiming that this decision conflicted

with language in a prior decision of this Court. This Court concluded that it had no jurisdiction because the cases were distinguishable. The "sole point raised" in this Court's first decision "was whether the agreement was ambiguous," and its construction, if so. It did not, in any respect involve the formal validity of the antenuptial agreement, and could not "because the question was neither raised...nor discussed in the decision." Id. at 887.[2]

State Farm's petition suffers from the same impediment. There is no express direct conflict between Reid and the Third District decision because the cases raised and were decided on different legal issues.

Reid upheld the validity of automobile insurance "household exclusions" against the claim that these were prohibited by a newly enacted Florida Statute, the Florida Automobile Reparations Act, § 627.733, Fla. Stat. (eff. January 1, 1972). Id. at 1173. This Court held that it was "certainly within the power of the legislature to prohibit all family household exclusions," but did not so by this statute. Reid at 1173.

The Third District decision addressed an entirely different issue not raised or considered in Reid – whether the household exclusion was ambiguous, based on

[2]The rationale behind this proscription is that "[N]o decision is authority on any question not raised and considered, although it may be involved in the facts of the case". State ex rel. Helseth v. Du Bose, 99 Fla. 812, 128 So. 4, 6 (Fla. 1930).

the facts. The Third District noted that it had "not overlooked Reid," but it "did not involve the direct interpretation of the household exclusion." Accordingly, in Reid, this Court "was not asked to interpret the application of the household exclusion." (App. 6, n.1). Thus, Reid and the Third District decision present disparate legal issues, which provide no basis for conflict jurisdiction.

The same analysis applies with respect to the ostensible conflict between the Third District decision and Linehan, 398 So.2d at 989. First, the policy exclusion in Linehan is paraphrased, not quoted, but appears to be materially different. Id. at 990, n.1. "Paraphrased, the exclusion provides that this insurance does not apply under coverage A bodily injury to any insured or **any member of the family of any insured** residing in the same household as the insured")[3] Second, from the limited facts provided, there was no argument advanced that the exclusion was ambiguous. Id. at 990. The Fourth District simply cited Reid, holding that the exclusion was valid. Id.

The Third District's decision resolved an entirely different issue. The court found that a specific household exclusion was ambiguous as applied to the parents' claims.

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[3]The underlined language is missing from the State Farm exclusion at issue. (App. 3).

Contrary to suggestion, Reid and Linehan do **not** "represent the only reasonable interpretation of the policy language...". (Pet. J. Br. p. 9). They could not "because the question was neither raised nor discussed in the[se] decisions"... Kyle v. Kyle, 139 So.2d at 887.

In sum, there is no express direct conflict between the Third District decision and the other cases cited.

CONCLUSION

For all of the foregoing reasons, State Farm's petition for review should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail/fax this ____ day of March, 2010 to:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing Answer Brief on Jurisdiction complies with the font requirements set forth in Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14-point typeface.

Lauri Waldman Ross, Esq.