SCV: Submitted on 08-16-2019 16:01:16 EDT for filing on 08-16-2019

IN THE

Supreme Court of Virginia

Record No. 181533

JOSEPH S. CORRIVEAU, by his mother and next friend, TRACEY BALLAGH,

Appellant,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al*.,

Appellees.

BRIEF OF APPELLEE STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

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STATEMENT OF THE CASE

Appellee State Farm Mutual Automobile Insurance Company ("State Farm") generally adopts the Statement of the Case contained in the Opening Brief of Appellant. However, State Farm points out that "The Circuit Court's Opinion" was much more thorough, comprehensive, and applicable to all relevant issues than as set forth in Corriveau's Statement of the Case.

STATEMENT OF THE FACTS

Similarly, State Farm adopts the "Statement of the Facts" set forth by Corriveau in his Opening Brief of Appellant. However, State Farm would dispute the statement on Page 4 of the Opening Brief under the Statement of the Facts that "Holland and Evans used these special needs harnesses to facilitate the abuse they carried out on Corriveau and Timothy".

STANDARD OF REVIEW

State Farm adopts the "Standard of Review" set forth in Corriveau's Petition for Appeal.

ARGUMENT AND AUTHORITIES

This appeal involves an inquiry as to whether an injury was sustained as a result of the "ownership, maintenance, or use "of an uninsured vehicle". (JA 80). The parties agree that in determining whether an accident or incident arises from the use of an uninsured vehicle, the critical issue and relevant inquiry as in this case is whether there is a causal relationship between the incident and the employment of the uninsured vehicle as a vehicle. State Farm Mutual Automobile Insurance Company v. Powell, 227 Va. 492 (1984); Simpson v. Virginia Mun. Liability Pool, 279 Va. 694, 699 (2010). That was and remains the relatively narrow issue which was presented to the trial court and upon which the trial court clearly expounded his ruling and was foundational for his ruling. Moreover, that the vehicle was being used as a vehicle also requires that the injury resulted from such use. Jane Doe v. State Farm Mutual Automobile Insurance Company, 878 F. Supp. 862, 864 (E.D. Va. 1995).

In addition, the Courts have reiterated that for UM coverage to extend to an injured party under circumstances and applications similar to this case, consideration must be given to the intention of the parties to the insurance agreement. State Farm Mutual Automobile Insurance Company v. Rice, 239 Va.

646 (1990). In other words, the scope of the coverage should reasonably be within the contemplation of the parties to the insurance contract at its inception. Simpson v. Virginia Mun. Liability Pool, 279 Va. 694 (2010).

Corriveau relies heavily on the case of State Farm v. Rice, 239 Va. 646 (1990). Importantly, Corriveau's use of Rice, and the specific excerpts set forth in the Opening Brief from Rice, supports the argument of State Farm in this case that no UM coverage should be afforded by State Farm. Corriveau acknowledges that this Court in Rice stated that "the specific enterprise associated with the use of the Jeep was to transport [the two hunters], their rifles, ammunition, and other hunting equipment to the location where they intended to embark upon their hunting expedition". Rice, 239 Va. at 649. In Rice, one of the men was shot while he was outside of the Jeep with a rifle being transported in the Jeep, the rifle clearly being an implement of the hunting expedition upon which they were embarking.

In this case, Corriveau attempts to analogize the hunting rifle in Rice with the safety harnesses in the special needs school bus at issue in this case. However, such an argument is readily distinguishable from the situation and rationale in Rice. The implements of the assaults and batteries purportedly inflicted upon Corriveau in this case were, as the trial court correctly noted, and as Corriveau concedes in his Statement of Facts, a fly-swatter, slapping, kicking, choking,

elbowing, a hand, pushing of a child's head, and spraying. (JA 117-118).

None of those implements of harm in the instant case were in any way specifically associated with the scope, function, or utility of the transport of special needs children like Corriveau in the special needs bus. The safety harnesses did not cause any harm to Corriveau. There are no allegations or assertions that Corriveau sustained ANY injuries from the safety harnesses, such as belt burns or belt rashes. Their use was merely incidental in the assaults. Corriveau's purported injuries did not result from the use of the safety harnesses, as was contemplated by this Court as a requirement to extend UM coverage in State Farm v. Rice. As such, this case is similar to and controlled by that of Doe v. State Farm, in which the State Farm v. Rice case was readily distinguishable. The special needs school bus was merely the location of the incidents and did not supply or furnish in any way the implements of the actionable incidents.

That the Bedford County school bus may have been designed for a specific purpose of transporting special needs children like Corriveau is not dispositive. There remains no connection or nexus between its special design and use, and the purported injuries sustained. The implements of the assaults were in no way connected to the special use of the bus. Corriveau is groping and straining to jam this case into the State Farm v. Rice rationale. It is not even a close fit.

In addition, Counsel for Corriveau briefly touches on the concept of the heightened duty of a common carrier towards its passengers and the foreseeable contact between driver and passenger. Such a concept is inapplicable in this case. As stated to the trial court, and without any contradiction or opposition, there is no reference in the State Farm auto policy at issue in this case regarding any provisions specifically for "common carriers". Further, as duly noted by the trial court, this special needs bus, as far as the trial court was concerned, was not a "common carrier" under Virginia law. (JA 102-107).

Finally, the trial court also correctly referenced the contemplation and intention of the parties to the insurance contract regarding the foreseeability of risks insured against. That concept was raised both in State Farm v. Powell and Doe v. State Farm. As set forth by the Federal District Court in Doe v. State Farm, 878 F. Supp. at 864:

> Analysis properly begins with State Farm Mutual Automobile Insurance Company v. Powell, 227 Va. 492, 318 S.E.2d 393, 397 (1984), as that opinion announces certain basic principles to guide courts in interpreting "ownership, maintenance or use" provisions in automobile insurance policies. The starting point in determining the scope of insurance coverage, according to the Powell court, is "consideration… [of] the intention of the parties." Id.
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> ***
>
> [e]ven though ownership, maintenance, or use of the vehicle need not be the direct, proximate cause of the

> injury in the strict legal sense nevertheless there must be a causal relationship between the accident and employment of the insured motor vehicle as a vehicle.

The trial court properly concluded that the conduct giving rise to this case was not such conduct as would be in the contemplation of the parties to the insurance contract at the inception of the contract. It strains reason to argue that such conduct would have been in the contemplation of the parties.

CONCLUSION

Accordingly, the ruling of the trial court below should be affirmed.

Respectfully submitted,

STATE FARM MUTUAL AUTOMOBILE
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By Counsel

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CERTIFICATE

The undersigned counsel for Appellee hereby certifies as follows:

1. The Appellants are: Joseph S. Corriveau, by his mother and next friend Tracey Ballagh.

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2. The Appellees are: State Farm Mutual Automobile Insurance Company and VACORP.

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3. On August 16, 2019 under Rule 5:26(e) of the Rules of the Supreme Court of Virginia, the correct number of copies of this Brief of Appellee have been hand-filed with the Clerk of the Supreme Court of Virginia, and true copies have been emailed to counsel for Appellant and counsel for the other Appellee, VACORP, on this date.

4. Counsel for Appellee wishes to state orally and in person the reasons why this appeal should be denied.

/s/ John P. Cattano
John P. Cattano, Esq.