IN THE SUPREME COURT OF MISSOURI

Case No. SC94075

ADAM DUTTON,

Plaintiffs/Appellants,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY

Defendant/Respondent.

Appeal from the Circuit Court of Jackson County, Missouri
No. 1116-CV08343

SUBSTITUTE BRIEF OF *AMICUS CURIAE* MISSOURI ORGANIZATION OF DEFENSE LAWYERS IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE*

The Missouri Organization of Defense Lawyers ("MODL") is an association of Missouri attorneys dedicated to promoting improvements in the administration of justice and optimizing the quality of the services that the legal profession renders to society. The attorneys who compose MODL's membership devote a substantial amount of their professional time to representing defendants in civil litigation, including matters involving automobile insurance. As an organization composed entirely of Missouri attorneys, MODL is concerned and interested in the establishment of fair and predicable laws affecting tort and insurance litigation involving individual and corporate clients that will maintain the integrity and fairness of civil litigation for both plaintiffs and defendants.

MODL addresses just one issue presented in this case: Whether the Missouri Vehicle Financial Responsibility Law (MVFRL)[1] mandates that an "owner's" policy of automobile liability insurance extend liability insurance protection to the insured for his or her operation of any vehicle at all, regardless of

[1] For ease of reference, the Missouri Vehicle Financial Responsibility Law, Mo. Rev. Stat. §§ 303.010 *et seq.*, is referred to herein as the "MVFRL." Further, all statutory citations herein are to the Revised Statutes of Missouri 2000 unless otherwise indicated.

whether the vehicle is designated as a covered vehicle in the "owner's" policy under which coverage is sought. MODL supports Respondent's position that the MVFRL imposes no such requirement.

CONSENT OF THE PARTIES

Counsel for Plaintiff objects to the filing of this *Amicus Curiae* Brief. MODL filed a Motion for Leave to File Amicus Curiae Brief pursuant to Rule 84.05(f)(3). That motion was sustained on July 2, 2014.

JURISDICTIONAL STATEMENT

MODL adopts the Jurisdictional Statement of Respondent.

STATEMENT OF FACTS

MODL adopts the Statement of Facts of Respondent.

ARGUMENT

As set out in Appellant's Statement of Facts, it is undisputed that Ms. Hiles purchased an "owner's" insurance policy for a Ford F-250 that she personally owned (the "F-250 Policy"). *See* Appellant's Substitute Brief (hereafter "App. Br.") 7. That is the insurance policy from which Dutton demands payment in this case. In the accident at issue here, however, Ms. Hiles was operating a different vehicle – a Nissan she also owned, and for which she had also purchased an "owner's" policy. *Id.* To the extent there is any dispute regarding whether the

Nissan was designated as a covered vehicle under the F-250 policy, MODL takes no position thereon. MODL addresses application of the MVFRL assuming that the F-250 policy *did not* designate the Nissan as a vehicle for which coverage was provided.

I. The MVFRL Does Not Require An Owner's Policy to Provide Liability Coverage for Operation of a Household Vehicle that is Not Designated in the Policy.

In his first argument, Dutton erroneously asserts that Missouri precedent already interprets the MVFRL to require stacking of the minimum $25,000 per person liability coverage under *every* "owner's policy" an insured has in force at the time of an automobile accident, regardless of whether the vehicle the insured was operating at the time of the accident is designated as a "covered" vehicle in each such "owner's" policy. *See* App. Br. 16-17 (footnote omitted). Dutton relies on *Karscig v. McConville*, 303 S.W.3d 499 (Mo. banc 2010) and *American Standard Insurance Co. v. Hargrave*, 34 S.W.3d 88 (Mo. banc 2000) for his assertion, but he has misapplied those authorities and misreads the MVFRL itself.

The MVFRL (and particularly § 303.190.2(2) RSMo) is clear.[2] It does not require an owner's policy to provide coverage for the insured's operation of a second car the insured owns, but which is not designated as a covered vehicle in an owner's policy. This Court did not hold otherwise in *Hargrave* or *Karscig*. Dutton's proposed interpretation of the MVFRL conflicts with the statute itself, and it accordingly cannot stand.

A. The Purpose of the MVFRL and What it Regulates.

This Court has explained that "[t]he purpose of the MVFRL is to ensure that persons injured on Missouri's highways . . . may collect at least minimal damage awards against negligent motor vehicle operators." *American Standard Ins. Co. v. Hargrave*, 34 S.W.3d 88, 90 (Mo. banc 2000). The extent of the protection the statute provides can only be found in the terms of the MVFRL itself.

The Legislature carefully defined the statute's minimum "financial responsibility" insurance requirements. The statute requires different types of policies depending on whether the insured is purchasing a policy for – a vehicle he or she owns (an "owner's" policy), or an "operator's" policy that would provide

[2] It is well-settled that the primary goal of interpreting any statute is to ascertain the intent of the legislature from the statutory language. *State ex rel. Womack v. Rolf*, 173 S.W.3d 634, 638 (Mo. banc 2005).

coverage for the insured's operation of vehicles he or she does *not* own. §§ 303.190.2-.3

Significantly, the Legislature left insurers and policyholders free to agree to the inclusion of coverage *beyond* the minimum coverage mandates in the MVFRL. Any such additional coverage may be offered on whatever terms the insured and policyholder might agree upon, and is not regulated by or subject to the terms of the MVFRL:

> 7. Any policy which grants the coverage required for a motor vehicle policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage *shall not be subject to the provisions of this chapter*. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

§ 303.190.7 (emphasis supplied).

B. Section 303.025.1 of the MVFRL Identifies Who Must Maintain "Financial Responsibility" Under the Act.

A proper analysis of the MVFRL begins with Section 303.025.1. That provision creates the financial responsibility requirements for owners and operators of vehicles in Missouri:

> 1. No *owner of a motor vehicle* registered in this state, or required to be registered in this state, shall *operate*, register or maintain registration of a motor vehicle, or permit another person to operate *such vehicle*, unless the owner maintains the financial responsibility which conforms to the requirements of the laws of this state. Furthermore, *no person* shall operate a motor vehicle *owned by another* with the knowledge that the owner has not maintained financial responsibility unless such person has financial responsibility which covers the person's operation of the other's vehicle;

§ 303.025.1 (emphasis supplied).

The first sentence of the section specifically applies to individuals who *own* vehicles. It instructs that a vehicle owner must "maintain financial responsibility" for the vehicle he or she owns, both for the insured's operation of the vehicle and for others' operation of that vehicle with the owner's permission. *Id.*

The instruction in the second sentence of Section 303.025.1 applies to *all* individuals, whether they own a vehicle or not. It imposes a *conditional*

requirement for a single, specific circumstance: If a person intends to operate a vehicle he does not own, and if he knows that the vehicle he intends to operate is *not* already insured by its owner, then the vehicle operator can only operate the vehicle if he has insurance coverage of his own that will apply to his operation of the non-owned vehicle.

C. Sections 303.025.2 and 303.190 of the MVFRL Expressly Permit Issuance of a Motor Vehicle "Owner's Policy" That Provides Coverage Only for the Operation of the Vehicle(s) Specifically Designated in the Policy.

1. Section 303.025.

The next pertinent provision of the MVFRL is Section 303.025.2. That provision instructs that a vehicle owner can satisfy the requirement to maintain "financial responsibility" for the vehicle he or she owns in a number of ways, including through purchase of "a motor vehicle liability policy which conforms to the requirements of the laws of this state." § 303.025.2. What, then, is a "conforming" vehicle liability policy? Section 303.190 provides the answer.

2. Section 303.190.

Section 303.190 begins by identifying two separate and distinct kinds of policies that will satisfy the minimum insurance requirements of the MVFRL – (1)

an "owner's policy" or (2) an "operator's policy." 303.190.1. Numerous Missouri decisions recognize that these two policy forms are substantially different, and that a policy must only satisfy the requirements for one kind of policy. See, e.g., *Karscig v. McConville*, 303 S.W.3d 499, 503 (Mo. banc 2010) ("a policy issued to an owner is an 'owner's policy' and must comply with the statutory mandates of § 303.190.2, while a policy issued to a non-owner is an 'operator's policy' and must comply with the statutory mandates of § 303.190.3"); *State Farm Mutual Auto. Ins. Co. v. Scheel*, 973 S.W.2d 560, 566-67 (Mo. App. W.D. 1998) (because policy satisfied the requirements for an "owner's policy" under the MVFRL, the policy did not also have to satisfy the requirements for an "operator's policy"); *Shelter Mut. Ins. Co. v. Ridenhour*, 936 S.W.2d 857, 858-59 (Mo. App. E.D. 1997) (the requirements for "owner's" and "operator's policies" differ under the MVFRL; an "owner's policy" need not also satisfy the requirements for an "operator's policy"). The form of policy pertinent in Dutton's appeal is the "owner's" policy.

Under Sections 303.190.2(1) and (2) of the MVFRL, an "owner's policy" must satisfy two specific requirements: (i) it must "*designate* by explicit description or appropriate reference" the particular vehicle or vehicles for which it grants coverage; and (ii) it must provide the minimum liability coverage for *the*

designated vehicle(s) when operated either by the vehicle owner or a permissive user:

> Such owner's policy of liability insurance:
>
> (1) Shall *designate* by explicit description or by appropriate reference *all motor vehicles with respect to which coverage is thereby to be granted*;
>
> (2) Shall insure the person named therein and any other person, as insured, *using any such motor vehicle or motor vehicles* with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of *such motor vehicle or motor vehicles*, subject to limits, exclusive of interest and costs, with respect to *each such motor vehicle*, as follows: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars because of injury to or destruction of property of others in any one accident.

§§ 303.190.2(1)-(2) (emphasis supplied). Section 303.190.2(2) repeatedly states that the liability coverage required under an "owner's policy" is coverage for the specific vehicle(s) designated as the insured vehicle(s) under the policy. Each reference to a vehicle is to "such motor vehicles" or "each such motor vehicle". "The plain meaning of the modifier 'such' is, 'of the type previously mentioned.'" *DeMeo v. State Farm Mutual Automobile Insurance Co.*, 639 F.3d 413, 416 (8th Cir. 2010).

Not a word of Section 303.190.2(2) requires a conforming "owner's" policy to provide any liability coverage for operation of a vehicle that is *not* designated in that policy as a covered vehicle. Indeed, nowhere does that Section even mention vehicles that are *not* "designated" as covered vehicles.

D. The MVFRL Should Be Applied According to its Terms.

Earlier Missouri decisions construing the MVFRL have recognized that the Legislature set the scope of the minimum coverage an "owner's" policy must provide, and that those limits are not to be expanded. For example, in *Sisk v. American Family Mutual Ins. Co.*, 860 S.W.2d 34, 35 (Mo. App. E.D. 1993), a vehicle owner purchased an "owner's policy" that completely excluded liability coverage for her use of any vehicle other than the Mercury Cougar identified as the insured vehicle under the policy. She operated her husband's vehicle without

permission, caused injuries, and sought coverage under her own policy. She argued that exclusion of coverage for her use of her husband's car violated the MVFRL. *Id.* The trial court held in favor of the insured, but the appellate court reversed. *Id.* The court pointed specifically to the fact that, although an "operator's policy" must afford coverage for the named insured's use of a non-owned vehicle, no such requirement exists for an "owner's policy." The court concluded that because the insured's "owner's policy" complied with Section 303.190.2, the coverage offered was sufficient, and that enforcement of the policy terms to deny coverage did not violate the MVFRL.

Shelter Mutual Ins. Co. v. Ridenhour, 936 S.W.2d 857 (Mo. App. E.D. 1997), is also instructive. In *Ridenhour*, the insured had an owner's policy for his own vehicle, but was driving a non-owned vehicle without permission when he caused an accident harming others. *Id.* at 858. The insured sought coverage under his own policy despite a provision in the policy excluding coverage for use of a non-owned vehicle without permission. *Id.* at 858-59. The *Ridenhour* Court held that the exclusion did not violate the public policy of Missouri, and that the owner's policy the insured had purchased fully satisfied the MVFRL despite the presence of the exclusion. *Id.* Indeed, the *Ridenhour* court noted that "owner's policies" *commonly* exclude coverage for a vehicle owner's operation of other

vehicles. *Id.* at 859.

Had the Legislature intended to require an "owner's policy" to provide broader liability coverage – *e.g.*, for the insured's operation of vehicles *not* designated in the policy as covered – it certainly could have said so expressly.

For example, section 379.203.1 requires all automobile insurance policies to provide uninsured motor vehicle coverage "for the protection of *persons* insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury". (Emphasis added.) Beginning with *Cameron Mutual Insurance Co. v. Madden*, 533 S.W.2d 538, 545-46 (Mo. banc 1976), this Court recognized that § 379.203.1 focuses on providing protection for *persons* who are insured by the policy. Therefore, limitations on an insured person's ability to stack the uninsured coverage of multiple policies violate the requirement of the statute. In *First National Insurance Co. v. Clark*, 899 S.W.2d 520 (Mo. banc 1995), however, this Court recognized the difference between the broad mandate for uninsured motorist coverage of *persons* and the more limited mandate for *liability* coverage in an "owner's" policy:

> By its clear language, Section 379.203 requires a minimum amount of coverage to persons, *not particularly described vehicles*. Thus, *Cameron* held that a contract term that

> purported to limit uninsured motorist coverage to injuries received in a particularly described vehicle violated the statutory mandate.
>
> Unlike uninsured motorist coverage, the liability insurance described under the safety responsibility law relates to the use and operation of a particularly described motor vehicle or class of motor vehicles….
>
> Section 303.025 has a different focus than the uninsured motorist law ….

Id. at 522 (emphasis supplied).

As it has in §§ 379.203.1 and 303.190.3, the Legislature could have mandated in § 303.190.2(2) that each owner's policy cover the insured person(s) for the operation of a broad or limitless class of vehicles. It did not do so. Instead, it expressed exactly the *opposite* intent, by mandating that an "owner's" policy is only required to cover vehicle(s) *designated* in the policy. That is precisely what differentiates an "owner's" policy from an "operator's" policy, as described in Section 303.190.

The fact that § 303.190.2(2) does not require an "owner's" policy to cover operation of vehicles other than those "designated" in the "owner's" policy demonstrates that the MVFRL simply does not require such broad coverage for that form of policy.. *See State v. Nations*, 676 S.W.2d 282, 285 (Mo. Ct. App. 1984). To read the MVFRL in any other manner would do violence to the clear text of the statute itself.

E. *Hargrave* and *Karscig* Are Inapposite.

As noted above, Dutton relies on *Karscig v. McConville*, 303 S.W.3d 499 (Mo. banc 2010) and *American Standard Insurance Co. v. Hargrave*, 34 S.W.3d 88 (Mo. banc 2000) in support of his contention that the MVFRL requires coverage under Ms. Hiles' F-250 policy even if the Nissan she was driving at the time of the accident was not designated as a "covered" vehicle under that policy. Dutton's reliance on those cases is misplaced.

In *Hargrave* Jeanette Hargrave was operating her father's vehicle when she negligently had an accident that injured her son. *Hargrave*, 34 S.W.3d at 89. Her father carried a State Farm "owner's policy" on the car. State Farm made a payment from the liability coverage of that policy.

In addition to the State Farm policy, the *Hargrave* opinion states that Ms. Hargrave also "had liability coverage" under an "owner's" policy that American

Standard had issued to her husband. *Id.* Ms. Hargrave sought payment under that policy as well, but American Standard argued that it owed no payment for Ms. Hargrave's loss. American Standard pointed to a household exclusion clause in Mr. Hargrave's policy that purported to eliminate liability coverage where, as had occurred with Ms. Hargrave, an accident resulted in bodily injury to her children who were living in her household.

American Standard conceded that the MVFRL would preclude enforcement of this household exclusion if *no* other insurance was available for Ms. Hargrave's accident. But in Ms. Hargrave's case, coverage had been paid under the State Farm policy. Relying on *First National Insurance Co. v. Clark*, *supra*, 899 S.W.2d 520, American Standard argued the MVFRL only required a single $25,000 payment to an injured party, and once any insurer paid that amount, the statute did not apply to other policies. *Hargrave*, 34 S.W.3d at 92. Therefore, American Standard argued, its household exclusion clause remained effective and precluded coverage.

This Court disagreed. In so doing, however, the Court explicitly framed the issue before it as "the application of Section 303.190 in instances where an insured is *covered* by multiple vehicle owner liability policies *when those policies each contain a household exclusion clause.*" *Id.* at 89-90 (emphasis supplied). The

Court recited the general requirement under the MVFRL that vehicle owners must be responsible for vehicles they own and those they operate (*id.* at 90), but went on to state that "*Halpin* [*v. American Family Mutual Ins. Co.*, 823 S.W.2d 479 (Mo. banc 1992)] holds *all household exclusion* clauses invalid up to" the minimum liability coverage limits set forth in the MVFRL. *Id.* at 91 (emphasis original).

Here, there is no argument that a household exclusion operates to eliminate liability coverage under the F-250 policy for Ms. Hiles' operation of the Nissan. The question Dutton poses is entirely different: Whether the minimum liability coverage required for an "owner's" policy under the MVFRL extends to *any* vehicle the insured operates, regardless of whether the vehicle is "designated" as a covered vehicle under the "owner's" policy. If that issue was even raised in *Hargrave*, it certainly was not discussed by this Court. *Hargrave* accordingly does not speak to, much less support, Dutton's proposed construction of § 303.190.2(2).

MODL respectfully submits that in *Hargrave*, if the vehicle Ms. Hargrave was driving at the time of her accident was *not* designated as a covered vehicle under her husband's "owner's" policy, proper application of § 303.190.2(2) would lead to the conclusion that any liability coverage provided to Ms. Hargrave under her husband's policy would *not* be subject to the minimum requirements of the MFVRL. Rather, any coverage for operation of her father's car would be

"additional coverage" within the meaning of § 303.190.7, and would not be regulated by the MVFRL.

Dutton's reliance on *Karscig* likewise is misplaced. His error in respect to *Karscig* is his failure to acknowledge that *Karscig* turned on this Court's holding that the policy in question was an "operator's policy," and thus subject to the very different requirements of § 303.190.3. *Karscig*, 303 S.W.3d at 503. The only form of policy at issue in this appeal is an "owner's" policy.

In *Karscig*, a negligent driver (Jennifer) caused an accident while driving a car owned by her parents. 303 S.W.3d at 501. The parents had an owner's policy for the vehicle. That policy covered Jennifer for her use of that vehicle. *Id.*

Jennifer held a policy that described a different vehicle. Her parents also owned that vehicle. *Id.* Jennifer's insurer denied coverage under the policy she owned, relying on an exclusion in the policy for her operation of any household vehicle other than the one specified as the insured vehicle under her policy. *Id.* at 501-02.

This Court held that because Jennifer did not own the vehicle specified as the insured vehicle the policy she owned, that policy *could not be* an "owner's policy" under Missouri law. *Id.* at 503. Accordingly, the Court concluded that Jennifer's policy had to be treated as an "operator's policy," and that it had to be

read to provide the minimum protection required under and governed by Section 303.190.3 of the MVFRL. An "operator's policy," unlike an "owner's policy," must extend coverage for an insured's use of *any* vehicle the insured does not own. *Id.* at 504; *see also* § 303.190.3. As Jennifer did not own the vehicle she was operating at the time of her accident, the MVFRL required that her policy be read to provide coverage for her operation of that vehicle.

In sum, this Court carefully analyzed the requirements for an "operator's policy" in *Karscig*, but that analysis has no application here. Ms. Hiles purchased an insurance policy for a vehicle she *does* own. There is no reason to treat her owner's policy as an "operator's policy" under the MVFRL. Rather, the only portion of the MVFRL pertinent to the scope of Ms. Hiles' liability coverage is Section 303.190.2, addressing the minimum requirements for an "owner's policy." Nothing this Court decided in *Karscig* bears on the issues in the instant action.

CONCLUSION

MODL respectfully submits that the plain language of the MVFRL does not require an owner's policy to provide the policyholder with liability coverage for the operation of any vehicle that is not designated as a covered vehicle under the policy. The MVFRL clearly expresses the intent of the legislature as to the limited scope of mandatory coverage required for an "owner's policy" in Missouri.

Dutton's proposed reading of the MVFRL extends far beyond the terms of that statute, and no prior court decisions of this Court or the Court of Appeals support Dutton's novel interpretation of § 303.190.2(2). Accordingly, MODL respectfully urges the Court to apply the MVFRL in accordance with its clear terms, rather than as Dutton has advocated, as it reaches its decision in this case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Amicus Brief complies with the limitations of Missouri Supreme Court Rule 84.06(b), and that this Brief contains 4425 words of proportional font, excluding the cover, signature block, certificate of service and this certificate (as determined by Microsoft Office Word software). The original signed Brief will be maintained for a period of not less than the maximum allowable time to complete the appellate process.

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CERTIFICATE OF SERVICE

The undersigned certifies that on July 7, 2014, I electronically filed the foregoing with the Clerk of the court and that I sent an electronic copy hereof by email to:

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The undersigned further certifies that the electronic file has been scanned for viruses and is virus free.

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