

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

MERCURY INSURANCE
COMPANY OF FLORIDA,

Appellant,

v.

CASE NO. 1D04-0683

ASHLEY COATNEY, as personal
representative of THE ESTATE OF
CEASAR L. COATNEY, DECEASED,
WILLIAM H. MOODY, SR., and
MARGARET MOODY,

Appellees.

Opinion filed August 16, 2005.

An appeal from the Circuit Court for Bay County.
Judy Pittman, Judge.

Mark J. Upton of Daniell, Upton, Perry & Morris, P.A., Daphne, Alabama, for
Appellant.

Randle D. Thompson of Kerrigan, Estess, Rankin, McLeod & Thompson, LLP,
Pensacola, for Appellees William H. Moody, Sr., and Margaret Moody.

John Fishel of Boggs & Fishel, Panama City, for Appellee Ashley Coatney.

Louis K. Rosenbloum of Louis K. Rosenbloum, P.A., Pensacola, for Appellees.

ON MOTIONS FOR REHEARING OR CLARIFICATION

PER CURIAM.

Pursuant to the respective parties' motions for clarification, and appellant's motion for rehearing, we withdraw the opinion issued in this cause on June 7, 2005, and substitute the following in its place. We deny appellant's motion for rehearing, but grant the motions for clarification.

This is an appeal from a declaratory judgment in which the trial court ruled that an exclusion in an automobile-liability insurance policy for any loss caused while the insured is committing or attempting to commit a felony was void as against public policy, pursuant to Allstate Indemnity Co. v. Wise, 818 So. 2d 524 (Fla. 2d DCA 2001). Appellant, Mercury Insurance Company of Florida (Mercury), also appeals an award of attorney's fees¹ to appellees, William H. Moody, Sr., and Margaret Moody. Mercury concedes that if we affirm the declaratory judgment, the lower court's assessment of fees as to Ashley Coatney pursuant to section 627.428(1), Florida Statutes (2002), was proper, but objects to the award of fees to William H. Moody, Sr., and Margaret Moody.

Notwithstanding appellees' agreement with the position taken by Mercury with respect to the award of section 57.105 attorney's fees, we conclude the trial court

¹Entered pursuant to section 57.105, Florida Statutes (2002).

properly exercised its discretion in this regard. In ruling on the declaratory judgment action, the trial court found the issue presented was controlled by the opinion in Allstate. We agree. In the absence of a supreme court decision on point, the trial court is bound to follow decisions of the district courts of appeal, and where there is no district court decision on point from the district court for the subject circuit, the trial court is bound to follow precedents of other district courts of appeal. See Pardo v. State, 596 So. 2d 665, 666-67 (Fla. 2d DCA 1992). Since there was no decision from this court on point, the trial court was required to follow the second district decision in Allstate in ruling on the declaratory judgment action. We therefore conclude the trial court properly awarded an attorney's fee pursuant to section 57.105, Florida Statutes (2002), to appellees William H. Moody, Sr., and Margaret Moody.

Accordingly, we AFFIRM the declaratory judgment, based on the rationale of Wise, and similarly AFFIRM the fee award.

ERVIN, DAVIS and HAWKES, JJ., CONCUR.