

**IN THE MUNICIPAL COURT OF APPEALS  
OF THE CITY OF EL PASO, TEXAS**

**CHRISTINA IRENE FLORES**

Appellant,

v.

**STATE OF TEXAS**

Appellee.

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**No. 11-MCA-3490**

**Ticket #: 18401128.2**

**OPINION**

Appellant appeals her conviction in Municipal Court for failing to maintain financial responsibility contrary to Section 601.151, Tex. Trans. Code. A fine of \$175.00 was assessed.

Appellant has submitted to this Court a Texas Liability Insurance Card in effect on the date she was cited covering the vehicle she was driving at the time. It is unclear whether she submitted this evidence to the Trial Court.

However, it does not identify her specifically as an insured driver, but only names Arturo, Norma, and Norma Isabel as insured drivers of the vehicle.

Nonetheless, the fact that she is not a named insured driver does not prevent her from being covered either as a resident of the family's household or as a permissive user of the vehicle. The Standard Texas Personal Auto Policy provides that an insurance company will pay damages for bodily injury or property damage for which a "covered person" becomes legally responsible because of an accident. "Covered person" is defined as the named insured or any family member using the vehicle. In turn, "family member" means a person who is a resident of your household and related to the insured by blood, marriage or

adoption. Therefore, if Appellant was a resident of the insured's household, she would have been covered unless she is an excluded driver.

An "excluded driver" endorsement is valid under Texas law and does not conflict with the Financial Responsibility Act. Therefore, if the insurance policy contains a "Form 515A" exclusion, none of the insurance coverage benefits would apply to that excluded driver. Spaugh v. Northern County Mutual Insurance Company and Charter General Agency, Inc., No. 09-96-158 CV (Tex. Civ. App. 9th District, Beaumont) 1997 Tex. App. Lexis 4424. Zamora v. Dairyland County Mutual Insurance Company, 930 S.W. 2d 739, (Tex. Civ. App., 13th District, Corpus Christi). Although this Court has seen notations on the standard Texas Liability Insurance Card reflecting that a person is an excluded driver, most of the time, an excluded driver is not identified. Therefore, without seeing the policy and whether it contains a Form 515A endorsement, you would not be able to determine if that person is an excluded driver.

Although, an owner of the vehicle may provide evidence of financial responsibility for others, such as members of the owner's household, it does not require the owner to provide auto insurance for every individual living in the owner's household. Spaugh v. Northern County Mutual Insurance Company, (cited above).

Further, if Appellant was not a resident of the insured's household, but was driving the insured vehicle with permission of the insured, then she would have extended coverage under the provisions of an "owner's policy". An owner's policy of liability insurance provides coverage to all motor vehicles identified in the policy, and provides liability protection on behalf of the insured named in the policy and "**any other person, as insured, using any such motor vehicle or motor vehicles with the expressed or implied**

**permission of such named insured."** Again, nothing on the standard Texas Liability Insurance Card would reflect the coverage available to a person who is a permissive user.

This Court has attempted to provide Appellant with ample opportunity to provide this Court with verification of coverage, and this Court has independently taken upon itself to verify coverage with her insurance company. Despite the City Prosecutor's Brief that their contact with the insurance company reflected that there was no coverage, this Court's investigation into the issue reflected that there may well have been coverage if Appellant was a resident of the insured's household or she was a permissive driver, which she claims she was.

This Court has made every effort to permit persons charged with this offense to establish the defense provided to them under Section 601.193, Tex. Trans. Code, so that they would avoid the significant consequences of conviction for this offense, including fine and Court costs as well as surcharges of \$250.00 each year for three years following conviction under the Driver Responsibility Act. [See Serna v. State, (11-MCA-3464, Mun. Ct. App.--2011); Escobar v. State, (11-MCA-3487, Mun. Ct. App.—2011); Torre v. State, (11-MCA-3486, Mun. Ct. App.—2011); Wilbanks v. State, (11-MCA-3489, Mun. Ct. App.—2011); Luykx v. State, (11-MCA-3493, Mun. Ct. App.--2011)]

This Court therefore will reverse and remand this case to the Trial Court for further consideration of the issue and to determine if Appellant can meet her burden of proof to

establish that coverage was available to her as outlined above.

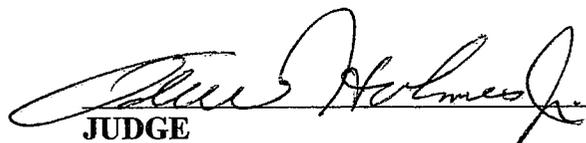
SIGNED this 11<sup>th</sup> day of October, 2011.

  
JUDGE

**JUDGMENT**

This case came on to be heard on the Transcript of the Record of the Court below, the same being considered, it is ORDERED, ADJUDGED and DECREED by the Court that the case be reversed and remanded to the Trial Court for re-trial.

SIGNED this 11<sup>th</sup> day of October, 2011.

  
JUDGE