

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SECURA INSURANCE COMPANY,  
Plaintiff-Appellee,

UNPUBLISHED  
March 19, 2013

v

No. 308425  
Shiawassee Circuit Court  
LC No. 11-001994-CZ

LARRY MATTHEWS and CONNIE  
MATTHEWS,

Defendants-Appellants,

and

JEFFREY STASA,

Defendant.

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Before: BORRELLO, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

In this insurance coverage dispute, defendants Larry Matthews and Connie Matthews (collectively the Matthews) appeal by right the trial court's opinion and order granting plaintiff Secura Insurance Company's request for declaratory relief. On appeal, the Matthews argue that the trial court erred when it determined that Secura did not have to defend and indemnify defendant Jeffrey Stasa because he was not an insured under the policy that Secura issued to Helen Stasa. We conclude that the trial court did not err when it determined that, under the undisputed facts, Jeffrey Stasa was not a member of Helen Stasa's household and, for that reason, was not covered under Helen Stasa's insurance policy with Secura. Accordingly, we affirm.

**I. BASIC FACTS**

Helen Stasa testified that, since the 1940s, she has owned two adjacent parcels that total 170 contiguous acres. Each parcel has a separate home and outbuildings with a separate driveway. The home on the north parcel faces Henderson Road and the home on the south parcel faces Riley Road. The two homes are connected by a "back lane" and are about a mile apart. Helen stated that she and her husband, who has since died, tore down the house on Henderson Road and replaced it with a new house. She raised her children, including her son Jeffrey Stasa,

in the Henderson Road home and continues to reside there. Helen said she and her husband farmed both properties until her husband was disabled.

Helen stated that she still owns the Riley Road property and pays the taxes on that property in addition to the taxes on the Henderson Road property. She also pays to maintain both homes and she insured both properties under a Special Farmowners Protector Policy that she purchased from Secura, including for the relevant time period from October 2007 through October 2008. Helen testified that Jeffrey has lived in the Riley Road home for about the last 30 years and that, in the summer of 2008, he lived there with his third wife, Melissa Dennis.

Jeffrey Stasa testified that he was outside smoking a cigarette in August 2008. He had his wife's dog by the collar when Larry Matthews drove an ATV up Riley Road and startled the dog: he "opens up his quad up by the creek and comes on down, and the dog rips out of my hand and comes out and he almost kills my animal on the road." The quad flipped and Matthews was injured; he had a small cut on his head and was only halfway conscious. Jeffrey said he called 911 and kept Matthews stable until an ambulance arrived.

Larry Matthews and his wife, Connie Matthews, sued Jeffrey and Helen Stasa in July 2010. The Matthews alleged that Larry suffered a brain injury, along with other injuries. The Matthews also alleged that, as a result of their failure to properly restrain the dog, Jeffrey and Helen Stasa were liable for Larry's injuries and Connie's loss of consortium. In June 2011, after it became clear that Helen Stasa did not own the dog involved in the accident, the parties stipulated to Helen's dismissal from that litigation with prejudice.

In May 2011, Secura sued Jeffrey Stasa and the Matthews for declaratory relief. Specifically, Secura asked the trial court to declare that Secura had no obligation to defend or indemnify Jeffrey Stasa under the policy that it had issued to Helen Stasa because Jeffrey was not a member of Helen's household and, therefore, was not an "insured" under the policy.

In June 2011, the Matthews and Jeffrey Stasa agreed to a \$300,000 consent judgment against Jeffrey in the underlying suit. Under the terms of the consent judgment, the parties agreed that the Matthews could not satisfy the judgment from Jeffrey's personal assets; they could only satisfy the judgment from the coverage available under the policy issued by Secura to Helen Stasa.

Secura moved for summary disposition under MCR 2.116(C)(10) in July 2011. In its motion, Secura argued that the undisputed evidence showed that Jeffrey Stasa was not a member of Helen Stasa's household because he did not live in the same house with her. For that reason, he did not constitute an "insured" as that term is defined under the policy issue to Helen Stasa even though the policy covered both the Henderson Road and Riley Road properties.

In response to Secura's motion, the Matthews argued that Jeffrey Stasa was a member of Helen Stasa's household. They maintained that whether a person lives under the same roof as the insured does not, by itself, resolve whether that person is a member of the insured's household. Because the policy covered both residences, they further maintained, the homes on Henderson Road and Riley Road should be viewed as one household for determining coverage.

After a hearing on the motion, the trial court determined that, under the undisputed facts, Jeffrey Stasa was not a member of Helen Stasa's household. Accordingly, Jeffrey was not an insured under Helen's policy with Secura. For this reason, it granted Secura's motion for summary disposition in December 2011.

This appeal followed.

## II. SUMMARY DISPOSITION

### A. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision to grant summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). This Court also reviews de novo the proper interpretation of an insurance contract. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005).

### B. ESTABLISHING RESIDENCY IN A HOUSEHOLD

In the policy that it issued to Helen Stasa, Secura agreed that, if "a claim is made or a suit is brought against an *insured* for damages because of *bodily injury* or *property damage* caused by an *occurrence* to which this coverage applies", it would pay "up to our limit of liability" for damages "for which the *insured* is legally liable" and would "provide a defense" to the insured at Secura's expense (emphases in original). There is no dispute that this liability coverage would apply to the extent that the Matthews' claims were against someone insured under the policy.

The term "insured" is defined in the policy to mean "you"; moreover, "you" and "your" are defined to mean the named insured shown on the declarations page. Helen Stasa is the only person named on the declarations page. As such, the terms "you" and "yours" refer to Helen alone and she is an "insured." In addition to defining an insured to mean "you", the policy defines an insured to include "residents of your household" who are also "your relatives." Because it is undisputed that Jeffrey Stasa is Helen Stasa's relative, he would be an insured under the policy if he is a "resident of [Helen Stasa's] household." The terms "resident" and "household" are not, however, defined under the policy. Hence, this phrase must be given its "plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory*, 473 Mich at 464.<sup>1</sup> Where the underlying facts are not in dispute, as is the case here, whether the

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<sup>1</sup> We reject the Matthews' contention that the term household, as used in the phrase "resident of your household", is ambiguous. The term plainly refers to persons living together as a family unit. See *Montgomery v Hawkeye Security Ins Co*, 52 Mich App 457, 460; 217 NW2d 449 (1974). And the fact that it can apply to a variety of living arrangements does not render it ambiguous. We also reject the Matthews' argument that related persons living in either house must be members of the same household because the policy covers both homes. A property owner might reasonably choose to insure multiple properties under the same policy, notwithstanding that the other properties are occupied by different households. In such a case, the policy might provide coverage for losses to the home itself and for liability arising from the

individual at issue was a resident of the insured's household is a matter of law for the courts. *Fowler v Auto Club Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002).<sup>2</sup>

As our Supreme Court recognized more than 30 years ago, the phrase “resident” of an insured's ‘household’” does not have an absolute meaning in ordinary communication; rather, it “may vary according to the circumstances’.” *Workman v Detroit Automobile Inter-Insurance Exchange*, 404 Mich 477, 495; 274 NW2d 373 (1979) (citations omitted). The meaning must be “viewed flexibly, ‘only within the context of the numerous factual settings possible’.” *Id.* at 496, quoting *Montgomery v Hawkeye Security Ins Co*, 52 Mich App 457, 461; 217 NW2d 449 (1974). For these reasons, our Supreme Court determined that courts should evaluate whether a person is a resident of a household by balancing all the relevant factors:

In considering these factors, no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others. Among the relevant factors are the following: (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his “domicile” or “household”; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; (4) the existence of another place of lodging by the person alleging “residence” or “domicile” in the household. [*Workman*, 404 Mich at 496-497 (internal citations omitted).]

It must be reiterated that no one factor is determinative; each factor must be weighed in light of the other factors. Thus, whether the person at issue is a member of the insured's household will not necessarily depend on whether that person resides under the same roof as the insured. *Montgomery*, 52 Mich App at 461 (rejecting a mechanical approach that looks solely to whether the persons at issue dwell in or occupy the same physical premises when determining whether the persons are residents of the same household); see also *Workman*, 404 Mich at 497 n 6 (holding that the fact that the person at issue lives under the same roof is a matter of weight in support of the conclusion that he or she is a member of the same household, but is not dispositive).<sup>3</sup> Rather, courts must consider the person's relationship to both the *place* at issue and the *group* that constitutes the household:

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policy holder's status as a landlord. Thus, the coverage would not be nugatory even though the separate property was occupied by related tenants.

<sup>2</sup> The policy further defines the term “insured” to include “‘additional insureds’ named in the Declarations”, but Jeffrey Stasa was not named as an “additional insured.”

<sup>3</sup> In *Workman*, our Supreme Court explained that, although it was construing a no-fault automobile policy that involved whether a person was domiciled in the same household, it was relying on long-standing precedents construing the phrase ‘resident of an insured's household.’ See *Workman*, 404 Mich at 495 (stating that this body of law is “analytically applicable” because the terms residence and domicile are legally synonymous with limited exceptions). Because we are not at liberty to overrule our Supreme Court, even if there are authorities from this Court that suggest that whether the person at issue lives under the same roof is the dispositive factor, we

Residence in a household contemplates both a relationship to a place and a membership in a group. It includes the common types of close relationships, varying greatly in detail, where persons live together as a family in a close knit group, usually because of close relationship by blood, marriage, or adoption, and deal with each other intimately, informally, and not at arm's length. [*National Ins Ass'n v Simpson*, 155 SW3d 134, 139 (Tenn App, 2004).]

A person who lives under the same roof with the insured might not be a member of the insured's household because he or she lacks the close knit and intimate relations that accompany being a member of a household or lacks the intent to meld with the family unit—such as might be the case with a boarder or a visiting relative. Conversely, a person who lives in an outbuilding or nearby home might, by reason of his or her intimate, informal, or dependent association with the insured and the insured's family, constitute a member of the insured's household despite not residing under the same roof.<sup>4</sup> These points can best be illustrated by examining the analyses in *Workman* and *Fowler*, which both involved persons who resided in structures that were separate from the insured's residence.

In *Workman*, our Supreme Court had to determine whether Deborah Workman was domiciled in the same household as her father-in-law and, for that reason, covered by his insurance policy. *Workman*, 404 Mich at 495. At the time of her accident, Deborah and her husband had taken their child to stay with Deborah's younger sister at Deborah's mother's house while her mother was away on vacation. *Id.* at 487. Prior to that point, Deborah and her family had moved into a trailer located on her father-in-law's property. *Id.*

In examining the various factors relevant to determining whether Deborah was domiciled with her father-in-law, the Court quickly rejected the notion that her stay at her mother's house altered her domicile: “[Deborah] testified that although she, her husband and child were temporarily staying with her younger sister in her mother's home when the accident occurred, if the accident had not happened, it was her family's intention to have gone back to the trailer as her home.” *Id.* at 497. Accordingly, the relevant inquiry was whether she was domiciled with her father-in-law, notwithstanding the fact that her home was a trailer located some 40 to 50 feet from her father-in-law's house. *Id.* at 498.

In holding that she was a member of her father-in-law's household, our Supreme Court found it important to note that the evidence showed that Deborah's nuclear family had an informal and friendly relationship with her father-in-law's family:

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must apply the flexible test stated by our Supreme Court in *Workman* until it elects to overrule or alter that decision. See *Boyd v WG Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993), overruled not in relevant part *Karaczewski v Farbman Stein & Co*, 478 Mich 28; 732 NW2d 56 (2007).

<sup>4</sup> Because the policy at issue limits coverage to persons who are both members of the household and related to the person identified on the declarations page, we need not consider whether and to what extent a person who is not related to the insured can be a member of the insured's household.

[S]he was welcome to use and did use all of the facilities of the house (*i.e.*, telephone, washers and dryers, and electricity, by cord from the house to the trailer), that her family ate meals with the senior Workman's family, and that during the day she and her child were "in and out" of the house. [*Id.*]

When this evidence was coupled with the fact that the trailer was on her father-in-law's property, belonged to him, was in close proximity to his house, and effectively depended on his house for utilities, the Court had no problem concluding that Deborah was a member of her father-in-law's household. *Id.*

In *Fowler*, this Court had to determine whether Ray Fowler was domiciled in his mother's household. *Fowler*, 254 Mich App at 363. At the time of the accident, Fowler was approximately 30 years old, divorced, and living with his girlfriend in an apartment in a carriage house on his parents' property:

[Fowler] had lived in the carriage house apartment for more than three years before he was injured, and did not have any plans to move. The carriage house and the main house had a shared address; however, the carriage house had its own entrance, its own set of locks, and its own walkway. The apartment consisted of a kitchen, a bathroom, a living room, and four bedrooms. [Fowler] testified that the carriage house had its own water, electric, gas, and telephone service, and that he or his girlfriend paid the utility bills. [He] paid his parents, who had keys to the carriage house, rent of \$500 a month, although the rental agreement was not reduced to a writing. Until he was injured, [he] and his girlfriend both worked and they shared housekeeping, laundry, and grocery shopping responsibilities. [Fowler] performed lawn maintenance and snow removal for his parents, and had an informal relationship in which he was allowed full access to their home. [He] and his parents often ate together. [*Id.* at 365.]

Although Fowler had established his domicile in his parents' carriage house, this Court nevertheless concluded that he was not a member of his parents' household; the Court reached that conclusion because it was clear from the evidence that Fowler had established his own independent household:

Unlike the arrangement in *Workman*, the evidence in this case established that [Fowler's] living arrangement was independent from his parents' household. [He] did not have a room in his parents' house, he did not rely on his parents for utilities or appliances, and [he] paid rent until he was injured. The fact that [his] parents had keys to the carriage house and that [he] stored items of personal property in his parents' house was insufficient in the face of the other evidence to make him a member of their household. On these facts, the trial court correctly determined as a matter of law that [Fowler] was not domiciled in his parents' household and therefore was not entitled to benefits under his mother's no-fault policy. [*Id.* at 365-366 (citation omitted).]

As can be seen from *Workman*, a household is not invariably limited to those persons who reside in a single building or structure; rather, persons living in separate buildings or structures can constitute a single household. The relevant factors will be the close relation of the structures along with the evidence that the residents function as an integrated unit. Even when two residences are related by proximity and ownership, as was the case in *Fowler*, if the persons residing in them do not live as a single, integrated family unit, they might not be part of the same household. In such cases, the apparent intent of the individuals to live independently of each other will be the most important factor.

### C. APPLYING THE LAW

Here, the undisputed evidence showed that Helen Stasa owned the home on Riley Road and that it was a part of her combined real properties. Helen's son, Jeffrey Stasa, had also occupied the Riley Road home as his residence for approximately 30 years. Helen testified that she does not have a formal arrangement with Jeffrey concerning the property: she does not require him to pay rent and she pays the taxes and upkeep on the property and provides the insurance for it. Although these factors support the conclusion that Jeffrey is a part of Helen's household, the remaining factors weigh strongly against his inclusion in her household.

Notably, the Riley Road home is separated from Helen's home by approximately one mile. Although there is a back lane connecting the two homes, the two homes are fully capable of supporting independent households; they have separate driveways, separate mailing addresses, separate facilities, and independent utilities. Indeed, Helen Stasa testified that, before Jeffrey moved into the Riley Road home, she and her husband had rented the home out. The lack of proximity and independent nature of the two homes limits the ability of the residents to effectively operate as a single household.<sup>5</sup>

In addition, although Jeffrey and his mother had a good relationship, there was evidence that they essentially maintained independent lives. Helen stated that Jeffrey had not worked on the farm since he was first married and that, after her husband was disabled, she and her husband leased the adjacent fields to someone else. She also related that she did not spend significant amounts of time with Jeffrey and his wife during the relevant period. She saw him about once per week; she would go over "if he need[ed] something." She did not have regular dinners with him and she avoided the Riley Road home because she did not get along with Melissa.

When these factors are considered as a whole, it is evident that Jeffrey Stasa and his then wife maintained a separate and independent household from Helen Stasa's household. As the trial court aptly noted, the facts of this case "are more similar to the facts of *Fowler* than those of *Workman*." The trial court did not err when it concluded that Jeffrey Stasa was not a member of his mother's household and, for that reason, not an insured under the insurance policy issued by Secura to Helen Stasa.

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<sup>5</sup> The policy further reflects that Helen's home is "owner occupied" and Jeffrey's home is "tenant occupied," and that Helen paid a separate premium to insure each parcel.

### III. ANIMAL COVERAGE PROVISIONS

The Matthews also argue that Jeffrey Stasa is an insured to the extent that he is a person legally responsible for animals to which the policy applies. The Matthews did not raise this argument in their brief on Secura's motion for summary disposition. And, although the Matthews' lawyer did briefly mention the policy's provisions providing coverage for animals in his oral arguments, he did not mention this coverage as an alternate basis for concluding that the accident was covered under the policy. Rather, he raised it in the context of determining what constitutes a household. For that reason, the trial court did not specifically address whether the policy covered all incidents involving any animal brought onto the property, even if the animal was not owned by the insured. Likewise, because it was raised at the last minute at oral arguments, Secura did not have an adequate opportunity to contest it. Given these facts, we conclude that the Matthews have waived this argument by failing to properly preserve it. See *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008) ("By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually."). In any event, after examining the language as a whole and in context, we conclude that this argument is without merit.

### IV. CONCLUSION

The trial court did not err when it determined that Jeffrey Stasa was not an insured under the policy that Secura issued to Helen Stasa. Therefore, it did not err when it concluded that Secura was entitled to the requested declaratory relief.

Affirmed. As the prevailing party, Secura may tax its costs. MCR 7.219(A).

/s/ Stephen L. Borrello  
/s/ Michael J. Kelly  
/s/ Mark T. Boonstra