

STATE OF MICHIGAN
COURT OF APPEALS

FREMONT INSURANCE COMPANY,
Plaintiff-Appellee,

UNPUBLISHED
August 15, 2013

v

BILLY RAY MARTIN, SR., and BILLY RAY
MARTIN, JR.,

No. 310906
Newaygo Circuit Court
LC No. 11-019700-CK

Defendants,

and

JOE EUGENE THATCHER, JR., by LYDIA
THATCHER, Conservator and Guardian,

Defendant-Appellant.

Before: WHITBECK, P.J., and OWENS and M. J. KELLY, JJ.

PER CURIAM.

In this dispute over insurance coverage, Lydia Thatcher,¹ as the conservator and guardian for her son, defendant Joe Eugene Thatcher, Jr., appeals of right the trial court's order granting plaintiff Fremont Insurance Company's motion for summary disposition. The trial court determined that, given the undisputed facts, defendant Billy Ray Martin, Jr.² was not a resident of his father's household at the time of the accident at issue. For that reason, the trial court granted Fremont Insurance's request for declaratory relief and entered an order declaring that Martin was not an insured under his father's policy with Fremont Insurance. Because the trial court properly determined that Martin was not an insured under his father's homeowner's policy, we affirm.

¹ We shall use Thatcher to refer to Lydia Thatcher in her capacity as conservator and guardian for her son and shall refer to her son as Joe Thatcher.

² We shall use Martin to refer to defendant Billy Ray Martin, Jr. alone.

I. BASIC FACTS

Evidence showed that Martin graduated from high school in 2009 and began a serious romantic relationship with a young woman in 2010. Martin worked full time in Grand Rapids; and, in early September 2010, he moved into an apartment in Jenison, Michigan with his girlfriend. Martin took most of his personal property with him, leaving behind only his hunting and fishing equipment. Martin's father sold him the mattress and box springs that he used at his father's home and Martin moved those items to his new apartment.

After Martin moved out, his father removed the remaining furniture from his son's room and converted it into a guest room. Martin visited his father occasionally and spent the night at his father's house about three times during the period at issue. There is no evidence that Martin's father financially supported him after he moved to Jenison. Martin did not make a formal change of address with the post office and did not change the address on his driver's license; but, he also stated that he did not receive much mail there and he had at least one bill, his Sprint bill, sent directly to his Jenison address.

Although he had moved out of his father's house, Martin agreed to allow a friend to use his father's pole barn to host a birthday party. He agreed after he learned that his father would be out of town. Martin's father did not know that his son had arranged for a party on his property.

Martin arrived at his father's house at approximately 9:30 to 10:00 p.m. on October 29, 2010 and discovered that around 20 people were already there and partying in the pole barn. Although many of the people were not legally permitted to drink, there was an unattended table with liquor at the party. Martin also let himself into his father's house through an unlocked door and took some of his father's alcohol.

Joe Thatcher attended the party with Shane McCumber; both men were old enough to legally purchase alcohol and Martin testified at his deposition that he saw McCumber remove a case of beer from his car after he arrived. After spending some time at the party, Joe Thatcher left with McCumber. While McCumber was driving Joe Thatcher home, he lost control of his car and struck a tree. Joe Thatcher suffered a serious head injury.

In January 2011, Martin moved back into his father's home after he had a falling out with his girlfriend.

Fremont Insurance sued Martin, his father, and Joe Thatcher for declaratory relief in July 2011. Specifically, Fremont Insurance asked the trial court to declare that Martin was not an insured under his father's homeowner's policy.

In August 2011, Thatcher sued Martin and the friend who organized the birthday party for breaching their duties of care to Joe Thatcher while at the party.

Fremont Insurance and Thatcher filed cross motions for summary disposition as to whether Martin was an insured under his father's policy at the time of Joe Thatcher's accident. The trial court determined that Martin was not a resident in his father's household at the time and was not, therefore, an insured under his father's policy. For that reason, the trial court entered an order granting summary disposition in favor of Fremont Insurance.

Thatcher now appeals.

II. SUMMARY DISPOSITION

A. STANDARDS OF REVIEW

On appeal, Thatcher argues that the trial court erred when it determined that Martin was not an insured under his father's homeowner's policy with Fremont Insurance. 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. RESIDENCY

The policy issued by Fremont Insurance to Martin's father provides, in relevant part, that the term "insured" means "you and the residents of your household" who are "your relatives." There is no dispute that Martin is related to his father; the only question is whether he was a resident of his household at the time at issue.

Although the term "resident" is not defined in the policy, we do not agree with Thatcher's contention that this term is ambiguous. When interpreting insurance policies, Michigan courts have long held that the phrase "resident of a household" is legally synonymous with "domicile." See *Grange Ins Co of Mich v Lawrence*, ___ Mich ___, slip op at 18-23; ___ NW2d ___ (2013) (recognizing that courts have treated residence as legally synonymous with the term domicile, but concluding that it does not follow that domicile is invariably synonymous with the term residence); see also *Workman v DAIIE*, 404 Mich 477, 495; 274 NW2d 373 (1979); *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 680; 333 NW2d 322 (1983).³ Moreover, where the underlying facts are not in dispute, as is the case here, whether the individual at issue was a resident of the insured's household is a question of law for the courts. *Fowler v Auto Club Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002).

As our Supreme Court has explained, 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*, 404 Mich 477, 495; 274 NW2d 373 (1979) (citations omitted). The meaning must be "viewed flexibly, 'only within the context of the numerous

³ We also find inapposite Thatcher's reliance on *Vanguard Ins Co v Racine*, 224 Mich App 229; 568 NW2d 156 (1997), for the proposition that the term resident is necessarily ambiguous. That case involved whether a child subject to a custody order should be deemed a resident or regularly residing at both his parents' households, even though his domicile was plainly with his mother. Because the terms resident and regularly residing could be construed to be broader than domicile, which would preclude coverage, the court interpreted the language against the insurer. Here, we are not called upon to construe the language as being broader than domicile to defeat coverage, but rather to resolve which location was Martin's actual domicile.

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).]

This Court has identified the following additional factors to consider when determining where a person resides: the person’s mailing address, whether the person maintains possessions at the insured’s home, whether the insured’s address appears on the person’s driver’s license and other documents, whether a bedroom is maintained for the person at the insured’s home, and whether the person is dependent on the insured for financial support or assistance. *Williams v State Farm Mut Automobile Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993) (citations omitted).

Considering these factors in light of the undisputed facts, it is evident that Martin had changed his domicile to the apartment that he had with his girlfriend in Jenison before the accident at issue. Martin stated several times that he lived in Jenison on the date in question and the evidence showed that he moved into the apartment in Jenison to establish a domestic partnership with his girlfriend. He also stated that he only returned to his father’s home after he had a falling out with his girlfriend. Thus, the evidence showed that Martin expressed a clear intent to establish a domicile outside his father’s home.

The evidence showed further that he did not have his personal possessions at his father’s house. He did leave some hunting and fishing items at his father’s house, but there is evidence that he did so because his father owned acreage that he might use for hunting. In any event, he did not have the types of possessions that he would need for daily living at his father’s home; his clothing and everyday personal possessions were at the apartment. Moreover, the evidence showed that Martin’s father did not maintain a bedroom for him and did not support him financially. Indeed, when Martin moved out, his father sold him the bed that he had previously used and Martin moved it to his new apartment. Accordingly, the evidence showed that Martin set up his apartment as his place of domicile.

Additionally, although Martin did not formally change his address with the post office, there was evidence that he did provide his new address to some of the businesses with which he engaged and there was evidence that he did not previously receive a large volume of mail. As such, the failure to formally change his address with the post office does not directly conflict with his expressed intent or the actions he actually took to change his domicile to the apartment

in Jenison. For similar reasons, the evidence that Martin had not yet changed his driver's license at the time of the accident does not alter the fact that the evidence shows that he intended to change his domicile to his apartment in Jenison.

Under the totality of the circumstances, it is evident that Martin was not a resident of his father's household when Joe Thatcher had his accident. Therefore, he was not an insured under his father's policy with Fremont Insurance.

III. CONCLUSION

The trial court did not err when it determined that Martin was not an insured under his father's policy with Fremont Insurance. Accordingly, the trial court properly granted Fremont Insurance's motion for summary disposition.

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

/s/ William C. Whitbeck

/s/ Donald S. Owens

/s/ Michael J. Kelly