

STATE OF MICHIGAN
COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

SANDRA L. THOM and RONALD THOM,

Defendants-Appellants,

and

MAXINE RILEY, individually and as next
friend for EMANUEL WALKER, a minor,
a/k/a DAMON EVANS,

Defendants-Appellees.

UNPUBLISHED

May 18, 1999

No. 203676

Wayne Circuit Court

LC No. 96-629817 CK

Before: Markey, P.J., and Holbrook, Jr. and Neff, JJ.

PER CURIAM.

Defendants Sandra and Ronald Thom appeal by right an order of the Wayne Circuit Court granting summary disposition for plaintiff in this declaratory judgment action arising out of a homeowner's insurance coverage dispute. We affirm.

Minor defendant Emanuel Walker a/k/a Damon Evans (hereinafter "Damon") was placed as a foster child in the Thoms' home in January of 1993, when Damon was approximately six months old. Damon remained a ward of the court and his temporary placement with the Thoms could be withdrawn at any time. The Thoms were compensated by the placement agency, which provided funds necessary for Damon's care. Damon was ultimately removed from the Thoms' care in December of 1993, after Damon suffered "shaken baby syndrome" at the hands of a caretaker hired by the Thoms. Defendant Maxine Riley, as Damon's next friend, sued the Thoms for negligent care and supervision. Plaintiff brought this action seeking a declaratory judgment that it has no obligation to defend and indemnify the Thoms in the negligence lawsuit.

At issue is whether Damon was an “insured” under the Thoms’ homeowner’s insurance policy with plaintiff, which policy excludes coverage for liability asserted against one insured person for injuries sustained by another insured person. The policy defines “insured person” to include “any dependent person in your care” if that person is “a resident of your household.”

On de novo review, we agree with the lower court that Damon met this definition, even though Damon’s placement with the Thoms was temporary and the placement agency and/or the juvenile court had ultimate responsibility and control over Damon’s care and funded his support. Like the lower court, we find persuasive the reasoning of this Court’s previous unpublished opinions and the majority of out-of-state cases concluding that a foster child should be considered a “dependent” and “resident” of the insured foster parent household under these circumstances. *Allstate Insurance Co v Peterson*, unpublished opinion per curiam of the Court of Appeals, issued March 11, 1988 (Docket No. 99376)(1988); *Frankenmuth Mut Ins Co v Alexander*, unpublished opinion per curiam of the Court of Appeals, issued August 26, 1994 (Docket No. 140261); see *Merchant Mut Ins Co v Artis*, 907 F Supp 886 (ED Pa, 1995); *Country Mut Ins Co v Peoples Bank*, 286 Ill App 3d 356; 675 NE2d 1031 (1997); *Jenks v State*, 507 So 2d 877 (La App, 1987); *Prudential Property & Cas Co v LaMarr*, 92 Ohio App 3d 331; 635 NE2d 63 (1993); *State Farm Fire & Casualty Co v Breazell*, 324 SC 228; 478 SE2d 831 (1996); *A G by Waite v Travelers Ins Co*, 112 Wis 2d 18; 331 NW2d 643 (1983).

Affirmed.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff