

2011 IL App (1st) 092560-U

No. 1-09-2560

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SIXTH DIVISION
November 18, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

UNITED AUTOMOBILE INSURANCE COMPANY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 05 CH 14096
)	
MARK WILLIAMS; and CAROLYN WILLIAMS, as)	
Special Administrator for the Estate of Otis Smith,)	Honorable
Deceased,)	Mary K. Rochford,
)	Judge Presiding.
Defendants-Appellees.)	

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Cahill and Garcia concurred in the judgment.

ORDER

¶ 1 *Held:* Where the insured's father-in-law was injured in a hit-and-run collision with a car while riding his bicycle, United Automobile Insurance Company owed coverage on the insured's uninsured motorist claim because the father-in-law was a resident relative of the insured's household on the date of the collision.

1-09-2560

¶ 2 Plaintiff United Automobile Insurance Company (United Auto) appeals a declaratory judgment finding coverage in favor of defendants, Mark Williams and Carolyn Williams as Special Administrator for the Estate of Otis Smith, deceased. United Auto argues the trial court's ruling that Smith was a resident relative of the insured's household was against the manifest weight of the evidence.

¶ 3 For the reasons that follow, we affirm the judgment of the trial court.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff United Auto issued a policy in August 2003 to defendant Mark Williams, who resided with his wife Carolyn at 7634 South Bishop Street in Chicago. Under the uninsured motorist coverage provision, the policy defined *insured* as "the named insured and any relative of the named insured." The policy defined *relative* as "a person related to the named insured or his spouse by blood, marriage or adoption and who is a resident of the same household as the insured."

¶ 6 Otis Smith, the father-in-law of Mark Williams, made an uninsured motorist claim against the policy pursuant to the resident relative provision following a collision on December 17, 2003. At the time of the collision, Smith was riding a bicycle and was struck by a motorist. The motorist did not remain at the scene and was unknown. Smith was taken to the hospital and underwent surgery.

¶ 7 United Auto filed a declaratory action alleging that it did not owe coverage to Smith because he did not reside with Williams on the date of the collision. United Auto sought a declaration that there was no coverage for Smith's claim.

1-09-2560

¶ 8 In April 2005, Smith gave a sworn statement to an attorney for United Auto. Smith stated that he had lived with his daughter Lisa on Maplewood Street until her death and then moved into his daughter Carolyn's home on Bishop Street. Lisa suffered from severe diabetes before her death. Smith received mail at the Bishop address, including his social security checks. He also had a "lady friend" who lived at 7414 South Emerald Avenue in Chicago. He would visit her at her home for two or three days and "sometimes stay over there." Smith said, however, that he did not live at the Emerald address but, rather, lived at the Bishop address at the time of the collision. He was riding his bicycle from the Emerald address to the Bishop address when the collision happened. Smith explained that his leg "bone was hanging out," "blood was running out of [his] head," and his knee was "scraped up real bad." He could not give the paramedics correct information about what happened or where he lived until he had received some treatment and calmed down a little bit. He also had trouble recalling his correct telephone number. On that date, he gave the Emerald address to the police, paramedics and hospital personnel. In February 2005, Smith began living in a state-assisted retirement home.

¶ 9 Smith died on December 7, 2005, and Carolyn Williams was appointed as special administrator of his estate.

¶ 10 In September 2006, Mark and Carolyn Williams submitted affidavits, which stated that Smith moved into their home on Bishop Street between the 8th and 15th of December in 2003.

¶ 11 According to his social security records, Smith was born in January 1940 and had a disability that began in January 2003. A form and two authorizations signed by Smith in March 2004 listed the Bishop address as his address. Furthermore, in a June 2004 document concerning

1-09-2560

his living arrangement, Smith said he began living with Mark and Carolyn Williams at the Bishop address on October 1, 2003. The social security records included other references to the Bishop address as Smith's address.

¶ 12 At the January 2009 bench trial in this matter, Marny Christin, a claims attorney for United Auto, testified that Mark Williams' policy application did not mention Smith. Christin stated that United Auto had reviewed the records concerning the collision and determined that Smith was not a resident of the insured's household because the police report concerning the collision listed Smith's address as the Emerald address. Furthermore, among the medical records for Smith's hospitalization after the collision, a social work discharge screening report, which was signed by someone other than Smith, stated that Smith "lives alone" and had lived with his daughter who was now deceased. That document, however, listed Smith's address as both Lisa's address on Maplewood and the Williams' home on Bishop Street. Furthermore, a form relating to a follow-up appointment at the hospital in January 2004 listed Smith's address as the Bishop address.

¶ 13 Christin also testified that Smith's social security records included a copy of a State of Illinois identification card issued to Smith in June 2004 with the Emerald address. In discovery, defendants produced a State of Illinois identification card issued to Smith in May 2005 with the Bishop address.

¶ 14 Mark Williams testified that Smith moved into the Williams' Bishop Street home after the death of Smith's other daughter Lisa in early December 2003. Mark and Carolyn had four children and had lived in their home for about two years before Smith's collision. The home had

1-09-2560

five bedrooms. Carolyn Williams also testified and confirmed that Smith lived with them. Both Mark and Carolyn testified that Smith had his own room, his personal items—including clothes, tools, and pictures—were at their home at the time of the collision, and Smith intended to live with them on a permanent basis. Moreover, Smith had started receiving mail at their home at the time of the collision.

¶ 15 The trial court found that United Auto failed to meet its burden of proof and, thus, denied its claim for declaratory relief. United Auto appealed.

¶ 16 II. ANALYSIS

¶ 17 United Auto, as the plaintiff in an action for declaratory relief, has the burden of proving it was entitled to a declaratory judgment that there was no coverage for Smith's claim. *Farmers Automobile Insurance Association v. Gitelson*, 344 Ill. App. 3d 888, 896 (2003). A reviewing court will not reverse the trial court's ruling following a bench trial unless the judgment is against the manifest weight of the evidence. *1350 Lake Shore Associates v. Mazur-Berg*, 339 Ill. App. 3d 618, 628 (2003). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is clearly evident or the factual findings on which it is based are unreasonable, arbitrary, or not based on the evidence." *Id.*

¶ 18 The term *resident* generally is construed liberally in favor of the insured and strongly against the insurer. *Hawkeye Security Insurance v. Sanchez*, 122 Ill. App. 3d 183, 186 (1984). Furthermore, the word *household* generally designates people who dwell under the same roof and compose a family; a domestic establishment; those who share in the privileges and duties of a common dwelling. *Id.* at 187; *Cincinnati Insurance v. Argubright*, 151 Ill. App. 3d 324, 331

1-09-2560

(1986). The phrase "resident of the same household" does not have a fixed meaning. *State Farm Fire & Casualty Co. v. Martinez*, 384 Ill. App. 3d 494, 499 (2008). Interpretation of that phrase requires a case-specific analysis of intent, physical presence and permanency of abode.

Coriasco v. Hutchcraft, 245 Ill. App. 3d 969, 970-71 (1993). The controlling factor, however, is the intent of the party whose residency is in question as evinced by that party's actions. *Gitelson*, 344 Ill. App. 3d at 894. Although a person can have only one domicile at a time, a person may have multiple residences. *Coriasco*, 245 Ill. App. 3d at 971-72 (a minor child of divorced parents, who regularly visited her non-custodial father, kept clothing and personal items at his home, and occasionally received mail there, was a resident of both parents' households for purposes of the under-insured motorist provision at issue); *Cincinnati Insurance*, 151 Ill. App. 3d at 330-31 (the adult son was a resident of his parents' house despite evidence that he spent part of his time at an apartment located above the family-owned-and-operated restaurant).

¶ 19 The record on appeal does not include a bystander's report of the proceedings before the trial court and, thus, does not comply with Illinois Supreme Court Rule 323(c) (eff. December 13, 2005). As the appellant, United Auto has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). We note, however, that the record does contain factual findings and the basis for the trial court's decision.

¶ 20 It is clear that United Auto was not entitled to declaratory relief because it failed to establish that Smith was not a resident of the Williams' household at the Bishop Street address at

1-09-2560

the time of the collision on December 17, 2003. Smith averred in his sworn statement that he lived with the insured from the time of his daughter Lisa's death in early December of 2003 until February 2005. Smith's sworn statement was supported by Mark and Carolyn Williams, who testified at the hearing that Smith, at the time of the collision, had his own room in their home, his personal belongings were there, and he received mail—including his social security checks—there. Although Smith was at the Williams' home for only a short time after Lisa's death and before the collision, both Mark and Carolyn testified that Smith intended to live with them indefinitely and did in fact live there until he moved to a state-assisted retirement home in February 2005. Furthermore, the Bishop Street address was listed as Smith's address on his Social Security records and on his post-collision hospital record. Based on this evidence of Smith's physical presence at the Bishop address and his intent to live there indefinitely, we cannot say that the trial court's ruling was against the manifest weight of the evidence.

¶ 21 United Auto's contention that Smith resided only at the Emerald address at the time of the collision was not supported by the manifest weight of the evidence. Smith explained that although he visited his friend occasionally and stayed at her Emerald address for a few days, he lived at the Bishop address at the time of the collision. See *Farmers Automobile Insurance Association v. Williams*, 321 Ill. App. 3d 310, 314 (2001) ("If an absence from a residence is intended to be temporary, it does not constitute an abandonment or forfeiture of the residence."); *Lundquist v. Allstate Insurance Co.*, 314 Ill. App. 3d 240, 248 (2000) (citing with approval a federal district court's conclusion that "under Illinois law, a person may reside in a particular location without being continuously physically present"). Moreover, even though Smith gave

1-09-2560

the Emerald address to the police and hospital staff at the time of the collision, he explained in his April 2005 sworn statement that he was not calm at the scene and had trouble giving the first responders correct information about what had happened and where he lived. His sworn statement also indicates he experienced some difficulty recalling personal information, like his own Social Security number, the name, address and telephone number of his current retirement home, and the date of Lisa's death. Furthermore, the Emerald address on one identification card issued on June 21, 2004, was not dispositive evidence of Smith's intent to live there at the time of the collision some six months earlier. When the evidence is viewed as a whole, United Auto did not provide sufficient evidence concerning Smith's intent to reside at the Emerald address or the extent and nature of his ties with that address.

¶ 22 The evidence showed that Smith had a disability, moved into his adult daughter's home before the collision, and spent the majority of his time living in the Williams' household. The record supports the trial court's ruling that Smith was covered under the policy issued to Mark Williams because Smith was a relative resident of the Williams' Bishop Street household at the time of the collision.

¶ 23 Finally, United Auto complains that the trial court erred by "expanding [the] definition of residence without continuous presence" to include an adult parent residing with an adult child. We disagree with United Auto's apparent supposition that only children living with parents may be deemed residents of multiple households. Illinois law is clear that a person can have only one domicile but may have several residences. *Casolari v. Pipkins*, 253 Ill. App. 3d 265, 267 (1993). Moreover, the policy at issue here did not limit its definition of *relative* to exclude residents of

1-09-2560

the household who are the parents of the insured.

¶ 24

III. CONCLUSION

¶ 25 We affirm the judgment of the circuit court.

¶ 26 Affirmed.