

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).

2014 IL App (4th) 131057-U

NO. 4-13-1057

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 20, 2014

Carla Bender

4th District Appellate

Court, IL

ERIN CARTER,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Sangamon County
STATE FARM FIRE AND CASUALTY COMPANY and)	No. 07MR675
JAMES RELLIHAN,)	
Defendants-Appellees.)	Honorable
)	Patrick J. Londrigan,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court found the trial court erred in granting summary judgment in favor of the insurer and in denying plaintiff's cross-motion for summary judgment. The appellate court entered summary judgment in favor of plaintiff and remanded for further proceedings.

¶ 2 In June 2007, plaintiff, Erin Carter, filed a complaint against defendant James Rellihan for damages caused by his alleged negligent acts. In November 2007, plaintiff filed a complaint for declaratory judgment against Rellihan, Thomas Connors, and defendant State Farm Fire and Casualty Company (State Farm). In August 2008, plaintiff filed a motion to compel Rellihan's discovery deposition, and the trial court continued the matter. In October 2008, State Farm filed a motion for summary judgment. In December 2008, plaintiff filed a motion to continue and a renewed motion to compel. The court denied plaintiff's motion to continue and granted State Farm's motion. On appeal, this court reversed and remanded for

further proceedings. In September 2013, State Farm filed a renewed motion for summary judgment, which the trial court granted.

¶ 3 On appeal, plaintiff argues the trial court erred in granting summary judgment in favor of State Farm. We reverse and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 In June 2007, plaintiff filed a complaint against Rellihan in Sangamon County case No. 07-L-155, alleging Rellihan wielded a pocketknife at a February 25, 2007, party and struck plaintiff in her throat. Plaintiff alleged Rellihan's negligent acts caused serious and permanent injuries. She sought judgment against him in excess of \$50,000.

¶ 6 In November 2007, plaintiff filed a complaint for declaratory judgment against State Farm, Rellihan, and Thomas Connors in Sangamon County case No. 07-MR-675. The motion alleged Rellihan resided at 7999 New City Road in Rochester and was a relative of Connors. State Farm issued a homeowner's policy to Connors providing insurance for him and residents of the household. Plaintiff claimed State Farm failed to provide coverage, including representation of Rellihan. Plaintiff sought a judgment declaring State Farm had an obligation under the policy to provide coverage to Rellihan, including representation and indemnification in her civil claim.

¶ 7 In December 2007, Connors filed a motion to strike or dismiss, claiming he was not a necessary party to the declaratory-judgment action. Also, State Farm answered the complaint for declaratory judgment, denying Rellihan was an insured under the policy and raising the intentional-acts exclusion as an affirmative defense. Connors was later dismissed from the cause of action.

¶ 8 In August 2008, plaintiff filed a motion to compel Rellihan to appear for a

discovery deposition within 30 days. Plaintiff stated a crucial issue in the case centered on whether Rellihan was a "resident" and therefore an "insured" within the meaning of the insurance policy. She claimed Rellihan's attorney would not allow him to testify under a belief he could incriminate himself. Plaintiff's counsel indicated he had personally consulted with Rellihan's attorney and made reasonable attempts to resolve the dispute. In September 2008, the trial court continued the matter generally.

¶ 9 In October 2008, plaintiff filed a request to admit, asking Rellihan to admit certain facts relating to his residency at the Rochester house. Rellihan, through his attorney, filed an answer to the request. Rellihan claimed he did not reside at the Rochester house but was merely visiting his aunt and sharing a room with his brother. During the visit, Rellihan decided to pursue a military career and was accepted into the United States Air Force (Air Force). He listed his aunt's address as a contact point of reference.

¶ 10 Also in October 2008, State Farm filed a motion for summary judgment pursuant to section 2-1005(b) of the Code of Civil Procedure (735 ILCS 5/2-1005(b) (West 2008)), claiming Rellihan was not a resident of the household. State Farm attached an affidavit from Rellihan and discovery depositions from Diane and John Munkirs.

¶ 11 In his affidavit, Rellihan stated his place of residence on February 23, 2007, was an apartment in Maryville, Missouri. He had a Missouri driver's license and received mail in Buckner, Missouri. He arrived in Rochester on January 11, 2007, to visit relatives. During the visit, he decided to pursue a military career, and his aunt, Diane Munkirs, assisted him in that endeavor. He was accepted into the Air Force and scheduled to leave in April 2007, but his plans changed because of pending criminal charges. Rellihan stated he only had clothes and "a few personal hygiene items" at the house and he did not change his driver's license or register to

vote in Illinois. He stated he never intended to stay permanently but considered himself a visitor or guest.

¶ 12 In her discovery deposition, Diane Munkirs testified Rellihan is her nephew and she lives at 7999 New City Road in Rochester. The property was owned by Connors, her son-in-law. She stated Rellihan came to visit and was going to stay for "a couple of weeks." He then decided to join the Air Force and signed on in Springfield. He shared a room with his brother and kept clothes in the closet. Diane gave him a key "after it looked like he was going to be [at the residence] pending going to the Air Force." She believed he returned to Maryville on two occasions prior to the incident to pick up more of his clothes. The Air Force mailed material to Rellihan at Munkir's house.

¶ 13 In his discovery deposition, John Munkirs, Diane's husband, stated Rellihan "was going to visit for a couple of weeks before he went in the service." He did not have his own room but shared the "bunkhouse" with his brother. He maintained his Missouri driver's license, paid taxes in Missouri, and leased an apartment in Missouri until April or May 2007.

¶ 14 In November 2008, plaintiff filed a cross-motion for summary judgment. In December 2008, plaintiff filed a motion to continue and a renewed motion to compel, claiming Rellihan had "still not been made available for a discovery deposition." Plaintiff argued the failure to grant a continuance based on Rellihan's failure to appear could violate her right to take his discovery deposition.

¶ 15 Without a written order or docket entry, the trial court denied plaintiff's motion to continue and granted State Farm's motion for summary judgment. In January 2009, plaintiff filed a motion to reconsider, which the court denied.

¶ 16 Plaintiff appealed, arguing the trial court erred in (1) not ordering Rellihan to

appear for a discovery deposition and (2) granting State Farm's motion for summary judgment. This court found the trial court did not abuse its discretion in denying plaintiff's motion to continue and renewed motion to compel. *Carter v. State Farm Fire & Casualty Co.*, No. 4-09-0092 (Sept. 9, 2009) (unpublished order under Supreme Court Rule 23). However, we found the court's grant of summary judgment in favor of State Farm was in error, stating Rellihan's actions were susceptible to different inferences as to whether the Munkirs' house constituted his residence for purposes of the insurance policy. We then remanded the cause for further proceedings.

¶ 17 In September 2013, State Farm filed a renewed motion for summary judgment and attached Rellihan's August 2013 deposition. In his deposition, Rellihan stated he began staying with his aunt and uncle in Rochester in January 2007. He kept a bag of clothes and personal hygiene items at the home. In January 2007, he met with an Air Force recruiter. Sometime in late January or early February, he advised his roommate in Missouri that he would not be coming back for his furniture. Rellihan stated he had no intention of living at his Missouri apartment anymore. He performed odd jobs on his aunt and uncle's farm adjacent to the Rochester home. He stated his last permanent residence was his Missouri apartment and he considered himself a guest of his aunt and uncle pending where he would settle in the military.

¶ 18 In November 2013, plaintiff filed a response and a cross-motion for summary judgment. Plaintiff argued summary judgment should be granted in her favor because Rellihan lived and kept all of his property at the Rochester property for one year's time.

¶ 19 The trial court granted State Farm's motion for summary judgment. Plaintiff filed a motion to reconsider, which the court denied. This appeal followed.

¶ 20

II. ANALYSIS

¶ 21 Plaintiff argues the trial court erred in granting summary judgment for State Farm, arguing the evidence showed Rellihan was a resident of the insured premises. We agree.

¶ 22 "Summary judgment is appropriate where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008) (quoting 735 ILCS 5/2-1005(c) (West 2000)). We construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opposing party. *Illinois State Bar Ass'n Mutual Insurance Co. v. Mondo*, 392 Ill. App. 3d 1032, 1036, 911 N.E.2d 1144, 1148 (2009). On appeal from a trial court's decision granting a motion for summary judgment, our review is *de novo*. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163, 862 N.E.2d 985, 991 (2007); see also *Joe Cotton Ford, Inc. v. Illinois Emcasco Insurance Co.*, 389 Ill. App. 3d 718, 720, 906 N.E.2d 1279, 1281 (2009) (finding review of a grant of summary judgment in an action for declaratory judgment is *de novo*).

¶ 23 Plaintiff claims Rellihan was a resident of the household for purposes of the insurance policy's liability coverage. In the policy's definition section, "insured" is defined as "you and, if residents of your household, *** your relatives," and "any other person under the age of 21 who is in the care of a person described above." Thus, Rellihan qualifies as an insured under the policy only if he can be deemed a resident of the household.

¶ 24 "The phrase 'resident of the household' has no fixed meaning" (*State Farm Fire & Casualty Co. v. Martinez*, 384 Ill. App. 3d 494, 499, 893 N.E.2d 975, 980 (2008)), but it must be liberally construed "in favor of the insured" (*Coriasco v. Hutchcraft*, 245 Ill. App. 3d 969, 970, 615 N.E.2d 64, 65 (1993)). "A person can have only one domicile, or permanent abode, at a

time; however, he may have several residences." *Casolari v. Pipkins*, 253 Ill. App. 3d 265, 267, 624 N.E.2d 429, 431 (1993).

¶ 25 " 'Resident' is generally understood to include intent and permanency of abode in addition to mere physical presence." *Coriasco*, 245 Ill. App. 3d at 970, 615 N.E.2d at 65.

Interpretation of the term requires a case-specific analysis of the three factors. *Martinez*, 384 Ill. App. 3d at 500, 893 N.E.2d at 980. "The controlling factor, however, is the intent of the party whose residency is in question as evinced by that party's actions." *Martinez*, 384 Ill. App. 3d at 500, 893 N.E.2d at 980; *Cincinnati Insurance Co. v. Argubright*, 151 Ill. App. 3d 324, 330, 502 N.E.2d 868, 872 (1986) (stating "intent is gathered primarily from the acts of a person").

Whether an insurance policy provides coverage depends on the circumstances "as of the time of the accident creating the potential liability." *Hawkeye Security Insurance Co. v. Sanchez*, 122 Ill. App. 3d 183, 186, 460 N.E.2d 873, 875 (1984); see also *Coley v. State Farm Mutual Automobile Insurance Co.*, 178 Ill. App. 3d 1077, 1081, 534 N.E.2d 220, 221 (1989).

¶ 26 The question here is whether, at the time of the incident with plaintiff, Rellihan resided in the Munkirs' household. The issue of physical presence is not contested by the parties. Thus, the focus centers on Rellihan's intent and permanency of abode. Facts supporting Rellihan's residency in Rochester include he had quit college in Missouri and had no intention of returning; he arrived in early January and was still there in late February; he listed the Munkirs' address as his contact point of reference and received mail there from the Air Force; he abandoned his apartment in Missouri, stopped paying rent, gave his furniture to his roommate, and made two trips there to retrieve his clothes; he listed the Munkirs' address as his residence on his job application form with Denver Mattress Factory; and he had a key to the residence.

¶ 27 Facts that do not point to Rellihan's residency at the Munkirs' house include he

retained his Missouri driver's license and he did not register to vote in Illinois. Moreover, he, along with his aunt and uncle, said he was visiting Rochester and was simply waiting to ship out with the Air Force.

¶ 28 Since our prior order, we have Rellihan's deposition testimony to consider. Therein, Rellihan stated he considered his Missouri apartment as his last permanent residence. Further, he considered himself a guest of his aunt and uncle until he left for the military.

¶ 29 We find this to be a close case. We note that when an injured third party is involved, public policy considerations dictate "that liability insurance policies should operate to afford injured parties coverage." *Skidmore v. Throgmorton*, 323 Ill. App. 3d 417, 421, 751 N.E.2d 637, 641 (2001); see also *State Security Insurance Co. v. Burgos*, 145 Ill. 2d 423, 438, 583 N.E.2d 547, 554 (1991) (noting public policy dictates "a liberal construction in favor of coverage be applied as the recovery of an injured third party is involved"). With these considerations in mind, we find the evidence indicates Rellihan was a resident of the insured property at the time of the incident. He lived there every day after leaving Missouri, he kept his belongings there, and he performed odd jobs for his aunt and uncle at the adjacent property. While Rellihan did not intend to make his aunt and uncle's house his permanent abode, he had no intention of returning to his apartment in Missouri. See *Farmers Automobile Insurance Ass'n v. Williams*, 321 Ill. App. 3d 310, 314, 746 N.E.2d 1279, 1282 (2001) (stating "[i]f an absence from a residence is intended to be temporary, it does not constitute an abandonment or forfeiture of the residence"). Here, while the home in Rochester was a short-term stopping point until Rellihan entered the military, it was still his residence at the time of the incident. The totality of the evidence tips the scales in favor of finding Rellihan was a resident of the Munkirs' household.

¶ 30 As the evidence shows Rellihan was a resident of the insured property, the trial

court erred in granting State Farm's motion for summary judgment and in denying plaintiff's cross-motion for summary judgment on the issue of Rellihan's residency. We hold Rellihan was a resident of 7999 New City Road in Rochester at the time of the incident. Pursuant to our authority to enter any judgment that ought to have been made in the trial court (Ill. S. Ct. R. 366(a)(5) (eff. Feb. 1, 1994)), we hereby grant summary judgment as to Rellihan's residency in favor of plaintiff. We remand for further proceedings.

¶ 31

III. CONCLUSION

¶ 32 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 33 Reversed and remanded with directions.