2016 IL App (1st) 150486-U

FIFTH DIVISION
June 30, 2016

No. 1-15-0486

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
AUTO CLUB INSURANCE ASSOCIATION,	)	Circuit Court of
	)	Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 CH 03116
	)	
MESIHA SUNEROGLU,	)	
	)	Honorable
Defendant-Appellant.	)	Franklin U. Valderrama,
	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming grant of summary judgment in favor of insurer where relative of named insured did not qualify as a "resident relative" for purposes of policy coverage.

¶ 2 Defendant Mesiha Suneroglu (Suneroglu) was struck by a vehicle while walking near the home owned by her daughter Zumrut Ozkaymak (Zumrut) and son-in-law Ilker Ozkaymak (Ilker). Suneroglu made an underinsured motorist claim against plaintiff Auto Club Insurance Association (Auto Club), the Ozkaymaks' automobile insurer. In a declaratory judgment action

filed in the circuit court of Cook County, Auto Club alleged that Suneroglu – a resident of the Republic of Turkey – was visiting her family at the time of the accident. According to Auto Club, Suneroglu was not a "resident relative" under the policy and therefore not an "insured person" at the time of the accident. On cross-motions for summary judgment, the court ruled in favor of Auto Club and against Suneroglu. In this appeal, Suneroglu contends that she is a "resident relative" under the policy and is thus entitled to coverage. She also argues that the court "erred in granting Auto Club summary judgment by seemingly determining that the involved insurance policy had no ambiguity, even though the [circuit court's] memorandum opinion and order does not expressly rule [as] such."

¶ 3 For the reasons discussed below, we affirm the judgment of the circuit court.

¶ 4 BACKGROUND

¶ 5 On December 17, 2013, Suneroglu was struck by a 2014 Jeep Cherokee driven by Erin Eme at the intersection of Sacramento Avenue and Addison Street in Chicago, Illinois. Suneroglu, a Turkish citizen, made an underinsured motorist claim against Auto Club, which subsequently filed a declaratory judgment action against her, denying any duty to cover her claims. In an amended complaint for declaratory judgment filed on February 25, 2014, Auto Club alleged that Suneroglu was not a "resident relative" in that she was not a resident in the Ozkaymaks' household at the time of the accident and thus not an "insured person" under their policy.

¶ 6 The underinsured motorist coverage provisions of the policy define "[i]nsured person(s)" to include "**You** or any **resident relative**." (Emphasis in original.) "You" includes the "Principal Named Insured," *i.e.*, Ilker and Zumrut. "Resident Relative" is defined in the policy as "a person who is a resident of **your** household, related to **you** by blood, marriage, civil union

or adoption, or is **your** ward or foster child, who resides in **your** household at the time of the accident. **Resident Relative** also includes **your** unmarried child temporarily away from home attending school." (Emphasis in original.) In her answer to the amended complaint, Suneroglu contended that "a person can have more than one residence at any given time," and she denied that she was "temporarily" visiting Cook County, as Auto Club had alleged. Auto Club and Suneroglu filed cross-motions for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005 (West 2014)).

¶ 7 Through the services of an interpreter, Suneroglu was deposed on April 7, 2014; her testimony included the following. Suneroglu, a 61-year-old housewife, had lived in Istanbul, Turkey for 40 years. In 1997, she and her husband purchased their home in Istanbul, where she had furniture and personal items. Suneroglu received mail at her home, including bank statements and utility bills. She had a Turkish driver's license, and she received treatment by a physician in Turkey for various health reasons.

¶ 8 Suneroglu visited her sister, who lives in Chicago, once in 1997. Since 2003 – when her daughter Zumrut had moved to Chicago from Turkey – Suneroglu visited the United States on seven or eight different occasions and during those visits she stayed at Zumrut's home. Suneroglu never traveled to any location in the United States other than Chicago. She testified that one of her visits was for four months; this was the longest period of time she stayed in the United States, other than after the accident.

¶ 9 While at Zumrut's home, Suneroglu and her husband shared a room with their grandson. Suneroglu had her own bed, dresser, nightstand, and "storage places." She had a set of keys to Zumrut's home, which she retained while in Turkey. Suneroglu kept medications and certain clothes, but no other personal items, at Zumrut's residence. She brought additional clothes and

Turkish tea when traveling from Istanbul to Chicago; she never had furniture or other items shipped to Chicago.

¶ 10 In 2011, Suneroglu was treated by a physician in Chicago. In 2012, she "had [an] infection and a high fever and also [her] blood pressure medication was depleted, so [she] had to go to" another physician, who became Suneroglu's physician in Chicago. Prior to her accident, the only mail Suneroglu ever received at Zumrut's address was from the Chicago physicians, *i.e.*, "mail from [her] doctor and medications," including "doctors' prescriptions." Suneroglu did not have an Illinois driver's license or any other form of identification that listed her address as Zumrut's residence. Although she visited museums in Chicago, she was not a member of any museum, club, or organization.

¶ 11 She never paid Zumrut or Ilker, purchased groceries for the family, or contributed toward the taxes on their home. According to Suneroglu, "[t]hey never let us pay." Although she had a bank account in Turkey and a credit card she used while in Turkey, she never opened a bank account in the United States. She paid for personal items in currency she carried from Turkey and converted in Chicago; Zumrut provided her with additional funds as needed. Suneroglu did not personally purchase insurance while in Chicago, and "found out that [Zumrut and Ilker] had some coverage" after her accident.

¶ 12 Suneroglu provided assistance to Zumrut and Ilker by cooking, cleaning, and helping them care for their children. She had no intention to seek employment in Chicago, as her "daughter's kids are enough." She did not view herself as a visitor in her daughter's home, testifying "[t]hat's my house, naturally."

¶ 13 Suneroglu's passport was issued by the Republic of Turkey. She traveled to the United States on a visitor's visa and did not have permanent residency in the United States, although she

testified that she intended to apply for permanent residency in the future. When asked about her "specific plans to live with Zumrut in Chicago in the future," Suneroglu stated, "If I can get the green card, I have plans to live with her here, but I also want to share time with Turkey." Although Zumrut had asked Suneroglu to live permanently in Chicago, Suneroglu testified that she did not intend to leave Turkey permanently at any point. Her intention was to spend time with both of her children: Zumrut and another adult daughter in Turkey.

¶ 14 On October 25, 2013, Suneroglu arrived in Chicago for the birth of Zumrut's second child. Prior to leaving Turkey, she had booked a return flight to Turkey for December 25, 2013, but stayed in Chicago beyond her return date due to the accident. At the time of her deposition, Suneroglu testified that she planned to return to Turkey on April 19, 2014, and her visa was set to expire on April 25, 2014. She testified that she had no "fixed date" for any upcoming travel to Chicago, but she "desire[d] to come back."

¶ 15 In a memorandum opinion and order entered on January 14, 2015, the circuit court found that Suneroglu was not a resident of the Ozkaymak household at the time of the accident. The court granted Auto Club's summary judgment motion and denied Suneroglu's cross-motion for summary judgment. Suneroglu timely appealed.

¶ 16 ANALYSIS

¶ 17 As a threshold matter, we note that Suneroglu cited an unpublished Rule 23 order in her brief. Such citation does not have precedential value and is not instructive for our analysis herein. See Ill. S. Ct. R. 23(e) (eff. July 1, 2011); *Doe v. Boy Scouts of America*, 2014 IL App (2d) 130121, ¶ 45 (noting that unpublished decisions are not precedential).

¶ 18 Suneroglu contends on appeal that the circuit court erred in concluding that she was not a resident of the Ozkaymak household at the time of her accident. She also asserts that the court

erred "by seemingly determining that the involved insurance policy had no ambiguity, even though the memorandum opinion and order does not expressly rule [as] such." We address each argument in turn.

¶ 19 Resident Relative

¶ 20 Suneroglu asserts that the circuit court should have granted her request for summary judgment, and not ruled in favor of Auto Club. "When parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. "Summary judgment motions are governed by section 2-1005 of the Code of Civil Procedure." *Id.* ¶ 29; 735 ILCS 5/2-1005 (West 2014). "Pursuant to that statute, summary judgment should be granted only where the pleadings, depositions, admissions and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and that the moving party is clearly entitled to judgment as a matter of law." *Pielet*, 2012 IL 112064, ¶ 29. "Summary judgment is a drastic remedy and should be allowed only when the right of the moving party is clear and free from doubt." *Jones v. Chicago HMO Ltd. of Illinois,* 191 Ill. 2d 278, 291 (2000). We review the grant of summary judgment *de novo*. *Pielet*, 2012 IL 112064, ¶ 30.

¶ 21 The parties agree that Suneroglu was a relative of the principal named insured. The disputed issue is whether she was a resident of the Ozkaymaks' household at the time of the accident. The term "resident of the household" has no fixed meaning. *State Farm Fire and Casualty Co. v. Martinez,* 384 Ill. App. 3d 494, 499-500 (2008). "The reasonable interpretation of the phrase requires a case-specific analysis of intent, physical presence and permanency of abode." *Farmers Automobile Insurance Association v. Gitelson*, 344 Ill. App. 3d 888, 894

(2003). "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. As Suneroglu accurately observes, a person may have more than one residence. See, *e.g.*, *Casolari v. Pipkins*, 253 Ill. App. 3d 265, 267 (1993).

¶ 22 Suneroglu's physical presence at the Ozkaymak household, however, was relatively limited. Although she had her own bed, dresser, nightstand and "storage places," she shared a room with her grandchild. She kept medicine and certain clothes – but no other personal effects – in the home. The only mail she received in Chicago related to her medical treatment; she did not receive utility bills or financial statements. She had keys to the Ozkaymak home, just as the Ozkaymaks had keys to her home in Istanbul. Suneroglu spent significantly less time in Chicago than Istanbul. See *Cincinnati Insurance Co. v. Argubright*, 151 Ill. App. 3d 324, 330 (1986) (finding that defendant's physical presence at the residence in question was evidenced by his testimony that he spent equal amounts of time at such residence and a second residence). In sum, Suneroglu's modest physical presence at the Ozkaymak home does not support a conclusion that she was a "resident relative" under the policy.

¶ 23 Another factor we examine to determine whether Suneroglu was a resident of the Ozkaymak household for purposes of the policy is "permanency of abode." Throughout a ten- or eleven-year period, Suneroglu stayed in Chicago seven or eight times, or less than once a year. For the visit when she was injured, she had purchased a round-trip ticket and arrived in Chicago on October 25, 2013, in anticipation of the birth of her grandchild. She had been scheduled to return home on December 25, 2013. During her deposition in April 2014, Suneroglu indicated that there was no "fixed date" for her to return to Chicago in the future. Although she had a physician in Chicago, Suneroglu never applied for permanent residency in the United States,

opened a bank account or used a credit card in Chicago, received any form of identification associating her to the Ozkaymak home, or contributed to the taxes or other expenses of the household.

¶ 24 The third – and the "controlling" – factor for determining whether Suneroglu was a resident of the household is intent, as evinced by her actions. *Gitelson*, 344 Ill. App. 3d at 894. Suneroglu's visits to her daughter's home were not regularly scheduled and were temporary in nature. She was a Turkish citizen who entered the United States on a visitor's visa. She stated that she intends to apply for permanent residency in the United States in the future. Although we agree with Suneroglu that her statements "are not without value in this analysis" (*Farmers Automobile Insurance Association v. Williams*, 321 Ill. App. 3d 310, 315 (2001)), we note that other statements by Suneroglu appear to acknowledge that any intent to establish a residence in Zumrut's home had not yet come into fruition, *e.g.*, "If I can get the green card, I have plans to live with her here, but I also want to share time with Turkey." Furthermore, as noted above, she has never actually applied for permanent residency in the United States, nor had she obtained an Illinois driver's license, established a bank account, or joined any museums, clubs, or other organizations. We find unpersuasive her contention that her "acts clearly show that her intent was to establish an additional residence in Zumrut and Ilker Ozkaymak's home in Chicago." While Suneroglu compares herself to "snow-birds" (people who spend the winter months in a warm place) and others with "dual residence[s]," her actions do not support a finding that she was a resident of the Ozkaymak household at the time of her accident. Further, Suneroglu did not establish the Ozkaymak home as any type of permanent abode for purposes of coverage under the Auto Club policy.

¶ 25 The cases cited by Suneroglu are inapposite. She primarily relies on *Casolari v. Pipkins*,

253 Ill. App. 3d 265 (1993), wherein the court considered whether a minor child who died in an automobile accident had lived with her father for purposes of his insurance policy. Pursuant to a marital settlement agreement, the father had shared custody of the minor prior to the accident. *Id.* at 266. The court concluded that (a) the evidence "tended to show" that the father resided in his parents' home, and (b) the minor's "regularly scheduled visits" at such residence, "under the facts presented, demonstrate that she was living with him" for purposes of policy coverage. *Id.* at 268-69. Initially, we note that the operative policy language in *Casolari* was "*lives with*," not "*resides*," *i.e.*, the primary issue was whether the minor had lived with her father. This court has repeatedly recognized that the question of whether a person "lives with" someone is a "very different question[]" than whether he or she is a "resident of [her] household." *Williams,* 321 Ill. App. 3d at 316. See also *Coley v. State Farm Mutual Automobile Insurance Co.*, 178 Ill. App. 3d 1077, 1083-84 (1989) (distinguishing between "*live with*" and "legal residence or domicile").

¶ 26 The *Casolari* court stated that the father had the "unique circumstances of having two residences" – one in Chicago, where he had accepted employment after his divorce, and one in Flora, Illinois, where he lived with his parents. *Id.* at 267. In concluding that the evidence "tended to show that the Flora home" (*id.* at 268) was a residence of the father, the court noted, among other things: the father was raised in Flora and lived in Flora during his marriage; after his divorce, but before accepting employment in Chicago, he lived with his parents in Flora; he maintained a bedroom at his parents' home; he kept clothes, guns, and other personal property in the Flora home; he spent the night at the home at least every other weekend; and he spent two to six weeks consecutively at the home on several occasions. *Id.* at 267. The father testified that he maintained a residence in Chicago solely due to his employment and it was never his intent to reside exclusively in the Chicago area. *Id.*

¶ 27 Suneroglu contends that, just as the father in *Casolari* was a resident of his parents' home in Flora, she is a resident of the Ozkaymak household in Chicago. We do not find Suneroglu's argument persuasive. The plaintiff in *Casolari* was a recently divorced father who found employment 250 miles away from his hometown while attempting to maintain regular contact with his minor child. Suneroglu is a foreign citizen who visited her adult daughter in Chicago seven or eight times during a span of ten or eleven years with no apparent regularity or consistency. Citing *Casolari*, Suneroglu also argues that "[e]ven if the Court were to find that Suneroglu was just visiting the [Ozkaymaks'] home at the time of her accident on December 17, 2013, this should not be a dispositive finding of lack of intent in this matter since a visit to a location does not prevent that location from being a residence." We initially note that the *Casolari* court cited *Coriasco v. Hutchcraft*, 245 Ill. App. 3d 969, 972 (1993), for the proposition that a visit to a location does not prevent that location from being a residence. *Casolari*, 253 Ill. App. 3d at 268. However, *Coriasco* (similar to *Casolari*) involved insurance coverage for a minor child of divorced parents who had regular visitations with the noncustodial parent – circumstances significantly different from the instant case. Furthermore, the *Casolari* court found that the evidence supported a finding that the Flora home was a residence of the father. Conversely, we conclude that Suneroglu never established her daughter's Chicago home as her residence.

¶ 28 Auto Club relies on *Farmers Automobile Insurance Association v. Gitelson*, 344 Ill. App. 3d 888 (2003), wherein the appellate court concluded that an adult woman – who had graduated from college the prior year – was not a resident of her parents' household in Wisconsin at the time of her fatal automobile accident. In determining that the evidence demonstrated the daughter's intent to "establish and maintain a residence in Illinois," the court noted that she had:

rented an apartment and worked a full-time job in the Chicago area; used her apartment as her permanent address; and opened a checking account at a Chicago-area bank. *Id.* at 894. Although she received some mail at the Wisconsin address, all of her financial documents and bills were sent to her Chicago-area address. *Id.* The court also noted that her "visits to her parents' Wisconsin home, although regular, were temporary." *Id.*

¶ 29 We recognize that the daughter in *Gitelson* was in a different stage of life than Suneroglu – a young adult "build[ing] an independent life" (*id.*) rather than a grandmother desiring to spend time with her family – and thus certain indicia of "intent" relied on by the *Gitelson* court, *e.g.*, securing formal employment in the Chicago area, are not easily applied in the instant case. Suneroglu, however, has not engaged in any other type of conduct which could be indicative of "intent," which is needed to establish that her daughter's home was Suneroglu's residence as well, *e.g.*, opening a bank account in Chicago, that the *Gitelson* court considered in reaching its conclusion. Furthermore, despite the *Gitelson* trial court's finding that the daughter spent "from 20%–50% of her time at her parents' residence," the appellate court concluded that she was not a resident of her parents' household. We surmise that Suneroglu's aggregate time in Chicago was likely a smaller percentage than that at issue in *Gitelson*. However, regardless of timing, we conclude that the key factor in determining residence – intent – was not adequately established in this case.

¶ 30 For the foregoing reasons, we conclude that the trial court did not err in finding that Suneroglu was not a "resident relative" for purposes of the policy, and in granting summary judgment in favor of Auto Club and against Suneroglu.

¶ 31 Potential Ambiguity in Policy

¶ 32 The insurance policy at issue provides, in pertinent part, that a resident relative is "a

person who is a resident of **your** household, related to **you** by blood, marriage, civil union or adoption, or is **your** ward or foster child, who resides in **your** household at the time of the accident." (Emphasis in original.) On appeal, Suneroglu focuses on a particular phrase in the foregoing definition: "who resides in your household at the time of the accident." Characterizing this phrase as "very unique," she argues that there are no Illinois or out-of-state decisions interpreting such language. Although she recognizes that courts have addressed the meaning of other terms – *e.g.*, "residency" and "household" – she contends "there is simply no case law on point" regarding the meaning of the phrase "*at the time of the accident*." According to Suneroglu, the policy definition is "at the least ambiguous and must be strictly construed against the insurer, Auto Club."

¶ 33 Based on our review of the record, Suneroglu does not appear to have raised this argument before the circuit court. We thus consider, as a preliminary matter, whether Suneroglu's argument has been forfeited on appeal. "Generally, arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal." *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15. "Allowing a party to change its theory of the case on appeal would weaken the adversarial process and likely prejudice the opposing party." *Allstate Property and Casualty Insurance Co. v. Trujillo*, 2014 IL App (1st) 123419, ¶ 17. As "the forfeiture rule does not bind the court" (*Tully v. McLean*, 409 Ill. App. 3d 659, 664 (2011)), however, we choose to address Suneroglu's argument.

¶ 34 Suneroglu contends that the challenged language is "susceptible to more than one reasonable interpretation" and is thus ambiguous. "That a term is not defined by the policy does not render it ambiguous, nor is a policy term considered ambiguous merely because the parties can suggest creative possibilities for its meaning." *Nicor, Inc. v. Associated Electric and Gas*

Insurance Services Ltd., 223 Ill. 2d 407, 417 (2006). "Rather, ambiguity exists only if the term is susceptible to more than one reasonable interpretation." *Id.* However, Suneroglu does not provide *any* additional reasonable interpretation to support her claim. As such, we will not "strain to find an ambiguity where none exists." *Hobbs v. Hartford Insurance Co. of the Midwest*, 214 Ill. 2d 11, 17 (2005). Furthermore, we agree with Auto Club's observation that "this is not a unique case as Illinois courts routinely review the circumstances related to residency and coverage under a policy 'at the time of the accident'[.]" See, *e.g.*, *Hawkeye Security Insurance Co. v. Sanchez*, 122 Ill. App. 3d 183, 186 (1984) (noting that "questions of the applicable coverage of an insurance policy can be determined only as of the time of the accident creating the potential liability").

¶ 35 "If the words used in the policy, given their plain and ordinary meaning, are unambiguous, they must be applied as written." *Valley Forge Insurance Co. v. Swiderski Electronics, Inc.*, 223 Ill. 2d 352, 362 (2006). We conclude that the "resident relative" definition in the policy is unambiguous, and Suneroglu does not fall within such definition.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of Cook County granting summary judgment in favor of Auto Club and denying Suneroglu's motion for summary judgment is affirmed.

¶ 38 Affirmed.