

BAR NEWS ITEM

IN THE COURT OF COMMON PLEAS OF THE 39TH
JUDICIAL DISTRICT PENNSYLVANIA -
FRANKLIN/FULTON COUNTIES

IN RE: APPOINTMENT OF : MISCELLANEOUS
 : DOCKET
TIMOTHY D. WILMOT, ESQ.: VOLUME BB. PAGE 429
AS STANDING MASTER IN :
DIVORCE :

ORDER OF COURT

May 16, 1996, it is ordered that Timothy D. Wilmot, Esquire, is designated and appointed as the Standing Master in Divorce, and he shall assume the duties and responsibilities of the standing master on June 1, 1996.

It is further ordered that upon commissioning of the master to any divorce case brought before this court, the master shall perform the usual and customary duties, including the scheduling and conducting of pre-hearing conferences and scheduling and conducting of the hearing itself in accordance with the state and local rules of court pertaining thereto.

By the Court,

/s/ John R. Walker
P.J.

MICHAEL P. BARLOW, Plaintiff vs. TROY REED, ERIE
INSURANCE COMPANY, PENNSYLVANIA NATIONAL
COMPANY and CAROL FOGELSONGER, Defendants,
Franklin County Branch, Civil Action - Law A.D. 1995 - 63

Declaratory Judgment- Insurance Contract- Interpretation- Residence

1. Where an insurance contract states that coverage extends to persons related to the policyholder by blood, marriage or adoption, and who reside in the same household, the definition of residence is controlled by the factual situation, and not by intent of the person seeking coverage.
2. Residence may differ from domicile.
3. In order for the person to be covered, there must be evidence which does not show efforts to maintain a separate existence from the rest of the policyholder's residence.
4. Where there is evidence that a person slept on the floor, very occasionally ate meals there, kept some clothing, received mail at that address, and listed that address on government forms as his residence, with no evidence indicating another residence, the court will not grant the insurance company summary judgment on the basis that he is not a resident.
5. Where a party is residing with another party, pays a sum toward rent, uses separate laundry facilities, has stored belongings which indicate a possible departure, and eat separately, and the person seeking coverage is not part of their immediate family, but instead simply sleeps in the same house, while the evidence suggests the person seeking coverage is not a resident, the court may not grant summary judgment if the evidence establishing the bulk of the factors listed above depends on the testimony of the party seeking to avoid coverage, due to the *Nanty-Glo* rule.

David C. Clever, Esq., Attorney for Michael P. Barlow, Plaintiff
John N. Keller, Esq., Attorney for Erie Insurance Co.,
Defendants
James G. Nealon III, Esq., Attorney for Pennsylvania Nation
Company, Defendants

OPINION AND ORDER

WALKER, P.J., April 22, 1996

Findings of Fact

The question before the court concerns where Troy Reed, driver of a car involved in an accident on November 12, 1993, resided on that date. The court finds the following as facts of record before the court in this matter.

Troy Reed, grandson of Agnes Reed, was raised in Agnes Reed's house at 378 East Liberty Street, Chambersburg, Pennsylvania. Deposition of Agnes Reed at 5. Troy left Agnes

Reed's house after dropping out of high school to live in Shippensburg. Deposition of Agnes Reed at 5, 26, Deposition of Troy Reed at 11. After having an altercation with his roommate, Greg Helm, during summer of 1993, Troy called a friend, Acamie Wilt, to pick him up at work and drive him to his grandmother's house. Deposition of Acamie Wilt at 5-6. Troy had a duffle bag with him. *Id.* at 6. Troy stated during his deposition that he considered his grandmother's house, 378 East Liberty Street, to be his residence. Deposition of Troy Reed at 50.

Supporting Troy's statement is the fact that Troy never paid rent or utilities for his grandmother, and never bought any food. Deposition of Troy Reed at 57. He stated he slept there, on the floor or the couch, three or four nights a week at the time of the accident. *Id.* at 19, 24. This sleeping arrangement was confirmed by Agnes Reed, Deposition of Agnes Reed at 9, 13, and Troy's uncle and aunt, Arnold and Debra Partin, Deposition of Arnold Partin at 6, 7, Deposition of Debra Partin at 6, although Debra Partin refused to acknowledge any pattern to Troy's habits. Deposition of Debra Partin at 7.

His grandmother agreed at her deposition that Troy was welcome to stay at her house, Deposition of Agnes Reed at 19, and that was Troy's understanding, Deposition of Troy Reed at 23. Troy occasionally ate at 378 East Liberty Street. *Id.* at 58, Deposition of Agnes Reed at 10. Troy received his mail, including unemployment compensation checks, at Agnes Reed's house. Deposition of Troy Reed at 13, 79, 81. Troy changed clothes, took bathes and performed other tasks for daily living at his grandmother's residence. *Id.* at 87, Deposition of Agnes Reed at 10, Deposition of Arnold Partin at 18. Troy also kept some clothes and changed clothing at Agnes Reed's house. Deposition of Troy Reed at 87, Deposition of Debra Partin at 16.

During this period outsiders knew Troy could be reached at his grandmother's. Troy used this address when applying for unemployment compensation and when paying taxes. Deposition of Troy Reed at 79. Five days after the accident Troy listed 378 East Liberty Street as his residence. *Id.* at 82. Troy's friends knew to use his grandmother's phone number to reach Troy, and

stopped to visit him, pick him up, or drop him off at this address. Depositions of Acamie Wilt at 7, Charlesa Ott at 6, 13, and Warren David Hockenberry at 18-19. Troy himself clearly indicated several times at his deposition that he considered Agnes Reed's house his home at the time of the accident. Deposition of Troy Reed at 88, 90-94.

The Partins live in the same house at 378 East Liberty with Agnes Reed. Deposition of Arnold Partin at 4, 5; Deposition of Debra Partin at 5. The Partins moved into the house on August 1, 1993. Deposition of Debra Partin at 7. Every two weeks they give Agnes Reed \$100 toward rent and utilities. Deposition of Arnold Partin at 8, 9-10. Arnold slept in one bedroom, and Debra slept on the couch. Deposition of Agnes Reed at 7 13. The Partins eat separately from Agnes Reed, and do not use the laundry facilities in the house. Deposition of Debra Partin at 9-10, 6. Troy never considered himself a part of the Partin household because it was his grandmother's house. Deposition of Troy Reed at 62.

Discussion

The question before this court on the pending motions for summary judgment is whether Roy Reed resided at 378 East Liberty Street in Chambersburg, Pennsylvania, and if so whether he was part of either Agnes Reed's household or Arnold and Debra Partin's household, or both, such that he would be covered by the respective auto insurance policies. While simply stated, the question is very close with regard to either household.

Both the insurance policies to be interpreted here, that issued to Agnes Reed by Erie Insurance Exchange, and that issued to the Partins by Pennsylvania National Insurance Company, contain language which defines a covered family member driving a car owned by another as a person related to the policy holder by blood, marriage or adoption and residing in the same household. Differences in the wording between the two policies do not alter the basic thrust, which the court finds to be identical. To be covered, a person must be a relative, and live in the same household. Troy's relationship with either policyholder is not seriously contested; he is clearly a relative.

This court has found two Superior Court decisions helpful in our consideration of this issue. In *Amica Mutual Ins. Co. v. Donegal Mutual Ins. Co.*, 376 Pa. 109, 545 A.2d 343 (1988) the court reaffirmed that the residence of a person may differ from his or her domicile, because residence is a factual inquiry, not dependent on a person's intent. *Amica* at 115, 545 A.2d at 346. The court went on to say that where the language of the policy does not contain such words as permanent or "legal" a person may change their residence frequently, and it may refer to a transitory arrangement. *Id.*

Donegal Mutual Ins. Co. v. State Farm Mutual Auto Ins. Co., 377 Pa. Super. 171, 546 A.2d 1212 (1988) also considered language concerning relatives and residences. The court surveyed a number of decisions, including those of courts in other states, and laid out scenarios where residence would not be found.

[A] son and daughter-in-law who live in the parents, home but who have separate bedrooms and living rooms, who buy their own groceries and usually do not eat with the parents, and who divide utility bills with the parents, as a matter of law, are not members of the parents' household. *Hoff v. Hoff*, 132 Pa. Super. 431, 1 A.2d 506 (1938). So also, a mother who resides in a building owned by her daughter, but who pays rent and utilities, has a separate entrance, has her own kitchen, and does her own cooking is not a member of the same household as her daughter. *Drake v. Donegal Mutual Ins. Co.*, 422 F. Supp. 272 (W.D. Pa. 1976). And, a son and grandson are not members of the grandfather's household where they are living in the grandfather's home under a temporary arrangement, where the son has stored rather than sold his furniture, and where the two families to a large extent maintain their separate identities. *Mission Ins. Co. v. Ward*, 487 S.W.2d 449 (Mo. 1972). Something more than mere temporary sojourn is required. *A.G. by Waite v. Travelers Ins. Co.*, 112 Wis.2d 18, 21-22, 331 N.W.2d 643, 645 (1983). Finally, a landlady who rents a room to a boarder and charges him for

meals is not a member of the boarder's household within the terms of a liability policy covering injuries to persons other than those of the same household. *Umbarger v. State Farm Mutual Automobile Ins. Co.*, 218 Iowa 203, 254 N.W. 87 (1934). See also: *Rivera v. State Farm Mutual Automobile Ins. Co.*, 34 D. & C.2d 797 (Montg. 1964), aff'd 205 Pa. Super. 30, 206 A.2d 338 (1965) (averment that cousin was boarder is not admission that cousin was member of insured's household).

Donegal at 179-180, 546 A.2d at 1216.

What these situations all indicate are some efforts on the part of the non-policyholder to create a separate sphere within the household. Because of the complex nature of this problem, this court will discuss Troy's status with regard to Agnes Reed first, and then with regard to the Partins.

The record is devoid of Troy taking any steps to create a separate sphere alongside Agnes Reed's household. He is clearly not a paying boarder, as he contributes nothing in the way of money or supplies. Since he seldom eats at the house, there is no evidence of separate eating facilities. In fact, the only evidence concerning Troy eating in the house involves Agnes Reed testifying that she cooked shrimp for Troy, Deposition of Agnes Reed at 10, that Troy testified she made him sandwiches and brought them in to him in the living room (where he slept), Deposition of Troy Reed at 58, and that Troy attended a barbecue which included the Partins and Agnes Reed, held at 378 East Liberty Street, accompanied by a friend. Depositions of Agnes Reed at 11, Arnold Partin at 15, Charlesa Ott at 6. This evidence is not conclusive one way or the other, although it tends more to residency than the opposite.

As detailed above, Troy used his grandmother's address as a resident might, getting mail, listing it on official forms like tax returns and applications for unemployment benefits, and having friends contact him there, meet him there, and drop him off there.

By far the most persuasive evidence of Troy's residency is the fact he slept there. Although his sleeping arrangements were unusual compared to the average resident, since he slept on the

floor most often, and that only three or four nights a week during this period, it is clear that Troy went to 378 East Liberty Street when he had no other place to go. His grandmother testified he was always welcome. Significantly, the parties can point to no other place which is such a nexus for Troy's activities. He had severed his ties with his former residence in Shippensburg, with the exception of some belongings stored there, though little of worth. He slept at the houses of friends, but no other activity such as the receipt of mail was shown for these addresses. In short, the strongest evidence in the record stands for the proposition that, as he himself testified, Troy Reed resided with his grandmother at 378 East Liberty Street at the time of the accident.

Moreover, since this is a motion for summary judgment, it is not necessary for the court to be satisfied that Troy unequivocally was a resident in Agnes Reed's household, but rather that there be a genuine issue of material fact about this issue. Pa.R.Civ.P. 1035; *Penn Center House, Inc. v. Hoffman*, 520 Pa. 171, 553 A.2d 900 (1988) Therefore, the court finding that there is a genuine issue of material fact concerning Troy's residence, Erie Insurance Exchange's motion for summary judgment must be denied.

With regard to the Partins, this court finds that language from the Donegal case gives guidance. That court said, "Thus, one who, though related and living in the same home, maintains a separate apartment therein and divides the expense of maintenance, is not a member of the same household as an insured who resides there." *Donegal* at 179, 546 A. 2d at 1216) quoting 6C Appleman, Insurance Law and Practice (Buckley ed.) § 4411, This language precedes that quoted above, which further reinforces this court's findings. Because of the separate existence which the Partins led apart from Agnes Reed, this court feels the Partin household is not coextensive with the Reed household. Therefore, the evidence tends to indicate that Troy is not a member of their household.

At argument, counsel stressed the small size of the house. The court, while impressed with this detailed description, finds this is not dispositive. Rather, the court considers as very important

these facts: the separate eating and sleeping arrangements, the separate laundry arrangements, the storage of the Partins, furniture, indicating an imminent move, and the Partins giving Agnes Reed \$100 every two weeks toward rent and utilities. The court is convinced this would adequately evidence at trial the separate nature of the two households despite the size of the house.

Unfortunately, the *Nanty-Glo* rule precludes the granting of summary judgment with regard to this defendant. The reason is that the evidence supporting the Partins, claim that they had a separate household from Agnes Reed depends on their testimony. To accept their deposition testimony, uncontradicted though it is, is to preclude the finder of fact from judging the Partins, credibility on the stand, and this Pennsylvania jurisprudence will not allow. *Nanty-Glo Borough v. American Surety Co.*, 309 Pa. 236, 163 A. 523 (1932) . Although the depositions were taken by the plaintiff or counsel for codefendant Agnes Reed, it is still the Partins' testimony which is key. *See Penn Center House, supra*. Therefore, this court must deny Pennsylvania National's motion for summary judgment as well.

ORDER OF COURT

April 22, 1996, the court hereby denies the motion for summary judgment of defendant Erie Insurance Company and the motion for summary judgment of defendant Pennsylvania National Company.