COURT OF APPEALS
DECISION
DATED AND FILED

July 2, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1162 **Cir. Ct. No. 2009CV18759**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

ROBERT M. SORRIN,

PLAINTIFF-APPELLANT,

V.

SENTRY INSURANCE, A MUTUAL COMPANY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: JANE V. CARROLL, Judge. *Reversed and cause remanded.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 CURLEY, P.J. Robert M. Sorrin appeals the trial court's grant of summary judgment/declaratory judgment to Sentry Insurance Company (Sentry).[1]

[1] In this case, the terms "summary judgment" and "declaratory judgment" are used interchangeably. The final order reads: "Order Granting Motion for Declaratory Judgment and Summary Judgment."

Sorrin argues that the trial court erred in deciding that there were no factual disputes that prevented summary judgment/declaratory judgment being granted to Sentry. Specifically, Sorrin submits that there were facts and inferences which, if viewed in the light most favorable to him, would support a finding that the driver of the car that struck him, William Pearson, was a resident of his mother's home at the time of the accident, thereby making him an insured under his mother's automobile insurance. We agree and reverse.

BACKGROUND

¶2 On December 17, 2008, Sorrin was injured when a car, driven by William Pearson, struck Sorrin while he was crossing the street in downtown Milwaukee. Sorrin suffered significant injuries. At the time, Pearson was driving his girlfriend's, Jessica Ristau's, car. A policy-limits settlement was reached with the automobile liability insurer that insured the girlfriend's car. The remaining dispute in the case had to do with Sentry Insurance Company, who insured Pearson's mother's automobile. Sentry argued that Pearson was not covered under his mother's policy because he was not residing with her at the time of the accident. The policy, in pertinent part, reads:

> **DEFINITIONS**
>
> ….
>
> **You, your, yourself** means the person named in the declarations and that person's husband or wife if a resident of the same household. *It also means a family member who is a resident of the household* and who doesn't own a motor vehicle or whose spouse doesn't own a motor vehicle.
>
> ….
>
> **CARS WE INSURE**
>
> ….

> **Other Cars**
>
> *We insure other cars you use with the permission of the owner*. We don't insure other cars owned or leased by you, or furnished or available for the regular use of you or resident members of your family.

(Emphasis added; emphasis omitted.)

¶3 The trial court agreed with Sentry and concluded that Pearson was not a resident of his mother's home at the time of the accident. In the trial court's decision, the judge discounted the opinion of Pearson's girlfriend Ristau that Pearson was not moving permanently to California.[2]

¶4 According to Pearson's deposition, Pearson, who was twenty years old at the time of the accident, had been traveling back and forth between Milwaukee and California starting about one year after he graduated from high school in 2007. During his last couple of years in high school, he lived with his mother and stepfather at 3275 North 47th Street in Milwaukee. After graduation, he continued to live at the 47th Street residence. However, Pearson, who had worked as a model both during and after high school for Ford Models, hoped to further develop his modeling career in California while still maintaining his employment with Ford Models here in Wisconsin. To that end, he and a friend,

[2] Perhaps contributing to the trial court's decision that no factual dispute existed, we note that the trial court mistakenly believed that Ristau "also testified that she thought Pearson was living in different cities with different people, when there was no evidence to indicate he was living anywhere other than in California and Milwaukee…." Her actual testimony was as follows:

> I didn't think that he was moving [to California] permanently. He was always kind of coming and going pretty freely, so I – I kind of assumed he had people that he was staying with, because he does have a lot of model friends throughout, you know, different cities that he would just kind of stay with.

Ingrid Shulta, traveled to California together in April 2008. They drove there in Shulta's car. He claimed he "took everything" with him.

¶5 Shulta said in her statement that Pearson only took clothing and toiletries with him when he left Milwaukee. Shulta testified that when they arrived in California she allowed Pearson to stay with her on a temporary basis for a couple of months. Earlier she had leased an apartment in her own name, and Pearson was not on the lease. She never received any mail for Pearson. She also stated that Pearson did not pay any rent. At this time, to Shulta's knowledge, Pearson was supporting himself through money given to him by his mother.

¶6 Pearson said that after leaving Shulta's apartment in the summer of 2008, he then stayed with two of his cousins. He testified that he was charged $500-$600 per month while there. However, he provided no furnishings for that home, and all that he had were the clothes he brought from Milwaukee. Again, his mother was providing him with money to pay all his expenses, although he did have some part-time employment in California.

¶7 Pearson testified that he made contact with a modeling agency in California but made little to no money there. While in California, he opened a bank account in November 2008, shortly before the December 2008 accident, primarily because this was the easiest way for his mother to send him money. While in California, he continued his iPhone account under his parents' plan, which his parents paid for while he was in California. He also never obtained a California driver's license. According to Pearson, he traveled back to Milwaukee by airplane three, four, or five times in the months he lived in California. Ultimately, he claimed he had to return to Milwaukee to live because he had to pay for the deductible for Ristau's car and therefore he was unable to pay his rent.

¶8 Contrary to what other witnesses attested to, Pearson testified that before and after he left for California he stayed in an upstairs bedroom in his mother and stepfather's house. He also claimed that his parents "redid the whole room," including painting it while he was in California.

¶9 Pearson's mother, Danette Stone-Bell, also was deposed. Interestingly, she revealed that at the time of the accident she was employed as an insurance agent for Sentry. She claimed that Sentry supplied her with a company car and she also owned a Chevy Trailblazer, which, while insured through Sentry, was not being driven. When asked directly whether Pearson ever drove it, she stated, "Not to my knowledge." With respect to Pearson's move to California, she stated that she believed Pearson took all of his belongings and a television. Stone-Bell was also of the belief that Pearson slept in the basement prior to going to California and stayed in the basement during his return visits, not in the upstairs guest bedroom as Pearson claimed. In a later affidavit, Stone-Bell claimed that once Pearson left for California she "did not consider him to be a resident of [her] household." Further, she averred that William never drove the Chevy Trailblazer "even when he lived at home prior to moving to California." This recollection was refuted by Shulta, who wrote in her statement that not only had she seen Pearson drive the Chevy Trailblazer, but also she rode in it with him.

¶10 Pearson's friend Ristau, with whom he had a boyfriend-girlfriend relationship at the time of the accident, also gave a deposition. (Ristau's family owned the car that Pearson was driving at the time of the accident.) Ristau's testimony conflicted with both Pearson's and his mother's recollections. First, as noted, it was her opinion that Pearson was not permanently moving to California. She stated that he came back to Milwaukee "a handful of times" between April and December 2008. She recalled that she picked him up at the airport several

times and took him to his mother's house. She said that when she would enter the house she saw that Pearson was still occupying the basement bedroom that he had lived in prior to going to California. She further testified that the room was not remodeled and he had "a lot of stuff there still," including "a closet full of clothes and shoes."

ANALYSIS

¶11 We review *de novo* the grant or denial of summary judgment, employing the same methodology as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-15, 401 N.W.2d 816 (1987). Summary judgment is proper when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2011-12).[3] In deciding if genuine issues of material fact exist, we draw all reasonable inferences in favor of the nonmoving party.[4] ***Metropolitan Ventures, LLC v. GEA Assocs.***, 2006 WI 71, ¶20, 291 Wis. 2d 393, 717 N.W.2d 58.

¶12 In deciding whether there are factual disputes, the circuit court and the reviewing court consider whether more than one reasonable inference may be drawn from undisputed facts; if so, the competing reasonable inferences may constitute genuine issues of material fact. *See* ***Hennekens v. Hoerl***, 160 Wis. 2d 144, 162, 465 N.W.2d 812 (1991). As noted, we draw all reasonable inferences from the evidence in favor of the nonmoving party. ***Grams v. Boss***, 97 Wis. 2d

[3] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[4] Sentry states in its brief that: "The issue asserted is whether the evidence is sufficient to support the trial court's judgment…." This is not the correct standard of review.

332, 338-39, 294 N.W.2d 473 (1980), *abrogated on other grounds by* ***Meyers v. Bayer AG, Bayer Corp.***, 2007 WI 99, ¶28, 303 Wis. 2d 295, 735 N.W.2d 448. Whether an inference is reasonable and whether more than one reasonable inference may be drawn are questions of law that we review *de novo*. ***Hennekens***, 160 Wis. 2d at 162. Choosing between conflicting reasonable inferences, like assessing credibility and weighing evidence, is the role of the fact finder; it is not the role of the circuit court on summary judgment. *See* ***Fortier v. Flambeau Plastics Co.***, 164 Wis. 2d 639, 665, 476 N.W.2d 593 (Ct. App. 1991).

¶13 Whether a person is a resident of a household for insurance coverage purposes "is a fact-intensive inquiry." ***Seichter v. McDonald***, 228 Wis. 2d 838, 844, 599 N.W.2d 71 (Ct. App. 1999). We must consider whether the person and the named insured were:

> (1) Living under the same roof; (2) in a close, intimate and informal relationship; and (3) where the intended duration is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship … in contracting about such matters as insurance or in their conduct in reliance thereon.

Pamperin v. Milwaukee Mut. Ins. Co., 55 Wis. 2d 27, 36-37, 197 N.W.2d 783 (1972) (citation and quotation marks omitted; ellipses in ***Pamperin***). When applying these factors, we must also consider: the age of the person; whether a separate residence is established; the self-sufficiency of the person; the frequency and duration of the stay in the family home; and the person's intent to return. ***Seichter***, 228 Wis. 2d at 845. "[N]o one factor is controlling[,] … all of the elements must combine to a greater or lesser degree in order to establish the relationship." ***Pamperin***, 55 Wis. 2d at 37.

¶14 It should be noted that an individual can have more than one residence at the same time. *See, e.g.*, ***Seichter***, 228 Wis. 2d at 846 (son of insured was resident of the household even though a full-time student in another city); ***Ross v. Martini***, 204 Wis. 2d 354, 360, 555 N.W.2d 381 (Ct. App. 1996) (son of divorced parents who had lived with both parents was a resident of both households); ***Belling v. Harn***, 65 Wis. 2d 108, 116-18, 221 N.W.2d 888 (1974) (wife was resident of the same household as her husband under the terms of the insurance policy when they were divorcing and living separately); ***Londre v. Continental W. Ins. Co.***, 117 Wis. 2d 54, 58, 343 N.W.2d 128 (Ct. App. 1983) ("members of a family need not actually reside under a common roof in order to be deemed part of the same household").

¶15 There is no dispute that Pearson lived with his mother and stepfather for several years of high school and the year following graduation. Also, no one argues that Pearson moved back into the family home in January 2009. The disagreement lies with where Pearson "resided" between April and December of 2008. Addressing the factors identified in ***Seichter***, Pearson was a young man of twenty years of age at the time of the accident. He was almost entirely dependent on his mother for his support. He did live in California for approximately eight months, but returned to Milwaukee between three to five times. While in California he lived with either friends or family. He never lived independently, nor did he ever sign a lease. He used his phone, which was on the family plan in Milwaukee. With respect to his mailing address, Pearson claimed to have forwarded his mail to California; however, Shulta never received any mail for him at her apartment. He also never obtained a California driver's license, which he stated was due to the long delays in obtaining one in California. Pearson did open a bank account in California, but not until November 2008. He and his mother

both claimed it was done to accommodate his mother sending him money for his support. At the time of the accident, Pearson gave the police his Milwaukee address. Indeed, he could not recall the address of his cousins' residence in California when asked during his deposition.

¶16 Pearson clearly had free access to his mother and stepfather's home. He stayed there when he came back to Wisconsin, although he claimed to sleep in a bedroom different from that identified by his mother and girlfriend. Pearson stated that he took all his belongings with him when he left. However, his girlfriend disagreed, stating that he had "a lot of stuff" remaining in his bedroom. In addition, Pearson continued his employment with the Milwaukee-based Ford Models while in California. Given these facts, it would appear that Pearson had a close, intimate informal relationship with his mother and that he was free to come and go as he pleased. *See* ***Pamperin***, 55 Wis. 2d at 36-37; ***Seichter***, 228 Wis. 2d at 845.

¶17 Some of the factors and their reasonable inferences could support a finding that Pearson resided in California: for example, his claimed intent to leave permanently and his mother's belief that he was no longer a member of the household. However, there are also factors and reasonable inferences that support a finding that Pearson continued to be a resident of his mother and stepfather's household: his girlfriend's belief that he was not moving permanently to California; many of his personal items remained in his bedroom in Milwaukee; and he never obtained a California driver's license.

¶18 It is also well to remember that both Pearson and his mother's self-interest lie with a finding that Pearson was not a resident of his mother and stepfather's home at the time of the accident, as both were set to be adversely

affected if Pearson would be found to be a resident of his mother's home. Pearson already had to pay the deductible for Ristau's automobile, which prevented him from remaining in California, and he would, in all likelihood, have to pay another deductible if the Sentry policy was utilized. His mother, as an employee of Sentry, was sure to have believed that her insurance rates would increase if the accident was charged against her insurance policy. This may well explain Stone-Bell's insistence that Pearson never drove her personal automobile, despite Shulta's observations that Pearson not only drove it, but she also accompanied him when he did.

¶19 On the strength of this record, summary judgment was not appropriate. As noted, we must draw all reasonable inferences in favor of the non-moving party. *See* ***Metropolitan Ventures***, 291 Wis. 2d 393, ¶20. The ultimate decision as to whether Pearson was a resident of his mother and stepfather's home must be made by a fact-finder. For the reasons stated, the decision of the trial court is reversed and the matter is remanded for a trial.

By the Court.—Order reversed and cause remanded.

Not recommended for publication in the official reports.