COURT OF APPEALS
DECISION
DATED AND FILED

June 22, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3386

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

MARTIN RIDDELL,

PLAINTIFF-APPELLANT,

V.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

DEFENDANT-RESPONDENT,

ANNETTE L. KLINGSPOHN AND FARMERS INSURANCE EXCHANGE,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL D. GUOLEE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Martin Riddell appeals the grant of summary judgment to State Farm Mutual Automobile Insurance Company (State Farm). He contends that the trial court erred in concluding that he was not eligible for uninsured motorist coverage under his parents' automobile insurance policy because he did not fall within the definition of "relative" found in the policy. He argues that there were disputed material facts and, alternatively, if there were not disputed material facts, then there were facts which were subject to conflicting inferences which made summary judgment inappropriate. We affirm because Riddell did not fall within the policy definition of a "relative" as he was neither living with his parents at the time of the accident, nor did he qualify as an "unemancipated child away at school."

I. BACKGROUND.

On June 6, 1995, Riddell, age twenty-two, was seriously injured when, while riding a bicycle on a Milwaukee street, he was struck by a car driven by Annette Klingspohn. Riddell grew up in Neenah, Wisconsin. At the time of the accident, his parents still lived in Neenah. They had a policy of automobile insurance covering three vehicles with State Farm.

Following graduation from high school in 1990, Riddell attended the University of Wisconsin-Fox Valley for two years. After leaving school, he lived in Appleton, Wisconsin, and was gainfully employed until he enrolled at Lawrence University in January 1995. After Riddell began attending Lawrence University, he was unable to continue his studies because he discovered that he did not qualify for financial aid. Riddell then moved to Milwaukee in March 1995.

At the time of the accident, Riddell was supporting himself by working thirty hours a week at Marshall Field's. During the summer Riddell

intended to audit a math course for which he would receive no credit. He had enrolled as a special student at the University of Wisconsin-Milwaukee, but at the time of the accident, he had not paid the tuition. Riddell never attended this class, as the accident occurred two weeks before the class was to start.

After the accident, Riddell commenced an action against Klingspohn and Farmers Insurance Exchange (Farmers), the company that insured Klingspohn. He obtained a default judgment against both Klingspohn and Farmers, but the insurance company successfully brought a motion seeking relief from the default judgment. After obtaining relief from the default judgment, Farmers filed a summary judgment motion, arguing that Klingspohn no longer had a policy of insurance with the company. The trial court granted Farmers' motion. Riddell then filed an amended complaint against State Farm, claiming he was entitled to uninsured motorist coverage under his parents' policy. State Farm brought a summary judgment motion. The motion was based upon its argument that Riddell was not covered by his parents' policy because he did not fall within the definition of "relative" found in the policy. The trial court agreed and granted summary judgment to State Farm. This appeal follows.

II. ANALYSIS.

The interpretation of an insurance contract presents a question of law. ***Maas v. Ziegler***, 172 Wis.2d 70, 79, 492 N.W.2d 621, 624 (1992). Issues of insurance coverage are therefore properly decided on summary judgment. *See* ***Raby v. Moe***, 153 Wis.2d 101, 109, 450 N.W.2d 452, 454 (1990). In an appeal from the entry of summary judgment, this court reviews the grant of summary judgment *de novo*, ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 315-16, 401

N.W.2d 816, 820 (1987), applying the same standard and following the same methodology required of the trial court under § 802.08(2), STATS.[1] ***Id.***

Riddell's parents' automobile insurance policy provided uninsured motorist coverage to a "relative." Relative, as defined in the policy, means "a person related to you or your spouse by blood, marriage, or adoption who lives with you. It includes your unmarried and unemancipated child away at school."

Riddell submits that he has alleged sufficient facts to permit a jury to answer the question of whether he fell within the policy's definition of "relative." He argues that there were both disputed material facts and, at the very least, some material facts which were "subject to conflicting interpretations," making summary judgment improper. He points to several facts which he claims support his contentions. First, Riddell notes that, at the time of the accident, he was unmarried and employed on only a part-time basis. Further, he asserts that he falls within the policy definition because he always considered his parents' home to be his permanent residence. As proof of his contention that his parents' home was his permanent residence, Riddell stated that he maintained a bedroom in his parents' home, that he received mail at his parents' home, and that he had a savings account in Neenah in both his and his mother's names. He submits that in January 1995, several months before his accident, he was found ineligible for financial aid at Lawrence University because he was not sufficiently independent

[1] Section 802.08(2), STATS., provides:

> The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, 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.

from his parents to qualify. He argues that this fact, coupled with his enrollment in a class at the University of Wisconsin-Milwaukee, satisfies the "unemancipated child away at school" language found in the policy definition of "relative."

State Farm responds that the trial court correctly determined the summary judgment motion as the material facts were neither disputed nor subject to conflicting interpretations. State Farm also requests, inasmuch as no Wisconsin case law has ever interpreted this particular policy language, that this court determine that the policy definition of "relative" is unambiguous and that the term "unemancipated" found in the policy exempts coverage for anyone over the legal age of majority, in this case, age eighteen.

We are satisfied that summary judgment was properly granted to State Farm for three reasons: first, Riddell was not living with his parents at, or shortly before, the accident; second, he was emancipated; and third, he was not "away at school." Because this case can be decided without determining whether the word "unemancipated" contained in the policy definition of "relative" excludes all persons over the legal age of majority from coverage, we decline to address it. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issues need be addressed).

The trial court, after determining that there were no disputed material facts, found multiple reasons to support State Farm's summary judgment motion:

> It's clear under these facts, this young adult left home, he is—there's a presumption, I think too he's age of majority. He's over that. He's 22. … He's been away since age 20. They were not putting him as a deduction on their tax return. He hadn't been named recently on any of their policies ….

> There's no care provided here other than the care [that] would [be] provided for any guest that would come to our [sic] house. No custody, no control. The young man is clearly emancipated here and he's clearly not living with—when we look at the school aspect, he really wasn't in school either and going to school.

Thus, the trial court concluded that summary judgment was appropriate because: (1) Riddell had not lived at home for two years, as evidenced by the fact that his parents had removed him from their automobile insurance policies two years previously; (2) he was over eighteen years of age, and therefore, presumptively emancipated. Further, he was emancipated because his parents no longer exercised control or custody over him and no longer listed him as a dependent on their income tax return; and (3) he was not attending school when injured.

Although Riddell claims that the record contains disputed material facts or undisputed material facts which are subject to conflicting interpretations, he has failed to identify a single disputed material fact or point to an inference based upon facts that are subject to conflicting interpretations. Thus, we conclude this matter was ripe for summary judgment.

Our review of the record supports a conclusion that Riddell was not living with his parents. As noted, Riddell's parents had an automobile insurance policy with State Farm. The policy defined an insured as: "1. the first person named in the declarations; 2. his or her spouse [and] their relatives." "Relative" is defined in the policy as "a person related to you or your spouse by blood, marriage or adoption who lives with you. It includes your unmarried and unemancipated child away at school."

When analyzing an insurance policy, "[w]ords used in a policy should be given their common, everyday meaning and should be interpreted as a

reasonable person in the insured's position would have understood them." ***Holsum Foods Div. of Harvest States Coop. v. Home Ins. Co.***, 162 Wis.2d 563, 568-69, 469 N.W.2d 918, 920 (Ct. App. 1991). In giving the State Farm policy language its common, everyday meaning, we must look to see whether Riddell satisfies the "lives with you" policy language before we determine whether he was an "unmarried and unemancipated child away at school."

Riddell argues that where he intends to make his permanent residence controls, and since he intended his residence to be his parents' home, he has fulfilled the "lives with you" language found in the policy. Although no Wisconsin cases have defined the phrase "lives with you" within the context of a policy's definition of "relative," the identical policy language was addressed in ***Stoner v. State Farm Mutual Automobile Ins. Co.***, 780 F.2d 1414 (8th Cir. 1986). There, the court found that the phrase "lives with you" was not ambiguous and means *actually* living with you. ***Id.*** at 1417. "Because the phrase 'lives with you' is susceptible of only one interpretation, i.e., actually living [with the policy owner,] in fact, those cases holding that an ambiguity in an insurance policy should be construed to provide coverage are not applicable." We adopt the ***Stoner*** court's interpretation that the words "lives with you" are unambiguous and require that a relative must actually live with the owner of the policy to be eligible for insurance coverage, unless, of course, the "relative" is an "unmarried and unemancipated" child and is temporarily "away at school."

Riddell did not live with his parents, and therefore, his assertions that he did are rejected. Under the undisputed facts presented here, we conclude that Riddell was not living with his parents at the time of the accident, nor was he temporarily away at school. In fact, the undisputed evidence indicates that he had not lived with his parents for several years.

First, we note that Riddell claims he was living with his parents because he considered their home to be his permanent residence. Under the ***Stoner*** definition of "lives with you," his assertion is immaterial. Moreover, the undisputed facts overwhelmingly support a conclusion that Riddell was not living with his parents. The record reflects that after leaving the University of Wisconsin-Fox Valley in 1992, Riddell lived at home until February 1993, when he moved into an apartment in Appleton, Wisconsin, which he shared with a roommate. Eventually he moved into another apartment, which he shared with a girlfriend until he began his studies at Lawrence University in January 1995. For the brief time that he attended school there (approximately three-and-one-half weeks), he lived in a dormitory. Upon leaving Lawrence University, Riddell took his belongings to his parents' house while he went to live with his girlfriend. Between the time he left Lawrence University and the time he moved to Milwaukee, Riddell spent only four days at his parents' house, and he did so for the express purpose of packing up his belongings to move them to Milwaukee.

Upon moving to Milwaukee, Riddell submitted a change of address form to the post office, asking that his mail be sent to his apartment in Milwaukee. He also moved his checking account from a bank in Appleton to a bank in Milwaukee.

Evidence from other sources also supports the conclusion that Riddell was not living with his parents from February 1993 until he moved to their home after the accident to recuperate. When Riddell filed his income taxes for 1993 and 1994, he listed his permanent address as the apartment in which he was living. He did not claim to be living in his parents' home. Additionally, his father informed his insurance agent that Riddell had moved out of the house in 1993 and, as a consequence, State Farm stopped charging the father a premium for his son on

the father's automobile insurance policy. When Riddell independently obtained automobile insurance (which later lapsed), he listed his Appleton address as his residence. Thus, we conclude that the record establishes that Riddell had moved out of his parents' home almost two years before the accident. Although Riddell still stored some of his belongings at his parents' home,[2] and still occasionally visited, he was not living with his parents when the accident occurred.

While we have concluded that Riddell did not "live with his parents," as we have interpreted that phrase, we further determine that Riddell was not an "unemancipated" child. "To emancipate means to free or release a child from the parental power, making the person released *sui juris*." ***Wadoz v. United Nat'l Indemnity Co.***, 274 Wis. 383, 388, 80 N.W.2d 262, 265 (1957) (citing ***Groh v. W.O. Krahn, Inc.***, 223 Wis. 662, 669, 271 N.W. 374, 377 (1937)). *See also* BLACK'S LAW DICTIONARY 521 (6th ed. 1990) (defining "emancipation" as "the act by which one who was unfree, or under the power and control of another, is rendered free, or set at liberty and made his own master"). Between the time Riddell left the University of Wisconsin-Fox Valley and the time he entered Lawrence University, he supported himself through various jobs. At that time he received no financial assistance from his parents other than an occasional gift. Thus, Riddell had been supporting himself through regular employment for almost two years before attending Lawrence University. He also had been working in Milwaukee for three months at the time of the accident.

[2] Riddell claimed to keep a bedroom at his parents' house, but his mother testified in her deposition that he had removed most of his belongings and he only stored mementos and such things at the home.

We also find information supplied by Riddell in his application for financial aid to be most persuasive in concluding that he was not financially dependent on his parents in January 1995. Riddell states that his reason for leaving Lawrence University was his failure to qualify for financial aid. However, his application for aid was not rejected, as Riddell argues in his brief, because "he was still dependent on his parents." Rather, it was rejected because his parents had taken him as a dependent on their 1992 income tax return, thereby disqualifying him for financial aid.[3] Moreover, his application soundly defeats his current contention that he was unemancipated. It states: "For the past two years I have been living on my own, paying my own bills and making my own way. The only reason is because my parents have said that they will not support me in any way, shape or fashion."[4] Thus, approximately six months prior to the accident, Riddell declared that he was not living with his parents and that they refused to financially support him.

Additional evidence that he was emancipated can be found from the fact that after Riddell moved to Milwaukee in March 1995, he signed a lease for an apartment without any parental involvement. Further, his sole support during this period of time came through his employment at Marshall Field's, as his parents gave him no financial assistance during this time period. Thus, given the cumulative effect of this evidence, we conclude that Riddell was not "unemancipated" under the terms of the policy.

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[3] Riddell's parents never claimed him again as a dependent after 1992, which is the last year he attended the University of Wisconsin-Fox Valley, and the last time his parents paid his college tuition.

[4] Riddell paid the $200 out of his own funds that he was charged for living in the dormitory for three-and-one-half weeks.

We also determine that Riddell was not "away at school." Although Riddell related that he had attended the University of Wisconsin-Fox Valley for two years following his graduation from high school in 1990, and that he lived at home, with his parents paying his tuition, he failed to mention several key events following his studies at the University of Wisconsin-Fox Valley that impact on the determination of whether he was "away at school."

Despite Riddell's intentions to take a summer college course, in actuality, at the time of the accident, he was not attending school. Nor had he paid the tuition for the University of Wisconsin-Milwaukee math course he intended to audit as a special student. Riddell's situation can be distinguished from that of a college student who becomes injured after arriving on campus shortly before classes have actually started. Riddell had been in Milwaukee for three months before summer school began, was employed, and was living independently. While he may have intended to audit a course, he never attended a single class and never paid the tuition. Thus, he was not "away at school."

For the reasons stated, the trial court's judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.