

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

November 21, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-0693**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**DEBBRA MACDONALD, INDIVIDUALLY, AND AS SPECIAL  
ADMINISTRATOR OF THE ESTATE OF WILLIAM  
MACDONALD, DECEASED,**

**PLAINTIFF-APPELLANT,**

**V.**

**AMERICAN NATIONAL PROPERTY AND CASUALTY  
COMPANY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Door County:  
JOHN D. KOEHN, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Debbra MacDonald, individually and as special administrator of William MacDonald's estate, appeals a summary judgment

dismissing her action against American National Property and Casualty Company. She argues that outstanding issues of material fact preclude summary judgment on whether Edmund Stephens was covered under (his father's) policy with American National. Alternatively, she argues that the court should have granted her motion for summary judgment on that question. Because we conclude that reasonable, differing inferences could be drawn from the undisputed facts and therefore summary judgment was inappropriate, we reverse the judgment and remand the matter for trial.

¶2 Stephens is covered under his father's insurance policy if he was "living in [his parents'] household" at the time of the accident. The trial court concluded that Stephens' deposition testimony established that he was not living in his parents' home because he had "moved out" and "had not intended to return." That conclusion was partially based on the court's interpretation of Stephens' deposition that contained a double-negative question and answer:

Q: When you were working in Door County did you have any - did you ever have any permanent plans not to return to the Oakwood residence.

A: Not really. My option - I mean I wasn't in school and I didn't have a lease and I knew I could always go back home for good if I need it, and I always had a place there so I was - when I went to Door County I was just, I was just kind of seeing where I would end up next.

The trial court's conclusion is also supported by some of Stephens' behavior and activities. He had moved into an apartment he shared with two roommates, where his name was on both the cable and utility bills. Later he began working in Door County and moved to several addresses in Door County where he paid rent.

¶3 On the other hand, MacDonald established that Stephens did not have a long-term lease for any residence at the time of the accident, maintained his driver's license address at his parents' home, did not change his voter's registration to Door County, and left most of his belongings at his parents' home. He spent at least one night per week at his parents' residence, where he ate meals, came and went without permission or invitation, and had access to household vehicles without permission. He testified that he considered himself a member of the family and a part-time resident of his parents' household, and that he understood he was covered under the insurance policy as a driver in the household. He considered his parents' home his "home base."

¶4 Summary judgment is inappropriate in this case because a reasonable trier of fact could draw differing inferences from the evidence. *See Jones v. Sears Roebuck & Co.*, 80 Wis. 2d 321, 325, 259 N.W.2d 70 (1977). Stephens' deposition testimony, besides being unclear, relates only to his "permanent plans not to return" to his parents' house. The intended duration of his stay at his parents' house is only one factor in determining whether he lived in that household. *See Londre v. Continental Western Ins. Co.*, 117 Wis. 2d 54, 343 N.W.2d 128 (1983); *Pamperin v. Milwaukee Mut. Ins. Co.*, 55 Wis. 2d 27, 37, 197 N.W.2d 783 (1972). The intended duration does not require the permanency generally associated with establishing a legal domicile, but does require something more than a "mere temporary sojourn." *See Pamperin*, 55 Wis. 2d at 35. The competing facts presented by the parties here would support differing inferences on Stephens' intentions as well as the ultimate question whether he was living in his parents household at the time of the accident.

*By the Court.*—Judgment reversed and cause remanded for trial. No costs on appeal.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

