

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

COTTY JAAK LUKK,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. N12C-03-228 PRW
)	
STATE FARM MUTUAL)	
AUTOMOBILE INSURANCE)	
COMPANY,)	
)	
Defendant.)	

Date Submitted: October 6, 2014
Date Decided: December 22, 2014

Upon Consideration of Post Trial Briefing.
Verdict for Plaintiff.

Joseph J. Longobardi, III, Esquire, LONGOBARDI & BOYLE, LLC, Wilmington, Delaware. Attorney for Plaintiff Cotty Jaak Lukk.

Patrick G. Rock, Esquire, HECKLER & FRABIZZIO, Wilmington, Delaware. Attorney for Defendant State Farm Mutual Automobile Insurance Company.

BUTLER, J.

INTRODUCTION

Cotty J. Lukk (“Plaintiff”) sustained serious injuries in a single car automobile accident on June 6, 2010 in western Pennsylvania. Plaintiff was a passenger in the automobile at the time of the accident. Plaintiff’s father, Timothy Lukk, held an automobile insurance policy (“the Policy”) with State Farm Mutual Automobile Insurance Co. (“Defendant”). State Farm denied Plaintiff’s claim for personal injury protection (PIP) benefits under his father’s policy. State Farm asserts the defense that Plaintiff was not an insured under his father’s policy because (1) Plaintiff had a separate household and/or (2) Plaintiff did not reside with and was not economically dependent on his father.

PROCEDURAL POSTURE

In a previous opinion denying cross motions for summary judgment in this case, this Court ruled that the language in the Policy was ambiguous, and, applying the doctrine of *contra proferentem*, the Court clarified the language of the Policy.¹ On September 22, 2014, this Court held a bench trial solely on the issue of liability.

¹ *Lukk v. State Farm Mut. Auto. Ins. Co.*, C.A. No. N12C-03-228 PRW, 2014 WL 4247767, at *1 (Del. Super. Ct. Aug. 27, 2014).

FINDINGS OF FACT

Cotty Luck was born on February 23, 1992. Cotty's parents, Timothy A. Lukk ("Father") and Kelly Snavely ("Mother"), separated and divorced before Plaintiff was two years old. After the separation, a family court order granted Plaintiff's parents joint custody with shared residence. Plaintiff would spend a week living in his mother's home in Chadds Ford, Pennsylvania, and then a week living in his father's home in Wilmington, Delaware. This arrangement continued until March of 2010 when Plaintiff moved to an apartment in Blairsville, Pennsylvania to obtain a degree from Wyotech, where he was studying to be a diesel mechanic.

When asked where he considered home growing up, Plaintiff testified that he considered his home to be his mother's house and his father's house. Plaintiff maintained a bedroom at both his mother's home and father's home. Plaintiff kept personal effects, furniture, and clothing in each bedroom. Plaintiff received mail, bills, and magazines at both homes. Both parents provided clothing, food, and spending money for Plaintiff throughout his life. Plaintiff's father provided health insurance for him until his father ran into some financial difficulties when Plaintiff was eighteen years old.

Plaintiff's father had re-married, but his second wife, Sally Ann Lewis, passed away in June of 2008 after a battle with cancer. Plaintiff's father was faced

with substantial debt when his late wife's medical bills piled up. Further, Plaintiff's father was a real estate agent and, like many others, he ran into financial difficulties during the crash of the housing market. In the Fall of 2009, Plaintiff's father could not pay his electric bill, so he borrowed approximately \$1,000 by cashing some savings bonds belonging to Plaintiff. Eventually, Plaintiff's father sold his Wilmington, DE home in a short sale in late December of 2009.

After selling his Wilmington home, Plaintiff's father moved in to the Kennett Square, Pennsylvania home of his current wife, Lori Ann Palumbo. Plaintiff's living arrangements remained the same, but instead of living at his father's old home in Wilmington, he lived in a spare bedroom in Lori Palumbo's home, where his father resided. A few months later, in March 2010, Plaintiff enrolled in the diesel mechanic program at Wyotech in Blairsville, Pennsylvania.

Plaintiff, with the help of his father, moved into an apartment in Blairsville, PA in order to be closer to Wyotech. Plaintiff testified that he left most of his belongings at the homes of his parents because he was required to wear a uniform at Wyotech, and he only needed some clothing for down time. Plaintiff's father paid the first two months rent on the apartment in order to repay Plaintiff for the money he borrowed during his financial struggle.

Plaintiff took out loans in order to attend Wyotech. The loans did not provide enough to meet Plaintiff's expenses in Blairsville, so his parents each gave

him anywhere between two hundred and four hundred dollars per month to cover the difference. Plaintiff testified that he relied on his parents as his primary source of support. Other than the money Plaintiff loaned to his father, Plaintiff made no financial contributions to either of his parent's households. Plaintiff only had a small bank account containing approximately two hundred dollars, and there is no evidence that he had earned more than \$1,300 of income during his life.

Plaintiff moved specifically to attend Wyotech, and he planned to move back home to find a job after he received his degree. Unfortunately, a few months after enrolling at Wyotech, on June 6, 2010, Plaintiff was seriously injured in a single car accident in western Pennsylvania while he was a passenger in a friend's truck. After the accident, Plaintiff returned home and resumed his old living arrangements, living with his mother for a week and with his father and Lori Palumbo the next. Because Plaintiff was still bound by the lease for the apartment in Blairsville, his father continued to pay the outstanding rent in full.

Plaintiff's school applications, loan applications, and Pennsylvania residential fishing license list his mother's Chadds Ford address. Plaintiff testified that his father was not on the loan applications because his father had poor credit at the time. Plaintiff also testified that a Pennsylvania fishing license is cheaper if the applicant is a resident.

DISCUSSION

1. Delaware PIP Statute

Under 21 *Del. C.* § 2118, “any auto insurance contract must include, at minimum, PIP coverage up to \$15,000 per person or \$30,000 per accident.”² The PIP coverage required by § 2118 “shall also be applicable to the named insureds and members of their households for accidents which occur through being injured by an accident with any motor vehicle other than a Delaware insured motor vehicle . . . while occupying any registered motor vehicle other than a Delaware registered insured motor vehicle . . .”³

The public policy underlying 21 *Del. C.* § 2118 “‘favors full compensation to all victims of automobile accidents’ and encourages ‘the Delaware driving public to purchase more than the statutory minimum amount [of coverage].’”⁴ Further, the Delaware Supreme Court has held that “any household exclusion in a Delaware automobile insurance policy is void and unenforceable.”⁵ Therefore, if

² *Wygant v. Geico Gen.*, 27 WL 3586488, at *2 (Del. 2011); 21 *Del. C.* § 2118(a)(2)(b).

³ 21 *Del. C.* § 2118(a)(2)(d).

⁴ *Progressive N. Ins. Co. v. Mohr*, 47 A.3d 492, 500 (Del. 2012) (quoting *Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d 915, 918 (Del. 1997)).

⁵ *Nationwide Gen. Ins. Co. v. Seeman*, 702 A.2d 915, 921 (Del. 1997); *See also Progressive N. Ins. Co. v. Mohr*, 47 A.3d 492, 500-01 (Del. 2012) (clarifying that the rule in *Nationwide* applies to both liability coverage and PIP benefits).

Plaintiff is a member of his father's household, the plain language of 21 *Del. C.* § 2118(a)(2)(d) requires that Plaintiff be covered under his father's policy.

2. The Insurance Policy

This Court has already interpreted the insurance policy language at issue in this case.⁶ The Policy defines an insured as “you or any member of your household.” In interpreting the definition of “member of your household” provided in the Policy, Judge Wallace wrote:

In order for Plaintiff to be entitled to PIP benefits under his father's policy, Plaintiff must have been “***EITHER*** : (1) a ‘member[] of [his father's] immediate family who ha[s] no separate household;’ ***OR*** (2) a ‘[p]erson[] who reside[s] with and [is] economically dependent upon [his father].’⁷

The parties agreed that Plaintiff is a member of his father's immediate family. State farm argues that, at the time of the accident, Plaintiff (1) had a separate household, (2) did not reside with his father, and (3) was not economically dependent upon his father.

3. Whether Plaintiff Was a Member of His Father's Household

In order to determine whether Plaintiff was a member of his father's “household” as that term is used in 21 *Del. C.* § 2118(a)(2)(d), and/or whether Plaintiff had a “separate household” as that phrase is used in the insurance policy,

⁶See *Lukk v. State Farm Mut. Auto. Ins. Co.*, C.A. No. N12C-03-228 PRW, 2014 WL 4247767 (Del. Super. Ct. Aug. 27, 2014).

⁷ *Id.* at *5 (emphasis in original).

the Court must first determine what constitutes a “household” and then what “household(s)” Plaintiff was a member of.

The Superior Court has previously held that the word “household,” for purposes of insurance policies, means “those who dwell under the same roof and compose a family.”⁸ In defining the phrase “resident of the household,” this Court has held that the clause means “one who dwells or has an abode under the same roof as the named insured for a duration of sufficient length so that the occupiers can be said to compose a family.”⁹ This Court has outlined several factors that should be considered in applying that definition to the facts of a case:

First, the occupier need not be a permanent member of the policyholder's household. However, he or she must be more than a mere transient or intend to stay for more than a temporary period. Second, the court should also consider whether there exists another residence for the individual seeking coverage under the homeowner's

⁸ *Engerbretsen v. Engerbretsen*, 675 A.2d 13, 19 (Del. Super. Ct. July 5, 1995), *aff'd sub nom. Engerbretsen v. United Serv. Auto. Ass'n*, 676 A.2d 902 (Del. 1996) (quoting *Amco Ins. Co. v. Norton*, 500 N.W.2d 542, 546-47 (Neb. 1993)).

[The Engerbretsen Court] adopted the definition of “household” found in *Amco Insurance Company v. Norton*, which was defined as “those who dwell under the same roof and compose a family.” It also adopted the following definition of “resident of the household” as “one who dwells or has an abode under the same roof as the named insured for a duration of sufficient length so that the occupiers can be said to compose a family.”

Temple v. Travelers Indem. Co., No. 98C-08-088 WCC, 2000 WL 33113814, at *3 (Del. Super. Ct. Nov. 30, 2000), *aff'd sub nom. Temple v. Traveler's Indem. Co.*, 782 A.2d 267 (Del. 2001) (internal citations omitted).

⁹ *Engerbretsen*, 675 A.2d at 19.

policy of another. Third, the nature and formality of the relationship between the individual seeking the protection of that policy and the policyholder should be scrutinized. Finally, the subjective element of the intent of those parties must be viewed in connection with the age, in terms of legal maturity, of the coverage supplicant.¹⁰

None of the above factors standing alone are outcome determinative, and they must be viewed together to determine whether the relationship exists.¹¹

Although Plaintiff did not live exclusively at his father's home, Plaintiff was more than a mere transient, and he intended to, and did, live in his father's home week on and week off throughout his life. Timothy Lukk is Cotty Lukk's biological father, and he maintained a bedroom in his home that was exclusively for Plaintiff's use. Plaintiff turned eighteen in February 2010, approximately one month before beginning school at Wyotech, and four months before the accident. Further, Plaintiff testified that he moved specifically to attend school, he left most of his belongings at his parent's homes, and he always intended to return home to find work after graduation.

This Court is of the opinion that a child of divorced or separated parents may be ruled to be a member of two households for purposes of insurance coverage.¹²

¹⁰ *Allstate Ins. Co. v. Laurenzi*, No. CIV.A.01C08279 CHT, 2003 WL 22853529, at *3 (Del. Super. Ct. Nov. 28, 2003) (citing *Engerbretsen*, 675 A.2d at 19-20).

¹¹ *Id.*

¹² *See Miller v. U. S. Fid. & Guar. Co.*, 316 A.2d 51, 56 (N.J. App. Div. 1974) (holding that a child of divorced parents was a member of both his mother's household and his father's household where child intended to be a member of both households and lived with his mother

One Delaware case that resolved a similar issue was *Fisher v. Novak*.¹³ In *Fisher*, the insurance policy covered those who “lived with” the named insured.¹⁴ The court found that to “live with” meant “to occupy a home with, to dwell with.”¹⁵ The court ruled that, because the daughter stayed at her father’s home for several days each week and her mother’s home for the remainder of the days each week, the daughter “lived with” both parents for purposes of the insurance policy.¹⁶

Like the daughter in *Fisher*, Plaintiff spent equal time during the year living with each parent. He maintained a bedroom with clothing, furniture, and personal effects in each home. Therefore, because Plaintiff dwelled under the same roof

during the week and his father on weekends); *Pellegrino v. State Farm Ins. Co.*, 639 N.Y.S.2d 668, 670 (N.Y. Sup. Ct. 1996) (ruling that a son who primarily resided with his mother in Pennsylvania was also a member of his father’s household where the son occasionally stayed at his father’s residence in New York, maintained a room with personal belongings in his father’s house, and received mail at his father’s house); *Alava By & Through Alava v. Allstate Ins. Co.*, 497 So. 2d 1286, 1288 (Fla. Dist. Ct. App. 1986) (ruling that child was a member of both households where child lived with his mother during the week and his father on weekends); *Cal-Farm Ins. Co. v. Boisseranc*, 312 P.2d 401, 406 (Fla. Dist. Ct. App. 1957) (ruling that a child of divorced parents with joint custody was a resident of the father's household for purpose of insurance, despite the fact that the child's physical residence was with his mother); *Who is "resident" or "member" of same "household" or "family" as named insured, within liability insurance provision defining additional insureds*, 93 A.L.R.3d 420 (1979) (collecting cases).

¹³*Fisher v. Novak*, No. CIV. A. 88C-MY-21, 1990 WL 82159, at *4 (Del. Super. Ct. June 11, 1990), *aff'd sub nom. State Farm Fire & Cas. Co. v. Fisher*, 599 A.2d 414 (Del. 1991).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

and composed a family with both his mother and his father, he was a member of both his mother's household and his father's household.

Although not essential to the holding, we note that the position asserted by State Farm here leads to the anomalous possibility that children in joint custodial relationships may have no insurance at all. In this case, Plaintiff's mother had no applicable insurance policy and thus could not insure Plaintiff as a member of her household. But if she did have one, it is quite possible that her insurer would likewise argue that mother's policy also did not cover Plaintiff because he "had a separate household" at his father's house. Thus, both insurers could deny coverage pointing to the separate household of the other, leaving Plaintiff completely uninsured, a result that is hardly desirable or consistent with the public policy expressed by the PIP statute.

State Farm next argues that Plaintiff could not have been a member of his father's household, because his father sold his house in a short-sale a few months before the accident. We do not believe that the short term financial struggles of a named insured should operate to strip coverage from members of his household. "A resident of a household is one who is a member of a family who live under the same roof. Residence emphasizes membership in a group rather than an attachment to a building."¹⁷ When Plaintiff's father moved in with Lori Palumbo, that became

¹⁷ *Am. States Ins. Co., W. Pac. Div. v. Walker*, 486 P.2d 1042, 1044 (Utah 1971).

his household. Further, there was a room in Ms. Palumbo's house for Plaintiff. This living arrangement continued to meet the definition of a household because Plaintiff and his father continued to dwell under the same roof and compose a family. The fact that Plaintiff's father did not own the home should have no bearing on whether this arrangement constituted a household for purposes of automobile insurance coverage.

4. Plaintiff's Blairsville Apartment Was Not a "Separate Household"

Defendant next argues that Plaintiff had a "separate household" because he had rented an apartment near Wyotech, where he was attending school. Courts from other jurisdictions have consistently ruled that a child who is temporarily away from the home while away at a college, technical school, or university may be considered a member of the parent's household for purposes of insurance coverage.¹⁸ At least one Delaware court has briefly considered the issue of

¹⁸ See e.g., *Aetna Casualty & Surety Co. v. Means*, 382 F.2d 26, 28 (10th Cir. 1967) (ruling that evidence was sufficient to support jury's determination that the son was a resident of the father's household where son was a minor, lived away at college, had a room and kept clothing at his father's house, received financial assistance from father, and used father's address as his own on important documents); *Federated Am. Ins. Co. v. Childers*, 608 P.2d 584, 587 (Or. Ct. App. 1980) (ruling that evidence supported a finding that son was a member of his father's household where son was temporarily living away from home to go to school, considered father's home to be his residence, left his possessions there, often returned for holidays, and maintained a bedroom in father's home); *Beck v. Pennsylvania Nat. Mut. Cas. Ins. Co.*, 429 F.2d 813, 817 (5th Cir. 1970) (holding that a son, who kept his personal belongings at his parent's house and returned there on every leave, was a member of his parent's household, despite the fact that the son was in the service and stationed away from home); *Who is "resident" or "member" of same*

whether a child living apart from the parental household may nonetheless be considered a resident of that household under a policy extending liability coverage to such residents.¹⁹ The Superior Court, in *Lawson v. Nationwide*, recognized factors that have been considered significant by courts considering this issue in other jurisdictions:

(1) the intention to establish a permanent abode outside the parents' household; (2) the reason for absence from the parents' household; (3) financial support received from parents; (4) proportionate amounts of time spent in the parents' house and in the "temporary" residence; (5) the address used on official documents; (6) distance from the parents' household; (7) whether the child has reached the age of majority; (8) the character of the "temporary" residence (i.e., dormitory room, rented apartment, purchased home); (9) whether personal belongings are left at the parents' house; (10) whether the child still has a room set aside for his/her use when at the parents' house; (11) any other facts showing emancipation or its lack (e.g., marital status, actions subsequent to the date liability accrued).²⁰

Although Plaintiff was renting an apartment near Wyotech at the time of the accident, applying the factors outlined above to the facts of this case compels the conclusion that Plaintiff remained a member of his parents' households when he temporarily moved to Blairsville. Plaintiff moved into the apartment specifically to attend Wyotech, and he planned to move back home after graduation to find a job. Plaintiff relied on his parents for support and they each provided him with

"household" or "family" as named insured, within liability insurance provision defining additional insureds, 93 A.L.R.3d 420 (1979) (collecting cases).

¹⁹ *Lawson v. Nationwide*, C.A. No. 79C-DE13, Bush, J. (Del. Super. Ct. Oct. 6, 1981).

²⁰ *Id.*

two to four hundred dollars per month to cover his expenses. Plaintiff had just turned eighteen, and there was no evidence that he used the apartment address for any official documents. Plaintiff only took some clothing to Blairsville, and he left most of his personal belongings in his parents' homes. There was still a room set aside for Plaintiff's use when he came back from Blairsville, one in his mother's home where he had always stayed, and one in Lori Palumbo's home, where Plaintiff's father lived and where his father continues to live. Therefore, Plaintiff remained a member of his parents' households when he moved to Blairsville to attend Wyotech.

5. Plaintiff Resided With His Parents

Plaintiff may also be covered under the policy if he resided with and was economically dependent upon his father. "Reside with" is not defined in the policy. This Court, in *Fisher v. Novak*, held that the term "live with" is ambiguous and it could mean either "to reside with, to dwell permanently and continuously with" or "to occupy a home with, to dwell with."²¹ This Court adopted the latter definition and ruled that a child, who spends several days each week with each of his parents separately, could be said to "live with" both parents. In *Fisher*, this Court noted that the Webster's Third New International Dictionary defines "reside" in pertinent part as: "to dwell permanently or continuously: have a settled abode

²¹ *Fisher*, 1990 WL 82159 at *4.

for a time: have one's residence or domicile.”²² “It is settled law that a person may have more than one residence at the same time.”²³ In consideration of the facts already outlined above, this Court finds that, at the time of the accident, Plaintiff resided with both parents and, therefore, resided with his father.

6. Plaintiff Was Economically Dependent Upon His Parents

At the time of the accident, Plaintiff had recently turned eighteen years of age. His parents provided continuous support consisting of money, food, and clothing throughout his life, and, other than some odd jobs, there is no evidence that Plaintiff has earned more than \$1,300 of income during his life. Defendant argues that Plaintiff could not have been economically dependent on his father because he had to loan his father \$1,000 during his father’s financial struggles. The testimony of Plaintiff, his father, and his mother all show that Plaintiff’s father paid the first two months rent in Blairsville, provided monthly spending money to Plaintiff, and continued to pay Plaintiff’s rent after he was injured in the accident. Plaintiff, relying solely on his student loans, simply would not have been able to keep up with his expenses without financial support from his parents.

²² *Fisher*, 1990 WL 82159 at *3 (citing Webster's Third New International Dictionary, Merriam-Webster, Springfield, Mass (1986)).

²³ *Paul v. Paul*, 60 A.3d 1080, 1083 (Del. 2012).

IN SUMMARY

The Court finds that, at the time of the accident, Cotty Lukk: was a member of his father's immediate family, was a member of his father's household, had no separate household, resided with his father, and was economically dependent upon his father.

CONCLUSION

For the foregoing reasons, the Court hereby finds in favor of the Plaintiff.

/s/ Charles E. Butler
Charles E. Butler, Judge