

MELANIE SCHIELDER

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NO. 2002-CA-1087

VERSUS

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COURT OF APPEAL

**STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY, TRECELLE
LEFLORE AND ABC
INSURANCE COMPANY**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 90-319, DIVISION "E"
HONORABLE JACQUES A. SANBORN, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Joan Bernard Armstrong, Judge Miriam G.
Waltzer, Judge Michael E. Kirby)

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The plaintiff, Melanie Schielder, filed the present action seeking damages for injuries sustained in a vehicular accident. Schielder was riding a bicycle when she was struck by a vehicle driven by Trechelle Leflore and owned by Leflore's stepfather. Leflore, State Farm Mutual Automobile Insurance Company (stepfather's insurer), and Allstate Insurance Company (Leflore's alleged insurer,) were named as defendants in the suit. Prior to trial, Schielder settled with State Farm and released it from the action. On the morning of trial, Schielder agreed to release Leflore individually and reserved her rights to proceed against Allstate. After plaintiff presented her case at trial, Allstate sought the involuntary dismissal of plaintiff's case on the basis that there was no evidence that Leflore was insured by Allstate. The trial court granted Allstate's motion and dismissed plaintiff's case. On appeal, the plaintiff argues that the trial court erred in finding that Leflore was not an insured under the Allstate policy when she was a listed driver on the policy and her grandfather, Thornton Smith, paid additional premiums to Allstate for twenty months to add her as an insured driver under his policy which premiums were never refunded by Allstate to Smith.

The automobile insurance liability policy issued by Allstate Insurance Company to Smith sets forth the following definitions as to persons covered

under the policy:

Insured Persons

- (1) While using your insured auto:
 - (a) You,
 - (b) Any resident, and
 - (c) Any other person using it with your permission.
- (2) While using a non-owned auto:
 - (d) You
 - (e) Any resident relative using a four-wheel private passenger auto or utility auto.

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Insured Auto

- (1) Any auto described on the declarations page
- (3) A non-owned auto used by you or a resident relative with the owner's permission

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Definitions

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- (5) "You" or "Your" – means the policyholder named on the declarations page and that policyholder's resident spouse.
- (6) "Resident" – means the physical presence in your household with the intention to continue living there. Unmarried dependent children while temporarily away from home will be considered residents, if they intend to continue to live in your household.

At trial, Leflore testified that in February of 1999 she sought to purchase a vehicle but did not have established credit. Smith agreed to assist her with the purchase of a 1999 Ford Explorer Sport. Smith's name was listed on the title as the owner of the vehicle. Leflore acknowledged that, at the time of the purchase of the vehicle and the date of the accident, she was

not living in Smith's house. She admitted that she had not lived with her grandparents, Rita and Thornton Smith, since she was sixteen years old. However, she gave their address as her residence when she purchased the vehicle. Leflore further stated that she used her grandparents' address on her application for a PEL grant and on her child's school application. She testified that she and her mother received mail and had personal items at Smith's house. However, she did not stay there overnight often.

Both grandparents testified at trial. They stated that while Leflore received mail and kept clothes at their residence, she had not lived with them since 1995. Mrs. Smith stated that Leflore's son stayed at her house before and after school, but he did not live with them. Mr. Smith testified that he sought to obtain insurance on Leflore and the Explorer because the vehicle was in his name. Mr. and Mrs. Smith spoke with Christy Fusilier, their insurance agent, and provided her with the information she requested. Mrs. Smith stated that Ms. Fusilier did not ask her for Leflore's driver's license or Leflore's address. Mr. Smith testified that Ms. Fusilier was informed that Leflore did not live with them and would be keeping the vehicle at her own house. Leflore was added as a driver and the vehicle as an insured vehicle to Smith's policy. Mr. Smith testified that he paid additional premiums for the coverage.

Christy Fusilier testified that had she known that Leflore was not living with the Smiths she would have told the Smiths that Leflore could not be added to their insurance policy. Fusilier stated that the Smiths told her that Leflore was living with them. The Smiths provided her with Leflore's driver's license, social security number and date of birth.

Documentation produced at trial revealed that Leflore's address on her driver's license issued in November of 1998 was listed as 2512 Guerra Drive, Violet, Louisiana. However, Smith's address in Braithwaite was listed on the credit agreement and sales documents from Bill Watson Ford.

The evidence presented established that Leflore was not living with her grandparents at the time insurance coverage was sought and on the day of the accident. Although she was listed as a driver on the policy, she was not a resident relative and therefore was not covered when driving a vehicle not owned by the Smiths. The terms of the insurance policy are clear and unambiguous and must be applied as written. La. C.C. article 2046; Magnon v. Collins, 98-2822 (La. 7/7/99), 739 So.2d 191. The trial court did not err when it granted defendant's motion for involuntary dismissal. Accordingly, the trial court's judgment is affirmed.

AFFIRMED