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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2424**

Ahmed Mohamud Abdi, et al.
Appellants,

vs.

State Farm Insurance Company,
Respondent.

**Filed December 9, 2008
Affirmed
Crippen, Judge***

Hennepin County District Court
File No. CV-07-9114

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Considered and decided by Minge, Presiding Judge; Schellhas, Judge; and
Crippen, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

CRIPPEN, Judge

Second cousins Mohamud Jama (Jama) and appellant Ahmed Abdi (Abdi) immigrated to the United States separately and rented space in the same Minneapolis apartment. Although the two shared certain expenses and household chores, both were independently employed. When Jama moved to Nebraska for work, he purchased a car and an automobile insurance policy from respondent State Farm Insurance Company (State Farm). Jama later returned to Minneapolis and moved back into the same apartment. Shortly after Jama's return, Abdi was injured in an automobile accident and sought no-fault benefits as a resident relative of Jama. After State Farm denied Jama's insurance claim, Abdi commenced this action to obtain benefits. The district court granted summary judgment to State Farm. Because Abdi was not a resident of Jama's household, we affirm.

FACTS

Abdi was born in Somalia in 1985 and immigrated to the United States in February 2004. Abdi commutes to work in Hutchinson, Minnesota, by riding with a friend because he does not own a car and has never been licensed to drive.

Upon arriving in 2004, Abdi moved into an apartment occupied by his cousin, Abdi Mohamud (Mohamud). Mohamud supported Abdi while he was living in Africa. Two months after Abdi arrived, Jama immigrated. Mohamud had also supported Jama in Africa, and Jama moved into Mohamud's apartment. Initially, Mohamud allowed Abdi and Jama to stay in the apartment rent-free. According to Abdi, Jama intended to stay

there “permanent[ly].” But after holding temporary positions in Minneapolis, Jama accepted a full-time position in Nebraska in late 2005.

While in Nebraska, Jama purchased a car and obtained an automobile insurance policy from State Farm. The policy includes underinsurance benefits covering bodily injuries of an “insured” and defines insured to include the policyholder and the policyholder’s “relatives.” A “relative” includes one “who resides primarily with [the policyholder].”

In March 2006, after Jama’s position in Nebraska was eliminated, he returned to Minnesota and moved back into Mohamud’s apartment. The men did not discuss the duration of Jama’s stay. Since Jama’s return, Abdi and Jama have been independently employed and have each contributed \$200 per month to the \$700 monthly rent. The occupants of the apartment shared responsibilities for cooking, cleaning, and household chores. Abdi and Jama socialized together, and Abdi would occasionally ride in Jama’s car.

One month after Jama’s return, Abdi was injured when a car in which he was a passenger was struck after running a red light. Abdi sought no-fault insurance benefits from State Farm under Jama’s policy. State Farm eventually denied Abdi coverage on the grounds that he did not meet the definition of “resident relative” for the purposes of the policy. After State Farm denied coverage, Abdi obtained first-party coverage from appellant Progressive Preferred Insurance Company, the insurer of the occupied vehicle. In early August 2006, Abdi and Progressive commenced an action against State Farm seeking no-fault benefits and reimbursement for no-fault benefits already paid.

On cross-motions for summary judgment, after determining that Abdi was not a resident of Jama's household, the district court denied Abdi's and Progressive's motion and granted State Farm's motion, thereby dismissing the claim. Observing that the relationship of Abdi and Jama was "indicative of roommates," the court concluded that the absence of intimacy was "analogous" to *Johnson v. Am. Econ. Ins. Co.*, 419 N.W.2d 126, 129 (Minn. App. 1988), where residency was denied in the circumstances of siblings who had moved into the home of their parents.

DECISION

Whether a person resides in a household for the purposes of an insurance policy is generally a question of fact. *Fruchtman v. State Farm Mut. Auto. Ins. Co.*, 274 Minn. 54, 55, 142 N.W.2d 299, 300 (1966); *Frey v. United Servs. Auto. Ass'n*, 743 N.W.2d 337, 344 (Minn. App. 2008). But where there are no genuine issues of material fact, the question of residence can be resolved as a matter of law by reference to the insurance policy and the facts in the record. *See American Family Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790 (Minn. 1993); *see also Mitsch v. American Nat. Prop. & Cas. Co.*, 736 N.W.2d 355, 358 (Minn. App. 2007) ("[T]he interpretation of insurance-policy language based on undisputed underlying facts [is a question] of law, which we review de novo."), *review denied* (Minn. Oct. 24, 2007).

Residency in a policyholder's household is shown where the claimant and policyholder live together for a duration "likely to be substantial," where they are in a "close, intimate and informal relationship," and thus where the residency conclusion "is consistent with the informality of the relationship," and "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.” *Firemen’s Ins. Co. v. Viktora*, 318 N.W.2d 704, 706 (Minn. 1982) (quoting *Pamperin v. Milwaukee Mut. Ins. Co.*, 197 N.W.2d 783, 788 (Wis. 1972)). This is a fact-specific inquiry in which the “entire nature of the relationship” is examined. *McGlothlin v. Steinmetz*, 751 N.W.2d 75, 83 (Minn. 2008).

There is no dispute that Abdi and Jama are related by blood, as required by Jama’s insurance policy. State Farm questions whether the relationship was likely to be for a substantial duration or the intimacy/informality of the relationship was such that Jama would consider it in contracting about such matters as insurance or Abdi would rely on this.¹ *See id.*

In *Viktora*, the supreme court held that a 24-year-old man who had moved into his parents’ home during a strike that suspended his employment was a resident in his

¹ Abdi argues that in *State Farm Fire & Cas. Co. v. Short*, 459 N.W.2d 111, 113-14 (Minn. 1990), the supreme court abandoned the portion of the *Viktora* factors examining whether the parties considered or relied upon their relationship in contracting or not contracting for insurance. The *Short* court held that a district court did not abuse its discretion in failing to instruct the jury to consider the parties’ contemplation or reliance on their relationship. *Id.* at 114. The court reasoned that where other considerations show the parties expect coverage of the claimant, their consideration at the time of contracting is not dispositive—that residency is determined at the time the coverage becomes necessary rather than the date on which the insurance is obtained or renewed. *Id.* at 113-14; *cf. Lott v. State Farm Fire & Cas. Co.*, 541 N.W.2d 304, 307-08 (Minn. 1995) (applying *Viktora* factors without discussion of parties’ considerations and holding that claimant not a resident because he did not live with policyholder). The parties’ consideration of or reliance on their relationship with one another, although not a determinative factor, remains a point of reference employed to examine the implications of a finding of residency. *See McGlothlin*, 751 N.W.2d at 83 (referring to fact that duration is significant because it could make it reasonable to conclude that parties considered relationship in contracting about matters such as insurance).

parents' home for the sake of his parents' insurance policy. *Id.* at 705, 707. Viktora lived with his parents for nearly four months before moving back to his apartment. *Id.* at 707. He did not pay room or board to his parents, and his mother did his laundry. *Id.* at 705. Reasoning that Viktora "was not self-supporting while at his parents' home" because he was unemployed and unable to pay rent, the court concluded that he and his parents "enjoyed the intimate, informal family relationship indicative of a legal residency." *Id.*

Six years later, this court applied the three-part *Viktora* test and held that a woman who lived in her parents' home where her married adult brother also lived was not a resident of her brother's household for the purposes of her brother's insurance policy. *Johnson*, 419 N.W.2d at 129. Although Johnson's brother and sister-in-law paid no rent, ate some meals with the rest of the family, and helped with the cooking and household chores, there was no indication that Johnson "relied on [her brother] for any of her needs." *Id.* at 127, 129. The court noted that the *Viktora* considerations are based on the assumption that residency clauses are aimed at benefiting those whom the insured "would ordinarily want [the policy] to protect." *Id.* at 129 (quotations omitted). The court observed that Johnson and her brother were "emancipated siblings," and concluded that they did not reside together for the purposes of the policy:

Absent a more permanent living arrangement or a special relationship between the parties—such as parent and child—from which an assumption of protection might be inferred, it is reasonable to conclude that [Johnson's brother] would not have contemplated protecting Johnson under his car insurance policy, and therefore Johnson is not a member

of her brother's household for the purpose of being covered by his insurance policy.

Id.

The facts of this case make it more like *Johnson* than *Viktora*. Upon his return from Nebraska, Jama had been living with Abdi for somewhere between 10 and 40 days before the accident. Abdi asserts in his deposition that the arrangement upon Jama's return was permanent, but he cites no evidence for this assertion; he acknowledges that he never discussed with Jama the duration of Jama's second stay. Furthermore, according to Abdi's testimony, Mohamud invited Jama to live at the apartment permanently upon arriving in the United States in 2004, but Jama left for Nebraska the following year.

Although Abdi and Jama shared use of Mohamud's apartment, the record does not support the conclusion that either of the men was dependent on the other in the way that *Viktora* was dependent on his parents. After Jama's return to Minnesota, both men were independently employed and simply contributed equally to the rent for the apartment. To the extent that either man was dependent on another for financial support, they appear to have been dependent on their cousin, Mohamud, who supported them while they were in Africa and took them in upon their arrival in the United States. In this way, Jama and Abdi are like the claimant and her brother in *Johnson* who were "emancipated," but living in their parents' home. 419 N.W.2d at 129.

Accordingly, there is nothing in the record to indicate that Jama would be expected to consider Abdi's needs in acquiring or maintaining automobile insurance.

There is no evidence that Abdi relied on Jama's provision of insurance, other than when he was an occasional passenger in Abdi's car. Although Abdi was not licensed to drive a car, there is not a persuasive basis for believing that a reasonably prudent person in his situation would or should rely on Jama's insurance for no-fault coverage.

Ultimately, the facts in the record demonstrate that the two men did not have a special relationship from which an "assumption of protection might be inferred." *Id.* Courts have typically found special relationships where the claimant is dependent to some degree on the policyholder, such as in a parent-child relationship. *See Rosenberger v. American Family Mut. Ins. Co.*, 309 N.W.2d 305, 309 (Minn. 1981) (holding that 19-year-old woman who was not self-supporting was resident of her stepfather's household); *Schoer v. West Bend Mut. Ins. Co.*, 473 N.W.2d 73, 76-77 (Minn. App. 1991) (holding that 21-one-year-old son who was not totally self-sufficient and had not established permanent residence elsewhere was resident of his mother's household for purposes of mother's insurance policy); *Wood v. Mutual Serv. Cas. Ins. Co.*, 415 N.W.2d 748, 751 (Minn. App. 1987) (holding that man, who was 17 years old when he enlisted in military, was still resident of his parents' home for purposes of insurance policy where he was dependent on them for his residence when not on duty), *review denied* (Minn. Feb. 12, 1988); *Mut. Serv. Cas. Ins. Co. v. Olson*, 402 N.W.2d 621, 624-25 (Minn. App. 1987) (holding that individual who moved into residence with mother on permanent basis was resident for purposes of insurance policy), *review denied* (Minn. May 20, 1987); *Morgan v. Illinois Farmers Ins. Co.*, 392 N.W.2d 37, 39-40 (Minn. App. 1986) (holding that college student who often lived at home despite having own apartment, was "resident" of

her parents' household for purposes of automobile policy), *review denied* (Minn. Oct. 22, 1986); *Skarsten v. Dairyland Ins. Co.*, 381 N.W.2d 16, 17, 19 (Minn. App. 1986) (holding that father and daughter were residents of same household for purposes of insurance policy under which daughter was named insured because daughter was family driver due to father's degenerative eye disease and parties consciously took relationship into consideration when contracting for insurance), *review denied* (Minn. March 27, 1986); *cf. McGlothlin*, 751 N.W.2d at 84 (holding evidence sufficient to support reasonable conclusion that adult woman who lived with half sister, paid rent, and had limited household responsibilities was not resident of that household).

Abdi argues that dependence is not relevant to the issue of residency. But we have not found, and he has not cited any cases, in which a claimant was held to be a resident of a policyholder's household where the claimant was not dependent upon the policyholder to some degree. The district court did not err in its judgment on Abdi's claim of coverage.

At about the same time as his initial claim to State Farm, Abdi signed an affidavit attesting that he was not covered by any automobile insurance policy and that he did not "live with a relative who owned and insured a personal automobile at the time of the accident." State Farm argues that Abdi has effectively waived his argument that he is covered by Jama's policy. Because the facts of the record on the relationship of the men require that we affirm the district court's summary judgment, we elect against exploring this alternative rationale supported by the insurer.

Affirmed.