

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 26, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 02-0608

Cir. Ct. No. 99-CV-20

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**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.

APPEAL from a judgment of the circuit court for Door County:
D. T. EHLERS, Judge. *Affirmed.*

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 judgment dismissing her claim against American National Property and Casualty Company. MacDonald

argues that the circuit court erred by finding that Edmund Stephens was not living in his father's household and was thus not an insured under the automobile insurance policy issued by American National to Edmund's father, Gregg Stephens. We reject this argument and affirm the judgment.

BACKGROUND

¶2 In December 1998, William MacDonald, a passenger in his own car, died as a result of a one-car rollover accident that occurred while Edmund was driving MacDonald's vehicle. At the time of the accident, an automobile insurance policy issued to Gregg Stephens by American National provided: "We will pay damages for which an insured person is legally liable because of bodily injury or property damage resulting from the ownership, maintenance or use of a car or utility trailer." An "insured person" was defined as "you or a relative." In turn, "relative" was defined as "a person living in your household and related to you by blood, marriage or adoption, including a ward or foster child."

¶3 Debra MacDonald filed suit against Edmund, Victoria Insurance Group and American National. Edmund and Victoria Insurance Group were later dismissed from the case. American National filed a motion for summary judgment arguing that Edmund was not living in his father's household at the time of the accident and thus was not covered under his father's automobile insurance policy. MacDonald filed a counter-motion for summary judgment. In January 2000, the circuit court granted summary judgment in favor of American National. On appeal, this court concluded that reasonable, differing inferences could be drawn from the undisputed facts. Consequently, we reversed the summary judgment and remanded the matter for trial. *See MacDonald v. American Nat'l Prop. & Cas. Co.*, 2000 WI App 1, 240 Wis. 2d 323, 621 N.W.2d 385.

¶4 After a trial to the circuit court on remand, the court found that Edmund was not living in his father’s household at the time of the accident and dismissed the claim against American National. This appeal followed.

ANALYSIS

¶5 MacDonald argues that the circuit court erred by finding that Edmund was not living in his father’s home for purposes of insurance coverage. Specifically, MacDonald contends that the circuit court ignored numerous facts and failed to consider “well-established Wisconsin case law” in interpreting the term “living in a household.” We are not persuaded.

¶6 The determination whether one lives in a household depends upon the particular factual circumstances in each case. *See Seichter v. McDonald*, 228 Wis. 2d 838, 844, 599 N.W.2d 71 (Ct. App. 1999). It is a fact-intensive inquiry that considers whether the person and the named insurer are:

(1) living under the same roof; (2) in a close, intimate and informal relationship; and (3) where the intended duration of the relationship is likely to be substantial, where it is consistent with the informality of the relationship, and from which 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.

Pamperin v. Milwaukee Mut. Ins. Co., 55 Wis. 2d 27, 37, 197 N.W.2d 783 (1972). In applying the test, the fact-finder considers: “(1) age of the person; (2) whether a separate residence is established; (3) self-sufficiency of the person; (4) frequency and the duration of the stay in the family home; and (5) intent to return.” *Seichter*, 228 Wis. 2d at 845. Findings of fact will not be set aside unless clearly erroneous. WIS. STAT. § 805.17(2).

¶7 Here, the circuit court acknowledged that there were a number of facts to support MacDonald's contention that Edmund was living in his father's household. The court specifically noted that Edmund continued to be in an intimate and informal relationship with his parents, visiting his parents' home "on an almost weekly basis without advance notice" or permission. The court further found that Edmund continued to receive some mail and phone calls at the house. Edmund used his parents' address for his driver's license, vehicle registration and income tax returns. Edmund additionally had his "own room" in the basement and continued to maintain some personal property and furnishings at the home. Finally, Edmund and his parents testified that Edmund was a member of the family who has lived at the home since the day of the accident.

¶8 The circuit court nevertheless concluded that there was "a plethora of other facts" to persuade it that Edmund was not living in his father's household. The court recited the following factors as most significant in making its determination: (1) Edmund's age; (2) Edmund's move from his parents' home in September 1997; (3) Edmund's failure to move back there after September of 1997 to the date of the accident; (4) Edmund's financial independence; (5) Edmund's lack of intent to return to his parents' home; (6) Edmund's status on American National's policy as an "occasional driver"; and (7) Gregg's statement to an American National insurance adjuster that Edmund was not a resident of the household. The court also noted that Gregg was in the process of removing Edmund from the subject insurance policy on the date of the accident. The circuit court's ultimate finding that Edmund was not living in his father's household at the time of the accident is supported by credible evidence. See WIS. STAT. § 805.17(2). That MacDonald can point to other evidence that is inconsistent with the circuit court's ultimate finding does not render that finding clearly erroneous.

¶9 MacDonald nevertheless argues that the circuit court failed to consider that a person can be a resident of more than one household for insurance purposes. *See Londre by Long v. Continental Western Ins. Co.*, 117 Wis. 2d 54, 58, 343 N.W.2d 128 (Ct. App. 1983). We disagree. The circuit court specifically acknowledged that a person can maintain more than one household, but nevertheless found that Edmund was not, in fact, living in his father’s household on the day of the accident.

¶10 Finally, MacDonald contends that the circuit court improperly relied on *State Farm Mut. Auto. Ins. Co. v. Taussig*, 592 N.E.2d 332 (Ill. App. 1992). We are not persuaded. Despite its reference to *Taussig* as well as its comparison of the terms “living in” and “reside,” the circuit court ultimately referred to and applied the fact-intensive inquiry mandated by *Pamperin* and *Seichter*.

¶11 Because there was sufficient evidence to support the circuit court’s ultimate finding that Edmund was not living in his father’s household, we conclude that the court properly dismissed MacDonald’s claim against American National.

By the Court.—Judgment affirmed.

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

