**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

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| ALLSTATE INSURANCE COMPANY, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | C.A. No. 01C-08-279(CHT) |
| | ) | |
| TERRY P. LAURENZI, | ) | NON-JURY |
| BRIAN O. LAURENZI, | ) | |
| CAROL E. LAURENZI, and | ) | |
| MARIA FARIES as Guardian Ad | ) | |
| Litem for Michael N. Gieron | ) | |
| | ) | |
| Defendant. | ) | |

**OPINION AND ORDER**

**On the Plaintiff's Motion for Summary Judgment**

Submitted: April 1, 2003
Resubmitted: October 28, 2003
Decided: November 28, 2003

Michael A. Pedicone, Esquire, Suite 700, 200 West Ninth Street, Wilmington, DE 19801, Attorney for Plaintiff.

Clayton E. Bunting, Esquire, P.O. Box 690, Georgetown, DE 19947, Attorney for Defendant Maria Faries, as Guardian Ad Litem for Michael N. Gieron.

Carol E. Laurenzi, Brian Laurenzi, 27 Enchanted Acres, Millsboro, DE 19966.

Terry P. Laurenzi, 11 Crow's Nest Court, Millsboro, Delaware 19966.

**TOLIVER, JUDGE**

Before the Court is the motion of the plaintiff,

Allstate Insurance Company, seeking the entry of a summary judgment in its favor concerning it obligations to defend and/or indemnify for damages arising out of an assault committed by the son of an insured under the terms of a homeowner's policy of insurance. The matter having been briefed and oral argument completed, that which follows is the Court's resolution of the issues so presented.

## STATEMENT OF FACTS AND NATURE OF THE PROCEEDINGS

Defendants Terry P. Laurenzi and Carol E. Laurenzi are the parents of Brian O. Laurenzi. Mr. and Mrs. Laurenzi have been divorced since 1996.[1] The record is unclear as to whether Mrs. Laurenzi and Mr. Laurenzi had joint custody or whether Mrs. Laurenzi had sole custody with visitation rights

[1] The divorce decree was not included in the pleadings, but Mrs. Laurenzi stated in her deposition that she thought her divorce was "in '96". Carol Laurenzi Depo. at 5.

given to Mr. Laurenzi.[2] In any event, Brian lived with his father for a brief period of time shortly after the divorce, but returned to live with his mother due to alleged physical and verbal abuse by his father.[3] Since that time, Brian has resided primarily with Mrs. Laurenzi and that Mr. Laurenzi has had a right to visit with Brian on weekends or whenever Brian desired. It also appears that a room at Mr. Laurenzi's home was designated as Brian's room and that Mr. Laurenzi claimed Brian as a dependent for purposes of filing his tax returns.[4]

On January 26, 1999, Brian struck Michael Gieron with his fist causing injury to Michael's jaw and teeth.[5] On that date, Mr. Laurenzi owned an "Allstate Deluxe Mobilehome Policy" covering his residence at Lot 1B Hickory Point,

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[2] As noted in the depositions of both parents, neither was able to provide legal documentation of the custodial arrangement. Therefore, the record is based solely upon their recollection.

[3] Id. at 15 - 16.

[4] The record also reflects that visitation with Mr. Laurenzi was usually declined by Brian because of the aforementioned allegations of abuse and strenuous relationship.

[5] The reason for the altercation, although in disputed, it is not relevant to the resolution of the instant controversy.

Millsboro, Delaware. The policy provided insurance against "covered losses, bodily injury, and property damage which occurred during the policy period."[6]

Under the terms of the policy, specifically, "Section II - Family Liability Protection," Allstate was obligated to:

> . . . pay all sums arising from the same loss which an **insured person** becomes legally obligated to pay as damages because of **bodily injury** or **property damage** covered by this part of the policy.[7] (Emphasis added.)

However, the policy excludes from coverage:

> . . . [a]ny **bodily injury** or **property damage** which may reasonably be expected to result from the intentional or criminal acts of an **insured person** or which is in fact intended by an **insured person**.[8] (Emphasis added.)

An "insured person" is defined as the policyholder, "and, if a resident of household, any relative or any dependent person in [the policyholder's] care."[9]

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[6] Allstate Deluxe Mobilehome Policy at 2.

[7] Id. at 17.

[8] Id.

[9] Id. at 2.

Maria Faries, as Guardian Ad Litem for Michael, filed suit against Brian, Mr. Laurenzi and Mrs. Laurenzi as a result of these injuries.[10] Allstate Insurance Company is defending the Laurenzis in that litigation under a reservation of rights provision. On August 30, 2001, Allstate initiated the instant action by filing a complaint seeking the entry of a declaratory judgement in its favor concerning its rights and obligations under the policy for the incident on January 26, 1999. Based upon the terms of its policy with Mr. Laurenzi, Allstate has alleged that it has a legal right to deny coverage to all three Laurenzi defendants for any claims arising from the assault by Brian against Michael.

Allstate filed a motion for summary judgment in this action on December 10, 2002, raising two arguments. The first is that at the time of the incident, Brian was not an insured as defined by the policy. Second, Allstate contends

[10] Faries v. Laurenzi, Del. CCP, C. A. No. 01-01-081.

that even if Brian was an insured under the policy, the injury to Michael was the result of an intentional act and reasonably foreseeable. Allstate was thereby relieved of its duty to defend and/or indemnify the Laurenzis for any of the damages sought on behalf of Michael.

Mrs. Faries filed a response to Allstate's motion insisting that the issues of whether Brian was considered an "insured person" under the policy and whether the injury to Michael was "reasonably foreseeable" were subject to a dispute of material fact and best left for a jury to decide.

## DISCUSSION

Summary judgment may be granted only when there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.[11] The moving party

[11] Davis v. West Center City Neighborhood Planning Advisory Committee, *Inc.*, 2003 WL 908885, at *1 (Del.Super.) *citing* Dale v. Town of Elsmere, 702 A.2d 1219, 1221 (Del. 1997).

bears the initial burden of showing that there are no material facts in dispute.[12] Once that burden is satisfied, through affidavits or otherwise, the burden shifts to the non-moving party to establish the existence of disputed material issues of fact.[13] The moving party is entitled to summary judgment if the non-moving party fails to make a sufficient showing on an essential element of its case with respect to which it will bear the burden of proof at trial.[14]

Since the central question in this case involves the proper interpretation of language in an insurance policy, the issue to be resolved is one of law.[15] Although analytically a question of fact, such interpretation is based under questions of law.[16] Therefore, the issue of whether Allstate

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[12] Moore v. Sizemore, 405 A.2d 679, 680 (Del. 1979).

[13] Albu Trading, Inc. v. Allen Family Foods, 2003 WL 21327487, at *1 (Del. Supr.) *citing* Brzoska v. Olson, 668 A.2d 1355, 1364 (Del. 1995).

[14] Id.

[15] Temple v. The Travelers Indemnity Co., 2000 WL 33113814, at * 1 (Del. Super.) *citing* Engerbretsen c. Engerbretsen, 675 A.2d 13, 17 (Del. Super. 1995).

[16] Engerbretsen, 675 A.2d at 17 *citing* Klair v. Reese, 531 A.2d 219, 222 (Del. Supr.).

has a duty to indemnify and defend the Laurenzis under the terms of the policy in the instant litigation, is ripe for summary judgment.

When the interpretation of an insurance contract is at issue, this Court has consistently held:

> If the language of an insurance contract is clear and unambiguous, the Court will not destroy or twist the words under the guise of construing them. The parties will be bound by the plain and common meaning of the policy language because creating ambiguity where none exists could create new rights, liabilities, and duties to which the parties have not assented. An ambiguity exists when the language of the contract permits two or more reasonable interpretations. When the language of an insurance contract is ambiguous and doubt exists as to coverage, the contract will be interpreted against the insurer, who drafted the policy and in favor of the insured.[17]

In this case, the insurance policy in dispute is not ambiguous. Even though the policy does not define who constitutes "a resident of your household," this Court in related situations, e.g., automobile coverage cases,[18] has

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[17] Temple, *supra* note 15 at *1 *citing* Engerbretsen, *supra* note 16 at 17.

[18] *See* Ellis v. Travelers, Ins., Co., Del. Super., C.A. No. 93C-01-155, Babiarz, J. (Aug. 24, 1994) (Construing "residents of your household"); Jones v. Nationwide, 1993 WL 189505 (Del. Super.) (Construing "living in your

adopted and followed the definition 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."[19] In attempting to give viable guidance to those attempting to apply that definition to the facts of a given case, several factors should be considered.

First, the occupier need not be a permanent member of the policyholder's household.[20] However, he or she must be more than a mere transient or intend to stay for more than a temporary period.[21] Second, the court should also consider whether there exists another residence for the individual seeking coverage under the homeowner's policy of another.[22]

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household").

[19] Engerbretsen, *supra* note 16 at 19 *quoting* Amco Ins. Co. v. Norton, 500 N.W.2d 542, 546-547 (Neb. 1993). In Norton, the Nebraska Supreme Court also considered numerous factors to satisfy its definition. However, Delaware has taken the approach that those factors are not absolutely necessary for our consideration. *See generally* Engerbretsen, supra note 16. *See also* Temple, *supra* note 15 at *3.

[20] Engerbretsen, *supra* note 16 at 19-20 (*citations omitted*).

[21] Id. at 20 *citing* Allstate Ins. Co. v. Shockley, 793 F.Supp. 852 (S.D.Ind. 1991), *aff'd*, 980 F.2d 733 (7th Cir. 1992).

[22] Id. at 19 (*citations omitted*).

Third, the nature and formality of the relationship between the individual seeking the protection of that policy and the policyholder should be scrutinized.[23] 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.[24]

It is important to note however, that no single one of these factors, including the intent of the parties in question, standing alone, is determinative of the issue at hand.[25] They must be viewed together to determine whether the relationship exists. It does not matter whether the phrase is used to provide coverage or as a basis to deny it.

Notwithstanding the uncertainty of the parties in this regard, the Court must conclude that the primary responsibility for the care of Brian on the date of the

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[23] Id.

[24] Engerbretsen, *supra* note 16 at 19 (*citations omitted*).

[25] Id. *quoting* Norton, 500 N.W.2d at 547.

assault was vested in Mrs. Laurenzi and that he "resided with her" for purposes of the policy in question. That conclusion is based upon several factors viewed together in light of the relevant circumstances reflected in the record.

In this regard, while Mrs. Laurenzi was unsure of whether she had sole custody or joint custody, it is readily apparent that Brian's principal residence was with her and that he was a part of her household.[26] Mr. Laurenzi believed Mrs. Laurenzi had custody of Brian and that he only had visitation rights.[27] Neither party disputes that Brian was able to visit his father whenever he wanted, but that the relationship with his father was "not good" and that he preferred staying with his mother. When Brian did visit, his visits were limited to weekends, holidays, or as Mrs. Laurenzi permitted.

The designation of a bedroom at Mr. Laurenzi's home as Brian's, is not significant and does not affect the Court's

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[26] Mrs. Laurenzi Dep. at 6 and 12, respectively.

[27] Mr. Laurenzi Dep. at 6-7.

view of the situation. It was so designated, the record reflects, because no one else needed the bedroom.[28] There is no indication in the record that the bedroom was kept specifically for Brian, that he kept clothes there or that he otherwise considered his father's residence a second home. Nor is the fact that Mr. Laurenzi may have claimed Brian on his taxes of any import since claiming an individual as a tax exemption involves criteria apart and distinguishable from residence and/or membership in the household of another for purposes of insurance coverage.[29] Moreover, the fact that Mr. Laurenzi paid child support to Mrs. Laurenzi, along with the limited visitation, only ratifies the conclusion that Brian was not a resident of Mr. Laurenzi's household.

Given this analysis, the Court finds no reason why Brian should be considered a "resident" of Mr. Laurenzi's

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[28] Id. at 8-9.

[29] No argument has been presented or evidence offered to support the conclusion that the criteria used in Engerbretsen and Norton to define "resident of household" are the same as those used by the Internal Revenue Code for claiming an individual as a tax exemption.

household. He can not, as a result, be considered an insured for purposes of the instant policy. Although Defendants argue that the current case law is inapplicable either due to the fact that Brian was a minor or because this case is primarily fact-driven, the Court does not agree. Simply because this Court must analyze and apply the facts of a case to address a question of law, does not preclude the entry of summary judgment. Since Brian is not considered an "insured" under the terms of Mr. Laurenzi's policy, Allstate has no duty to indemnify or pay for any damages or judgments arising from the incident on January 26, 1999.

In the alternative, even if Brian were considered an "insured" under Mr. Laurenzi's policy, Allstate insists that it would still be able to deny coverage. The policy excludes coverage for "bodily injury . . . which may reasonable be expected to result from the intentional or criminal acts of an insured person . . . ." In response, Mrs. Faries alleges that Brian did not intend to injure Michael, which thereby

mandates Allstate to provide coverage.

On March 10, 1999, Brian pled guilty to Assault Third Degree, 11 Del. C. §611, which states:

> A person is guilty of assault in the third degree when:
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> (1) The person intentionally or recklessly causes physical injury to another person.[30]

The Delaware Supreme Court held in Robinson v. State that unless a defendant specifically refuses to admit the actual commission of a crime when entering a guilty plea, that guilty plea is an admission to the acts complained of.[31] Regardless of Brian's age, he admitted to intentionally or recklessly causing personal injury to Michael.

"Recklessly" is defined under 11 Del. C. §231(a), which states in pertinent part, that:

> A person acts recklessly . . . when the person is aware of an consciously disregards a substantial and unjustifiable risk that the

[30] 11 Del. C. § 611.

[31] 291 A.2d 279 (Del. 1972).

element exists or will result from the [32]

A act is deemed as "intentional" via 11 Del. C. §231(a) when:

> (1) . . . the element involves the nature of the person's conduct or a result thereof, it is the person's conscious object to engage in conduct of that mature or to cause that result; and
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> (2) If the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist.[33]

By accepting a guilty plea, Brian admitted that when he struck Michael, it was either his conscious object to injure Michael or he consciously disregarded a substantial and unjustifiable risk that Michael would be injured.[34] Either way, this Court is persuaded that such actions were clearly the type in which Allstate sought to exclude in its policy. Consequently, Allstate would have no obligation to pay or indemnify, even if Brian were considered to be an "insured"

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[32] 11 Del. C. § 231(c).

[33] 11 Del. C. § 231(a).

[34] *See generally* Young v. Allstate Ins. Co., 1990 WL 63959 (Del. Super.). To suggest otherwise ignores the circumstances surrounding the incident as well as the extent of the injury suffered by Michael.

under the policy.

Notwithstanding this determination, the Court must go further. The Delaware Supreme Court has held that an insurer may have to defend an insured even if the insurer will not be required to indemnify the insured.[35] The test is whether, upon interpreting the allegations of the litigation in the light most favorable to the insured, the complaint alleges a risk within the coverage of the policy.[36] Since the Court has already concluded that the terms of the policy clearly exclude coverage for Brian's criminal act, it must also find that the plaintiff's complaint in the companion action fails to allege such a risk. It therefore follows that Allstate also has no duty to defend the Laurenzis in this suit.

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[35] Charles E. Brohawn & Bros., Inc. v. Employers Com'l Union Ins. Co., 409 A.2d 1055, 1058 (Del. 1979).

[36] Id.

## CONCLUSION

For the aforementioned reasons, the Plaintiff's Motion for Summary Judgment must be, and hereby is, **granted.**

**IT IS SO ORDERED.**

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**Toliver, Judge**