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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 STATE FARM MUTUAL
9 AUTOMOBILE INSURANCE
10 COMPANY and STATE FARM FIRE
11 AND CASUALTY COMPANY

12 Plaintiffs,

13 v.

14 SHELBIE FROUNFELTER, et al.,

15 Defendants.

CASE NO. C16-5242BHS

ORDER GRANTING
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY
JUDGMENT

16 This matter comes before the Court on Plaintiffs State Farm Fire and Casualty
17 Company and State Farm Mutual Automobile Insurance Company's ("State Farm")
18 motion for partial summary judgment (Dkt. 19). The Court has considered the pleadings
19 filed in support of and in opposition to the motion and the remainder of the file and
20 hereby grants the motion for the reasons stated herein.

21 **I. PROCEDURAL HISTORY**

22 On March 31, 2016, State Farm filed a complaint for declaratory judgment against
Defendants Shelbie Frounfelster ("Frounfelster"); Rosa A. Morelos and Sergio Morelos,

1 individually, and the marital community comprised thereof; and Rosa Morelos as
2 administratrix of the Estate of M. Rosario Chacon-Cisneros (collectively “Defendants”).
3 Dkt. 1.

4 On August 29, 2016, State Farm filed the instant motion seeking partial summary
5 judgment of no coverage. Dkt. 19. On September 26, 2016, Defendants responded and
6 moved for certification of a question to the Washington Supreme Court. Dkt. 22. On
7 September 30, 2016, State Farm replied and requested that the Court not consider
8 Defendants’ improper cross-motion for certification. Dkt. 25.

9 **II. FACTUAL BACKGROUND**

10 The underlying facts involve a car accident caused by Frounfelter involving the
11 other Defendants. On January 1, 2012, Frounfelter turned sixteen. She acquired her
12 driver’s license a few days after her birthday. Frounfelter’s mother, Lisa Siler, and
13 father, Michael Webb, split custody of Frounfelter under a parenting plan. Under the
14 plan, Mrs. Siler had sole decision-making authority over Frounfelter’s upbringing, Mrs.
15 Siler’s house was Frounfelter’s primary residence, and Mr. Webb has weekend and
16 occasional holiday visitation rights.

17 On August 31, 2012, Mr. Webb bought Frounfelter a 2004 Mustang convertible as
18 a gift. The car was titled and registered in Mrs. Siler’s name even though Mr. Webb paid
19 for the car.

20 On October 12, 2012, Frounfelter was involved in a serious accident with the car.
21 M. Rosario Chacon-Cisneros died from injuries sustained in the accident, and Defendants
22 Rosa and Sergio Morelos also sustained injuries in the accident. The Moreloses sued

1 Frounfelter, Mrs. Siler, and Mr. Webb in state court. The jury denied the vicarious
2 liability claims against Mrs. Siler and Mr. Webb, but returned a verdict against
3 Frounfelter for \$382,206 in damages. State Farm insured Mrs. Siler, and, after the
4 verdict, tendered policy limits of \$50,000. This matter involves Mr. Webb’s policies.

5 At the time of the accident, Mr. Webb had three policies with State Farm. First,
6 Mr. Webb had an automobile insurance policy. This policy defined an insured as Mr.
7 Webb and his “resident relatives.” Dkt. 20-12 at 9. The policy provided a definition for
8 the term “resident relative” as follows:

9 *Resident Relative* means a *person*, other than *you*, who resides
10 primarily with the first *person* shown as a named insured on the
Declarations Page and who is:

- 11 1. related to that named insured or his or her spouse by blood,
marriage, or adoption. An unmarried and unemancipated child of that
12 named insured or his or her spouse is considered to reside primarily with
that named insured while that child is away at school; or
- 13 2. a ward or a foster child of that named insured, his or her spouse,
or a *person* described in 1. above.

14 *Id.* at 8.

15 Second, Mr. Webb had an umbrella policy that also insured Mr. Webb and his
16 “relatives whose primary residence is [Mr. Webb’s] household.” Dkt. 20-13 at 10.

17 Third, Mr. Webb had a homeowner’s policy. The details of this policy are
18 irrelevant because Defendants have conceded that there is no issue of coverage under this
19 policy. Dkt. 22 at 5.

20 **III. DISCUSSION**

21 State Farm moves for partial summary judgment seeking a declaration that there is
22 no coverage for Frounfelter’s car accident under the policies State Farm issued to Mr.

1 Webb. Dkt. 19. Regarding the homeowner’s policy, Defendants concede noncoverage,
2 and, therefore, the Court grants State Farm’s motion on this issue. Finally, because the
3 Court grants State Farm’s motion on whether Frounfelter was an insured under the
4 policies, the Court need not address whether the car was within the scope of the auto
5 policy.

6 **A. Summary Judgment Standard**

7 Summary judgment is proper only if the pleadings, the discovery and disclosure
8 materials on file, and any affidavits show that there is no genuine issue as to any material
9 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
10 The moving party is entitled to judgment as a matter of law when the nonmoving party
11 fails to make a sufficient showing on an essential element of a claim in the case on which
12 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
13 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
14 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
15 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
16 present specific, significant probative evidence, not simply “some metaphysical doubt”).
17 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
18 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
19 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
20 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
21 626, 630 (9th Cir. 1987).

1 The determination of the existence of a material fact is often a close question. The
2 Court must consider the substantive evidentiary burden that the nonmoving party must
3 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
4 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
5 issues of controversy in favor of the nonmoving party only when the facts specifically
6 attested by that party contradict facts specifically attested by the moving party. The
7 nonmoving party may not merely state that it will discredit the moving party’s evidence
8 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
9 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
10 nonspecific statements in affidavits are not sufficient, and missing facts will not be
11 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

12 **B. State Farm’s Motion**

13 State Farm argues that Mr. Webb’s automobile and umbrella policies do not
14 provide coverage for injuries sustained in Frounfelter’s car accident. State Farm
15 concedes that “Washington courts have not interpreted the terms ‘resides primarily’ or
16 ‘primary residence’ in insurance policies.” Dkt. 19 at 12. State Farm, however, contends
17 that the terms are unambiguous and the only rational interpretation of these terms
18 precludes coverage for Frounfelter under her father’s policies. Dkt. 19 at 12–18.
19 Defendants counter that the terms are either ambiguous or violate public policy if
20 interpreted to preclude coverage. Dkt. 22 at 14–19. The Court will address both issues.

1 **1. Ambiguity**

2 In Washington, interpreting insurance policies is a question of law. *Am. Star Ins.*
3 *Co. v. Grice*, 121 Wn.2d 869, 874 (1993), *opinion supplemented by* 123 Wn.2d 131
4 (1994). Washington courts construe insurance policies as a whole, giving force and
5 effect to each clause in the policy. *Id.* If the policy language is clear and unambiguous,
6 the Court will not modify the policy or create an ambiguity. *Id.* If the policy language is
7 fairly susceptible to two different reasonable interpretations, it is ambiguous, and the
8 Court may attempt to discern the parties’ intent by examining extrinsic evidence. *Id.* If
9 the policy remains ambiguous after resort to extrinsic evidence, the Court construes the
10 ambiguities against the insurer. *Id.* at 874–75.

11 Neither the phrase “resides primarily” nor “primary residence” is defined in the
12 policy. Generally, undefined terms are given their plain, ordinary, and popular meaning
13 as understood by an average purchaser of insurance. *Allstate Ins. Co. v. Peasley*, 131
14 Wn.2d 420, 424 (1997). When words in a policy are undefined, courts look to the
15 dictionary to determine the words’ common meaning. *Id.* at 425–426. Merriam–Webster
16 dictionary defines “resides” as, “to dwell permanently or continuously: occupy a place as
17 one’s legal domicile.” Merriam–Webster Dictionary, Resides,
18 <http://www.merriamwebster.com/dictionary/resides> (last visited November 1, 2016). It
19 defines “primarily” as, “for the most part” or “in the first place.” *Id.*, Primarily,
20 <http://www.merriamwebster.com/dictionary/primarily> (last visited November 1, 2016).
21 Both of these definitions favor State Farm. While Defendants argue that Frounfelter had
22 her own room at her father’s house and kept property such as a motorbike there, the

1 record reflects that, for the most part and in the first place, Frounfelter permanently and
2 continuously occupied her mother's residence as her legal domicile. Other than some
3 conclusory allegations, Defendants fail to contest these definitions with any evidence or
4 authority of their own. Dkt. 22 at 18–19. Therefore, the Court concludes that the phrase
5 “resides primarily” is not ambiguous and, under an ordinary and plain meaning, does not
6 trigger coverage under Mr. Webb's automobile policy.

7 Regarding the phrase “primary residence,” the analysis is slightly different
8 because Washington courts have addressed the term “residence.” In *Pierce v. Aetna*
9 *Cas. & Sur. Co.*, 29 Wn. App. 32 (1981), the court considered the phrase “residents of the
10 same household.” The court concluded that “the following are relevant factors in
11 determining who is a resident of the same household: (1) the intent of the departing
12 person, (2) the formality or informality of the relationship between the person and the
13 members of the household, (3) the relative propinquity of the dwelling units, and (4) the
14 existence of another place of lodging.” *Id.* at 37–38. In applying these factors to the
15 facts, the court held that the minor and father were not residents of the same household
16 because the father maintained a separate distinct household, the child was a member of
17 the mother's household, and “[t]heir visits together were infrequent and irregular.” *Id.* at
18 40–42.

19 In *Adams v. Great Am. Ins. Companies*, 87 Wn. App. 883 (1997), the court held
20 that “[t]here is no bright line test” for “the factual inquiry courts must undertake in
21 considering whether children of divorced parents are ‘residents’ of a particular parent's
22 household for insurance coverage purposes.” *Id.* at 890.

1 It is helpful to review any parenting plan or other court orders, but the
2 inquiry in each case is factual: Does the child regularly spend time in the
3 household in question, such that there exists a continuing expectation of the
4 child's periodic return on intervals regular enough that the household is the
5 child's home during the time the child is there, as opposed to a place of
6 infrequent and irregular visits.

7 *Id.* The *Adams* court concluded that the child was a resident because the “court-ordered
8 parenting plan required Susan to ‘reside with’ each of her parents, and plainly
9 contemplated that both parents would remain deeply involved in their children’s
10 upbringing,” the child “was to spend at least some portion of her day with her father on
11 140 days of the year,” and the child “had two regular places of lodging.” *Id.* at 889.

12 In this case, the facts are closer to the *Pierce* case rather than the *Adams* case. The
13 parenting plan dictated that Frounfelter would reside with the mother except for visits
14 every other weekend and certain holidays on a rotating basis. Dkt. 20-2 at 2–4. While
15 the visits were regular, it is debatable whether they were “frequent.” Spending every
16 other weekend with her father results in 52 days of contact per year, or almost a third of
17 the contact as stated in *Adams*. Sole decision-making authority for major decisions was
18 awarded to Mrs. Siler because the parents were opposed to mutual decision-making
19 authority. *Id.* at 6. While Mr. Webb was involved in Frounfelter’s upbringing, the fact
20 that he had no major decision-making authority undermines a finding that he was deeply
21 involved. Finally, whether Frounfelter had two separate places of lodging is as debatable
22 as to whether her contact with her father was frequent. Based on these facts, it is a close
call whether Mr. Webb’s house is Frounfelter’s residence. State Farm, however, included
additional language in the contract of insurance that resolves the dispute in its favor.

1 The umbrella policy in dispute defines “insureds” as Mr. Webb and his “relatives
2 whose **primary** residence is [Mr. Webb’s] household.” Dkt. 20-13 at 10 (emphasis
3 added). Merriam–Webster dictionary defines “primary” as, “of first rank, importance, or
4 value.” Merriam–Webster Dictionary, Primary,
5 <http://www.merriamwebster.com/dictionary/primary> (last visited November 1, 2016).

6 The first and most important place where Frounfelter lived or stayed for most of her time
7 was her mother’s house. If anything, the evidence reflects that her father’s house was at
8 most a place of temporary visitation every other weekend and on certain holidays. State
9 Farm also argues that, under the plain meaning of the term “primary,” a person may not
10 have two primary residences. Dkt. 19 at 14 (citing *Bolin v. Progressive Northwestern*
11 *Ins. Co.*, 2009 WL 1010770, at *8 (E.D.Mo. Apr. 9, 2009)). The Court agrees with such
12 an interpretation. Defendants have submitted no other definition disputing this
13 interpretation or evidence. Therefore, the Court concludes that the phrase “primary
14 residence” is not ambiguous and precludes coverage under Mr. Webb’s umbrella policy.

15 **2. Public Policy**

16 The Washington Supreme Court has held that “limitations in insurance contracts
17 which are contrary to public policy and statute will not be enforced, but otherwise
18 insurers are permitted to limit their contractual liability.” *State Farm Gen. Ins. Co. v.*
19 *Emerson*, 102 Wn.2d 477, 481 (1984) (citing *Mut. of Enumclaw Ins. Co. v. Wiscomb*, 97
20 Wn.2d 203, 210 (1982)). “[E]xclusions that have been held violative of public policy
21 generally have been those manifesting no relation to any increased risk faced by the
22

1 insurer, or when innocent victims have been denied coverage for no good reason.”

2 *Eurick v. Pemco Ins. Co.*, 108 Wn.2d 338, 343–44 (1987).

3 In this case, Defendants argue that the attempt to exclude children who do not
4 primarily reside in the insured’s household is void as a matter of public policy. Dkt. 22 at
5 14. Defendants, however, fail to show that this limitation has no relation to an increased
6 risk for State Farm or precludes coverage for innocent victims for no good reason.
7 Instead, State Farm correctly points out that its language limits the drivers it will insure,
8 other than the named insured. Dkt. 25 at 6. Such a limitation does not violate any
9 identified public policy. Moreover, the language limits the liability on all victims when
10 the accident is caused by a person who does not primarily reside with the named insured.
11 This is not discriminatory because it applies to all victims of certain drivers. It does not
12 provide insurance for some victims yet preclude coverage for other victims. Therefore,
13 the Court concludes that the disputed language and resulting limitations do not violate
14 public policy. Even if Defendants’ motion to certify a question to the Washington
15 Supreme Court was not procedurally improper, it fails on the merits.

16 **IV. ORDER**

17 Therefore, it is hereby **ORDERED** that State Farm’s motion for partial summary
18 judgment (Dkt. 19) is **GRANTED**.

19 Dated this 3rd day of November, 2016.

20 

21 **BENJAMIN H. SETTLE**
22 United States District Judge