

RENDERED: JULY 24, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000671-MR

SHELTER MUTUAL INSURANCE COMPANY

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 11-CI-00647

NEIL PARAGH; JUDY BUSBY, GREG BUSBY
NATICA BUSBY, NATICA BUSBY as next of friend
and parent of AUSTYN BUSBY, a minor, SEBASTIAN
BUSBY, a minor and JUAN DELEON, a minor; and
CHERYL HENDERSON and DARRELL HENDERSON

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: COMBS, KRAMER, AND TAYLOR, JUDGES.

COMBS, JUDGE: This case involves the issue of residency in an insurance coverage dispute. In a declaratory action, Shelter Mutual Insurance Company appeals from a summary judgment of the Fayette Circuit Court that found that Neil

Paragh was a resident of its insureds' household. Shelter Mutual argues that because questions concerning where Neil resided present a genuine issue of material fact, entry of summary judgment was erroneous. After our review, we agree. Consequently, we vacate the trial court's judgment and remand for additional proceedings.

At approximately 11:00 p.m. on October 23, 2010, Neil Paragh, age 26, stopped his vehicle in the center lane of south-bound traffic on Interstate 75 near Lexington. A fellow motorist passing the parked vehicle reported to police that a man was standing beside the car and was urinating on the roadway. No lights were illuminated on the vehicle. Before law enforcement arrived to investigate, a van driven by Cheryl Henderson rear-ended the stationary vehicle. Judy Busby, Naticha Busby, Austin Busby, Sebastian Busby, and Juan Deleon ("the Busby family") were passengers in the van.

Makund Paragh, Neil's father, was insured under a personal umbrella policy issued by Shelter Mutual that covered personal liability for Makund and all family members *residing in his household*. Shelter Mutual denied coverage for the collision on the basis that Neil was not a resident of his father's household at the time of the collision.

On February 4, 2011, Henderson, her husband, and the Busby family filed a personal injury action against Neil Paragh. Several insurance companies, including Shelter Mutual, were also named as defendants. Pursuant to the provisions of Kentucky Revised Statute[s](KRS) 418.040, the plaintiffs filed an

action for a declaration of rights with respect to the extent of insurance coverage available to Neil Paragh. By order entered October 1, 2012, the Hendersons and the Busby family were granted leave to file an amended complaint. The amended complaint included claims filed pursuant to Kentucky's Unfair Claims Settlement Practices Act against Shelter Mutual.

After the depositions of Neil, his mother, his father, and several motel employees from Neil's place of employment were filed in the record, the Hendersons and the Busby family moved for summary judgment. In an order entered October 10, 2012, the Fayette Circuit Court held that Neil was a resident of his father's household at the time of the collision. The circuit court found that Neil was also a resident of an apartment within a motel owned and operated by his family at the time of the collision.

The court's order was made final and appealable pursuant to the provisions of CR 54.02 by a subsequent order entered on March 25, 2014. By that time, the parties had settled the personal injury claims. In its order, the circuit court noted that the parties had also "reached an agreement as to additional sums of money to be paid to [Henderson and her husband] in the event it is ultimately determined that Paragh resided in the household of [his father] at the time of the [a]ccident." The court observed that the parties had acknowledged in their settlement agreement that Shelter Mutual intended to appeal its interlocutory order entered on October 10, 2012. They agreed to request that the order be made final

and appealable “in order to expedite the final resolution of this case.” This appeal followed.

The issue of coverage in this case turns on the definition of “insured” in the Shelter Mutual policy. In relevant part, the policy agreement defines “insured” to include the “relatives” of the named insured. (Neil’s father is the named insured.) The term “relative” is further defined to mean a person related to the named insured by blood, marriage, or adoption, “who is a resident of your household.” The policy agreement provides that the term “reside” means to “establish living quarters in a location intending to make that place, *and no other*, one’s fixed and permanent home.” (Emphasis added.)

In his answers to interrogatories propounded by Shelter Mutual, Neil indicated unequivocally that he lived alone at the motel at the time of the collision. Without reservation, he indicated that his parents lived at a home on Saturn Way in Bowling Green and that he did not live with them at the time of the collision. In his deposition, Neil testified that he kept clothing, toiletries, and other personal items at the motel apartment. For all purposes, he indicated that he had provided the motel’s address as his mailing address and residence. He also testified that since the collision, he had resided with his parents at the Saturn Way home because he did not have a driver’s license and he needed his parents’ assistance.

In her deposition, Neil’s mother testified that in the time leading up to the collision, she and her husband, Neil’s father, lived at the Saturn Way home. She testified that Neil would come to visit at Saturn Way a couple of days each

week. She denied that Neil did his laundry at her home or collected his mail from there.

In his deposition, Neil's father testified that at the time of the collision, Neil was splitting time between his motel apartment and the home at Saturn Way. He indicated that the motel apartment was fully furnished and that Neil did not share it with anyone else. When asked where Neil lived prior to the collision, his father provided the address of the motel apartment. He indicated that he would not have said that Neil lived with him and his wife, Neil's mother, at the Saturn Way home. He testified that following the collision, he and his wife went to the apartment to collect Neil's clothes and toiletries and brought them to the Saturn Way home where Neil now resided.

Shelter Mutual contends that the trial court erred by concluding, as a matter of law, that Neil was a resident of his father's household. It argues that the issue of Neil's residence is a question of fact that was not appropriate for summary judgment. The Hendersons respond that the only reliable evidence of Neil's residency adequately supports the court's findings.

In *Perry v. Motorists Mutual Insurance Co.*, 860 S.W.2d 762 (Ky.1993), the Kentucky Supreme Court discussed the issue of residency for purposes of underinsured motorist coverage (UIM). In *Perry*, the father of a daughter who had died in an automobile accident twelve hours after her wedding, filed an action for underinsured motorist benefits against his insurance carrier. The parties agreed that the daughter had not lived in her father's house for several

weeks prior to the wedding but that she still kept most of her belongings there. Furthermore, the newlyweds' living arrangements had not been settled at the time of their deaths. The UIM carrier argued that, as a matter of law, the daughter could not be considered a resident of her father's household. The Supreme Court of Kentucky disagreed, observing that “[r]esidency and intent are *questions of fact* and not of law *where the evidence supports more than one inference* upon which reasonable minds may differ.” *Id.* at 764. (Emphasis added.)

We have carefully reviewed the evidence of record in this case. The facts do not contradict a finding that Neil was a resident of his motel apartment. Consequently, we hold that the trial court erred by concluding that the question of his residency could be answered as a matter of law. Reasonable minds could indeed differ with respect to the inferences arising from the abundant and conflicting evidence as to Neil’s residency and his intention at the time of the collision to establish the Saturn Way residence, and no other, as his fixed and permanent home. The issues of fact surrounding the question of Neil’s residence precluded the entry of the court’s summary judgment in this matter.

Accordingly, we reverse the order of the trial court and remand for further proceedings.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jason E. Williams
London, Kentucky

BRIEF FOR APPELLEE NEIL
PARAGH:

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BRIEF FOR APPELLEE CHERYL
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