

NOT DESIGNATED FOR PUBLICATION

ARSCEOLA JOYCE BROWN * **NO. 2007-CA-0725**
DAVIS ON BEHALF OF THE *
MINOR CHILDREN, ZAIRE * **COURT OF APPEAL**
ALI ROSE AND COREION I. *
JENA MOLETTE * **FOURTH CIRCUIT**

VERSUS * **STATE OF LOUISIANA**

ELLWOOD PLEASANT, * * * * *
CHARLES GREEN, STATE
FARM INSURANCE
COMPANY, DEF COMPANY
AND ABC INSURANCE
COMPANY, ET AL.

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2004-15408, DIVISION "A-5"
Honorable Ernest L. Jones, Judge Pro Tempore
* * * * *

Judge Dennis R. Bagneris, Sr.
* * * * *

(Court composed of Judge Dennis R. Bagneris, Sr., Judge Edwin A. Lombard, and Judge Roland L. Belsome)

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REVERSED AND REMANDED

Plaintiff, Arsceola Molette Davis, as Tutor of her minor grandchildren, Zaire Ali Rose, and Coreion I. Jena Molette,¹ (“Mrs. Davis”) appeals the granting of a motion for summary judgment in favor of Defendant, State Farm Mutual Automobile Insurance Company (“State Farm”). We find the trial court erred in granting State Farm’s motion for summary judgment as a genuine issue of material fact exists as to whether Valerie Molette was a resident of her step-father’s household for the purpose of insurance coverage. Therefore, we reverse and remand.

FACTS

In June of 2004, Valerie Molette (Ms. Molette) was fatally injured while riding as a passenger on a motorcycle operated by Charles Green. The accident occurred on I-10 East, near the Elysian Fields exit in the Parish of Orleans, State of Louisiana. Neither the owner nor the driver of the motorcycle was insured. However, at the time of the accident, Ms. Molette’s step-father, Louis Davis (“Mr. Davis”), held an uninsured motorist insurance policy with State Farm.

¹ The petition for damages was amended to add Paula Honore on behalf of her minor child, Unique Honore.

On October 26, 2004, Mrs. Davis filed a petition for damages alleging that the UM policy provided by State Farm, on behalf of Mr. Davis, provided coverage for Ms. Molette because Ms. Molette resided with Mr. and Mrs. Davis at the time of the June 2004 accident. Specifically, the State Farm UM coverage provided for Mr. Davis states, in pertinent part, as follows:

**SECTION III – UNINSURED MOTOR VEHICLE –
COVERAGE U, “ECONOMIC-ONLY” UNINSURED MOTOR
VEHICLE – COVERAGE UEO AND UNINSURED MOTOR
VEHICLE PROPERTY DAMAGE – COVERAGE U1**

Who is an Insured – Coverages U and UEO

Insured – means the person and persons covered by uninsured motor vehicle coverage or “economic-only” uninsured motor vehicle coverage. This is:

1. the first *person* named in the declarations;
2. his or her *spouse*;
3. their *relatives* [.]

Pursuant to the policy, relative is defined as “a *person* related to *you* or *your spouse* by blood, marriage or adoption who resides primarily with *you*. It includes *your* unmarried or unemancipated child away at school.” (Emphasis in original).

Thereafter, both Mrs. Davis and State Farm filed motions for summary judgment. In support of Mrs. Davis’s motion for summary judgment, she attached: (1) her affidavit along with Mr. Davis’s affidavit attesting to the fact that Ms. Molette primarily resided with them at the time of her death; and (2) a copy of the Certificate of Death for Ms. Molette which gave her primary residence as being at the home of Mr. and Mrs. Davis. In support of State Farm’s motion for summary judgment, State Farm attached: (1) a copy of the UM policy; (2) a copy of the certified return from the Louisiana Department of Public Safety and Corrections (documentation regarding Ms. Molette’s application and renewals for a State of

Louisiana identification card); (3) a copy of the certified return received from Checker's Drive-In Restaurants, Inc.; and (4) a copy of the certified return received from the Orleans Parish Registrar of Voters.

The issue argued at the summary judgment hearing concerned the primary residence of Valerie Molette. Mrs. Davis argued that Valerie Molette's primary residence was 6400 Brunswick Ct., New Orleans, La. 70131, the home of Louis Davis, whereas State Farm argued that 208 Southern Pl., Chalmette, La. 70043 was Ms. Molette's primary residence. Following the hearing, the trial court denied Mrs. Davis's motion for partial summary judgment and granted State Farm's motion for summary judgment, dismissing State Farm with full prejudice. Thereafter, Mrs. Davis filed a motion for new trial, which was denied by the trial court. Mrs. Davis now appeals this final judgment.

DISCUSSION

This is an appeal of a grant of a motion for summary judgment. Appellate courts review summary judgments *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Independent Fire Ins. Co. v. Sunbeam Corp.*, 99-2181, 99-2257, p. 7 (La.2/29/00), 755 So.2d 226, 230. Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, scrutinized equally, show that there is no genuine issue as to material fact, and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B). However, as noted by the Supreme Court in *Independent Fire Ins. Co.*, the trial court cannot make credibility determinations on a motion for summary judgment. *Independent Fire Insurance Co.*, p. 16, 755 So.2d at 236. As this Court noted in *Berthelot v. Avondale Industries, Inc.*, 02-1779, p. 3 (La.App. 4

Cir. 2/26/03), 841 So.2d 91, 93 “[i]t is not the function of the trial court on a motion for summary judgment to determine or even inquire into the merits of the issues raised. Additionally, the weighing of conflicting evidence has no place in summary judgment procedure.” As also stated by this Court in *Coto v. J. Ray McDermott S.A.*, 99-1866, p.4 (La.App. 4 Cir. 10/25/00), 772 So.2d 828, 830 “[i]n determining whether an issue is genuine, courts cannot consider the merits, make credibility determinations, evaluate testimony or weigh evidence.” *Id.* at p. 4, 772 So.2d at 830.

To determine whether the trial court erred in granting State Farm’s motion for summary judgment, we must determine whether there are any genuine issues of material fact. Based on the affidavits submitted on behalf of Mr. and Mrs. Davis, (which state that Ms. Molette resided with them² at the time of her death) as well as the submitted Certificate of Death for Ms. Molette, which gave her address as being at the home of Mr. and Mrs. Davis, we find there is a genuine issue of material fact regarding Ms. Molette’s primary residence at the time of her death. Since we find there is a genuine issue of material fact in this case, summary judgment is not proper.

Accordingly, we find the trial court erred in granting summary judgment in favor of State Farm. We find there is a genuine issue of material fact that precludes the granting of summary judgment. Therefore, we reverse the judgment of the trial court and remand this matter for further proceedings.

REVERSED AND REMANDED

² Mr. and Mrs. Davis reside at 6400 Brunswick Ct., New Orleans, La. 70131.

In light of this evidence, we find there is a genuine issue of fact remaining as to whether the