

STATE OF MICHIGAN
COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

v

TINA MARIE WEISHAAR, Next Friend of
DEVIN J. GARTEN, a Minor,

Defendant-Appellant,

and

ESTATE OF BRIAN RUSSELL,

Defendant.

UNPUBLISHED
December 6, 2005

No. 263251
Oakland Circuit Court
LC No. 2004-060666-CK

Before: Talbot, P.J., and White and Wilder, JJ.

WHITE, J. (*dissenting.*)

I respectfully dissent.

The facts viewed in a light most favorable to defendant are that the record contains no evidence that Russell ever had previously rented the premises at issue. There was no written lease agreement between Russell and defendant, and the record is clear that Russell and defendant were friends. In answers to interrogatories Russell stated that this residence “was never intended to be a rental property.”¹ There was no showing that Russell was in the business of renting for profit.

¹ Russell stated in response to defendant’s interrogatory 9.1:

9.1 Please provide the name or names of all persons who had the direct or indirect responsibility as “landlord” of the subject property on the date of the incident, relating to the subject matter of plaintiff’s complaint

(a) the name, business and residential address and telephone number of any such person;

(continued...)

Under the policy's express terms "Rental of your residence premises is not considered a business when . . . it is rented occasionally for residential purposes." Where there is no record evidence that the premises had ever been rented before, where there was no lease agreement, where the parties were friends, and where there was no showing that Russell ever engaged in or pursued the business of renting property for profit, plaintiff was not entitled to summary disposition as a matter of law. I would reverse.

/s/ Helene N. White

(...continued)

* * *

ANSWER:

Brian Russell was the owner of the premises at the time of this incident. Prior to the Plaintiffs moving into the residence at 234 High Street, Pontiac, Michigan, they had been living in another one of Brian Russell's residence [sic] which was located at 2445 Ortonville in Ortonville, Michigan. Since they were unable to pay the rent of the residence at 2445 Ortonville, arrangements were made for them to move into the 234 High Street address for a reduced rate. Despite the fact that rent was required, Plaintiffs did not pay same. In addition, **the residence at 234 High Street, Pontiac, Michigan, was never intended to be a rental property. This had been the property where I had been living. No written lease was ever prepared due to the nature of this relationship.** [Emphasis added.]