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Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0378

Kawaljit S. Bhatia, as Trustee for the
next of kin of Ena M. Bhatia, deceased,
Appellant,

vs.

Owners Insurance Company,
Respondent.

Filed December 6, 2021
Affirmed
Gaïtas, Judge

Dakota County District Court
File No. 19HA-CV-19-5092

Paul W. Rogosheske, Rogosheske, Rogosheske, & Atkins, PLLC, South Saint Paul, Minnesota (for appellant)

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Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this uninsured motorist (UM) benefits action, appellant Kawaljit Bhatia challenges the district court's grant of respondent insurer's summary-judgment motion. Bhatia argues that there is a genuine fact issue as to whether his daughter was a resident relative under his insurance policy when she was killed in a fall from a motorcycle.

Because the record evidence does not establish a genuine issue of material fact regarding his daughter's residence, we affirm.

FACTS

In 2016, 21-year-old Ena Bhatia fell off a moving motorcycle that her boyfriend was driving. She died at the scene.

Alleging that the motorcycle was an uninsured vehicle, Bhatia, who is Ena's father and next-of-kin, sought UM benefits from his own insurance company, respondent Owners Insurance Company (Owners). Bhatia's insurance policy with Owners identifies the circumstances under which the policyholder may recover damages when the policyholder or a relative is injured or killed in an uninsured vehicle.

The UM endorsement states, in relevant part:

> **2. COVERAGE**
> **a.** **We** will pay compensatory damages, including but not limited to loss of consortium, any person is legally entitled to recover from the owner or operator of an **uninsured automobile** because of **bodily injury** sustained by an injured person while **occupying** an **automobile** that is covered by **SECTION II – LIABILITY COVERAGE** of the policy.
> **b.** This coverage is extended to you, if an individual, as follows:
> **(1)** **We** will pay compensatory damage, including but not limited to loss of consortium, **you** are legally entitled to recover from the owner or operator of any **uninsured automobile** because of **bodily injury you** sustain:
> **(a)** when **you** are not **occupying an automobile** that is covered by **SECTION II – LIABILITY COVERAGE**; or
> **(b)** while **occupying** an **automobile you** do not own which is not covered by **SECTION II**

– LIABILITY COVERAGE of the policy, or

(2) The coverage extended in **2.b.(1)** above is also afforded to a **relative** who does not own an **automobile**.

c. The **bodily injury** must be accidental and arise out of the ownership, maintenance or use of the **uninsured automobile**.

The policy defines "relative" as "a person who resides with you and who is related to you by blood, marriage or adoption."[1]

Owners denied Bhatia's claim. Bhatia filed suit seeking UM benefits under the policy. Owners moved for summary judgment. Based on the record evidence, the district court determined that the undisputed facts established that Ena did not reside with Bhatia and therefore was not a resident relative under his policy. The district court granted Owners' summary-judgment motion.

Bhatia appeals.

DECISION

Bhatia argues that the district court erred in determining that the undisputed record evidence established that Ena did not reside with him and was therefore not a "relative" under his insurance policy. He contends that, because the record evidence establishes a genuine issue of material fact as to Ena's residency, summary judgment was inappropriate and reversal is required.

[1] We note that the policy contains a slightly different definition of "relative" in the non-stacked no-fault insurance endorsement: "any person related to you by blood, marriage or adoption and who resides in your household." The parties have consistently relied on the policy's general definition of the term, and not the definition in the no-fault endorsement. Likewise, the district court's analysis focused on the general definition of "relative."

Summary judgment is proper if the movant shows, by citing to specific parts of the record, including depositions, documents, affidavits, admissions, and interrogatory answers, that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01, 56.03(a). A genuine issue of material fact exists "when reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997). "[O]n a motion for summary judgment, the facts *and the reasonable inferences to be drawn from those facts* must be resolved in [the nonmoving party's] favor." *Staub v. Myrtle Lake Resort*, 964 N.W.2d 613, 620 (Minn. 2021). "Any doubt as to whether issues of material fact exist is resolved in favor of the party against whom summary judgment was granted." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995) (citing *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 646 (Minn. 1974)).

Appellate courts "review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). Reviewing courts "view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

The record evidence here is as follows.[2] Bhatia and his former spouse had two children, Ena and a son. The couple divorced in 2003. After the divorce, Bhatia continued

[2] The facts are derived from the summary-judgment record and are presented in the light most favorable to Bhatia. *See STAR Ctrs., Inc.*, 644 N.W.2d at 76-77.

to live in the marital home in Burnsville. As a teenager, Ena maintained a bedroom in the Burnsville home, and she would often stay there, alternating between her father's house and her mother's residence. Following her graduation from high school and emancipation, Ena remained close with her father. They saw each other every day. But Ena moved to an apartment.

Bhatia owns multiple businesses. One of these businesses is a retail store in St. Paul that sells gifts and other items. Bhatia owns the building that houses the St. Paul store. On the upper level of the building, there are four apartment units. At the time of Ena's death, Bhatia occasionally stayed in one of these units although he continued to live in the Burnsville home. Bhatia's son lived in a second unit. And, after graduating from high school, Ena lived separately in a third unit. The fourth unit was vacant and used by the family as needed.

Ena kept her bedroom in her father's Burnsville home, and she occasionally stayed there as an adult. But Ena lived in the unit above the store. Her boyfriend also lived with her there on and off.

Although Bhatia spent time in his apartment above the store, he resided in the Burnsville home. He received mail at both the Burnsville home and the St. Paul building.

Ena did not pay rent for her apartment in the St. Paul building. Bhatia also covered all of her other expenses, including her car insurance and health insurance.

At the time of her death, Ena was in the process of moving from Bhatia's building to a new apartment with her boyfriend. Bhatia last saw her on November 16, 2016—two days before the motorcycle accident—and they discussed her move at that time. According

to Bhatia, she was ecstatic to be moving. She told him that she had written a check on the business account to cover rent for her new apartment. Ena told Bhatia that she was moving some of her belongings into the new apartment that night, including a television that she had taken from the store. Bhatia did not know whether she had actually moved anything into the new residence or spent any time there before she died. But Bhatia "hoped" that Ena had spent the night of November 16 there because she had not stayed in her apartment in his building.

Having identified the record evidence regarding Ena's residency, we next consider the applicable legal principles. A party claiming insurance coverage bears the preliminary burden of proof to show a prima facie case of coverage. *Boedigheimer v. Taylor*, 178 N.W.2d 610, 614 (Minn. 1970). Once the party claiming coverage meets this burden, the party "is entitled to go to the jury and the burden of proof then shifts to the insurer to prove facts establishing avoidance of liability under the insurance policy as an affirmative defense." *Id*. Whether the insured has demonstrated a prima facie case of coverage depends on the language of the insurance policy at issue. *See id.*

"Generally, the extent of an insurer's liability is determined by its insurance contract with its insured." *Hanbury v. Am. Family Mut. Ins. Co.*, 865 N.W.2d 83, 86 (Minn. App. 2015), *rev. denied* (Minn. Aug. 25, 2015). Insurance policy language "must be construed as a whole, and unambiguous language must be given its plain and ordinary meaning." *Henning Nelson Constr. Co. v. Fireman's Fund Am. Life Ins. Co.*, 383 N.W.2d 645, 652 (Minn. 1986) (citing *Bobich v. Oja*, 104 N.W.2d 19, 24 (Minn. 1960)). If a contract is "clear and unambiguous," a court "should not rewrite, modify, or limit its effect by a

strained construction." *Valspar Refinish, Inc., v. Gaylord's, Inc.*, 764 N.W.2d 359, 364-65 (Minn. 2009). "Whether a contract is ambiguous is a question of law," which an appellate court reviews de novo. *Carlson v. Allstate Ins. Co.*, 749 N.W.2d 41, 45 (Minn. 2008).

Under Bhatia's policy, a "relative" is "a person who resides with you and who is related to you by blood, marriage or adoption." The parties agree that Ena was related to Bhatia by blood. Thus, the sole question before the district court, and now before us, is whether there is a genuine fact issue regarding Ena's residence—specifically, whether she resided with Bhatia.[3]

The district court concluded that the undisputed facts demonstrate that "Ena . . . does not qualify as a 'resident relative' under the terms of the policy to allow UM coverage." In support of this determination, the district court noted that Ena "maintained her own residence separate and apart from [Bhatia]," she did not "regularly sleep under the same roof as [Bhatia]," and she had no intention of returning to Bhatia's Burnsville home because she "was in the process of moving to a new residence that was not owned by [Bhatia]."

On appeal, neither party contends that the policy's definition of a relative is ambiguous. Instead, Bhatia argues that the district court erred in concluding that Ena did not reside with him. He maintains that the record evidence establishes a factual dispute as to whether Bhatia and Ena were "living under the same roof." On the other hand, Owners

[3] The district court observed that Owners "does not concede that the vehicle in the accident qualifies as an uninsured vehicle pursuant to the policy." But the district court noted that it was not "asked to determine whether the motorcycle is an 'uninsured vehicle' under the policy."

argues that there is no factual dispute. According to Owners, there is no record evidence that Ena was residing with Bhatia in his home, the Burnsville residence.

To assist us in considering this issue, the parties refer us to a body of Minnesota caselaw addressing resident relatives. Both parties cite *Firemen's Ins. Co. of Newark, N.J. v. Viktora*, a homeowners-insurance case, which the district court used as a foundation for its analysis. 318 N.W.2d 704 (Minn. 1982). There, the Minnesota Supreme Court identified several factors bearing on whether an adult son resided "in the named insured's household":

> a. [l]iving under the same roof;
> b. in a close, intimate and informal relationship; and
> c. where the intended duration is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance or in their conduct in reliance thereon.

Id. at 706 (quotation omitted).

In support of its position, Owners relies on two additional supreme court decisions. In *Fruchtman v. State Farm Mut. Auto. Ins. Co.*, a mother was a passenger in her 27-year-old son's vehicle when there was an accident; the coverage question was whether the son was a member of his mother's household. 142 N.W.2d 299, 300-01 (Minn. 1966). The son, who was on leave between military assignments, had moved out of his mother's home more than two years earlier, had not visited the home for more than two weeks at a time, and did not intend to return to the home, although he stored most of his belongings there. *Id.* at 301. The supreme court concluded that the mother and her son did not reside in the

same household. *Id.* at 301-02. And in *Van Overbeke v. State Farm Mut. Auto. Ins. Co.*, the injured relative was 19 years old, employed and self-supporting, attending post-secondary school in Mankato, and intending to reside there. 227 N.W.2d 807, 810 (Minn. 1975). The supreme court concluded that he was not a resident relative of his brother's household in Marshall. *Id.*

Owners draws a contrast between these two decisions and *Viktora*, where the supreme court ultimately determined that the adult son *was* a resident relative of his parents' household. 318 N.W.2d at 707. There, the 23-year-old son moved to his parents' home from another city after losing his job and lived there for nearly four months before the accident occurred. *Id.* at 705. He did not pay room or board, and his mother usually did his laundry. *Id.* In concluding that the son was a resident relative, the supreme court pointed out that he lived with his parents, that he "was not self-supporting," and that the family "enjoyed the intimate, informal family relationship indicative of a legal residency." *Id.* at 707.

Bhatia directs us to our decision in *Skarsten v. Dairyland Ins. Co.*, 381 N.W.2d 16 (Minn. App. 1986), *rev. denied* (Minn. Mar. 27, 1986). In *Skarsten*, a 24-year-old daughter was the policyholder and her father was injured in a car accident. *Id.* at 17. Years before the accident, the daughter had moved away from her parents' home in Benson to attend school and lived in California and Minneapolis. *Id*. at 17-18. She was unemployed, however, and returned to her parents' house once or twice per month and on holidays. *Id*. at 18. Although she received most of her mail at her own Minneapolis address and was registered to vote in California, she had her own room at her parents' house and kept

belongings there. *Id*. We concluded that the daughter was a resident relative and noted that a policy's use of the term "resident or member of the same household" is intended to protect "'those whom, because of close relationship, a person obtaining a liability insurance policy would ordinarily want it to protect.'" *Id*. at 18-19 (quoting *Nat'l Farmers Union Prop. & Cas. Co. v. Maca*, 132 N.W.2d 517, 520 (Wis. 1965)).

Although the cited cases are helpful in illustrating factual scenarios involving resident-relative provisions, our first and primary consideration must be the terms of Bhatia's policy. *See Hanbury*, 865 N.W.2d at 86. That policy language is different than the language at issue in *Skarsten*, the case that Bhatia urges us to follow. Bhatia's policy defines a resident relative as one who "resides with" the insured. In *Skarsten*, however, the provision was not limited to a resident. Rather, the policy covered a "resident *or member of the same household*," which is a broader definition. *See Skarsten,* 381 N.W.2d at 18.

Because the policy here requires a resident-relative to *reside* with the insured, we agree with the district court's decision to focus on whether Bhatia and Ena lived under the same roof. Our independent review of the record evidence certainly establishes that father and daughter had a close relationship. But there are no facts that would allow a reasonable fact finder to conclude that they lived together. *See DLH, Inc*, 566 N.W.2d at 69. Thus, we also agree with the district court's conclusion that there is no genuine issue of material fact as to whether Ena resided with her father.

Citing *Am. Fam. Mut. Ins. Co. v. Thiem*, Bhatia points out that a relative can reside in more than one place. 503 N.W.2d 789, 790 (Minn. 1993). He argues that a fact finder

could conclude that Ena lived in both the Burnsville home and the St. Paul apartment. We agree that in some circumstances—such as those in *Thiem*, where a minor child spent time in the homes of both of his divorced parents, *see id.* at 790-91—an individual may have more than one residence. But the record evidence shows no such circumstances here. Although Ena maintained her childhood bedroom in Bhatia's Burnsville home, had a key to the home, and would occasionally spend the night, she did not reside there. The undisputed evidence is that Ena resided in the St. Paul apartment. Moreover, there is no evidence that Ena ever planned to reside in the Burnsville home again. At the time of her death, she was in the process of moving to another apartment.

Bhatia also directs us to the evidence that Ena remained dependent on him in adulthood, relying on him to pay for her housing and all other expenses. He argues that he "certainly considered her a part of his household and intended to have her covered for all aspects of life, including his insurance contracts." But again, our analysis is guided by the policy language, which defines a relative as a person who resides with the policyholder. Although Ena was largely dependent on her father, there is no record evidence suggesting that she resided with him at the time of her death.

The record evidence leaves no doubt that Bhatia loved his daughter and that he remained close and connected with her until she passed away. But because there is no genuine factual dispute as to whether Ena resided with Bhatia, the district court did not err in determining that she did not qualify as a resident relative under Bhatia's insurance policy and in granting Owners' motion for summary judgment.

Affirmed.