**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1249**

Paul Vang,
Respondent,

vs.

Illinois Farmers Insurance Company, et al.,
Appellants.

**Filed March 30, 2010**
**Affirmed**
**Schellhas, Judge**

Washington County District Court
File No. 82-CV-08-461

Arlo H. Vande Vegte, Dovolas & Vande Vegte PLLC, Plymouth, Minnesota (for respondent)

Paul W. Godfrey, Votel, McEachron & Godfrey, St. Paul, Minnesota (for appellants)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Crippen, Judge.*

**U N P U B L I S H E D  O P I N I O N**

**SCHELLHAS**, Judge

Appellants challenge summary judgment in favor of respondent, arguing that the district court erred in determining that (1) respondent is a resident relative in his sister

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

and brother-in-law's household and therefore an insured under their automobile insurance policy; and (2) respondent is not precluded from receiving benefits under his sister and brother-in-law's policy even though he is a named insured on another policy.

## FACTS

Respondent Paul Vang was injured as a passenger in an automobile accident on April 14, 2007. After settling his liability claim with the driver of the automobile, respondent sought underinsured-motorist (UIM) benefits. This case concerns whether respondent's UIM claim is covered by an automobile insurance policy issued by appellant Mid-Century Insurance Company (Mid-Century) or an automobile insurance policy issued by appellant Illinois Farmers Insurance Company (Illinois Farmers).

Both Mid-Century and Illinois Farmers are part of Farmers Insurance Group, but the two policies provide different coverage. The Mid-Century policy names respondent and his brother as insureds and has bodily-injury policy limits of $50,000 per person and $100,000 per accident. The Illinois Farmers policy names respondent's sister and brother-in-law as insureds and has bodily-injury policy limits of $250,000 per person and $500,000 per accident. Both policies provide for the payment of UIM benefits to cover unpaid damages sustained by an "insured person," defined as the named insured or a "family member." Both policies define "family member" as "a person related to [the named insured] by blood, marriage or adoption who is a resident of [the named insured's] household."

Respondent sought UIM benefits under the Illinois Farmers policy. After a residency investigation, Farmers Insurance Group extended coverage to respondent under

the Mid-Century policy under which he was a named insured, rather than under the Illinois Farmers policy under which he asserted that he was a resident relative. Respondent thereafter sought a declaratory judgment that he was a resident in his sister and brother-in-law's household and therefore may claim UIM benefits under their Illinois Farmers policy. On cross-motions for summary judgment, the district court concluded that (1) respondent was a resident of his sister and brother-in-law's household at the time of the accident and therefore was an insured under the Illinois Farmers policy, and (2) respondent is not precluded from receiving benefits under the Illinois Farmers policy even though he is a named insured on the Mid-Century policy. This appeal follows.

**D E C I S I O N**

***Respondent's Residence***

Appellants first challenge the district court's determination, based on the undisputed facts, that respondent is a "resident" in his sister and brother-in-law's household. Whether a person resides in a household for the purposes of an insurance policy generally is a question of fact. *Frey v. United Servs. Auto. Ass'n*, 743 N.W.2d 337, 344 (Minn. App. 2008). But when the material facts are undisputed, the question of residence can be resolved as a matter of law by reference to the insurance policy and the facts in the record. *Am. Family Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790 (Minn. 1993).

The Illinois Farmers policy does not define the term "resident." But the Minnesota Supreme Court has recognized three factors that bear on whether an individual is a "resident" in a named insured's household: (1) whether the individual is living under

the same roof as the named insured; (2) whether the individual is in a "close, intimate and informal relationship" with the named insured; and (3) whether the intended duration of the individual's stay in the named insured's household is "likely to be substantial or indefinite," such that it would be reasonable to conclude that the parties would consider the relationship in contracting about such matters as insurance. *McGlothlin v. Steinmetz*, 751 N.W.2d 75, 83 & n.6 (Minn. 2008) (quotation omitted) (noting that factors derived from *Pamperin v. Milwaukee Mut. Ins. Co.*, 197 N.W.2d 783, 788 (Wis. 1972)). The district court considered these three factors and concluded that all three weigh in favor of a determination that respondent was a "resident" in his sister and brother-in-law's household. We agree.

*Living Under the Same Roof*

The district court properly determined that respondent was living in his sister and brother-in-law's household. The evidence establishes that respondent had his own room and computer in their household, slept there the majority of the time, ate his meals there, kept much of his clothing at that household, and considered that household his home. Respondent had use of his sister and brother-in-law's vehicles and reported their household address as his residence when he renewed his driver's license in March 2007, and when he applied for a job. Respondent also received some mail at his sister and brother-in-law's household. And when a representative of Farmers Insurance Group came unannounced to respondent's sister and brother-in-law's house in June 2007, respondent was there and told the representative that he lived there. The evidence

establishes that respondent resided in the household of his sister and brother-in-law at the time of the accident.

Appellants emphasize that respondent maintained some incidents of residence at his parents' home, arguing that he lived in his parents' home instead of his sister and brother-in-law's household. But a person may be a resident in more than one household for insurance purposes. *See Mut. Serv. Cas. Ins. Co. v. Olson*, 402 N.W.2d 621, 624 (Minn. App. 1987) (distinguishing domicile from residence and stating that it is possible to have multiple residences), *review denied* (Minn. May 20, 1987). In light of the substantial evidence indicating that respondent was a resident in his sister and brother-in-law's household, the evidence that he maintained some incidents of residence at his parents' house demonstrates, at most, that respondent maintained two residences, as the district court concluded.

*Close, Intimate, and Informal Relationship*

The district court also determined that respondent had a close, intimate, and informal relationship with his sister and brother-in-law. Respondent, who was a 19-year-old college student at the time of the accident, came and went from his sister and brother-in-law's household according to his own schedule, although his sister kept track of his whereabouts. Respondent helped babysit his sister and brother-in-law's children. But respondent did not pay his sister and brother-in-law rent and, as noted above, had free use of the family's vehicles and a computer.

Appellants assert that this evidence is insufficient because it does not establish that respondent was dependent upon his sister and brother-in-law. We disagree. Appellants

cite no authority supporting their argument that dependence is a requirement for residency. Moreover, the record reflects that respondent's sister and brother-in-law supplied him with room, board, and transportation; the mere possibility that he could have provided for those needs on his own does not negate the fact that respondent relied on his sister and brother-in-law for his daily needs. Appellants cite only *Firemen's Ins. Co. of Newark, N.J. v. Viktora*, 318 N.W.2d 704 (Minn. 1982), which is factually similar to this case. In *Viktora*, the 23-year-old man who sought insurance coverage through his parents' policy as a "resident" in their household was considered a resident because he lived at their house, received mail there, did chores, did not pay rent, and ate his meals there. 318 N.W.2d at 705, 707. Respondent, like the insurance claimant in *Viktora*, "enjoyed the intimate, informal family relationship" with his sister and brother-in-law that is "indicative of a legal residency." *See id.* at 707.

*Nature and Duration of Intended Stay*

The district court determined that the duration of respondent's stay in his sister and brother-in-law's household was likely to be substantial and could reasonably be expected to be considered in contracting about such matters as insurance. As we previously discussed, the facts of respondent's daily life demonstrate that he was living in his sister and brother-in-law's household, which was close to his school and employment. Respondent also was in the process of changing his address information with various institutions to reflect the fact that he had moved into his sister and brother-in-law's household, and there is no evidence in the record that respondent was looking for an alternative residence or considering moving out. Indeed, at the time of the district court's

decision, respondent was still living with his sister and brother-in-law even though they had moved. Although respondent's sister and brother-in-law did not notify their insurance company that they had another driver living at their home, they did furnish respondent with use of their vehicles, encouraged him to change his address, and kept track of his whereabouts. The record demonstrates that respondent's stay in his sister and brother-in-law's household was likely to be substantial and reasonably supported a conclusion that the parties would consider respondent's living arrangements in contracting for or relying upon insurance.

Overall, the undisputed facts in the record establish that respondent was a resident in his sister and brother-in-law's household at the time of the accident and, therefore, an insured person under their insurance policy.

***Effect of Respondent's Status as Named Insured***

Appellants also argue that, under Minn. Stat. § 65B.43, subd. 5 (2008), the district court erred in concluding that respondent's status as a named insured on the Mid-Century policy does not negate his entitlement to benefits under his sister and brother-in-law's policy as a resident in their household. Section 65B.43, subdivision 5, defines "insured" for purposes of the Minnesota No-Fault Automobile Insurance Act (the No-Fault Act) and excludes from that definition individuals named as an insured on another insurance policy. Minn. Stat. §§ 65B.41, .43, subds. 1, 5 (2008). But the No-Fault Act also specifically provides that it is not to be construed to prevent an insurer "from offering other benefits or coverages in addition to those" that the No-Fault Act requires. Minn. Stat. § 65B.49, subd. 7 (2008). Because the language of the two policies at issue here is

broader than the language of the No-Fault Act, and "the extent of an insurer's liability is generally governed by its terms so long as the policy does not omit coverage required by law," we look to the language of the policies to decide this issue. *Holmstrom v. Ill. Farmers Ins. Co.*, 631 N.W.2d 102, 105 (Minn. App. 2001).

When multiple insurance policies may apply, the "other insurance" clauses of the policies are examined to see if they conflict. *Id.* at 105. "When both policies claim to be excess, they are deemed to conflict." *Heinen v. Ill. Farmers Ins. Co.*, 566 N.W.2d 378, 381 (Minn. App. 1997). And if policies conflict, the policies are compared to determine which is closest to the risk. *Id.* at 380-81 (discussing closeness-to-the-risk doctrine). We review de novo the district court's determination of whether the two insurance policies conflict. *Holmstrom*, 631 N.W.2d at 103-04.

Here, the two policies contain identical "other insurance" clauses, which both read, in relevant part: "We will pay only our share of the loss, not to exceed our share of the maximum recovery. Our share is the proportion that our limit of liability bears to the total of all applicable limits in the same level of priority." The district court properly concluded that the closeness-to-the-risk doctrine is inapplicable because the policies' pro rata "other insurance" clauses do not conflict. *See id.* (stating that closeness-to-the-risk doctrine is used only after preliminary determination that applicable policies' "other insurance" clauses conflict). Therefore, respondent, who qualifies as an insured under both policies, is entitled to coverage under both policies pursuant to their "other insurance" provisions.

**Affirmed.**