

SUPREME COURT OF LOUISIANA

NO. 97-C-3085

***ROBERT J. CARBON,
INDIVIDUALLY AND ON BEHALF OF HIS MINOR DAUGHTER,
JENNIFER CARBON***

versus

ALLSTATE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT,
PARISH OF LAFOURCHE

KNOLL, Justice, dissenting

The majority characterizes the policies' definition of "resident" as requiring physical presence. I disagree. The first sentence requiring "physical presence...with the intention to continue living there" means that physical presence alone is insufficient to establish coverage as a resident relative. A second condition of intent to continue to live there must also be satisfied. See, e.g., Prudhomme v. Imperial Fire & Cas. Ins. Co., 95-1502 (La.App. 3 Cir. 4/3/96), 671 So.2d 1116, *writ granted in part* (to reorganize the limitations of the insurer's liability), 96-1030 (La. 6/7/96), 674 So.2d 987, cited by the majority. Although a half brother had no other home and had lived with his sister for three months before the accident and about a year after, he had articulated an intent that living with his sister was only temporary. Therefore the trial court did not manifestly err in finding him not to be covered under the resident relative expansion clause of the policy.¹

¹He was, nonetheless, held by the intermediate court to be covered under the policy because the sister's leaving her car keys out at night was tacit permission to use her car.

The second sentence of Allstate's definition: "Unmarried dependent children, while temporarily away from home will be considered residents if they intend to continue to live in **your** household" must apply to circumstances where there is *no* physical presence. A dependent child would still be covered under the expansion clause if, despite physical absence, a child *intended* the absence to be only temporary. The word "continue," then, must refer to the fact that at some time there *had been* physical presence, and coverage would hinge on the child's intent.

In the instant matter, there was never any doubt that at one time, Jennifer maintained a physical presence in the named insured's household. Thus, at issue here is whether, under the second sentence, or expansion clause of the policy, an insurer can give effect to an unemancipated minor child's intent with respect to residency and thereby preclude coverage under her parent's policy.

The majority points out that in defining "resident," intent has been an important consideration. However, in cases cited by the majority, only an adult's intent was at issue.² Those cases have little bearing on this case where the intent of a minor is at issue. Permitting a minor's intent to control in this case could have negative impact in related situations.³ For example, a run away child who is injured would be returned to his parents pursuant to La.Ch.Code art. 1628 et seq. Subsequently, the parents would be obligated to care for that child pursuant to their alimentary obligations articulated in

²In *Bearden v. Rucker*, 437 So.2d 1116 (La.1983), the court determined that an adult woman was an insured resident under her husband's policy despite a legal separation and 9 months of physical separation. In *Miley v. La. Farm Bureau Cas. Ins. Co.*, 599 So.2d 791 (La.App. 1 Cir.), *writ denied*, 604 So.2d 1313 (La.1992), the adult wife was not covered under her husband's policy because her moving out with virtually all her belongings and leaving her house keys behind signified her intent to no longer be a resident. In that case, the first sentence of the policy mirrors the first sentence of the policy in the instant matter. See also *Prudhomme v. Imperial Fire & Cas. Ins. Co.*, 95-1502 (La.App. 3 Cir. 4/3/96), 671 So.2d 1116, *writ granted in part* (to reorganize the limitations of the insurer's liability), 96-1030 (La. 6/7/96), 674 So.2d 987.

³The majority notes that a fifteen-year old child has the cognitive ability to form an intent, and that a child's intent is relevant in delinquency matters. But the legislature has specifically provided for juvenile proceedings and punishment where a juvenile's conduct (accompanied by the requisite intent) would have been considered criminal if done by an adult.

La.Civ.Code art. 227 and 141.⁴ That alimentary obligation is so deeply rooted in our civil law tradition that it is closely linked with the specific authority of a parent to dictate the residence of his child. 1 PLANIOL, CIVIL LAW TREATISE, pt. 1, no. 640 and pt. 2 nos. 1657 - 1663 (La. St. L. Inst. transl. 1959). On that basis, “[a]n unemancipated minor can not quit the parental house without the permission of his father and mother.” La.Civ.Code art. 218. Yet, under the majority opinion, insurance protection purchased by the parents could not be used to pay for expenses on account of the child’s injuries merely because of the whim of a teenager to “permanently” leave home.

In this case, Jennifer was a legal resident of her father’s household by virtue of the joint custody decree.⁵ Under the decree, her father was required to maintain a policy of hospitalization insurance affording primary and major medical coverage for Jennifer. He was also required to pay for all of Jennifer’s other medical expenses. As part of his overall insurance protection plan, her father maintained a UM and umbrella policy with Allstate. The majority, in giving effect to the whim of a child and the will of a disgruntled former spouse, permits the father to undertake all the financial burdens and yet interferes with his ability to give effect to a contract for his financial protection to which neither the child nor the former spouse is a party.

The general policy behind UM coverage is to fill the void created when an injury is inflicted by a motorist who is uninsured, underinsured, or unknown. 12A RONALD A. ANDERSON & MARK RHODES, COUCH CYCLOPEDIA OF INSURANCE LAW § 45:620 (2d ed. 1981).

⁴Article 227 provides: “Fathers and mothers, by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children.”

When parents divorce, the obligation to provide support continues subject to a court’s delegation of proportionate amounts pursuant to La.Civ.Code art. 141, which provides in pertinent part: “In a proceeding for divorce or thereafter, the court may order either or both of the parents to provide an interim allowance or final support for a child based on the needs of the child and the ability of the parents to provide support.”

⁵In Louisiana, it is recognized that a person may have more than one residence. *See, e.g., Fielding v. Casualty Reciprocal Exchange*, 331 So.2d 186 (La.App. 3 Cir.), writ denied, 334 So.2d 217 (La.1976).

Accordingly, Allstate set its premiums, which did not decrease because Jennifer began living with her mother. Obviously, Allstate had already made a business decision that Jennifer's presence or absence would have no effect on its risk beyond what it had anticipated at the time it set the cost of providing insurance for the named insured's family. Allstate, therefore, would not be prejudiced by a determination that Jennifer was covered under her father's policy, and Jennifer's father should be permitted to benefit from the insurance protection.

Perhaps because of the broad protective purposes behind insurance, Louisiana has taken a broad view of who is a covered resident under a policy's expansion clause, such as the one at issue in this case,⁶ and a narrow view of who is a resident when a resident would be excluded from coverage under the policy.⁷ See WILLIAM S. MCKENZIE & H. ALSTON JOHNSON, III, *INSURANCE LAW AND PRACTICE* §§ 45 - 46 (2d ed. 1996). In this case, a broad interpretation would extend coverage to Jennifer under her father's policy.

The majority is concerned that finding Jennifer covered under her father's policy

⁶In *Taylor v. State Farm Mutual Automobile Insurance Company*, 178 So.2d 238 (La. 1965), for example, a minor child who had gone to live with his uncle in another state was considered a resident covered under his father's policy. As there was no showing that the parents were not obligated to continue to support their son, the son's absence was considered only temporary. In *Butler v. MFA Mutual Insurance Company*, 356 So.2d 1129 (La.App. 2 Cir.), writ denied, 358 So.2d 641 (La.1978), a minor child was covered under the father's policy even though the mother had been awarded custody. The court noted that the child lived in a home owned by the father, who occasionally stayed overnight. The court reasoned that the result was in accord with the intent of the uninsured motorist statute and that including the minor had not increased the risk to the insurer beyond what was contemplated in a family policy. Similarly, a thirty-year old divorced son was covered under his father's policy even though he maintained a separate apartment. *Bond v. Commercial Union Assurance Company*, 407 So.2d 401 (La.1981)(on Rehearing).

⁷For example, in *Dofflemeyer v. Gilley*, 395 So.2d 403 (La.App. 3 Cir. 1981), the court of appeal reversed a jury's finding that the unemancipated minor was a resident of his father's household. The court noted that a determination that the son was a resident would preclude coverage, and pointed to the son's using another address on his W-4 and W-2 forms in support of its conclusion. In *Pizzo v. Graves*, 453 So.2d 592 (La.App. 5 Cir.), writ denied, 457 So.2d 1181 (La.1984), the court pointed to the mother's affidavit attesting her permission for her minor son to live away from her home in support of its determination that the child was not a resident, thereby concluding that the child was covered under the exclusion clause. In *Branham v. Traders & General Insurance Company*, 344 So.2d 1073 (La.App. 3 Cir. 1977), the son maintained an apartment in Natchitoches where he went to school. Despite his frequent visits home, he was not considered a resident of his father's household where the policy excluded residents from coverage.

would require us to find that it is the public policy of this state that all unmarried dependent children of the insured subject to a custody agreement or judgment be covered under an insurance policy as insureds regardless of whether they, in fact, have *ever* had any physical presence in the insured's home.

97-3085, at p. 9. (Emphasis added.) However, Louisiana jurisprudence has recognized that coverage may be precluded when a minor child has never stayed at the insured parent's home. *See, e.g., Chapman v. Allstate Insurance Company*, 306 So.2d 414 (La.App. 3 Cir. 1975); *Mobley v. State Farm Mutual Automobile Insurance Company*, 28,357 (La.App. 2 Cir. 5/8/96) 674 So.2d 1117, *writ denied* 96-1402 (La. 9/20/96), 679 So.2d 433.

In this case, there has been no suggestion that Jennifer never spent time at her father's house following the divorce. Therefore, I would find that the trial judge did not abuse his discretion in granting the motion in limine excluding non-essential evidence. I would also conclude that the policies' definition of resident is against public policy as applied to minors, given the strong connection between parental authority, alimentary obligations and La.Civ.Code art. 218.

For these reasons, I respectfully dissent.