

SUPREME COURT OF LOUISIANA

No. 98-C-1688

**PAULETTA GEDWARD, INDIVIDUALLY AND AS TUTRIX OF HER
MINOR CHILD, KODI SONNIER**

versus

**RONNIE SONNIER, ACCEPTANCE INSURANCE COMPANY, GLENN
JOLIVETTE AND BOBBY SONNIER**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
THIRD CIRCUIT, PARISH OF LAFAYETTE**

KNOLL, JUSTICE, concurring in part and dissenting in part.

I concur in part. Kodi is clearly a resident of his father's dwelling. I concur specially to note that in determining whether a child is the resident of an unmarried spouse, the intention of the parties and the facts and circumstances of the case will be paramount to the discretion we afford trial courts. Generally, a child should be found a legal resident of his parents' households by virtue of a joint custody decree. However, where a parent has not exercised the right of visitation under the joint custody decree, the child may be found not to be a resident of that parent's household. *See Carbon v. Allstate Ins. Co.*, 97-3085 (La.10/20/98), 719 So.2d 437, 443 (Knoll, J., dissenting).

I cannot agree, however, with the majority's conclusion that the exclusion, when read with the definition of "motor vehicle," is ambiguous. The homeowner's policy defines the term "motor vehicle" as "a motorized golf cart, snowmobile or other motorized land vehicle owned by any insured." However, the policy excludes coverage to bodily injury "arising out of the . . . use . . . of . . . a motor vehicle owned or operated by, or rented or loaned to YOU." Under the clear and explicit terms of the contract, the exclusion modifies the general definition of "motor vehicle," expanding its applicability to the exclusion clause, and excludes coverage for injury caused by the use of a motor vehicle "owned or operated by, or rented or loaned to YOU." Under Louisiana jurisprudence, the insurer and insured may agree to limit liability and to impose and enforce reasonable conditions upon their policy obligations, absent a conflict with statutory provisions or public policy. *See Ducote v. Koch Pipeline Co.*, 98-0942 (La. 1/20/99), __So.2d __, 1999 WL 20897. The ambiguity in the policy is created only when the majority interprets the policy in a strained manner under the guise of contractual interpretation to enlarge its provisions beyond what was reasonably contemplated by its

unambiguous terms. *Valentine v. Bonneville Ins. Co.*, 96-1382 (La. 3/17/97), 691 So.2d 665. Only with a perversion of the words is an ambiguity created where none exists. Indeed, the majority's strained reading of the homeowner's policy creates the absurd results that coverage is excluded for bodily injury from motor vehicles owned by the insured, but that the policy provides coverage for bodily injury from motor vehicles "operated by, or rented or loaned to" the insured. This interpretation of the provision violates LA.CIV. CODE art. 2049 by rendering the clause meaningless because a homeowner cannot loan himself an owned vehicle. Accordingly, I respectfully dissent from that portion of the opinion.