

The Supreme Court of the State of Louisiana

**PENELOPE CATZEN, SOPHIA VORHOFF,
AND HARRY VORHOFF**

No. 2022-CC-01261

VS.

**TASHONTY TONEY, ESURANCE INSURANCE
COMPANY, AND STATE AUTO PROPERTY
AND CASUALTY INSURANCE COMPANY**

IN RE: State Auto Property and Casualty Insurance Company - Applicant
Defendant; Applying For Supervisory Writ, Parish of Orleans Civil, Orleans Civil
District Court Number(s) 2019-12508 C/W 2020-01222 C/W 2020-1514, Court of
Appeal, Fourth Circuit, Number(s) 2022-C-0490;

January 18, 2023

Writ application granted. See per curiam.

PDG

JLW

JDH

SJC

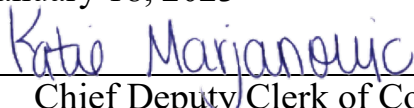
JTG

WJC

JBM

Supreme Court of Louisiana

January 18, 2023



Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2022-CC-01261

PENELOPE CATZEN, SOPHIA VORHOFF, AND HARRY VORHOFF

VS.

**TASHONTY TONEY, ESURANCE INSURANCE COMPANY, AND STATE
AUTO PROPERTY AND CASUALTY INSURANCE COMPANY**

On Supervisory Writ to the Orleans Civil District Court, Parish of Orleans

PER CURIAM

In this case, we must determine whether plaintiff is a resident of her father’s household for purposes of coverage under her father’s insurance policy. For the reasons that follow, we conclude the insurance policy does not provide coverage, and the insurer is therefore entitled to summary judgment.

UNDERLYING FACTS AND PROCEDURAL HISTORY

Plaintiff, Penelope Catzen, filed the instant suit alleging she was struck and injured by a speeding motorist while she was riding her bicycle in the bicycle lane on Esplanade Avenue in the City of New Orleans. She named several defendants, including State Auto Property and Casualty Insurance Company (“State Auto”), which issued an insurance policy providing uninsured motorist coverage to her father, Phillip Catzen, in Maryland.¹

State Auto filed a motion for summary judgment, arguing plaintiff did not meet the definition of “family member” under its policy because she was not a resident of her father’s household in Maryland.² In support of its motion, State Auto

¹ The accident involved several victims and resulted in several consolidated lawsuits. For purposes of this opinion, we are only concerned with the claims of Penelope Catzen against State Auto.

² State Auto’s policy provides, in pertinent part:

relied on plaintiff's deposition, in which she testified she has resided in New Orleans since 2013. In 2017, she moved to a home on St. Roch Avenue in New Orleans, where she was residing at the time of the 2019 accident. Plaintiff testified the home was owned by her partner, and she paid rent to him. She admitted to receiving mail at this address, using this address to register to vote and to file her Louisiana state income taxes.

Plaintiff opposed the motion for summary judgment. Relying on her deposition, she asserted she did not currently own, nor has she ever owned a home in Louisiana. She also relied on her testimony that she maintained close contact with her family in Maryland and travels home on average five times per year. When she travels to Maryland, she stays at her parent's house in her childhood bedroom. Additionally, she keeps enough belongings at her parent's house in Maryland to fill "a room and a shed full" and has no plans to retrieve them. Plaintiff testified she originally moved to Louisiana when she was "fresh out of college" and had no set plan for her future in Louisiana. She explained that in the future, she "might live somewhere else" or be back at her parent's home in Maryland.

Following a hearing, the district court denied State Auto's motion for summary judgment. In oral reasons for judgment, the court explained "I think there clearly are disputed issues of material fact, and I do think that questions of intent and motive, current as well as future intentions, are not appropriate for summary judgment."

B. "Insured" as used in this Part means:
1. You or any "family member".

PERSONAL AUTO POLICY
Definitions

F. "Family member" means a person related to you by blood, marriage or adoption **who is a resident of your household**. This includes a ward or foster child. [emphasis added]

State Auto applied for supervisory review of this judgment. The court of appeal denied the writ.

Upon State Auto's application to this court, we ordered written briefing pursuant to the provisions of La. Code Civ. P. art. 966(H).³ Having received briefs from both parties, we now review the district court's ruling on the motion for summary judgment on the merits.

DISCUSSION

A ruling on a motion for summary judgment is reviewed under a de novo standard, with the appellate court using the same criteria that govern the trial court's determination of whether summary judgment is appropriate, i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Guidry v. Brookshire Grocery Co.*, 19-1999 (La. 2/26/20), 289 So.3d 1026, 1027; *Murphy v. Savannah*, 18-0991 (La. 5/8/19), 282 So.3d 1034, 1038; *Wright v. Louisiana Power & Light*, 06-1181 (La. 3/9/07), 951 So.2d 1058, 1070.

Pursuant to La. Code Civ. P. art. 966(D)(1), the burden on the party moving for summary judgment "does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense." *Reynolds v. Bordelon*, 14-2371 (La. 6/30/15), 172 So.3d 607, 610–11. When a motion for summary judgment is made and supported, an adverse party may not rest on the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise, must set forth specific facts showing that

³ As required by the article, we permitted the parties an opportunity to request oral argument and entertained State Auto's request for argument. After careful consideration, we found oral argument was unnecessary under the facts of this case and therefore elected to exercise our discretion to consider the matter on written briefs only.

there is a genuine issue for trial. La. Code Civ. P. art. 967(B); *Bufkin v. Felipe's Louisiana, LLC*, 14-0288 (La. 10/15/14), 171 So.3d 851, 858. Once a motion for summary judgment has been properly supported by the moving party, the failure of the non-moving party to produce evidence of a material factual dispute mandates the granting of the motion. *Dauzat v. Curnest Guillot Logging Inc.*, 08-0528 (La. 12/2/08), 995 So.2d 1184, 1187 (citing *Babin v. Winn-Dixie Louisiana, Inc.*, 00-0078 (La. 6/30/00), 764 So.2d 37, 40).

It is undisputed that plaintiff was not a named insured under the State Auto policy, nor was she operating an insured vehicle at the time of the accident. Therefore, the only way she would be covered under the State Auto policy is if she is a “family member” of Mr. Catzen, the named insured. The State Auto policy defines “family member” as “a person related to you by blood, marriage or adoption **who is a resident of your household.**” [emphasis added].

The courts typically look at a person’s physical presence in the insured’s household as a factor to be considered in determining whether a person was a covered “resident” under an insurance policy. *Carbon v. Allstate Ins. Co.*, 97-3085 (La. 10/20/98), 719 So.2d 437, 440. The term “household” embraces a collection of persons as a single group living together under one roof. *Miley v. Louisiana Farm Bureau Cas. Ins. Co.*, 599 So.2d 791, 798 (La. App. 1st Cir.), writ denied, 604 So. 2d 1313 (La. 1992). Whether a person is or is not a resident of a particular place is a question of law and fact, to be determined from all the facts of each particular case, but mere isolated facts cannot be relied on wholly to determine the question. *Taylor v. State Farm Mutual Auto. Ins. Co.*, 248 La. 246, 257, 178 So.2d 238, 242 (1965).

Applying this analysis, we find State Auto has satisfied its initial burden on summary judgment by showing facts which indicate plaintiff was not a resident of her father’s household in Maryland at the time of the accident. In particular, State Auto pointed out plaintiff has lived and worked in New Orleans since 2013,

approximately six years before the accident. At the time of the accident, she was residing at an address on St. Roch Avenue in New Orleans. She received mail at this address and used it for filing her Louisiana state income taxes, as well as for registering to vote. Additionally, she provided this address to the officers compiling the police report after the accident, as well as to medical personnel.

Plaintiff does not dispute any of these facts. However, she contends she keeps a significant amount of personal belongings at her father's home in Maryland and frequently visits her father's home, at which time she stays in her childhood bedroom. Plaintiff submits these facts are analogous to those in *Bond v. Commercial Union Assurance Co.*, 407 So.2d 401, 407–08 (La. 1981) (on rehearing), in which we concluded that a deceased son was a resident of his father's household even though he maintained an apartment in a different city.

We find *Bond* is factually distinguishable. In *Bond*, the decedent worked offshore and was required to be on call twenty-four hours a day when at work. As a result, he rented an apartment in Lafayette in order to be closer to his work. However, he only kept his work clothes and the “bare essentials” for apartment living in Lafayette. When not on call, the decedent lived at his father's home in Alexandria. He had his own key to the house and came and went as he pleased. He also kept various items of personal property there, including a desk, most of his clothes, a gun collection, two dogs, stereo and camping equipment and other personal belongings. Additionally, the decedent received mail at the Alexandria address, including dividend checks, federal and state tax forms, car insurance payment notices, and mail from friends.

The unique facts of *Bond* are not present in this case. While plaintiff testified she visited her father's home in Maryland several times during the year, there is no indication these visits established the same degree of residence as in *Bond*. See *Hamilton v. State Farm Mutual Auto. Ins. Co.*, 364 So.2d 215, 218 (La. App. 3rd Cir.

1978), *writ denied*, 366 So.2d 915 (La. 1979) (“[a]lthough plaintiff did visit in the home of his parents during this period, we do not consider these occasional short visits as establishing a residency therein and it is clear from plaintiff’s own deposition that such was not his intention.”). Similarly, plaintiff has presented no evidence that she keeps only bare essentials in New Orleans. Although she keeps some possessions at her father’s home, she admitted she left these possessions because she was unable to fit everything in her car when she moved to New Orleans in 2013.

Despite these facts, plaintiff submits summary judgment is not appropriate here because the determination of residence hinges on her subjective intent. She relies on jurisprudence indicating that the test for residence “is whether the absence of the party of interest from the household of the alleged insured is intended to be permanent or only temporary—i.e., whether there is physical absence coupled with an intent not to return.” *Bearden v. Rucker*, 437 So.2d 1116, 1121 (La. 1983) (quoting *Southern Farm Bureau Casualty Insurance Co. v. Kimball*, 552 S.W.2d 207 (Tex.Civ.App. 1977)).

The jurisprudence has recognized that a person’s intent to be a resident can be established by objective means. *See Berryhill v. Entergy New Orleans Inc.*, 2005-0005 (La. App. 4 Cir. 8/3/05), 925 So.2d 12, 15, *writ denied*, 2005-2068 (La. 2/10/06), 924 So.2d 168 (“[t]he intention of a person to be a resident of a particular place is determined by his expressions at times not suspicious, and his testimony, when called on, considered in the light of his conduct and the circumstances of his life.”).

In this case, the objective facts indicate plaintiff’s absence from her father’s Maryland household was not intended to be merely temporary. As discussed earlier, she had lived and worked in New Orleans for approximately six years prior to the accident. She has consistently used her New Orleans address for official purposes,

such as registering to vote, and gave that address to authorities after the accident. Even after the accident, plaintiff continued to manifest her intent to remain in Louisiana by acts such as obtaining a Louisiana driver's license, registering her car in Louisiana and obtaining insurance in Louisiana in 2020.⁴ Moreover, in her petition for damages in this case, she alleged she is "domiciled in the Parish of Orleans, State of Louisiana." By her actions and conduct both before and after the accident, plaintiff has clearly demonstrated she had no intent to return to a permanent residence in Maryland.⁵

We conclude plaintiff has failed to produce any evidence establishing there is a genuine issue of material fact concerning her residence for purposes of coverage under the State auto policy. Accordingly, summary judgment in favor of State Auto is mandated.

DECREE

For the reasons assigned, the writ is granted and made peremptory. The judgment of the district court is reversed. Summary judgment is hereby granted in favor of State Auto Property and Casualty Insurance Company, and all claims of Penelope Catzen against State Auto Property and Casualty Insurance Company are dismissed with prejudice. The case is remanded to the district court for further proceedings on the remaining claims.

⁴ Prior to the instant accident, plaintiff made two property damage claims under the State Auto policy based on damage to her 2013 Subaru Impreza vehicle in New Orleans. She contends that State Auto paid these claims even though it was obvious both she and the vehicle were located in New Orleans and it therefore waived any coverage defense it may have had. We see no merit to this argument. As State Auto points out, the vehicle involved in the accident was a covered vehicle under its policy, and any claims were governed by the property damage section of its policy, which does not contain a residency requirement. State Auto's decision to pay these property damage claims does not waive any defenses it has under the uninsured motorist provisions of its policy.

⁵ Notably, plaintiff's own testimony revealed she had no firm intent to return to Maryland, as she stated that in the future, she "might live somewhere else" or be back at her parent's home in Maryland. While it is certainly possible plaintiff may leave Louisiana at some point in the future, her actions at the time of the 2019 accident and as late as 2020 revealed no intent to leave the state.