STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN BASIC PROPERTY INSURANCE ASSOCIATION,

Plaintiff-Appellant,

v

EARL MOORE, LEOLA MOORE, and EVA GEER,

Defendants-Appellees.

UNPUBLISHED
August 9, 1996

No. 182095
LC No. 92-7790-NO

Before: Hood, P.J., and Griffin and J.F. Foley*, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order entering judgment in favor of defendants in a declaratory action. We affirm.

On February 14, 1992, Eva Geer was injured when she slipped and fell on the front porch of the home owned by Earl and Leola Moore, at 2521 Baker Road, in the city of Dexter. Geer is the daughter of the Moores. Geer, her four children, and the Moores lived in the home. Geer brought suit against the Moores for her injuries. Plaintiff is the holder of the Moores' homeowner's insurance policy. Plaintiff sought a declaratory judgment to determine its rights and obligations under the homeowner's policy for the underlying personal injury action.

Plaintiff claimed that because Geer is a relative of the Moores, who resides in the same household as the Moores, she falls under the policy's definition of "insured," and therefore is not entitled to recover under the policy for her injuries. Defendants argued that, although they are related and live under the same roof, Geer and her children established a separate household.

Leola Moore testified that Geer and Geer's four children reside with Leola and her husband in the Moores' two-story, five-bedroom home. According to Moore, Geer, pursuant to a written agreement, rents the upstairs three bedrooms for $300 per month. The home has two bathrooms, one

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* Circuit judge, sitting on the Court of Appeals by assignment.

upstairs and one downstairs, and two kitchens, one in the front of the home and one in the rear. The Geers do not have use of the entire home. The Moores and the Geers usually have separate Thanksgiving and Christmas dinners, but celebrate birthdays together. Leola testified that she considers her family household to include only her and her husband.

Geer, who was thirty-three at the time of trial, testified that she and her four children had been living at 2521 Baker since she separated from her ex-husband in April 1990. According to Geer, she pays her mother $300 per month in rent, buys her family's groceries, pays for her share of the utility bills, and pays Leola $50 per week to baby-sit her children. Because she cannot afford a phone, she uses the Moores' phone when necessary and reimburses them the cost of any calls. Geer and her children live upstairs, where they have three bedrooms and a bathroom, and use a separate kitchen from the Moores. Geer considers her family household to include only herself and her four children. They only socialize with her parents on occasion. Geer testified, on cross-examination, that she does not do laundry at the home, has no access to the basement, and only uses the living room with the Moores' permission. She also indicated that there is a front and a rear entrance to the home, but because the rear entrance enters near the Moores' bedroom, she does not use or have a key to that entrance.

The trial court held that, on basis of the evidence presented, there were two households at 2521 Baker Road, and that although Geer was a relative and resided at the same address, she was not a member of the Moores' household; but, rather, a relative living separately as a tenant.

Plaintiff argues that the trial court erred in finding that Geer was not a resident of the Moores' household. We disagree. Whether a person is a resident of an insured's household is a question of fact, and will not be reversed unless clearly erroneous. *Montgomery v Hawkeye Sec Ins Co*, 52 Mich App 457, 461; 217 NW2d 449 (1974).

The Moores' homeowner's policy defines "insured" as "you and residents of your household who are" . . . "your relatives; or" . . . "other persons under the age of 21 and in the care of any person named above," and goes on to exclude an "insured" from recovering under the policy for any bodily injury.

Insurance contracts are to be interpreted according to the commonly understood meaning. *Thomas v Vigilant Ins Co*, 156 Mich App 280, 282; 401 NW2d 351 (1986). The *Thomas* Court held that the "commonly understood meaning of the word "household" is a family unit living together under the same roof." *Thomas, supra*, p 283. In arriving at this holding, this Court looked to dictionary definitions:

> *Black's Law Dictionary (rev 4th ed)*, p 873, defines "household" as: "a family living together . . . [t]hose who dwell under the same roof and compose a family." *Webster's New International Dictionary* (1971) defines "household" as: "[t]hose who dwell under the same roof and compose a family; a domestic establishment; specifically, a social unit comprised of those living together in the same dwelling place." *The*

> *American Heritage Dictionary of the English Language* (1976) defines "household" as: "[a] domestic establishment including the members of a family and others living under the same roof." The commonly understood meaning of the word "household" is a family unit living under the same roof. [*Id*., pp 283-284.]

However, the Supreme Court held that the terms "resident" of an insured's "household" or "domiciled in the same household" as an insured, have "no absolute meaning," and their meaning "may vary according to the circumstances." *Workman v DAIIE*, 404 Mich 477, 495-496; 274 NW2d 373 (1979). "The legal meaning of these terms must be viewed flexibly, only within the context of the numerous factual settings possible." *Id.*

In *Workman*, the Supreme Court stated that the following factors, among other things, must be balanced and weighed with each other in determining whether a person is a resident of an insured's household:

> (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household"; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place the person lives is in the same house, within the same curtilage or upon the same premises; (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household. [*Id*., p 496; Citations omitted.]

Applying these considerations to the facts in the present case, we find no error in the trial court's determination that there were two distinct households at 2521 Baker Road, at the time of the accident. The evidence demonstrated that the living arrangement arose out of Geer's separation from her husband, and there was no indication that it was a permanent or indefinite arrangement. Although the Moores and Geers were blood relatives, they were not a close knit family unit. They socialized on occasion, but did not celebrate holidays together. The Geers lived upstairs, and the Moores lived downstairs. The Moores and Geers had separate bathrooms and kitchens. The Geers did not have full access to all parts of the home. The Geers did not have a key to the rear entrance of the home, which was closest to the Moores' bedroom. Moreover, Geer paid Leola Moore $300 per month in rent, bought her family's groceries, paid for her share of the utility bills, paid her mother $50 per week to baby-sit her children, and reimbursed the Moores for the cost of any telephone calls she made on their phone. We conclude that, on the basis of the evidence presented, the trial court's findings were not clearly erroneous.[1]

Plaintiff also claims that because Geer's and Leola's testimony is full of inconsistencies, it should not be believed. However, issues of credibility are the province of the trier of fact, and such issues will not be resolved anew on appeal. *Stanton v Dachille*, 186 Mich App 247, 255; 463 NW2d 479 (1990).[2]

Additionally, plaintiff's reliance on *Denn v VanGuard Ins Co*, 707 F Supp 104 (ED NY 1989), is misplaced. In that case, on facts similar to those in the instant case, the court found that the claimant was a member of the insured's household. Plaintiff argues that because there is no Michigan case law with respect to whether a rent-paying relative is a member of an insured's household, this Court should look to the New York case for guidance. However, the tools necessary to resolve this issue are presented in Michigan case law. See *Workman*, *supra*; *Thomas*, *supra*.

Plaintiff also argues that the trial court erred in finding in favor of defendants, where the Moores were engaged in a business pursuit, which precludes coverage under the homeowner's policy. Because this issue was not addressed at trial, appellate review has been waived. *Allen v Keating*, 205 Mich App 560, 564-565; 517 NW2d 830 (1994). Our review is nevertheless proper if the issue involves a question of law for which the facts necessary for its resolution have been presented. *Gillette Co v Dep't of Treasury*, 198 Mich App 303, 311; 497 NW2d 595 (1993). This Court, however, will not resolve this issue because the facts are insufficient to determine, as a matter of law, whether the Moores were engaged in a business pursuit.[3]

Affirmed.

/s/ Harold Hood
/s/ Richard Allen Griffin
/s/ John F. Foley

[1] We do not agree with plaintiff's argument that the trial court's citing of *Bellows v Delaware McDonald's Corp*, 206 Mich App 555; 522 NW2d 707 (1994), is incorrect. Even if the citing was incorrect, we would not reverse because the trial court reached the right result. *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995).

[2] Several alleged inconsistencies are between Geer's deposition testimony and her trial testimony, as well as Geer's deposition testimony and Leola Moore's deposition testimony. Only Leola's deposition, however, was introduced into evidence. Therefore, any inconsistencies not brought out at trial between Geer's deposition and any other testimony were not before the trier of fact. The trier of fact should not now be attacked for not considering them in judging credibility.

[3] The insurance policy precludes payment for injuries

> arising out of business pursuits of an insured or the rental or holding for rental of any part of any premises by an insured. This exclusion does not apply to . . . the rental or holding for rental of an insured location . . . on an occasional basis if used only as a residence.

With respect to this issue, the evidence in the record is the deposition testimony of Leola Moore. According to Leola, she had rented out the rooms in the past: once to her son, once to another man she treated as a son, and once to a woman acquaintance, who stayed in the home while the Moores were out of town. After Geer moves out, Leola may rent the rooms again, but she has no plans, and would not rent to a stranger. She did not rent the rooms for income, but to help those in need.