# STATE OF MICHIGAN

# COURT OF APPEALS

JAMES DAIL JENKS,

Plaintiff-Appellant,

v

STATE FARM MUTUAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 15, 2005

No. 251522
Wayne Circuit Court
LC No. 02-225604-CK

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals by right a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is the son of Dail Jenks and Donna Dixon. Jenks and Dixon divorced in March 1987. The judgment awarded both parents joint legal custody. Jenks had sole physical custody; Dixon had visitation rights. In August 1997, when plaintiff was fourteen, he was injured in an automobile accident. After attaining the age of majority, plaintiff filed this action to recover uninsured motorist benefits under the policy defendant had issued to Dixon in June 1997. That policy provided coverage for "damages for bodily injury an insured is legally entitled to collect from the owner or driver of an uninsured motor vehicle." An insured includes the named insured and his or her relatives. A relative is "a person related to you or your spouse by blood, marriage or adoption who resides primarily with you." The trial court ruled that plaintiff was not a resident relative as defined by the policy and granted defendant's motion.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

An insurance policy is a contract. "It is an agreement between the parties in which a court will determine what the agreement was and effectuate the intent of the parties." *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). When determining the parties' agreement, the court will read the contract as a whole and give meaning to all the terms contained within the policy. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996). If the insurance contract contains definitions, they must be used when interpreting the policy language. *Cavalier Mfg Co v Employers Ins of Wausau (On Remand)*, 222 Mich App 89, 94; 564 NW2d 68 (1997). Clear and unambiguous language may not be rewritten under the guise of interpretation. *South Macomb Disposal Auth v American Ins Co (On Remand)*, 225 Mich App 635, 653; 572 NW2d 686 (1997). The construction and interpretation of an insurance policy and whether an ambiguity remains for the factfinder are questions of law that are reviewed de novo on appeal. *Henderson v State Farm Fire & Cas Co*, 460 Mich 348, 353; 596 NW2d 190 (1999).

The insurance policy here does not define the word "reside." "The fact that a policy does not define a relevant terms does not render the policy ambiguous." *Id.* at 354. Rather, an undefined term is to be interpreted in accordance with its commonly used meaning. *Id.* And, the court may refer to dictionary definitions to ascertain the meaning of a particular term. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 262; 617 NW2d 777 (2000).

The verb "reside" is defined as "to dwell permanently or for some time; live." *Random House Webster's College Dictionary* (1997). The adverb "primarily" is defined as "essentially; chiefly." *Id*. It is undisputed that plaintiff's primary residence was his father's home and that he was actually residing there at the time of the accident. As Dixon's son, plaintiff was obviously a blood relative. But, even assuming plaintiff also resided with Dixon by virtue of the visitation arrangement, see *Vanguard Ins Co v Racine*, 224 Mich App 229, 233-234; 568 NW2d 156 (1997), reasonable minds could not differ in concluding that plaintiff did not reside there "primarily" when he spent the majority of his time living in his father's house. Therefore, the trial court did not err in granting defendant's motion.

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell