

9-25-2009

Farm Bureau Ins. Co. of Idaho v. Kinsey Appellant's Brief Dckt. 36607

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/
idaho_supreme_court_record_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

Recommended Citation

"Farm Bureau Ins. Co. of Idaho v. Kinsey Appellant's Brief Dckt. 36607" (2009). *Idaho Supreme Court Records & Briefs*. 117.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/117

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law.

IN THE SUPREME COURT OF THE STATE OF IDAHO

FARM BUREAU MUTUAL INSURANCE)
COMPANY OF IDAHO,)
)
Plaintiff/Respondent,)

Docket No. 36607-2009

v.)

JAMEY KINSEY and M. WILMOTH)
KINSEY, d/b/a KINSEY FAMILY)
LIMITED PARTNERSHIP,)
)
Defendants.)

MICHAEL BROOKBANK,)
)
Intervenor/Appellant.)

APPELLANT'S BRIEF

Appeal from the District Court of the Fifth Judicial District for Twin Falls County
Honorable Randy J. Stoker, District Judge, Presiding

Jeffrey J. Hepworth
Jeffrey J. Hepworth, P.A.
& Associates
P.O. Box 1806
Twin Falls, ID 83303-1806

Kent L. Hawkins
Merrill & Merrill
P.O. Box 991
Pocatello, ID 83204-0991

Attorneys for Intervenor/Appellant

Attorneys for Plaintiff/Respondent

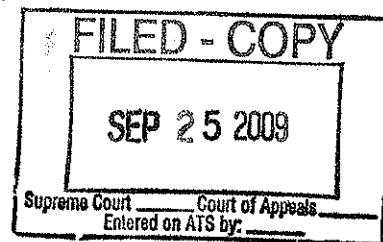


TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS AND AUTHORITIES	ii
I. STATEMENT OF THE CASE	1
A. NATURE OF THE CASE	1
B. PROCEDURAL HISTORY AND DISPOSITION	1
C. STATEMENT OF FACTS	2
II. ISSUES PRESENTED ON APPEAL	4
III. STANDARD OF REVIEW	4
IV. LEGAL ARGUMENT	5
A. <u>THE DISTRICT COURT ERRED IN GRANTING FARM BUREAU'S MOTION FOR SUMMARY JUDGMENT ON THAT BASIS THAT MR. KINSEY HAD CHANGED HIS RESIDENCE</u>	6
B. <u>AMBIGUITIES IN INSURANCE CONTRACTS MUST BE RESOLVED IN FAVOR OF COVERAGE</u>	6
C. <u>A PERSON MAY BE A RESIDENT OF MULTIPLE HOUSEHOLDS FOR PURPOSES OF DETERMINING INSURANCE COVERAGE</u>	10
D. <u>CONCLUSION</u>	13
CERTIFICATE OF MAILING	14

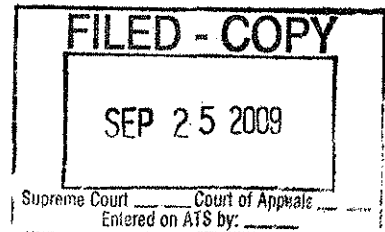


TABLE OF CITATIONS AND AUTHORITIES

Page

CASES

AID Insurance Co., v. Armstrong, 119 Idaho 897, 901 (Ct. App. 1991) 5, 6, 10

Allstate Insurance Co. v. Mocabay, 133 Idaho 593, 598 (Idaho 1999) 7, 8

Farmers Insurance Co. of Idaho v. Talbot, 133 Idaho 428, 431 (Idaho 1999) 4, 5

Government Employees Insurance Co. v. Dennis, 645 P.2d 672, 677 (Utah 1982) 5

Hardware Mutual Casualty Co., v. Home Indemnity Co., 241 Cal. App. 2d 303, 306 (Cal. App. Dist. 1, 1966) 6, 7, 8, 9

Mutual Service Casualty Insurance Co. v. Olson, 402 N.W.2d 621 (Minn. App. 1987) 10

I.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is a controversy that involves the law of insurance. On August 18, 2007 Michael Brookbank was driving southbound on 3500 East in Twin Falls County when a dog ran out into the road from the driveway of M. Wilmoth Kinsey's residence and collided with Mr. Brookbank's motorcycle. (R. 55). Mr. Brookbank crashed and sustained personal injuries. *Id.* The dog was owned by Jamey Kinsey, M. Wilmoth Kinsey's grandson. *Id.* The central issue in this case is whether Jamey Kinsey is a "resident" of his grandmother's household in order to determine if there is insurance coverage for Jamey Kinsey. If Jamey Kinsey is not covered then he is judgment proof.

B. PROCEDURAL HISTORY AND DISPOSITION

On October 1, 2007 Michael Brookbank filed a complaint against Jamey Kinsey to recover the damages he sustained from the collision which occurred on August 18, 2007. (R.54). On April 14, 2008, M. Wilmoth Kinsey's insurance company, Farm Bureau Mutual Insurance Company of Idaho ("Farm Bureau") filed a verified complaint seeking a declaratory judgment that Jamey Kinsey was not an "insured" under his grandmother's insurance policy and that Farm Bureau was not obligated to defend Jamey Kinsey. (R.8). In its verified complaint, Farm Bureau alleged that at the time of the incident Jamey Kinsey was staying in an outbuilding located at 3497 East 3000 North in Kimberly, Idaho; this is his grandmother's address. (R.8).

Plaintiff/Appellant Michael Brookbank became aware of Farm Bureau's complaint for declaratory judgment and sought to intervene in that case. Mr. Brookbank filed a motion to intervene in the declaratory action. (R.4). The parties eventually stipulated to allow Mr. Brookbank to intervene. (R.4). Shortly thereafter Farm Bureau filed a motion for summary judgment. Jamey Kinsey did not file a memorandum in opposition. Instead, Mr. Brookbank filed a cross motion for summary judgment asserting that Jamey Kinsey was a resident of M. Wilmoth's household at the time of the incident and therefore was covered as an "insured" under the insurance policy.

On June 8, 2009 the district court heard oral argument on the cross motions for summary judgment. On June 10, 2009 the court issued its written opinion on the cross motions. (R. 124). The court held that Jamey Kinsey was not a "resident" of M. Wilmoth's household and as such he was not covered under the Farm Bureau policy. (R. 138). Plaintiff Michael Brookbank filed this instant appeal seeking a reversal of the lower court's erroneous decision.

C. STATEMENT OF FACTS

Wilmoth Kinsey is the named insured on the Farm Bureau policy that is at issue in this case. (R. 128). Wilmoth Kinsey's residence is located at 3497 East 3000 North, Kimberly, Idaho. (R. 99). Wilmoth is also the grandmother of Jamey Kinsey. (R. 115).

There are approximately four houses located on the property described as 3497 East 3000 North in Kimberly, Idaho ("Kinsey Farm"). (R. 100). Wilmoth Kinsey's children and their families resided in the houses on the property. (R. 101-2). Jamey Kinsey grew up on the Kinsey Farm where he lived with his father after his parents'

divorce in 1972. (R. 105,115). After graduating from high school he worked for Terry Hollifield for 2 -3 years and lived in the bunkhouse on his grandmother's farm. (R.115). Between 1990 and 1992 Jamey was enlisted in the Navy, presumably away from home. (R.115). After he got out of the Navy in 1992, Jamey returned to Kimberly and went to CSI and also worked on the farm. (R.115). Between 1997 and 2001 Jamey worked in the oil fields in Colorado, he "bounced all over the country," and at one point lived with his mother in Texas. (R.115). Afterward, Jamey left Texas and returned home to Idaho sometime around 2001. (R.115). When he returned to Idaho he lived in the house with his grandmother, Wilmoth Kinsey. (R.111).

On August 18, 2007 Mr. Brookbank collided with Mr. Kinsey's dog on 3500 East, a country road located in Twin Falls County, Idaho. (R.119). Jamey Kinsey was staying in an outbuilding located at the Kinsey Farm when Mr. Brookbank collided with the dog. (R. 8). In fact, on August 18, 2007, Jamey was at his grandmother's house looking for a pair of his work boots. (R.72). At the time of the accident, deputies from the Twin Falls County Sheriff's Office were called to the scene of the accident in response to a 911 call made by Jamey Kinsey. (R.73). The police officers generated an accident report that listed "Jamey Kinsey" as the owner of the dog, Jamey's address on the report was listed as 3497 East 3000 North, Kimberly, Idaho. (R.92).

Additionally, Jamey kept his personal property in his grandmother's bunkhouse or in her home. (R.71). Jamey's grandmother also safeguarded Jamey's money, paid his bills and ensured that he keeps his vehicle registration current. (R.74). Jamey's vehicle title and registration lists his address as "3497 East 3000 North, Kimberly,

Idaho.” (R.94). Furthermore, Jamey’s driver’s license lists his address as “3497 East 3000 North, Kimberly, Idaho.” In fact, Jamey’s discovery response lists Jamey’s address as “3497 E 3000 N, Kimberly, ID 83341.” (R.61).

The only time Jamey Kinsey has ever stated a different address was at his deposition held on November 3, 2008 when he stated that his address was “333 Rock Creek Road, Hansen, Idaho” – the same address as his girlfriend (R.67). At that deposition, Jamey was asked why he did not want to concede that his address was his grandmother’s address, Jamey replied: “That’s the truth. Yeah, the Kinsey ranch had nothing to do with this, at all, whatsoever. And I know you’re after the insurance out there, so that’s just not kosher.”(R.74).

II.

ISSUES PRESENTED ON APPEAL

1. Did the trial court err in resolving the “resident” ambiguity in the insurance contract in favor of insurer Farm Bureau?

III.

STANDARD OF REVIEW

This Court is asked to review the district court’s ruling on a motion for summary judgment. This Court employs the same standard employed by the district court when originally ruling on the motion. *Farmers Insurance Co. of Idaho v. Talbot*, 133 Idaho 428, 431 (Idaho 1999). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* Generally, this Court and the district court liberally construe the record in favor of the

party opposing the motion for summary judgment and draws all reasonable inferences and conclusions in favor of that party.

This Court has addressed the issue of insurance coverage, holding that:

“Under certain clear cut factual patterns the determination of whether [a person] is, for the purposes of insurance coverage, a resident, is a question of law.”

AID Insurance Co (Mutual) v. Armstrong, 119 Idaho 897, 900 (Ct. App. 1991) citing *Government Employees Insurance Co. v. Dennis*, 645 P.2d 672, 677 (Utah 1982).

When presented with questions of law, this Court has held that

“[it] exercises free review and is not bound by findings of the district court, but is free to draw its own conclusions from the evidence presented.”

Farmers, 133 Idaho at 431. Therefore, this Court exercises free review to determine whether Jamey Kinsey was a “resident” of his grandmother’s household for purposes of insurance coverage; this Court is not bound by the findings of the district court.

IV.

LEGAL ARGUMENT

A. THE DISTRICT COURT ERRED IN GRANTING FARM BUREAU'S MOTION FOR SUMMARY JUDGMENT ON THAT BASIS THAT MR. KINSEY HAD CHANGED HIS RESIDENCE.

The central dispute in this case is whether Jamey Kinsey was a resident of his grandmother’s household at time that Mr. Brookbank collided with Mr. Kinsey’s dog. If Jamey was a resident of his grandmother’s household then he is covered by his grandmother’s insurance policy. Alternatively, if he is not a resident of her household then he is not eligible for insurance coverage.

B. AMBIGUITIES IN INSURANCE CONTRACTS MUST BE RESOLVED IN FAVOR OF COVERAGE.

The insurance contract between Farm Bureau and Wilmoth Kinsey provides that for purposes of coverage, an “insured” means “you or the entity named in the Declarations” and “if you are an individual, insured also means, if residents of your household, your spouse, your relatives, or minors in the care of you or your relatives.” (R.18). The contract does not define the terms “residents of your household.” These terms are ambiguous.

As a general rule, “courts interpret the phrase ‘resident of the same household’ to extend coverage if this can be done under a reasonable interpretation of the facts.” *AID Insurance Co., v. Armstrong*, 119 Idaho 897, 901 (Ct. App. 1991). This Court has held that

“If any doubt exists the language of the policy will be interpreted against the insurance company and in favor of coverage. *Id.* If an insurance policy may be given either of two reasonable meanings, one which permits recovery and one which does not, the meaning of the more favorable to the insured should be adopted.”

Id. (internal cites omitted) (emphasis added). Clearly, policy favors the adoption of a reasonable meaning which permits coverage.

The term “resident” is subject to multiple meanings. On the one hand “resident” may mean “a member of a family living at that home permanently as one unit headed by [one member] for their mutual interest and social happiness.” See *Hardware Mutual Casualty Co. v. Home Indemnity Co.*, 241 Cal.App.2d 303, 306 (Cal.App.Dist.1 1966). Although not explicitly stated, this seems to be the definition propounded by Farm Bureau. On the other hand, the term “resident” may simply require that the “relative

reside in the household” not that he live there permanently as a member of the family.”
Id.

Webster’s Dictionary defines “resident” as “living in a place for some length of time,” “resident” also means “not migratory.” Thus, a “resident of the same household” is “one, other than a temporary or transient visitor, who lives with others in the same house for a period of some duration, although he may not intend to remain there permanently.” *Hardware*, 241 Cal.App.2d at 310. This definition is consistent with this Court’s definition of “resident” in *Allstate Insurance Co. v. Mocabey*. 133 Idaho 593, 598 (Idaho 1999). In *Mocabey* this Court held that the term “resident” connotes a living arrangement with some degree of permanence.” *Id.* If there is some degree of permanence then one is no longer a temporary or transient visitor, rather the person is a resident even if he does not plan to remain at that location permanently.

In *Mocabey* the insurer brought suit seeking a declaratory judgment that its policy did not provide liability coverage for the insureds’ grandson’s allegedly accidental shooting of the victim. *Id.* at 595. In that case the grandson went to live with his grandparents after the grandparents were contacted by the Department of Health and Welfare. *Id.* After the grandson arrived he spent approximately 2 days with his grandparents and then left the house to stay with some friends. *Id.* The grandson would occasionally return to his grandparents’ house for a shower, a change of clothes and a meal. However, he would then leave again to be with his friends. Approximately two months after his arrival, the grandson allegedly shot a woman in the head at her home with a gun he’d stolen from a friend. *Id.*

The *Mocaby* Court adopted an objective test for determining “residency” relying on objective factors rather than subjective testimony. The Court considered the individual’s storage of personal belongs in the named insured’s household; custody arrangements for the minor; the presence or absence of a close continuing connection between the individual and the insured; the presence of a bedroom kept for the individual’s visits to the household; and the intent of the named insured with respect to the individual’s residence. *Id* at 598. Ultimately the *Mocaby* Court held that the factors weighed against finding that the grandson was a resident of his grandparents’ household.

However, the California Court of Appeals found coverage in a case with facts almost identical to the facts in this case. In *Hardware Mutual Casualty Co. v. Home Indemnity Co.*, the California Court of Appeals held that the nephew was a resident of his aunt and uncle’s household for the purposes of insurance coverage. 241 Cal.App.2d 303, 304 (Cal.App.Dist.1, 1996). In *Hardware*, the nephew (Bowens) was involved in a motor vehicle collision in which the plaintiff was injured. The aunt and uncle’s insurance company appealed a determination that it was liable for defending the nephew because he was an additional insured on his aunt and uncle’s policy. *Id* at 305-6.

Prior to the accident Bowens and his cousin shared an apartment in Oakland. Shortly thereafter Bowens’ cousin joined the Navy and his cousin’s room in his parents’ house was no longer occupied. *Id* at 309. Approximately 2 weeks before the motor vehicle collision, Bowens was working in his uncle’s garage tinkering with a car trying to get it to work. *Id*. He slept in his aunt and uncle’s house the day before the accident. *Id*

at 309. He was also unemployed at the time. *Id.* Additionally Bowens had some clothes with him but most of them were still in the Oakland apartment. *Id at 310.* After the motor vehicle collision, Bowens stayed at his aunt and uncle's house in Richmond for a period of 2 weeks after the accident before returning to the apartment. The motor vehicle collision was investigated by a police officer. *Id at 310.* The officer testified that when he spoke with Bowens and asked him where he lived the latter gave him the address in Richmond. The court inferred that Bowens also had the Richmond address listed on his driver's **license** since the officer asked to see Bowens' **license** and registration. *Id.* Additionally, when Bowens arrived at the hospital he gave the hospital his aunt and uncle's telephone number. *Four days after the accident a licensed investigator arrived at the Richmond address to speak with Bowens; when asked for his address Bowens again gave his aunt and uncle's Richmond address. Id.* The investigator also noticed that the vehicle registration for a car parked in front of the Richmond address showed that Bowens was the owner and that his address was his aunt and uncle's Richmond address. *Id at 311.*

Based on these facts the court held that Bowens was a resident of his aunt and uncle's household even though he still had an apartment in Oakland. *Id at 311.* These facts taken together evidenced that Bowens was not merely a transient visitor; on the contrary, it establishes a close continuous contact between the insureds and the individual sufficient enough to establish that Bowens was in fact a resident of the insureds' household.

C. A PERSON MAY BE A RESIDENT OF MULTIPLE HOUSEHOLDS FOR PURPOSES OF DETERMINING INSURANCE COVERAGE.

A person, whether a **minor** or an adult, may be a resident of more than one household for insurance purposes. *AID Insurance Co., v. Armstrong*, 119 Idaho at 902 citing *Mutual Service Casualty Insurance Co. v. Olson*, 402 N.W.2d 621 (Minn.App.1987). For example, in *Olson* the insurance company appealed the trial court's holding that a **child** was a resident of his mother's household when the **child** primarily resided with his father who had custody of the **child**. *Olson*, 402 N.W.2d at 621. The insurance company argued that the **child** could have only one residency and since the father had custody the **child** could only be the resident of his father's household. *Id.* The Minnesota Court of Appeals rejected that argument holding that:

"...as a general rule, while a person can have only one domicile, he can have more than one residence. 28 C.J.S. Domicile § 2(a) (1941). We see no reason why a person who meets the criteria for being considered a resident of an insured's household should be precluded from coverage solely because he is also a resident of another household."

Olson, 402 N.W.2d at 621 (emphasis added).

The district court failed to consider the fact that an individual such as Jamey Kinsey may have multiple residences so long as he meets the criteria for being considered a resident. To the contrary, the district court operated under the premise that an individual may have only one residency and in fact held that Jamey had changed his residency. In reality Jamey was a resident of two households. Furthermore, contrary to the district court's holding, Jamey Kinsey met the criteria for being considered a resident of his grandmother's household.

This case is in many ways nearly identical to the *Hardware* case referenced above. There is no question that Jamey was a resident of his grandmother's household when he was growing up. On August 18, 2007, the date of the incident, it is conceded that Jamey was staying at an outbuilding located at his grandmother's property. In addition to that, Jamey kept his property at that same location, including his money. This fact illustrates that there was a close relationship between Jamey and the insured. That fact also indicates that Jamey was not simply a temporary or transient visitor; rather it is an indication that Jamey was a resident of his grandmother's household.

Jamey's grandmother also paid his bills and made sure that his vehicle registration remains current. Again, this illustrates that Jamey is not merely a temporary and transient visitor; he and his grandmother have established a living arrangement where there is in fact a degree of permanency. In addition, Jamey stored his worldly possessions at his grandmother's home which is indicative of trust between the parties which is present in close and personal relationship between the parties. In fact, at the time of the incident Jamey was looking for his work boots at the house where he had left them. The inference is that Jamey believed that his work boots were likely to be at his grandmother's along with all his other property.

Furthermore, on August 18, 2007, police officers responded to the accident. At some point the officers spoke to Jamey because under the section identified as "property damage" the report requires the officer to identify the name of the object that was struck and the owner's name and address. The report identifies the object that was struck as an animal owned by Jamey Kinsey whose address was "3497 East 3000

North, Kimberly, ID 83341.” Like the officer in *Hardware*, the police officer in this case would have had to make contact with Jamey Kinsey at the time of the accident to elicit that information from him.

Jamey also listed his grandmother’s address as his own on his driver’s **license** and vehicle registration. Had Jamey considered his girlfriend’s house as his own he would have changed the address on his driver’s **license**. By listing his grandmother’s address on his own on his driver’s **license** and registration, Jamey announced to the public and to the relevant state agencies that he believed himself to reside at that address. These facts taken together are sufficient to show that Jamey was not merely a temporary or transient visitor in his grandmother’s household, rather it shows that there was a living arrangement between the two which had some degree of permanency. Therefore, Jamey was a “resident” of his grandmother’s household under one definition of the term “resident.” Consequently, the district court erred in holding that Jamey was not a resident of his grandmother’s household because he had changed his residence.

Moreover, this court has recognized that a person may have multiple residences for purposes of insurance coverage . This is true in the instant case. Although Jamey may produce enough subjective statements to establish that he maintains a residence at his girlfriend’s house, the objective facts also support the conclusion that Jamey was a resident of his grandmother’s household as well. In *Hardware*, defendant Bowens maintained an apartment in a different city yet that fact did not prevent the court from

finding that he was nonetheless a resident of his aunt and uncle's household. Residency does not require long-term permanence. As such the district court erred in holding that the facts do not support the conclusion that Jamey Kinsey was a resident of his grandmother's household.


D. CONCLUSION.

It is clear that ambiguous terms such as "resident" are to be construed in favor of providing insurance coverage if there are different rational meanings for the term. In this case the Appellant contends that one rational definition of a "resident" is a person, other than a temporary or transient visitor, who lives with others in the same house for a period of some duration, although he may not intend to remain there permanently. When a person is not a transient or temporary visitor in the insured's household then a living arrangement with some degree of permanence exists. That type of living arrangement was present in this case. Jamey Kinsey lived at his grandmother's home at the date of the incident, as he had done other times in his past. Jamey stored his personal belongings and his money at his grandmother's. His grandmother paid his bills and made sure he kept his vehicle registration current. Jamey also listed his grandmother's address as his own on his driver's license, his vehicle registration, and in his discovery responses. Lastly, he communicated to the officer on the date of the incident that his address was "3497 East 3000 North, Kimberly, Idaho 83341." These facts show that Jamey was more than a mere transient visitor – he was a resident of Wilmoth Kinsey's household.

Consequently, the Appellant respectfully requests that this court reverse the district court's ruling and hold that Jamey Kinsey was a resident of his grandmother's household for purpose of insurance coverage.

DATED this 24th day of September, 2009.

JEFFREY J. HEPWORTH, P.A.
& ASSOCIATES

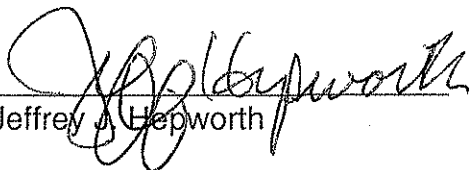
By 
Jeffrey J. Hepworth
Attorneys for Intervenor/Appellant

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 161 5TH Avenue South, Suite 100, Twin Falls, Idaho, certifies that on the 24th day of September, 2009, he caused a true and correct copy of the APPELLANT BRIEF to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

Kent L. Hawkins
Merrill & Merrill
P.O. Box 991
Pocatello, ID 83204-0991

Hand Delivered	<input type="checkbox"/>
U.S. Mail	<input checked="" type="checkbox"/>
Fax	<input checked="" type="checkbox"/>
Fed. Express	<input type="checkbox"/>


Jeffrey J. Hepworth