COURT OF APPEALS
DECISION
DATED AND RELEASED

August 31, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 94-1598

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

JAMIE L. MCCALLUM,
ZENATH MCCALLUM STOEVEKEN,
a minor by her guardian ad litem,
ERIK B. ELLINGSON,

Plaintiffs-Appellants,

v.

ALPHA PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Waupaca County: PHILIP M. KIRK, Judge. *Affirmed*.

Before Dykman, Sundby, and Vergeront, JJ.

PER CURIAM. Jamie McCallum and her daughter, Zenath McCallum Stoeveken, appeal from a judgment dismissing their claim against

Alpha Property & Casualty Insurance Company. Jamie and Zenath sued Alpha as the liability insurer for Bruce and Karen McCallum, Jamie's parents, after the McCallums' dog bit Zenath. Alpha denied liability because a policy provision excluded liability coverage for injuries suffered by residents of the McCallum household. A jury trial resulted on the residency issue, with the jury finding in Alpha's favor. The issues are whether the court should have resolved the residency question in Jamie and Zenath's favor as a matter of law, and whether the evidence supports the jury's finding that Jamie and Zenath resided in the McCallum household. Because we conclude that residency was properly treated as a question of fact, and that the evidence supports the verdict, we affirm.

In early 1989, Jamie experienced marital difficulties, including some physical abuse. As a result, she left her husband in Milwaukee and moved in with her parents in Waupaca in February 1989, along with Zenath, who was then fourteen months old. Jamie transferred all her belongings to the McCallums or to storage, and did not intend to return to her husband. She testified that because she had no money or a job, returning home was her only option. She further testified that she only intended to stay with her parents for a month or two until she could find a job and afford her own home.

In March 1989, she began dating her current husband, and soon began discussing the possibility of their living together. That eventually happened, but not until November 1989. In the meantime, Jamie remained in her parents' household, where the dog bite occurred in July. Jamie found work in May 1989, but it was a part-time low wage job that never gave her the income needed to live on her own.

The McCallums' home has five bedrooms, and Jamie and Zenath each had one to herself. Jamie did not pay rent or regularly contribute to the household expenses. Mr. McCallum testified that he set no time limits or conditions on Jamie's stay with them. He had no opinion as to Jamie's intention when she moved in with them. There is no dispute that during their stay with the McCallums, both Jamie and Zenath were treated as members of the family.

A person resides in the insured's household for purposes of liability coverage if (1) he or she lives under the same roof as the insured, (2) in a

close, intimate and informal relationship, and (3) where the intended duration is likely to be substantial, where it is consistent with the informality of the relationship, and from which it is reasonable to conclude that the parties would consider the relationship for insurance purposes. ***Pamperin v. Milwaukee Mut. Ins. Co.***, 55 Wis.2d 27, 37, 197 N.W.2d 783, 788 (1972). On the other hand, one is not a resident of the household if "even though he has no other place of abode, he comes under the family roof for a definite short period or for an indefinite period under such circumstances that an early termination is highly probable." ***National Farmers Union Property & Casualty Co. v. Maca***, 26 Wis.2d 399, 408, 132 N.W.2d 517, 521-22 (1965). The jury was so instructed, and returned a verdict that Jamie and Zenath were residents of the McCallum household in July 1989. The trial court refused to change that verdict on motions after verdict.

Jamie and Zenath first argue that the residency issue is a question of law that should have been resolved without a trial. We disagree. Intent, a crucial element of residency, can be determined only by inference from historical facts. ***Tellurian U.C.A.N., Inc. v. Goodrich***, 178 Wis.2d 205, 215, 504 N.W.2d 342, 346 (Ct. App. 1993). That is a fact finder's duty and the trial court properly allowed a jury trial on the issue.

Jamie and Zenath next argue that the undisputed evidence admitted at trial allowed only one reasonable inference—that the stay of Jamie and Zenath in the McCallum household was never intended to last more than a short time. Again, we disagree. As a matter of credibility, the jury could have rejected Jamie's testimony regarding her intent when she moved into the household. The jury could also have concluded that Jamie voluntarily, or as a matter of necessity, abandoned her original intent. The jury could reasonably infer that a young woman (Jamie was then in her early twenties), with a baby, no money and limited work skills and experience, and just out of a bad marriage, might plan an extended stay with parents willing and able to take her in and support her. Although the alternative inference was also reasonably available, we are bound by the jury's choice among reasonable inferences.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.