

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JANUARY 30, 1996

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(1), 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. 95-2237-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**RICHARD SWORD
and LOIS SWORD,**

Plaintiffs-Appellants,

v.

**MONTGOMERY WARD & COMPANY,
FERN WRIGHT, AUTO OWNERS
INSURANCE COMPANY, GILSON
BROTHERS COMPANY and
CONTINENTAL INSURANCE
COMPANY,**

Defendants,

**HERITAGE MUTUAL
INSURANCE COMPANY,**

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Richard and Lois Sword appeal a summary judgment dismissing their claim against Heritage Mutual Insurance Company.¹

The trial court applied Heritage's policy exclusion of coverage to relatives in the insured's household. The Swords contend that whether they are members of the insured's household is a question of fact appropriate for jury trial. Because the facts are undisputed and the reasonable inferences lead only to one conclusion, we affirm.

Richard and Lois resided in the basement of a residence owned by Lois's mother, Fern Wright, who resided upstairs. Wright considered her residence a two-unit property. The Swords and Wright had separate telephone lines. However, Wright testified that Lois and Richard use common entrances, do not have separate heat, light, sewer or water bills, and that the separate kitchen "was actually my laundry room and it had a refrigerator and stove in there so it's not really what you call a kitchen." At the time of the accident, Lois and Richard used Wright's bathroom shower. The Swords' and Wright's mail came to the same mailbox. Lois grew up in the home, and Richard began living there shortly after they were married on February 14, 1993. In return for living there rent-free, Lois and Richard assisted Wright in the management of her rental properties.

On March 10, 1993, Richard severed two fingers while snow blowing the driveway at Wright's request. He and his wife initiated this personal injury action against Wright, and her homeowner's insurer, Heritage. Heritage defended on the grounds that the policy excludes coverage for claims made by relatives in the homeowner's household.² Heritage moved for

¹ This is an expedited appeal under RULE 809.17, STATS.

² The policy provides in part:

SECTION II—EXCLUSIONS

....

2. Coverage E—Personal Liability, does not apply to:

....

f. **bodily injury** to you or an **insured** within the meaning of part a. or b. of "**insured**" as defined.

Further, the policy contains the following definitions:

DEFINITIONS

summary judgment, contending that because it was undisputed that Richard was a member of Wright's household, he was excluded from coverage as a matter of law. The trial court agreed and entered summary judgment dismissing the Swords' claims against Heritage.

When reviewing summary judgment, we apply the standard set forth in § 802.08(2), STATS., in the same manner as the circuit court. *Kreinz v. NDII Secs. Corp.*, 138 Wis.2d 204, 209, 406 N.W.2d 164, 166 (Ct. App. 1987). Summary judgment is appropriate when material facts are undisputed and when inferences that may be reasonably drawn from the facts are not doubtful and lead only to one conclusion. *Radlein v. Industrial Fire & Cas. Ins. Co.*, 117 Wis.2d 605, 609, 345 N.W.2d 874, 877 (1984).

[W]hether a person is a resident or a member of a household is dependent upon three factors:

- (1) Living under the same roof; (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 "... in their conduct."

Quinlan v. Coombs, 105 Wis.2d 330, 336, 314 N.W.2d 125, 127 (Ct. App. 1981).

The Swords raise only one issue: they assert that whether they were members of Wright's household presents a question of fact for the jury to
(..continued)

In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We," "us" and "our" refer to the Company providing this insurance. In addition, certain words and phrases are defined as follows:

....

3. "insured" means you and residents of your household who are:

- a. your relatives; or
- b. other persons under the age of 21 and in the care of any person named above.

determine. We disagree. "When there is but one account of what happened, and the application of acceptable rules of law to that account is problematical, a question of law results." Clarence Morris, *Law and Fact*, 55 HARV. L. REV. 1303, 1314-15 (1942) (citing Oliver Wendell Holmes, *Law in Science and Science in Law*, 12 HARV. L. REV. 443 (1899)).

Here, the descriptions of the parties' living arrangements are undisputed. First, they lived under one roof, received one set of electric, water and sewer bills, shared the entrance way and shower and were members of the same extended family. Second, there was no formal lease, rent payments or other written memorialization of the living arrangements. The parties described a close and informal relationship. Third, Lois grew up in the home, and Richard moved in after their marriage. The record indicates no plans to move or change these living arrangements. Under these circumstances it would be reasonable for the parties to rely on the relationship in contracting matters such as insurance.

The Swords rely on *Quinlan*, 105 Wis.2d at 336, 314 N.W.2d at 129, which stated "whether [two individuals] were residents of the same household [presented a question] of fact." Because *Quinlan* is easily distinguished, it is not controlling. In *Quinlan*, "[t]he issue on appeal is whether persons unrelated by blood, marriage or adoption who are living together under the same roof can be considered 'residents of the same household.'" *Id.* at 333, 314 N.W.2d at 127. Because here Wright and the Swords are related by blood and marriage, *Quinlan* does not control.

Because the undisputed facts and all reasonable inferences lead to the conclusion that the injured party was a relative in the insured's household, we conclude that the trial court was entitled to apply the policy exclusion as a matter of law and dismiss the Swords' claim against Heritage.

By the Court. – Judgment affirmed.

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