

NO. A06-1016

State of Minnesota
In Supreme Court

State Farm Insurance Companies
a/k/a State Farm Fire and Casualty Company,
Appellant,

vs.

Beth McGlothlin,
Respondent,

and

Michael Steinmetz and Dawn Steinmetz,
Debtors.

BRIEF OF APPELLANT

Stephen R. O'Brien (#80615)
Barristers Trust Building
247 Third Avenue South
Minneapolis, MN 55415
(612) 332-8388

Attorney for Respondent

James C. Lofstrom (#0143431)
4635 Nicols Road, Suite 206
Eagan, MN 55122
(651) 454-1233

Attorney for Debtors

William L. Moran (#177167)
Scott G. Williams (#349410)
MURNANE BRANDT
30 East Seventh Street, Suite 3200
St. Paul, MN 55101
(651) 227-9411

Attorneys for Appellant

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STATEMENT OF ISSUES

1. Did the court of appeals err by failing to utilize the Minnesota Supreme Court's mandated standard of "manifestly contrary to the evidence and without reasonable evidentiary support" in reviewing the trial court's "probable cause" determination?

- Pursuant to Minnesota Statutes § 571.75 and other applicable law, in order to succeed on a motion to serve a supplemental complaint for garnishment, the moving party must show "probable cause" that the garnishee would be liable for the debt at issue. The trial court concluded that Respondent failed to establish "probable cause" that Appellant would owe insurance coverage due to the application of the resident relative exclusion in Appellant's homeowner's policy.
- The court of appeals reviewed *de novo* the trial court's factual findings based on the undisputed record. The court of appeals found that the evidence was "evenly divided" as to whether Respondent was a resident relative under the homeowner's policy, but reversed and remanded the trial court's determination of no "probable cause" under the *de novo* standard of review.
- Most apposite authority for this issue: *Altman v. Levine & Tanz, Inc.*, 97 N.W.2d 460 (Minn. 1959); *Cashman v. Firemen's Fund Ins. Co.*, No. C8-91-1117, 1991 WL 238339 (Minn. Ct. App. Nov. 19, 1991); *State Farm Fire & Cas. Co. v. Lawson*, 406 N.W.2d 20 (Minn. Ct. App. 1987); *Skarsten v. Dairyland Ins. Co.*, 381 N.W.2d 16 (Minn. Ct. App. 1986).

2. Did the Court of Appeals err by failing to address the trial court's finding of dual residency?

- The trial court concluded that Respondent qualified as a resident relative on the date of the dog bite based on the frequency and length of her stay at Debtors' home, the privileges enjoyed by Respondent while staying at Debtors' home, and Minnesota law regarding dual residency. In this regard, the trial court found that Respondent enjoyed, at the very least, dual residency for insurance purposes. Accordingly, the trial court ruled that Respondent failed to

establish "probable cause" that Appellant would owe insurance coverage due to the application of the resident relative exclusion.

- The court of appeals conducted its own, independent analysis of the record and declared that the facts were "evenly divided" and that it was a "close case" on the issue of Respondent's residency status. Nevertheless, the court determined that Respondent "might" be able to establish "probable cause" and reversed and remanded the case to the trial court. The court of appeals failed to address Appellant's arguments (and the trial court's analysis) with respect to dual residency.
- Most apposite authority for this issue: *American Fam. Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789 (Minn. 1993); *Fireman's Ins. Co. v. Viktora*, 318 N.W.2d 704 (Minn. 1982); *Fruchtman v. Appellant Mut. Auto. Ins. Co.*, 142 N.W.2d 299 (Minn. 1966); *Mut. Serv. Cas. Ins. Co. v. Olson*, 402 N.W.2d 621 (Minn. Ct. App. 1987).

STATEMENT OF CASE

This matter came before the trial court on Respondent's motion to file a supplemental complaint for garnishment. Pursuant to Minnesota Statutes section 571.75 and other applicable law, in order to succeed on such a motion the moving party must show "probable cause" that the garnishee would be liable for the debt at issue.

According to the Complaint filed with the trial court, a dog owned by Debtors bit Respondent on April 8, 2003. At the time of the incident, Debtors were the named insureds on a homeowner's insurance policy issued by Appellant. In late 2003, Respondent brought suit against Debtors. After receiving notification of the suit, Appellant denied coverage for the allegations against Debtors, in part, because Respondent qualified as a resident relative at the time of her injuries. According to the homeowner's policy issued to Debtors, coverage does not apply to "bodily injury" sustained by a resident relative.

Respondent and Debtors subsequently entered into a *Miller-Shugart* Stipulation and *Miller-Shugart* Assignment, pursuant to which the trial court entered judgment in favor of Respondent. Following entry of the judgment, Respondent served a Garnishment Summons and Notice to Debtor and Nonearnings Disclosure upon Appellant. Thereafter, Appellant served a Nonearnings Disclosure on Respondent which denied that Appellant was liable in any way for the judgment against Debtors.

Respondent then filed her motion for leave to implead Appellant as party to the action and to file and serve a supplemental complaint. Appellant opposed the motion.

By way of a Memorandum and Order dated February 7, 2006, the Honorable Kathryn D. Messerich, Judge of Dakota County District Court, denied Respondent's motion. Based on the undisputed facts of the case, the trial court concluded that Respondent qualified as a resident relative under the applicable homeowner's insurance policy. Consequently, there was no "probable cause" for finding that Appellant would be held liable under the homeowner's insurance policy at issue. Among other things, the trial court found that the undisputed evidence established that Respondent was, at a minimum, a dual resident of her parents' home in Bloomer, Wisconsin, and of Debtors' home in Eagan, Minnesota.

The Minnesota Court of Appeals, in an opinion issued on June 5, 2007, did not find any ambiguity in the homeowner's policy at issue. Instead, the court conducted its own analysis of the record under a *de novo* standard of review and declared that the facts were "evenly divided" and that it was a "close case" on the issue of Respondent's residency status. Nevertheless, the court determined that Respondent "might" be able to establish "probable cause" and reversed and remanded the case to the trial court. The court of appeals failed to address Appellant's arguments (and the trial court's analysis) with respect to dual residency.

Appellant filed a Petition for Review of Decision of Court of Appeals on July 5, 2007, and review was granted by this Court on August 21, 2007.

STATEMENT OF FACTS

I. RESPONDENT'S BACKGROUND AND PLACES OF RESIDENCE

Respondent Beth McGlothlin ("Respondent") was born on June 24, 1977. (AA.2, ¶ 5.) She is single and has no children. (*Id.*) Respondent grew up on a farm outside of Bloomer, Wisconsin, until she was five years old. (AA.7, ¶ 4.) Respondent's family then moved to 1423 Riggs Street in Bloomer, Wisconsin. (*Id.*) Sometime in approximately 2001, Respondent moved from her parents' home in Bloomer into an apartment in Chippewa Falls, Wisconsin. (*Id.*; AA.3, ¶ 10.) However, she moved back to her parents' home after approximately eleven months. (*Id.*)

Respondent began working for Drew Pearson Advertising in Hopkins, Minnesota, in May 2002 as a receptionist/account analyst, a position for which she was paid \$14.16 per hour. (AA.2, ¶ 5.) Drew Pearson Advertising also provided Respondent with health insurance. (*Id.*) In order to be closer to her work, Respondent began residing with Debtors Michael and Dawn Steinmetz (collectively "Debtors") in May 2002. (AA.2, ¶ 5; AA.6–7, ¶ 3.) Respondent is the half-sister of Debtor Dawn Steinmetz. (AA.2, ¶ 7; AA.9, ¶ 13.) Debtors reside in Eagan, Minnesota. (AA.2, ¶ 7.)

Typically, Respondent would reside with Debtors Monday night through Thursday night during the time that she worked at Drew Pearson Advertising.

(AA.8, ¶ 10.) Respondent would typically reside with her parents from Friday night through Sunday night. (*Id.*) Occasionally, Respondent would not work on Fridays; Respondent would usually reside with her parents from Thursday night through Sunday night in these instances. (*Id.*)

During the time that Respondent resided with Debtors, Respondent “paid approximately \$150.00 on average” per month to Debtors for rent and use of a television and water. (AA.9, ¶ 13; see also AA.2, ¶ 7.) She had access to Debtors’ kitchen, although she kept her food separate from Debtors. (AA.9, ¶ 14; see also AA.2, ¶ 7.) Respondent had her own room at Debtors’ home, where she stored some of the clothing that she owned. (AA.2, ¶ 7; AA.8, ¶ 11.) Respondent also had her own bathroom at Debtors’ home. (AA.9, ¶ 16.) While staying with Debtors, Respondent had a key to Debtors’ home and parked her vehicle in Debtors’ driveway. (AA.2, ¶ 7.)

While living with Debtors, Respondent helped with the feeding and walking of Debtors’ dogs (including the dog that bit Respondent), although Respondent was under no obligation to provide such assistance. (*Id.*; AA.9–10, ¶ 16.) Respondent also used a Minnesota cellular phone number while living with Debtors. (AA.2, ¶ 7.) Respondent’s employer, Drew Pearson Advertising, listed Debtors’ address in Eagan as one of Respondent’s places of residence, along with her parents’ home in Bloomer. (AA.3, ¶ 14; see also AA.11, ¶ 17.) According to Respondent, at one point she asked Drew Pearson Advertising to

stop using Debtors' address as her own because she considered her parents' home in Bloomer to be her permanent residence. (AA.11, ¶ 17.)

While living with Debtors, Respondent used her parents' address as her mailing address and had a key to her parents' home, where Respondent had a room, dresser, and bed designated for her. (AA.2, ¶ 6; AA.3, ¶ 8; AA.7, ¶ 5.) Respondent also stored certain belongings in her parents' home, including "figurines and other collectables," stereo equipment, books, the majority of her clothes, and other personal belongings. (AA.7, ¶ 5.) Respondent had two dogs and a cat that she cared for at her parents' home when she returned on the weekends from Minnesota. (AA.9–10, ¶ 16.) When Respondent returned from Debtors' residence to her parents' home on the weekends, her parents did not charge her rent and purchased the groceries used by Respondent. (AA.8, ¶ 8.) Respondent's parents did expect her to help around the home with chores. (AA.9, ¶ 16.)

Respondent's vehicles have been registered in Wisconsin. (AA.8, ¶ 7.) She has obtained insurance for these vehicles in Wisconsin. (*Id.*) During the time that Respondent resided with Debtors, her bank accounts were located in Wisconsin, and Respondent was registered to vote in Wisconsin. (AA.3, ¶ 9; AA.8, ¶ 7.) Respondent's parents provided her with various forms of financial support while she was living with Debtors. (AA.8, (A.60, ¶ 9.) Among other things, Respondent's parents provided her with some financial help for payment

of her school loans and other bills. (*Id.*) During the time that Respondent lived with Debtors, she did not consider herself financially independent. (*See id.*)

According to Respondent, the “arrangement” between her and Debtors was to stay at Debtors “on a part-time” and “temporary” basis. (AA.8–9, (A.60, ¶ 12.) However, as of October 23, 2003,¹ or more than six months after the incident at issue in this case, Respondent was still residing with Debtors during the week and there were no plans for her to stop staying with Debtors during the week. (AA.2, ¶ 7.)

According to Respondent, she did not spend significant amounts of time with Debtors during the time that she lived with them, in part because Debtor Dawn Steinmetz traveled frequently and also because Respondent “preferred to keep to [her]self in the area [she] rented.” (AA.9, ¶¶ 14–15.) Respondent and Debtors “very rarely had meals together.” (AA.9, ¶ 15.) Instead, Respondent usually ate meals alone and spent evenings alone in Debtors’ basement. (AA.9, ¶¶ 14–15.) Respondent also often ate meals outside the home. (*Id.*)

II. THE UNDERLYING INCIDENT

It is alleged that on April 8, 2003, a dog owned by Debtors bit Respondent after she intervened in an “interact[ion]” between Debtors’ dogs. (AA.11; AA.12, ¶ 1.) As a result of the dog bite, Respondent suffered injuries and disfigurement

¹ On October 23, 2003, a representative of Appellant State Farm Insurance Companies a/k/a State Farm Fire and Casualty Company visited with Respondent and her attorney as part of an investigation into the insurance claim underlying this litigation. (AA.2, ¶ 3.)

to her nose, incurred and will incur medical expenses, and experienced mental distress and pain. (AA.12, ¶¶ 1–2.) At the time of the incident, Debtors were the named insureds on a homeowner’s insurance policy issued by Appellant State Farm Insurance Companies a/k/a State Farm Fire and Casualty Company (“Appellant”). (AA.13, ¶ 3.)

III. RELEVANT PROVISIONS OF THE APPLICABLE HOMEOWNER’S INSURANCE POLICY

Effective from June 15, 2002, to June 15, 2003, the applicable homeowner’s insurance policy issued by Appellant contains the following provisions relevant to this action:

DEFINITIONS

“You” and “your” mean the “named insured” shown in the **Declarations**. Your spouse is included if a resident of your household. “We,” “us,” and “our” mean the Company shown in the **Declarations**.

Certain words and phrases are defined as follows:

* * *

4. “insured” means you and, if residents of your household:

- a. your relatives; and
- b. any other person under the age of 21 who is in the care of a person described above.

* * *

SECTION II – LIABILITY COVERAGES

COVERAGE L – PERSONAL LIABILITY

If a claim is made or a suit is brought against an **insured** for damages because of **bodily injury** or **property damage** to which this coverage applies, caused by an **occurrence**, we will:

1. pay up to our limit of liability for which the **insured** is legally liable; and

* * *

COVERAGE M – MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical expenses incurred or medically ascertained within three years from the date of an accident causing **bodily injury**. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage applies only:

1. to a person on the **insured location** with the permission of an **insured**;
2. to a person off the **insured location**, if the **bodily injury**:
 - a. arises out of a condition on the **insured location** or the ways immediately adjoining;
 - b. is caused by the activities of an **insured**;
 - c. is caused by a **residence employee** in the course of the **residence employee's** employment by an **insured**; or
 - d. is caused by an animal owned by or in the care of an **insured**; or

* * *

SECTION II – EXCLUSIONS

1. Coverage L and Coverage M do not apply to:

* * *

- h. **bodily injury** to you or any **insured** within the meaning of part a. or b. of the definition of **insured**.

This exclusion also applies to any claim made or suit brought against you or any **insured** to share damages with or repay someone else who may be obligated to pay damages because of the **bodily injury** sustained by you or any **insured** within the meaning of part a. or b. of the definition of **insured**;

(AA.18, 31–34.)

IV. RESPONDENT’S LAWSUIT

In late 2003, Respondent brought suit against Debtors. (AA.12, ¶ 2.) After receiving notification of the suit, Appellant denied coverage for the allegations against Debtors, in part, because Respondent qualified as a resident relative at the time of the dog bite; therefore, homeowner’s liability insurance coverage was unavailable for Respondent’s injuries.² (AA.41–42.)

Respondent and Debtors subsequently entered into a *Miller–Shugart* Stipulation and *Miller–Shugart* Assignment, pursuant to which the trial court entered judgment in favor of Respondent. (AA.43–51.) Following entry of the judgment, Respondent served a Garnishment Summons and Notice to Debtor and Nonearnings Disclosure upon Appellant. (AA.14, ¶ 8.) Thereafter, Appellant

² Appellant also took the position that there was no coverage because Respondent qualified as an “owner” of the dog in question under Minnesota law at the time of the bite. (AA.42.)

served a Nonearnings Disclosure on Respondent which denied that Appellant was liable in any way for the judgment against Debtors. (AA.52–53.)

In response, Respondent filed a motion for leave to implead Appellant as a party to the action and to file and serve a supplemental complaint pursuant to Minnesota Statutes § 571.75 and other applicable law. (AA.12–16.) Respondent argued that her motion should be granted because there was “probable cause” to conclude that Appellant would be liable for the judgment against Debtors. (*Id.*) Appellant asserted that Respondent clearly qualified as a resident relative under the homeowner’s policy at issue; consequently, there was no “probable cause” for finding that Appellant would be held liable under the policy. (AA.59.)

V. TRIAL COURT’S MEMORANDUM AND ORDER

On February 7, 2006, the Honorable Kathryn D. Messerich, Judge of Dakota County District Court, issued a Memorandum and Order denying Respondent’s motion, finding no “probable cause.” (AA.54–62.)

As an initial matter, the trial court determined that the exclusion in the homeowner’s policy relating to resident relatives did not contain any ambiguity. (AA.59.) Therefore, “whether [Debtors] had a reasonable expectation of coverage cannot be used to construe the policy language” at issue. (AA.60.) According to the trial court, since “[t]here can be no dispute that [Respondent] is a relative” of Debtor Dawn Steinmetz, the only question remaining was whether Respondent was a resident of Debtors’ household on the date of her injuries. (*Id.*)

On this issue, the trial court found it significant that Respondent had been staying with Debtors for approximately eleven months before the dog bite, that “[s]he stayed there during the work week” and had many privileges at Debtors’ home, and that she “had no plans to change this arrangement.” (*Id.*) According to the trial court, while Respondent characterized her arrangement with Debtors as “‘temporary,’ the fact is she continued to stay with [Debtors] much longer than those situations where Minnesota Courts have found residency.” (*Id.*) Moreover, the trial court declared that Respondent’s “situation” was unlike “those in which residency was not found.” (*Id.*)

The trial court observed:

The undisputed facts of this case support a finding that, at a minimum, [Respondent] had dual residency in Bloomer, Wisconsin and at her sister’s home in Eagan, Minnesota. She maintained full-time employment in Minnesota and resided at her sister’s house during the week to go to this job. There is no evidence that this employment was temporary or that anyone contemplated a change in where [Respondent] lived during the week. A person can be a resident of two different households for insurance purposes. *American Family Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790–91 (Minn. 1993).

Here, the undisputed facts support a finding that [Respondent] was a resident relative under [Debtors’] homeowner’s policy.

(AA.61–62.)

Consequently, the trial court found that, based on the undisputed facts of the case, Respondent failed to establish “probable cause” that Appellant would be held liable for the debt owed by its insureds under the homeowner’s policy at issue. (AA.62.)

VI. COURT OF APPEALS' DECISION

In an opinion issued on June 5, 2007, the court of appeals reviewed, *de novo*, the trial court's factual findings based on the undisputed record. (AA.63–71.) In this regard, the court conducted its own, independent analysis of the record and declared that the facts were “evenly divided” and that it was a “close case” on the issue of Respondent's residency status. (AA.69; AA.71.) In addressing whether Respondent qualified as a resident relative at the time of the dog bite, the court of appeals failed to address Appellant's arguments (and the trial court's analysis) with respect to dual residency. Nevertheless, the court determined that Respondent “might” be able to establish “probable cause” and reversed and remanded the case to the trial court. (AA.71.) The court of appeals did not find any ambiguity in the homeowner's policy at issue.

SUMMARY OF ARGUMENTS

In light of this Court's mandate that a trial court's determination of “probable cause” in a garnishment action should not be disturbed unless “manifestly contrary to the evidence and without reasonable evidentiary support,” the court of appeals erred in reviewing the trial court's “probable cause” determination *de novo*. Under the appropriate standard of review, the trial court's determination of no “probable cause” should have been affirmed because the court of appeals' opinion reveals that the trial court's determination was not “manifestly contrary to the evidence and without reasonable evidentiary support”

when the court of appeals observed that the facts were “evenly divided” and that it was a “close case” on the issue of Respondent’s residency status.

Even if the *de novo* standard of review applied by the court of appeals to the factual findings of the district court was appropriate, the court of appeals should have affirmed the district court’s finding of no “probable cause.” The circumstances surrounding Respondent’s stay at Debtors’ home, including the frequency and length of Respondent’s stay and the many privileges she enjoyed, place the facts of this case squarely in line with other Minnesota cases finding that an individual was a resident of an insured’s household. Since Minnesota law makes it clear that a person can be a resident of more than one household on the date of a triggering incident (a legal principle applied by the trial court), Respondent’s connections to her parents’ home in Wisconsin do nothing to alter her status as a resident relative on the date of the dog bite. As such, coverage is excluded in this matter because Respondent qualified as a resident relative.

Further, on the issue of whether Respondent made a sufficient showing to establish “probable cause,” the court of appeals’ decision is internally inconsistent. By determining that the evidence was “evenly divided,” the court expressly recognized that Respondent had failed to present *probable* grounds that coverage might exist, yet ruled that the trial court’s determination of no “probable cause” was erroneous. The burden to establish “probable cause” rests with Respondent. Thus, if the evidence is “evenly divided,” Respondent, by definition, has failed to carry her burden of establishing “probable cause.”

Accordingly, this Court should reverse the court of appeals' decision and determine, as the trial court did, that Respondent failed to establish "probable cause" that Appellant would owe liability insurance coverage based on the application of the resident relative exclusion.

STANDARD OF REVIEW

The appropriate standard of review is at issue in this case. This Court and the Minnesota Court of Appeals have held on several occasions that a trial court's determination of "probable cause" in a garnishment action should not be disturbed unless "manifestly contrary to the evidence and without reasonable evidentiary support." See, e.g., *Altman v. Levine & Tanz, Inc.*, 97 N.W.2d 460, 463 (Minn. 1959); *Cashman v. Meyer, Scherer & Rockcastle, Ltd.*, No. C1-90-1935, 1991 WL 30337, at *1 (Minn. Ct. App. Mar. 12, 1991) (holding that the trial court's determination of probable cause in an insurance garnishment action should not be disturbed unless "manifestly contrary to the evidence and without reasonable evidentiary support"); *Freeberg v. Firnschild*, No. C8-89-422, 1989 WL 94451, at *1 (Minn. Ct. App. Aug. 22, 1989) (same). This standard has also been referred to as a "clearly erroneous" standard of review. *Innsbruck Village Ass'n v. Stock Roofing, Inc.*, No. A06-95, 2006 WL 3772286, at *1 (Minn. Ct. App. Dec. 26, 2006) (deferring to "district court's findings of fact, unless clearly erroneous" and affirming trial court's denial of request for leave to serve a supplemental garnishment summons and complaint in an insurance garnishment action); *Cashman v. Firemen's Fund Ins. Co.*, No. C8-91-1117, 1991 WL

238339, at *2 (Minn. Ct. App. Nov. 19, 1991) (applying “clearly erroneous” standard to findings regarding resident relative status); *State Fire & Cas. Co. v. Lawson*, 406 N.W.2d 20, 23 (Minn. Ct. App. 1987) (affirming trial court’s factual determination under “clearly erroneous” standard of review that a person did not qualify as a resident relative under the circumstances); *Skarsten v. Dairyland Ins. Co.*, 381 N.W.2d 16, 18 (Minn. Ct. App. 1986) (observing that trial court’s determination on the issue of resident relative status will not be overturned unless “clearly erroneous”).

The court of appeals reviewed this matter *de novo*; it cited to *Health Personnel v. Peterson*, 629 N.W.2d 132, 134 (Minn. Ct. App. 2001), and *Lobeck v. State Farm Mut. Auto. Ins. Co.*, 582 N.W.2d 246, 249 (Minn. 1998), for its assertion that “[a]s with other insurance–coverage issues, we review a district court’s probable–cause determination *de novo*, applying the general principles of contract interpretation to the policy.” (AA.65–66) (internal citation omitted).

It is Appellant’s position that the court of appeals did not apply the appropriate standard of review to this case. Instead, consistent with the rulings of this Court and the Minnesota Court of Appeals set forth above, this Court should review the trial court’s finding of no “probable cause” for the sole purpose of determining whether the ruling is “manifestly contrary to the evidence and without reasonable evidentiary support.”

ARGUMENTS

I. THE COURT OF APPEALS ERRED IN REVIEWING THE TRIAL COURT'S "PROBABLE CAUSE" DETERMINATION *DE NOVO*

As set forth above, this Court and the Minnesota Court of Appeals have held on several occasions that a trial court's determination of "probable cause" in a garnishment action should not be disturbed unless "manifestly contrary to the evidence and without reasonable evidentiary support." See, e.g., *Altman v. Levine & Tanz, Inc.*, 97 N.W.2d 460, 463 (Minn. 1959); *Cashman v. Meyer, Scherer & Rockcastle, Ltd.*, No. C1-90-1935, 1991 WL 30337, at *1 (Minn. Ct. App. Mar. 12, 1991); *Freeberg v. Firnschild*, No. C8-89-422, 1989 WL 94451, at *1 (Minn. Ct. App. Aug. 22, 1989). This standard has also been referred to as a "clearly erroneous" standard of review. *Innsbruck Village Ass'n v. Stock Roofing, Inc.*, No. A06-95, 2006 WL 3772286, at *1 (Minn. Ct. App. Dec. 26, 2006); *Cashman v. Firemen's Fund Ins. Co.*, No. C8-91-1117, 1991 WL 238339, at *2 (Minn. Ct. App. Nov. 19, 1991); *State Fire & Cas. Co. v. Lawson*, 406 N.W.2d 20, 23 (Minn. Ct. App. 1987); *Skarsten v. Dairyland Ins. Co.*, 381 N.W.2d 16, 18 (Minn. Ct. App. 1986).

"Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). "If there is reasonable evidence to support the trial court's findings of fact, a reviewing court should not disturb those findings." *Id.* (citation omitted). The

“clearly erroneous” standard applies to all factual findings, whether based on testimony or documentary evidence. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995). The reviewing court should view the evidence in a manner most favorable to the trial court’s findings. *Continental Cas. Co. v. Knowlton*, 232 N.W.2d 789, 794 (Minn. 1975). “Findings of fact by the trial court will be upheld on appeal if reasonably supported by the evidence considered as a whole.” *Klingelhutz v. Grover*, 236 N.W.2d 610, 611 (Minn. 1975).

In light of this Court’s mandate that a trial court’s determination of “probable cause” in a garnishment action should not be disturbed unless “manifestly contrary to the evidence and without reasonable evidentiary support,” the court of appeals erred in reviewing the trial court’s “probable cause” determination *de novo*. Under the appropriate standard of review, the trial court’s determination of no “probable cause” should have been affirmed because the court of appeals itself believed that the trial court’s determination was not “manifestly contrary to the evidence and without reasonable evidentiary support,” as indicated by the court of appeals’ determination that the facts were “evenly divided” and that it was a “close case” on the issue of Respondent’s residency status. (AA.69; AA.71.)

Accordingly, applying the appropriate standard of review to this case, this Court should reverse the court of appeals’ decision and determine, as the trial court did, that Respondent failed to establish “probable cause” that Appellant

would owe insurance coverage due to the application of the resident relative exclusion.

II. RESPONDENT HAS FAILED TO ESTABLISH “PROBABLE CAUSE” THAT APPELLANT WOULD OWE INSURANCE COVERAGE UNDER THE HOMEOWNER’S POLICY AT ISSUE

Even if the *de novo* standard of review applied by the court of appeals to the factual findings of the district court was appropriate, for the reasons set forth below, the court of appeals should have affirmed the district court’s finding of no “probable cause.”

A. General Legal Principles Used in Interpreting Insurance Policies

“Insurance policies are similar to other contracts; they are matters of agreement by the parties and the function of a court is to determine what the agreement was and enforce it.” *Fillmore v. Iowa Nat’l Mut. Ins. Co.*, 344 N.W.2d 875, 877 (Minn. Ct. App. 1984). Where there is no ambiguity in the insurance policy, there is no room for construction. *Dairyland Ins. Co. v. Implement Dealers Ins. Co.*, 199 N.W.2d 806, 811 (Minn. 1972). Exclusions in a policy are as much a part of the contract as other parts and must be given the same consideration in determining the coverage afforded. *Ross v. City of Minneapolis*, 408 N.W.2d 910, 914 (Minn. Ct. App. 1987). A court cannot distort the natural meaning of the terms of an insurance policy to read an ambiguity into its plain language in order to provide coverage or enlarge the liability of the insurer. *Id.*; see also *Merseth v. State Farm Fire & Cas. Co.*, 390 N.W.2d 16, 18 (Minn. Ct. App. 1986) (declaring that where the insurance policy clearly and unambiguously sets forth the terms

and scope of its coverage, the insurer is entitled to have that coverage enforced according to its terms).

B. The “Probable Cause” Standard in Garnishment Proceedings

“To succeed on a motion to file a supplemental complaint for garnishment, the moving party must show probable cause that the garnishee will be liable for the debt.” *Roloff v. Taste of Minnesota*, 488 N.W.2d 325, 326 (Minn. Ct. App. 1992) (citing Minn. Stat. § 571.75, subd. 4 (1990)). In this context, “probable cause” means “some showing by evidence which fairly and reasonably tends to show the existence of the facts alleged.” *Poor Richards, Inc. v. Chas. Olson & Sons & Wheel Service Co.*, 380 N.W.2d 225, 227 (Minn. Ct. App. 1986) (quoting *Gudbrandsen v. Pelto*, 287 N.W. 116, 117 (Minn. 1939)). “The question whether probable cause has been shown depends on whether the evidence shows probable grounds for believing that the garnishee might be held liable under the policy involved here.” *Gudbrandsen v. Pelto*, 287 N.W. 116, 117–18 (Minn. 1939). “It is well established that a judgment creditor can obtain only those rights that the judgment debtor had against the garnishee.” *Poor Richards*, 380 N.W.2d at 228 (citations omitted).

Therefore, the homeowner’s insurance policy in effect at the time of the incident issued by Appellant to Debtors “control[s] the disposition of [this] action.”
Id.

C. The Language in the Policy Defining a Resident Relative Is Unambiguous

According to the homeowner's insurance policy issued to Debtors, "insured" means you and, if residents of your household: a. your relatives; and b. any other person under the age of 21 who is in the care of a person described above." (AA.18.) This Court previously examined identical language in the context of determining whether an individual qualified as a resident relative and ruled that it is unambiguous. *Lott v. State Farm Fire & Cas. Co.*, 541 N.W.2d 304, 306–07 (Minn. 1995). In *Lott*, this Court noted that it had previously declared exclusionary language virtually identical to this provision—"residents of the [n]amed [i]nsured's household"—to be "clear and unambiguous." *Id.* at 307 (citing *Fireman's Ins. Co. v. Viktora*, 318 N.W.2d 704, 706 (Minn. 1982)).

When insurance language is unambiguous, courts "will not render a construction which is more favorable to finding coverage." *Viktora*, 318 N.W.2d at 706. Instead, the words in the homeowner's insurance policy defining a resident relative must be construed in light of their "plain" and common meaning. *See id.* Moreover, since the policy language at issue is unambiguous, an insured's reasonable expectations about coverage cannot be used to construe the policy language. *See Atwater Creamery Co. v. Western Nat'l Mut. Ins. Co.*, 366 N.W.2d 271, 278 (Minn. 1985) (noting that "ambiguity in the language of the [insurance] contract is not irrelevant under the [reasonable expectations doctrine]

but becomes a factor in determining the reasonable expectations of the insured . . .”); *Vierkant v. AMCO Ins. Co.*, 543 N.W.2d 117, 121 (Minn. Ct. App. 1996).

D. The Record is Clear That Respondent Was a Resident of Debtors’ Household at the Time of the Dog Bite

To determine whether a person qualifies as a resident relative, a court “must examine the parties’ relationship as of the time of the incident triggering a claim for coverage.” *State Farm Fire & Cas. Co. v. Duel*, No. C7–98–208, 1998 WL 531821, at *3 (Minn. Ct. App. Aug. 25, 1998) (citing *State Farm Fire & Cas. Co. v. Short*, 459 N.W.2d 111, 114 (Minn. 1990)). Whether a person resides with a named insured is ordinarily a question of fact. *Fruchtman v. State Farm Mut. Auto. Ins. Co.*, 142 N.W.2d 299, 300 (Minn. 1966). “When the relevant facts are undisputed, the question of whether a person is a resident relative may be decided as a matter of law.”³ *Duel*, 1998 WL 531821, at *2 (citing *American Fam. Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790–91 (Minn. 1993)).

The determination of whether individuals are residents of the same household rests on the facts of each case. *Krause v. Mut. Serv. Cas. Co.*, 399 N.W.2d 597, 601 (Minn. Ct. App. 1987) (citation omitted). In analyzing the residency issue, courts do not distinguish between clauses extending, and

³ Despite failing to identify a single disputed fact, the court of appeals reversed and remanded the trial court’s finding of no “probable cause” for further factual findings. (AA.71.) It is well settled that the issue of whether a person qualifies as a resident relative may be decided as a matter of law when the facts are undisputed. *State Farm Fire & Cas. Co. v. Duel*, No. C7–98–208, 1998 WL 531821, at *2 (Minn. Ct. App. Aug. 25, 1998) (citing *American Fam. Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790–91 (Minn. 1993)).

clauses excluding, coverage. *Skarsten v. Dairyland Ins. Co.*, 381 N.W. 16, 18 (Minn. Ct. App. 1986).

Minnesota courts have traditionally employed a three-factor test to determine residency in an insured's household. See, e.g., *Lott v. State Farm Fire & Cas. Co.*, 541 N.W.2d 304, 307–08 (Minn. 1995); *Fireman's Ins. Co. v. Viktora*, 318 N.W.2d 704, 706–07 (Minn. 1982). In *Viktora*, this Court noted that the meaning of "household" is generally considered "synonymous with 'family' and as including those who dwell together as a family under the same roof." 318 N.W.2d at 707 (citations omitted). In *Lott*, this Court stated:

In this context, 'household' refers to a social unit which is something more than a group of individuals who occasionally spend time together in the same place. Thus, in order to determine whether an individual is a resident of the insured's household, we must look at the nature of the individual's relationship with the social unit that makes up the insured's household and not simply at the individual's connection to the place where the insured resides. In looking at the nature of the individual's relationship with the social unit that makes up the insured's household, we look at three factors: first, whether the individual and the insured are living under the same roof; second, whether the individual and the insured are living in a close, intimate, and informal relationship; and third, whether the intended duration is likely to be substantial.⁴

⁴ The specific wording of the three-part test varies slightly depending upon which case is consulted. See, e.g., *Wood v. Mut. Serv. Cas. Ins. Co.*, 415 N.W.2d 748, 750 (Minn. Ct. App. 1988) (setting forth the factors as including "(1) living under the same roof; (2) maintenance of a close relationship; and (3) whether the intended duration was substantial and such that the parties would consider the relationship in contracting for such things as insurance"); *Fireman's Ins. Co. v. Viktora*, 318 N.W.2d 704, 706 (Minn. 1982) (quoting a Wisconsin case to set forth the following 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 [footnote continued on the next page]

541 N.W.2d at 307–08 (citing *Viktora*, 318 N.W.2d at 706). Of the three factors set forth in *Viktora* and refined by this Court in *Lott*, “[n]o one factor is controlling, but all must ‘combine to a greater or lesser degree in order to establish the relationship.’” *Skarsten v. Dairyland Ins. Co.*, 381 N.W.2d 16, 19 (Minn. Ct. App. 1986) (quoting *Pamperin v. Milwaukee Mut. Ins. Co.*, 197 N.W.2d 783, 789 (Wis. 1972)); see also *State Farm Fire & Cas. Co. v. Lawson*, 406 N.W.2d 20, 22 (Minn. Ct. App. 1987) (stating that all the factors “merge to create either a portrait of a relationship akin to household membership or one more transient in character”).

In this case, it is clear that Respondent qualifies as a resident relative on the date of her injuries. Analyzing her living situation with Debtors under the framework of *Lott* (or any of the other slightly different versions of the three–part residency test or its equivalent), the undeniable conclusion is that Respondent was residing with Debtors for insurance purposes on April 8, 2003.

1. Respondent Was Residing Under the Same Roof as a Named Insured Relative

There is no debating that Respondent and a named insured relative (Debtor Dawn Steinmetz) were living under the same roof. Respondent is the half–sister of Debtor Dawn Steinmetz. (AA.2, ¶ 7; AA.9, ¶ 13.) Respondent

parties would consider relationship ‘ . . . in contracting about such matters as insurance or in their conduct in reliance thereon.’”). Some courts do not specifically mention a distinct three–part test, although the factors listed for consideration are essentially the same. *State Farm Fire & Cas. Co. v. Duel*, No. C7–98–208, 1998 WL 531821, at *3 (Minn. Ct. App. Aug. 25, 1998).

began residing with Debtors in May 2002. (AA.2, ¶ 5; AA.6–7, ¶ 3.) Respondent was residing with Debtors at the time of the dog bite. (AA.11; AA.12, ¶ 1.) Thus, there is no question that the first factor for determining residency set forth in *Lott* weighs in favor of finding that Respondent was a resident relative of Debtors at the time of the dog bite.

2. The Duration of Respondent’s Stay with Debtors Clearly Qualifies Her as a Resident Relative

The third factor set forth in *Lott*—“whether the intended duration is likely to be substantial”—weighs heavily in favor of concluding that Respondent was a resident relative on April 8, 2003. Under Minnesota law, Respondent’s approximately eleven-month stay at Debtors’ home before the dog bite is significantly longer than the period of time needed to find residency in a particular location. See, e.g., *Viktora*, 318 N.W.2d at 706 (holding that less than four months of residency was sufficient to qualify as a resident relative); *Rosenberger v. American Fam. Mut. Ins. Co.*, 309 N.W.2d 305, 309–10 (Minn. 1981) (finding that two months of residency constituted sufficient duration to qualify as a resident relative).

Not only does Respondent’s lengthy stay with Debtors prior to her injuries indicate that she is a resident relative, but Respondent’s extended stay with Debtors *after* her injuries further demonstrates that she meets the definition of a resident relative. Courts have looked at events following a triggering incident when examining the factors used to determine residency status. See, e.g.,

Fruchtman v. State Farm Mut. Auto. Ins. Co., 142 N.W.2d 299, 301 (Minn. 1966) (looking at events following the accident at issue to “shed[] some light” on the residency determination and describing such events as “significant”). Here, as of October 23, 2003—or approximately seventeen months after beginning her stay with Debtors—Respondent continued to reside with Debtors three or four nights during the week. (AA.2, ¶ 7.) Further, as of October 23, 2003, there were no plans for Respondent to end her stay with Debtors. (*Id.*)

The extended duration of Respondent’s stay with Debtors contrasts sharply with those cases where Minnesota courts have found the length of residence too short for an individual to qualify as a resident relative. In *Auto-Owners Ins. Co. v. Harris*, 374 N.W.2d 795, 797–98 (Minn. Ct. App. 1985), for example, the Minnesota Court of Appeals found that the claimant did not qualify as a resident relative after a dog attack because his presence was not significant enough in his parents’ (the named insureds) home. According to the individual’s testimony, he had stayed at his parents’ home “four or five nights in the year before the dog bite.” *Id.* at 796.

In *Fruchtman v. State Farm Mut. Auto. Ins. Co.*, 142 N.W.2d 299, 301–02 (Minn. 1966), a twenty–seven year old individual who had been self–supporting since the time he left high school and who had not been physically present in his parents’ home for more than a week or two on any one occasion for a period of more than two years was determined not to be a resident of his parents’ household. In *Fruchtman*, there was also evidence that the son intended to

move out of his parents' home to attend to a military assignment within two weeks after the accident. *Id.* at 301.

In *Mut. Serv. Cas. Ins. Co. v. Olson*, 402 N.W.2d 621 (Minn. Ct. App. 1987), the court noted that the intended duration factor “does not require the permanence associated with domicile, but something more is required than a ‘mere temporary sojourn.’” *Id.* at 624 (quoting *Pamperin v. Milwaukee Mut. Ins. Co.*, 197 N.W. 2d 783, 787–88 (Wis. 1972)). Indeed, as in *Olson*, spending four or five nights in a year in a particular location could reasonably qualify as a “mere temporary sojourn.” The same is true of the individual’s infrequent and short-lived visits to his parents’ home in *Fruchtman*. In contrast, Respondent’s frequent, extended, continuous, and scheduled stays with Debtors cannot reasonably be characterized as a “mere temporary sojourn.”

Respondent’s connections to Minnesota while living with Debtors further illustrate the nature of her residency in Minnesota. While living with Debtors for approximately eleventh months prior to the incident, Respondent used a Minnesota cellular phone number and worked at a full-time job in Minnesota where she presumably paid Minnesota taxes. (AA.2, ¶¶ 5–7.) A person making a “mere temporary sojourn” out of state does not work full-time in the visited state for four or five days a week with no ending date in sight, obtain a cellular phone number in the visited state, and stay at a place of residence in the new location with no plans to end such a living situation.

In *Viktora*, it was established that less than four months of residency was sufficient to qualify as a resident relative in certain circumstances. In *Rosenberger*, two months of residency was sufficient. Respondent's approximately eleven-month stay with Debtors prior to the dog bite—and approximately seventeen-month stay overall, at least—clearly places Respondent's situation well beyond the temporal requirements established by *Viktora* and *Rosenberger* for finding residency. Consequently, the third factor for examining a person's residency status for insurance purposes as set forth in *Lott*—"whether the intended duration is likely to be substantial"—supports the conclusion that Respondent was a resident relative of Debtors.

3. Respondent Was Living in a Sufficiently "Close, Intimate, and Informal" Relationship with Debtors to Qualify as a Resident Relative

An examination of the circumstances surrounding Respondent's stay at Debtors' home reveals that Respondent was living in a sufficiently "close, intimate, and informal" relationship as contemplated by Minnesota law to be considered a resident relative for insurance purposes.

As noted above, while staying with Debtors, Respondent had her own room, where she stored some of the clothing that she owned. (AA.2, ¶ 7; AA. 8, ¶ 11.) Respondent also had her own bathroom at Debtors' home. (AA.9, ¶ 16.) Respondent had a key to Debtors' home and parked her vehicle in Debtors' driveway. (AA.2, ¶ 7.) Respondent had access to Debtors' kitchen. (AA.9, ¶ 14; see also AA.2, ¶ 7.) Moreover, while living with Debtors, Respondent helped with

the feeding and walking of Debtors' dogs, although she was not obligated to provide such assistance. (AA.2, ¶ 7; AA.9–10, ¶ 16.)

While Respondent may argue that she was nothing more than a tenant of Debtors because she “paid approximately \$150.00 on average” per month to Debtors for rent and utilities (AA.2, ¶ 7; AA.9, ¶ 13), upon closer reflection, such a payment does not seem out of place in a family household unit. First, Respondent was working full-time as a twenty-five year old adult while she was living with Debtors, so she certainly had some money to contribute to the costs of maintaining Debtors' household. Second, this Court may take judicial notice that few, if any, metropolitan area landlords are offering rooms to rent with a personal parking space, utilities included, no lease or damage deposit required, for “approximately \$150.00 on average” per month, especially not in living situations containing the other privileges enjoyed by Respondent while staying with Debtors. In this sense, Debtors were willing to help out a family member by offering a cheaper rent than would be expected on the open market. Simply because Respondent contributed money toward her living situation does not remove her from the definition of a resident relative. In fact, Respondent's situation is not unlike that of any other young adult living at home who is required by his or her parents to contribute money toward the family expenses while working a full-time job and paying down school loans and other debts.

While Respondent may argue that she was not a member of Debtors' household because she never actually moved out of her parents' residence in

Bloomer, many courts have ruled that individuals were residing away from their parents' homes in circumstances analogous to those in this matter. See, e.g., *Van Overbeke v. State Farm Mut. Auto. Ins. Co.*, 227 N.W.2d 807, 810 (Minn. 1975) (holding that an emancipated student who maintained his own apartment was not a resident of the same household as his parents although he used his parents' mailing address); *Fruchtman v. State Farm Mut. Auto. Ins. Co.*, 142 N.W.2d 299, 301–02 (Minn. 1975) (ruling that a young man who had not stayed with his mother for any significant length of time for more than two years was not a resident of her home, although he was at her home on the date of the incident, kept belongings there, and used his mother's mailing address); *French v. State Farm Mut. Auto. Ins. Co.*, 372 N.W.2d 839, 843 (Minn. Ct. App. 1985) (finding that a young man who purposefully moved out of his parents' home was not a resident of his parents' home although he used his parents' mailing address).

Moreover, even if this Court were determine that Respondent was a resident of her parents' home in Wisconsin at the time of the incident, *such a determination would have no bearing on whether Respondent was a resident of Debtors' home in Minnesota at the same time.* As this Court has previously observed, “[a]lthough it is possible to have only one domicile, it is possible for insurance purposes to be a resident of more than one household” on the date of a triggering incident. *American Fam. Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 790–91 (Minn. 1993); see also *Mut. Serv. Cas. Ins. Co. v. Olson*, 402 N.W.2d 621, 624 (Minn. Ct. App. 1987) (observing that a person may be a resident of two

households at the same time for insurance purposes and noting that other states “have also ruled that person can be a resident of more than one household”). Consequently, Respondent’s many connections to Wisconsin have little importance for determining whether she qualifies as a resident relative while living with Debtors in Minnesota.

Significantly, although the trial court found that the undisputed evidence established that Respondent was, at a minimum, a dual resident of her parents’ home in Bloomer and Debtors’ home in Eagan, the court of appeals failed to address Appellant’s arguments (or the trial court’s analysis) with respect to dual residency. The court of appeals’ determination that the facts were “evenly divided” on the issue of Respondent’s residency status supports the trial court’s finding that the Respondent was, at a minimum, a dual resident.⁵

⁵ In *Wood v. Mutual Serv. Cas. Co.*, 415 N.W.2d 748, 750 (Minn. Ct. App. 1987), the Minnesota Court of Appeals elaborated upon the usual three-factor residency test to consider other factors such as the relevant person’s age, whether a separate residence has been established, and the person’s self-sufficiency. In *Wood*, the issue was whether an individual qualified as a resident relative insured under his father’s automobile policy. See *id.* at 749–51. While the factors considered by the court in *Wood* are not as relevant here because *Wood* centered on whether the individual had moved *out* of a residence and not whether he qualified as an insured by virtue of *living in* a particular residence, Appellant contends that the *Wood* factors do not change Respondent’s status as a resident relative. Respondent was nearly twenty-six years old at the time of the dog bite, was gainfully employed in Minnesota, was covered by health insurance, and had established a residence other than at her parents’ home before moving in with Debtors, making it appropriate to determine that Respondent had a separate residence in Minnesota for insurance purposes.

When the record is viewed as a whole, the undisputed facts in this case demonstrate that Respondent was a resident of Debtors' household in Minnesota on the date of her injuries and was, therefore, an insured under the homeowner's policy, not entitled to liability insurance benefits.

E. The Court of Appeals' Decision Is Internally Inconsistent

On the issue of whether Respondent made a sufficient showing to establish "probable cause," the court of appeals' decision is internally inconsistent. By determining that the evidence was "evenly divided," the court expressly recognized that Respondent had failed to present *probable* grounds that coverage might exist, yet ruled that the trial court's determination of no "probable cause" was erroneous. The burden to establish "probable cause" rests with Respondent. *Roloff v. Taste of Minnesota*, 488 N.W.2d 325, 326 (Minn. Ct. App. 1992) (citing Minn. Stat. § 571.75, subd. 4 (1990)). Thus, if the evidence is "evenly divided," Respondent, by definition, has failed to carry her burden of establishing "probable cause."

F. Respondent's Status as a Resident Relative Precludes Coverage for Her Injuries Under the Plain Language of the Homeowner's Insurance Policy

The undisputed evidence establishes that Respondent was a resident relative under the terms of the homeowner's insurance policy issued by Appellant to Debtors. Consequently, Respondent was an insured at the time of her injuries. According to the plain language of the policy, coverage does not apply to "bodily injury to you or any **insured** within the meaning of part a. or b. of the

definition of **insured.**” (AA.31–34.) Since there is no possibility that Appellant would be obligated to defend or indemnify Debtors for all or part of Respondent’s claims, Respondent has failed to demonstrate “probable cause” in this matter.

Accordingly, this Court should reverse the court of appeals’ decision and determine, as the trial court did, that Respondent failed to establish “probable cause” that Appellant would owe insurance coverage due to the application of the resident relative exclusion.

CONCLUSION

This Court has previously ruled that a trial court’s determination of “probable cause” in a garnishment action should not be disturbed unless “manifestly contrary to the evidence and without reasonable evidentiary support.” Thus, the court of appeals erred in reviewing the trial court’s “probable cause” determination *de novo*.

Under the appropriate standard of review, the trial court’s determination of no “probable cause” should have been affirmed because the court of appeals itself believed that the trial court’s determination was not “manifestly contrary to the evidence and without reasonable evidentiary support,” as indicated by the court’s determination that the facts were “evenly divided” and that it was a “close case” on the issue of Respondent’s residency status.

Even if the *de novo* standard of review applied by the court of appeals to the factual findings of the district court was appropriate, the court of appeals should have affirmed the district court’s finding of no “probable cause.” The

circumstances surrounding Respondent's stay at Debtors' home establish that Respondent was, at a minimum, a dual resident of her parents' home and of Debtors' home. As such, coverage is precluded in this matter because Respondent qualified as a resident relative. Consequently, there is no "probable cause" for finding that Appellant would be held liable under the homeowner's policy at issue. Accordingly, this Court should reverse the court of appeals' decision and determine, as the trial court did, that Respondent failed to establish "probable cause" that Appellant would owe insurance coverage for Respondent's claims.

Dated: September 20, 2007

MURNANE BRANDT

William L. Moran

William L. Moran #177167

Scott G. Williams #349410

Attorneys for Appellant

30 East Seventh Street, Suite 3200

St. Paul, MN 55101

(651) 227-9411

CERTIFICATE OF BRIEF LENGTH

The undersigned counsel for Appellant State Farm Insurance Companies a/k/a State Farm Fire and Casualty Company certifies that this Brief complies with the requirements of Minn. R. Civ. App. P. 132.01 in that it is printed in proportionately spaced typeface utilizing Microsoft Word 2002 and contains 8,232 words, excluding the Table of Contents and Table of Authorities.

Dated: September 20, 2007

MURNANE BRANDT

William L. Moran

William L. Moran #177167
Scott G. Williams #349410

Attorneys for Appellant
30 East Seventh Street, Suite 3200
St. Paul, MN 55101
(651) 227-9411

765859