2011 IL App (2d) 101286-U
No. 2-10-1286
Order filed November 29, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ECONOMY PREMIER ASSURANCE CO. and METROPOLITAN PROPERTY AND CASUALTY CO.,	)	Appeal from the Circuit Court of Stephenson County.
Plaintiffs-Appellants,	)	
v.	)	No. 05-MR-38
MATTHEW PETERSON, RICHARD PETERSON, MARY ELLEN BROWN, individually and as parent of MOLLY BROWN, a minor, BRADLEY BROWN, as parent of MOLLY BROWN, a minor, FRANKLIN E. MORGAN, ROBERT SWANSON TRUCKING, and STATE FARM AUTOMOBILE INSURANCE CO.,	)	Honorable James M. Hauser,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices BOWMAN and ZENOFF concurred in the judgment.

ORDER

Held: In insurance case, there were genuine issues of material fact as to whether endorsement excluding son of named insured as a covered driver under the policy was in effect on the date of the son's accident. Summary judgment was also inappropriate as to whether the son was residing in the named insured's household on the date of the accident. Finally, summary judgment was proper on issue of

whether the son's purchase of other insurance prior to the accident removed him from the scope of the policy.

¶ 1 Plaintiffs, Economy Premier Assurance Co. and Metropolitan Property and Casualty Insurance Co., appeal from the grant of summary judgment in favor of defendants, Matthew Peterson (Matthew) and Richard Peterson (Richard) *et al.*, on plaintiffs' complaint for a declaratory judgment that insurance policies issued by plaintiffs and held in Richard's name did not provide coverage for a February 28, 2008, automobile accident involving Matthew. The trial court held that there was no dispute of material fact that the policies provided coverage. We disagree, and reverse and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 On February 28, 2008, Matthew Peterson drove off a closed bridge over Interstate 90, his car falling onto traffic below. He was driving a 1998 Cadillac Seville. At that time, Richard, Matthew's grandfather, was the named insured on two policies issued by Metropolitan Property and Casualty Insurance Co. and its affiliate, Economy Premier Assurance Co. (together "MetLife"). One was an automobile policy (auto policy) and the other a personal excess liability policy (umbrella or PELP policy). On June 26, 2008, MetLife sued defendants, seeking a declaratory judgment that Matthew's accident was covered under neither policy. The parties subsequently filed cross-motions for summary judgment. On January 29, 2010, MetLife filed its final amended motion for summary judgment. MetLife made two arguments specific to the auto policy and one argument specific to the umbrella policy. First, MetLife asserted that there was no coverage under the auto policy because Richard and Matthew had signed, on February 27, 2008 (the day before the accident), a document entitled "Named Operator Exclusion Endorsement" (exclusion endorsement) in which Matthew was expressly excluded from the auto policy. (MetLife expressly acknowledged that the

exclusion endorsement did not apply to the umbrella policy.) Second, MetLife maintained that the auto policy did not cover Matthew because, on the date of the accident, the Cadillac was covered by other automobile insurance that Matthew had obtained several days before the accident. Finally, MetLife argued that Matthew was not covered under the umbrella policy because he was not residing in Richard's household on the date of the accident.

¶ 4 The parties attached to their cross-motions numerous documents, including transcripts from the depositions of (1) Richard; (2) Matthew; (3) Janet Licht, a representative for Williams and Manny, Inc. (WM), the insurance agency through whom MetLife issued the policies; and (4) Kristine Parr, a underwriter for MetLife. The parties also attached hard copies of policy declarations for the auto and umbrella policies. Each declaration page contained such items as (1) dates of the policy term, (2) effective dates of any policy changes; (3) named insured (which on both policies was Richard); (4) covered vehicles; (5) household drivers; and (6) dollar-amount coverage limits for each policy. Each declaration page also shows a date at the upper right-hand corner of its front page. It is not clear whether this date is the issuing date of the policy (or amended policy), or is simply the date the hard copy was printed at WM. In what follows, this date is referred to as the issuing date.

¶ 5 The record contains several declaration pages for the auto policy. Because there is an issue in this case as to the timing of Matthew's exclusion under the auto policy, we set forth those declarations and note the status of both Matthew and the Cadillac under each declaration:

Issuing Date	Matthew's Status	Cadillac's Status	Special Notes
7/09/07	Listed as Household Driver	Listed as Insured Vehicle	Policy Change Note: "Loss Payee Information Changed. Anti-Theft Discount Added." "Policy Change Effective Date" is 7/09/2007
2/29/08	Listed As Excluded Driver	Listed as Insured Vehicle	Policy Change Note: "Driver Assignment Changed. Excluded Driver Changed. Driver Info/Vehicle Class Changed." "Policy Change Effective Date" is 2/27/2008
3/10/08	Not Listed At All	Not Listed At All	Policy Change Note: "Driver Assignment Changed. Driver Removed From Policy. Vehicle Removed from Policy. Loss Payee Removed." "Policy Change Effective Date" is 3/15/2008.
3/17/08	Listed as Excluded Driver	Listed as Insured Vehicle	No Policy Changes Noted. "Duplicate Effective Date" is 2/27/08.

Hereinafter, we refer to the declaration pages by issuing date.

¶ 6 As for the umbrella policy, it was designed to provide supplement existing liability insurance. The declaration pages for the umbrella policies state minimum coverage amounts for the underlying insurance.

¶ 7 While the declaration pages for the umbrella and auto policies were amended at various times in the history of the policies, the basic terms of the policies remained consistent. The auto policy contained several provisions for termination of the policy, including (as pertinent here) the following:

> "If **you** obtain other insurance on **your covered automobile**, any similar insurance provided by this policy will terminate as to that **automobile** on the effective date of the other insurance." (Emphasis in original.)

The auto policy contained the following definition relevant here:

> " '**YOU**' and **'YOUR'** mean the person(s) named in the Declarations of this policy as named insured and the spouse of such person or persons if a resident of the same household." (Emphasis in original.)

The auto policy also provided that it could be amended by "endorsement."

¶ 8 The general coverage clause in the umbrella policy stated:

> "This insurance policy is a legal contract between **you** (the policy owner) and **us** (the Company named in the Declarations). It insures **you** for the various kinds of insurance shown in the Declarations.
>
> * * *
>
> **We** will pay all sums in excess of the **retained limit** for **damages** to others caused by an **occurrence** for which the law holds an **insured** responsible and to which this policy applies. **We** will not pay more than the limit shown in the Declarations for Liability." (Emphasis in original.)

The umbrella policy then provided these definitions:

> " '**You**' and '**your**' mean the named **insured** shown in the Declarations and that persons's resident spouse." (Emphasis in original.)

" '**Insured**' means **you** or a **relative** residing in **your** household, or any person using, with **your** permission, an **auto**, pleasure vehicle or boat **you** own or rent or that has been loaned to **you**, provided it is not furnished for their regular use."[1] (Emphasis in original.)

¶ 9 Richard testified at his deposition that he purchased the auto and umbrella policies through WM. Richard had used WM for many years. The first agent he worked with at WM was Sheila Loewe, and later he worked with Licht. He knew that WM offered insurance through several companies. Richard did not care which company issued his policy as long as he got "the best deal." He relied on the recommendations of WM's agents, whom he considered the representatives of the insurance companies. For instance, after Richard purchased the policies from MetLife, he relied on Licht to answer questions about the policies. He never contacted MetLife directly. Richard maintained a personal file of insurance records, and he recorded the dates he received documents from MetLife.

¶ 10 In summer 2007, Richard added Matthew as a household driver to both the auto and the umbrella policies. At that time he also added the Cadillac to both policies as an insured vehicle. The Cadillac was titled in both Richard's and Matthews' names. Shirley, Richard's wife, was already listed as an insured driver under both policies when Matthew was added. Later, Richard added a 2000 Chevrolet Malibu to the policies.

¶ 11 On January 11, 2008, Richard received the following letter printed on MetLife letterhead (January 11 letter):

"January 11, 2008

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[1] Defendants do not argue that Matthew fell under the "permissive user" portion of this definition.

Richard Peterson

1010 Woodland Dr

Rockford IL 61108

Date of Nonrenewal: 03/15/08

Policy Number: A 1182139262 0

Dear Richard Peterson:

All insurance companies set their premium rates based upon certain standards and expectations as to the characteristics of the risks which they will insure. Such characteristics include, but are not limited to, driving record and use of the vehicle.

We have carefully reviewed your file and regret to inform you that we are unable to continue to insure you in the Economy Premier Assurance Company. We are, therefore, required to inform you that your Economy Premier Assurance Company automobile insurance policy is nonrenewed effective 03/15/08, 12:01 A.M. Standard Time. The reason for our decision is based on the following:

Matthew's accident involvements on 3/10/07 and 8/5/07 and violations on 11/23/06 and 2/5/07 for driving without valid license. Also, Matthew's expired license.

We are available to assist you with any questions you may have about this decision. For assistance, call (815) 398-6800.

* * *

As a result of this termination, you may be eligible for a refund which will be sent to you shortly.

Although we are not able to cover your automobile insurance needs at the present time, we urge you to make arrangements for other insurance protection immediately. ***

Thank you for your interest in MetLife Auto & Home.

Sincerely,

Kristine Parr

Underwriting Department

Williams Manny Inc."

Richard testified that he never received a nonrenewal letter for the umbrella policy.

¶ 12 Richard testified that, in response to the letter, he began to seek other insurance for Matthew. On February 11, 2008, Richard and Matthew met with Licht at WM's offices. During their meeting, Licht handwrote the following note (February 11 note):

"Effective 3-15-08 remove the 2000 Chevy Malibu and effective 3-15-08 remove the 1998 Cadillac Seville. Remove Matthew Peterson as a driver. No longer in household."

Richard explained why he signed the February 11 note:

Q. What was the purpose of this document from your viewpoint?

A. To clean up the insurance. When there was an expiration, it would be all over because Matthew had already bought new insurance.

Q. All right. When you say when there was an expiration it would be all over, what do you mean by when there was an expiration?

A. March 15th of '08 when the policy expired.

Q. Okay. So were you directing [WM] and MetLife that after March 15, 2008[,] they could remove the Cadillac and Matthew from the policies?

***

A. I signed this at her direction. I relied on her.

***

Q. *** [W]hat did you hope to achieve by signing this particular document?

A. Just to clean it all up because we didn't want insurance with them anymore.

Q. As of what date?

A. 3/15 of '08.

Q. All right. By signing this document, you wanted to make sure that the insurance stayed in place on the Cadillac and Matthew through March 15, 2008?

A. That's correct and I was already making arrangements to have my wife's vehicle insured by where she had it insured before."

¶ 13 Also on February 11, 2008, Licht gave Richard a form to complete and sign along with Matthew. The form was the exclusion endorsement. Richard stated that he took notes of his February 11 meeting. His notes state: "98 Cad- No Ins.-March 15" and "2000 Chev-No Ins-March 15-Shirley Car."

¶ 14 Richard took the endorsement with him when he left Licht's office. He later completed the endorsement, and both he and Matthew signed it. Though Matthew likely did not read the endorsement, Richard described its substance to him. Richard testified that, effective February 22, 2008, State Farm issued Matthew an insurance policy for the Cadillac. Richard emphasized that no one at WM or MetLife told him that coverage for Matthew under the auto policy might terminate before March 15, 2008, if Matthew obtained other auto coverage. Richard said, "Our expectation was that this would just run out [on March 15, 2008] if we bought a new one."

¶ 15 On February 27, 2008, Richard took the signed exclusion endorsement and proof of the State Farm insurance to Licht. Licht then signed the exclusion endorsement.

¶ 16 Richard was shown a document that he identified as the exclusion endorsement, which began with the following language:

"NAMED OPERATOR EXCLUSION ENDORSEMENT

In consideration of the issuance or renewal of the policy, it is agreed that the insurance afforded hereunder shall not apply to any **insured** with respect to any accidents occurring while the person or persons named below are operating any vehicle.

The named **insured(s)** and the excluded person(s) shown in the Declarations accept this endorsement as witnessed by his or her signature.

The original signed document will be maintained in **our** company records." (Emphasis in original.)

Following this language was a section for "EXCLUDED PERSON(S) INFORMATION," with blank lines for signing and dating. Richard identified Matthew's signature, dated February 27, 2008. The next section was for "NAMED INSURED'S INFORMATION," and Richard identified his signature, dated February 27, 2008. He also identified what appeared to be Licht's signature as "authorized representative," also dated February 27, 2008. Following Licht's signature was this language:

"This endorsement applies to **your** current policy and will apply to any subsequent renewal, replacement policy or midterm change until such time it is removed by agreement between **you** and **us**.

The provisions of this endorsement supersede and exclude from your policy any contrary provision(s)." (Emphasis in original.)

Handwritten at the bottom of the page was the number "A 118 213 9620." (There is no dispute that the auto policy and the umbrella policy have identical numbers but that the auto policy is distinguished by an "A" in front of its numbers.)

¶ 17 Asked if he understood the exclusion endorsement to apply effective February 27, 2008, Richard answered that the endorsement "was in anticipation of the expiration on March 15th of the policy." Licht never informed him that, by signing the exclusion endorsement, Richard would be agreeing to the termination of Matthew's coverage before March 15, 2008. Richard likewise acknowledged, however, that no one from MetLife told him that the exclusion endorsement would *not* go into effect on February 27, 2008. Richard was further questioned as to his expectations in signing the exclusion endorsement:

"Q. So at the time that you gave the [exclusion endorsement] to Janet Licht, you also gave her evidence that Matthew had insurance with State Farm?

A. And the conversation was he has new insurance. We are not going to cancel the insurance now because of this. We are going to let it run out on March 15th because there is no sense in trying to get a refund on such a short time.

Q. Okay. Well, you knew when you signed the [exclusions endorsement] that Matthew had insurance with State Farm, true?

A. That's true.

Q. And he got that insurance between February 11, 2008[,], and February 27th of 2008?

A. Yes

***

Q. And at that point, would it be any concern—since Matthew had insurance with State Farm, was there any concern that the [MetLife] policy remained in force?

A. Well, again, I would rather have an overlapping situation than to go with the exact date for date. I don't know if you understood my way of doing stuff, okay? But if I

can just—I wanted him to have new insurance so he got the new insurance and it was not effective March 15th. It just happened to be insured ahead and there was no desire on anybody's part to get double insurance. There was no desire. I am as honest as I can be. He got new coverage and the other one was going to expire and my conversation with [Licht] was just let it run out.

Q. But it wasn't your intention to have double coverage, was it?

A. No, it wasn't. And my additional—when the accident happened, I can add further, I said this is unusual. This was not planned. Maybe it's a 50/50, 70/30, 60/40 situation. I am not an insurance person. I'm not an attorney. I am just an average citizen retired guy, 79 years old and all I want to do is make sure this young man has insurance.

Q. At the time of the—you know, I realize now you know there was an accident on February 28th of '08.

A. Yes[,] but I didn't know that on the 27th.

Q. Right. And on the 27th was it critical to you that the [MetLife] policy remained in force knowing that [Matthew] had a State Farm policy?

***

A. I feel cornered. I mean, really, I just—I can't explain it but he had a policy that was going to expire, just let it sit and he happened to buy a new one and then it's just there. It's just the way it happened.

* * *

"Q. *** You weren't trying to issue a new policy on February 27th?

A. No, sir.

Q. If anything you were going to renew a policy on March 15, 2008?

A. That's correct.

Q. Okay. So that's what you were getting this endorsement for is to renew a new policy [March] 15, 2008?

***

A. That's correct.

Q. You made some statements about double coverage and you said you didn't intentionally go about to create a problem between insurance companies. Do you remember saying that?

A. Exactly. Right.

***

Q. It is true, though, it was your intent both on February 11th when signing that handwritten note that [Janet] Licht wrote and on February 27th when signing the [exclusion endorsement] was it not your intent on both those dates to keep your MetLife policy in effect on the Cadillac and Matthew on March 15th?

A. Yes."

¶ 18 Richard testified that, though he intended to renew the auto policy effective March 15, 2008, he did not to intend to, and indeed did not, renew the umbrella policy but obtained an umbrella policy from another source effective March 15, 2008.

¶ 19 Richard stated that he received no refund check from Licht on either February 11 or February 27, 2008. Richard identified a check from MetLife for $58 that his records reflect he received on March 7, 2008. The stub states: "Your refund is the result of a premium overpayment on your policy." On the check itself is a policy number "12A 118-21-3962-0" and an account number "88-118213962 Automobile." Richard testified that, when he received the check, he did not know

whether it concerned Matthew or Shirley or both of them, since he was cancelling Shirley's coverage under the auto policy at the same time as Matthew's. Richard was then shown a list of entries retained by WM showing the customer transaction history for Richard's policies (WM transaction entries).[2]

Date	Trn	Type	Due Date	B	P	Description	Amount
4/18/07	+EN	PAUT	4/26/07	D	Y	Add Son Matthew	192.00
4/19/07	+EN	PUMB	4/19/07	D	Y	Youthful driver added	66.00
7/06/07	+EN	PAUT	7/06/07	D	Y	Add 98 Cadillac	1130.00
7/06/07	+EN	PUMB	7/06/07	D	Y	Add 98 Cadillac	24.00
2/20/08	-EN	PHOM	3/15/2008	D	Y	Chng HO ded to $500	-58.00
3/03/08	-EN	PHOM	3/03/2008	D	Y	Eff 2/17/08 D: Chev Malibu	-58.00
3/11/08	-EN	PAUT	3/15/2008	D	Y	D Chev & Matthew	-589.00

¶ 20 Richard was directed to the entries for 2/20/08 and 3/03/08. He testified that, though he did not "know" WM's accounting, it appeared to him that the $58 referenced in these two entries pertained to the removal of the Chevy Malibu that Shirley drove.

¶ 21 Richard was then asked when he received certain of the declaration pages for the auto policy. He testified that he received the 2/29/08 declaration page on March 6, 2008. However, Richard could find no copy of the 2/27/08 declaration page in his personal file.

[2] We have included more entries than Richard was questioned about because Licht, whose testimony we recount below, addressed them.

¶ 22 Richard acknowledged that, on March 5, 2008, an investigator for MetLife interviewed him and Matthew. Richard confirmed that he had reviewed a transcript of the interview and that it was accurate except for some misspellings. MetLife's arguments before this court rely partly on the transcript. However, in the portion of the record to which MetLife directs us, there appear only 6 of the 45 pages that the transcript appears to comprise.

¶ 23 Richard was also asked at his deposition about Matthew's residential history. Richard testified that, on the day of the accident, Matthew was "living" at his girlfriend's grandfather's house. Matthew divided his time between that house and Richard's house. Asked how long, at the time of the accident, Matthew had been living with his girlfriend, Richard said, "I don't know. He was occasionally at my house overnight and occasionally not so I can't—I don't know." When Richard was pressed to "estimate" how often Matthew "stayed at [Richard's] house" in the six months preceding the accident, Richard answered, "Probably half the time." For the 12 months preceding the accident, Richard allowed Matthew to list Richard's home as his "official residence," and Richard knew of no other "official residence" for Matthew. In that time period, Richard attempted "to provide [Matthew] a home base that he could utilize and live out of when he needed to," and Matthew received "all his mail" at Richard's house.

¶ 24 Richard was shown a document that he identified as a photocopy of State Farm insurance cards and their mailing envelope. The envelope was postmarked February 20, 2008, and addressed to Matthew at Richard's address. The cards list Matthew as insured and the 1998 Cadillac as a covered vehicle. The policy term was February 22, 2008, to August 22, 2008. Richard also identified a "binder" of insurance from State Farm addressed to Matthew at Richard's address. The binder names Matthew as "applicant" and lists the 1998 Cadillac. The effective date of the binder

was February 22, 2008. Richard confirmed that, as Licht's February 11 note indicated, Matthew "was no longer in [Richard's] household" as of February 11.

¶ 25 Matthew testified at his deposition that his signature was on the exclusion endorsement. At the time he signed the endorsement, Matthew did not know when it would take effect. He did not recall anyone explaining to him the substance of the endorsement; he simply went along with Richard, whom he trusted to handle the insurance matters. Matthew testified that no one from MetLife gave him notice that he would not have MetLife coverage on February 28, 2008. Matthew confirmed that he was the exclusive driver of the Cadillac since he purchased it.

¶ 26 Matthew stated that, for the last several years, he has used Richard's house as a "home base." Asked, "Do you receive all your mail there?" Matthew answered, "Yes." He estimated that, in the six months before the accident, he "spent *** approximately 70 percent of the time at [Richard's] house." Matthew "would usually visit [his girlfriend] at nights." He stored no items at her house except "what [he] had left there from maybe the night before or the weekend." Matthew denied that, at the time of the accident on February 28, 2008, he was "living with his girlfriend."

¶ 27 The attachments to the motions include the transcript of a March 5, 2008, interview of Licht by an MetLife investigator. Licht stated that, when MetLife gave her notice that they intended not to renew Richard's auto policy, she spoke with Parr. Afterwards, Licht explained to Richard that "Matthew had to get off the [auto] policy before [MetLife] would even consider renewing it." Licht told Richard that, in order to get the auto policy renewed, he needed to sign a document excluding Matthew from coverage under the policy. (Richard told Licht that he also wanted to have Shirley removed from the auto policy.) Regarding her instruction to Richard to complete an exclusion endorsement for Matthew, Licht stated:

"A. *** What was the intention, um, for the dates when all this was gonna transpire and all the changes were gonna be made?

Q. Everything really was intended for the renewal, um, March 15th. To, um, get everything changed and done on that date. I was kinda surprised when [Richard] brought in the State Farm [declaration] page showing, you know, the coverage. But he did say, you know, he had decided to go forward with State Farm. So, it just—it kind of made me think, you know, maybe we should have taken him right off—the day that he got the State Farm policy in force. But we never really had, ah, ah, proof of insurance.

Q. Uh-hum.

A. Until he brought in the um, exclusion form, so—

* * *

"Q. Um, he brought the exclusion back; you witnessed it; you signed it.

A. Uh-hum.

Q. Um, and then he hand-wrote out, he hand-wrote out that, that letter that said—

A. Uh-hum.

Q. You know, what his intentions were?

A. Right. Uh-hum.

Q. Yeah, you'd have that in his file here as well, I would assume?

A. Yeah.

Q. Um, the bottom is dated 2/11/08?

A. Uh-hum.

Q. Um, and then the exclusion letter is dated 2/27?

A. Uh-hum.

Q. So would it—you, you probably talked to him before 2/11, then, I would imagine?

A. Right. We probably talked, talked on the phone, and then he came in to talk about everything. And—

Q. So he, he wrote this out?

A. I wrote that, then he—I just stood by and I had him sign it, and—

Q. Oh, okay.

A. He signed it.

Q. Okay. And then, this is something you faxed to underwriting?

A. Yes.

Q. And then underwriting, that would have been [Parr]? ***

***

A. Yes.

Q. Um, and then [Parr] said we still need an exclusion. Is that—okay. All right. Your conversation with Richard was, the exclusion would be effective when?

A. Oh—the, the renewal date.

Q. Okay.

A. The 15th, yeah.

Q. And [Kris] knew that as well?

A. Yes.

Q. Did you ever speak directly with [Parr], as with—you know, specifics on when this exclusion would take place?

A. Um, no.

Q. Okay. And since this unfortunate accident, aside from today, you mentioned that you, you talked to [Richard].

A. Uh-hum.

Q. Did you talk to him between the accident and, and today?

A. Yes.

Q. Did the conversation—or did any—was there any ever [*sic*] conversation about whether this exclusion would affect this accident?

A. No.

Q. Okay.

A. Well, and—plus, he had a copy of his, you know, the statement that he signed on 2/11, saying that, you know, his intentions were to remove it at the renewal. So in his mind, it was clear that's when he wanted to make the change.

* * *

Q. [T]he exclusion was signed, um, and your, and your dealings with [Richard]—the intent was, to, the exclusion to be effective at the renewal date, is that correct?

A. Yes.

Q. And [you and Richard] both had that understanding?

A. Yes.

Q. Okay. And [Parr] in underwriting had the same understanding?

A. Yes."

¶ 28 Also in her recorded statement, Licht noted that MetLife refused to renew the umbrella policy because, though Richard claimed Matthew had moved out of Richard's house, Matthew was still "liv[ing] in the area."

¶ 29 At her deposition, Licht confirmed that the transcript of the recorded statement was accurate. Licht further testified that WM is authorized to sell insurance for several companies including MetLife. Licht does not work on commission but is paid a salary plus bonuses. As an insurance producer, she does the preparation work for the issuance of policies by the insurance companies with whom WM works. As Richard's insurance agent, Licht was able to answer his questions about his insurance needs.

¶ 30 Licht was then directed to the following language in the January 11, 2008, nonrenewal letter: "We are available to assist you with any questions you may have about this decision. For assistance, call (815) 398-6800." Licht identified this as WM's phone number. MetLife provided it because WM were the agents on the policy and authorized to discuss the policy with Richard. Licht also considered herself, however, an agent for MetLife. Asked if she wanted, "if at all possible *** to try and meet [Richard's] instructions or needs," Licht answered, "Not necessarily. We have an obligation to [MetLife]."

¶ 31 Licht testified extensively about her February 11 handwritten note. She stated that the note did not reflect "what's going to happen" but was "just a statement that the customer has agreed to the changes that we talked about." She did not "necessarily" know that Richard wanted the Cadillac and Matthew to remain on the auto policy until March 15, 2008. (Elsewhere, when asked if Richard's "intentions were to remove [Matthew] effective March 15, 2008," Licht answered, "I would guess so.") This comment prompted the following lengthy exchange:

> "Q. Why did you write the [February 11 note]?
>
> A. Because like I said, we always ask the customer to sign a document just an E-mail or handwritten statement just to let them know that this is the change that we talked about and that's what they want—

Q. Okay.

A. —to, you know, happen.

Q. And what does [the February 11 note] say ***? Does it say that he should lose coverage on the Cadillac and Matthew before March 15th?

A. No.

Q. Okay. Does it say that he should have coverage until March 15th?

A. Yes.

Q. Okay. So when you created this and handwrote this for him to sign, you knew that by signing this, he was directing you to keep coverage on the Cadillac and Matthew until March 15, 2008?

***

A. No. We don't really take a direction—you know, the customer doesn't tell us what to do. We, you know, tell them this is our procedures and ask them to sign it if this is what he wanted.

Q. Okay.

A. So it's not like he told me anything. It was like this is what we had talked about and agreed to and he, you know, signed it.

Q. All right. Did you agree as a representative of [WM] and as an authorized agent for MetLife did you agree on February 11 when he signed this to keep his coverage for Matthew and the Cadillac in effect until March 15, 2008?

A. I can't say yes because it's not up to me. I am not the company.

Q. Did the [February 11 note] state that the Cadillac and Matthew would be insured until March 15, 2008?

A. That's what the document says.

***

Q. And that's what you intended it to say when you wrote it?

A. I am not saying that I was intending anything.

Q. You knew when you wrote this on February 11, 2008[,] that [Richard] wanted that, correct? That he wanted [Matthew] and the Cadillac insured though March 15, 2008?

A. I can't say that because he purchased other insurance.

Q. When he signed this document on February 11, 2008, did he have any other insurance on that Cadillac?

A. I don't know.

* * *

Q. *** [Y]ou know at the time that the [February 11 note] was signed by Richard and at the time that the exclusion form was signed by Richard that the exclusion would take effect on March 15, 2008?

***

A. I can't say that because I am not the company. The company has rules for their exclusions and—

Q. You are talking about MetLife now?

A. MetLife, yes.

Q. But I am talking about you as a licensed producer when you did all this paperwork for Richard as his producer, you in your mind had the idea that all these changes would take effect on March 15th?

A. Yes.

Q. Okay. And in fact when you gave your statement to MetLife, that's what you told them, correct?

A. Yes.

Q. And you also were asked if [Parr] knew that as well and you answered yes?

***

A. Yes.

***

Q. So it was your understanding that [Parr] also knew that these changes would take effect on March 15, 2008?

A. Yes."

(Later, however, Licht testified that she did not know what Parr "thought or expected" as to when the exclusion endorsement would take effect.)

¶ 32 Licht testified that she did not fax the February 11 note to MetLife. She clarified that, when she acknowledged in her recorded statement that "this is something [she] faxed to underwriting," she was referring to the exclusion endorsement, not the February 11 note. According to Licht, Parr directed Licht to have Richard and Matthew execute an exclusion endorsement. It was Parr as well who wanted to know whether Matthew was still living with Richard. Licht identified a series of e-mails that she exchanged with Parr between January 8 and 10, 2008. The e-mails were as follows, beginning with the earliest, with their authors designated.

Licht: "The insured is obtaining insurance at State Farm for his grandson Matthew Peterson who has moved out of the household. Once new insurance is in place can Mr. Peterson continue with his Met life [*sic*] policy?"

Parr: "Will the grandson still be residing in the area and possibly able to operate any of the insured vehicles?"

Licht: "The grandson would be living in the Rockford area. If he has his own vehicle and insurance he wouldn?t [*sic*] need to drive his grandfather?s [*sic*] vehicles. Would you want a signed exclusion for the grandson just to be safe?"

Parr: "We would be able to reinstate the auto with proof the grandson is out of the household and has his own insurance and the named driver exclusion. We would not be able to reinstate the PELP with the exclusion."

¶ 33 Licht was questioned further about the exclusion endorsement. She stated that it was she who handwrote the number for the auto policy at the bottom of the exclusion endorsement. The exclusion endorsement meant that, "in exchange for [MetLife's] agreement to renew [Richard's] insurance on March 15th[,] [Richard] agreed that Matthew would not be on the new policy nor would [the] Cadillac." Licht was asked for her opinion of the meaning of this statement in the exclusion endorsement: "This endorsement applies to **your** current policy and will apply to any subsequent renewal, replacement policy or midterm change until such time it is removed by agreement between **you** and **us**" (Emphasis in original.) She took it to mean "that as of the date that Richard and Matthew signed [the endorsement] that [it] would be part of their current policy." However, at no time before the accident on February 28, 2008, did Licht "commit or promise" to Richard as to "when [the] exclusion endorsement would take effect." It was MetLife's decision as to when the endorsement would take effect. Since Matthew had auto insurance with State Farm when Richard signed the exclusion endorsement on February 27, Licht was aware of no reason why Matthew would need to remain on the MetLife auto policy through March 15.

¶ 34 Regarding the declarations for the auto policy, Licht testified that she had not seen a declaration page "created on or before February 28, 2008[,] that showed [Matthew] was excluded." Licht was then shown the 3/17/08 declaration, which had a "duplicate effective date" of February 27, 2008, and listed Matthew as an excluded driver. Licht interpreted the declaration to mean that Matthew was excluded as of February 27, 2008. Licht acknowledged that she had never "been involved in a situation where an insurance company after an accident created a document to show for the first time that a household driver had been excluded." Licht was unaware of any document sent to Richard before the February 28, 2008, accident advising him that coverage for Matthew and the Cadillac would not continue under the auto policy until March 15, 2008. Licht also recognized, however, that, if the exclusion went into effect on February 27, 2008, there would have been "no opportunity" to provide Richard notice of the exclusion before the February 28 accident.

¶ 35 Licht was questioned about WM's transaction entries for Richard's policies. Though Licht noted that she was not the WM employee who made the entries, she gave her opinions as to what the entries meant. She construed the notation in the 3/03/08 entry, "Eff 2/1/708 D:Chevy Malibu," as apparently meaning that the Chevrolet Malibu would no longer be covered. Licht noted, however, that the designation "PHOM" in the 3/03/08 entry means a homeowner's policy. Based on the fact that the 3/03/08 entry referenced a refund of $58, the same amount as in the immediately prior entry (2/20/08), which also was designated "PHOM" and contained the notation "Chng HO ded to $500," Licht concluded that the 3/03/08 entry was a "duplicate" and that the $58 was not actually for the removal of the Malibu. Rather, Licht believed that the removal of the Malibu was noted in the 3/11/08 entry, which was designated "PAUT" (which means an auto policy), contained the notation "D Chev & Matthew," and noted a refund of $589. Licht construed the 3/11/08 entry's reference to a "due date" of 3/15/08 to mean that the Malibu and the Matthew would be removed

from the auto policy effective 3/15/08. When asked if she could see "any other transaction entry earlier than March 15, 2008[,] suggesting that Matthew should be deleted from coverage or that the Cadillac should be deleted from coverage," Licht said no. Licht explained that, if a vehicle is deleted mid-term, a refund will issue only if the policy was paid in full when the vehicle was deleted. Licht could not tell from the entries whether Richard had paid in full at the beginning of the policy term.

¶ 36 Licht was asked as well about the "customer activities" listing maintained by WM. A February 28, 2008, entry under Richard's policy indicates "CHGR," shorthand for "change," effective March 15, 2008. Although Light made this entry, she did not recall what kind of change was meant here.

¶ 37 Licht noted that Richard had wanted to renew the auto policy but not the umbrella policy, as he obtained umbrella coverage through another insurer.

¶ 38 Parr testified that she is an underwriter for MetLife. Parr affirmed that, based on Matthew's driving record, MetLife decided in January 2008 not to renew either Richard's auto policy or his umbrella policy. MetLife sent separate notes of nonrenewal for the two policies. Parr agreed that the exclusion endorsement was "in consideration of renewing the [auto] policy for Richard." Parr recognized that the form for the exclusion endorsement has no line for "effective date" and that MetLife could have easily included one if it wanted. Parr acknowledged that the only policy number that appears on the endorsement was for the auto policy and that the exclusion did not apply to the umbrella policy. The signed endorsement was faxed to MetLife on February 27, 2008, and Parr directed that the endorsement be made effective that day. The "actual processing" of the exclusion did not occur until February 29, which means that "the actual paperwork to document the exclusion hadn't been completed until one day after the accident."

¶ 39 Parr recognized a fax cover sheet and several attached documents that were faxed from WM to MetLife on February 29, the day after the accident. The fax was from "Judy Shuey" at WM to "Michelle V." at MetLife. Included in the fax was Licht's handwritten note of February 11. Also included was a typed note that read:

¶ 40 "Richard was at the agency, Wednesday, 2/27/08 and brought the Named Operator Exclusion Endorsement that Matthew signed 2/27/08 and had a discussion with Janet Licht. In addition he gave us a copy of the policy that Matthew had taken with State Farm Insurance which is attached. Also attached is a form Richard Peterson signed to delete the 2000 Chevy Malibu 3/15/08 as well as the 1998 Cadillac and to remove Matthew Peterson as driver and he is no longer in household. Richard Peterson advised Janet that the Cadillac is in his name and Matthew's name."

Parr believed that this note was generated by WM, not MetLife. The note appeared to reference Parr's handwritten note of February 11. Parr testified that she had not seen Licht's February 11 note prior to the processing of the exclusion endorsement. She did not know whether Michelle Veetmer, an employee in the claims department at MetLife, had seen Licht's note prior to the processing of the exclusion.

¶ 41 When asked if there was any written notification from MetLife to Richard that coverage for Matthew would terminate earlier than March 15, 2008, Parr answered that "[t]here were policy coverage statements that were processed that showed the endorsement of the exclusion of [Matthew]." Parr explained that these coverage statements, which expressly noted the exclusion of Matthew from the auto policy, were processed prior to March 15. Parr knew that the statements were sent to Richard, but she did not believe they were sent prior to February 28. To know the exact

date they were first sent, Parr would have to consult the statements, but she did not have them at the deposition.

¶ 42 Parr was shown a document that she recognized as a series of entries from MetLife's "Multiple Billing System" (MetLife billing entries). The named insured is Richard. The billing history for Richard shows a credit of $58.00 with an effective date of February 27, 2008. Parr asserted that this was "*the* $58 refund" (emphasis added), by which, considering the context of her testimony, she meant a credit for the exclusion of Matthew from the auto policy. Parr explained that the refund was *pro rata* and would have been calculated automatically upon entry of the exclusion. Parr was then shown a coverage summary for the auto policy. The summary was for the term "03/15/2007-3/15/2008" and indicated that the "latest transaction" was "8/01/2007" and that the "latest process" was "07/16/2007." Listed as "included drivers" were Richard, Shirley, and Matthew. There were four covered vehicles including the Cadillac. The total annual premium for the policy was $3,148, of which $1,834 was allocated to the Cadillac. Parr recognized that, since Matthew did not purchase the Cadillac until July 2007, the $1,834 was the premium for the term from July 2007 to March 2008. Asked if the $58 proration for the exclusion of Matthew for February 27 to March 15, 2008, was too small in view of the $1,834 premium, Parr explained that the $58 was for the exclusion of Matthew, not the Cadillac, which remained on the auto policy until March 15. When asked why, since Matthew was listed as the sole driver of the Cadillac, the exclusion of Matthew was not considered the removal of the Cadillac, Parr replied that she could not speak to the accuracy of the $58 refund because her position at MetLife did not involve calculating premium refunds. Parr noted that the memo for the $58 check from MetLife to Richard merely states that it is for "overpayment." She agreed that "an exclusion is different than an overpayment of a premium."

¶ 43 Parr was then shown WM's transaction entries. When asked if she believed the 2/20/08 and 3/03/08 entries suggested that the $58 refund was for the removal of the Malibu, Parr replied that she could not speak to the transaction entries because they were not generated by MetLife. Acknowledging that the Malibu was deleted from the auto policy effective March 15, 2008, Parr said that she had no "idea why [WM] would have a document with $58 being returned with a date of February 17, 2008, referencing the Malibu." Parr further agreed that Matthew had not purchased his State Farm auto insurance by February 17, 2008. She also acknowledged that she was aware of only one check for $58 from MetLife to Richard during the time period in question.

¶ 44 Parr's attention was then directed to the WM transaction entry for 3/11/08, which reads "-EN/PAUT/3/15/2008/D/Y/D Chev & Matthew/ -$589." Parr was then shown a document that she identified as MetLife's billing notes, written in shorthand. According to Parr, the first of two entries for 12/16/08 read: "Pulled cold for the auto 3/115/08 [*sic*] to 9/15/08 term. Do not show a refund in the amount of $589. Only show an endorsement credit for $589. This did not result in a refund check due to policy cancelled spoiled and insurance payment for $782 was transferred to auto-one." The second entry for 12/16/08 read: "Talked to underwriting Kris Parr, requested rush copies of reference check for $589, stub, when we sent to insured and when insured cashed, this is regarding to a claim [*sic*]." Parr explained that these entries reflect that she was "requesting a copy of the $589 refund to help [her] understand what it was for. There was not a refund. It was a credit to the policy." The $589 check "was never a refund to premium." Parr testified that she "never found a refund check that specifically said this is a refund for Matthew Peterson and the 1998 Cadillac." Asked how she knew the $58 was a refund for the exclusion of Matthew, Parr answered, "I could tell from entries in the policy system." Parr did not mean the MetLife billing entries but the

"document showing the processing of the excluded driver." (Parr did not further identify this document, and the reference is not apparent from the record.)

¶ 45 Parr identified a printout of a policy summary for Richard's auto policy. Parr had handwritten the following on the document:

> " *RUSH* A11821396210. *RUSH* APU - effective 3-15-08 add Matthew as excluded Driver & Attached Losses. Thanks Kris P. x5208."

Parr explained that "APU" means "agency processing unit." Parr recognized that she did not direct the APU to have Matthew added as an excluded driver effective February 27, 2008, the date of the exclusion endorsement. Parr was examined further on the relation between the exclusion endorsement (which she claimed went into effect on February 27, 2008), and her later note to have Matthew designated as an excluded driver as of March 15, 2008:

> "Q. Explain what you meant by that note and why you made that note.
>
> A. I discovered that Matthew Peterson had been deleted from the automobile policy. It was processed back in March. I discovered it in July and sent a request to the processing unit.
>
> Q. He was deleted as of when?
>
> A. As of March 15.
>
> Q. Okay. And who made that deletion?
>
> A. I'm assuming the agency.
>
> Q. Was that something that was done by anybody in MetLife underwriting?
>
> A. No.
>
> Q. And when did the exclusion endorsement go into effect excluding Matthew from coverage?

A. February 27, 2008.

Q. And how long did that exclusion endorsement stay in effect—And that would be reflected in the system of MetLife?

A. I'm not sure I understand your question.

Q. Okay. You processed the exclusion endorsement and you requested the effective date of February 27, 2008, true?

A. I requested the [*sic*] effective 2-27-2008, and it was sent to processing to be processed.

Q. All right. And that, in fact, was processed in the MetLife system?

A. Yes.

Q. And what was the effect of deleting Matthew as of March 15, 2008?

A. That with Matthew no longer listed as an excluded driver on the auto policy, that would mean that he would be covered in a claim.

Q. If he was a permissive user of a car, for example?

A. Yes.

Q. And between February 27, 2008, and March 15, 2008, according to MetLife records was Matthew an excluded driver?

A. Yes.

Q. And for whatever reason, as of March 15, '08, he was deleted by you believe somebody from the agency?

A. Yes.

Q. And when you discovered that, what did you do?

A. I sent this request *** to our processing unit to have Matthew added back on to the policy as an excluded driver to put the policy back to the way that the agreement was intended, to be able to continue on with the policy.

Q. And that was—You had him excluded as of March 15, '08, and that was the subject of your note ***?

A. Yes.

Q. From February 27, '08[,] to March 15, '08, he was excluded as a driver under the MetLife system?

A. Yes, that was never deleted."

¶ 46 Parr was shown a document that she identified as "policy notes" for Richard's auto policy. The notes, written in shorthand, were entered by various personnel within MetLife. Parr identified the following note dated July 31, 2008, as written by her: "Effective 3-15-08 added Matthew as excluded and added incident from 2-28-08."

¶ 47 Parr was then asked questions about the umbrella policy. She was directed to the policy's definition of "insured," which is "you or a relative residing in your household" (emphasis omitted). She agreed that the policy does not specify when, in relation to the purchase of the policy or the date of an accident, the relative must be residing in the insured's household. Parr also noted that she did not see any provision in the umbrella policy that would exclude Matthew from coverage for having purchased auto insurance from State Farm.

¶ 48 The trial court denied summary judgment for MetLife and granted it for defendants. The trial court issued a lengthy decision, in which it addressed three issues: (1) whether the exclusion endorsement went into effect on February 27, 2008, and on that date terminated Matthew's coverage under the auto policy; (2) whether the issuance of the State Farm policy on February 22, 2008,

terminated coverage under the auto policy; and (3) whether Matthew was not insured for the February 28, 2008, accident under the umbrella policy because he was not residing with Richard on that date.

¶ 49 Addressing the first issue, the trial court held that the exclusion endorsement did not take effect on February 27, 2008:

> "This court concludes that it was the intention of Richard Peterson and Janet Licht that *as of March 15, 2008,* Matthew Peterson would no longer be residing in Richard's household and that Matthew and the Cadillac would be removed from the [MetLife] policy as of that date. It was Kristine Parr's intention that Matthew would be excluded from the policy as of that date as well. Based on those intentions, the [exclusion endorsement] does not preclude coverage under the primary policy for Richard Peterson and Matthew Peterson. [MetLife] is bound by the acts of its agents, Kristine Parr and Janet Licht. The handwritten note from Kristine Parr confirms the intention that Matthew would be excluded from the [MetLife] policy as of March 15, 2008. That was Janet Licht's intention as well. Although [MetLife] argues that Janet Licht was Richard Peterson's agent and not [MetLife's], this court concludes that Janet Licht was [MetLife's] agent. She executed documents, specifically the [exclusion endorsement], as [MetLife's] authorized representative. Pursuant to *State Security Insurance Co. v. Burgos*, [145 Ill. 2d 423 (1991)], MetLife is bound by the acts of its agent, Janet Licht.
>
> The fact that the [exclusion endorsement] was executed one day prior to the accident is completely coincidental. The date put on [the] [e]ndorsement was simply the date that Richard and Matthew happened to go to Janet Licht's office and execute the document. The court believes that Richard signed the document and simply dated his signature as of that

date, [Matthew] then signed his name and put the same date down, and Janet Licht then signed her name and put the same date down. This court does not believe that the parties intended to change their original understanding that Matthew would be covered until March 15, 2008[,] by putting the date on which they signed the document on the [e]ndorsement." (Emphasis in original.)

¶ 50 The trial court then held that Matthew's purchase of State Farm insurance did not terminate his coverage under the auto policy:

"The other similar insurance termination provision only applies to the Named Insured and his spouse. Matthew Peterson is neither. Obviously, this argument by [MetLife] fails.

The court also believes that [MetLife's] other arguments based on the State Farm policy do not apply in this case. Richard Peterson had received notification that he would be without liability insurance as of March 15, 2008. He did not want to be without insurance and so he therefore took steps to ensure that his coverage would continue. He likewise wanted to ensure that [Matthew] would continue to have liability [*sic*] automobile liability insurance, so steps were taken to accomplish that. Under these facts, this court does not believe it is appropriate to penalize Richard and Matthew for their efforts to comply with Illinois' mandatory insurance laws by obtaining the State Farm policy."

¶ 51 Finally, the court held that, on February 28, 2008, Matthew met the residency definition in the umbrella policy:

"Matthew was a relative of Richard Peterson. Matthew divided his time between [Richard's] residence and his girlfriend's grandfather's residence. He received his mail at [Richard's] residence, the Cadillac had his residence address as [Richard's] and within days of the accident he entered into a contract where he listed his grandfather's address as his

> address. Clearly Matthew was residing in his grandfather's household on the date of the accident and is not excluded under the terms of the excess policy. A person may have more than one residence. *Cincinnati Insurance Company v. Argubright*, [151 Ill. App. 3d 324 (1986)]."

MetLife filed this timely appeal, and argues that the trial court erred on all three issues.

¶ 52 II. ANALYSIS

¶ 53 A. The Exclusion Endorsement

¶ 54 We first set forth the standard of review. Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010); *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). "The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine issue of material fact exists." *Adams*, 211 Ill. 2d at 43.

> "In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. [Citations.] In appeals from summary judgment rulings, review is *de novo*. [Citation.]" *Id.*

¶ *55* The first issue we address is the exclusion endorsement. MetLife argues that the endorsement unambiguously excludes Matthew from coverage and that the exclusion became effective February 27, 2008. In making this argument, MetLife does not distinguish between the insurance policies. Defendants' first response is that MetLife is estopped from arguing that the exclusion applies to the umbrella policy. Defendants argue that Parr, as MetLife's agent, bound MetLife with her deposition testimony that the exclusion endorsement did not apply to the umbrella policy. The same admission, defendants maintain, was made by MetLife during discovery.

¶ 56 We need not determine whether MetLife made these admissions, for there is an independent and sufficient reason why MetLife may not argue on appeal that the exclusion endorsement applies to the umbrella policy: MetLife maintained the contrary position in the court below. In its final amended motion for summary judgment, MetLife said, "The Exclusion Endorsement applied only to the auto policy and not [to] the PELP." MetLife may not take a contrary position now. See *Sakellariadis v. Campbell*, 391 Ill. App. 3d 795, 800 (2009) (an appellant is barred "from taking one position at trial and a different position on appeal").[3] We only consider, then, the effect of the exclusion endorsement on the auto policy. We note that defendants do not dispute that the endorsement became part of the auto policy when the document was executed on February 27, 2008. What they dispute is whether, by the terms of the endorsement, the exclusion of Matthew became effective on February 27, 2008.

¶ 57 In interpreting the auto policy, we are guided by well-established principles:

[3] At oral argument, MetLife clarified that it is not claiming that the exclusion endorsement applies to the umbrella policy.

> "Insurance policies are subject to the same rules of construction applicable to other types of contracts. [Citation.] A court's primary objective is to ascertain and give effect to the intention of the parties as expressed in the agreement. [Citation.] In performing that task, the court must construe the policy as a whole, taking into account the type of insurance purchased, the nature of the risks involved, and the overall purpose of the contract. [Citations.]
>
> The words of a policy should be accorded their plain and ordinary meaning. [Citation.] Where the provisions of a policy are clear and unambiguous, they will be applied as written [citation] unless doing so would violate public policy [citation.] That a term is not defined by the policy does not render it ambiguous, nor is a policy term considered ambiguous merely because the parties can suggest creative possibilities for its meaning. Rather, ambiguity exists only if the term is susceptible to more than one reasonable interpretation. [Citation.] *** Where ambiguity does exist, the policy will be construed strictly against the insurer, who drafted the policy [citation], and liberally in favor of coverage for the insured [citation]." *Nicor, Inc. v. Associated Electric and Gas Insurance Services Ltd.*, 223 Ill. 2d 407, 417-18 (2006).

¶ 58 MetLife focuses its argument on the language of the auto policy and maintains that, because the relevant language is clear and unambiguous, it would be improper to look beyond the four corners of the policy. Defendants, however, do not begin by construing the policy in isolation but consider from the outset the factual context of the endorsement, including Licht's February 11 handwritten note, WM's and MetLife's internal records as to the processing of the endorsement, and the deposition testimony of Richard, Matthew, Licht and Parr as to how they viewed the transaction. Defendants' approach has validation from our supreme court:

> "Because insurance contracts are issued under given circumstances, they are not to be interpreted in a factual vacuum. A policy term that appears unambiguous at first blush might not be such when viewed in the context of the particular factual setting in which the policy was issued. [Citation.]" *Associated Electric and Gas*, 223 Ill. 2d at 418.

As the supreme court has elsewhere stated:

> "[I]n determining whether an ambiguity exists in an insurance contract, this court's opinions have held that the court should consider the subject matter of the contract, the facts surrounding its execution, the situation of the parties and the predominate purpose of the contract, which is to indemnify the insured." *Dungey v. Haines & Britton, Ltd.*, 155 Ill. 2d 329, 336 (1993).

¶ 59 *Dungey* is an example of the testing of the clarity of an insurance policy against the factual context of the policy. *Dungey* involved three insurance policies issued by the same insurer with the same named insured. When the first policy was issued, the husband of the named insured signed a named drivers exclusion endorsement. The notation " 'CE-180' " appeared at the bottom of the endorsement. *Id.* at 331. When the policy was renewed, the husband signed a second endorsement that had the notation " 'CE-303' " at the bottom. *Id.* at 331. For the numerous subsequent renewals of the policy, the insurer did not require the husband to sign another endorsement. However, the declaration statement for each subsequent policy had a preprinted line entitled " 'Endorsement(s),' " following which there was a series of codes, including " 'CE-303.' " *Id.* at 331-32. After the first policy was issued, the wife took out two other policies from the insurer. The second policy listed the couple's son as the primary driver, and the husband was not required to sign an exclusion. The third policy listed the husband as driver. The second and third policies had shorter policy periods and higher premiums than the first policy. Some of the same vehicles insured under the first policy

were, at various times, insured under the second policy. On the same day the third policy was issued, the wife added a Chevrolet van to the first policy. According to the wife, she told her insurance agent that the husband would be the primary driver of the van. A year after the third policy was issued, the husband was involved in a traffic accident while driving the Chevrolet van. The insurer, citing the exclusion endorsement, denied coverage. The trial court granted summary judgment for the insurer, and the supreme court affirmed. *Id.* at 338.

¶ 60 The court began by examining the language of the first policy, and found no ambiguity. The court then considered whether the insurer's actions "were a source of ambiguity." *Dungey*, 155 Ill. 2d at 336. The court concluded that, because the declaration pages for the later renewals of the first policy listed, under " 'Exclusions,' " the code for the second signed exclusion, the wife could not have reasonably believed that the insurer's failure to require a signed exclusion for each renewal meant that the insurer no longer considered the husband an excluded driver under the first policy. *Id.* at 337. As for the insurer's conduct with respect to the second and third policies, the court noted that, though all three policies named, at various times, some of the same vehicles, the Chevrolet van was named under the first policy alone. The court also noted that the second and third policies were more expensive and had shorter terms than the first policy. The court concluded: "The decision to provide insurance to [the husband] under these terms, and for vehicles insured under [the second and third policies], bears no relationship to [the insured's] willingness to provide him with insurance under the first, lower premium, policy." *Id.* at 338.

¶ 61 Regarding the insured's claim that "the factual setting in which the policy was issued created a genuine issue of material fact which could not be resolved by summary judgment," the court said:

> "We believe that as a matter of law the trial judge was correct in holding that the factual circumstances did not render this policy ambiguous. The clear and unambiguous language

rebuts any attempt by the plaintiffs to show ambiguity in the policy through these factual circumstances." *Id.*

¶ 62 Here, the operative language of the endorsement exclusion states:

"In consideration of the issuance or renewal of the policy, it is agreed that the insurance afforded hereunder shall not apply to any **insured** with respect to any accidents occurring while the person or persons named below are operating any vehicle.

The named **insured(s)** and the excluded person(s) shown in the Declarations accept this endorsement as witnessed by his or her signature.

* * *

This endorsement applies to **your** current policy and will apply to any subsequent renewal, replacement policy or midterm change until such time it is removed by agreement between **you** and **us**.

The provisions of this endorsement supersede and exclude from the policy and contrary provision(s)." (Emphasis in original.)

¶ 63 Considering the language at first in isolation, we cannot say it is clear and unambiguous when the exclusion of Matthew would take effect. The endorsement states no date on which the exclusion is to take effect. MetLife argues that the language, "[t]his endorsement applies to your current policy and will apply to any subsequent renewal," clearly demonstrates that the exclusion was to take effect immediately. On this reading, "subsequent renewal" means the impending March 15, 2008, renewal, for which the exclusion was consideration. We are not convinced. First, the clause in question references simply the "endorsement." The endorsement could immediately "apply," as an amendment to the policy, on the date it was signed, without the exclusion it contemplates taking effect simultaneously. Moreover, even if the exclusion itself "appl[ied] to [the]

current policy or subsequent renewal," the term "subsequent renewal" may not mean the March 15, 2008, renewal when the document is considered as a whole. The first line of the endorsement states that it is "[i]in consideration of the issuance or renewal of the policy." Here, "renewal" is not qualified. The endorsement may be read to distinguish between the renewal that would occur on March 15, 2008, for consideration rendered (namely the exclusion), and any "subsequent renewal." Just when the consideration for the March 15, 2008, renewal would be fully executed, *i.e.*, the exclusion would take effect, is unclear. The exclusion could occur either immediately or on March 15, 2008, and still be considered "consideration." On the other hand, the endorsement does say that its "provisions *** supersede and exclude from the policy any contrary provision(s)." The use of the present tense suggests that the endorsement would become operative immediately, rendering Matthew an excluded driver as of February 27, 2008.

¶ 64 Thus, the endorsement may be read as contemplating either (1) an immediate exclusion that will apply also at the March 15, 2008, renewal and to later renewals unless otherwise agreed by the parties; or (2) an exclusion that will take effect only at the March 15, 2008, renewal and that will persist through other renewals unless otherwise agreed by the parties. Being susceptible to reasonable, alternative readings, the language of the endorsement is ambiguous.

¶ 65 We turn to the circumstances surrounding the execution of the endorsement. Licht, of course, played a considerable role in the process since Richard never spoke directly to MetLife about the renewal of the auto policy and the endorsement exclusion. Defendants point out that, though insurance brokers like Licht are normally considered the agents of the insured rather than of the insurer, an insured may create the appearance that the broker is authorized to act on its behalf. See *State Security Insurance Co. v. Burgos*, 145 Ill. 2d 423, 431 (1991). Defendants argue that MetLife created an appearance of authority by, first, referring Richard to WM in case he had questions about

the January 11, 2008, nonrenewal notice, and, second, directing Licht to have Richard sign the exclusion endorsement and allowing her to sign the exclusion endorsement as MetLife's authorized representative. Though MetLife denies that Licht was its agent, it does not argue the point but simply cites boilerplate propositions, none of which foreclose that Licht was MetLife's apparent agent. In fact, one of the propositions undercuts MetLife's own position:

> "a broker may be considered as the agent of the insured under certain circumstances. For example, if the insured has called the broker into action, retained control over his or her actions, and if the broker acts in the insured's interest, the broker may be considered as the agent of the insured ***." *Burnhope v. National Mortgage. Equity Corp.*, 208 Ill. App. 3d 426, 434 (1990).

MetLife "called [Licht] into action" by referring Richard to WM for questions about the nonrenewal letter and by not only directing Licht to have Richard sign the exclusion endorsement but also allowing her to sign as MetLife's authorized representative.

¶ 66 As an agent of MetLife, Licht had Richard sign the handwritten note of February 11, 2008. The note read: "Effective 3-15-08 remove the 2000 Chevy Malibu and effective 3-15-08 remove the 1998 Cadillac Seville. Remove Matthew Peterson as a driver. No longer in household." It is not clear from Licht's and Parr's testimony when, if at all, the note was passed to MetLife. This does not diminish the relevance of the note. Licht signed the exclusion endorsement as MetLife's authorized representative, and her note is relevant as showing how she and Richard understood the exclusion would operate. If the note indeed never was faxed to MetLife, Richard appears not to have known. He justifiably saw the note as part of the agreement with Metlife that led to the renewal of the auto policy.

¶ 67 Looking first at the text of the note, we see an ambiguity as to when Matthew was to be removed from the auto policy. On the one hand, the policy changes might be read as a group, all with the effective date of March 15, 2008. The underlying thought would be that the drafter considered it unnecessary to reiterate a second time the date of March 15, 2008. On the other hand, the fact that the date was expressed twice but not a third time could suggest that the drafter deliberately chose not to assign that date to the exclusion (but perhaps intended for the exclusion to take place immediately). Licht's recorded statement and deposition testimony were equivocal as to the meaning and effect of the February 11 note. In her recorded statement, Licht said that she, Richard, and Parr all understood that the exclusion would take effect on the renewal date. Licht conveyed the same at one point in her deposition testimony, but at other points she claimed that she could not say definitely that Richard wanted Matthew to remain covered under the auto policy until March 15, 2008. Licht agreed that the note conveyed "that the Cadillac and Matthew would be insured until March 15, 2008," but when asked if that was her intent in writing the note, she said, "I am not saying that I was intending anything." She also stated that, regardless of what the note conveyed, MetLife would have the final decision over when the exclusion would take effect.

¶ 68 Richard testified at his deposition that his aim in signing the document was "to make sure that the insurance stayed in place on the Cadillac *and Matthew* through March 15, 2008" (emphasis added). He did not intend, by arranging for other insurance for Matthew, to have him excluded from the MetLife auto policy before March 15, 2008.

¶ 69 As for the exclusion endorsement, Licht consistently claimed that the endorsement meant "that as of the date that Richard and Matthew signed [it] that [it] would be part of their current policy." When Richard was asked if he understood the exclusion endorsement to apply immediately, he gave the vague answer that the endorsement "was in anticipation of the expiration on March 15th

of the policy." He reiterated, however, that his intent in signing both Licht's note and the endorsement was "to keep [his] MetLife policy in effect on the Cadillac and Matthew on March 15th." Parr was not asked at her deposition to interpret the terms of the endorsement exclusion. Licht gave varying testimony as to what she believed Parr understood as to the effective date of the exclusion. Notably, Parr did state that she requested MetLife processors to make the exclusion effective February 27, 2008. Defendants claim that the exclusion was not entered into MetLife's system until March 15, 2008, and point to the considerable internal documentation in the record from MetLife and WM. The documentation is difficult to interpret; hence, it is no surprise that Licht and Parr came to different conclusions regarding the purpose for the $58 refund from MetLife. MetLife records show a $58 refund with an effective date of February 27, 2008, while WM shows a $58 refund issued earlier in February, before exclusion endorsement was even signed. There is an apparent conflict between Parr's claim that, between February 27, 2008, and March 15, 2008, MetLife's system showed that Matthew was an excluded driver, and her admission that the exclusion was not processed until February 29. Given the possibility of backdating, it is difficult to discern from the records themselves just when MetLife entered the exclusion into its system. Yet this is rather beside the point, for the exclusion endorsement could have been binding and effective when signed even though the exclusion was not entered into MetLife's system until later. To the extent that the timing of the exclusion's processing bears upon how MetLife viewed the terms of the exclusion endorsement, we must conclude that the internal documentation does not resolve the ambiguity in the endorsement.

¶ 70 Thus, the broader context of the exclusion endorsement does not resolve the ambiguity in its terms. We recognize that "[t]he construction of an insurance policy and a determination of the rights and obligations of the parties thereunder are questions of law for the court to decide and are

appropriate subjects for disposition by way of summary judgment." *First Chicago Insurance Co. v. Molda*, 408 Ill. App. 3d 839, 845 (2011). As in any case involving contract interpretation, however, summary judgment is appropriate only where there exists no genuine issue of material fact as to the interpretation of the insurance policy. See *A.D. Desmond Co. v. Jackson National Life Insurance Co.*, 223 Ill. App. 3d 616, 619 (1992). Although ambiguities are to be resolved in favor of the insured (*Associated Gas and Electric*, 223 Ill. 2d at 417), a reviewing court may not resolve ambiguities that turn on disputed issues of material fact (*In re Estate of Alfaro*, 301 Ill. App. 3d 500, 508-09 (1998)). Here, the exclusion endorsement is ambiguous, and the pertinent extrinsic evidence presents a question of material fact. Summary judgment, therefore, was inappropriate.

¶ 71 Defendants claim that, because MetLife has itself moved for summary judgment, it has forfeited any claim that a triable fact question exists. Defendants, however, cite only First District cases (*e.g.*, *American Service Insurance Co v. United Auto Insurance Co.*, 409 Ill. App. 3d 27, 31-2 (2011)), and our district has held differently. See *Pielet v. Pielet*, 407 Ill. App. 3d 474, 500 n. 10 (2010), citing *Danada Square, LLC v. KFC National Management Co.*, 392 Ill. App. 3d 598, 607 (2009) ("merely because the parties have filed cross-motions for summary judgment, and many of the facts are undisputed, does not compel the conclusion that there are no triable issues of fact in the case").

¶ 72 B. Matthew's Purchase of Other Insurance

¶ 73 MetLife next claims that it was error for the trial court to hold that Matthew's purchase of other insurance for the Cadillac did not terminate coverage for that vehicle under the auto policy. (As below, MetLife does not argue that Matthew's purchase of other insurance for the Cadillac terminated coverage under the umbrella policy (indeed, the policy contemplates that the insured will have underlying insurance.)) This is the operative provision in the auto policy:

> "If **you** obtain other insurance on **your covered automobile**, any similar insurance provided by this policy will terminate as to that **automobile** on the effective date of the other insurance." (Emphasis in original.)

¶ 74 The policy defines "you" or "your" as "the person(s) named in the Declarations of this policy as named insured and the spouse of such person or persons if a resident of the same household."

¶ 75 MetLife stresses that Richard, who was the named insured under the auto policy, was the co-owner of the Cadillac that was insured by State Farm effective February 22, 2008. The termination provision, however, does not depend on who owns the vehicle but on who "obtains" the insurance. The documentation for the State Farm policy lists no insured other than Matthew. Ascribing to "obtain" its plain and ordinary meaning, we hold that it was Matthew, not Richard (the named insured under the auto policy) or Shirley (Richard's spouse), who obtained other insurance for the Cadillac. Accordingly, the termination provision was not triggered. The trial court's entry of summary judgment for defendants on this issue was proper.

¶ 76 C. Matthew's Residency

¶ 77 MetLife's final argument is that the trial court erred by holding that Matthew "was residing in [Richard's] household on the date of the accident." As below, MetLife restricts this argument to the umbrella policy. MetLife maintains that the trial court's holding "overlooks the recorded statement which Richard and [Matthew] gave only a few days after the accident." MetLife points to a page of the transcript of the interview, in which Matthew stated that he has not lived at Richard's home "in a while" and that the home was "basically a mailing address." However, the record appears to contain only 5 of the 45 pages transcribed. Lacking the full context of the statements on which MetLife relies, we refuse to draw any conclusions from them. See *In re*

Marriage of David, 367 Ill. App. 3d 908, 918 (2006) (without the trial transcript, it was impossible to construe ambiguous trial court order).

¶ 78 That policy limits "insured" to "you or a relative residing in your household" (emphasis omitted). Defendants claim that the trial court's conclusion was sound because the policy is ambiguous for not defining "residing" and "household," and the ambiguity must be resolved in favor of coverage. Defendants, however, suggest no way in which "household" could be ambiguous. As for "residing," defendants claim that there is ambiguity because

> "[t]he policy does not specify when an individual must be a resident of the insured's household in relation to an accident to be covered under the policy. The policy does not provide any guidelines for what percentage of time within the policy period an individual must be in an insured's 'household' for coverage to apply. In short, the policy provides no guidance as to the duration, timing, or extent of an individual's presence in a home required to be considered a resident of an insured's household under the policy."

¶ 79 We disagree with defendants that "residing" is ambiguous. Where the issue is the meaning of a policy term, "[g]overning legal authority must, of course, be taken into account ***, for a policy term may be considered unambiguous where it has acquired an established legal meaning." *Associated Electric and Gas*, 223 Ill. 2d at 417. "There is no fixed or exact meaning to the phrase 'resident of the household'; however, the phrase is not ambiguous." *Coriasco v. Hutchcraft*, 245 Ill. App. 3d 969, 971 (1993). "[S]imply because a court must examine the facts in each case to determine whether a plaintiff is a resident of the household does not mean that the term is ambiguous." *Id.* "The reasonable interpretation of ['resident of the household'] merely requires an analysis of intent, physical presence, and permanency of abode in each case." *Id.* More precisely,

> "Two elements are necessary to create a residence, (1) bodily presence in that place and (2) the intention of remaining in that place; neither alone is sufficient to create a legal 'residence.' When a legal residence is established, a temporary departure therefrom with intention to retain that residence and to return to it is not an abandonment or forfeiture of that 'residence.' [Citation.] In such cases the courts usually say the controlling element in determining if 'residence' has been lost or retained is the person's intention. [Citation.] The intention, however, must be a *bona fide* intention to return at some time and make that place a permanent home." *Hughes v. Illinois Public Aid Comm'n*, 2 Ill. 2d 374, 380 (1954).

"A person can have only one domicile, or permanent abode, at a time; however, she may have several residences." *Coriasco*, 245 Ill. App. 3d at 971. "[T]he controlling factor is the intent, as evinced primarily by the acts[] of the person whose residence is questioned." *Farmers Automobile. Insurance Ass'n v. Williams*, 321 Ill. App. 3d 310, 314 (2001). However, though there is no ambiguity in the term "residing," there is often a triable fact question whether the definition was met under the circumstances. "Because a determination of residency depends on intent, it typically should not be made on a motion for summary judgment." *Id.* "Indeed, 'summary judgment is particularly inappropriate where the inferences which the parties seek to have drawn deal with questions of motive, intent and subjective feelings and reactions.' " *Id.* (quoting *Raprager v. Allstate Insurance Co.*, 183 Ill. App. 3d 847, 859 (1989).

¶ 80 Defendants cite several cases, *Casolari v. Pipkins*, 253 Ill. App. 3d 265, 266 (5th Dist. 1993), *State Farm Mutual Automobile Insurance Co v. Taussig*, 227 Ill. App. 3d 913,914 (1st Dist. 1992), *Murphy v. State Farm Mutual Automobile Insurance Co.*, 234 Ill. App. 3d 222, 223 (5th Dist. 1992), and *Coley v. State Farm Mutual Insurance Co.*, 178 Ill. App. 3d 1077, 1079 (3rd Dist. 1989), but we are leery of relying on them because the critical policy language in each was "lives with"—a

"very different" concept than "resides in the household," as this district has observed (see *Williams*, 321 Ill. App. 3d at 316). We noted in *Williams* that a person may currently "live with" another yet still have a residence elsewhere. *Williams*, 321 Ill. App. 3d at 316.

¶ 81 In *Williams*, Matthew Williams, a 21-year-old man, was involved in an automobile accident in Florida. Jan Courtney, his mother, who resided in Illinois, was the named insured of a policy that covered " 'residents of her household.' " *Williams*, 321 Ill. App. 3d at 311. At the time of the accident in July 1998, Williams was living with his father in Florida while attending community college. Williams had lived in Florida previously; he graduated from high school there in 1996 and was in a romantic relationship with a Jodie LaCau that started and ended while he was in Florida. In 1996, Williams moved to Illinois. He lived with Courtney while attending community college. He also resumed his relationship with LaCau, who was still in Florda. Two years later, in May 1998, Williams moved back to Florida. Wiliams and LaCau became engaged in October 1998. *Id.* at 311-12.

¶ 82 Williams and Courtney sought coverage for the accident under Courtney's automobile policy. The insurer denied coverage and sued Williams and Courtney for a declaratory judgment that the accident was not covered under Courtney's policy. The parties filed cross-motions for summary judgment on the issue of residency and coverage. The trial court entered summary judgment for the defendants, holding that Williams was still a resident of Courtney's home at the time of the accident. *Williams*, 321 Ill. App. 3d at 314.

¶ 83 This district held that neither side was entitled to summary judgment. We noted the divergent evidence on whether Williams was a resident of Courtney's household at the time of the accident:

"We first note that Williams' declarations suggest that he had not abandoned Courtney's residence. Williams testified that, despite his move to his father's residence, he 'considered [him]self still living" in De Kalb, that he was 'just going away to school.' Furthermore, he indicated that he planned to return the next summer and resume his part-time job. Finally, according to Courtney, Williams told her 'that he would be moving back, that [his move] was not permanent.' Although Williams' statements weigh less than his acts, his statements are not without value in this analysis. [Citation.]

¶ 84 Several of Williams' acts further suggest an intent to retain Courtney's residence as his own. On the date of his accident, the vast majority of his belongings were in De Kalb; his room was reserved for his use; he had a key to Courtney's residence; he had an Illinois driver's license; his car was registered in Illinois; he received mail at Courtney's residence; he belonged to a church in De Kalb; and his only dentist was in Illinois. These facts are wholly consistent with Williams' claim that he left Courtney's residence only for a temporary purpose, to pursue his education.

¶ 85 However, as [the insurer points out], other facts suggest that Williams intended to 'leave Courtney's household forever.' Although Williams stated that he moved only to enter [BCC, a community college] his move into his father's residence indicated a greater permanence. Indeed, when he applied for a job in Florida, he stated that he was residing with his father both presently and permanently. Furthermore, he moved about three months before his classes were to begin. This suggests that, as Courtney related, Williams moved not only to attend college but to be close to LaCau, who would become his fiancée. Finally, Williams closed his bank account in Illinois, and he made no concrete plans to return to De Kalb on school breaks or at any time. In light of these facts, even Courtney did not expect

> that Williams would live with her again. If Courtney inferred that Williams did not intend to return, clearly a reasonable fact finder could make that inference as well." *Id.* at 314-15.

This district concluded that Williams' intent was not "clear enough to support summary judgment." *Id.* at 317.

¶ 86 *Williams* is illustrative of the multi-faceted, fact-intensive inquiry that determining residency may require. As in *Williams*, so here the record leaves significant questions as to intent. Richard and Matthew both testified as to how Matthew, in the six months before the accident, divided his time between his girlfriend's grandfather's house and Richard's house. According to Richard, Matthew "stayed" at Richard's house about "half the time." According to Matthew, he "spent *** approximately 70 percent of [his] time at [Richard's] house." Matthew "would usually visit [his girlfriend] at nights" and left nothing at her grandfather's home except "what [he] had left there from maybe the night before or the weekend." Richard also testified, in the 12 months preceding the accident, Matthew treated Richard's home as his "official residence." The undisputed core of facts in this testimony suggests that Matthew was a resident of Richard's home for at least some of the months leading up to the accident. The matter becomes uncertain, however, when we consider Richard's deposition testimony that, as of February 11, 2008, the date of Licht's handwritten note, Matthew "was no longer in [Richard's] household." The January 2008 e-mails between Parr and Licht suggest that Matthew's moving "out of the household" was a prerequisite for renewal of the auto policy. The record is unclear, however, both as to what specifically Richard had to do to satisfy that condition, and as to what did in fact did occur such that Richard could represent that Matthew "was no longer in [the] household." The record is also unclear as to when this change occurred, since, on February 20, 2008, 9 days after Licht's note, Matthew was still receiving mail at Richard's

house. Further haze is cast on the record by Matthew's denial that, at the time of the accident, he was "living" with his girlfriend. Summary judgment, we conclude, was inappropriate since there is a genuine issue of material fact as to whether and when Matthew was no longer residing in Richard's household.[4]

¶ 87 III. CONCLUSION

¶ 88 To summarize, there are two issues with respect to Matthew's coverage under the auto policy: (1) whether Matthew was excluded from coverage on February 28, 2008, by virtue of the exclusion endorsement signed one day before on February 27; and (2) whether Matthew was excluded from coverage on February 28 by virtue of his prior purchase of other automobile insurance for the Cadillac. The trial court was correct in entering summary judgment for defendants on issue (2). The court, erred, however, in granting summary judgment for defendants on issue (1), as there are genuine issues of material fact.

¶ 89 The sole issue with respect to Matthews' coverage under the umbrella policy is whether Matthew was residing in Richard's household on February 28, 2008. The trial court erred in granting summary judgment for defendants on this issue, as there are genuine issues of material fact.

¶ 90 For the foregoing reasons, the judgment of the trial court is affirmed in part and reversed in part.

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[4] MetLife appears not to recognize the tension between its arguments. On the one hand, MetLife claims that Matthew was no longer a resident of Richard's household on February 28, 2008. At the same time, MetLife relies on Matthew's securing of the State Farm policy, but the cards and binder for the policy suggest that Matthew was a resident of Richard's house at least as of February 20, 2008.

¶ 91 Affirmed in part and reversed in part; cause remanded.