2016 IL App (1st) 151480-U

No. 1-15-1480

Fourth Division
June 16, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

NATIONWIDE AGRIBUSINESS INSURANCE COMPANY, Plaintiff-Appellant, v. GENERAL CASUALTY COMPANY OF ILLINOIS, Defendant-Appellee, ANTON PUTMAN AND JUSTIN PUTMAN Defendants.	)	Appeal from the Circuit Court of Cook County. No. 12 CH 41071 Honorable Rita M. Novak, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice McBride and Justice Ellis concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant insurance company did not waive the application of a policy exclusion following an automobile accident when it informed plaintiff insurance company that it would handle the claim as "primary." Defendant was not estopped from asserting policy defenses where it offered to defend potential insured four months after it received notice of a lawsuit. Finally, the 18-year-old son of the named insured was a resident of the insured's household where he regularly visited with his father, kept personal effects in his father's house, and maintained a bedroom in the house.

¶ 2 This case arises out of an insurance coverage dispute. Plaintiff Nationwide Agribusiness Insurance Company (Nationwide) appeals the judgment of the circuit court of Cook County granting summary judgment in favor of defendant General Casualty Company of Illinois (General Casualty). At issue is the applicability of a family member exclusion in an automobile policy issued by General Casualty to Anton Putman. Nationwide argues that General Casualty has waived the applicability of the exclusion because of certain communications it made to Nationwide and its subsequent actions. Nationwide also argues that General Casualty breached its duty to defend an insured individual under the policy, and thus is estopped from asserting any policy defenses. Lastly, Nationwide argues alternatively that the exclusion is not applicable on the facts of the case. We affirm.

¶ 3 BACKGROUND

¶ 4 Anton and his three sons returned to his home on January 1, 2010, following a trip. Justin Putman, Anton's 18-year-old son, drove the group in Anton's vehicle. When they arrived at the driveway, Anton got out and entered the house through the garage. As Justin reversed the vehicle into the garage, Anton returned to the garage. The vehicle's trailer hitch receiver struck Anton's foot, causing serious injury.

¶ 5 General Casualty Insurance Policy

¶ 6 At the time of the accident, Anton had a personal automobile insurance policy on his vehicle through General Casualty. The policy contained an exclusion which stated:

"We do not provide Liability Coverage for any 'insured' for 'bodily injury' to you or any 'family member.' However, this exclusion does not apply:

1. To the maintenance or use of your 'covered auto' by any 'insured' other than you or any 'family member'; or

2. When a third party acquires a right of contribution against you or any 'family member.' "

¶ 7 The parties do not dispute that Anton is the named insured on the policy, and they do not dispute that Justin also qualified as an "insured" under the policy because he was a permissive user of the vehicle. The substantive issue at the center of the parties' dispute is whether Justin constituted a "family member," and consequently, whether the exclusion to liability coverage applies. The policy defines a family member as "a person related to [the named insured] by blood, marriage, or adoption who is a resident of [the named insured's] household. This includes a ward or foster child."

¶ 8 Justin's Residency

¶ 9 According to Anton's deposition, he lived in a house in Frankfort, Illinois, at the time of the accident. He could not remember how long he had lived in the home, but knew he had lived there during December 2010. Anton owned the surrounding subdivision and made his living building homes on the subdivision's developed lots. Beginning in 2008, after he built a house, Anton would live in the home until it was sold. He lived in any given home for an average of four to six months. At the time of the accident, Anton had a contract to sell the Frankfort house. In June 2010, he moved into his parents' home.

¶ 10 Justin visited his father at his father's home. According to Anton, Justin stayed overnight at his home for "a few days every other week," or approximately 20 percent of his time. Once Justin turned 18 years old, his visits lasted for fewer days. He kept approximately half of his clothing, toiletries, a dirt-bike, and a guitar at Anton's residence. Justin would bring any other items with him when he stayed. According to Justin's deposition, he had a bedroom at his father's home.

¶ 11 Nancy Putman, Anton's ex-wife and Justin's mother, lived in a house in Mokena, Illinois, which Anton had built in July 1991. According to Justin's deposition, he had lived in the Mokena home for his entire life. He received all of his mail there. At the time of the accident, Justin was a senior at Lincoln-Way East High School based on his residency at the Mokena home. His driver's license, college applications, and federal student aid applications all listed the Mokena home as his residence. Similarly, Justin registered to vote and registered with the selective service using the Mokena address.

¶ 12 Initial Insurance Claim

¶ 13 General Casualty received notice of the accident on January 7, 2010, and opened a bodily injury liability claim file. Debra Owen was assigned to the claim and subsequently reclassified it as an uninsured or underinsured motorist claim. In investigating the claim, Owen learned that Nancy maintained an automobile insurance policy for Justin with Nationwide. On January 26, 2010, Owen emailed Kristen Vaglienti, Nationwide's claim representative, and indicated that General Casualty viewed Nationwide as the primary insurance coverage applicable to Anton's claim. Vaglienti responded with a voicemail, stating that Nationwide considered itself to be excess to General Casualty's coverage and indicating that any disagreement would be decided by "the courts."

¶ 14 Following the communication with Nationwide, several individuals at General Casualty began to discuss, through internal emails, which insurance provider was primary as well as whether to classify the claim as a bodily injury liability claim or an uninsured/underinsured motorist claim based upon Justin's residency. The exchange culminated in an email from Conrad Dreyer, a General Casualty branch manager, stating that the decision on whether the claim was a bodily injury liability claim or an uninsured/underinsured motorist claim "could

go either way" based upon the facts of Justin's residency. Dreyer concluded the email by writing: "P.S. we should advise mother's carrier we feel primary for the auto coverage, but the next line of coverage would be theirs before getting to our umbrella." In a subsequent affidavit, Dreyer stated that his reference to "primary" was only intended to indicate that the automobile involved in the accident was owned by the named insured of the General Casualty policy. He explained that "[t]ypically, in an automobile insurance policy, coverage is 'primary' for autos owned by the named insured and 'excess' for non-owned autos." He further stated that the question of which policy is "primary" is a determination "separate and apart from the applicability of any coverage defenses."

¶ 15 Dreyer's directive was subsequently relayed to Owen. She emailed Vaglienti on February 4, 2010, stating, "[The] claim has been reviewed by my management regarding coverage. We will be handling the claim as primary for the auto coverage, but your policy would be next in line prior to our umbrella."

¶ 16 Anton's Lawsuit Against Justin

¶ 17 Owen contacted Anton on February 8, 2010, seeking medical bills and records. Anton informed her that he had retained an attorney. Two weeks later, General Casualty received an attorney's lien. Owen responded acknowledging the lien and requesting records pertinent to the claim. Anton's attorney responded four months later, on June 16, 2010. He listed Anton's medical bills and made a demand to settle the claim for the policy limit. He also acknowledged that General Casualty treated the claim as an uninsured motorist claim, rather than as a bodily injury liability claim. Owen sent a letter acknowledging the demand on June 22, 2010. She sent him another letter the following day requesting documentation of lost

wages. Owen spoke with the attorney again on July 9, 2010, and sent him a letter on July 13, 2010, regarding Anton's umbrella coverage with General Casualty.

¶ 18 The record reveals no further correspondence between Anton's attorney and General Casualty until January 3, 2012. During a phone call on that day, Anton's attorney told a General Casualty representative that he needed to file the lawsuit because the statute of limitations was about to run. The representative stated that General Casualty was treating the claim as an uninsured motorist claim and it did not have bodily injury liability coverage and directed the attorney to contact Nationwide. Anton filed a lawsuit against Justin that day.

¶ 19 Following this exchange, Susan Todd became the claim adjuster for General Casualty. Todd spoke with Anton's attorney on March 19, 2012, and reiterated that General Casualty only had uninsured motorist coverage on the claim due to an exclusion because Anton was struck by his own vehicle. Todd's notes of the conversation in the claim file indicated that she "advised of the issue of the ex-wife's coverage." The attorney indicated that he had filed a lawsuit and General Casualty obtained a copy of the suit.

¶ 20 General Casualty subsequently sent a copy of the lawsuit to Nationwide. A Nationwide adjuster emailed Todd on March 20, 2012, noting that General Casualty had indicated in February 2010 that they were the primary carrier. The adjuster asked when General Casualty had changed its position. Todd replied that an exclusion to Anton's policy applied. In an email sent to the Nationwide adjuster on March 26, 2012, Todd indicated that the exclusion was based on Anton being both the named insured and injured party. She also advised that General Casualty had not sent a reservation of rights letter. When the adjuster asked Todd for a copy of General Casualty's denial letter, she replied that no denial had been issued because General Casualty's uninsured motorist coverage was still potentially applicable to the loss. In

an email sent on May 10, Todd advised the Nationwide adjuster that General Casualty did not have a coverage position.

¶ 21 Todd sent a reservation of rights letter to Anton and his attorney, advising them of the family member exclusion. Though addressed to Anton, the letter was intended for Justin. On July 24, 2012, Todd sent another reservation of rights letter to Justin at his mother's residence. The letter advised that he was afforded no liability coverage because of the family member exclusion. It also stated that it would provide Justin a defense subject to a reservation of rights.

¶ 22 On July 25, 2012, General Casualty sent a letter to Nationwide proposing the two insurers split the costs of Justin's defense and reserve the right to recoupment. Nationwide rejected General Casualty's proposal on August 1, 2012.

¶ 23 Nationwide's Declaratory Action Against General Casualty

¶ 24 Nationwide filed a complaint for declaratory order against General Casualty on November 13, 2012, which is the subject of the current appeal. Anton and Justin are named as nominal but necessary parties. The complaint's first count sought a declaratory judgment that General Casualty bore the primary duty to defend and indemnify Justin from Anton's lawsuit. Nationwide asserted that Justin was insured under the General Casualty policy as a permissive user of Anton's vehicle. It also asserted that General Casualty had waived all policy defenses when it communicated to Nationwide that it would handle the claim as primary on February 4, 2010. The complaint's second count sought equitable contribution for the defense costs Nationwide incurred representing Justin. General Casualty appeared in the matter through counsel on January 24, 2013. Nationwide subsequently amended its complaint, but did not make any substantial changes. General Casualty filed its answer to the

complaint on March 25, 2013. In its answer, General Casualty did not raise any issue of standing or set forth any affirmative defense.

¶ 25 Prior to General Casualty's answer, Nationwide filed a motion for summary judgment on the issues of whether Justin was a permissive user of Anton's vehicle, whether the exclusion at issue was applicable under the facts of the case, and whether General Casualty was estopped from raising the exclusion. The motion was supported by both Anton's and Justin's depositions. Following arguments, the trial court ruled that Justin was a resident of Anton's home at the time of the accident and that the exclusion applied. It also held that General Casualty was not estopped from asserting its policy defense.

¶ 26 After further discovery, Nationwide filed a second motion for summary judgment on the issue of whether General Casualty had waived the exclusion. In both its response and during argument, General Casualty asserted that Nationwide did not have standing to assert waiver because it was not a party to the insurance contract between Anton and General Casualty. After arguments, the trial court denied Nationwide's motion for summary judgment. It explained that it did not believe that Nationwide had standing to assert waiver and estoppel; however, it noted that it could make its ruling "on a much more concrete basis." Ultimately, the court ruled that General Casualty's statements to Nationwide did not establish intent to waive the exclusion. Subsequently, General Casualty filed its own motion for summary judgment in its favor which the trial court granted. Nationwide appeals.

¶ 27 ANALYSIS

¶ 28 Nationwide argues that the trial court erroneously denied its motions for summary judgment and granted General Casualty's motion for summary judgment. It makes four primary arguments: (1) the trial court erroneously held that it did not have standing to bring

the declaratory action; (2) General Casualty waived the exclusion in its communications to Nationwide and its subsequent actions; (3) General Casualty is estopped from claiming the family member exclusion based upon its failure to defend Justin from his father's lawsuit; and (4) the exclusion is inapplicable on the facts of the case.

¶ 29 Standard of Review

¶ 30 This case comes before us after the trial court resolved the matter on the parties' cross-motions for summary judgment. A motion for summary judgment may be granted where the pleadings, depositions, admissions, and affidavits establish that there exists 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 2014); *WKS Crystal Lake, LLC v. LeFew*, 2015 IL App (2d) 150544, ¶ 13. If the parties have filed cross-motions for summary judgment, the parties believe that no genuine issues of material fact are presented to the court, only issues of law. *LeFew*, 2015 IL App (2d) 150544, ¶ 13. We therefore review the issues *de novo*. *Id*. Similarly, the interpretation of an insurance policy presents a question of law, to be reviewed *de novo*. *Hoover v. Country Mutual Insurance Co.*, 2012 IL App (1st) 110939, ¶ 32.

¶ 31 Standing

¶ 32 Nationwide first contends that the trial court erroneously found that it lacked standing to seek a declaratory judgment against General Casualty. It also asserts that General Casualty waived the affirmative defense of standing by failing to raise it in its answer. General Casualty responds that Nationwide does not have standing to argue waiver based upon General Casualty's actions or communications to Anton or Justin. It further argues that it was not required to raise the issue of standing in its answer because Nationwide's complaint did not allege waiver of the exclusion based upon General Casualty's interactions with either

Anton or Justin. General Casualty acknowledges, however, that its argument on appeal and below may be better understood as an argument that the elements of waiver were not established.

¶ 33 We find it first necessary to clarify the issue before this court. Although Nationwide argues that the trial court based its summary judgment determination upon an erroneous conclusion that it lacked standing to file a declaratory suit, this contention is belied by the record. The trial court's expressed doubts regarding Nationwide's standing related to its claims of waiver, not its standing to bring a declaratory suit generally.[1] The court also made clear that even though it had doubts regarding Nationwide's standing to raise waiver, it was resolving the issue on its merits. Moreover, General Casualty, in both arguments below and on appeal, has limited its standing argument to the question of whether Nationwide has standing to argue waiver based upon conduct directed towards Jason and Anton. Thus, we address standing only on this limited issue.

¶ 34 Although Nationwide cites numerous cases to support its standing to bring a declaratory action generally, it provides no citation in support of its ability to raise waiver based upon General Casualty's interactions with Anton or Justin. However, General Casualty also provides no legal citation to support its contention that Nationwide lacks standing and admits that its argument may be mischaracterized. Arguments must be supported by citation to legal authority. See Ill. S. Ct. R. 341(h)(7)(eff. Jan. 1, 2016); see also *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991). This court is not required to develop parties' arguments for them. *New v. Pace Suburban Bus Service*, 398 Ill. App. 3d 371, 384 (2010) ("This court is not a repository where the burden of argument and research may be dumped.") Because standing is

[1] The trial court also referenced standing in regard to a substantive estoppel claim which Nationwide has not raised on appeal.

an affirmative defense, General Casualty bore the burden of proving Nationwide lacked standing to raise a claim of waiver based on General Casualty's actions towards Anton and Justin. *Deutsche Bank National Trust Co. v. Gilbert*, 2012 IL App (2d) 120164, ¶ 15. It failed to do so. Therefore, the claim that Nationwide lacked standing is forfeited on appeal. Ill. S. Ct. R. 341(h)(7)(eff. Jan. 1, 2016).

¶ 35 Waiver

¶ 36 Nationwide contends that General Casualty expressly waived the family member exclusion when Owen sent Nationwide an email indicating that General Casualty would be "handling the claim as primary." General Casualty responds that it could not have waived a contractual right to Nationwide because the other insurance company was not a party to the insurance policy in question. It also argues that the record shows it did not intentionally waive its right to exercise the family member exclusion.

¶ 37 Waiver is an equitable principle invoked whenever a party "relinquishes a known right or acts in such manner as to warrant an inference of such relinquishment." *Mollihan v. Stephany*, 52 Ill. App. 3d 1034, 1041, (1977); see also *Lumbermen's Mutual Casualty Co. v. Sykes*, 384 Ill. App. 3d 207, 219 (2008). Express waiver "arises from an affirmative act, is consensual, and consists of an intentional relinquishment of a known right." *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 326 (2004). The purpose underlying the doctrine of waiver is to prevent a party from deceiving another party with false assurances that compliance with a contractual duty will not be required, but then seeking recompense for noncompliance. *Midwest Builder Distributing, Inc., v. Lord and Essex, Inc.*, 383 Ill. App. 3d 645, 674 (2007).

¶ 38 The burden of proof lies with the party claiming waiver. *First Federal Savings and Loan Ass'n of Chicago v. Walker*, 91 Ill. 2d 218, 229 (1982). As waiver is a unilateral action, detrimental reliance by the insured is not required. *Western Casualty & Surety Co. v. Brochu*, 105 Ill. 2d 486, 499 (1985). To prove waiver, an insured must demonstrate facts that would make the insurer's assertion of the defense " 'unjust, inequitable, or unconscionable.' " *Sykes*, 384 Ill. App. 3d at 219 (quoting *Vasilakis v. Safeway Insurance Co.*, 46 Ill. App. 3d 369, 374 (1977)). Where the material facts are undisputed and allow only one reasonable inference, the issue of waiver may be determined in a summary judgment motion. *Home Insurance Co.*, 213 Ill. 2d at 326.

¶ 39 Waiver rests upon the relinquishment of a known right between two parties, often involving a contractual duty. In regard to General Casualty's communication to Nationwide, the latter company has failed to establish that such a right existed between the two parties.[2] Nationwide was not a party to Anton's insurance policy contract nor has it alleged that any contractual or other relationship existed with General Casualty. The exclusion in question involved the rights and duties between General Casualty and Justin. As there was no obligation between the two insurance companies at the time the email was received, there was no right to waive in relation to Nationwide and therefore no waiver. Although Nationwide provides legal citation for its assertion that its lawsuit constitutes action in subrogation of Justin's rights (see, *e.g.*, *Associated Indeminity Co. v. Insurance Co. of North America*, 68 Ill. App. 3d 807 (1979)), there is nothing in the record to suggest that General Casualty's statements were intended to reach Justin nor that they ever did. Thus, where the

[2] We acknowledge that our determination that no right existed between the two parties shares some similarities with the parties' arguments involving standing. However, we believe the issue addressed here more accurately reflects a question of whether Nationwide sufficiently proved an element of a waiver claim, *i.e.* a relinquished right, rather than whether Nationwide had standing to bring a waiver claim at all.

statements were not made to Justin and the record does not indicate that they were ever communicated to him, we cannot find that General Casualty waived the application of the family member exclusion.

¶ 40 Additionally, we agree with the trial court's determination that Nationwide failed to establish that General Casualty's statement that it would "be handling the claim as primary for the auto coverage" constituted a knowing and intentional waiver of the family member exclusion. Dreyer, the General Casualty manager who directed Owen to email Nationwide, stated in his affidavit that the question of which provider is the primary insurer and the question of whether an exclusion is applicable are separate and distinct. Nothing in the record contradicts Dreyer's affidavit, and thus we must accept it as true. See *US Bank, National Ass'n v. Avdic*, 2014 IL App (1st) 121759, ¶ 31 ("[F]acts contained in an affidavit in support of a motion for summary judgment which are not contradicted by counteraffidavit are admitted and must be taken as true for purposes of the motion.") (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 241 (1986)). Dreyer's email to Owen corroborates the assertion in his affidavit. It is clear that he viewed primary coverage and the applicability of the exclusion as two separate questions because at the time he requested that Nationwide be informed that General Casualty was the primary insurer, he still viewed the question of the exclusion's applicability as able to "go either way" depending on Justin's residency. If, as Nationwide now argues, the question of which insurer was primary was directly linked to the applicability of policy defenses, it would be irrational for Dreyer to conclude that General Casualty was primary without coming to a determination regarding the family member exclusion. Accordingly, Nationwide failed to establish that General Casualty's statements reflected a knowing and intentional waiver of the policy exclusion.

¶ 41 Nationwide argues that *State Farm Mutual Auto Insurance Co. v. Burke*, 2016 IL App (2d) 150462, is dispositive. In *Burke*, Burke and his family members were injured in an automobile accident when an uninsured driver struck Burke's company vehicle. *Id.* ¶ 3. The company vehicle was covered under a Michigan insurance company's auto policy purchased by Burke's employers, but its coverage was explicitly limited to employees acting within the scope of their employment and included other limitations. *Id.* ¶¶ 5-10. Burke insured his wife's car under an Illinois insurance company's policy which provided uninsured motorist coverage. *Id.* ¶ 4. After the accident, the Michigan company emailed Burke that it would "be granting coverage" under the policy and later made offers regarding his claims. *Id.* ¶¶ 14-15. When the company subsequently denied Burke and his family members' claims, the Illinois insurance company began an action seeking a declaratory judgment that the Michigan company owed coverage. *Id.* ¶¶ 15-16. Following cross-motions for summary judgment, the Illinois company argued, *inter alia*, that the Michigan company had waived all defenses to coverage. *Id.* ¶ 18. The trial court disagreed and awarded summary judgment to the Michigan company. *Id.* On appeal, the reviewing court reversed, finding that the Michigan company's statements and actions constituted waiver. *Id.* ¶¶ 73-74. Unlike in *Burke*, here General Casualty did not state unambiguously that it was "granting coverage," rather, it stated that it was the "primary" insurance policy. Moreover, the comments in *Burke* were made to the insured and not to another insurance carrier. Accordingly, we find that case inapposite.

¶ 42 Nationwide also argues that General Casualty implicitly waived the exclusion because it investigated the claim "in a fashion typical of an insurance company with primary responsibility" and because it interacted with Anton's attorney for two years without mentioning the exclusion. A party implicitly waives a right when their conduct "is

inconsistent with any intention other than to waive it." *Home Insurance Co.*, 213 Ill. 2d at 326. We cannot find that General Casualty's investigation into the claim and interaction with Anton's attorney are solely consistent with an intention to waive the exclusion. General Casualty has not contested that the claim may implicate an underinsured/uninsured motorist provision of Anton's policy; therefore, investigation of the claim would still be necessary even if the exclusion foreclosed liability coverage. As to the company's interactions with Anton's attorney, the attorney's letter to General Casualty on June 16, 2010, reveals that the insurance company had made clear that it was viewing the matter under the uninsured motorist portion of Anton's policy, rather than the liability portion, within four months of being contacted. Thus, we find Nationwide's argument unpersuasive.

¶ 43 Estoppel

¶ 44 Nationwide also contends that General Casualty should be estopped from asserting any policy defenses because it breached its duty under the insurance policy to defend Justin against any claim. It asserts that General Casualty was required to defend Justin under a reservation of rights or to file a declaratory action and it failed to do either. General Casualty responds that it fulfilled its duty both by offering to defend Justin under a reservation of its rights and by participating in Nationwide's declaratory action.

¶ 45 The parties agree that General Casualty received notice of Anton's lawsuit on March 19, 2012. They also agree that under Anton's insurance policy, General Casualty had a duty to defend Justin from his father's suit.

¶ 46 Under a duty to defend, an insurer who believes that a claim is not covered cannot merely refuse to defend the insured based upon the asserted lack of coverage. *Sandra's Best Craft, LLC v. Zurich American Insurance Co.*, 408 Ill. App. 3d 173, 180 (2010). Instead, the insurer

must either "(1) defend the suit under a reservation of rights or (2) seek a declaratory judgment that there is no coverage." *Employers Insurance of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 150 (1999). If the insurer breaches this duty, they are estopped from raising any policy defenses to coverage, regardless of whether such defenses are meritorious. *Id.* at 151-52.

¶ 47 The doctrine of estoppel for failure of an insurer to defend seeks to prevent an insurer from refusing to provide a defense. See *Sandra's Best Craft, LLC*, 408 Ill. App. 3d at 182 (reasoning that the decision in *Ehlco* was based on the insurer's simple refusal to defend) (citing *Ehlco Liquidating Trust*, 186 Ill. 2d at 150). Nationwide repeatedly asserts that General Casualty has abandoned and failed to defend Justin in its brief, but it does not cite to the record to support any of these claims. See *Coombs v. Wisconsin National Life Insurance Co.*, 111 Ill. App. 3d 745, 746 (1982) ("[A]ssertions in an appellate brief cannot serve as a substitute for a proper record.") Although the record contains the complaint from Anton's lawsuit, there is no other documentation from which this court may determine that General Casualty failed to render an appropriate defense.

¶ 48 The record does reveal that four months after receiving notice of Anton's lawsuit, General Casualty sent a letter to Justin offering to provide him a defense subject to a reservation of rights regarding the family member exclusion. Despite Nationwide's assertions to the contrary, there is no indication within the letter that this offer was conditioned on contribution from Nationwide. There is no indication in the record that Justin accepted that offer or that any action was necessary in Justin's defense prior to the trial court 's finding that General Casualty's liability policy was not implicated in the accident.

¶ 49 Estoppel is an extraordinary remedy, although it is warranted where an insurer refuses to undertake its duty to defend. *Sandra's Best Craft, LLC*, 408 Ill. App. 3d at 181 (citing *Ehlco Liquidating Trust*, 186 Ill. 2d at 151). Here, where the record reflects only that General Casualty offered to defend Justin subject to a reservation of rights, rather than any indication that it refused to do so, we cannot find that estoppel is warranted. As the record does not reflect that General Casualty refused to undertake Justin's defense, we need not consider whether its participation in Nationwide's declaratory suit was sufficient in and of itself to fulfill the duty to defend.

¶ 50 Justin's Residency

¶ 51 Finally, Nationwide contends alternatively that the trial court erroneously determined that Justin was a resident of Anton's household, and consequently, that the family member exclusion applied. It argues that Justin was not a resident because Anton did not keep a permanent residence at any one house, Justin left only some items at the Frankfort house, and Justin registered his mother's address as his own on numerous occasions. General Casualty responds that the record reflects residency because Justin spent 20 percent of his time living with his father, regardless of the particular address, and kept much of his personal effects at Anton's home.

¶ 52 The parties agree that the exclusion's applicability rests on the determination of whether Justin was a resident of Anton's household. The phrase "resident of household" does not have a fixed meaning. *State Farm Fire and Casualty Insurance Co. v. Martinen*, 384 Ill. App. 3d 494, 499 (2009). Instead, when determining whether an individual is part of a household, courts have utilized a case-specific analysis of three factors: permanency of abode, personal presence, and intent. *Coriasco v. Hutchcraft*, 245 Ill. App. 3d 969, 970-71 (1993). Of these

factors, intent of the individual is controlling. *Farmers Automobile Insurance Ass'n v. Gitelson*, 344 Ill. App. 3d 888, 894 (2003). Whereas an individual may only have one domicile, he or she may have more than one residence. *Coriasco*, 245 Ill. App. 3d at 971.

¶ 53 Personal presence weighs in favor of residency. Justin kept half of his clothing, a guitar, a dirt bike, and toiletries at his father's house. Justin himself stayed at the house about 20 percent of the time, in multiple-day visits, every other week. He had his own bedroom there.

¶ 54 Intent also weighs in favor of residency. Even though Justin was 18 years old and was no longer required to visit his father, he continued to spend 20 percent of his time living with him. Nationwide argues that Justin manifested an intent to live solely with his mother because he registered for school, voting, and other matters at his mother's house. He also viewed his mother's house as his home. We find this argument unpersuasive because an individual can have more than one residence. See *Coriasco*, 245 Ill. App. 3d at 971. The fact that Justin established his mother's home as his primary residence does not foreclose a finding that he was also a resident of his father's household. Moreover, while he referred to his mother's house as his home, he also claimed a room in his father's home as his own.

¶ 55 Finally, the element of permanence provides some support for a finding of residency. Nationwide is correct that Anton moved from home to home frequently due to his employment. However, the insurance policy in question did not refer to a specific building or house. Rather, the use of the term household "connotes membership in a family group, not attachment to a building." *Cincinnati Insurance Co. v. Argubright*, 151 Ill. App. 3d 324, 330 (1986). Illinois courts have also recognized that the element of permanency may be viewed in a different context when the resident in question is a dependent child of divorced parents. See *Coriasco*, 245 Ill. App. 3d at 972 (holding "[t]he permanency-of-abode criterion is not

particularly significant in the case of a minor child," and noting that the minor's "father's home ha[d] an element of permanency" as she returned there each week.) Although Justin was 18 years old at the time of the accident, he was still a high school student and dependent on his parents. Thus, there was an element of permanency where he consistently stayed overnight at regular intervals in the house his father owned and resided in, regardless of what specific house that entailed.

¶ 56 Nationwide relies on *Gitelson* and *State Farm Mutual Auto Insurance Co. v. Taussig*, 227 Ill. App. 3d 913 (1991), for the proposition that an adult child's presence in his or her parents' home does not make the child a resident of the parents' household. However, these cases are factually distinct from the present facts. Both *Gitelson* and *Taussig* involved employed, adult children who rented their own apartments separate from their parents' home. *Gitelson*, 344 Ill. App. 3d at 894; *Taussig*, 227 Ill. App. 3d at 914. In the present case, Justin remained dependent on his parents, despite having reached the age of majority and maintained no residence of his own. As such, we find both cases inapposite.[3]

¶ 57 Given Justin's personal presence in his father's household, his demonstrated intent to continue visiting and staying with his father, and his permanence in his father's home through consistent visits, we agree with the lower court that Justin constituted a resident of Anton's household. Accordingly, the family member exclusion was applicable and General Casualty's liability policy was not implicated in the accident. Therefore, the trial court did not err by granting summary judgment in favor of General Casualty and against Nationwide.

¶ 58 Conclusion

[3] We note that Nationwide also cites *Carter v. State Farm Fire and Casualty Co.*, 2014 IL App (4th) 131057-U, for the proposition that public policy generally weighs in favor of a finding of coverage. As the order in that case was filed pursuant to Illinois Supreme Court Rule 23(b) (eff. July 1, 2011), Nationwide's citation is improper and thus does not merit further consideration. See Ill. S. Ct. R. 23(e) (eff. July 1, 2011).

¶ 59 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 60 Affirmed.