

No. 30469 - Farmers Mutual Insurance Company, a West Virginia corporation v. Herbert Junior Tucker AND Hubert Junior Tucker v. Darrell Lee Taylor, Leonard Locie Taylor, and other individuals presently unknown

FILED

December 9, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS

RELEASED

December 11, 2002

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Maynard, Justice, dissenting:

I believe that the term “household” is clear and means a family living together under the same roof. Up until now, a majority of this Court believed the same thing.

In *Spangler v. Armstrong*, 201 W.Va. 643, 646, 499 S.E.2d 865, 868 (1997) (per curiam), this Court stated that “liability policies providing coverage for members of an insured’s ‘household’ generally include persons who live under the same roof, but not those who live in separate houses.” In support of this proposition, we cited *Gredig v. Tennessee Farmers Mut. Ins. Co.*, 891 S.W.2d 909, 913 (Tenn.Ct.App. 1994) (“The great weight of authority seems to be to the effect that a household means those living together under one roof, under one head, and under the common control of one person.” (Quoting *Boyd v. Peoples Protective Life Ins. Co.*, 208 Tenn. 280, 345 S.W.2d 869, 872 (1961)); *Howard v. Hartford Ins. Co.*, 127 N.H. 727, 507 A.2d 230, 232 (1986) (“We hold that someone living in a separate dwelling, though on the insured premises, is not a member of the named insured’s household.”); *Hernandez v. Comco Ins. Co.*, 357 So.2d 1368, 1371 (La.Ct.App. 1978) (“The

pattern which emerges from the myriad of decisions considering the term ‘household’ seems to be an emphasis on dwelling as a family under one head.”); 43 *Am.Jur.2d Insurance* § 704 (1982) (“liability policies providing coverage for any member of the insured’s ‘household’ . . . have been held not to include persons living in separate homes from the insured.” (Footnote omitted)); and *Webster’s New Collegiate Dictionary* 550 (1981) (defining “household” as “those who dwell under the same roof and compose a family.”). Based on all of this authority, we concluded that “the word ‘household’ in [the insurance policy at issue] is clear and unambiguous.” *Spangler*, 201 W.Va. at 646, 499 S.E.2d at 868 (footnote omitted).

Our analysis and conclusion in *Spangler* still hold true. There is absolutely no legitimate reason for the majority’s complete about face. I simply fail to understand how a term can go from being clear and unambiguous to being so “elastic” that it is practically devoid of meaning within the space of five years.

In sum, the majority opinion results in a substantial change in our law with regard to who is a “resident of your household” for insurance purposes despite there being no factual or legal basis for such a change. Also, it suggests that as long as a person lives somewhere on the insured’s property, he or she is covered by the insured’s homeowner’s policy. In addition, it unnecessarily interjects uncertainty into what was previously a settled area of law. Finally, by foreclosing summary judgment and leaving the question of residency of a household up to a jury in each case, it opens the possibility of wildly inconsistent verdicts in cases with the

same or similar set of facts.

For the reasons stated above, I would have applied the settled law in *Spangler* to the facts of this case and affirmed summary judgment on behalf of Farmers Mutual. Accordingly, I dissent. I am authorized to state that Chief Justice Davis joins me in this dissent.