NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 CA 0069

WESLEY DRAUGHN AND STARR DRAUGHN, AS THE NATURAL PARENTS AND TUTOR AND TUTRIX OF THEIR MINOR CHILD, STORMY DRAUGHN

VERSUS

STATE FARM INSURANCE COMPANY

Judgment Rendered: JAN 10 2018

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Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 638,621

Honorable Todd W. Hernandez, Judge

* * * * * * *

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BEFORE: McCLENDON, WELCH, CRAIN, THERIOT, AND CHUTZ, JJ.

McClendon, J. dissents and assigns reasons.

WELCH, J.

The plaintiffs/appellants, Wesley and Starr Draughn, as the natural parents and tutor and tutrix of their minor child, Stormy Draughn, appeal a district court judgment granting summary judgment in favor of the defendant, State Farm Mutual Automobile Insurance Company ("State Farm"), dismissing with prejudice all of the plaintiffs' claims against State Farm. For reasons that follow, we reverse the judgment of the district court and remand the matter for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiffs filed this suit against their uninsured/underinsured motorist ("UM/UIM") coverage provider seeking recovery for injuries sustained by their minor daughter while she was a passenger in her maternal grandmother's vehicle. The following facts are undisputed. In October of 2013, State Farm issued a Texas personal auto policy that listed both of the plaintiffs, Wesley and Starr Draughn, as the named insureds on the declaration sheet. The policy provided liability insurance coverage with limits of $100,000.00 per person and UM/UIM coverage with benefits up to $100,000.00 per person for the two vehicles scheduled on the policy: Mr. Draughn's 2013 Ford F250 SD pickup truck and Mrs. Draughn's 2008 Jeep Wrangler. During the relevant policy period, the Draughns' address was listed as Balmorhea, Texas, and under the terms of the policy the covered vehicles were considered to be garaged in Texas. The Draughns purchased the policy in connection with their move from Kansas to Texas related to Mr. Draughn's employment.

In March of 2014, after living in Texas as a family for approximately six months, Mrs. Draughn and her two minor children travelled to Louisiana to stay at the home of Mrs. Draughn's mother, Gwen Krall, in Covington. Mr. Draughn remained in Texas. Shortly after arriving in Louisiana, Mrs. Draughn took a job as

a waitress, and Stormy, the Draughn's older child, was enrolled in school in St. Tammany Parish.

On April 18, 2014, Stormy was injured in a single vehicle automobile accident in Harrison County, Mississippi, while returning to Louisiana from a day at the beach. Stormy was a passenger in a Toyota Tundra owned by her maternal grandmother, Gwen Krall, but being driven by Linda Krall, Gwen Krall's sister-in-law.

Mrs. Draughn and her children never returned to live in Texas with Mr. Draughn. In October of 2014, Mrs. Draughn filed for divorce from Mr. Draughn and has remained with her children in Louisiana. On April 16, 2015, Mr. and Mrs. Draughn filed suit against State Farm in the 19th Judicial District Court, East Baton Rouge, Louisiana.[1] The petition alleged that the liability insurer of the driver, Linda Krall, had paid its policy limits and the plaintiffs sought additional recovery for Stormy's injuries under their State Farm UM/UIM coverage.

On June 10, 2016, State Farm filed a motion for summary judgment asserting that there was no UM/UIM coverage under the facts presented due to certain exclusions in the policy that precluded coverage for vehicles owned by "family members." With regard to UM/UIM coverage, the State Farm policy in effect at the time of the April 18, 2014 accident provided, in pertinent part, as follows:

> **Part C – Uninsured/Underinsured Motorists Coverage**
>
> **Insuring Agreement**
>
> A. We will pay damages which a ***covered person*** is legally entitled to recover from the owner or operator of an ***uninsured motor vehicle*** because of bodily injury sustained by a ***covered person***, or ***property damage***, caused by an accident.

[1] Mr. and Mrs. Draughn were legally married at the time they filed suit against State Farm in April of 2016.

The owner's or operator's liability for these damages must arise out of the [ownership], maintenance or use of the ***uninsured motor vehicle***.

Any judgment for damages arising out of a suit brought without our consent is not binding on us. If we and you do not agree as to whether or not a vehicle is actually uninsured, the burden of proof as to that issue shall be on us.

B. ***Covered person*** as used in this Part means:

1. You or any ***family member***;

2. Any other person ***occupying your covered auto***;

3. Any person for damages that person is entitled to recover because of bodily injury to which this coverage applies sustained by a person described in B.1. or B.2. above.

Section D.II.1. of Part C of the policy provides, in part:

II. However, ***uninsured motor vehicle*** does not include any vehicle or equipment:

1. Owned by or furnished or available for the regular use of you or any ***family member***.

Additionally, the policy contains the following "owned-but-unscheduled" exclusion:

EXCLUSIONS

A. We do not provide Uninsured/Underinsured Motorists Coverage for any person:

1. For bodily injury sustained while ***occupying***, or when struck by, any motor vehicle or trailer of any type owned by you or any ***family member*** which is not insured for this coverage under this policy.

Under the terms of State Farm's policy, a "family member" is defined as a "person who is a resident of your household **and** related to you by blood, marriage or adoption." [Emphasis added].[2] First, according to State Farm, Mrs. Draughn

[2] The full definition of "family member" under the policy reads as follows:

D. ***Family member*** means a person who is a resident of **your** household and related to **you** by blood, marriage or adoption. This definition includes a ward or foster child who is a resident of your household, and also includes your spouse even when not a resident of your household during a period of separation in contemplation of divorce. [Emphasis added.]

and her children were residents of Gwen Krall's household at the time of the accident, and Gwen is a blood relative of the insured, Mrs. Draughn; therefore, Gwen Krall was a "family member" of the insured under the terms of the policy. As such, State Farm maintained that Gwen Krall's Toyota Tundra did not qualify as an "uninsured motor vehicle" under the terms of the policy. Second, State Farm argued that UM/UIM coverage was excluded under the provision of the owned-but-unscheduled exclusion of the policy, which excluded UM/UIM coverage under the State Farm policy for *any* person injured while occupying a vehicle owned by the insured or a family member, where that vehicle is not listed on the insured's State Farm policy. In support of its motion for summary judgment, State Farm attached the petition, the policy, and the deposition of Mrs. Draughn. State Farm relied upon several Louisiana cases to support its arguments regarding the determination of residency in relation to the policy.

The plaintiffs opposed State Farm's motion by arguing that Mrs. Draughn and Stormy were not residents of Gwen Krall's household at the time of the accident; thus, Gwen Krall did not qualify as a "family member" under the policy. The plaintiffs also cited Louisiana jurisprudence in support of their position regarding residency and coverage under the policy. The plaintiffs stressed that at the time of the accident, Mrs. Draughn and the children's visit to Louisiana was intended to last only six months and was for the limited purpose of visiting Mrs. Draughn's family. The plaintiffs attached Mrs. Draughn's affidavit and deposition testimony to that effect. Based on the evidence presented in opposition, the plaintiffs maintained that Mr. Draughn continued to be the head of the household in Texas, and that this fact prevented Mrs. Draughn and the children from becoming residents of Gwen Krall's household.

Following a hearing, the district court granted the motion for summary judgment and signed a judgment dismissing the plaintiffs' suit.[3] The plaintiffs appeal and assert that the district court erred in finding that Mrs. Draughn and Stormy were residents of Gwen Krall's household and in determining that UM/UIM coverage was unavailable to the plaintiffs under the policy.[4]

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[3] On January 24, 2017, this court issued a rule to show cause, remanding the matter to the trial court for clarification, as the judgment appeared to fail to specifically identify in whose favor and against whom the judgment was rendered. Following remand, the trial court rendered a supplemental and amending judgment, signed on February 10, 2017. The supplemental and amending judgment granted judgment on the motion for summary judgment in favor of State Farm and dismissed the plaintiffs' suit with prejudice. Based on the sufficiency of the supplemental and amending judgment, we maintain the appeal.

[4] We note that in the trial court and here, both parties cited and relied upon Louisiana statutes and jurisprudence in their arguments, and neither has challenged the application of Louisiana law under the facts presented either in the trial court or on appeal. Because the issue was not appealed, it is not truly before us. **Parekh v. Mittadar**, 2011-1201 (La. App. 1st Cir. 6/20/12), 97 So.3d 433, 440 n.11. Nevertheless, we observe that the relevant law regarding interpretation of the family member and owned-but-unscheduled policy exclusions at issue herein as well as the determination of residency for purposes of coverage under the policy is the same in Texas as it is in Louisiana; therefore, it would not be necessary to conduct a choice-of-law analysis to determine which state's law to apply in this situation. See **Champagne v. Ward**, 2003-3211 (La. 1/19/05), 893 So.2d 773, 786; **Maldonado v. Kiewit Louisiana Co.**, 2013-0756 (La. App. 1st Cir. 3/24/14), 146 So.3d 210, 217-218; **Wendling v. Chambliss**, 2009-1422 (La. App. 1st Cir. 3/26/10), 36 So.3d 333, 335; see also **Verhoev v. Progressive County Mut. Ins. Co.**, 300 S.W.3d 803, 811-812 (Tex. App.-Fort Worth 2009); **Armendariz v. Progressive County Mut. Ins. Co.**, 112 S.W.3d 736, 739 (Tex. App.-Houston [14th District] 2003); **Reyes v. Texas All Risk Gen. Agency, Inc.**, 855 S.W.2d 191, 192 (Tex. App.-Corpus Christi 1993); **Conlin v. State Farm Mut. Auto. Ins. Co.**, 828 S.W.2d 332, 335 (Tex. App.-Austin 1992), writ denied, (Dec. 31, 1992); **State Farm Mut. Auto. Ins. Co. v. Nguyen**, 920 S.W.2d 409, 411-412 (Tex. App.-Houston [1st District] 1996); and **Southern Farm Bureau Cas. Ins. Co. v. Kimball**, 552 S.W.2d 207, 208 (Tex. Civ. App.-Waco 1977), writ refused NRE (Sept. 27, 1977)("The controlling test for whether persons are residents of the same household at a particular time, within the meaning of the policy in question, is not solely whether they are then residing together under one roof. The real test is whether the absence of the party of interest from the household of the alleged insured is intended to be permanent or only temporary i.e. whether there is a physical absence coupled with an intent not to return.").

Additionally, we note that under the precepts set forth in La. C.C. arts. 3515 and 3537, the interpretation of the State Farm policy under Louisiana law does not implicate any polices or law of Mississippi—the location of the accident. The insurance contract was issued in Texas to Texas residents, the original tortfeasor and owner of the vehicle involved were Louisiana residents, and the plaintiffs now allege in their petition that they are Louisiana domiciliaries. See also La. C.C. art. 3515, comment (d) (When a conflict exists with regard to more than one issue, each issue should be analyzed separately. One result of this analysis might be that the laws of different states may be applied to different issues in the same dispute, or dépeçage.)

LAW AND DISCUSSION

Summary Judgment

On appeal, summary judgments are reviewed *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. **Sunrise Const. and Development Corp. v. Coast Waterworks, Inc.**, 2000-0303 (La. App. 1st Cir. 6/22/01), 806 So.2d 1, 3, writ denied, 2001-2577 (La. 1/11/02), 807 So.2d 235.[5] A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3).

A summary judgment may be rendered on the issue of insurance coverage alone, although there is a genuine issue as to liability or damages. **Simmons v. Weiymann**, 2005-1128 (La. App. 1st Cir. 8/23/06), 943 So.2d 423, 425. An insurance policy is a contract between the parties and should be construed employing the general rules of interpretation of contracts set forth in the Louisiana Civil Code. **Reynolds v. Select Properties, Ltd.,** 93-1480 (La. 4/11/94), 634 So.2d 1180, 1183. When interpreting insurance contracts, the court's responsibility is to determine the parties' common intent. **Louisiana Ins. Guar. Ass'n v. Interstate Fire & Cas. Co.**, 93-0911 (La. 1/14/94), 630 So.2d 759, 763; see also La. C.C. art. 2045. The parties' intent, as reflected by the words of the policy, determines the extent of coverage. **Ledbetter v. Concord Gen. Corp.**, 95-0809 (La. 1/6/96), 665 So.2d 1166, 1169, decree amended, 95-0809 (La. 4/18/96), 671 So.2d 915. Words and phrases used in a policy are to be construed using their

[5] Louisiana Code of Civil Procedure art. 966, regarding summary judgment, was amended and reenacted by La. Acts 2015, No. 422, § 1, with an effective date of January 1, 2016. The legal standard to be used by the courts in granting a motion for summary judgment remains unchanged by the recent legislative amendments to Article 966. See La. C.C.P. art. 966, 2015 comment (b).

plain, ordinary, and generally prevailing meaning, unless the words have acquired a technical meaning. See La. C.C. art. 2047.

Absent a conflict with statutory provisions or public policy, insurance companies have the right to limit coverage in any manner they desire, so long as the limitations do not conflict with statutory provisions or public policy. **Reynolds**, 634 So.2d at 1183. If the policy wording at issue is clear and unambiguously expresses the parties' intent, the insurance contract must be enforced as written. **Succession of Fannaly v. Lafayette Insurance Co.,** 2001-1355 (La. 1/15/02), 805 So.2d 1134, 1137-1138. The determination of whether a contract is clear or ambiguous is a question of law. **Cadwallader v. Allstate Insurance Co.,** 2002-1637 (La. 6/27/03), 848 So.2d 577, 580. An insurer has the burden of proving that a loss comes within a policy exclusion. **North American Treatment Systems, Inc. v. Scottsdale Ins. Co.,** 2005-0081 (La. App. 1st Cir. 8/23/06), 943 So.2d 429, 443, writs denied, 2006-2918, 2006-2803 (La. 2/16/07), 949 So.2d 424, 424.

Residency in Context of Coverage

The parties agree that Stormy is a "covered person" under the policy issued to Mr. and Mrs. Draughn. The issue herein is whether her grandmother, Gwen Krall, qualifies as a "family member" – i.e. blood relative and a resident of the insured's household. If Gwen Krall is a family member then UM/UIM coverage would be excluded because Stormy was occupying a vehicle owned by a family member not covered under the policy at the time of the accident.

The State Farm policy does not define the terms "household" or "resident." The term "household" has been defined by this court as a "collective body of persons living together within one curtilage, subsisting in common and directing their attention to a common object, the promotion of their mutual interests and social happiness." **Miley v. Louisiana Farm Bureau Cas. Ins. Co.**, 599 So.2d

791, 798 (La. App. 1st Cir.), writ denied, 604 So.2d 1313 (La. 1992). However, a shared household alone does not establish residency for purposes of insurance coverage. Instead, the question of residency in the context of an insurance policy has been found to be largely one of intention. *Id.* In **Bearden v. Rucker**, 437 So.2d 1116, 1121 (La. 1983), the Louisiana Supreme Court "injected an 'intent' requirement into insurance policy definitions of 'resident' even in policies which did not specifically define 'resident.'" **Carbon v. Allstate Ins. Co.**, 97-3085 (La. 10/20/98), 719 So.2d 437, 441.[6] In **Bearden**, the supreme court explained:

> The controlling test of whether persons are residents of the same household at a particular time, within the meaning of the policy in question is not solely whether they are then residing together under one roof. The real test is whether the absence of the party of interest from the household of the alleged insured is intended to be permanent or only temporary—i.e., whether there is physical absence coupled with an intent not to return.

Bearden, 437 So.2d at 1121.

Residency is, in this respect, "a matter of intention and choice" rather than a matter of location. **Id.** The intention of a person to be a resident of a particular place is determined by his expressions at times not suspicious, and his testimony, when called on, considered in light of his conduct and circumstances of life. **Miley**, 599 So.2d at 798. The courts have held that whether a person is or is not a resident of a household is a question of law as well as a question of fact that is to be determined from the facts of each case. **O'Neal v. Blackwell**, 2000-2014 (La. App. 1st Cir. 11/14/01), 818 So.2d 118, 121; citing **Miley**, 599 So.2d at 791, 798.

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[6] In **Bearden**, a wife, legally separated from her husband for nine months, was injured in an automobile accident as a guest passenger of a non-owned vehicle. The question presented was whether the policy issued in the name of the husband on a community owned vehicle in the wife's exclusive custody for her use provided her with UM coverage. Under the terms of the policy, coverage would be afforded if it was determined that the wife was, at the time of the accident, "a resident of the same household" as her husband. The policy in question covered both spouses' vehicles and was originally obtained prior to their separation and renewed before legal separation occurred. The supreme court reversed the lower courts' denial of coverage, finding that the phrase, "resident of the same household," was ambiguous as the word "resident" had no fixed meaning. Construing the ambiguity in the policy in favor of coverage, the court noted that the emphasis is upon "whether there remains 'membership in a group rather than attachment to a building' and it is 'a matter of intention and choice' rather than one of location." **Bearden**, 437 So.2d at 1121 citing **Southern Farm Bureau Casualty Ins. Co. v. Kimball**, 552 S.W.2d 207 (Tex.Civ.App. 1977).

On appeal, the plaintiffs stress the affidavit and deposition testimony of Mrs. Draughn regarding her intent to return home to live with her husband upon the expiration of her planned six-month visit, and also note that she still had her Texas license plate and driver's license at the time of accident. The plaintiffs acknowledge that Mrs. Draughn ultimately filed for divorce from Mr. Draughn in October of 2014, and that she and the children never moved back to Texas. However, the plaintiffs stress that coverage is determined at the time of the loss claim, and contend that in April of 2014, Mrs. Draughn was in Louisiana and intended to visit family for six months and then return to Texas to live with her husband. Mrs. Draughn testified in her deposition as follows regarding the move to Louisiana:

> Q. ...Why did you move back here?
>
> A. We were coming to stay with fam – just coming to visit and it was a short term move. Supposed to be.
>
> Q. So did you actually move here at that time or were you here just visiting family?
>
> A. We had moved and it was a temporary move.
>
> Q. What do you mean by "a temporary move"?
>
> A. We were -- We had moved down here and we were only supposed to have been living here six months and then we were going to move back to Texas --
>
> Q. Okay.
>
> A. -- but --
>
> Q. And why were you going to move back to Texas?
>
> A. Well, we wanted -- We had moved here to visit family and be closer to family because we had been gone so many years. We were just going to move back to Texas to be back with my husband as a family.
>
> Q. All right. And it sounds like that plan changed at some point.
>
> A. Yes.

Q. Why did it change?

A. Things happen.

***

Q. But if you can just give me a general idea, when you say things happen, what you are talking about?

A. We just decided to get a divorce.

In support of their position that intent is the critical factor in the determination of residency for purposes of coverage, the plaintiffs rely upon the Third Circuit's holding in **Prudhomme v. Imperial Fire & Cas. Ins. Co.**, 95-1502 (La. App. 3rd Cir. 4/3/96), 671 So.2d 1116, writ granted in part, 96-1030 (La. 6/7/96), 674 So.2d 987, wherein the defendant was driving his half-sister's vehicle when he struck the plaintiff's vehicle head-on. The issue was whether the defendant qualified as a covered person under his half-sister's liability policy, which, in turn, required a finding that he was a resident of his half-sister's household. The record reflected that the defendant began living in his half-sister's house for three months prior to the accident and continued to do so for about a year after the accident. Both the defendant and his half-sister testified at trial that the defendant's stay was intended to be temporary and that the defendant did not consider his half-sister's house to be his residence. The court of appeal, although observing that it was a close question, found no manifest error in the district court's determination that the defendant was not a resident of his half-sister's household.

The plaintiffs herein suggest that the time period that Mrs. Draughn was visiting at her mother's house is much shorter than that of the defendant in **Prudhomme**. State Farm contends that **Prudhomme** is distinguishable on the basis that there is a distinction between parents and children versus siblings living together, because siblings do not typically live together, whereas minor children

and parents and grandparents often live together. However, such a distinction is not borne out by review of the policy in **Prudhomme** or here, where the policies classify a "family member" by the type of relation—i.e. blood, marriage, adoption, foster family—in relation to the insured, and not by the degree of relation as suggested by the defendants.

State Farm also argues that Mrs. Draughn's affidavit and deposition testimony regarding her intent to return to Texas after a six-month visit do not create a genuine issue of material fact as to residency. According to State Farm, the plaintiffs confuse residence with domicile. State Farm maintains that under Louisiana and Texas law a person can only have one domicile, but multiple residences. State Farm argues that domicile is a permanent location based on the intent to remain indefinitely, while residence, in contrast "is of a more temporary character." State Farm concludes that even accepting as true Mrs. Draughn's testimony that she and the children intended to return to Texas, the correct legal result is to find that they were residents of both Texas and Gwen Krall's Louisiana household, because intent is "only relevant" to the determination of domicile, not residence.

We agree that the jurisprudence recognizes that a person can have several places of residence, but only one place of residence can be the domicile. See **Gowins v. Gowins**, 466 So.2d 32, 34-35 (La. 1985); **Taylor v. State Farm Mutual Auto. Ins. Co.**, 248 La. 246, 256-257, 178 So.2d 238, 242 (1965). Nevertheless, the jurisprudence makes clear that the question of residency in the context of insurance coverage, whether it be multiple or singular, remains largely a question of intent. See **Bearden**, 437 So.2d at 1121; **Seymour v. Estate of Karp**, 2005-1382 (La. App. 4th Cir. 7/31/08), 996 So.2d 1, 6-7.

Alternatively, State Farm contends that Mrs. Draughn's claimed intentions in her deposition testimony and affidavit are of no moment, because the facts are

undisputed that she and Stormy intended to reside with Gwen Krall at the time of the accident. State Farm points out a number of facts in support of its argument, including the Draughns' residency in an RV park in Texas for only six months prior to Mrs. Draughn and the children coming to Louisiana, Mrs. Draughn's failure to recall the exact mailing address for the Texas RV park, Mrs. Draughn's employment and Stormy's enrollment in school in Louisiana prior to the accident, Mrs. Draughn's filing for divorce in October of 2014, and her failure of return to Texas.

Summary judgment declaring a lack of coverage under an insurance policy may not be rendered unless there is no reasonable interpretation of the policy, when applied to the undisputed material facts shown by the evidence supporting the motion, under which coverage could be afforded. **Jones v. Estate of Santiago**, 2003-1424 (La. 4/14/04), 870 So.2d 1002, 1010. Review of the record leads us to conclude that there is a genuine issue of material fact regarding Mrs. Draughn's and her children's residency at the time of the accident, which precludes the granting of summary judgment at this time. See **Seymour**, 996 So.2d at 6.

Summary judgment is seldom appropriate for determinations based on subjective facts, such as motive, intent, good faith, knowledge and malice. **Smith v. Our Lady of the Lake Hosp., Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 751. Further, it is well established that in determining whether an issue is genuine, courts cannot consider the merits, make credibility determinations, evaluate testimony, or weigh evidence. *Id.* State Farm essentially argues that this court should disregard Mrs. Draughn's testimony that she and the children were visiting Louisiana for six months and that she intended to return to Texas to reside with her husband. However, to do so, this court would be required to disregard the rule set forth in cases like **Beardon** and **Miley**, which hold that the question of residency in the context of insurance coverage is a question of intent. Additionally, such a

determination requires a credibility determination regarding Mrs. Draughn's affidavit and deposition testimony on the subjective fact of what her intent was at the time of the accident. Finally, such a determination involves the weighing of Mrs. Draughn's testimony against the countervailing evidence set forth by State Farm regarding her activities once she arrived in Louisiana. Such determinations are inappropriate in the context of a motion for summary judgment. State Farm has failed to meet its burden of proving that coverage is excluded under the policy. See **North American Treatment Systems, Inc.**, 943 So.2d at 443. We find the district court erred in granting summary judgment in favor of State Farm, and we reverse the district court's judgment and the dismissal of State Farm from this litigation.

CONCLUSION

For the above reasons, we reverse the judgment of the district court dismissing the claims of plaintiffs/appellants, Wesley and Starr Draughn, as the natural parents and tutor and tutrix of the minor child, Stormy Draughn, against the defendant/appellee, State Farm Mutual Automobile Insurance Company, and remand this matter to the district court for further proceedings. All costs of this appeal are to be paid by the defendant/appellee, State Farm Mutual Automobile Insurance Company.

REVERSED AND REMANDED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2017 CA 0069

WESLEY DRAUGHN AND STARR DRAUGHN, AS THE NATURAL PARENTS AND TUTOR AND TUTRIX OF THEIR MINOR CHILD, STORMY DRAUGHN

VERSUS

STATE FARM INSURANCE COMPANY

****

McClendon, J., dissenting.

I disagree with the majority. I do not believe that there is a genuine issue of material fact as to whether Ms. Draughn and her children were residing with Gwen Krall in Louisiana at the time of the accident. Ms. Draughn was employed in Louisiana, and her daughter was enrolled in school in Louisiana. Further, she asserted in her petition that they were domiciled in Louisiana. Additionally, in the excerpt from her deposition, Ms. Draughn repeatedly testified that she moved to Louisiana, even though it was a short-term move. Therefore, I respectfully dissent.