



Progressive Select Ins. Co. v. Rafferty

United States District Court for the Middle District of Florida, Orlando Division

July 16, 2020, Decided; July 16, 2020, Filed

Case No. 6:19-cv-566-Orl-37EJK

Reporter

472 F. Supp. 3d 1141 *; 2020 U.S. Dist. LEXIS 127687 **; 2020 WL 4034947

PROGRESSIVE SELECT INSURANCE COMPANY, Plaintiff, v. PATRICK JAY RAFFERTY; and STEPHANIE ALEXANDRA SIMICH, Defendants.

Subsequent History: Magistrate's recommendation at [Progressive Select Ins. Co. v. Rafferty, 2021 U.S. Dist. LEXIS 19223 \(M.D. Fla., Jan. 29, 2021\)](#)

Counsel: **[**1]** For Progressive Select Insurance Company, an Ohio corporation, Plaintiff: Stuart J. Freeman, LEAD ATTORNEY, Freeman, Goldis & Cash, PA, St Petersburg, FL USA.

For Stephanie Alexandra Simich, Defendant: Gregory D. Swartwood, LEAD ATTORNEY, Nation Law Firm, Longwood, FL USA.

Judges: ROY B. DALTON, JR., United States District Judge.

Opinion by: ROY B. DALTON, JR.

Opinion

[*1142] ORDER

This declaratory judgment action concerns an automobile insurance policy issued by Plaintiff Progressive Select Insurance Company ("**Progressive**"). (*See* Doc. 1.) Defendant Stephanie Alexandra Simich and Progressive moved for summary judgment. (Doc. 29 ("**Simich Motion**"); Doc. 30 ("**Progressive Motion**").) Each side responded and replied. (Docs. 36, 39-41.) On review, the Progressive Motion is granted, and the Simich Motion is denied.

I. BACKGROUND¹

This insurance coverage dispute is between Progressive and Ms. Simich, girlfriend **[*1143]** of the named insured's son. (*See* Docs. 1, 29, 30.) On November 5, 2017, Ms. Simich and her boyfriend, Defendant Patrick Jay Rafferty ("**P. Rafferty**"), were involved in an automobile accident. (Doc. 1, ¶ 11; Doc. 12, ¶ 11.) P. Rafferty was driving Ms. Simich's vehicle, and Ms. Simich was injured. (Doc. 1, ¶ 11; Doc. 12, ¶ 11.) **[**2]** At the time of the accident, P. Rafferty's father, Donald L. Rafferty ("**D. Rafferty**"),

¹For resolving a summary judgment motion, the Court ordinarily presents the facts in the light most favorable to the non-moving party. *See Battle v. Bd. of Regents*, 468 F.3d 755, 759 (11th Cir. 2006). Here, two parties moved for summary judgment, and the material underlying facts are undisputed—only the inferences drawn from those facts are disputed. So the Court presents the undisputed facts from the record evidence.

maintained an automobile insurance policy with Progressive. (Doc. 1, ¶¶ 8-9; Doc. 31-1, pp. 3-55 ("Policy").) The Policy lists D. Rafferty's address on Centre Court in Reunion, FL and includes D. Rafferty and P. Rafferty's brother, Christopher Rafferty, as "Drivers and resident relatives." (Doc. 31-1, p. 3.)

The Policy provides liability coverage for "bodily injury for which an insured person becomes legally responsible because of an accident." (Doc. 31-1, p. 13.) An "insured person" under the Policy includes the named insured and "a relative"—"a person residing in the same household as [a named insured], and related to [a named insured] by blood, marriage, or adoption, and includes a ward, stepchild, or foster child." (*Id.* at 13-14.) "Relative" also encompasses a named insured's "unmarried dependent children temporarily away from home . . . if they intend to continue to reside in [the named insured's] household." (*Id.* at 13.)

Because the Policy covered D. Rafferty's blood relatives residing in his household, P. Rafferty's residences before the accident are pertinent. (*Id.* at 3, 13-14.) After coming to Orlando, FL for college in 2004, [**3] P. Rafferty lived in several different places—he lived with friends for a few years, moved into his father's guestroom in Reunion, FL for less than a year around 2009 or 2010, and then lived with friends in Orlando until 2014. (Doc. 29-1, p. 10:12-24, 12:5-15:25, 42:3-22.) He moved back in with his father in 2014, where he stayed until March 2016. (*Id.* at 15:21-16:13, 44:14-21; Doc. 35, pp. 9:3-10:23.²) While living there, P. Rafferty began dating Ms. Simich, who lived about three miles from D. Rafferty. (Doc. 29-1, p. 16:12-17:20, 50:20-22.) P. Rafferty spent substantial time at Ms. Simich's house, and in early 2016, P. Rafferty told his father he was officially moving in with her. (*Id.* at 17:25-18:5, 44:14-21; Doc. 35, pp. 10:25-12:1; Doc. 33, p. 15:7-15.)

P. Rafferty moved into Ms. Simich's house around March 2016 and shared her master bedroom. (Doc. 29-1, pp. 17:25-18:5, 38:10-16, 44:14-21; Doc. 34, p. 16:4-8.) He brought his clothing, toiletries, desktop computer, desk and chair, and other personal items. (Doc. 29-1, pp. 17:25-18:19, 38:17-24, 39:6-21; Doc. 33, p. 17:12-16; Doc. 34, pp. 12:25-13:4.) The only belongings he left at his father's home were old clothes and maybe some [**4] tools—nothing he used regularly. (Doc. 29-1, pp. 18:10-19, 57:1-4; Doc. 34, pp. 12:25-13:4.) P. Rafferty later bought a television for Ms. Simich's house and added a bar table and chairs to the backyard. (Doc. 34, pp. 18:1-19:6, 20:14-21:24.) P. Rafferty kept his motorcycle and tools in Ms. Simich's garage. (Doc. 29-1, pp. 54:22-55:1, 60:6-10, 63:25-64:3; Doc. 34, pp. 21:24-22:7; Doc. 35, p. 15:16-22.)

There was no lease agreement or set monthly rent while P. Rafferty lived at Ms. Simich's house. (Doc. 29-1, pp. 22:7-21, 38:8-9; Doc. 33, p. 17:17-24.) But he gave her about \$300 to \$500 each month based on what she requested, and he contributed money for groceries and other expenses. (Doc. 29-1, pp. 22:1-21, 37:5-25; Doc. 33, [**1144] pp. 17:17-18:10.) Another individual, Tony Riggio, lived at Ms. Simich's house too, and he paid her \$500 a month under an oral agreement. (Doc. 29-1, pp. 21:7-9, 50:3-14; Doc. 34, pp. 8:8-14, 9:15-22.) P. Rafferty didn't receive mail at Ms. Simich's house (only packages), and he used his father's address as his "permanent address" for government and legal documents out of convenience because he "had moved around so many times."³ (Doc. 29-1, pp. 17:8-11, 25:1-21, [**5] 30:13-31:2, 43:8-9, 45:2-9.) P. Rafferty lived at Ms. Simich's house until after the accident on November 5, 2017. (*Id.* at 18:23-19:7, 57:22-24; Doc. 35, p. 12:21-24.) On the date of the accident, P. Rafferty was thirty-four years old. (*See* Doc. 32, p. 8:3.)

While living with Ms. Simich, P. Rafferty spent nights

²Where the parties filed excerpts of deposition transcripts, the page numbers for citations to the depositions are those from the top right-hand corner of the transcripts rather than those associated with the document number at the top of the page.

³The address on P. Rafferty's driver's license, voter's registration, 2017 tax return, motorcycle registration, and bank account is his father's address. (Doc. 29-1, pp. 24:24-25:21, 30:13-35:10, 52:22-53:6.) P. Rafferty also used his father's address for his business and filed annual reports with it. (*Id.* at 17:2-11, 24:9-14, 48:15-50:2.)

at his father's house, though there's disagreement about how many. According to P. Rafferty, he stayed there only about ten times—he packed toiletries and clothing to use while there. (Doc. 29-1, pp. 22:22-23:10.) Mr. Riggio confirmed P. Rafferty stayed at Ms. Simich's almost every night. (Doc. 34, pp. 11:15-20, 22:8-23:6.) But Ms. Simich claims he spent two or three nights a week at his father's home. (Doc. 33, pp. 15:16-16:8.) P. Rafferty never gave D. Rafferty money for rent or home maintenance while living with Ms. Simich. (Doc. 29-1, p. 52:3-5; Doc. 35, p. 16:11-20.) He considered himself a resident of Ms. Simich's house and said he was living with her on the date of the accident—D. Rafferty agreed. (Doc. 29-1, pp. 26:1-4, 26:20-22, 52:19-21; Doc. 35, p. 17:10-13.) After the accident, P. Rafferty moved back to his father's home because Ms. Simich's father "removed" him **[**6]** from her house. (Doc. 29-1, pp. 19:3-13, 58:5-12.)

Ms. Simich later made a demand to Progressive for damages for the injuries she sustained in the accident caused by P. Rafferty's alleged negligence. (Doc. 1, ¶ 12; Doc. 12, ¶ 12.) Progressive then brought this declaratory judgment action seeking a determination that P. Rafferty isn't covered under the Policy and that Progressive has no duty to indemnify or defend P. Rafferty. (See Doc. 1, ¶¶ 13-22; *id.* at 5-6.) Ms. Simich answered (Doc. 12), but P. Rafferty failed to respond, so a clerk's default was entered against him (see Docs. 9-10). Progressive and Ms. Simich move for summary judgment, contesting whether P. Rafferty is a "relative" under the Policy. (Docs. 29, 30.) With briefing complete (see Docs. 36, 39-41), the matter is ripe.

II. LEGAL STANDARDS

Summary judgment is appropriate only if the movant shows there is "no genuine dispute as to any material fact and [it] is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). On issues for which the movant has the burden at trial, it must show the absence of a genuine

issue of material fact and support its motion with credible evidence showing that no reasonable jury could find for the nonmoving party **[**7]** on the essential elements. *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993) (citing *United States v. Four Parcels of Real Prop. in Green & Tuscaloosa Cty.*, 941 F.2d 1428, 1438 (11th Cir. 1991)).

On issues for which the nonmovant would bear the burden of proof, the movant has two options: (1) it may simply point out a lack of evidence to support the **[*1145]** nonmoving party's case; or (2) it may provide "affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial." *Four Parcels*, 941 F.2d at 1438 (citation omitted). "The burden then shifts to the non-moving party, who must go beyond the pleadings, and present affirmative evidence to show that a genuine issue of material fact exists." *Porter v. Ray*, 461 F.3d 1315, 1320 (11th Cir. 2006) (citation omitted).

"A factual dispute is genuine 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" *Four Parcels*, 941 F.2d at 1437 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)). A court must view the evidence and all reasonable inferences in the light most favorable to the nonmovant, *Battle*, 468 F.3d at 759—"when conflicts arise between the facts evidenced by the parties, [the court] credit[s] the nonmoving party's version." *Evans v. Stephens*, 407 F.3d 1272, 1278 (11th Cir. 2005). Yet "[the] court need not permit a case to go to a jury . . . when the inferences that are drawn from the evidence, and upon which the non-movant relies, are 'implausible.'" *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 743 (11th Cir. 1996) (citation omitted). "When opposing parties tell two different stories, one of which is blatantly contradicted **[**8]** by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

III. ANALYSIS

The dispute boils down to one question: Was P. Rafferty "residing in the same household" as D. Rafferty at the time of the accident and thus a "relative" and "insured person" entitled to coverage under the Policy? (Doc. 29, p. 2; Doc. 30, p. 2.) Progressive says no, arguing P. Rafferty was residing with Ms. Simich, not D. Rafferty, at the time of the accident. (Docs. 30, 36, 41.) Ms. Simich says yes, contending P. Rafferty's permanent residence was at D. Rafferty's house. (Docs. 29, 39, 40.) Let's look to the Policy before turning to P. Rafferty's residence.

A. Policy Interpretation

Under Florida law, "insurance contracts are to be construed in a manner that is 'reasonable, practical, sensible, and just.'" *U.S. Fire Ins. Co. v. Freedom Vill. of Sun City Ctr., Ltd.*, 279 F. App'x 879, 880 (11th Cir. 2008)⁴ (citations omitted). Courts begin with the policy—"the most important factor." *James River Ins. Co. v. Ground Down Eng'g, Inc.*, 540 F.3d 1270, 1274 (11th Cir. 2008) (citation omitted). Courts interpret policies consistent with "the plain meaning of the language used so as to give effect to the policy as it was written." *Travelers Indem. Co. v. PCR Inc.*, 889 So. 2d 779, 785 (Fla. 2004). "Words and phrases in an insurance policy, when not specifically [**9] defined therein, 'must be given their everyday meaning and read in light of the skill and experience of ordinary people.'" *Siegle v. Progressive Consumers Ins. Co.*, 788 So. 2d 355, 359-60 (Fla. 4th DCA 2001) (citation omitted). For this, courts can look to legal and non-legal dictionaries. *Id. at 360*. If the language "is susceptible to more than one reasonable interpretation, one providing coverage and the other limiting coverage," courts should "resolve the ambiguity in favor of the insured by adopting a reasonable interpretation [**1146] of the policy's language that provides coverage." *Travelers Indem. Co.*,

889 So. 2d at 785-86 (citations omitted).

To qualify for coverage under the Policy, P. Rafferty must meet the definition of a "relative": "a person residing in the same household as [a named insured], and related to [a named insured] by blood, marriage, or adoption." (Doc. 31-1, p. 13.) Because P. Rafferty is D. Rafferty's son (*see, e.g.*, Doc. 35, p. 7:18-22), at issue is whether he was "residing in the same household" as D. Rafferty. The Policy doesn't define "residing" or "household." (*See* Doc. 31-1.) The dictionary defines "resides" as "to dwell permanently or continuously: to occupy a place as one's legal domicile." *Owners Ins. Co. v. Berke*, No. 6:17-cv-1505-Orl-37TBS, 2018 U.S. Dist. LEXIS 217033, 2018 WL 3850005, at *2 (M.D. Fla. Aug. 1, 2018) (quoting *Webster's Third New Int'l [**10] Dictionary* (3d ed. 1961)). And the Florida Supreme Court defines "resident" as "one who lives at a place with no present intention of removing therefrom." *Id. at *2* (quoting *Kiplinger v. Kiplinger*, 147 Fla. 243, 2 So. 2d 870, 873 (Fla. 1941)). So the Court adopts these definitions in interpreting the Policy and determining coverage. *See id. at *2-3*.

B. P. Rafferty's Residence

"[W]hat constitutes residency is a mixed question of law and fact to be determined from the evidence presented in each individual case." *Gen. Guar. Ins. Co. v. Broxsie*, 239 So. 2d 595, 597 (Fla. 1st DCA 1970). "The residence of a party consists of fact and intention." *Kiplinger*, 2 So. 2d at 873 (citation omitted). Residency under an insurance policy is typically a factual matter, but "when the facts are essentially undisputed, the Court may determine whether a family member is a resident as required for coverage under the policy." *N.H. Indem. Co. v. Reid*, No. 3:05-CV-1280-J-12MCR, 2007 U.S. Dist. LEXIS 9086, 2007 WL 473677, at *2 (M.D. Fla. Feb. 8, 2007) (citations omitted), *aff'd*, 294 F. App'x 459 (11th Cir. 2008).

Considering the facts and relevant intentions, P. Rafferty couldn't reasonably be considered "a person

⁴While unpublished opinions are not binding precedent, they may be considered persuasive authority. *See* 11th Cir. R. 36-2; *see also* *United States v. Almedina*, 686 F.3d 1312, 1316 n.1 (11th Cir. 2012).

residing in the same household" as D. Rafferty at the time of the accident. It's undisputed P. Rafferty was thirty-four years old, self-employed, and not financially dependent on his father. (See Doc. 29-1, pp. 8:14-18, 17:2-11; Doc. 32, p. 8:3; Doc. 38, p. 25:12-13.) He periodically lived **[**11]** with D. Rafferty over the years, but he lived with Ms. Simich for the eighteen months before the accident. (Doc. 29-1, pp. 17:25-19:2, 52:19-21, 59:5-10; Doc. 35, pp. 12:21-24, 17:10-13.) All his often-used belongings, including toiletries, clothes, furniture, and motorcycle, were at her house. (Doc. 29-1, pp. 17:25-18:19, 38:17-24, 39:6-21, 54:23-55:1, 60:6-10; Doc. 33, p. 17:12-16; Doc. 34, pp. 12:25-13:4; Doc. 35, p. 15:16-22.) And he paid Ms. Simich \$300 to \$500 each month and contributed to groceries and house maintenance. (Doc. 29-1, pp. 22:1-21, 37:5-38:7; Doc. 33, pp. 17:17-18:10.) So P. Rafferty was undoubtedly residing with Ms. Simich. See [Berke, 2018 WL 3850005, at *2](#) (describing "residing" as living permanently and continuously in a place with no present intention of leaving).

While a person may have more than one "residence" under an insurance policy, P. Rafferty's limited connections to his father's home aren't enough to render him a resident of D. Rafferty's household. First is his use of his father's address as his "permanent address." It's true P. Rafferty used D. Rafferty's address for mail and government and business documents, but this was out of convenience because he moved around often before **[**12]** living with Ms. Simich. (See Doc. 29-1, pp. 17:8-11, 30:13-23.) But while using an address for mail and other purposes may be a factor for establishing residency despite living somewhere **[*1147]** else, courts have found residency where there were also other indicia of residence. See, e.g., [Seitlin & Co. v. Phoenix Ins. Co., 650 So. 2d 624, 625-26 \(Fla. 3d DCA 1994\)](#) (received mail at parent's house plus maintained a room and belongings there and parents claimed him as a dependent for taxes); [Trezza v. State Farm Mut. Auto. Ins. Co., 519 So. 2d 649, 652 \(Fla. 2d DCA 1988\)](#) (used parents' address "as his permanent address" on legal and government documents plus kept most of his belongings there and considered it his "home").

Next are his overnight stays at his father's home. Although the frequency is disputed, it's undisputed he stayed in the guestroom and packed clothing and toiletries because he kept no useful belongings there. (Doc. 29-1, pp. 22:22-23:10; Doc. 33, pp. 15:16-16:8; Doc. 34, pp. 22:20-23:6; Doc. 35, pp. 15:23-16:10.) D. Rafferty didn't financially support P. Rafferty, and P. Rafferty didn't pay rent or otherwise contribute to the maintenance of D. Rafferty's home. (Doc. 29-1, p. 52:3-18; Doc. 35, p. 16:11-20; Doc. 38, p. 25:12-13.) Even if P. Rafferty stayed at his father's house two or three nights a week as Ms. Simich testified (**[**13]** see Doc. 33, pp. 15:16-16:8), this doesn't mean P. Rafferty resided there—he stayed there as a guest. See, e.g., [Broxsie, 239 So. 2d at 597](#) (a resident is "more than a mere visitor"); [Griffin v. Gen. Guar. Ins. Co., 254 So. 2d 574, 575 \(Fla. 3d DCA 1971\)](#) (an uncle wasn't a resident of his nephew's house despite residing there three to four days a week because "he actually maintained his residence with his mother and stepfather at another domicile").

P. Rafferty's intention about his residency further reveals P. Rafferty wasn't "residing in" his father's household. P. Rafferty told his father he was officially moving in with Ms. Simich, moved all his often-used belongings there, paid her each month, and lived with her for eighteen months—until her father forced him to leave after the accident. (Doc. 29-1, pp. 17:25-19:13, 38:17-39:21, 44:14-21, 57:1-4; Doc. 33, p. 17:12-16; Doc. 34, pp. 12:25-13:4; Doc. 35, pp. 11:2-12:1, 14:21-24.) He testified he didn't consider himself to be a resident of his father's house on the date of the accident, and he had no present intent to live there. (Doc. 29-1, pp. 26:1-22, 54:2-5). And his father didn't financially support him or list him as a "resident relative" covered under the Policy. (See Doc. 31-1, p. 3; Doc. 32, p. 8:3). So P. Rafferty wasn't **[**14]** "residing in" D. Rafferty's household at the time of the accident.⁵ See, e.g., [Reid, 2007 U.S.](#)

⁵The court in [American Securities Insurance Co. v. Van Hoose, 416 So. 2d 1273 \(Fla. 5th DCA 1982\)](#), discussed cases in which other courts found an insurance policy with similar language covered an individual not physically staying in the insured's house at the relevant time, but its summary involved cases in which there was a temporary absence from

[Dist. LEXIS 9086, 2007 WL 473677, at *3-5](#) (not a resident of parents' house where he lived away from parents for eight months before the accident, he considered his own household home with no intent to live with parents, and his father didn't financially support him or intend to insure him under the policy); [Berke, at *3](#) (individual didn't "reside with" the insured because there was no evidence he permanently or continuously lived there, at most he was an occasional overnight guest).

What's more, no case Ms. Simich relies on supports that P. Rafferty maintained two residences—a "living arrangement" with her and a "permanent residence" with D. Rafferty based on using his father's address for mail and legal documents. (See Doc. 29, pp. 9-17; Doc. 39, pp. 6-9; Doc. 40, **[*1148]** pp. 3-9.) In some cases she cites, individuals were residents of a parent's household despite living elsewhere at the time of the accident, but this was because the parent financially supported the child, the child maintained a room and kept clothing there, the child lived there part-time, or some combination of these factors. See, e.g., [Sutherland v. Glens Falls Ins. Co., 493 So. 2d 87, 87-89 \(Fla. 4th DCA 1986\)](#); [Alava v. Allstate Ins. Co., 497 So. 2d 1286, 1287-88 \(Fla. 3d DCA 1986\)](#); [Row v. United Servs. Auto. Ass'n, 474 So. 2d 348, 350-52 \(Fla. 1st DCA 1985\)](#). And some cases she cites discuss using a parent's address **[**15]** as a "permanent address," but none found residency based solely on that—the courts focused on whether the adult children were away for schooling or military service, financially supported by their parents, maintained a room and belongings there, or considered the parent's house to be home.⁶ See, e.g., [Seitlin & Co., 650 So. 2d at 625-26](#); [Trezza, 519 So. 2d at 652](#). Although

the insured's household with the intent to go back to that residence. [Id. at 1274 n.2](#). Such cases are distinguishable from the facts here.

⁶In another case, an individual was temporarily residing at his parents' house at the time of the accident, and although the court considered the address used for mail and other government documents, the court focused the residency determination on the intent of the individual to continue living at the parents' address. See [Whitten v. Allstate Ins. Co., 476 So. 2d 794, 795-96 \(Fla. 1st DCA 1985\)](#). There was no evidence he intended to continue living there, so he didn't qualify as a resident. See *id.*

P. Rafferty used his father's address as his "permanent address," these other residency factors aren't present here.⁷

Ms. Simich also argues the Policy is ambiguous, so her "reasonable interpretation [that P. Rafferty maintained two residences] must prevail." (Doc. 39, pp. 9-10.) This fails for two reasons. First, the Policy isn't ambiguous—the Court gives the undefined terms their plain meaning in dictionaries and caselaw. See [Berke, 2018 WL 3850005, at *2](#) (relying on the dictionary definition of "resides" and caselaw defining "resident" in interpreting similar policy language). Second, Ms. Simich relies on *Reid* to claim the language is ambiguous, but there the court determined no reasonable jury would find the son was a resident of his parents' household where he maintained his own duplex for eight months before the accident, was responsible for **[**16]** his own bills, didn't have a room at his parents' house, rarely spent the night there, and considered his duplex his home. [Reid, 2007 U.S. Dist. LEXIS 9086, 2007 WL 473677, at *3-5](#). So even if the language were ambiguous, her interpretation—that P. Rafferty was a resident of his father's house based on using his father's address as his "permanent address"—isn't reasonable considering the facts here.

Ultimately, no case provided by Ms. Simich or found by the Court supports a finding of residency in a parent's household under facts like these. On this record, P. Rafferty didn't "reside in" D. Rafferty's household on the date of the accident—he didn't live there permanently or continuously and had no intention of living there. As no reasonable juror could conclude P. Rafferty was residing in his father's household and thus a "relative" under the Policy, the Progressive Motion is granted. See, e.g., [Berke, 2018](#)

⁷Ms. Simich also contends [Continental Insurance Co. v. Roberts, No. 8:03-cv-1260-T-24MSS, 2004 U.S. Dist. LEXIS 30943, 2004 WL 5572025 \(M.D. Fla. Apr. 20, 2004\)](#), is a factually similar case supporting her position. (Doc. 39, pp. 10-12; Doc. 40, pp. 5-7.) There, the court considered whether a boyfriend qualified as a "family member" for purposes of a coverage limitation, not whether he was a resident of the same household as a named insured. See [2004 U.S. Dist. LEXIS 30943, 2004 WL 5572025, at *3-5](#). It is thus inapposite.

[WL 3850005, at *3](#); [Reid, 2007 U.S. Dist. LEXIS 9086, 2007 WL 473677, at *3-5](#).

IV. CONCLUSION

It is **ORDERED AND ADJUDGED**:

[*1149] 1. Defendant Stephanie Alexandra Simich's Motion for Summary Judgment (Doc. 29) is **DENIED**.

2. Plaintiff Progressive Select Insurance Company's Motion for Entry of Final Summary Judgment (Doc. 30) is **GRANTED**.

3. The entry of final judgment is **DEFERRED**. On or before Wednesday, **July 29, 2020**, Plaintiff must notify **[**17]** the Court in writing of the status and proposed disposition of the claim against Defendant Patrick Jay Rafferty who has not appeared (*see* Docs. 9, 10).

4. The final pretrial conference set for August 20, 2020 is **CANCELED**.

DONE AND ORDERED in Chambers in Orlando, Florida, on July 16, 2020.

/s/ Roy B. Dalton, Jr.

ROY B. DALTON, JR.

United States District Judge