

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JAMES ROBINSON, JR.

APPELLANT

VS.

CASE # 2009-TS-00864

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**

APPELLEE

**APPEAL FROM THE GRANT OF SUMMARY JUDGMENT BY
CIRCUIT COURT OF SMITH COUNTY, MISSISSIPPI**

**BRIEF OF APPELLEE
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

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STATEMENT OF THE ISSUES

- I. The Circuit Court of Smith County correctly granted State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment because Christy Robinson Best testified under oath that she did not reside with her brother and her parents at 493 SCR 106 at the time of James Robin Robinson, Jr.'s accident. Because she did not reside at 493 SCR 106 at the time of the accident, James Robin Robinson, Jr. was not entitled to claim the uninsured motorist benefits under the coverage afforded by Christy Robinson Best's automobile policy with State Farm Mutual Automobile Insurance Company.
- II. The affidavits submitted by James Robin Robinson, Jr. in an effort to defeat State Farm Mutual Automobile Insurance Company's motion for summary judgment were conclusory, self-serving and unsupported by material facts. The affidavits were insufficient to create a genuine issue of material fact concerning Christy Robinson Best's residence at the time of the accident.

STATEMENT OF THE CASE

On September 6, 2005, Plaintiff/Appellant James Robinson, Jr. was injured when the motorcycle on which he was riding collided with a vehicle operated by David J. Luckey.¹ It is undisputed that at the time of the accident, Robinson was residing in the home belonging to his parents which is located at 493 SCR 106, Mize, Mississippi. Robinson sustained significant injuries as a result of the accident.

On September 28, 2007, James Robinson, Jr. ("Robinson") filed his Complaint against State Farm Mutual Automobile Insurance Company ("State Farm") and other defendants in the Circuit Court of Smith County, Mississippi seeking damages for injuries sustained in the accident.² [R.E. 5; R. 1] Co-Defendants Progressive Gulf Insurance Company, Nationwide Property and Casualty Company have upon information and belief tendered their policy limits and been dismissed from this matter. Further, Co-Defendant David J. Luckey has been dismissed as well.

The Complaint alleged that the vehicle driven by David J. Luckey was underinsured and that Robinson was entitled to underinsured motorist coverage under an automobile insurance policy issued to his sister, Christy Robinson Best. [R.E. 9; R. 5] Robinson sought the limits of the underinsured motorist coverage in the insurance policy issued by State Farm to his sister Christy Robinson Best ("Best") based on his contention that Christy Robinson Best was residing along with him at the home of their parents at 493 SCR 106 Mize, Mississippi at the time of his accident. [R.E.

¹ According to Plaintiff's Complaint the motorcycle operated by Plaintiff was owned by an individual named Phillip James.

² The Complaint filed by Plaintiff was styled "Robinson, Jr. vs. Progressive Casualty Insurance Company; State Farm Mutual Automobile Insurance Company; Safe Way Insurance Company; Nationwide Property and Casualty Company and David J. Lucky". [R.E.1; R. 5]

11; R. 7]

On December 28, 2007, State Farm filed its Answer to the Complaint in which it denied that Robinson was entitled to underinsured motorist coverage under the automobile policy issued to Christy Robinson Best. [A.R.E.³ 1; R. 12]

Christy Robinson Best was examined under oath on August 18, 2008. [R.E. 47; R. 97] During her sworn testimony Christy Robinson Best affirmed that she maintained an address at 444 SCR 106, a mobile home located across the road from her parents' home at 493 SCR 106.⁴ Best testified that she had lived at 444 SCR 106 before she married Christopher Dewayne Best in 2001. [R.E. 55; R. 17] Best further testified that after getting married, Best moved for a time to Mendenhall, but she and her husband subsequently returned to 444 SCR 106. [R.E. 55; R. 105] She and her husband subsequently separated and Best stayed for a time with a friend in Raleigh and after her divorce was finalized, she returned to 444 SCR 106. [R.E. 56, 57; R. 106, 107]

Christy Robinson Best further testified that she considered 444 SCR 106 to be her home. [R.E. 58; R. 107] The majority of her belongings and personal effects were kept there. [R.E. 57; R. 108] She intended the 444 SCR 106 address to be the place where she was going to live. [R.E. 57; R. 108]

After her brother's accident in August 2005, Christy Robinson Best did go to the home of her parents at 493 SCR 106 to assist her mother and care for her brother on a periodic basis. [R.E.

³ "R.E." refers to portions of Appellant's record excerpts while "A.R.E." refers to Appellee's additional record excerpts which were not included in the Appellant's record excerpts.

⁴ Robinson concedes in his Brief to this Court that at the time of the accident, Christy Robinson Best maintained an address of 444 Smith County Road 106, Mize, Mississippi. *See Brief of Appellant James Robin Robinson, Jr. at p. 3, ¶ 1.*

61; R. 111] During this time, Robinson was unable to take care of himself, and her assistance was needed.

Christy Robinson Best's sworn testimony was clear that at the time of Robinson's accident in September 2005, she was not living at her parents home. [R.E. 60; R. 110] Best further clearly testified under oath that she considered 444 SCR 106 to be her permanent home and that her belongings were there and she intended to stay there as her permanent home. [R.E. 58, 57; R. 107-08]

Based on Christy Robinson Best's sworn testimony, State Farm filed a Motion for Summary Judgment. [A.R.E. 7; R. 24] In its Motion for Summary Judgment, State Farm argued that Robinson was not entitled to underinsured motorist benefits under the automobile policy issued to Christy Robinson Best because, at the time of the accident, Robinson and Christy Robinson Best did not reside in the same household. [A.R.E. 7; R. 24] The Motion was supported by an Itemization of Material Facts [A.R.E. 12; R. 29] and Memorandum of Law. [A.R.E. 16; R. 83] In support of the Motion for Summary Judgment, State Farm offered in total the sworn statement of Christy Robinson Best in which she testified that she did not reside in the same household as her brother on the date of the accident, and further, that she had no intention of residing in that household.

A hearing was held on the Motion for Summary Judgment on February 6, 2009. [R.E. 70; T. 1] At the hearing, Robinson did not produce any factual evidence to rebut Christy Robinson Best's testimony that she did not reside in her parents home at the time of her brother's accident and did not intend to reside at that home. [R.E. 75, 76; T. 3, 4] The Court conditionally granted the Motion but gave Robinson thirty (30) days to provide evidence to show that Christy Robinson Best resided with her parents on the date of the accident. [R.E. 77; T. 5]

On February 9, 2009, an Order was entered based on Judge Evan's ruling, tentatively sustaining State Farm's Motion and granting Robinson thirty (30) days from February 6, 2009, to produce the required evidence. [R.E. 16; R. 40]

It did not appear that any counter-affidavits were filed by the Plaintiff within the Court's deadline and as such the court entered an initial Order on March 9, 2009, sustaining State Farm's Motion. However, following the entry of this Order, on March 9, 2009, Robinson's attorney filed a Motion for Additional Time requesting five (5) additional days to submit affidavits [R.E. 2, 29; R. 58] Upon information and belief there has never been any order entered granting the additional time requested by Plaintiff. [R.E. 2]

Nevertheless the Court's Order of March 9, 2009 was withdrawn and on March 11, 2009, Robinson filed a Response to the Motion for Summary Judgment and attached four (4) affidavits. [R.E. 31; R. 45] The affidavits were from Robinson's parents, Robin and Carolyn Robinson; brother, Ben Robinson; and friend, Keith Brewer. [R.E. 19-22; R. 47-50] All affidavits contained virtually identical "magical" language claiming that Christy Best was residing in the parents' home on the date of the accident. [R.E. 19-22; R. 47-50]

State Farm filed a Supplemental Motion for Summary Judgment and Motion to Strike the Affidavits on March 27, 2009, arguing that the Plaintiff's response was untimely and that the affidavits were self-serving and essentially identical. [R.E. 23; R. 52] Moreover, State Farm argued that the affidavits did not affect the basis for summary judgment inasmuch as they were silent as to the intent of Christy Robinson Best as to her residence. [R.E. 25, 26; R. 54, 55] Additionally, the affidavits did not provide anything substantive to support the claim that Christy Best was a resident in her parents home at the time of the accident. [R.E. 26; R. 55]

A hearing was held on April 13, 2009, and the Court determined that due to the testimony

of Christy Robinson Best, the Motion for Summary Judgment should be finally granted. [R.E. 35; R. 66] An Order sustaining State Farm's Motion and dismissing the case was filed on May 5, 2009. [R.E. 36; R. 67] On that same day, Robinson filed his Notice of Appeal. [R.E. 38; R. 69]

SUMMARY OF THE ARGUMENT

The issue in this appeal is whether Smith County Circuit Judge Robert Evans properly granted summary judgment in favor of Appellee State Farm. In its Motion and supporting documents, State Farm submitted specific facts as to the residence of Christy Robinson Best as of the date of the accident at issue. These facts clearly establish that at the time of the accident at issue, Christy Robinson Best was not a resident of her parents home at 493 SCR 106, Mize, Mississippi, where her brother resided.

Further, notwithstanding the affidavits submitted in opposition to State Farm's Motion for Summary Judgment, Appellant Robinson has not presented any facts or evidence which would call into question the Smith County Circuit Court's ruling on the issue of the residence of Christy Robinson Best. The affidavits submitted by Plaintiff are conclusory and completely lacking in substance. As such, they fail entirely to meet the requirements set forth by Miss. R. Civ. P. 56(e) and cases interpreting the Rule.

ARGUMENT

- I. The Circuit Court of Smith County correctly granted State Farm Mutual Automobile Insurance Company's Motion for Summary Judgment because Christy Robinson Best testified under oath that she did not reside with her brother and her parents at 493 SCR 106 at the time of James Robinson, Jr.'s accident. Because she did not reside at 493 SCR 106, James Robinson, Jr. was not entitled to claim the uninsured motorist benefits under the coverage afforded by Christy Robinson Best's automobile policy with State Farm Mutual Automobile Insurance Company.

A. Determining Residence

In cases such as this, Mississippi law requires consideration of the Mississippi Uninsured Motorist Statute, MISS. CODE ANN. § 83-11-103; the language of the relevant insurance policy; and, Mississippi case law to determine who is an insured. All three provide the basis for determining whom, in addition to the named insured, are covered by virtue of their “residence.” *

1. The Mississippi Uninsured Motorist Statute

One key for determining who is an “insured” for coverage purposes is the language employed in the statute. Pursuant to the Mississippi Uninsured Motorist statute, an “insured” is defined as “the named insured and, *while a resident of the same household*, the spouse of any such named insured and relatives or either. . . “ *See* MISS. CODE ANN. § 83-11-103 (*emphasis added*).

In the present case there is not any dispute that the named insured under the policy at issue is Christy Robinson Best and further there is not any dispute that James Robinson, Jr., is the brother of Christy Robinson Best. However, as the Smith County Circuit Court rightly determined, Robinson and Christy Robinson Best were not residing in the same household at the time of the accident and the Plaintiff has not produced any *facts* to dispute this issue.

2. State Farm Policy No. 54 2136-A01-24

The language of the relevant insurance policy also determines who is covered in addition to the named insured. The policy at issue listed Christy Robinson Best as the named insured. Under the UM section of the policy, “insured” is defined as “1. you; 2. your spouse; 3. your relatives.” [R.E. 46; R. 96] Under the policy definitions, “relative” is defined as “a person related to you or your spouse by blood, marriage or adoption who resides primarily with you.” [R.E. 45; R. 95] There is not any question that Robinson is Christy Best’s brother, but that does not make him a relative under the policy unless he can prove that he resided primarily with her at the time of the accident.

3. Mississippi Law Determining Residence

Lastly, Mississippi case law assists in determining to whom coverage is extended by virtue of “residence” in uninsured motorist cases. The Mississippi Supreme Court previously has set forth a three-part test to help determine whether one is a part of a household for purposes of uninsured motorist coverage:

1) the subjective or declared intent of the person remaining, either permanently or for an indefinite or unlimited period, in the place he contends is his “household;” 2) the formality or informality of the relationship between such person and the members of the household; and 3) whether the person alleging his residence to be a particular household has another place of lodging.

Johnson v. Preferred Risk Auto. Ins. Co., 659 So. 2d 866, 874 (Miss. 1995) (citing *Workman v. Detroit Auto Inter-Insurance Exchange*, 274 N.W.2d 373 (Mich. 1979.)) Under Mississippi law, a significant factor is placed on the subjective or declared intent of the purported household member, and Christy Robinson Best declared under oath that her intent was that 444 SCR 106 was and would continue to be her permanent residence and that it was not her intent for 409 SCR 106 to be her residence.

B. Christy Robinson Best Was Not Residing at 493 SCR 106

The uninsured motorist statute, the State Farm policy language, and the relevant case law clearly dictate that Plaintiff/Appellant James Robinson, Jr. is not entitled to under-insured motorist benefits contained in his sister’s State Farm automobile policy. By applying the relevant law for uninsured motorist coverage to the facts in this case, it is abundantly clear that the Smith County Circuit Court correctly granted summary judgment in favor of State Farm.

A critical consideration for determining residence is the intent of the parties. In the Mississippi Supreme Court’s *Johnson* decision, *supra*, the Court had to determine whether a husband

and wife who each temporarily resided with their respective parents were entitled to uninsured motorist benefits under their parents' insurance policies. The couple was in the process of moving from Knoxville, Tennessee, to Little Rock, Arkansas. The Johnsons testified that it was their intent to reside with their parents and to be there as family members for the few weeks before moving to their permanent residence in Arkansas. *Johnson*, 659 So. 2d at 870. The Court took their intent into consideration when determining whether they were "residents" for purposes of uninsured motorist coverage. *Id.* at 875. "Where a family member is not a resident of the same household as the insured, UM coverage will be denied." *Id.* at 872.

The *Johnson* court spent a great deal of time exploring the concept of "resident." *Id.* at 873-75. Ultimately, the Court looked to what the parties to the insurance contract meant, i.e., their intent. *Id.* at 875. The Court determined that the Johnsons intended to stay with their respective parents until such time as they could move their belongings to Little Rock and establish a home there. *Id.* Their parents most likely intended "their UM coverage to extend to their emancipated, married children during any indefinite subsequent visits." *Id.* At the time of the accident in which the Johnsons were injured, they were therefore residents of their parents' homes.

While the *Johnson* case is initially distinguishable from the present case in that Christy Robinson Best is not the parent of Plaintiff/Appellant Robinson and as such there would be no intent to cover her adult brother under her policy, the case does acknowledge that "intent" regarding residency is a significant consideration.

The Mississippi Supreme Court has stated, "[t]he key in determining the intent of the parties is whether they created and maintained a household, and not the existence of a contiguous roof." *Mercer v. Progressive Gulf Ins. Co.*, 885 So. 2d 61, 65 (Miss. 2004) (quoting *Merrimack Mut. Fire Ins. v. McDill*, 674 So. 2d at 8). The sworn testimony in this case plainly and clearly provides that

Christy Robinson Best and Plaintiff Robinson did not create and maintain a household at 493 SCR 106.

In a more recent case with facts similar to the current litigation, the Mississippi Supreme Court held that an injured daughter who lived in a house owned by her father on the same road as his residence was not a resident of his household, and thus, not insured. *Mercer v. Progressive Gulf Ins. Co.*, 885 So. 2d 61 (Miss. 2004). Mercer was driving a car not insured by her father's policy and was involved in an accident with an uninsured motorist. 885 So.2d at 62. Mercer claimed that she was a resident of her father's house, and was therefore entitled to UM coverage under his policy. *Id.* The trial court granted summary judgment to Progressive. *Id.* Mercer appealed to the Mississippi Supreme Court. *Id.* At the time of the accident, Mercer was living at 360 County Road 203 with her two children. The house was owned by her father who lived right down the way at 330A County Road 203. *Id.* Mercer did not pay rent to her father while she lived there. She and her children went to see her father every day to visit, eat and sometimes stay the night. After the accident, she and the children moved back in with her father. *Id.* at 63. Prior to the accident, she and the children had clothes and furniture at the 360 County Road house; she cooked meals at that house; and she received mail at that house. *Id.* Nonetheless, Mercer claimed on appeal that the trial court erred in granting summary judgment to Progressive because her intent, not her physical location, determined she was a member of her father's household. *Id.* at 66.

The court looked at the facts of *Merrimack Mut. Fire Ins. v. McDill*, 674 So. 2d 4 (Miss. 1996.) In that case, the 28-year-old son, Brown, lived in a garage apartment in a separate building on his parents' property. While living there, Brown shot and wounded his former girlfriend, McDill, and shot and killed her fiancé. McDill sued Brown, they reached a settlement, and Brown then sought a writ of garnishment against Merrimack. Merrimack claimed that Brown was not an insured

under the policy. The trial court granted partial summary judgment determining that Brown was an insured under the policy. The supreme court on appeal reversed and remanded for trial on the issue of Brown's residency, holding that there were material facts in dispute. The court held "[t]he key in determining the intent of the parties is whether they created and maintained a household, and not the existence of a contiguous roof." *Mercer* at 65 (quoting *Merrimack Mut. Fire Ins. v. McDill*, 674 So. 2d at 8.) "Brown received his mail at his parents' address, ate numerous meals in his parents' home, and his parents imposed specific guidelines to living in the apartment." *Mercer* at 65.

After examining *Merrimack*, the *Mercer* court concluded that Mercer was not a resident of her father's house based on the following factors: the house occupied by Mercer and her children was 100 feet away from her father's; each house had a separate address, mailbox, driveway, utility meters and cable service. *Mercer* at 66. Mercer and her children kept clothing, belongings, personal items and toys at the 360 County Road residence, along with a completely furnished and stocked kitchen. *Id.* Reiterating what it said in *Merrimack*, the court again stated that the key was intent, and that the facts in Mercer's case did not show intent to live with her father. The supreme court found that no genuine issue of material fact existed, and the trial court was correct in granting summary judgment to Progressive. *Id.* at 67.

A multitude of facts in this case establish that Christy Robinson Best intended 444 SCR 106, not 493 SCR 106, to be her permanent residence. In his Brief, Robinson concedes that Christy Robinson Best maintained an address of 444 SCR 106 at the time of the accident. *See Brief of the Appellant James Robin Robinson, Jr. at p. 3, ¶ 1.* It is undisputed that prior to her marriage to Christopher Best, Christy Robinson Best lived at 444 SCR 106. [R.E. 54; R. 104] After her marriage, she lived with Christopher Best at the 444 SCR 106 residence. [R.E. 54; R. 104] After filing for divorce in August 2005, Christy Best stayed temporarily with a friend in Raleigh,

Mississippi, but during the pendency of her divorce, she still considered her residence to be 444 SCR 106. [R.E. 56, 58; R. 106, 107] After leaving the friend's home in Raleigh, Mississippi, Christy Best returned to 444 SCR 106. Christy Best testified that the majority of her belongings and personal effects were maintained at 444 SCR 106. She intended the residence there to be where she was going to live. [R.E. 57; 108]

Christy returned from Raleigh to her mobile home at 444 SCR 106 to live and maintain a residence after her brother's accident. Although she would go across the street every day to help her mother with her brother's care, she only occasionally spent the night at her parents' house after the accident. Christy never intended to move back into her parents' home and did not do so. She helped daily with her brother's care, but kept the majority of her personal effects and belongings at her home at 444 SCR 106.

The summary judgment evidence is clear that Christy Robinson Best did not reside with her parents and brother at any time relevant to the instant suit. She testified that she always intended the mobile home at 444 SCR 106 located across the street from her parents' home to be her home. Her attachment was to 444 SCR 106. She kept her belongings there, she slept there, and she claimed it as her home.

Christy Best did not create and maintain a household with her parents and brother just because she was physically with them every day after the accident assisting with the care of her severely injured brother. Even if she spent some nights at her parent's house, this does not negate her intent to keep 444 SCR 106 as her home and residence.

Furthermore, her actions **AFTER** the accident have no bearing on Christy's residence at the time of the accident. As the applicable case law as cited above indicates, it is the relationship at the time of the accident which dictates whether uninsured motorist coverage is available. She has

testified that when the accident occurred her residence was her mobile home at 444 SCR 106, and she was temporarily visiting a friend in Raleigh. Her testimony clearly demonstrates that she was not living with her parents at the time of her brother's accident, and she never claimed her parents' house as her residence. Christy was an adult, going through a divorce, who had established and maintained her own residence for years as well as maintaining her own insurance. She was self-sufficient and in no way dependent on her parents for shelter. Simply stated, Christy Robinson Best did not reside with her parents at the time of the accident at issue.

In his brief, Plaintiff briefly addresses the case of *McLeod v. Allstate Ins. Co.*, as support for the general proposition that the term "resident" as it pertains to uninsured motorist coverage is viewed broadly and that an individual can have more than one residence. The *McLeod* case is immediately distinguishable from the present case in that in *McLeod* the named insured died as a result of the accident at issue and therefore, her intent with regards to her residence was unknown and had to be determined through affidavits. *McLeod v. Allstate Ins. Co.*, 789 So.2d 806 (Miss. 2001). In the present case, Christy Robinson Best is alive and well and has offered her sworn testimony as to both her intent and specific facts supporting her residence.

The Plaintiff/Appellant's brief is completely silent as to any specific facts to support Plaintiff's contention that Christy Robinson Best was residing at her parent's home at the time of the accident. Further Plaintiff/Appellant's brief is completely silent as to ANY evidence of Christy Robinson Best's intent.

- II. The affidavits submitted by James Robinson, Jr. in an effort to defeat State Farm Mutual Automobile Insurance Company's motion for summary judgment were conclusory, self-serving and unsupported by material facts. The affidavits were insufficient to create a genuine issue of material fact concerning Christy Robinson Best's residence at the time of the accident.

Although on appeal the trial court's grant of summary judgment is reviewed under the *de novo standard*, mere reliance on allegations or denials in the pleadings is not sufficient to defeat a motion for summary judgment, instead the party opposing the motion is required to set forth *specific facts* showing that genuine issues for trial do exist. See *Richardson v. Norfolk Southern Ry. Co.*, 932 So.2d 1002, 1007 (Miss.2006)(*emphasis added*). Further the appellate court must confine its review to what appears in the record. *Miller v. R.B. Wall Oil Co., Inc.*, 970 So.2d 127 (Miss.2007).

In order to defeat a motion for summary judgment, "the non-movant must bring forward significant probative evidence demonstrating the existence of a triable issue of fact." *McMichael v. No Way Steel and Supply*, 562 So.2d 1371 (Miss. 1990). The Plaintiff in this case has not presented any probative facts that support his claim. When the non-movant relies upon affidavits to oppose a motion for summary judgment, the affidavits must be "made on personal knowledge," and "shall set forth such facts as would be admissible in evidence" Miss. R. Civ. P. 56(e).

In the present case the sole issue for the trial court's determination was whether or not the Plaintiff/Appellant's sister Christy Robinson Best was a resident along with her brother in the home of their parents at the time of the Plaintiff's accident in September 2005. Thus, the only issue for this Court is whether there are any *facts in the record* which would warrant the reversal of the Smith County Circuit Court's ruling.

State Farm presented the sworn testimony of Christy Robinson Best, who testified to specific facts, including her intent which established her residence as 444 SCR 106. In an effort to oppose the motion, Robinson offered four essentially identical affidavits in support of his claim that Christy resided with him and his parents. The affidavits from Robinson's parents, brother, and friend state that Christy Robinson was residing in her parents' house at the time of Robinson's accident. [R.E. 19-22; R. 47-50] Initially, it is Appellee's contention that these affidavits were untimely as there was

never any Order signed granting Plaintiff additional time to submit the ordered affidavits. Nevertheless, the affidavits provided do not say anything about Christy's intent to make her parents' home her residence, and do not provide any underlying facts to support this claim.

The insufficiency of the affidavits is best understood not by what they state, but what they fail to state. The affidavits do not address where Christy Robinson Best's belongings were kept. The affidavits do not address where her personal effects were kept. The affidavits do not address where Christy Robinson Best intended her permanent residence to be. The affidavits do not address any details regarding Christy Robinson Best's alleged residence. The affidavits do not address whether or not Christy Robinson Best had moved her personal belongings from 444 SCR 106 to 493 SCR 106. In essence, the affidavits are completely lacking in any factual detail. The paucity of the affidavits cannot overcome the abundance of residency testimony contained in the sworn testimony of Christy Robinson Best.

The Mississippi Supreme Court has stated that a conclusory, self-serving affidavit, unsupported by material facts relevant to the proposition at issue is insufficient as it pertains to issues related to summary judgment. *Dalton v. Cellular South, Inc.*, 20 So.3d 1227, 1233- 1234 (Miss. 2009). The Mississippi Supreme Court's disdain for self-serving affidavits applies equally to non-movant and movants and further noted the insufficiency of affidavits that merely contain "magic language" without any facts in support. 20 So.3d at 1234.

Other than four self-serving conclusory affidavits, the Plaintiff has not produced anything in the record before this Court to call into question the residence of Christy Robinson Best. These affidavits only spout the aforementioned "magical language" that Christy Robinson Best was residing with her parents at the time of the accident in question. These affidavits fail to set forth any facts which would lead to this conclusion. As stated in *Dalton* above, such a lackluster showing is

not enough to overturn a motion for summary judgment.

The law clearly states that residency turns on intent. State Farm has presented solid evidence that Christy resided at 444 SCR 106. Despite the time she spent assisting in her brother's recovery, her intent has been clearly established that she lived and resided at 444 SCR, and considered that her permanent residence at the time of the accident and not the home of her parents.

CONCLUSION

James Robinson, Jr., the Plaintiff/Appellant, in this uninsured motorist case, attempts to claim uninsured motorist benefits under a policy of automobile insurance issued to his sister, Christy Robinson Best. In order for him to establish a claim for benefits, he must show that he and his sister resided in the same home at the time of the accident. Christy Robinson Best testified that she did not reside with James Robin Robinson, Jr. before, during or after the accident. Moreover, she has testified that she did not intend to reside in the home of her parents where James Robin Robinson, Jr. resided. Mississippi case law is clear that the intention of insured determines her residence

Moreover, the affidavits submitted by James Robin Robinson, Jr. in his effort to oppose State Farm's Motion for Summary Judgment do not create a genuine issue of material fact. These affidavits are conclusory and self-serving and completely lacking in any real facts to substantiate where Christy Robinson resided. The affidavits, virtually identical in language, do nothing more than state the "magical language" that Christy Robinson was residing in her parents' home on the date of the accident. The affidavits provide no true evidence that Christy Robinson was residing and intended to reside in the home of her parents.

Because there is not any genuine issue of material fact in the record as to Christy Robinson Best's residence at the time of the accident, the Smith County Circuit Court correctly held that State Farm was entitled to a grant of summary judgement. For the reasons set forth in the Record before



the Court and this Brief, State Farm respectfully requests that the grant of summary judgment by the Smith County Circuit Court be affirmed.

Respectfully submitted this the 20th day of January, 2010.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, Appellant

By: 
WILLIAM M. DALEHITE, JR.

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day forwarded U. S. Mail, postage prepaid, a true and correct copy of the above and foregoing to:

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Honorable Robert G. Evans, Trial Court Judge
Smith County Circuit Court
Post Office Box 545
Raleigh, MS 39153-0545

This the 20th day of January, 2010.



William M. Dalehite, Jr.