In the Missouri Court of Appeals
Eastern District

DIVISION TWO

NATHANIEL JAMES MANNER, Plaintiff/Appellant, v. NICHOLAS BRIAN SCHIERMEIER, CON-TECH FOUNDATIONS, LLC, HELMET CITY, INC., and JAFRUM INTERNATIONAL, INC., Defendants, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, and AMERICAN STANDARD INSURANCE COMPANY, Defendants/Respondents.	)	No. ED96143 Appeal from the Circuit Court of St. Charles County Honorable Nancy L. Schneider Date: December 27, 2011

Plaintiff sought $400,000.00 in underinsured-motorist benefits under the terms of four vehicle liability insurance policies for injuries suffered in a collision while driving his Yamaha motorcycle. The trial court entered summary judgment in favor of the insurers, and plaintiff appeals. The issue on appeal is whether the owned-vehicle exclusion in the underinsured-motorist coverage endorsement attached to three of the policies applies to exclude underinsured-motorist coverage. We affirm in part and reverse and remand in part.

UNCONTESTED FACTS

On September 25, 2004, plaintiff, Nathaniel Manner, who was operating a 1983 Yamaha motorcycle, was struck and injured by a vehicle operated by Nicholas Schiermeier (the driver). The driver had insurance with a liability limit of $100,000.00 per person. The driver's insurance policy limits of $100,000.00 were tendered to and accepted by plaintiff with the permission of defendants, American Standard Insurance Company of Wisconsin (American Standard) and American Family Mutual Insurance Company (American Family) (collectively, the defendant insurers). For purposes of this case, it was stipulated that plaintiff's damages were $1,500,000.00.

Prior to the accident, plaintiff had requested and obtained insurance on the Yamaha from American Standard. Plaintiff was the named insured and policyholder of an insurance policy issued by American Standard that listed the Yamaha on the declarations page (the Yamaha policy). At that time of the accident, plaintiff had paid for the Yamaha, either in whole or in part, and he was in the process of getting title switched to his name.

In addition, at the time of the accident, plaintiff also owned a 2002 Ford Ranger and was the policyholder of an insurance policy issued to him by American Standard that listed the Ford Ranger on the declarations page (the Ford Ranger policy). Plaintiff also owned a 1992 Ford F150 and was the policyholder of an insurance policy issued to him by American Family that listed the Ford F150 on the declarations page (the Ford F150 policy). Furthermore, at the time of the accident, plaintiff's father, James Manner, was the owner of a 1999 Suzuki Motorcycle and was the policyholder of an insurance policy issued by American Standard that listed the 1999 Suzuki on the declarations page (the Suzuki policy). Each of the four policies had an identical underinsured-motorist (UIM) coverage endorsement attached to it.

PROCEDURAL BACKGROUND

Plaintiff filed a lawsuit to recover damages for his injuries, naming the driver, Con-Tech Foundations, LLC, Helmet City, Inc., and Jafrum International, Inc., as defendants. He subsequently entered into settlements with the driver, Helmet City, Inc., and Jafrum International, Inc., and dismissed his claims against all defendants. Plaintiff then filed a motion to substitute the defendant insurers as defendants and filed a fourth amended petition to obtain damages in the amount of UIM coverage under the three insurance policies issued to him and the one policy issued to his father by the defendant insurers. Plaintiff and the defendant insurers filed separate motions for summary judgment. The trial court entered summary judgment in favor of the defendant insurers, without designating the ground on which its decision was based.

Plaintiff appeals from this judgment.[1] After briefing, the issues on appeal were narrowed to the question of whether the owned-vehicle exclusion in the UIM endorsements excludes UIM coverage by the Ford Ranger, Ford F150, and Suzuki policies. We affirm the entry of summary judgment with respect to the Ford Ranger and Ford F150 policies because the owned-vehicle exclusion in those policies excludes UIM coverage. We reverse and remand with respect to the Suzuki policy because a genuine issue of material fact exists with respect to whether plaintiff was a "resident" of his father's household as required in the owned-vehicle exclusion in the UIM endorsement for that policy. We also reverse and remand with respect to the Yamaha policy

[1] Plaintiff also appeals from the denial of his motion for summary judgment. The denial of a motion for summary judgment is not an appealable order, James v. Paul, 49 S.W.3d 678, 682 (Mo. banc 2001), even when the order denying summary judgment to one party is entered at the same time as an appealable order granting summary judgment to the other party. Merlyn Vandervort Invst. v. Essex Ins. Co., 309 S.W.3d 333, 335 n.1 (Mo.App. 2010); Grable v. Atlantic Cas. Ins. Co., 280 S.W.3d 104, 106 n.1 (Mo.App. 2009); Leiser v. City of Wildwood, 59 S.W.3d 597, 605 (Mo.App. 2001).

because whether it provides UIM coverage or not depends on whether the owned-vehicle exclusion in the Suzuki policy applies.

DISCUSSION

We review the entry of summary judgment *de novo*. ITT Commercial Finance v. Mid-Am. Marine, 854 S.W.2d 371, 376 (Mo. banc 1993). Summary judgment is appropriate when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Id. at 377. "'When the underlying facts are not in question, disputes arising from the interpretation and application of insurance contracts are matters of law for the court.'" Grable v. Atlantic Cas. Ins. Co., 280 S.W.3d 104, 106 (Mo.App. 2009) (quoting Federal Ins. Co. v. Gulf Ins. Co., 162 S.W.3d 160, 164 (Mo.App. 2005)). The interpretation of an insurance policy and the determination of whether coverage and exclusion provisions are ambiguous are questions of law that we review *de novo*. Burns v. Smith, 303 S.W.3d 505, 509 (Mo. banc 2010).

I. Ford Ranger, Ford F150, and Suzuki Policies

The primary issue in this appeal is the application of the owned-vehicle exclusion in the UIM endorsements attached to the Ford Ranger, Ford F150, and Suzuki policies. If this exclusion in any one of these policies applies, then there is no UIM coverage for that policy, and that policy may not be stacked with any policy providing coverage. Accordingly, plaintiff argues that the owned-vehicle exclusion in each policy is not applicable.

The same owned-vehicle exclusion is attached to each of the policies and reads as follows:

> **EXCLUSIONS**
>
> This coverage does not apply for **bodily injury** to a person:
> 1. While **occupying,** or when struck by, a motor vehicle that is not insured under this policy, if it is owned by **you** or any resident of **your** household.

* * *

Plaintiff specifically argues that the terms "person" and "owned," as used in the owned-vehicle exclusion in the three policies' UIM endorsements, are ambiguous and must be construed in his favor. Alternatively, in the case of the term "owned," he argues that it involves a disputed issue of material fact. He also argues that the term "resident," as used in the owned-vehicle exclusion in the UIM endorsement in the Suzuki policy, involves a disputed issue of material fact.

Because there are no statutory requirements for UIM coverage in Missouri, the existence of such coverage is determined by the contract between the insured and the insurer. Ritchie v. Allied Property & Cas. Ins. Co., 307 S.W.3d 132, 135 (Mo. banc 2009); Rodriguez v. General Acc. Ins. Co., 808 S.W.2d 379, 383 (Mo. banc 1991). *De novo* review requires that we apply well-settled principles of contract interpretation to these insurance policies. Gavan v. Bituminous Cas. Corp., 242 S.W.3d 718, 720 (Mo. banc 2008).

If an insurance policy is unambiguous, the rules of construction are inapplicable, and absent public policy to the contrary, the contract will be enforced as written. Krombach v. Mayflower Ins. Co., Ltd., 827 S.W.2d 208, 210 (Mo. banc 1992). Courts may not create an ambiguity to distort the language of an unambiguous policy or enforce a construction that they find more appropriate. Id. "[T]he absence of a definition for a key term does not necessarily render the policy ambiguous." Eldridge v. Columbia Mut. Ins. Co., 270 S.W.3d 423, 426 (Mo.App. 2008).

A policy provision is ambiguous if it is reasonably open to different constructions, or if it is duplicative, is indistinct, or causes the policy's meaning to be uncertain. Martin v. U.S. Fidelity and Guar. Co., 996 S.W.2d 506, 508 (Mo. banc 1999); Krombach, 827 S.W.2d at 210.

We will give ambiguous language "the meaning that would ordinarily be understood by the layman who bought and paid for the policy." Krombach, 827 S.W.2d at 210. When provisions of an insurance policy are ambiguous, we construe them against the insurer. Burns, 303 S.W.3d at 509; Krombach, 827 S.W.2d at 210. "Ambiguous provisions of a policy designed to cut down, restrict, or limit insurance coverage already granted, or introducing exceptions or exemptions must be strictly construed against the insurer." Krombach, 827 S.W.3d at 210-11.

When an insurance company relies upon a policy exclusion to assert noncoverage, it must establish undisputed facts sufficient to prove the exclusion is applicable. Oakley Fertilizer v. Continental Ins., 276 S.W.3d 342, 351 (Mo.App. 2009).

A. "Person"

Plaintiff first contends that the term "person" as used in the owned-vehicle exclusion is ambiguous because the word "person" is not defined in the policies, and the policies do not indicate whether the term "person" includes an **"insured person."** Plaintiff argues that this ambiguity requires a construction in his favor that **"insured person"** and "person" are mutually exclusive, and therefore the exclusion does not apply to an **"insured person,"** such as himself.

Plaintiff relies on Versaw v. Versaw, 202 S.W.3d 638, 643-44 (Mo.App. 2006), to support his argument that "person" is ambiguous. In Versaw, the court found a household exclusion in a vehicle liability policy to be ambiguous. The exclusion stated that coverage did not apply to: "**Bodily injury** . . . to any person related to and residing in the same household with the operator." None of the other eleven exclusions in the policy used the term "any person;" rather, seven of the other eleven policy exclusions had used the defined terms **"you," "your,"** or **"insured person,"** and not the term "any person." The court concluded that in this context, "any

person" could be reasonably understood to exclude **"you," "your,"** and **"insured person."** Id. at 644.

Versaw has recently been distinguished in another case involving a household exclusion in a vehicle liability policy. Jensen v. Allstate Ins. Co., 349 S.W.3d 369, 376-80 (Mo.App. 2011). The Jensen court observed that a factor in Versaw was that the term "any person" did not appear anywhere else in the policy to give the term "any person" greater context. Id. at 378. In contrast, in the policy before the court, the phrase "any person" appeared throughout the policy. The court examined the policy and determined that the use of **"you"** and "any person" separately and together established a pattern that would indicate to the ordinary person reading the policy that

> when "any person" appears by itself, without any qualifiers, it means "any person" and is not ambiguous at all *in the context of the **pattern** established in the drafting and setting forth of the exclusions, because those exclusions will say:*
>
> > ***"you"** when referring to the policyholders;*
> >
> > ***"insured person"** when referring to the policyholders plus any others who qualify within the definition; and*
> >
> > *"any person" when referring to any person.*

Id. at 379 (emphasis in original). "In sum, the phrase 'any person' appears multiple other places and means exactly *any person* without limitation except when it expresses a limitation." Id. at 380. Thus, the Jensen court concluded that the term "any person" as used in the household exclusion was unambiguous. Id.

This case involves an owned-vehicle exclusion in a UIM endorsement, rather than a household exclusion in a liability policy, and the language and framework of the endorsement is different from that of the liability policies in Versaw and Jensen. However, the word "person" is

also used elsewhere in the UIM endorsement and in the policy to which it is attached, which, like the policy in Jensen, gives the word "person" a context that was missing in Versaw.

To determine whether the word "person" includes or excludes **"insured person,"** we begin with the general provisions of the three policies. The first section of each policy contains a list of duties that "each person claiming any coverage of this policy" must undertake in the case of an accident. **"Bodily injury"** is defined in the policy definitions as: "bodily injury to or sickness, disease or death of any person." In each of these situations, "person" can only be read to include an **"insured person."** Otherwise, the policy would list duties only for uninsured persons claiming coverage, or cover injuries only for uninsured persons, a nonsensical result. Further, in the definitions section of the Ford Ranger and Ford F150 policies, **"relative"** is defined in part as "a person living in **your** household, related to **you** by blood, marriage or adoption." Since a **"relative"** is an **"insured person"** in the UIM endorsement, "person," as used in the definition of **"relative,"** also necessarily includes an **"insured person."**

"Person" is also used in the Limits of Liability section in the context of bodily injury to "persons" and the limits of liability for each "person." Again, the Limits of Liability section would be meaningless if the limits of liability and bodily injury provisions applied only to uninsured persons and not also to **"insured persons."**

We next look at the UIM endorsement, which covers damages for bodily injuries to an **"insured person"** under specific circumstances. **"Insured person"** as defined in the UIM endorsement includes **"you"** and also identifies specific categories of "person," none of which is an **"insured person."** The Exclusions section of the UIM endorsement begins with the statement: "This coverage does not apply for **bodily injury** to a person," followed by three

numbered exclusions.[2] Thus, "a person" applies to all three **"bodily injury"** exclusions. If "person," as used in the **"bodily injury"** exclusions, did not include **"insured person,"** the three **"bodily injury"** exclusions would be meaningless because they would only exclude persons not entitled to coverage in the first place. See Close v. Ebertz, 583 N.W.2d 794, 797 (N.D. 1998) (citing Hartford Ins. Co. v. Halt, 223 A.D.2d 204, 210 (N.Y. App. Div. 1996)). This is particularly apparent in the second and third **"bodily injury"** exclusions. If "person" as used in the second **"bodily injury"** exclusion did not include an **"insured person,"** the exclusion would not exclude an **"insured person"** who makes a settlement without the insurer's written consent, thus leading to the absurd result that an **"insured person"** could make a settlement without the insurer's consent. Further, in the third **"bodily injury"** exclusion, the word "persons" appears in the context of classifying vehicles used to carry "persons" for a charge or for charity. There would be no logical reason for the word "persons" as used in the third exclusion to exclude **"insured persons"** when classifying the purposes for which vehicles are used. In this context, therefore, a "person" includes an **"insured person."** See Omaha Property & Cas. Ins. v. Johnson, 866 S.W.2d 539, 541 (Tenn. Ct. App. 1993).

In sum, the word "person" is used broadly throughout the policy and the endorsement to include any person, including **"insured persons."** It is not ambiguous.

B. "Owned"

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[2] We set out the entire Exclusions section as it appears in the UIM endorsement:

> **EXCLUSIONS**
>
> This coverage does not apply for **bodily injury** to a person:
> 1. While **occupying**, or when struck by, a motor vehicle that is not insured under this policy, if it is owned by **you** or any resident of **your** household.
> 2. Who makes or whose legal representative makes a settlement without **our** written consent.
> 3. While **occupying your insured car** when used to carry persons for a charge. This exclusion does not apply to shared-expense car pools or the charitable carrying of persons.
> This coverage does not apply to punitive or exemplary damages.
> Underinsured Motorists Coverage shall not apply to the benefit of any insurer or self-insurer under any workers' compensation or disability benefits law or any similar law.

Plaintiff next argues that the term "owned" as used in the owned-vehicle exclusion must take the meaning most favorable to the insured, and that the meaning of "owned" that is most favorable to him is "title ownership." He concludes that because he did not have a title, he was not the owner of the Yamaha, and the exclusion therefore does not apply to him. Alternatively, he argues that if ownership does not require a title, there is a question of material fact about whether he "owned" the Yamaha.

When we interpret the language of an insurance contract, we give the language its plain meaning. Shahan v. Shahan, 988 S.W.2d 529, 535 (Mo. banc 1999). "The plain or ordinary meaning is the meaning that the average layperson would understand." Id. In determining the ordinary meaning, we consult standard English language dictionaries. Martin, 996 S.W.2d at 508; Shahan, 988 S.W.2d at 535. See Auto Owners Ins. v. Sugar Creek Mem. Post, 123 S.W.3d 183, 188 (Mo.App. 2003). "A word with more than one dictionary meaning is not necessarily ambiguous if the court concludes that, in context, only one meaning that comports with the parties' objectively reasonable expectations is applicable." Strader v. Progressive Ins., 230 S.W.3d 621, 624 (Mo.App. 2007). See also American Family Mut. Ins. Co. v. Wemhoff, 972 S.W.2d 402, 405-06 (Mo.App. 1998).

Plaintiff has not cited any English language dictionaries for the definition of "owned," nor has he demonstrated that any English language dictionary defines "owned" as having a certificate of title. Rather, plaintiff cites definitions of "own" and "owners" appearing in Lightner v. Farmers Ins. Co., Inc., 789 S.W.2d 487, 489 (Mo. banc 1990), and United States Fidelity & G. Co. v. Safeco Ins. Co. of Am., 522 S.W.2d 809, 817-818 (Mo. banc 1975).[3]

[3] Plaintiff also cites language from an unpublished court of appeals opinion on which the Missouri Supreme Court granted transfer. When the Missouri Supreme Court transfers a case to that court, the decision of the court of appeals is "necessarily vacated and set aside and may be referred to as *functus officio*." State v. Norman, 380 S.W.2d 406, 407 (Mo. banc 1964). "The decision of the court of appeals on a case subsequently transferred is of no

The Lightner case, on which plaintiff relies, affirmed the trial court's entry of a directed verdict on the question of whether the plaintiff, who was seeking uninsured-motorist coverage under three of his father's policies, was an "owner" of a truck because the policy defined "relative" to exclude a relative who "owns" a vehicle. Lightner held that although the father had added the son's name to the certificate of title of the truck, the son was not the "owner." 789 S.W.2d at 489-90. "The presence of [the son's] name on the title is not the single controlling factor as Farmer's insists." Id. at 490.

In Safeco, a teenage driver had an accident in an automobile that belonged to his friend's mother, and that he was driving with his friend's permission. One of the issues was whether he was covered under the non-owned automobile provisions of his father's Safeco policy, which required that he have been driving with the permission of the "owner." Safeco held that even though the friend's mother held the certificate of title, the friend was an "owner" of the vehicle "insofar as she had possession, control and dominion over the automobile most of the time and she was capable of transferring lawful possession of the automobile to [the driver]." 522 S.W.2d at 817.

Both Safeco and Lightner consulted definitions of "own" and "owner" from BLACK'S LAW DICTIONARY and C.J.S. Safeco recited the following from BLACK'S LAW DICTIONARY 1259 (Rev. 4th ed. 1968): "'[O]wner' 'is not infrequently used to describe one who has dominion or control over a thing, the title to which is in another.'" 522 S.W.2d at 818. Lightner considered the following language from the definition of "owner" in BLACK'S LAW DICTIONARY:

> "'the person in whom is vested the ownership, dominion, or77 title of property, who has dominion of a thing . . . which he has the right to enjoy and do with as he pleases, even to spoil or destroy it so far as the law permits . . .' The term is, however, a *nomen generalissimum,* and its meaning is to be gathered from the

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precedential effect." Benton House v. Cook & Younts, 249 S.W.3d 878, 883 (Mo.App. 2008); Gerlach v. Missouri Comm'n on Human Rights, 980 S.W.2d 589, 594 (Mo.App. 1998).

> connection in which it is used and from the subject matter to which it is applied . . . ."

Lightner, 789 S.W.2d at 489 (quoting BLACK'S LAW DICTIONARY 996 (5th ed. 1979)). Lightner also considered the following definition from C.J.S.:

> "The word 'own' is a general term which varies in its significance according to its use. It has been said that the words indicating qualified or absolute ownership, depends on the subject matter and the circumstances surrounding the subject matter and the parties."

Lightner, 789 S.W.2d at 489-90 (quoting 67 C.J.S. *Own* (1978)). Safeco considered the following definition of "owner" from a different volume of C.J.S.:

> "The term 'owner' is a general term having a wide variety of meanings depending on the context and the circumstances in which it is used. Broadly, an 'owner' is one who has dominion over property, which is the subject of ownership." . . . "The term 'owner' may also be synonymous with 'holder' or 'possessor' . . ."

Safeco, 522 S.W.2d at 818 (quoting 73 C.J.S. *Property* §13(a) (1951)). Neither Lightner nor Safeco sets out a dictionary definition in which "owned" is defined as holding certificate of title.[4]

In sum, Lightner demonstrates that having one's name on a certificate of title does not7 necessarily make that person an "owner" of a vehicle, in the sense that "own" was used in the insurance policy before that court. 789 S.W.2d at 490. Safeco demonstrates that one can be an "owner" of a vehicle without having a certificate of title, in the sense that "owner" was used in the insurance policy before that court. 522 S.W.2d at 817. Both Lightner and Safeco stand for the proposition that the words "own" and "owner" are capable of different meanings depending on the context and the situation involved. Lightner, 789 S.W.2d at 489-90; Safeco, 522 S.W.2d at 818.

[4] See also Shelter Mut. Ins. Co. v. Ballew, 203 S.W.3d 789, 794-95 (Mo.App. 2006), in which the court considered an argument that a "property owned" exclusion was ambiguous. In determining that it was not, it consulted the definition of "owned" in WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1612 (1933), in which "owned" was defined as an adjective meaning "held as one's own possession." Ballew, 203 S.W.3d at 795.

Thus, we consider the owned-vehicle exclusion, which is the context in which "owned" is7 used. In McDonnell v. Economy Fire & Cas. Co., 936 S.W.2d 598 (Mo.App. 1996), we considered the ambiguity of an owned-vehicle exclusion that excluded medical payments coverage, which like UIM coverage, is optional. We held that "[t]here is nothing unclear or ambiguous about the exclusion of medical payment coverage on an auto which the insured could have, but chose not to, insure." Id. at 600. We concluded that for such optional coverage, "there is no legal reason to find coverage where the insured could have covered the vehicle which she owned and used as a temporary substitute but elected not to purchase insurance." Id. Thus, an owned-vehicle exclusion is designed to exclude coverage for bodily injuries suffered when occupying a vehicle that is "owned" but not insured under the policy because that vehicle would or should be covered by a different policy for which optional UIM coverage could be purchased. Accordingly, in the context of the owned-vehicle exclusion in a liability policy, if one's possession of a vehicle is sufficient to constitute an insurable interest for which optional UIM coverage could be purchased, the vehicle is an "owned" vehicle.

In this case, plaintiff has not demonstrated that the word "owned," as used in the owned-vehicle exclusion, is ambiguous, or that it requires a certificate of title in addition to possession sufficient to constitute an insurable interest for which optional UIM coverage could be purchased. Further, plaintiff has not demonstrated that a question of material fact exists on the question of whether he "owned" the Yamaha as that term is used in the owned-vehicle exclusion. Here, the undisputed facts demonstrate that plaintiff held the Yamaha as his own possession. He had paid for it, either in whole or in part; drove it; and was in the process of having title transferred to him. He had separately insured it for liability and loss, and obtained separate UIM coverage on it. Accordingly, plaintiff "owned" the Yamaha as that term is used in the owned-

vehicle exclusion. There is no issue of material fact on the issue of ownership that precludes summary judgment.

The only two terms challenged in the owned-vehicle exclusions of the Ford Ranger and Ford F150 policies are "person" and "owned." Because "person" is not ambiguous and does not exclude plaintiff and because plaintiff was occupying the Yamaha, which he "owned" but did not insure under those policies, the owned-vehicle exclusion in the Ford Ranger and Ford F150 policies excludes coverage for plaintiff's bodily injury.

However, with respect to the Suzuki policy, we must also examine whether defendants have shown that plaintiff was a "resident" of his father's household before we can determine if the exclusion applies.

C. "Resident of Your Household"

Plaintiff argues that he is not excluded from coverage under the Suzuki policy because defendant insurers did not demonstrate an absence of material fact on the question of whether plaintiff was a "resident of [his father's] household." In support of their summary judgment motion, defendants cited plaintiff's deposition testimony that plaintiff had used his father's address to determine his school district, for his employment and tax forms, in opening a bank account, for his previous auto insurance policy, and for his driver's license. Defendants also submitted documentary evidence showing that plaintiff had used his father's address for his medical bills, his driver's license, tax returns, and insurance policy. Plaintiff did not dispute the authenticity of these documents, but denied he was a "resident," citing his affidavit in which he denied that he lived in his father's house.

In determining whether a person is a "resident," Missouri courts consider whether the living arrangement is permanent or temporary and whether the household functions as a family

unit.[5] American Family Mut. Ins. Co. v. Brown, 657 S.W.2d 273, 275 (Mo.App. 1983) (citing Cobb v. State Sec. Ins. Co., 576 S.W.2d 726, 738 (Mo. banc 1979)). As indicated by the extensive documentary and testimonial evidence, whether plaintiff was a "resident" of his father's household is a disputed question of material fact. The question of plaintiff's residency in this situation depends on credibility determinations. See Miller v. Secura Ins. and Mut. Co. of Wis., 53 S.W.3d 152, 157-59 (Mo.App. 2001). The existence of such a factual dispute precludes summary judgment. See Neal, 992 S.W.2d at 210-11; Pruitt v. Farmers Ins. Co., 950 S.W.2d 659, 665 (Mo.App. 1997). See Reed, 231 S.W.3d at 853-54. Defendants did not establish a right to summary judgment on this issue, and therefore, the summary judgment entered on the Suzuki policy must be reversed and remanded.

II. Yamaha Policy

The owned-vehicle exclusion in the Yamaha policy is not applicable because the Yamaha was insured under that policy. The UIM endorsement in the Yamaha policy defined an underinsured motor vehicle as "a **motor vehicle** which is insured by a liability bond or policy at the time of the accident which provides **bodily injury** liability limits less than the limits of liability of this Underinsured Motorists coverage." Thus, an "underinsured motor vehicle" is one with a liability limit less than the limit of liability of that policy's UIM endorsement's coverage. See Rodriguez, 808 S.W.2d at 382. Under this definition, "if the other motorist pays as much or more to the insured for bodily injury as the insured has underinsured coverage, then the insured is not permitted to recover under the underinsured coverage." Melton v. Country Mut. Ins. Co.,

[5] This test was originally developed to define the term "household" in insurance policies. See Cobb v. State Sec. Ins. Co., 576 S.W.2d 726, 738 (Mo. banc 1979); Mission Insurance Company v. Ward, 487 S.W.2d 449, 451 (Mo. banc 1972). More recently, however, courts have acknowledged that words such as "household," "residence," and "living with" are synonymous. See Reed v. American Standard Ins. of Wisconsin, 231 S.W.3d 851, 853 (Mo.App. 2007). The same test has been applied to the term "resident." See, e.g., Columbia Mut. Ins. Co. v. Neal, 992 S.W.2d 204, 210 (Mo.App. 1999); American Family Mut. Ins. Co. v. Brown, 657 S.W.2d 273, 275 (Mo.App. 1983).

75 S.W.3d 321, 325 (Mo.App. 2002). Standing alone, the Yamaha policy does not provide UIM coverage. The driver was not an underinsured motorist as defined in the UIM endorsement because the driver's liability limit of $100,000.00 was not less than the liability limit of $100,000.00 in the UIM endorsement.

Thus, plaintiff is not entitled to recover under the UIM endorsement in the Yamaha policy unless the Yamaha policy can be stacked with the Suzuki policy. The defendant insurers have conceded that summary judgment cannot be sustained if the owned-vehicle exclusion in one or more of the policies is found inapplicable. The factual resolution of whether plaintiff was a "resident" of his father's household must be made before the applicability of the owned-vehicle exclusion in the Suzuki policy can be made. That determination will govern whether the Suzuki policy can be stacked with the Yamaha policy or not.

Conclusion

The judgment of the trial court is affirmed with respect to the Ford F150 and Ford Ranger policies. It is reversed and remanded with respect to the Suzuki and Yamaha policies.

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Kathianne Knaup Crane, Presiding Judge

Lawrence E. Mooney, J. and Kenneth M. Romines, J., concur.