

October 24, 2008

**MINNESOTA COURT OF APPEALS OPINES THAT CHILD IS NOT A RESIDENT OF HIS FATHER'S HOUSEHOLD EVEN THOUGH CHILD STAYED WITH HIS FATHER SOME WEEKENDS AND EVENINGS PER THE FATHER'S AND MOTHER'S CUSTODY AGREEMENT**

In *Kimberly Jestus, as Trustee for the Next-of-Kin of Grant Allen Jestus, Decedent, v. Michael A. Jestus*, 2008 WL 4471405 (Minn. App. October 7, 2008), the Minnesota Court of Appeals reversed the District Court; holding that the deceased son of Michael and Kimberly Jestus was not a resident of his father's household, therefore, the decedent's estate was not barred from obtaining coverage under the father's policy despite the policy exclusion which precluded an insured from collecting benefits for bodily injury.

In *Jestus*, Kimberly and Michael Jestus were divorced on December 23, 2002. Kimberly was awarded sole custody of the couple's two children, Stephanie and Grant. Michael was granted visitation rights consisting of alternate weekends, every Wednesday, every other Monday, alternating major legal holidays, and the option of three weeks of custody during summers. Legal custody of the children was shared by both parents.

In April of 2003, Michael purchased a home two to three blocks from the original family home where Kimberly and the children still resided. Michael furnished two of the three bedrooms for the children and the children sometimes stayed overnight during Michael's visitation periods.

In May of 2003, Grant Jestus accidentally drowned while boating with his father. Michael possessed a boat insurance policy with State Farm. The policy excluded coverage for bodily injury to Michael or any other insured under the policy. Residents of Michael's household were included under the policy's definition of insured.

Kimberly Jestus initiated suit against Michael Jestus as trustee for Grant's next of kin and commenced a wrongful death action against Michael and State Farm. Michael and Kimberly entered into a *Miller Shugart* Settlement in which Michael stipulated to a \$100,000.00 judgment against him so long as the estate only sought collection from State Farm.

The District Court held that Grant was a resident of both Kimberly and Michael's households at the time of this death; thus Grant's estate was excluded from coverage for bodily injury under the State Farm policy.

The Minnesota Court of Appeals reversed the District Court; holding that Grant was not a resident of his father's household. The Appellate Court reasoned that although Grant was close to his father, he did not live with his father. In support of this rationale, the Court cited the following facts: Kimberly did not view Michael as a partner in a joint parenting effort based on the fact that she did not trust him with the children because he was an alcoholic and she only allowed him visitation rights because she was ordered to by the court; Michael did not adequately provide for the young children's needs as the mother had to include overnight bags to satisfy the same; Kimberly never reached out to Michael for any parental assistance beyond that

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ordered by the court; and Michael never attempted to expand his parental role beyond the role ordered by the court.

Although *Jestus* is an unpublished opinion and lacks true precedential power, it provides important guidance for the future determination of the residency of minor children in one of the myriad of different family scenarios that may arise through divorce, separation or single parenthood. The issue regarding residency of minor children is especially important due to the prevalence of resident relative policy exclusions that arise under all sorts of different insurance policies, including automobile and homeowner's policies.

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