

CENTRAL MANUFACTURERS' MUTUAL INSURANCE  
COMPANY v. FRIEDMAN.

4-8475

209 S. W. 2d 102

Opinion delivered March 8, 1948.

1. INSURANCE—FLOATER POLICY—MINORS.—Appellant having issued to appellee a floating policy covering his son's personal property while away from home and in the army, *held* that since at the time of the loss of the property the son was a minor it was the



Appellant says there are only two questions for decision: "1. Was Benno S. Friedman, at the time of the thefts of his personal property, a member of the insured's family of the same household within the terms and provisions of the policy of insurance? 2. Did the court err in permitting the plaintiff to introduce incompetent, irrelevant and hearsay testimony and to consider the same in making its findings of fact and conclusions of law?"

Mr. I. J. Friedman, Benno's father, testified: "My name is I. J. Friedman. I live at 722 South 24th Street, Fort Smith, Ark., and I have a policy of insurance with The Central Manufacturers' Mutual Insurance Company of Van Wert, Ohio. (The policy was produced and introduced in evidence). My son, Benno S. Friedman, was drafted into the Army in the spring of 1946. At that time he was 18 years of age. He is not married and was living at my home at the time he was drafted. He is now 19 years of age."

Over appellant's objection and exceptions, Mr. Friedman was further permitted to testify that his son, Benno, would be discharged from the Army when his 18 months were up, that he did not have a separate home of his own, that he was subject to Army orders wherever he was located, that his son attended Ohio State College three or four months before he was drafted, attended Officers Training School and received a commission, that he was paying his son's expenses at Ohio State, that he intended to send him back to school after his discharge and that his son was coming back home after his discharge.

It was stipulated "that on February 1st to 8th, 1947, there was stolen from Benno S. Friedman, from locked room by picking lock, in Billeting Officers Quarter, No. 804, Room No. 18, at Fort Eustis, Virginia, the following articles," (naming them), of the value of \$238.45, and "that on January 22, 1947, there was stolen from said Benno S. Friedman, from locked suitcase from Building 2309, Fort Eustis, Virginia, the following articles," (naming them), in the amount of \$252.50, "and that if

the plaintiff is entitled to recover he should recover in the amount of \$428.95 for the loss of the articles."

The policy in question provides: "Property Covered: 1. Personal property owned, used or worn by the persons in whose name this policy is issued, hereinafter called the Insured, and members of the Insured's family of the same household, while in all situations, except as hereinafter provided. . . . 4. With respect to the unscheduled personal property ordinarily situated throughout the year at residences other than the principal residence of the Insured, the Company shall not be liable in excess of ten per cent of the amount of insurance set forth in Item (a) Paragraph 3," or ten per cent of \$5,000."

At the time of the property loss here, Benno was a minor and it was the duty of the parent to support and educate him so long as he remained a member of his family. *Biggs v. St. Louis, Iron Mountain & Southern Railway Company*, 91 Ark. 122, 120 S. W. 970, and *Frauenthal & Schwarz v. Bank of El Paso*, 170 Ark. 322, 280 S. W. 1001, 44 A. L. R. 871.

The domicile of Benno was with his father, *Landreth v. Henson*, 116 Ark. 361, 173 S. W. 427. Domicile includes residence and place of abode. Webster defines "domicile": "A place of residence, either of an individual or a family; a dwelling place; an abode, a home or habitation." Residence and place of abode are synonymous. *Husband v. Crockett*, 195 Ark. 1031, 115 S. W. 2d 882. The Constitution of this state provides: Art. XIX, § 7: "Absence on business of the state or of the United States or on a visit, . . . shall not cause a forfeiture of residence once obtained."

The evidence is undisputed that Benno was unmarried, a minor, was living with his father at the time of his induction into the Army, and intended to return to the parental home in Fort Smith when discharged. He did not intend to change his domicile or residence and had made no change unless his military service alone brought about such change. In the circumstances here,

Benno's military service did not bring about any change in his domicile or residence.

In the very recent case of *Kennedy v. Kennedy*, 205 Ark. 650, 169 S. W. 2d 876, we said: "In the Conflict of Laws, vol. 1, p. 155, Professor Beale discusses the 'domicile of a soldier or sailor' and the capacity of a sailor or soldier to acquire a 'residence' notwithstanding his service in the Army or Navy, and it was there said: 'It is, of course, possible for him (soldier) to provide a house of his own, off the post, where his family may live, if this is allowed by superior officers; and it is possible for him to change his domicile by the proper proceedings while on leave. But he cannot acquire a domicile in an Army Post.'

"At p. 157 of the same text it is said: 'This does not mean, of course, that the soldier or sailor in any way loses his personality or ceases to be *sui juris*. He is as able as anyone to acquire a new domicile so far as conditions allow. He cannot acquire it by any act done under military orders since, as has been seen, he has no choice but obedience. His orders would, so long as he remained in the Army, be enforced by all the powers of the state, and if he were permitted to leave the Army he could no longer remain in the Army quarters. He may, however, like anyone else, change his domicile by acquiring a residence outside an Army Post with the intention of making it his home. . . .

"The domicile of a soldier or sailor in the military or naval service of his country generally remains unchanged, domicile being neither gained nor lost by being temporarily stationed in the line of duty at a particular place, even for a period of years. A new domicile may, however, be acquired if both the fact and the intent concur."

Here, there is no evidence that Benno acquired a residence outside of the Army post with the intention of making it his home.

We think the word "household" as used in the section of the policy, *supra*, meant domicile, residence or place of abode. "Household" is defined in Bouvier's

