STATE OF MICHIGAN

COURT OF APPEALS

TITAN INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED August 10, 2001
v	No. 222658 Oakland Circuit Court
AUTO CLUB INSURANCE ASSOCIATION, Defendant-Appellant.	LC No. 98-008957-CZ

Before: Hoekstra, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

This case involves a no-fault insurance coverage dispute between two automobile insurers. Plaintiff sued defendant to recover one-half of the no-fault personal injury protection (PIP) benefits that it paid to David Nagy. Following a jury trial, the trial court entered judgment in favor of plaintiff. Defendant appeals as of right. We reverse and remand for entry of judgment in favor of defendant.

David Nagy, a pedestrian, was struck and seriously injured by a motor vehicle. David does not own a car and does not have a no-fault insurance policy in his name. David, his brothers Eugene Nagy and Edward Nagy, and Edward's wife Patricia Nagy, all live in a house in Melvindale, Michigan. The house has two distinct living quarters. David and Eugene occupy the lower level of the house. Edward and Patricia occupy the upper level of the house. Eugene has a no-fault insurance policy with plaintiff. As a relative of Eugene domiciled in the same household, David was entitled to collect, and did collect, no-fault benefits from plaintiff. See MCL 500.3114(1).[1]

[1] MCL 500.3114(1) provides in pertinent part:

> Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. [footnote omitted.]

Plaintiff then sought reimbursement from defendant, the no-fault insurer of Edward and Patricia. Plaintiff maintained that defendant should share in the payment of benefits because David is also a relative domiciled in the same household as Edward and Patricia. See MCL 500.3115(2).[2] Defendant refused to pay. Defendant took the position that it had no obligation to provide benefits because David did not reside with Edward and Patricia. Plaintiff subsequently commenced this action seeking to recoup half of the benefits it paid to David. The sole issue at trial was whether David was domiciled in the same household as Edward and Patricia.

Eugene and Edward testified about the layout of the house and their living arrangements. The house is jointly owned by Eugene, Edward and Patricia. It was purchased as a two-family residence, and has not been modified. The house is divided into two separate units, one on the upper level and one on the lower level. David and Eugene live in the lower portion of the house. Edward and Patricia live in the upper portion of the house. The two units have separate gas meters, electric meters, entrances, living rooms, bathrooms, kitchens and bedrooms. An interior stairway is blocked off. Edward and Patricia do not share their living quarters with Eugene and David. All four Nagys share a common mailbox and mailing address. A single home insurance policy insures the house, and the Nagys have never leased any part of the house. David has always lived on the lower level. Edward and Patricia have always lived on the upper level. Edward testified that David has never lived on the upper level with him and Patricia.

Both parties moved for a directed verdict. The trial court denied plaintiff's motion, and took defendant's motion under advisement. The jury returned a verdict for plaintiff. Defendant renewed its motion for a directed verdict, and the trial court instructed defendant to file a motion for judgment notwithstanding the verdict (JNOV). The trial court subsequently denied defendant's motion for JNOV or a new trial.

On appeal, defendant argues that the trial court erred in denying its motions for a directed verdict and JNOV or a new trial. We review a trial court's grant or denial of a motion for a directed verdict de novo. *Gauntlett v Auto-Owners Ins Co*, 242 Mich App 172, 176; 617 NW2d 735 (2000). When evaluating a motion for a directed verdict, a court must view the evidence in the light most favorable to the nonmoving party and make all reasonable inferences in favor of the nonmoving party. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994); *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997). "Directed verdicts are appropriate only when no factual question exists upon which reasonable minds may differ." *Id.* We also review de novo a trial court's ruling on a motion for JNOV. *Morinelli v Provident Life and Accident Ins Co*, 242 Mich App 255, 260; 617 NW2d 777 (2000). "In reviewing a decision

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[2] MCL 500.3115(2) provides:

> When 2 or more insurers are in the same order of priority to provide personal protection insurance benefits an insurer paying benefits due is entitled to partial recoupment from the other insurers in the same order of priority, together with a reasonable amount of partial recoupment of the expense of processing the claim, in order to accomplish equitable distribution of the loss among such insurers.

regarding a motion for JNOV, this Court must view the testimony and all legitimate inferences that may be drawn therefrom in a light most favorable to the nonmoving party." *Id.* "If reasonable jurors could have honestly reached different conclusions, the jury verdict must stand." *Id.* at 260-261. The decision to grant or deny a new trial is reviewed for an abuse of discretion. *Id.* at 261.

This Court has recognized that where the underlying facts are not in dispute, domicile is a question of law for the court to decide. See *Witt v American Family Ins Co*, 219 Mich App 602, 605-606; 557 NW2d 163 (1996); *Goldstein v Progressive Casualty Ins Co*, 218 Mich App 105, 111-112; 553 NW2d 353 (1996); *Salinger v Hertz Corp*, 211 Mich App 163, 165, 167; 535 NW2d 204 (1995); *Williams v State Farm*, 202 Mich App 491, 494; 509 NW2d 821 (1993). In this case, the facts necessary to resolve the question of domicile were not in dispute. Both Edward and Eugene testified consistently regarding the layout of the house and the Nagys' living arrangements. Given the lack of a factual dispute, whether David was domiciled in the same household as Edward and Patricia for purposes of the no-fault statute is a question of law. See *Salinger*, *supra* at 165, 167. The evidence adduced at trial left no question of fact for the jury to resolve. The only remaining issue was the legal effect of these undisputed facts. Accordingly, the trial court erred in submitting the question of David's domicile to the jury.

Defendant asks us to address this legal question rather than remand the matter to the trial court. This Court may decide a question of law if the facts necessary for its resolution have been presented. *Michigan Twp Participating Plan v Federal Ins Co*, 233 Mich App 422, 435-436; 592 NW2d 760 (1999); *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). We agree with defendant that the undisputed facts compel the conclusion that David was not domiciled in the same household as Edward and Patricia.

The question of domicile is one which must be decided on the unique facts of each case. *Bryant v Safeco Ins Co*, 143 Mich App 743, 745; 372 NW2d 655 (1985), citing *Workman v DAIIE*, 404 Mich 477, 495-496; 274 NW2d 373 (1979). In determining whether a person is domiciled in the same household as the insured, the following factors should be considered: (1) the subjective or declared intent of the person to remain indefinitely or permanently in the insured's household; (2) the formality or informality of the relationship between the person and the members of the insured's household; (3) whether the place where the person lives is in the same house, within the same curtilage, or upon the same premises as the insured; and (4) the existence of another place of lodging for the person alleging domicile in the household. *Workman*, *supra* at 496-497. This Court has stated that the following factors are also relevant in determining the domicile of an individual: (1) the person's mailing address; (2) whether the person maintains possessions at the insured's home; (3) whether the insured's address appears on the person's driver's license and other documents; (4) whether a bedroom is maintained for the person at the insured's home; and, (5) whether the person is dependent upon the insured for financial support or assistance. *Williams*, *supra* at 494-495.

The application of these factors is not particularly helpful in this case. David lives in the same house and shares the same address as Edward and Patricia. The dispositive issue was whether David lives in their household. The undisputed testimony clearly establishes that the house comprised two separate households. David lives with Eugene on the lower level. David

has never lived with Edward and Patricia on the upper level. On these facts, we conclude as a matter of law that David was not domiciled in the same household as Edward and Patricia.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Brian K. Zahra