

STATE OF MICHIGAN
COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant,

and

IRA E. JONES, also known as IRA E. JOHNSON,

Defendant.

UNPUBLISHED
September 9, 2004

No. 246602
Kent Circuit Court
LC No. 02-002575-NF

Before: Donofrio, P.J. and White and Talbot, JJ.

PER CURIAM.

In this declaratory judgment action, defendant Allstate Insurance Company appeals as of right from an opinion and order finding that Ira E. Jones was not domiciled with his sister, who was insured by plaintiff State Farm Mutual Automobile Insurance Company. The trial court therefore held that Allstate, as the insurer of the motorist who struck Jones, a pedestrian, was in the highest order of priority for payment of personal protection insurance (PIP) benefits under MCL 500.3114(1) and MCL 500.3115(1), provisions of the no-fault act. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Allstate argues that the facts establish that Ira Jones was domiciled with his sister, Dorothy Bettis, rather than with his girlfriend, Patricia Robinson. “The determination of domicile is a question of fact to be resolved by the trial court, and this Court will not reverse the trial court's determination unless the evidence clearly preponderates in the opposite direction.” *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111; 553 NW2d 353 (1996). Factors to be considered in determining domicile include:

- (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his “domicile” or “household”; . . .
- (2) the formality or informality of the relationship between the person and the members of the household; . . .
- (3)

whether the place where the person lives is in the same house, within the same curtilage or upon the same premises, . . . (4) the existence of another place of lodging by the person alleging “residence” or “domicile” in the household. . . . [*Workman v DAIIE*, 404 Mich 477; 509 NW2d 821 (1979) (citations and footnotes omitted).]

In addition, the following factors are relevant:

(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 v State Farm Mutual Automobile Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993); see also *Salinger v Hertz Corp*, 211 Mich App 163, 165; 535 NW2d 204 (1995); *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983).]

Allstate argues that Jones’ intent at the time of the accident was to live with his sister, as evidenced by his giving her address and telephone number at the accident scene, his application for benefits with his sister’s carrier, his difficulty in describing Robinson’s home, his failure to declare to Robinson that he had the intent to return to her home, and because he attended church when he was at his sister’s house. However, we note that Jones did provide a description of Robinson’s apartment. Moreover, Robinson testified only that she was not always sure Jones would return when he left mad, but that he never moved out the year of the accident. Jones said that whenever he went to his sister’s house, his intention was always to return to his girlfriend’s apartment. That Jones attended church when he was at his sister’s in White Cloud appears to be indicative of an affiliation with a White Cloud church, but not of Jones’ domicile. Jones and his girlfriend had previously lived together in White Cloud.

Jones listed his sister’s address on his driver’s license, used his sister’s address as his primary mailing address, and provided his sister’s address at the accident scene. We note that Jones actually received mail at both addresses. Jones relationship with his sister was informal and he stayed in a room in her house, factors which would militate in favor of a finding of domicile with her. However, these are the only factors that support a finding that he was domiciled with his sister.

In contrast, the evidence that Jones resided with Robinson was compelling. Both testified that they began living together within about a year of their eleven-year-old son’s birth. Jones frequently went to White Cloud and stayed with his sister. He said he would spend from a day to a week there but was living with his girlfriend and their son. Although still married to someone else, he characterized the relationship as being like husband and wife. They shared a bedroom and some furniture, and Jones contributed \$300 to \$400 of the rent for their \$575 apartment. He kept only a pair of pants, a shirt and a few toiletries at his sister’s, while his remaining clothes and other possessions were at his girlfriend’s apartment. Although he always used the same bedroom at his sister’s house, it was a guest room also used by others, and was furnished and decorated by his sister. While Jones’ sister allowed him to use the room and provided meals from time to time, the evidence indicated that these amenities were offered to him as a frequent guest, and not because he was dependent upon his sister for financial support or assistance. We

agree with the trial court that this evidence, overall, clearly preponderates in favor of a finding that Jones' was domiciled with his girlfriend, and did not reside with his sister.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot