

STATE OF MICHIGAN
COURT OF APPEALS

NATIONAL GENERAL INSURANCE
COMPANY,

Plaintiff-Appellee,

v

HOME-OWNERS INSURANCE COMPANY,

Defendant-Appellant,

and

JOHN BECKETT, Personal Representative of the
ESTATE OF LISA LOTHAMER,

Defendant.

JOHN BECKETT, Personal Representative of the
ESTATE OF LISA LOTHAMER,

Plaintiff,

v

GMAC INSURANCE COMPANY,

Defendant,

and

NATIONAL GENERAL INSURANCE
COMPANY,

Defendant-Appellee,

and

HOME-OWNERS INSURANCE COMPANY,

UNPUBLISHED

June 15, 2010

No. 291131

Jackson Circuit Court

LC No. 07-003127-CK

No. 291132

Jackson Circuit Court

LC No. 07-003159-NF

Defendant-Appellant.

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

In Docket No. 291132, Linda Lothamer (Lothamer), now deceased, sued National General Insurance Company (National General) and Home-Owners Insurance Company (Home-Owners) seeking personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq.* In Docket No. 291131, National General sued Home-Owners seeking a declaration that Home-Owners was in the highest order of priority under the no-fault act and therefore responsible for the PIP benefits. After the cases were consolidated, the circuit court issued an order granting National General's motion for summary disposition under MCR 2.116(C)(10) and denying Home-Owners' motion for summary disposition. Home-Owners appeals as of right. This Court consolidated the appeals, and we now affirm.

On May 7, 2006, Lothamer was injured in an automobile accident in Tampa, Florida. She was a passenger in a vehicle owned and operated by Robert Lamphere, which was insured by National General. Lothamer had apparently been living with Lamphere before she came to Florida. However, at the time of the accident, Lothamer was living in Florida at the mobile home of her mother, Brenda Lowe. She initially came for a visit with Lowe but decided to stay in Florida. She obtained employment, opened a bank account, and continued to live with Lowe, which she intended to do until she found more permanent housing. She had not changed her driver's license to reflect a new address, but received some of her mail at Lowe's residence. Lothamer was to begin a job in a new city on the day following the accident and was in the process of looking for an apartment. According to Lowe, however, at the time of the accident Lothamer had no other place to live.

Home-Owners was the insurer of a vehicle owned by Lowe. It is undisputed that under MCL 500.3114, National General would be liable for Lothamer's PIP benefits unless Lothamer was domiciled in Lowe's household. The trial court concluded that Lothamer was domiciled with Lowe. It noted that Lowe's home was not a permanent residence but that Lothamer stayed nowhere else. Further, the court stated that there "was no end date" to this living arrangement and that Lothamer's plan was to live there indefinitely until she found a permanent residence. The court concluded that Lowe's home was Lothamer's domicile for an indefinite length of time.

We review de novo a trial court's decision on a motion for summary disposition under MCR 2.116(C)(10). In evaluating such a motion, a trial court must consider affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the opposing party. *Cervantes v Farm Bureau Gen Ins Co*, 272 Mich App 410, 413; 726 NW2d 73 (2006). If the proffered evidence does not establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The determination of domicile is typically a question of fact, but where the underlying facts are not in dispute, domicile is a question of law for the court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). "[T]his 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).

In *Beecher v Common Council of Detroit*, 114 Mich 228, 231; 72 NW 206 (1897), quoting Jacobs, Law of Domicile, § 378, the Court held:

“A removal which does not contemplate an absence from the former domicile for an indefinite and uncertain time is not a change of it. But when there is a removal, unless it can be shown or inferred from circumstances that it was for some particular purpose, expected to be only of a temporary nature, or in the exercise of some particular profession, office, or calling, it does change the domicile. The result is that *the place of residence is prima facie the domicile, unless there be some motive for that residence not inconsistent with a clearly-established intention to retain a permanent residence in another place.*” [Emphasis added.]

A fundamental tenet of domicile is that an individual can only have one domicile, but he must have a domicile somewhere. *Id.* at 230. Moreover, a person’s “‘existing domicile continues until he acquires another, and, *vice versa*, by acquiring a new domicile he relinquishes his former one.’” *Id.*, quoting Cooley, Taxation (2d ed), p 369. Domicile has also been characterized as “that place where a person ‘has voluntarily fixed his abode not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently *or for an indefinite or unlimited length of time.*’” *Henry v Henry*, 362 Mich 85, 101-102; 106 NW2d 570 (1960), quoting *Williams v North Carolina*, 325 US 226, 236; 65 S Ct 1092; 89 L Ed 1577 (1945) (emphasis added).

In *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), the Court set forth four factors to be considered in determining a person’s domicile:

(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; [and] (4) the existence of another place of lodging by the person alleging “residence” or “domicile” in the household[.] [Internal citations omitted.]

“[N]o one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others.” *Id.* at 496. In *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983), this Court identified other factors indicative of domicile that were specific to young adults transitioning out of their parents’ home: (1) whether the claimant used the parents’ home as his mailing address; (2) whether the claimant kept some of his possessions with the parents; (3) whether the claimant used the parents’ address on his driver’s license or other documents; (4) whether a room was maintained for the claimant; and (5) whether the claimant was dependent on his parents for support.

Regardless whether she was welcome to return to Lamphere's home, the evidence indicates that Lothamer relinquished Lamphere's residence as her home when she decided to stay in Florida. Lothamer said that she lived at Lowe's residence, although she did not intend to stay there forever, and Lothamer and Lowe did, in fact, live in the same house. Lothamer was not merely at Lowe's house for a special occasion or visiting for some temporary purpose, such as a vacation, but was staying there indefinitely. Further, Lothamer did not sign a rental agreement or otherwise enter into a formal agreement with Lowe; Lowe was simply letting her daughter live with her for as long as she wanted. Although Lothamer may have had a place to stay in Michigan, although she had no intent of returning to the state, she had no other place to stay in Florida, where she was working and where she planned to live. Lothamer used Lowe's address for some of her mail and kept her clothes there; she kept the rest of her belongings in a Florida storage unit. She had not yet changed her driver's license but used Lowe's address on an employment application and to open a bank account. She had exclusive use of a bedroom while she was there. Finally, she made her own money but was at least partially dependent on Lowe; i.e., Lowe provided lodging and transportation. There was no evidence that Lothamer was receiving financial assistance from anyone else.

Based on these facts, the evidence does not clearly preponderate against the trial court's conclusion that Lothamer intended to make Lowe's residence her home indefinitely until a more permanent situation developed and that, as a result, Lothamer was domiciled with Lowe. See *Dobson v Maki*, 184 Mich App 244, 252-254; 457 NW2d 132 (1990). Accordingly, Home-Owners, as the insurer of Lowe's vehicle, was in the highest order of priority for purposes of paying Lothamer's PIP benefits.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot