

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 4, 2012

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2989

Cir. Ct. No. 2010CV1

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

PAUL OLIVER,

PLAINTIFF-APPELLANT,

V.

**ERIC STEVEN BOEHMFELDT AND FARMERS INSURANCE EXCHANGE,
D/B/A FARMERS INSURANCE COMPANY,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Florence County:
LEON D. STENZ, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Paul Oliver appeals a judgment dismissing a personal injury claim for want of personal jurisdiction under Wisconsin's long arm

statute, WIS. STAT. § 801.05(1).¹ Oliver argues Eric Boehmfeldt was domiciled in Wisconsin at the time of the accident and had sufficient minimum contacts to invoke personal jurisdiction. Oliver also argues that the circuit court erred by failing to apply Wisconsin law to resolve the parties' dispute.² We reject Oliver's arguments and affirm.

¶2 On March 13, 2009, Oliver and Boehmfeldt were involved in an automobile accident in Iron Mountain, Michigan. Oliver is a resident of Michigan and was uninsured. Under Michigan law, a Michigan driver who does not have an insurance policy in effect on the date of the accident is barred from recovering damages from the tortfeasor.³ Oliver therefore commenced a lawsuit in Wisconsin, alleging that Boehmfeldt was a Wisconsin resident.

¶3 Boehmfeldt moved to change venue and dismiss, contending that both parties were Michigan residents at the time of the accident and venue should be in Dickinson County, Michigan. Boehmfeldt further contended the matter should be dismissed because Oliver was barred under Michigan law from bringing the lawsuit because he was uninsured at the time of the accident.

¶4 After a hearing, the circuit court concluded that it lacked personal jurisdiction because Boehmfeldt was domiciled in Michigan and there were

¹ References to Wisconsin Statutes are to the 2009-10 version unless noted.

² Both parties fail to conform to the requirements of WIS. STAT. RULE 809.19(1)(i), which requires reference to the parties by name rather than by party designation.

³ In his appellate brief, Oliver concedes that under Michigan law, a Michigan driver who does not have a policy of insurance in effect on the date of the accident is barred from recovering damages from the tortfeasor. Under Wisconsin law, the tortfeasor remains responsible for the damages caused by operating the vehicle.

insufficient contacts with Wisconsin to exercise personal jurisdiction. The case was dismissed and Oliver appeals.

¶5 Whether there is personal jurisdiction is a question of law that we review independently. *Rasmussen v. GMC*, 2011 WI 52, ¶14, 335 Wis. 2d 1, 803 N.W.2d 623. While our review is independent, we benefit from the circuit court’s analysis. *Id.* We will not reverse the circuit court’s factual findings unless clearly erroneous. WIS. STAT. § 805.17(2).

¶6 Pursuant to WIS. STAT. § 801.05(1), Wisconsin courts may exercise general personal jurisdiction over a defendant who, when the action is commenced, has “local presence or status” within the state. *Rasmussen*, 335 Wis. 2d 1, ¶18. Oliver argues personal jurisdiction was appropriate under § 801.05(1)(b) and (1)(d). Paragraph (1)(b) provides that a court having subject matter jurisdiction has personal jurisdiction over a person served if the defendant is a natural person domiciled within the state. Paragraph (1)(d) provides that a nonresident defendant has the requisite “local presence or status” when he or she “[i]s engaged in substantial and not isolated activities within this state”

¶7 The determination of a person’s domicile involves the adjudication of questions of fact. *See Baker v. Department of Taxation*, 246 Wis. 611, 617, 18 N.W.2d 331 (1945). Here, the circuit court concluded that Boehmfeldt was domiciled in Michigan. The court found that Boehmfeldt “had a fixed and permanent home in Michigan and they had abandoned their Wisconsin residence and they left.”⁴ Boehmfeldt had enrolled his children in a Michigan school,

⁴ Boehmfeldt moved to Michigan on September 1, 2008.

obtained a resident fishing license and opened bank accounts there. Boehmfeldt also filed tax returns indicating a Michigan residence and obtained a journeyman electrician license in Michigan. The court’s findings are not clearly erroneous. *See* WIS. STAT. § 805.17(2).

¶8 The circuit court also determined that there were insufficient contacts within Wisconsin to permit the court to exercise personal jurisdiction under WIS. STAT. § 801.05(1)(d). The court stated:

I do not believe that there was substantial contact with Wisconsin. Once he left the state, they didn’t come back. Only contact was through their mistaken belief that they had six months to change their driver’s license. The only contact that he had at that point was the residence which he had abandoned and eventually deeded over in lieu of foreclosure.

The fact that he still had not changed their license or registration, I don’t think those are substantial contacts sufficient for the Court to consider jurisdiction over two Michigan residents involved in an accident in Michigan.

¶9 The circuit court did not believe there were “substantial” contacts as contemplated by the long arm statute,⁵ and neither do we. Boehmfeldt’s only contacts with Wisconsin were the remnants of his prior residency. The fact that Boehmfeldt still had a Wisconsin driver’s license, and his car was still registered and insured in Wisconsin at the time of the accident was explained by

⁵ Relying upon *Vermont Yogurt Co. v. Blanke Baer Fruit & Flavor Co.*, 107 Wis. 2d 603, 612-13, 321 N.W.2d 315 (Ct. App. 1982), Boehmfeldt argues that when neither the plaintiff nor the defendant are Wisconsin residents and the cause of action arose out of activities in a different state, the defendant’s contacts in Wisconsin must be “substantially higher in order to support [personal] jurisdiction” Boehmfeldt contends that Oliver’s contacts “certainly do not meet the heightened requirements for contacts set forth in *Vermont Yogurt*” Oliver fails to address *Vermont Yogurt*, or refute Boehmfeldt’s argument and it is therefore deemed admitted. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

Boehmfeldt's mistaken belief that he had six months to change his driver's license and "we were in our [six-month] grace period."

¶10 Moreover, WIS. STAT. § 801.05(1) plainly requires the circuit court to analyze a defendant's contacts at the time the action is commenced.⁶ *FL Hunts, LLC v. Wheeler*, 2010 WI App 10, ¶¶11-12, 322 Wis. 2d 738, 780 N.W.2d 529. The summons and complaint in the present case were filed with the circuit court on January 4, 2010. Oliver concedes in his brief that Boehmfeldt's Wisconsin driver's license was revoked on August 21, 2009, and the Wisconsin insurance policies were cancelled on July 30, 2009. Accordingly, the court lacked personal jurisdiction.

¶11 Because we conclude the circuit court lacked personal jurisdiction, we need not decide whether Michigan law applied. However, Wisconsin has no legitimate interest in an accident between nonresidents who have no substantial connection to this state. As the circuit court correctly recognized, "This is an accident that happened in Michigan ... between two Michigan residents." Quite simply, it appears Oliver was forum shopping to avoid the fact that, as an uninsured driver, he could not sue under Michigan law.⁷

⁶ Oliver admits in his brief that "[WIS. STAT. §] 801.05(1)(d) allows a court to exercise general personal jurisdiction over a defendant who, *at the time of the commencement of the action*, is engaged in 'substantial and not isolated activities within (Wisconsin)' This requirement also applies to paragraph (1)(b) by the plain language of the statute.

⁷ The cases cited by Oliver regarding choice of law are easily distinguishable, as they involve Wisconsin residents or accidents occurring within Wisconsin.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

