

STATE OF MICHIGAN  
COURT OF APPEALS

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GEICO CASUALTY COMPANY,

Plaintiff-Appellant,

v

TIMOTHY MARSHALL and WESTERN  
RESERVE MUTUAL CASUALTY COMPANY,

Defendants-Appellees.

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UNPUBLISHED

November 18, 2008

No. 279060

Livingston Circuit Court

LC No. 05-021828-CK

Before: Fitzgerald, P.J., and Bandstra and O'Connell, JJ.

PER CURIAM.

Plaintiff Geico Casualty Company (Geico) appeals as of right the trial court order granting defendants Timothy Marshall (Marshall) and Western Reserve Mutual Casualty Company summary disposition of Geico's complaint. We affirm.

The trial court determined, as a matter of law, that Marshall was an Ohio resident at the time of his December 25, 2003 automobile accident, and therefore, that Geico was obligated to pay to Marshall, or on his behalf, up to \$500,000 in personal protection insurance (PIP) benefits<sup>1</sup> under the no-fault act, MCL 500.3101 *et seq.*<sup>2</sup> Geico challenges this determination on appeal, asserting that the trial court should have concluded as a matter of law that Marshall was a Michigan resident at the time of the accident, and that Geico had no statutory or contractual obligation to pay PIP benefits to him.

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<sup>1</sup> The statutory phrase is "personal protection insurance benefits," but these benefits are also known as "first-party" or "PIP" benefits. *McKelvie v Auto Club Ins Ass'n*, 459 Mich 42, 44, n 1; 586 NW2d 395 (1998).

<sup>2</sup> MCL 500.3163 requires that insurers "authorized to transact automobile liability insurance and personal and property protection insurance in this state . . . file and maintain a written certification that any accidental bodily injury or property damage occurring in this state arising from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle by an out-of-state resident who is insured under its automobile liability insurance policies, is subject to the personal and property protection insurance system" of the no-fault act. However, the amount of PIP benefits payable under such circumstances is limited to \$500,000. MCL 500.3163(4).

This Court reviews de novo a trial court's decision to grant a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Sobiecki v Dep't of Corrections*, 271 Mich App 139, 141; 721 NW2d 229 (2006). Additionally, where the underlying facts are not in dispute, residence is a question of law for the court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002); *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 680; 333 NW2d 322 (1983). This Court also reviews questions of law de novo. *Gen Motors Corp v Dep't of Treasury*, 466 Mich 231, 236; 644 NW2d 734 (2002).

"Residence" means "the place, esp[ecially] the house, in which a person lives or resides; dwelling place; home." *Bloomfield Estates Improvement Assoc, Inc v City of Birmingham*, 479 Mich 206, 215; 737 NW2d 670 (2007), citing *Random House Webster's College Dictionary* (1997). A person's residence is "the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time." *Dairyland, supra* at 680. "[D]omicile and residence in Michigan are generally synonymous terms . . ." and therefore, cases discussing either concept are instructive here. *Id.* See also *Workman v Detroit Automobile Inter-Ins Exchange*, 404 Mich 477, 496; 274 NW2d 373 (1979) (determining a claimant's residency is "to the same analytical effect" as determining their domicile).

In *Workman, supra*, our Supreme Court identified four factors to consider when determining where a person is domiciled:

(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 [as the insured party with who, the person claims to be domiciled];

(4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household.

This Court, noting that "[t]hese four factors do not make a comprehensive and exclusive list; they are merely '[a]mong the relevant factors'" to be considered, has identified the following additional factors to consider when identifying the residence or 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. [*Cervantes v Farm Bureau General Ins Co*, 272 Mich App 410, 415; 726 NW2d 73 (2006). See also *Fowler, supra* at 364-365; *Williams v State Farm Mut Auto Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993); *Dairyland, supra* at 682.]

“In considering these factors, no one factor is, in itself, determinative; instead each must be balanced and weighed with the others.” *Workman, supra* at 496; accord *Williams, supra* at 495 (no factor should be given “special weight”).

Many of the factors to be considered in determining residency seemingly are of little or no value to the analysis in this case, involving an adult male in his mid-forties, unmarried, living a very transient lifestyle as an over-the-road truck driver, with no bank accounts or credit cards, who lived for extended periods of time with his parents in Ohio, who stayed with equal ease with his girlfriend, Kary Nehme, in Michigan, with his parents in Ohio, and in the sleeper compartment of his semi-truck wherever it was parked, who seemingly keeps almost all of his possessions with him in his truck and who carried his clothing in a suitcase wherever he stayed.

While Marshall's subjective or declared intent tends to favor a finding that he was a Michigan resident on the date of the accident, the import of Marshall's declaration is tempered by his transient lifestyle and by the fact that he took no official action to establish Michigan residency during the six months he purportedly lived with Nehme in her mother's Lincoln Park, Michigan home. Indeed, every official action Marshall took both before and after the accident, including paying taxes, registering to vote, registering his vehicles and renewing his driver's license, identified him as an Ohio resident. Additionally, Marshall himself expressed ambivalence about any intent to remain “permanently or for an indefinite or unlimited length of time,” at Nehme's mother's home when he indicated that his staying there was dependent on the status of his relationship with Nehme, to which he “wasn't going to commit” and which led him to return to his parents' home on occasion both prior to June 2003 and again after his accident.

As for the formality or informality of Marshall's relationship with Nehme and her mother, we agree with the trial court that the relationship was very informal. Marshall seems to have regularly stayed at Nehme's mother's house for some amount of time in the evenings while waiting to load his truck, at a steel company minutes away, for his run the next day. Marshall also indicated that he spent time there during the weekends. However, there was no formal arrangement regarding Marshall's status at Nehme's mother's home or regarding any payment of rent or household bills; Marshall “chipped in” what he wanted to pay, when he had the money to do so. And, it is not clear that Marshall stayed at Nehme's mother's home every night, through the night; rather, it seems more that he stopped in for some amount of time when he was able and wished to do so. Further, Marshall did not have a key to the house as one might expect if he were truly residing there. Finally, that Marshall was not committed entirely to living at Nehme's mother's home and that he returned to Ohio after the accident because “family take better care of you than friends” also demonstrate the informality of Marshall's relationship with Nehme and her mother for purposes of determining Marshall's residency.

Notably, and perhaps most tellingly, Marshall consistently used his parents' address as his mailing address for all "business-type" mail and for all official purposes. He never used Nehme's mother's address for any important or official purpose and, other than a few letters from Nehme, he did not receive any mail there.<sup>3</sup> Marshall's parents' address appears on his driver's license and he used it when filing tax returns, on his medical records, and for receiving bills and insurance information.

The related factors of whether Marshall had another place of lodging, whether a bedroom was maintained for him and whether he maintained possessions at the home, as well as whether there was any financial dependence or support between the parties, are all seemingly inapposite in this case. Clearly, Marshall had equal ability to lodge at his parents' home, at Nehme's mother's home or in his truck, and he stayed in all three places at various times depending on his schedule and his inclination. There was no bedroom maintained for Marshall in either Nehme's mother's home or his parents' home. When at his parents' home, there was a bedroom Marshall used, but it was not considered his bedroom. When he was at Nehme's mother's home, he would use Nehme's son's bed and Nehme's son would sleep on the couch. Marshall did not keep many possessions in either place; he might have left some clothing, books or movies at Nehme's mother's house, but he left his car in Ohio, at the truck terminal or at his parents' house. He kept his clothing and personal items with him, in his truck. Finally, while Marshall indicated that he gave Nehme's mother money to pay some household bills and that he had given his parents money or bought them meals, there was no indication that either Nehme's mother or Marshall's parents were dependent on such financial assistance, nor that Marshall was financially dependent on them in any way.

Contrary to Geico's representation, there is no "overwhelming un rebutted evidence" that Marshall was a Michigan resident at the time of the accident. Instead, this Court is left to weigh Marshall's statements that he began "staying" with Nehme in June 2003 against other evidence. It appears from the record that, for Marshall, "moving" simply involved carrying his suitcase in to Nehme's mother's house when he wished to change his clothes and/or sleep there. Further, the record demonstrates the ease with which Marshall could (and seemingly did) return to his parents' home in Ohio, as well as the fact that all of Marshall's mail, all official documents and all medical records, both before and after the accident, identified him as an Ohio resident. Bearing in mind that, as this Court explained in *Cervantes*, *supra* at 416, a person's subjective intent should not be "exalt[ed] . . . to a determinative status" when determining residency for purposes of the no-fault act, the trial court did not err in concluding that Marshall remained an Ohio resident on December 25, 2003.<sup>4</sup>

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<sup>3</sup> Nehme served some time in a detention center in Brighton; Marshall was on his way to visit her there when the accident occurred. Nehme apparently wrote letters to Martin while she was detained, and sent them to him at her mother's home.

<sup>4</sup> Geico argues alternatively, that this Court should reverse the trial court's order because there are material factual disputes related to the determination of Marshall's residency, which require a jury trial. However, Geico repeatedly represented below that there were no material facts in dispute, and thus, that the question of Marshall's residency was a question of law for the court.  
(continued...)

Geico points to this Court's decision in *Williams*, *supra* at 491, as supporting a different result. In *Williams*, the plaintiff was a former Michigan resident who moved to Nevada after graduating from a Michigan high school. Three years later, the plaintiff "informed his parents that he was moving back to Michigan . . . quit his job, closed his bank account in Nevada and opened another one in Michigan, relinquished his apartment and forwarded his mail to his parent's address in Michigan, and loaded his personal belongings in his truck." *Id.* at 492-493. On his way to Michigan, the plaintiff was injured in an automobile accident in Oklahoma. At the time, the plaintiff had Nevada car insurance and Nevada license plates on his vehicle. This Court determined that the plaintiff was domiciled in his parents' Michigan household at the time of the accident. *Id.* at 495.

Unlike the instant case, clearly the plaintiff in *Williams* had taken overt, official action to renounce his domicile in Nevada and establish his parents' home in Michigan as his new domicile, including closing his Nevada bank account and opening a new bank account in Michigan and forwarding his mail to his parents' address. The plaintiff in *Williams* 'burned all of his bridges in Nevada' before leaving for Michigan. *Id.* at 493. By contrast, here, Marshall continually maintained his official connection with Ohio, continuing to use his parents' Ohio address for all official, or business purposes, including his mail, his driver's license and vehicle registration, his medical records, obtaining and paying for insurance, and the payment of income taxes. Indeed, it seems Marshall intentionally left his "bridges" back to Ohio intact, to accommodate those periods of time during which his relationship with Nehme might sour.<sup>5</sup>

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Geico specifically asked the trial court to consider the undisputed facts, set forth in Marshall's sworn statement and deposition, together with pertinent documentary evidence, and conclude that Marshall was a Michigan resident. The trial court gave appropriate consideration to the record before it, concluding that Marshall was an Ohio resident. Our review of the record demonstrates that there are no material facts in dispute; rather, what is disputed is whether those facts establish Michigan or Ohio residency. Further, "[a] party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994). Therefore, there is no basis for Geico to now assert that material questions of fact precluded summary disposition.

<sup>5</sup> Geico also points to this Court's unpublished decision in *Fontana v Maryland Casualty Co*, unpublished opinion per curiam of the Court of Appeals, issued January 24, 2006 (Docket No. 264127), as supporting its assertion that Marshall was a Michigan resident at the time of his accident. That decision has no precedential effect. MCR 7.215(C)(1). Further, it offers no support to Geico's position here. In *Fontana*, this Court reversed the trial court's determination that the plaintiff resided with her father, rather than her mother, at the time of her March 31, 2003 automobile accident, where the plaintiff lived with her mother, received her mail there, maintained a room there and kept her possessions there, and where the only indication of domicile with her father was that his former address remained on her driver's license. Here, while Marshall may have "lived with" Nehme, he did not maintain a room there, keep possessions there or receive any mail there. Rather, he slept in Nehme's son's bed, relegating the teen to the couch for the nights Marshall was present, and he kept all of his clothing with him in his truck. All of his mail went to his parents' address, which he used for all official purposes including his driver's license, insurance, taxes and medical records, and where there was a bedroom he could use, presumably without displacing anyone else. Certainly, unlike in *Fontana*,  
(continued...)

Notwithstanding Marshall's asserted belief that he was a resident of the home of Nehme's mother on December 25, 2003, the record presented demonstrates instead that, for purposes of the no-fault act, Marshall remained an Ohio resident on that date. Therefore, the trial court did not err in summarily disposing of Geico's complaint.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

/s/ Peter D. O'Connell

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(...continued)

more than merely the address on Marshall's driver's license supports the conclusion that Marshall remained a resident of Ohio at the time of his accident.