STATE OF MICHIGAN

COURT OF APPEALS

FARMERS INSURANCE EXCHANGE,

Plaintiff-Appellee,

v

ANGELA HENDERSON, Conservator of EDWARD CARTER, a Legally Incapacitated Person, and CEDRIC LLOYD BLAIR,

Defendants,

and

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

UNPUBLISHED
November 17, 2009

No. 284683
Wayne Circuit Court
LC No. 06-619478-CK

EDWARD CARTER,

Plaintiff,

v

FARMERS INSURANCE EXCHANGE,

Defendant-Appellee,

and

AUTO CLUB INSURANCE ASSOCATION,

Defendant-Appellant.

No. 284684
Wayne Circuit Court
LC No. 06-614939-NF

Before: Wilder, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

In these consolidated appeals, defendant Auto Club Insurance Association ("appellant") appeals by leave granted from the trial court's order granting summary disposition in favor of defendant Farmers Insurance Exchange ("appellee"). We reverse and remand for proceedings consistent with this opinion.

Edward Carter ("Edward"), a pedestrian, was struck by an uninsured vehicle and suffered serious injuries. Edward did not own a vehicle and purportedly did not reside with an individual having a no-fault insurance policy. Consequently, appellee was assigned to handle the claim through the Michigan Assigned Claims Facility. However, appellee asserted that appellant was responsible for the claim. Specifically, appellee alleged that Edward's sister, Rubie L. Carter, ("Rubie L.") was covered under a policy of insurance with appellant, and Edward resided with her at the time of the accident. A declaratory action was filed to determine the insurance company responsible for payment of insurance benefits. After hearing the cross-motions for summary disposition, the trial court granted summary disposition in favor of appellee, concluding that Edward resided part-time with his sister, Rubie L., and therefore, her insurance company, appellant, was responsible for the claim based on dual domiciles.

Summary disposition decisions are reviewed de novo on appeal. *White v Taylor Distributing Co, Inc*, 482 Mich 136, 139; 753 NW2d 591 (2008). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), the court must examine the pleadings, affidavits, depositions, admissions, and any other evidence in the light most favorable to the nonmoving party and grant the benefit of any reasonable doubt to the opposing party. *Id*. When ruling on a motion for summary disposition, the court does not assess the credibility of the witnesses. *Id*. at 142. Therefore, inconsistencies in a statement given by a witness cannot be ignored. *Id*. at 142-143. Rather, application of disputed facts to the law present proper questions for the jury or trier of fact. *Id*. at 143. The disputed factual issue must be material to the legal claims. *Martin v Ledingham*, 282 Mich App 158, 161; ___ NW2d ___ (2009).

Questions involving statutory interpretation are reviewed de novo by the appellate courts. *Renny v MDOT*, 478 Mich 490, 495; 734 NW2d 518 (2007). The courts must give effect to the Legislature's intent by examining the plain language of the statute. *Id*. When the language of a statute is unambiguous, judicial construction is neither permitted nor required. *Id*.

MCL 500.3114 governs entitlement to personal protection insurance benefits and provides for the order of priority for payment of benefits. It provides, in relevant part:

> (1) 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. A personal injury insurance policy described in section 3103(2) 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 motorcycle accident. When personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative or relative's spouse, the injured person's

> insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer.

If benefits are not available through MCL 500.3114, insurance may be obtained through the assigned claims plan. MCL 500.3172 provides in relevant part:

> (1) A person entitled to claim because of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may obtain personal protection insurance benefits through an assigned claims plan if no personal protection insurance is applicable to the injury, no personal protection insurance applicable to the injury can be identified, the personal protection insurance applicable to the injury cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, or the only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed. In such case unpaid benefits due or coming due are subject to being collected under the assigned claims plan, and the insurer to which the claims is assigned, or the assigned claims facility if the claims is assigned to it, is entitled to reimbursement from the defaulting insurers to the extent of their financial responsibility.

When a dispute arises between two or more automobile insurers regarding their obligation to provide coverage, an action shall be filed for the circuit court to declare the rights and duties of any interested party. MCL 500.3172(3).

In *Workman v Detroit Automobile Inter-Ins Exchange*, 404 Mich 477, 486-487; 274 NW2d 373 (1979), the plaintiff was rendered a paraplegic following a one-vehicle accident while a passenger in an automobile owned and operated by her sister. Earlier in the month before the accident, the plaintiff, her husband, and their child moved to a travel trailer owned by her father-in-law, and the trailer was located 40 to 50 feet from the father-in-law's home. However, three to four days before the accident, the plaintiff and her family stayed at the residence of her mother so her sister would not be alone while her mother was on vacation. *Id*. When the accident occurred, the plaintiff and her husband did not own a motor vehicle. Consequently, a declaratory action was filed to determine which of three insurance companies was responsible for providing personal injury protection insurance benefits. Before trial, the court dismissed the insurance company representing the plaintiff's mother. *After trial*, the court held that the insurer for the plaintiff's father-in-law was responsible for providing benefits and concluded that there was no cause of action against the insurer for the plaintiff's sister. *Id*. at 488-489.

On appeal, the father-in-law's insurer conceded that the plaintiff was a relative for purposes of the statute, but asserted that she was not domiciled in the same household. To resolve the issue, the Supreme Court articulated a number of considerations to address to determine the propriety of domicile:

> Our review of both Michigan opinions and opinions of our sister state courts first reveals the general principle that the terms "resident" of an insured's "household" or, to the same effect, "domiciled in the same household" as an

insured, have "no absolute meaning", and that their meaning "may vary according to the circumstances". The "legal meaning" of these terms must be viewed flexibly, "only within the context of the numerous factual settings possible".

Accordingly, both our courts and our sister state courts, in determining whether a person is a "resident" of an insured's "household" or, to the same analytical effect, "domiciled in the same household" as an insured, have articulated a number of factors relevant to this determination. In considering these factors, no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others. Among the relevant factors are the following: (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[.] [*Id*. at 495-497 (internal citations and footnotes omitted).]

After examining the above factors in relationship to the facts of the case, the Supreme Court affirmed the trial court's determination that the appropriate "domicile" was with the plaintiff's father-in-law, James Workman, Sr.:

When the above factors are tested against the facts in the record in this case, it is overwhelmingly clear, as the trial court held, that plaintiff was "domiciled in the same household" as her father-in-law, James Workman, Sr.

First, the record reveals facts indicating it was plaintiff's intention to remain living in the trailer on the property of James Workman, Sr., for at least an indefinite length of time. Plaintiff testified that although she, her husband and child were temporarily staying with her younger sister in her mother's home when the accident occurred, if the accident had not happened, it was her family's intention to have gone back to the trailer and remain living there "for an indefinite period of time". Plaintiff further testified that she and her husband were not looking for any other place to live and that she considered the trailer as her home. In addition, she testified that her family's mailing address was the same as her father-in-law's. Second, the record reveals facts indicating that the relationship between plaintiff, her husband and child, and her father-in-law's family was informal and friendly. Plaintiff testified that she was welcome to use and did use all of the facilities of the house (*i.e.*, telephone, washers and dryers, and electricity, by cord from the house to the trailer), that her family ate meals with the senior Workman's family, and that during the day she and her child were "in and out" of the house. Third, the record reveals that the trailer in which plaintiff and her family lived was unquestionably on the same premises, or property, as her father-in-law's house, and that the trailer belonged to her father-in-law. The trailer was located 40 to 50 feet from the house. The electrical power for the trailer was supplied by a cord attached to the house and water for the trailer was provided by means of a hose connected to the house. Furthermore, testimony

> established there was no fence of physical barrier of any type between the house and the trailer. Fourth, the record reveals that plaintiff and her family had left the apartment they were living in prior to moving into the trailer and had no intention of returning there (or to any other lodging).
>
> For these reasons, we hold that plaintiff was under § 3114(1) of the No-Fault Act, "a relative of [and] domiciled in the same household" as her father-in-law, James Workman, Sr. Accordingly, we affirm the trial court's conclusion that Community Services Insurance Company is responsible to plaintiff for personal injury protection insurance benefits under the No-Fault Act. [*Id*. at 497-498.]

In the present case, the testimony regarding Edward's domicile at the time of the accident conflicted. The application for bodily injury benefits provided a Glynn Street address where Edward's mother, Rubie P. Carter, resided. The applicant submitted that Edward did not reside with any relative on the date of the accident, but rather, that he resided with an unnamed girlfriend at the address listed as his mother's. However, an affidavit submitted in support of a claim for benefits provided that Edward resided at the Glynn Street address with his mother and his sister, Rubie L. During his deposition, Edward admitted that he had difficulties with his memory and that he resided in both places. However, he acknowledged that his driver's license listed the Glynn Street residence as his address. Edward's sister, Rubie L., provided an affidavit that Edward resided on Glynn Street at the time of the accident, and that he did not reside with her on Normile Street. However, in her deposition, Rubie L. provided testimony that Edward resided at both places. She explained that she provided different testimony in her deposition because she feared that her rates would increase. Edward's other sister, Angela Henderson, testified that Edward stayed at both residences and had clothes at both homes.

Because of the inconsistencies in the affidavits and deposition testimony, the trial court improperly granted summary disposition. Inconsistencies in statements given by witnesses cannot be ignored. *White, supra*. Rather, the trial court had the obligation to weigh the criteria set forth in the *Workman* decision against the credibility of the witnesses and their varying statements in deposition, affidavits, and other documentary evidence. *Id*. Indeed, in the *Workman* decision, the Supreme Court affirmed the trial court's factual determination of the appropriate domicile *following trial*. Accordingly, we reverse the trial court's decision and remand for proceedings consistent with this opinion.

Furthermore, the trial court erred in ruling as a matter of law that Edward's "part-time [residence] with his sister [Rubie L.]" was sufficient to establish dual domiciles that invoked statutory coverage pursuant to MCL 500.3114(1). The statute provides personal protection insurance to a person "named in the policy, the person's spouse, and a relative of either domiciled in the same household." The plain language of the statute does not provide for "dual domiciles." *Renny, supra*. Terms used in a statute must be given their plain and ordinary meaning, and it is appropriate to consult a dictionary for definitions. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004). The term "domicile" is defined as "a place of residence, house or home… a permanent legal residence." Random House Webster's College Dictionary (2000), p 391. Additionally, the courts have held that a person can have only one domicile that is the place where there is a true fixed permanent and principal establishment to which the person has the intention to return. See *Henry v Henry*, 362 Mich 85, 101-102; 106 NW2d 570 (1960); *Beecher v Detroit Common Council*, 114 Mich 228, 230; 72 NW 206 (1897). Accordingly, we

remand for the trial court to resolve the factual disparity regarding Edward's domicile for purposes of the no-fault act.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood