STATE OF MICHIGAN

COURT OF APPEALS

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee,

and

ALLSTATE INSURANCE COMPANY,

Defendant.

UNPUBLISHED
June 21, 2011

No. 294324
Ingham Circuit Court
LC No. 08-001249-NF

Before: MARKEY, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order granting defendant's[1] motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court found that Sarah Campanelli, a minor, was domiciled in Michigan at the time of the motor vehicle accident that resulted in her death; consequently, plaintiff was the priority insurer responsible for paying personal injury protection benefits under the no-fault act, MCL 500.3101 *et seq*. Because we find that there was a genuine issue of material fact regarding Sarah's domicile, we reverse.

Plaintiff argues that the trial court erred when it granted summary disposition in favor of defendant and failed to grant summary disposition in its favor. We agree that summary disposition should not have been granted in favor of the defendant, but we also conclude that

[1] References to "defendant" in the singular throughout this opinion are to defendant State Farm only. Defendant Allstate Insurance was dismissed earlier in the case by stipulation of the parties.

summary disposition was not appropriately granted in favor or either party on the facts of this case.

A trial court's determination of a motion for summary disposition is reviewed de novo. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion brought under MCR 2.116(C)(10), the court considers the affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriate if there is no genuine issue regarding any material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

The question of which insurance policy has coverage in the instant matter revolves around the issue of Sarah's domicile at the time of the accident. Under MCL 500.3114(1)[2], if Sarah resided in Michigan, then plaintiff was responsible for Sarah's personal injury protection benefits. On the other hand, if Sarah's domicile was in Tennessee, then defendant was responsible under MCL 500.3114(4)(a)[3].

The statutory term, "domiciled in the same household," has no absolute meaning; rather, its meaning may vary according to the circumstances. *Cervantes v Farm Bureau Gen Ins Co of Mich*, 272 Mich App 410, 414; 726 NW2d 73 (2006). Generally, however, "domicile" is defined as "[t]hat place where a man has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning." *In re Servaas*, 484 Mich 634, 679; 774 NW2d 46 (2009), citing Black's Law Dictionary (5th ed); see also *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 680; 333 NW2d 322 (1983).

Generally, a determination involving a person's domicile is a question of fact. *Fowler v Airborne Freight Corp*, 254 Mich App 362, 364; 656 NW2d 856 (2002). Only where facts are undisputed is domicile a question of law for the court. *Id*. Although plaintiff and defendant assert that the underlying facts pertaining to Sarah's domicile are not in dispute, we hold that there are genuine issues of material fact that make it inappropriate for the trial court to have properly resolved this issue as a matter of law. See *Dobson v Maki*, 184 Mich App 244, 252; 457 NW2d 132 (1990) (holding that denial of summary disposition is proper where there is conflicting evidence regarding domicile).

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[2] MCL 500.3114(1) provides, in relevant part: "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."

[3] MCL 500.3114(4) provides, in relevant part: "Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority: (a) The insurer of the owner or registrant of the vehicle occupied."

When determining a person's domicile, a number of factors are weighed and balanced with each other with no one factor being determinative, or given special weight. *Cervantes*, 272 Mich App at 415-416; *Univ of Mich Regents v State Farm Mut Ins Co*, 250 Mich App 719, 730; 650 NW2d 129 (2002). Relevant factors in deciding whether a person is domiciled in the same household as the insured include 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. [*Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979) (internal citations omitted).]

"These four factors do not make a comprehensive and exclusive list; they are merely '[a]mong the relevant factors' to be considered." *Cervantes*, 272 Mich App at 415, quoting *Workman*, 404 Mich at 496 (brackets in original). Accordingly, in addition to the four *Workman* factors, this Court has identified other relevant factors, such as:

> (1) whether the child continues to use the parents' home as the child's mailing address, (2) whether the child maintains some possessions with the parents, (3) whether the child uses the parents' address on the child's driver's license or other documents, (4) whether a room is maintained for the child at the parents' home, and (5) whether the child is dependent upon the parents for support. [*Fowler*, 254 Mich App at 364-365.]

Here, there was extensive testimony regarding the first *Workman* factor, Sarah's subjective or declared intent. Sarah's sister, Ashley, recalled Sarah going to Michigan in the summer of 2007 to stay with their mother and their mother's uncle. Ashley reported that Sarah told her that she was going to try to stay in Michigan for a year to try to build a relationship with their mother and to go to school in Michigan. Ashley said that she later spoke with Sarah around Thanksgiving 2007 and that Sarah stated she wanted to return to Tennessee around Christmas to live and go to school.

Sarah's father, Frank, said there was no intent for Sarah to permanently remain in Michigan. Frank said that Sarah spoke to him on Thanksgiving, requesting to return to Tennessee, but he told her that she would have to finish the semester. Frank believed that Sarah understood that Christmas was the earliest she could return home, and that he probably would have picked Sarah up at that time.

Sarah's mother, Tina Taylor, believed that Sarah wanted to stay in Michigan to get to know her more. Taylor said that Sarah expressed a desire to visit Tennessee over Thanksgiving to see her boyfriend. Taylor stated that Sarah was going to stay with her for a year, and that she was going to Tennessee to visit her boyfriend for Christmas.

The trial court, while acknowledging that Sarah had in the past maintained her domicile in Tennessee, determined that, as a matter of law, the circumstances of the summer and fall of 2007 changed her domicile to Michigan. We disagree. It is undisputed that Sarah expressed her intention to return to Tennessee with both her sister and her father. Had she been of majority age, the evidence is sufficient to infer that she would in fact have acted on her intentions. However, as the trial court recognized, Sarah was a minor child, and her legal custodian, her father, told her that she had to finish the school semester in Michigan and was not permitted to return to Tennessee until the Christmas break at the earliest. These circumstances raise genuine issues of material fact related to Sarah's intentions. Rather than the facts simply reflecting a hope to return to Tennessee, the facts could just as easily be interpreted as showing a firm intention to return that was stifled only by the fact that Sarah was not legally permitted, because of her age, to act on her intention at that time.

The second factor, concerning the "formality or informality of the relationship between the person and the members of the insured's household," favors neither location because Sarah's residence with both parents was in the context of a minor child living under the care of a parent. Likewise, the third and fourth *Workman* factors favored neither location. Under the third factor, Sarah resided in the same home with the parent with whom she was living. Regarding the fourth factor, there was no testimony about Sarah having access to "another place of lodging."

Turning to the additional *Fowler* factors, we note there was little evidence in the record regarding what address Sarah used for mailing, for forms, or regarding the status of her possessions or finances. Taylor stated that she enrolled Sarah in a Michigan school, giving the school a Michigan address for Sarah. Sarah began working at a Michigan restaurant and was socially active. Sarah's Tennessee probation officer testified that Sarah told her that she was doing well in Michigan. Although Frank provided for the needs of his daughters in Tennessee and maintained a room for Sarah, Taylor stated that she and Sarah lived with Taylor's uncle in a three-bedroom house trailer in Michigan. Taylor said that Sarah arranged her bedroom and was painting it. Taylor paid Sarah's expenses during her time in Michigan, including medical insurance.

It is clear that the trial court based its decision to grant summary disposition in favor of defendant on its finding that there was "no real evidence that Sarah intended to return to Tennessee to live." However, as noted earlier, while it is true that Sarah's mother stated that Sarah planned to stay with her in Michigan for a year, there was contradictory testimony from her sister and father indicating that Sarah intended to return to Tennessee. Accordingly, because a trial court is not permitted to determine facts or assess credibility on a motion for summary disposition, *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994), there was a genuine issue of material fact, and summary disposition was improper.

Plaintiff next argues that the trial court should have found that Sarah was domiciled in Tennessee based on previous decisions of the Livingston Probate Court and the Wayne Circuit Court that Sarah was domiciled in Tennessee. However, those courts did not determine Sarah's

domicile for the purpose of insurance coverage, and there is no authority that suggests that the trial court was required to adopt the ruling of different jurisdictions deciding the issue for a different purpose for different parties.[4] The probate court was considering a petition for formal probate and a determination of the personal representative, and a petition for funeral arrangements. The Wayne Circuit Court, on an emergency motion to change custody while Sarah was in a coma, ordered ex parte that the domicile of Sarah not be removed from Michigan but subsequently set aside this order as "void ab initio." Although plaintiff argues that the trial court ignored these orders, it is evident that the trial court considered the transcripts of the probate proceeding, because, as the only substantial testimony submitted in the case, the trial court had to rely on the probate court testimony for its factual findings. Regardless of the prior proceedings in other courts, this appeal involves review only of the trial court's independent determination of Sarah's domicile for the purpose of no-fault act priorities.

We reverse. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens

[4] Plaintiff concedes the doctrines of res judicata or collateral estoppel do not apply. See *Monat v State Farm Ins Co*, 469 Mich 679, 682-685; 677 NW2d 843 (2004) (collateral estoppel), and *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001) (res judicata).