STATE OF MICHIGAN

COURT OF APPEALS

FAITH A. ORTWINE, Plaintiff-Appellee,	UNPUBLISHED October 18, 2016
v	No. 328268 Oakland Circuit Court
GRANGE INSURANCE COMPANY OF MICHIGAN, Defendant-Appellant.	LC No. 14-141157-NF

Before: SAAD, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

In this insurance coverage dispute, defendant appeals the order of the trial court that denied its motion for summary disposition. For the reasons provided below, we reverse and remand for entry of summary disposition in favor of defendant.

I. BASIC FACTS

This case arises out of a motorcycle accident that occurred on August 29, 2013. At the time of the accident, plaintiff had been living in Florida for over a year, but would return frequently to visit Michigan. While in Michigan for one of these visits, James Thomas, plaintiff's former stepfather,[1] picked up plaintiff at her mother's residence on Hegel Road in Goodrich Township in Genesee County to take her to a barbecue and a boat ride in Oakland County. The two rode on James's motorcycle, with plaintiff riding on the back of the bike. Sometime after exiting onto Dixie Highway in the Clarkston area, James noticed that the traffic in front of him was fairly heavy and was stopping quickly. After he applied the brakes to the motorcycle, he thought that he could not stop in time to avoid running into another vehicle, so he decided to "lay the bike down." While the motorcycle was sliding on its left side, it hit some protrusion in the road, which caused the bike to instantly flip up and over and start sliding on its

[1] James Thomas was married to plaintiff's mother from 1995 to 2004. James testified that he still considers plaintiff to be his daughter, and plaintiff testified that she considers James to be her father.

right side. The flip threw both James and plaintiff from the bike. Plaintiff sustained several lacerations that needed stitches or staples.

At the time of the accident, plaintiff's mother, Ellen Thomas, was insured through a no-fault policy with defendant. The policy included two vehicles, a 2012 Ford Mustang and a 1995 Honda Civic. Plaintiff owned and drove the Honda Civic. Plaintiff was listed as a driver on the policy but was not a named insured. Plaintiff sought personal injury protection (PIP) benefits from defendant because she asserted that she was a resident relative of Ellen Thomas, her mother. Defendant denied her claim. Plaintiff then filed this action against defendant.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10) and argued that plaintiff was not a resident relative of her mother and was therefore not entitled to recover PIP benefits under MCL 500.3114(1). Defendant asserted that Ellen Thomas' home was not plaintiff's domicile as required to collect PIP benefits. Defendant contended that plaintiff's domicile was in Florida where she intended to live for an indefinite period of time. Defendant relied on plaintiff's deposition testimony where she stated that she leased a home in Florida from June 2012 to August 2014; she kept most of her possessions in Florida, including her vehicle and pets; she attended classes at a college in Florida; and she had several jobs in Florida. Plaintiff also testified that when she visited Michigan, she stayed with her father and friends more often than she stayed with her mother. Plaintiff further testified that she could not stay with her mother for any length of time because they did not get along well. Defendant argued that there was no genuine issue of material fact that plaintiff was not domiciled with her mother at the time of the accident.[2]

In response, plaintiff argued that she was a listed driver on her mother's policy and that she had moved to Florida for the purpose of attending college. Plaintiff contended that her car was insured under a Michigan insurance policy and was registered in Michigan, and she had a Michigan driver's license. Plaintiff also argued that she had a bedroom in her mother's home with furniture and other belongings in it. Plaintiff further relied on her mother's deposition testimony indicating that she and plaintiff moved into her home in 2011 and plaintiff never moved out. Plaintiff also noted that she returned to her mother's home after the accident and convalesced there for nearly three months.

At oral argument, both parties agreed that, because the underlying facts were not in dispute, the issue of plaintiff's domicile was an issue of law for the trial court to decide. The trial court determined that defendant had not satisfied its burden of establishing that plaintiff's domicile was in Florida, but stated that it was not satisfied that plaintiff's domicile was in Michigan. The court recognized that the facts were not in dispute but opined that the conclusion that resulted from those facts was in dispute. Accordingly, the trial court denied defendant's motion.

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[2] Defendant also argued that plaintiff was not involved in an accident that involved a motor vehicle as required to collect PIP benefits. Defendant is not challenging the trial court's decision to deny the motion on that basis; thus, that issue is not before this Court.

This Court granted defendant's request for a stay and granted its application for leave to appeal the trial court's ruling. *Ortwine v Grange Ins Co of Mich*, unpublished order of the Court of Appeals, entered August 19, 2015 (Docket No. 328268).

II. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Lakeview Commons v Empower Yourself, LLC*, 290 Mich App 503, 506; 802 NW2d 712 (2010). "A motion brought pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim, and is reviewed by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id*. "Summary disposition is proper if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. (quotation marks and citation omitted).

Further, the determination of domicile generally is a question of fact, but when "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).

III. ANALYSIS

A. COURT'S FAILURE TO DECIDE

Defendant maintains that, by merely denying its motion for summary disposition, the trial court erred when it failed to determine definitively the issue of plaintiff's domicile. We agree because that issue is a question of law for the court as there were no genuine issues of material fact.

Courts have repeatedly recognized that the determination of a person's domicile is a question of law for the court when the underlying material facts are not in dispute. See, e.g., *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 490; 835 NW2d 363 (2013); *Fowler*, 254 Mich App at 364; *Williams v State Farm Mut Auto Ins Co*, 202 Mich App 491, 494; 509 NW2d 821 (1993).

At the hearing on defendant's motion, both parties agreed that the matter of domicile was to be resolved by the court as a question of law.[3] In fact, the trial court noted that "[t]here isn't

[3] While plaintiff agreed that the underlying facts were not in dispute at the trial court and initially in her answer to defendant's application for leave to appeal in this Court, she now argues in her brief on appeal that there was a dispute regarding one material fact—namely, plaintiff's intent. This position on appeal is untenable as it is contrary to her position at the trial court. See *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 455 n 1; 733 NW2d 766 (2006). In any event, plaintiff notably points to no evidence in the record to show this purported question on her intent. Instead, she claims that the *lack* of evidence on the matter makes her intent "at the very least, not clear," which necessitates a finding that summary disposition is not warranted. We disagree with plaintiff. Contrary to plaintiff's claim, we find that there is no evidentiary dispute on this matter. As discussed in Part III-B of this opinion, plaintiff testified that after moving to Florida in June

any individual fact in dispute[.]" Nevertheless, the court declined to make a definitive determination on domicile because it was "not comfortable" in doing so. In essence, while the court acknowledged that the underlying facts were not in dispute, it reasoned that the conclusion to be drawn from those facts could be in dispute. However, because the parties and the court all agreed that the underlying facts were not in dispute, the trial court had an obligation to make a definitive ruling, and it erred when it failed to do so. Although the conclusion may be "a close question of law," the existence of such a "close question" is insufficient to somehow turn the inquiry into a question of fact. See *Salinger v Hertz Corp*, 211 Mich App 163, 167; 535 NW2d 204 (1995).

B. DOMICILE DETERMINATION

Defendant says that the trial court erred when it denied its motion for summary disposition because there is no genuine issue of material fact that plaintiff was not domiciled with her mother at the time of the accident. We agree.

"[A] personal protection insurance policy . . . 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." MCL 500.3114(1) (emphasis added). It is not disputed that plaintiff was not a named insured under any no-fault policy. Instead, plaintiff sought PIP benefits under her mother's policy as a resident relative. Thus, the critical issue before us is whether plaintiff was domiciled at her mother's home.

Although the no-fault act does not define the term "domiciled," the term "domicile" "has a precise, legal meaning in Michigan's common law, and thus must be understood according to that particular meaning." *Grange Ins*, 494 Mich at 492-493.

> [O]ur common law has recognized that from the time of a person's birth—from childhood through adulthood—a person can only have a single domicile at any given point in time. Indeed, there are few legal axioms as established as the one providing that every person has a domicile, and that a person may have one—and *only* one—domicile. [*Id*. at 494 (emphasis in original).]

Although a person has only one domicile at any moment, she may have more than one residence. *Id*.

> For purposes of distinguishing "domicile" from "residence," this Court has explained that "domicile is acquired by the combination of residence and the intention to reside in a given place . . . . If the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short, will establish a domicile." The traditional common-law inquiry into a person's

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2012, she was planning on moving back to Michigan *only* if she could not get in-state tuition rates for attending classes at the University of Central Florida. None of the evidence presented suggests that plaintiff held a different intent. Thus, plaintiff's attempt to create a question of fact fails.

> "domicile," then, is generally a question of intent, but also considers all the facts and circumstances taken together. [*Id*. at 494-495 (citation omitted).]

"All relevant factors must be considered in ascertaining domicile." *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 681; 333 NW2d 322 (1983). In *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), our Supreme Court set forth several factors to consider when determining domicile, including "(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[.]" In *Dairyland*, 123 Mich App at 681, this Court addressed "the particular problems posed by young people departing from the parents' home and establishing new domiciles as part of the normal transition to adulthood and independence." In that case, this Court identified additional relevant factors to consider, including "whether the claimant continues to use his parents' home as his mailing address, whether he maintains some possessions with his parents, whether he uses his parents' address on his driver's license or other documents, whether a room is maintained for the claimant at the parents' home, and whether the claimant is dependent upon the parents for support." *Id*. at 682.

Applying the above factors, we hold that plaintiff's domicile was in Florida with her boyfriend rather than in Michigan with her mother.

Plaintiff, who was 22 years old at the time, moved to Florida with her boyfriend in June 2012.[4] They rented a duplex together, and both names were on the lease. Plaintiff claimed that she "needed a change of scenery" and moved to Florida to follow her boyfriend and to go to college. She had planned on attending the University of Central Florida (UCF), but she was not granted in-state tuition at the time. So she instead attended one semester at a community college in Florida, with the intent to attend UCF later.

From June 2012 through the time of the accident in August 2013, plaintiff held several different jobs in Florida.[5] Plaintiff had belongings in both Florida and Michigan and received mail at the Florida residence and some at her mother's residence. Notably, plaintiff testified that she only had a key to her Florida house and did not have a key to any residence in Michigan. Plaintiff also testified that although her old bedroom was located in the basement of her mother's house and included a twin-sized bed, when back in Michigan, she would stay "most of the time" with her boyfriend at his father's house because he had a bigger bed.

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[4] Plaintiff testified that in the six months immediately preceding the move to Florida, she lived in the Waterford/Clarkston area, which was not her mother's address.

[5] In fact, she got fired from her job right before the accident because her employer did not approve of her taking the time away for the August 2013 trip to Michigan. But plaintiff testified that, at the time, she had another job lined up upon her return to Florida.

Plaintiff testified that she stayed in Florida but also came back to Michigan often because she and her live-in boyfriend "were always back and forth visiting." She explained that, at the time of the accident on August 29, 2013, she was in Michigan on one of those visits for a week or two. When asked where she had intended to stay during that time if she had not been involved in the accident, she responded:

> Back and forth between the guy that I was living with's step-parents' house and my parents' house. I am sure friend's [sic] houses and stuff. I don't really like staying in one spot too much.

Plaintiff's car, which was registered in Michigan, remained in Florida when she visited Michigan. Plaintiff explained that she was waiting for an affirmative determination from UCF on her qualifying for in-state residency for tuition purposes before officially transferring her vehicle registration over to Florida. Indeed, plaintiff maintained that "if UCF was out of the picture because of tuition," she was "a hundred percent" coming back to Michigan. Plaintiff also had a Michigan driver's license and had never obtained a Florida driver's license. Plaintiff's mother's address was listed on her driver's license. However, when asked at her deposition what her mother's address was, she initially could not remember what it was and had to be reminded. When asked where plaintiff considered her residence to be at the time of the accident, she responded that she did not know because she split her time between Florida and Michigan.

After the August 29, 2013, accident, plaintiff suffered dizziness, nausea, vertigo, extreme mood swings, and memory loss. In this state, her doctor did not want her to travel, so plaintiff lived with her mother for nearly three months before returning to Florida. Importantly, plaintiff explained that during this time she was "basically a guest" in the home and that she would not have stayed at her mother's house during that time if she had not been involved in the accident. Plaintiff's boyfriend returned to Florida one week after the accident to take care of the couple's pets, which they had left behind.

Plaintiff permanently returned to Michigan in August 2014 when she broke up with her boyfriend. Plaintiff and her mother drove all of plaintiff's belongings up from Florida in a van. Plaintiff then lived at her mother's house and also with friends. After a month or two after returning to Michigan, plaintiff started renting a house in Flint and took on several other roommates, although she was the only name on the lease. Plaintiff testified that one of the factors in her getting her own place was that there normally was tension between her and her mother. Plaintiff explained that "[m]e and my mom can't be in the same area for too long[.]"

The above facts show that plaintiff's domicile was in Florida with her boyfriend at the time of the accident. During her testimony, plaintiff repeatedly referenced "moving" to Florida and "visiting" in Michigan. Plaintiff signed a lease for a home in Florida and lived there with her boyfriend and her pets. The only house key she had was for the Florida residence. She also had several different jobs in Florida and attended one semester of college. While plaintiff contends that she moved to Florida only for the purpose of attending college and that her domicile was in Michigan with her mother, the evidence shows that plaintiff did not regularly stay in her mother's home even when she visited Michigan. Plaintiff testified that before she moved to Florida, she lived "in between" her father's house and her mother's house. She also testified that she often stayed with her boyfriend at his father's house when the couple visited

Michigan because he had a bigger bed. Moreover, the fact that plaintiff left her twin-size bed in her mother's basement does not weigh in favor of finding a domicile in Michigan, as the usefulness of a twin-size bed for plaintiff and her boyfriend in Florida seems suspect. Plaintiff further testified that she considered herself a "guest" while she was at her mother's home during her recovery period. This certainly is an odd view to have if plaintiff truly considered her mother's home to be her domicile.[6] Further, she stated that she would not have stayed at her mother's house following the accident if she had not been involved in the accident.

Moreover, the determination of domicile primarily is a question of intent. See *Grange Ins*, 494 Mich at 495. Specifically, a person's domicile is where the person resides and intends to remain, i.e., the place "whenever he is absent, he has the intention of returning." *Id.* at 494 (quotation marks and citation omitted). And here, plaintiff testified that while in Florida, it was her intent to stay in Florida. Importantly, she explained that she did not have any present intent to return in the future to live in Michigan. Instead, she claimed that her intent was to stay in Florida and return to Michigan *only* if she could not obtain in-state tuition rates at UCF. This *conditional* intent makes it clear that she did not consider Michigan, let alone her mother's house, her true and permanent domicile.

Accordingly, plaintiff's domicile at the time of the August 2013 accident was Florida as a matter of law, and the trial court erred when it denied defendant's motion for summary disposition on this basis.

Reversed and remanded for entry of summary disposition in favor of defendant. We do not retain jurisdiction. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Michael J. Kelly

[6] Also noteworthy is how plaintiff described the address that was on affixed to the back of her driver's license: "I had *her* Hegel address on the back of my license . . . ." (Emphasis added.) Plaintiff's use of the possessive pronoun "her" instead of "my" or "our" tends to show that she considered the Hegel home to be her mother's address and not hers, which is consistent with her statement that she considered herself a "guest" while at the Hegel house.