STATE OF MICHIGAN

COURT OF APPEALS

CONCERNED PROPERTY OWNERS OF GARFIELD TOWNSHIP, INC.,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF GARFIELD,

Defendant/Counterplaintiff-Appellee,

and

JOHN NOWLAND, KEN BURRITT, TERESA BURRITT, TOM BRADY, MARIAN BRADY, TOM EDWARDS, SARA EDWARDS, KURT BURRIT, EMILY BURRITT, MIKE KAZMIERSKI, KELLY KAZMIERSKI, KEN PORTE, and LORRIE PORTE,

Counterdefendants-Appellants.

UNPUBLISHED
October 25, 2018

No. 342831
Grand Traverse Circuit Court
LC No. 2017-032273-CZ

Before: MURPHY, P.J., and SAWYER and SWARTZLE, JJ.

MURPHY, P.J. (*concurring*).

Consistent with my dissenting opinion in *Eager v Peasley*, 322 Mich App 174, 191-204; 911 NW2d 470 (2017), and although *Eager* involved a restrictive covenant in a deed and here an ordinance is at issue, I continue to be of the view that language relegating use of a dwelling to a single or one family is ambiguous relative to the issue of whether short-term rentals are permissible, such that the free use of property should govern, unless there is express and clear language to the contrary. A single family or one family can equate to the "same" family during the entire period of ownership, or it can encompass any particular family that rents a dwelling at a point in time, even if for a short period. *Id.* at 196-197. However, a prominent and ultimately controlling distinction in the instant case is that the ordinance's definition of "family" referred to persons who are "domiciled together . . . in a dwelling unit," indicating permanence not transience. Garfield Township Ordinance, § 3.2; see *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 493; 835 NW2d 363 (2013) ("For over 165 years, Michigan courts

have defined 'domicile' to mean 'the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning.' "). A family renting a dwelling for a short period is not *domiciled* together in the dwelling.[1] Thus, I see no reason to even reach and discuss *Eager* or *O'Connor v Resort Custom Builders, Inc*, 459 Mich 335; 591 NW2d 216 (1999). Accordingly, I respectfully concur.

/s/ William B. Murphy

[1] I do disagree with the majority's reliance on a different part of the definition of "family," which provides that a family does "not include any society, club, fraternity, sorority, association, lodge, coterie, organization or group of students or other individuals whose domestic relationship is of a transitory or seasonable nature or for an anticipated limited duration of a school term or other similar determinable period." Garfield Township Ordinance, § 3.2. This language is focused on the character of the alleged domestic relationship, precluding certain groups of people from calling themselves a "family" if the relationship is transitory or seasonable in nature, e.g., a group of unrelated people who get together every year in the summer and live as a unit for vacation purposes. This language does not speak to situations in which a family, in the classic sense of the term, is comprised of, for example, a father, mother, son, and daughter, and which family rents a home for a week. Instead, the "domiciled" language bars the rental, because my hypothetical family is not staying at or residing in the home on a permanent basis.