

STATE OF MICHIGAN
COURT OF APPEALS

BOARD OF HOSPITAL MANAGERS FOR THE
CITY OF FLINT, doing business as HURLEY
MEDICAL CENTER,

Plaintiff-Appellant,

v

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

Defendant-Appellee,

and

MICHIGAN AUTOMOBILE INSURANCE
PLACEMENT FACILITY AND MICHIGAN
ASSIGNED CLAIMS PLAN,

Defendant.

Before: METER, P.J., and SHAPIRO and RIORDAN, JJ.

RIORDAN, J. (*dissenting*).

I respectfully dissent. We know that Brandon Gault was not domiciled with his mother, Kimberly Rupright, at the time the automobile accident at issue occurred because both Gault and Rupright unequivocally stated that Gault did not live with Rupright on April 8, 2017, and that he had not lived with her at least since he was in the 11th grade. Regardless, the majority ignores these undisputed facts and takes great pains to tell us not to believe the two persons who are at the center of this dispute. Accordingly, I would affirm.

I. FACTS & PROCEDURAL HISTORY

On April 8, 2017, Gault, then 19 years old, was injured while riding as a passenger in a motor vehicle that collided with another vehicle. He suffered jaw injuries and was airlifted to a

medical center for surgery. Gault did not have a driver's license or any no-fault coverage of his own.

After the accident, Rupright, who was insured by defendant, Farm Bureau General Insurance Company of Michigan, called defendant's claims center to file a claim for personal injury protection (PIP) benefits on behalf of her son. During that call, Rupright stated that Gault received mail at her home and, without being prompted, explained: "[H]e doesn't live with me, but the way I was told the way no fault is even if, you know, he gets his – collects his mail there – I have to be responsible." She stated that she was "told they have a big pool for people who do not have insurance, but they said that's really hard to get," and explained: "I thought maybe my son could do that being that he doesn't live with me, per se." She further stated that "also he gets mail at Becky's,"¹ but when asked for her son's address, Rupright replied: "It's – it would be my address. He has no place. He goes from couch to couch."

Very unfortunately, Gault died in an unrelated accident in April 2018. Prior to his death, defendant's senior medical claims representative interviewed Gault in a recorded phone conversation. In his recorded conversation, Gault stated that before he dropped out of school in the 11th grade, he lived with his father, not his mother. When asked how long he had been living with his father before the accident, he replied: "It's been a while. He's been gone for three years" When asked whether he then moved back to his mother's house, Gault replied: "Well, I was staying all kinds of places. Half the time I really don't have a home." He explained that he was "hopping back and forth to houses," but that he tried to stay with coworkers because he did not have a driver's license or a car, and he needed a ride to work every day. He stated that he had worked for a tree service for 15 months and paid rent to stay with a coworker's family "for pretty much all of it." However, he was not living with the coworker at the time of the interview because he had lost his job after the accident. At the conclusion of the interview, Gault stated that the best way to contact him was through his mother. Gault gave his mother's address as his mailing address and stated that he received letters from his father and medical and dental bills at that address. He explained that at the time of his interview he had a bedroom upstairs at his mother's house and kept some of his clothes there, but he slept downstairs.

Ultimately, defendant denied Gault's claim because both Gault and his mother "stated that [Gault] did not reside with Ms. Rupright at the time of the accident." Before Gault died, he assigned his claim to plaintiff which, in turn, sued defendant for payment of benefits alleging that at the time of the accident Gault had no automobile insurance of his own and lived with his mother, who was insured by defendant. Defendant admitted insuring Gault's mother at the time of the accident, but citing *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), maintained that Gault was not an insured under his mother's policy because he was not domiciled with her at the time of the accident.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff filed a cross-motion for summary disposition, asserting that Gault was domiciled with his

¹ The record contains no further identification or explanation of Becky's identity or relationship with Gault.

mother when he was in high school, and although he was 19 years old and was sleeping at various places at the time of the accident, he had not established a new domicile. The trial court concluded that Gault was domiciled with his father at the time of the accident, granted defendant's motion for summary disposition, and denied plaintiff's motion for summary disposition. This appeal followed.

II. STANDARDS OF REVIEW

A trial court's decision to grant or deny a motion for summary disposition is reviewed de novo. *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *El-Khalil*, 504 Mich at 160. The trial court may grant a motion under subrule (C)(10) when there is no genuine issue of material fact, after considering "all evidence submitted by the parties in the light most favorable to the party opposing the motion." *El-Khalil*, 504 Mich at 160. "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). Generally, the determination of domicile is a question of fact, but when the underlying facts are not disputed, domicile is a question of law, and is reviewed de novo. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002); *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 490; 835 NW2d 363 (2013).

III. ANALYSIS

Plaintiff argues that the trial court committed error requiring reversal when it concluded that Gault was not domiciled with his mother at the time of the accident. I disagree.

Our Supreme Court addressed the issue of domicile in relation to the no-fault act in *Workman*, 404 Mich 477, and provided a non-exhaustive list of factors: (1) the subjective or declared intent of the person seeking to establish domicile; (2) the formality of the relationship between that person and the members of the household; (3) whether that person lives in the same house, within the same curtilage, or upon the same premises; and (4) whether that person maintained another place of lodging. *Id.* at 496-497. In applying the *Workman* factors, we have considered "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." *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983). In such cases, "[o]ther relevant indicia of domicile include such factors as 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.

In *Grange*, 494 Mich 475, our Supreme Court addressed two cases involving the effect of divorce on a child's domicile for purposes of determining coverage under the no-fault act. MCL 500.3114(1). The Court recognized three means of establishing a domicile: (1) domicile of origin, acquired at birth; (2) domicile by choice, when a person replaces a current domicile by choosing another; and (3) domicile by operation of law, established when a person under legal disability lacks the capacity to establish a domicile of choice. *Id.* at 501-502. The Court held that an

unemancipated child lacks the legal capacity to acquire a domicile by choice, the child's domicile is determined by the domicile of the child's parents, and "[t]he child's domicile of origin remains the child's domicile until a new domicile is acquired through the actions of the child's parents or until that point in time when the minor, either through emancipation or by reaching the age of majority, can acquire a domicile of choice." *Id.* at 503.

Here, the evidence of Gault's domicile is based on two telephone conversations with defendant's representatives. There is no indication from these calls that, prior to the accident at issue, Gault had any "subjective or declared intent . . . to establish domicile" at his coworker's house. *Workman*, 404 Mich at 496. Rather, Gault simply found it convenient to stay with coworkers; he was not living with his coworker after the accident, he did not have a phone number for the coworker, and no longer talked with him. Therefore, the trial court correctly held that Gault had not established a domicile of his own.

Thus, the outcome-determinative issue is whether Rupright's house was Gault's original domicile which he had not relinquished. Gault stated that he did not live with Rupright either before or after the accident. Gault stated that before he dropped out of school in 11th grade, he had lived with his father and then began "hopping back and forth to houses." Before the accident, he stayed with his grandmother and friends from work. After the accident, he provided Rupright's address as the best way to reach him, and that he would see Rupright once in a while, but did not stay at her house. We have previously held that although a person may be domiciled in a household while not actually living there "[s]torage of some of his belongings at his mother's home, use of such home as a mailing address, and the knowledge that he could and would return to live with her if forced to do so by adverse circumstances, are insufficient to constitute him a member of his mother's household." *Dairyland*, 123 Mich App at 681, 684. This case is analogous to *Dairyland*, and, based on the evidence presented in the trial court, Gault was not domiciled in Rupright's house at the time of the 2017 accident. Thus, summary disposition was properly granted.

Although plaintiff argues that by operation of law his domicile reverted to Rupright's house when Gault's father "left" for at least the last year that Gault was a minor, plaintiff presents no evidence concerning the circumstances of Gault's father's "departure" or that it necessarily terminated Gault's domicile with him by operation of law. There simply is nothing in the record to support this conclusion. Accordingly, plaintiff's argument and the majority's conclusion are without merit. Therefore, I also would find it unnecessary to consider plaintiff's additional argument that defendant failed to carry its burden of proving that Gault had established a new domicile.

IV. CONCLUSION

Plaintiff failed to present evidence that Gault was domiciled at Rupright's house at the time of the accident and summary disposition was properly granted. Accordingly, I would affirm.

/s/ Michael J. Riordan