STATE OF MICHIGAN

COURT OF APPEALS

ANDREW LUCIO,

Plaintiff,

v

GREAT LAKES CASUALTY INSURANCE COMPANY,

Defendant/Cross-Plaintiff-Appellant,

and

AUTO CLUB INSURANCE ASSOCIATION, a/k/a AAA,

Defendant/Cross-Defendant-Appellee.

UNPUBLISHED
December 29, 2011

No. 299786
Wayne Circuit Court
LC No. 09-003014-NI

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

When Andrew Lucio turned 18, he decided to attend high school in Saginaw, rather than in Frankenmuth where he resided with his mother and stepfather. Andrew moved into the Saginaw home of Penny Maxwell, located approximately six miles from the high school. While staying with Maxwell and driving her car, Andrew sustained injuries in a motor vehicle accident. Andrew's subsequent claim for personal injury protection (PIP) benefits launched this insurance coverage dispute.

Great Lakes Casualty Insurance Company insured Penny Maxwell, and Auto Club Insurance Association insured Julie Mossner, Andrew's mother. The insurance companies agree that Andrew's "domicile" at the time of the accident dictates which of them must provide coverage pursuant to MCL 500.3114 of the no-fault act.

The circuit court ruled that Andrew was domiciled in Saginaw rather than Frankenmuth, obligating Maxwell's no-fault carrier, Great Lakes, to shoulder liability for Andrew's PIP benefits. In resolving this question, the circuit court relied heavily on the testimony of Andrew's

stepfather, who claimed to have banished Andrew from the Frankenmuth home. Even accepting the stepfather's account as accurate, we hold that his intent to exile Andrew did not determine Andrew's domicile. Rather, as Andrew's domicile remained with his parents in Frankenmuth, we reverse and remand for entry of judgment in Great Lakes' favor.

I. FACTS AND PROCEEDINGS

In March or April 2006, Andrew's mother, Julie Mossner, moved from Saginaw to the Frankenmuth farmhouse of Thomas Mossner, whom she later married. Andrew and his half-sister moved to Frankenmuth with their mother. During the spring term of the 2005-2006 school year, Andrew commuted to Arthur Hill High School in Saginaw. The next fall, he attended a Frankenmuth school. In January 2007, Andrew celebrated his 18th birthday and elected to return to Saginaw's Arthur Hill High School. When Andrew did not graduate as expected in June 2007, he transferred to the Mackinaw Academy, a Saginaw Township Community school for the 2007-2008 school year. Rather than commute to Saginaw from Frankenmuth, a distance of 25 miles each way, Andrew moved into the Saginaw home of Penny Maxwell in August or September of 2007. Andrew resided in the Maxwell home until February 2008, when he was injured in a car accident. After a five-day hospitalization, Andrew returned to his mother's residence in Frankenmuth so that she could care for him.

Throughout the time that Andrew stayed with the Maxwells, his driver's license identified his Frankenmuth address. Andrew provided the Saginaw schools with his Frankenmuth address, and testified that he made no effort to change his mailing address to the Maxwell residence because "[he] was going back home after [he] finished [school]." Most of Andrew's possessions remained in a bedroom maintained for him in Frankenmuth. He returned to the Frankenmuth home occasionally, slept in his room, did his laundry, "caught up with [his] family and then [he] would go back." Andrew worked part-time in Saginaw while attending high school. He provided his employers with the Frankenmuth address because he perceived that he "legally resided with [his] parents." His checking account also reflected his Frankenmuth address.

Both Maxwell and Julie Mossner allowed Andrew to drive their cars. Julie Mossner's Auto Club no-fault policy identified Andrew as a driver of her 2001 Pontiac Bonneville. Julie Mossner bought Andrew's clothing, paid for his glasses, haircuts, and cell phone, brought food to the Maxwell house, occasionally gave Andrew cash, and represented to her employer that Andrew resided with her so that he could remain on her health insurance policy. Andrew helped himself to food when he visited the Frankenmuth home, and freely used the farm's gasoline pumps to fill the Maxwell vehicle. Penny Maxwell allowed Andrew to live in her home rent-free and did not seek contribution to the food bills or any other expenses. Maxwell claimed Andrew as a dependent on her 2007 income tax return.

Thomas Mossner's deposition testimony disabused any notion that Andrew's living arrangement was the product of exemplary intra-family cooperation. Thomas asserted that Andrew "more or less was moved out" of the Frankenmuth home because "he did not want to go by the rules of the home, so he had to leave." According to Thomas, Andrew was "not welcome" to reside in the Frankenmuth home and possessed no key, but was permitted to visit. He acknowledged that Andrew's possessions remained in his bedroom, professed no knowledge

that Andrew had been staying with the Maxwells, and made no effort to disguise his dislike for his stepson. Nevertheless, Thomas Mossner named Andrew as a driver in two Auto Club no-fault policies, and the policies contained Andrew's name during the time he stayed with the Maxwells.

Exactly one year after his accident, Andrew sued both defendants seeking payment for first-party no-fault benefits. Both defendants denied liability. Great Lakes, as Maxwell's insurer, filed a cross-complaint against Auto Club, asserting that Andrew was domiciled with his mother at the time of the accident, placing Auto Club first in priority for payment of Andrew's PIP benefits. Auto Club sought summary disposition of Great Lakes' claim pursuant to MCR 2.116(C)(10), and Great Lakes responded by seeking summary disposition under MCR 2.116(I)(2). In their pleadings, both Auto Club and Great Lakes denied the existence of any material fact questions concerning Andrew's domicile at the time of the accident.

In a written opinion and order, the circuit court granted summary disposition to Auto Club, thereby making Maxwell's Great Lakes policy first in priority, reasoning as follows:

> Plaintiff's step father indicated in his deposition that Plaintiff was not living with him or his wife at the time of the accident. Plaintiff's step-father stated that he had kicked Plaintiff out of the house and changed the locks after Plaintiff left. Plaintiff did leave belongings at the house and his mother still maintained a room for him
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> Plaintiff testified that he was staying with Ms. Maxwell to be closer to Mackinaw Academy where he was attending school as his parents' home was 25 miles away. Plaintiff paid for his own food and his mother paid for his clothes, haircuts and doctor visits. He indicated that he intended to return home after graduating from Mackinaw Academy, but Plaintiff was not asked at his deposition if his step-father had removed him from the home.
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> Plaintiff's mother testified that she paid for her son's cell phone and that all of his personal belongings were at her home. Plaintiff also stayed at his mother's house on occasion and used his mother's address when completing job applications and other documents or forms.
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> Mrs. Maxwell, testified that she invited Plaintiff to live with her after he left his home. She treated him like a member of her family and he lived with her for about nine months. She also claimed him as a dependent on her 2007 income taxes. Plaintiff received mail at her home, but also received mail at his mother's home.
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> Although there is some dispute with regard to the facts in this case, it does not appear that there is a genuine issue of material fact. Based on the facts above, it is clear that Plaintiff was living with Mrs. Maxwell and was not domiciled at his mother's home. Although he did have a key to his mother's house, he did not stay there on a regular basis.

> The present matter differs from the facts presented in *Goldstein v. Progressive Cas. Ins. Co.*, 218 Mich App 105 (1996), a case relied upon by Defendant Great Lakes. In *Goldstein*, the plaintiff was living on campus while school was in session and the Court held that he was domiciled at his parents' home. The Court of Appeals noted that the plaintiff kept his personal possessions at his parents' home, had a room that remained empty during his absence, was home for breaks, and used his parents' address as his permanent address.
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> The plaintiff in the case at hand was attending school, but there is no indication that he was intending to return to permanently reside at his mother's home. His step-father clearly testified that Plaintiff was not allowed to live at home and would not be allowed to return on a full time basis and Mrs. Maxwell had claimed his as a dependent on her income taxes. Accordingly, the court finds that Plaintiff was domiciled at Mrs. Maxwell's home. Therefore, Great Lakes, Mrs. Maxwell's insurer, has priority.

II. STANDARD OF REVIEW

Great Lakes contests the circuit court's summary disposition ruling, which we review de novo. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In deciding a motion brought under MCR 2.116(C)(10), a court considers the pleadings, admissions, affidavits, and other relevant documentary evidence in the light most favorable to the nonmoving party to determine whether the existence of any genuine issue of material fact warrants a trial. *Walsh*, 263 Mich App at 621. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West*, 469 Mich at 183. Summary disposition under MCR 2.116(I)(2), on the other hand, is appropriate "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment."

III. ANALYSIS

A. SUBJECT MATTER JURISDICTION

Auto Club insists that this Court lacks subject matter jurisdiction based on the circuit court's entry of a stipulated order of dismissal:

> IT IS HEREBY ORDERED that the above cause is dismissed with prejudice and without costs as to any party. This order resolves the last pending claim and closes the case.

According to Auto Club, this order constitutes a consent judgment from which a party cannot claim an appeal.

In *Ahrenberg Mechanical Contracting Inc v Howlett*, 451 Mich 74, 75; 545 NW2d 4 (1996), the Supreme Court reversed this Court's decision dismissing an appeal because the

appellant had approved a final order "as to form and content," and thereby "unwittingly allowed entry of a consent judgment." The Supreme Court explained that the appellant

> vigorously litigated its position in circuit court, and then acted promptly to perfect an appeal. There is nothing in the record to suggest that approval of the disputed order "as to form and content" signaled the [appellant's] agreement with the trial judge's ruling. [*Id.* at 78.]

Here, as in *Ahrenberg*, the record clearly reflects that the parties never stipulated to the outcome of the cross motions for summary disposition. As in *Ahrenberg*, nothing signaled that by consenting to the entry of an order consistent with the circuit court's ruling, Great Lakes agreed with the ruling, or intended to forego its right of appeal. Because Great Lakes' stipulation to an order reflecting that the circuit court granted summary disposition to Auto Club did not render the underlying issue unappealable, we proceed to consider the merits of this case.

B. MATERIAL, UNDISPUTED EVIDENCE SUPPORTS THAT ANDREW'S DOMICILE WAS IN FRANKENMUTH

Pursuant to MCL 500.3114(1), a PIP policy applies not only to the named insured, but also to "a relative . . . domiciled in the same household." When an individual is injured in a motor vehicle accident, that policy is first in priority to provide PIP benefits. Only if the injured party is not a named insured, and is not "domiciled in the same household" as a relative named insured, would another insurer become liable. See MCL 500.3114(4) (delineating priority of insurers when subsection [1] is inapplicable). Generally, "[t]he determination of domicile is a question of fact to be resolved by the trial court, and this Court will not reverse the trial court's determination unless the evidence clearly preponderates in the opposite direction." *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111; 553 NW2d 353 (1996), citing *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 631; 499 NW2d 423 (1993). However, if the determinative facts are not in dispute, domicile presents a question of law for the court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). In this case, the material facts germane to determining domicile are undisputed. Because the relevant facts and governing law do not support that Andrew was "domiciled" in Maxwell's Saginaw household, we reverse the circuit court's contrary conclusion.

"Domicile and residence in Michigan are generally synonymous terms." *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 680; 333 NW2d 322 (1983). For non-insurance purposes, both terms represent "'the place where a person has his home, with no present intent of removing, and to which he intends to return after going elsewhere for a longer or shorter period of time.'" *Id.*, quoting *Hartzler v Radeka*, 265 Mich 451, 452; 251 NW 554 (1933). "In ascertaining domicile for purposes of the no-fault act, our Court has held that persons domiciled [in the same household] may include those who are not actually living in the same household as the insured." *Dairyland*, 123 Mich App at 681. Courts must employ a flexible approach to domicile "in the context of the numerous factual settings possible." *Id.* at 680.

"Several factors should be considered in determining domicile, and these factors should be weighed or balanced with each other because no one factor is determinative." *Fowler*, 254

Mich App at 364. In *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), the Court identified four factors to consider:

> (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. [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 v Farm Bureau Gen Ins Co of Michigan*, 272 Mich App 410, 415; 726 NW2d 73 (2006), quoting *Workman*, 404 Mich at 496 (brackets in original).

Young adults in transition from parental homes to independent living arrangements pose special problems in determining domicile. *Dairyland*, 123 Mich App at 681. As the facts of this case illustrate, the *Workman* factors do not account for facts pertinent to determining the domicile of a student who has left home, but has yet to sever ties with his family's household. The first *Workman* factor favors Maxwell's insurer, Great Lakes, as Andrew clearly intended his legal residence to remain with his parents in Frankenmuth. The second factor is neutral; Andrew maintained informal relationships with members of both households. The third factor considers whether the person "lives in the same house, within the same curtilage or upon the same premises." As Andrew was not physically living in his parents' home at the time of the accident, this factor favors the Mossners' insurer, Auto Club. The fourth factor addresses the existence of another place of lodging. Under the circumstances of this case, this factor is duplicative of the third. Thus, application of the *Workman* factors essentially results in a tie.

This Court has recognized that "the realities of young adulthood . . . may involve differing degrees of separation from the parental home." *Dobson v Maki*, 184 Mich App 244, 254; 457 NW2d 132 (1990). Young adults frequently live in temporary settings, such as dormitories or friends' abodes, while nevertheless intending to remain a member of the family home. The geographic location of an impermanent place of lodging may not represent an intended domicile. As an aid to resolving when a student ceases to be a member of his family household, this Court has identified the following pertinent factors:

> (1) whether the child continues to use the parents' home as the child's mailing address;
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> (2) whether the child maintains some possessions with the parents;
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> (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 parent's home; and
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> (5) whether the child is dependent upon the parents for support. [*Goldstein*, 218 Mich App at 112, citing *Dairyland*, 123 Mich App at 682.]

In *Goldstein*, 218 Mich App 105, this Court applied the *Dairyland* factors to a situation bearing some similarities to this case. The student in *Goldstein* kept most of his possessions at his parents' home in Maryland, used his parents' address on his Maryland driver's license, had a bedroom at his parents' Maryland home, and returned to Maryland during holidays and between school years. The student's parents provided him with financial support and claimed him as a dependent. *Id.* at 112. This Court held that despite the student's college residence outside Maryland, the evidence supported the trial court's finding that the student was domiciled with his parents. *Id.*

Here, the record evidence indisputably substantiates that Andrew and his mother considered the Frankenmuth farmhouse his "domicile," and that Andrew intended to return to Frankenmuth after high school. Andrew lacked any formal relationship tethering him to the Maxwell home, maintained a Frankenmuth mailing address, deliberately and repeatedly identified Frankenmuth as his residence, kept most of his possessions in Frankenmuth, and remained dependent on his mother for essential aspects of support. Thus, application of each *Dairyland* factor supports that Andrew was domiciled in the Frankenmuth household of his parents.

The circuit court rested its contrary conclusion on Thomas Mossner's testimony that Andrew "was not allowed to live at home and would not be allowed to return on a full time basis," and Maxwell's identification of Andrew as a dependent on her income tax return. Thomas's plan that Andrew live elsewhere neither eliminates nor renders irrelevant Andrew's intent to remain domiciled in Frankenmuth. Despite Thomas's efforts to banish Andrew, the young man maintained continuous, direct ties to the Frankenmuth home by consistently identifying it as his domicile, storing most of his possessions there, returning to stay there at will, and helping himself to food and gasoline kept there. In other words, Thomas's efforts to ban Andrew from the house proved wholly unsuccessful. Similarly, Maxwell apparently made her decision to name Andrew as a dependent without Andrew's input or that of his mother, and her independent action does not overcome Andrew's expressed intent to remain officially domiciled in Frankenmuth.

The pertinent facts identified in *Dairyland* objectively support Andrew's intention to remain domiciled in his parents' Frankenmuth household, and the testimony establishing these facts was undisputed. Because the evidence clearly preponderates in favor of a Frankenmuth domicile, we reverse the circuit court's ruling that Great Lakes, as Maxwell's insurer, was first in priority to pay Andrew's PIP benefits. Andrew was domiciled in the Mossners' household and the Mossners' insurer, Auto Club, was first in priority. Accordingly, we reverse the grant of summary disposition in Auto Club's favor, and remand for entry of judgment in favor of Great Lakes.

C. AUTO CLUB'S POLICY

Lastly, Great Lakes contends that the language of Julie Mossner's no-fault insurance policy compels Auto Club to cover Andrew's first-party no-fault benefits. Great Lakes presented a copy of the policy to the circuit court on the day of the summary disposition hearing. The Court considered the policy, but failed to reference it in its ruling.

The Auto Club policy extends coverage to "resident relative[s]" of the named insured, and defines a "resident relative" as "your unmarried child attending school away from home." When deciding an insurance policy dispute, an appellate court considers the language of the insurance policy and interprets the terms therein in accordance with Michigan's well-established principles of contract construction. *Besic v Citizens Ins Co of the Midwest,* 290 Mich App 19, 24; 800 NW2d 93 (2010). Andrew qualified as a resident relative under the plain and unambiguous terms of the policy. Thus, the policy language constitutes an alternate ground for reversing the circuit court.

Reversed and remanded for entry of judgment in favor of Great Lakes. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher