STATE OF MICHIGAN

COURT OF APPEALS

AUTO CLUB INSURANCE ASSOCIATION, Plaintiff-Appellee,	UNPUBLISHED November 29, 2012
v	No. 305592 Wayne Circuit Court
FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellant.	LC No. 10-010509-NF

Before: MURPHY, C.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Defendant Frankenmuth Mutual Insurance Company ("Frankenmuth") appeals as of right the trial court's order denying Frankenmuth's motion for summary disposition and granting summary disposition in favor of plaintiff Auto Club Insurance Association ("ACIA"). We affirm.

On October 15, 2009, an automobile struck and seriously injured Elizabeth Ulinski as she attempted to walk across a highway. ACIA insured the driver of the vehicle that struck Elizabeth, and it paid no-fault personal protection insurance (PIP) benefits to and on behalf of Elizabeth. ACIA later learned that Frankenmuth insured a vehicle owned by Elizabeth's mother, Sheila Ulinski, at the time of the accident. Thereafter, ACIA filed a complaint against Frankenmuth, seeking reimbursement for its PIP payments under the theory that Elizabeth was "domiciled in the same household" as Sheila at the time of the accident and, thus, Frankenmuth had statutory priority over ACIA with respect to the payment of PIP benefits pursuant to MCL 500.3114(1) and 3115(1). The parties did not dispute the pertinent facts, and they each moved for summary disposition under MCR 2.116(C)(10). Following a hearing, the trial court found, as a matter of law, that Elizabeth had been domiciled in Sheila's household when the accident occurred; therefore, Frankenmuth was the highest priority insurer and was obligated to pay the PIP benefits. Accordingly, the trial court granted summary disposition in favor of ACIA pursuant to MCR 2.116(C)(10).

On appeal, Frankenmuth argues that the trial court erred in finding that Elizabeth was "domiciled in the same household" as Sheila and in granting summary disposition in ACIA's favor on that basis. We disagree.

This Court reviews de novo a ruling on a motion for summary disposition. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 363; 656 NW2d 856 (2002). We also review de novo questions of law. *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). "Generally, the determination of domicile is a question of fact." *Fowler*, 254 Mich App at 364. However, when "the underlying facts are not in dispute, domicile is a question of law for the court." *Id.*, citing *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111-112; 553 NW2d 353 (1996), and *Williams v State Farm Mut Automobile Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993). We note that this Court has also stated that "the determination of domicile is a question of fact for trial court resolution." *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 684; 333 NW2d 322 (1983).[1]

MCL 500.3114(1) provides in pertinent part that "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." (Emphasis added.) There is no dispute that Sheila and Elizabeth are relatives, mother-daughter, that Sheila is a named insured in the Frankenmuth policy, and that Elizabeth's injuries arose from an accident involving a motor vehicle.[2] Thus, if Elizabeth was indeed domiciled in her mother's household at the time of the accident, the Frankenmuth policy would be implicated. Furthermore, in regard to ACIA's policy and the matter of priority, MCL 500.3115(1) provides in relevant part:

> *Except as provided in subsection (1) of section 3114*, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim

[1] In general, MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). "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 v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The trial court is not permitted to assess credibility, to weigh the evidence, or to resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). *Skinner*, 445 Mich at 161; *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

[2] Elizabeth did not have her own car insurance policy, nor did she own a vehicle.

> personal protection insurance benefits from insurers in the following order of priority:
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> (a) Insurers of owners or registrants of motor vehicles involved in the accident. [Emphasis added.]

Under the facts presented, MCL 500.3115(1)(a), standing alone, would implicate the ACIA policy, where there is no dispute that ACIA was the insurer of the owner/registrant of the vehicle that struck Elizabeth in the accident. However, for purposes of statutory priority, MCL 500.3115(1)(a) is subject to the applicability of MCL 500.3114(1), as indicated in the prefatory language to § 3115. Therefore, if § 3114(1) applies, which is dependent upon whether Elizabeth was domiciled in her mother's household, the Frankenmuth policy would have priority, requiring Frankenmuth to pay all of the PIP benefits. If Elizabeth was not so domiciled, ACIA would solely be responsible for paying PIP benefits under MCL 500.3115(1)(a). The parties agree that resolution of this case turns entirely on the issue of whether Elizabeth's domicile was her mother's home at the time of the accident.

The Legislature used the term "domiciled" in MCL 500.3114(1), but there is no statutory definition of "domicile" in the no-fault act, MCL 500.3101 *et seq.* Accordingly, caselaw has developed to provide guidance in addressing the question of domicile, and in *Fowler*, 254 Mich App at 364-365, this Court observed:

> 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.
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> The relevant factors in deciding whether a person is domiciled in the same household as the insured include: (1) the subjective or declared intent of the claimant to remain indefinitely in the insured's household, (2) the formality of the relationship between the claimant and the members of the household, (3) whether the place where the claimant lives is in the same house, within the same curtilage, or upon the same premises as the insured, and (4) the existence of another place of lodging for the person alleging domicile. *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979).
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> When considering whether a child is domiciled with the child's parents, other relevant indicia include: (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.[3] [Citations omitted.]

[3] In *Workman*, 404 Mich at 495-496, our Supreme Court stated:

Prior to analyzing the factors, we initially address an argument posed by ACIA that every person must have a domicile and that the only conceivable location of Elizabeth's domicile was her mother's home; Frankenmuth does not offer any domicile for Elizabeth. The general proposition that every person has a domicile does find support in decisions issued by the Michigan Supreme Court in *People v Dowdy*, 489 Mich 373, 385; 802 NW2d 239 (2011), and *Beecher v Common Council of Detroit*, 114 Mich 228, 230; 72 NW 206 (1897). However, neither case concerned the no-fault act. We find it unnecessary to resolve whether the principle espoused in *Dowdy* and *Beecher* has any application in the case at bar, given that, under a straightforward analysis of the traditional factors recited in *Fowler*, we find that Elizabeth was domiciled in her mother's household. Accordingly, ACIA is entitled to summary disposition, even without us accepting ACIA's position that everyone has a domicile and the only possible domicile was Sheila's home.

Turning to an examination of the factors in this case, we find that some of them support a conclusion that Elizabeth was domiciled in the same household as her mother Sheila at the time of the accident, while other factors support the opposite conclusion. Elizabeth was 25 years old when the accident occurred, and she had moved out of her mother's house approximately seven years earlier. During this time, Elizabeth supported herself through prostitution, lived in various cheap motels and with friends, never stayed long at any one location, and would periodically return to her mother's house for one-to-three nights at a time. Factors that weigh against a finding that Elizabeth was domiciled in her mother's household at the time of the accident include Elizabeth's declared intent not to return and live in Sheila's house, the existence of alternate lodging, the fact that Elizabeth did not live in her mother's house at the time she was injured,[4] and the absence of financial support provided by Sheila to Elizabeth. On the other hand, a number of factors support a conclusion that Elizabeth was domiciled in Sheila's household at the time of the accident. It was undisputed that since moving out of her mother's house, Elizabeth continuously used Sheila's home as her mailing address and listed Sheila's address as her own on her Michigan identification card, voter registration, cellular telephone contract, and application for SSI benefits. Elizabeth maintained possessions at her mother's house, including clothing and toiletries that she intentionally kept at the house for use during her recurring visits to the home. Sheila also testified that Elizabeth always had a room in which to stay when she visited Sheila's house, and although Sheila converted Elizabeth's former bedroom into a computer room, the record indicates that Elizabeth continued to sleep on a pull out couch in that room and maintained toiletries in the room's closet. Moreover, Elizabeth testified that she always considered the room to be her room and believed that she had a room in her mother's

> Our review of both Michigan opinions and opinions of our sister state courts first reveals the general principle that the terms "resident" of an insured's "household" or, to the same effect, "domiciled in the same household" as an insured, have "no absolute meaning," and that their meaning "may vary according to the circumstances." The "legal meaning" of these terms must be viewed flexibly, "only within the context of the numerous factual settings possible." [Citations omitted.]

[4] We do note that a person may be considered domiciled in a household even though he or she is "not actually living in the . . . household." *Dairyland Ins*, 123 Mich App at 681.

house at the time of the accident. Elizabeth also testified that Sheila's house was the only place that she ever considered to be her home and that she viewed her lodging in motels and with friends as merely temporary places of abode.

In support of its position, Frankenmuth relies heavily on *Dairyland Ins*, 123 Mich App 675. In *Dairyland Ins*, this Court rejected a claim that a 20-year-old male was domiciled in his mother's household under circumstances that have similarities to the instant case. However, we find that, while a close call, it is somewhat distinguishable based on the following facts noted in the opinion:

> He had lived in the grandfather's trailer more than six months at the time of the accident. He ate his meals there (except for the meals he obtained at the restaurant where he was employed), slept there, and traveled from there to his job and back. He was satisfied with the arrangement and had no plans to terminate it. [*Id.* at 679-680.]

The Court later reiterated that the young man "liked living in his grandfather's trailer and expected to continue to do so indefinitely[.]" *Id.* at 684. Here, Elizabeth had no intent to continue living in the motel indefinitely. We find that *Dobson v Maki*, 184 Mich App 244; 457 NW2d 132 (1990), more closely parallels the situation here. In *Dobson*, *id.* at 252-254, this Court stated:

> USF & G further contends that the trial court erred in finding that DesRochers was domiciled in his father's home at the time of the accident. . . . DesRochers was twenty-one years old at the time of the automobile accident involved in this case. The accident occurred on March 14, 1987. DesRochers' mother and father are divorced, but both reside in the Baraga County area. In the late summer of 1984, DesRochers lived and worked with his father for approximately one month. When this arrangement did not work out, DesRochers went to live in a trailer located on his mother's property. In January of 1985, DesRochers moved to Green Bay, Wisconsin. He lived and worked in Green Bay until he was laid off from his job and moved back to Baraga County in January of 1987.
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> Upon arriving back in the area DesRochers stayed with his father for several days. Thereafter he stayed several days a week with his father and spent the rest of his nights at various friends' homes. DesRochers testified that it was never his intention to remain in Baraga County. He intended to stay only until he was called back to work in Green Bay. He testified that it was not his intention to reside permanently or indefinitely with his father. He had brought only his clothes with him from Green Bay and had left his other possessions there.
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> DesRochers testified that when he slept at his father's he did not have a room but slept on the couch. He did not have a dresser for his possessions nor did he have a key to the house. He received no financial support from his father but was allowed to do his laundry and eat whatever food was available in the house when he was there. DesRochers received mail at his father's home and had

> directed that his unemployment checks be sent there. He also listed his father's address as his own when he applied for a bank loan in February of 1987. Shortly after the automobile accident DesRochers was arrested and he listed his father's address as his residence.
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> [W]hile much of the subjective evidence supports USF & G's claim of no domicile, all of the objective evidence, DesRochers' mailing address and designation on the bank loan, supports the proposition that he was domiciled at his father's home. It is apparent to us that DesRochers, at the time of the accident, would not have considered himself to be without a home. Instead it appears as though he considered himself to officially reside at his father's home but that he could sleep wherever he chose on any given night. We recognize that the facts of this case may not fall neatly within the factors as enunciated in *Workman, supra,* and *Dairyland, supra.* However, we must take into consideration the realities of young adulthood which may involve differing degrees of separation from the parental home. Accordingly, we affirm the decision of the trial court finding that DesRochers was domiciled in his father's home at the time of the accident.

In the present case, as in *Dobson*, although a number of factors weigh against a finding that Elizabeth was domiciled in her mother's household at the time of the accident, we do not conclude that the trial court erred in finding that Elizabeth was domiciled in Sheila's household. The record before us indicates that, although Elizabeth moved around quite often and did not intend to live indefinitely at her mother's house, the home remained the one constant in Elizabeth's young, troubled life and the place to which she repeatedly returned. This case presents a very close call and, after weighing the competing factors, we affirm the trial court's ruling that Elizabeth was domiciled in her mother's household at the time of the accident. Accordingly, ACIA was entitled to summary disposition.[5]

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

[5] We are not persuaded by Frankenmuth's argument that Elizabeth was not domiciled in the same *household* as Sheila at the time of the accident because the commonly understood meaning of "household" requires a family unit living together under the same roof. Defendant does not cite any authority supporting such a construction of "household" for the purposes of the no-fault act. Moreover, as noted earlier in this opinion,"[i]n ascertaining domicile for purposes of the no-fault act, . . . persons domiciled [in the same household] may include those who are not actually living in the same household as the insured." *Dairyland Ins Co*, 123 Mich App at 681.