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STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

McKENNA FROWNFELTER

Plaintiff-Appellant

SC No: 168356
COA No: 366118
OCCC Case No: 2020-184089-NF

v.

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant-Third Party Plaintiff-Appellee,

and

PROGRESSIVE MICHIGAN INSURANCE COMPANY, FARMERS INSURANCE COMPANY and AUTO-OWNERS INSURANCE COMPANY,

Third-Party Defendants/Appellees.

_____/

McKENNA FROWNFELTER,

Plaintiff-Appellant,

SC No: 168357
COA No: 366120
OCCC Case No: 2022-192235-NI

v

CORY FROWNFELTER, AUTO-OWNERS INSURANCE COMPANY and ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendants-Appellees.

MICHIGAN DEFENSE TRIAL COUNSEL'S *AMICUS CURIAE* BRIEF

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Michigan Defense Trial Counsel (MDTC) is a statewide attorney association that primarily focuses on civil-defense representation. The MDTC was established in 1979 to enhance and promote the civil-defense bar, and it accomplishes that goal by facilitating dialogue among and advancing the knowledge and skills of civil-defense lawyers. The MDTC appears before this Court as a representative for Michigan's civil-defense lawyers and their clients, a significant portion of which could be affected by the issues involved in this case.[1]

ORDER APPEALED FROM AND JURISDICTIONAL STATEMENT

MDTC relies on the parties' Order Appealed From and Jurisdictional Statement in their Application and Response before this Court.

STATEMENT OF QUESTION PRESENTED

MDTC relies on the parties' Statement of Questions Presented before this Court.

STATEMENT OF FACTS

MDTC relies on the parties' Statement of Facts sections in their Briefs before this Court.

STANDARD OF REVIEW

MDTC also relies on the parties' Standard of Review sections in their Briefs on appeal.

[1] After reasonable investigation, MDTC believes that (a) no MDTC member who voted either in favor or against preparation of this brief, and no attorney in the law firm or corporation of such a MDTC member, represents a party to this litigation; (b) no MDTC member who is a representative of any party to this litigation participated in the authorship of this brief; and (c) no one other than MDTC, or its members who authored this brief or their law firms or employers, made direct or indirect financial contribution to the preparation or submission of this brief.

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OVERVIEW OF THE DOMICILE ISSUE

At its core, this is a No-Fault case, but Murphy seems to be fighting Occam as they did back when this Court decided *Grang*e. The question here is whether Justice Zahra's test for determining the domicile of children of divorce (in his *Grange* concurrence) is a reasonable test to adopt now? The answer is obvious: of course it is reasonable. It is just as reasonable now as it would have been if the majority had adopted it in *Grange*. Justice Zahra's observations and concerns are just as right now as they were in 2013.

However, neither the collective reality of our complex family lives nor the primary goals of the No Fault Act have changed since *Grange* was decided. This Court has surely already set forth criteria sufficient to govern the determination of domicile. As no-fault law continues to evolve, particularly since its overhaul in 2019, the need for certainty – or in the very least consistency – is more important than ever. As a result, stare decisis – and when it should apply, as it should here – is critical to this Court's decision here.

I. IF THE PRIMARY GOAL OF THE NO FAULT ACT IS *PROMPT* PAYMENT OF BENEFITS, THEN THE SIMPLEST AND MOST EFFICIENT WAY TO DETERMINE A MINOR'S DOMICILE IS TO LOOK TO THE CHILD CUSTODY ORDER

For over 165 years, Michigan law indicates that while a person may have multiple residences, any individual person can only have one domicile.[2] *Grange Ins Co of Michigan v Lawrence*, 494 Mich 475, 493 (2013) (citing *In re High,* 2 Doug 515, 523 (Mich 1847). A person is eligible for benefits under a personal protection insurance policy when they are "the person named in the policy" or "a relative ... domiciled in the same household." MCL 500.3114(1). "A domicile determination is generally a question of fact; however, where the underlying material

[2] 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.'"

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facts are not in dispute, the determination of domicile is a question of law for the circuit court." *Grange* at 490. See also *Fowler v Auto Club Ins Assn*, 254 Mich App 362, 364 (2002) (citing *Goldstein v Progressive Cas Ins Co,* 218 Mich App 105, 111-12 (1996) and *Williams v State Farm Mut Automobile Ins Co,* 202 Mich App 491, 494-95 (1993)).

Children "may have only a single domicile at any one time." *Id*. at 515. Yes, all the main citations for any Brief being filed in Michigan Appellate Courts regarding domicile are from this Court's decision in *Grange*. As far as Michigan Jurisprudence and stare decisis are concerned, *Grange* has been the law for over a decade. At that time, this Court took great care in evaluating the history of domicile and the common law before concluding that a Family Court custody Order conclusively establishes a child's domicile — nothing has really changed since that time.

This Court has long echoed that one of the primary goals of the No-Fault Act is to provide benefits to an injured person in the most efficient means possible, i.e. promptly. So, if a domicile determination of a minor can be resolved in one of two ways, such as (1) litigating over a multi-factor test or (2) looking at the Child Custody Order, then the most direct and efficient way t o determine a child's domicile is by looking to the Child Custody Order.

Efficiency, predictability, and promptness were also on this Court's mind in 1984 when it analyzed another No-Fault issue in *Royal Globe Ins Cos v Frankenmuth Mut Ins* Co, 419 Mich 565 (1984). This Court's comment on "prompt" benefits being the goal of the No-Fault Act hits close to home in this appeal as well:

> Although it was not so in *Nickerson,* under the no-fault act and the facts of this case, there is no question but that "assured" and "adequate" compensation will be forthcoming. The only question is, from whom? And, unlike the concern in *Nickerson,* what is more directly implicated here is the need to further the goal of the no-fault act which seeks to provide victims of motor vehicle accidents with *prompt* reparation for their losses. That purpose is better served in cases such as the one before us by the certainty and predictability that a literal construction of the

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> word "occupant" will yield, when it is assigned its primary and generally understood meaning.

Id. at 575.

Again, "[t]he primary goal of the [Michigan] no-fault act is 'to provide victims of motor vehicle accidents assured, adequate, and ***prompt*** reparation for certain economic losses.'" *McCormick v Carrier,* 487 Mich 180, 234 (2010) (emphasis added) (quoting *Shavers v Attorney Gen,* 402 Mich 554, 578–79 (1978)). This Court's 2010 quote from its decision in *McCormick v Carrier*'s is illuminating because while *McCormick* overruled *Kreiner v Fischer*, 471 Mich 109 (2004), Justice Hathaway concurred for the sole purpose of pointing out that "[a]ny analysis of the impact of stare decisis must focus on the individual case and the reason for overruling precedent." *Id*. at 226. (citing to Justice Hathaway's concurrence in *Regents of U of M v Titan Ins Co*, 487 Mich 289, 314 (2010)).

There are no looming factual distinctions in this case that would provoke this Court to apply reasoning that differs from that in *Grange*. As Justice Zahra correctly pointed out in *Grange*, "the practical realities of post-divorce familial relationships" do not often coincide with the Family Court's Custody Order – an observation joined by the Michigan Association of Justice and the Family Law Section of the State Bar.[3] But this was true back when *Grange* was decided, and it is true in this case as well. Because there are no factual distinctions or public policy concerns that differ here than in *Grange*, this Court is obligated to follow *Grange* under stare decisis.

Stare decisis is generally "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Robinson v City of*

[3] Justice Zahra's criticism of the alternating domicile theory is not unjustified either.

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Detroit, 462 Mich 439, 463 (2000) (citation omitted). The analysis this Court is struggling with in this case is essentially the same as it was in *Grange*, and nothing has changed since *Grange*.

So, if it is true that any important domicile determination occurs ad hoc *after* a motor vehicle accident — and it is equally true that the goal of the No-Fault Act is ***prompt*** payment of benefits — then Occam requires this Court to follow its own precedent in *Grange*. *Shavers v Attorney General* was the first decision from this Court concerning the No-Fault Statute as it was in 1978. *Shavers v Attorney General*, 402 Mich 554 (1978). *Shavers* dealt with a Constitutional challenge to the No-Fault Act, but it also highlighted the attendant circumstances that surrounded the Act's beginnings as well as the main purpose behind the Act, too. Justice Williams described the purpose of the No-Fault Statute in his opinion's first sentence:

> The Michigan No-Fault Insurance Act, which became law in October 1, 1973, was offered as an innovative social and legal response to the long payment delays, inequitable payment structure, and ***high legal costs*** inherent in the tort (or "fault") liability system. . . . and the ***court system was overburdened***.

Id. at 578-79 (emphasis added).

The problems in the court system, however, were pointed out six years earlier in ***1972*** by Chief Justice Thomas Kavanagh in "The State of the Judiciary" presented by him to a joint session of the Michigan Legislature. Kavanaugh, *The State of the Judiciary,* 51 Mich B J 156 (1972). The following excerpts highlight the problems that existed in the judicial system at the very time the Legislature was analyzing, discussing, and debating what would become the Michigan No-Fault Statute. Justice Kavanagh's speech included references to:

1. a court crisis;
2. crucial problems of the judicial system;
3. a staggering backlog of civil cases [in Wayne County Circuit Court];
4. a critical court congestion in the metropolitan area; and
5. too few judges being available to keep the backlog from building up; with more people, with more problems; with more laws, under which

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> citizens take their complaints to court; with more criminal cases adding to the congestion.

Id.

These are the attendant circumstances and the state of the law that existed when the No-Fault Statute was enacted, and they must be considered when determining the Legislative intent with respect to any section of the No-Fault Statute, including domicile determinations. Which course of action would lead to less cases being filed? Which path to ascertaining the domicile of a minor is the most efficient and the most likely to lead to the prompt payment of benefits? The answer should be obvious.

The full public policy behind the No-Fault Act is echoed by this Court in *Celina Mut Ins Co v Lake States Ins Co*, where (again) it said the No-Fault system "is designed to provide victims with assured, adequate, and ***prompt*** reparations ***at the lowest cost to both the individuals and the no-fault system***. *Celina Mut Ins Co v Lake States Ins Co,* 452 Mich 84, 89 (1996). See also *Shavers v Attorney General*, 402 Mich 554 (1978) (reasoning that the No Fault Act was a response (in part) to the high legal costs associated with the tort system). The most efficient, or prompt, way to determine a minor's domicile immediately after the accident is – as this Court said in *Grange* – to look at the Child Custody Order.

Respectfully submitted,

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Date: January 29, 2026

This Brief contains 1,943 countable words in the elements listed in MCR 2.712(C)(6)-(8).