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IN THE MICHIGAN SUPREME COURT

McKENNA FROWNFELTER, Plaintiff-Appellant 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.	Supreme Court No. 168356 Court of Appeals No. 366118 Oakland County Circuit Court Case No. 2020-184089-NF Hon. Kwame Rowe

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AMICUS CURIAE BRIEF ON BEHALF OF MICHIGAN ASSOCIATION FOR JUSTICE AND THE FAMILY LAW SECTION OF THE STATE BAR OF MICHIGAN

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STATEMENT OF INTEREST OF AMICUS – MICHIGAN ASSOCIATION FOR JUSTICE

The Michigan Association for Justice (MAJ) is a non-profit membership association dedicated to advancing the needs and interests of trial lawyers in relentless pursuit of a fair and effective legal system. It was established in 1945 and its membership is comprised of over 1,300 lawyers and legal professionals from all over Michigan with a focus on representing injured and wronged individuals and supporting those attorneys who take on that responsibility.

To that end, MAJ seminars, forums, document banks, and library of publications help members advocate for their clients. MAJ's work in our state's Capitol makes certain that those who place profit over people cannot tilt the scales of justice in favor of the rich and powerful. MAJ's People's Law School program has taught tens of thousands of Michigan citizens about our legal system and their civil justice rights. The MAJ Lids for Kids helmet safety campaign has fitted more than 10,000 children with bike safety helmets, earning MAJ recognition from the Governor, the Legislature, and mayors of cities across the state as well as the police and public safety community.

Because of its unique role in Michigan's legal landscape, MAJ is particularly positioned to offer its insight into the important legal issue presented by this matter. Insurance coverage issues and in particular, no-fault coverage issues are both very common and very complex. The Court of Appeals ruling in this matter adopts an approach which places form over substance and ignores the realities of domestic living situations in favor of blind adherence to orders which often do not reflect the actual circumstances of the injured individual.[1]

[1] As required by MCR 7.312(H)(5), no counsel for any party in this matter authored any portion of this brief or contributed monetarily to its preparation or submission to this Court.

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STATEMENT OF INTEREST OF AMICUS – FAMILY LAW SECTION OF THE STATE BAR OF MICHIGAN

The Family Law Section Council ("The Council") is the governing body of the Family Law Section ("The Section" or "FLS") of the State Bar of Michigan. The Section is comprised of over 2,500 lawyers in Michigan practicing in, and committed to, the area of family law. The Section members elect the members of the Council. The Council provides services to its membership in the form of educational seminars, monthly Family Law Journals (an academic and practical publication reporting new cases and analyzing decisions and trends in family law), advocating and commenting on proposed legislation relating to family law topics, and filing Amicus Curiae briefs in selected cases in the Michigan Courts. Because of its active and exclusive involvement in the field of family law, and as part of the State Bar of Michigan, the Council has an interest in the development of sound legal principles in the area of family law.

The instant case involves the use of domestic relations judgments and orders as determinative of domicile of children for purposes of establishing priorities among insurers. The Section is concerned that the application of domestic relations orders to insurance related issues presents problems for both domestic relations and insurance law as outlined in this brief. Pursuant to MCR 7.312(H)(2)(c), the Section, as a recognized section of the State Bar of Michigan, joins the instant brief without the filing of a motion.

STATEMENT OF THE QUESTION INVOLVED

I. Whether the Court of Appeals ruling, which purports to adhere to the Michigan Supreme Court's opinion in *Grange Ins Co of Mich v Lawrence*, erroneously adopts and applies a bright-line rule which subverts the reality of a minor's domicile in favor of a court order which is not intended to address no-fault insurance coverage issues and which ignores the realities of the parties' living circumstances?

Amici MAJ and FLS answer YES

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INTRODUCTION

The issue in this case flows from the application of the Michigan Supreme Court's ruling in *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013), to circumstances not envisioned by either the *Grange* Court or the Child Custody Act and the custody order issued pursuant to that Act. The Michigan Association for Justice is concerned that the application of custody orders as a bright-line rule to establish domicile of minor children of divorced parents ignores the factual realities of many living arrangements. Further, such a rule inappropriately impacts resolution of domestic relations actions by forcing family law courts and practitioners to consider no-fault coverage issues which are not part of the Child Custody Act.

MAJ and FLS advocate for a rule which takes into account the terms of a custody order, but which also takes into account the facts and circumstances of a minor child's living arrangements at the time they became entitled to no-fault benefits.

STATEMENT OF FACTS

Amici MAJ and FLS rely on the statement of facts provided by the parties their respective briefing before this Court.

ARGUMENT

I. The Court of Appeals ruling, which purports to adhere to the Michigan Supreme Court's opinion in *Grange Insurance Company v Lawrence*, erroneously adopts and applies a bright-line rule which subverts the reality of a minor's domicile in favor of a court order which is not intended to address no-fault insurance coverage issues and which ignores the realities of the parties' living circumstances.

The Court of Appeals' ruling in this matter attempted to follow the rule set forth in *Grange Insurance Company of Michigan v Lawrence,* which concluded that the determination of domicile for a minor child of divorced

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or separated parents who is entitled to benefits under the No-Fault Act should be controlled by the terms of the child custody order entered under the Child Custody Act. However, the *Grange* Court did not have before it the type of circumstance present in this case; a custody order which provides for an equal division of physical and legal custody. While the *Grange* opinion attempted to provide some guidance in such an instance, in fact, as Justice Zahra concluded in his concurrence in *Grange*, the bright-line rule established by the majority in *Grange* "falls short of addressing the practical realities of post-divorce familial relationships." *Grange*, 494 Mich at 517. Never is that failing more apparent than in this case.

First and foremost, this Court should recall that orders issued under the Child Custody Act are focused on identifying and preserving a child's "established custodial environment" when it is in the best interests of the child. The Child Custody Act does not address "domicile" in its application to child custody disputes. Rather, an "established custodial environment" depends "upon a custodial relationship of a significant duration in which [the child is] provided the parental care, discipline, love, guidance and attention appropriate to his age and individual needs; an environment in both the physical and psychological sense in which the relationship between the custodian and the child is marked by qualities of security, stability and permanence." *Sabatine v Sabatine*, 513 Mich 276, 286; 15 NW3d 204 (2024), quoting *Baker v Baker*, 411 Mich 567, 579-80; 309 NW2d 532 (1981). An established custodial environment may exist with both parents and in more than one home. *Rittershaus v Rittershaus*, 273 Mich App 462, 471; 730 NW2d 262 (2007).

Domicile determinations under the No-Fault Act make no such considerations and may only exist in one place. "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.' " *Grange*, 494 Mich at 493, quoting *In re High*, 2 Doug 515, 523 (Mich 1847). Blanketly importing a determination made under an child custody order

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into the context of the No-Fault Act wrongly conflates these two distinct legal concepts. [2]

The *Grange* rule further alters the traditional concept of domicile as a unique location by adopting a concept of "dual domiciles" for minor children while parents share joint physical custody, as recognized by Justice Zahra in his concurrence in *Grange*.

> [T]he majority's alternating-domicile theory for children whose parents share joint physical custody contradicts this long-standing principle and in substance permits dual domiciles for such children. This alternating-domicile concept is unprecedented in the domicile jurisprudence of this state, which views domicile as that place where a person ultimately returns, despite going elsewhere for a period of time.

Grange, 494 Mich at 528.

The practical application of the majority's rule to an order of equal physical custody creates an unworkable situation whereby the minor child has only one domicile, which apparently changes as the minor child's physical location changes under the family court's order. Given the realities of daily life, with parents who often alternate physical custody various times throughout the week, this means a child's domicile may change numerous times in a week.

Further, the *Grange* rule does nothing to address when that domicile change actually occurs. For example, if an equal physical custody order provides that a child goes to school on Wednesday from their mother's home, but then goes to his father's home after school, with whom is the child domiciled if either parent picks up the child early on Wednesday for a medical appointment and an accident occurs? Did the child's domicile change in the morning at school drop-off or only after the end of the school day? Does it matter if it was the father who picked up the child for the

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[2] Justice Zahra's concurrence rightly questioned whether the family law courts could even make domicile determinations under the Child Custody Act, given the Act's use of the term "legal residence" and not "domicile." *Grange*, 494 Mich at 529-30.

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midday appointment or if it was the mother? These uncertainties are not remedied by application of the *Grange* rule, but rather exacerbated.

Importantly, the *Grange* rule also fails to recognize that parents often alter the terms of the custody order by agreement to create arrangements that are workable for them under the realities of their daily life. Those agreements may not be documented in subsequent custody orders and yet may reflect a very different reality than what is contained in the custody order. Again, as recognized by Justice Zahra, "[p]arents commonly reach amicable, private agreements, reflective of their joint intent, that conflict with an existing family court order." *Grange*, 494 Mich at 533. The *Grange* rule forces a determination of domicile which may be very different from the reality of the child and the family without any avenue for bringing the domicile determination into harmony with the facts of the case.

Finally, the *Grange* rule creates a burden on persons attempting to obtain no-fault insurance by requiring them to review and consider the terms of a custody order in obtaining no-fault coverage. "The primary goal of the 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; 795 NW2d 517 (2010), quoting *Shavers v Attorney General,* 402 Mich 554, 579; 267 NW2d 72 (1978). The application process is generally one which inquires into the residents of the household and the licensed drivers. Rarely, if ever, does a no-fault application use the term "domicile" or ask about any custody orders which may be in place governing the minor children of the applicant.[3] Nevertheless, the *Grange* rule would require parents to undertake an analysis of their custody orders - without regard to the actual circumstances of their living arrangements – to determine if a minor child should be identified as a resident domiciled in their household so that they can be sure to have adequate coverage, even if the realities of the living arrangements differ from the custody order.

Equally concerning in this regard should be the propensity for no-fault insurers to allege fraud as a basis to deny coverage when resident relatives

[3] For example, the policy at issue in this case asked the applicant to identify "all members of your household 14 years…or older".

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are not disclosed. See, e.g., *Bazzi v Sentinel Ins Co,* 502 Mich 390; 919 NW2d 20 (2018) ("*Bazzi II*"); *Pioneer State Mut Ins Co v Wright*, 331 Mich App 396, 401; 952 NW2d 586 (2020). Michigan law does not provide that insurers are "categorically entitled to rescission" in such circumstances, but rather that a reviewing court should "balance the equities" to determine if rescission is appropriate. *Bazzi II*, 502 Mich at 408-09. A bright-line application of the *Grange* rule, without consideration of all of the attendant circumstances, invites insurers to challenge coverage based on a parent's understanding of a child custody order and its impact on the child's domicile when that order likely never uses the term "domicile" and the no-fault application likely never asked about a custody order. If "balancing the equities" is the standard to review claims of rescission based on fraud, it would seem logical to apply a similar standard that takes into account all circumstances in reaching a conclusion regarding domicile in the first instance.

CONCLUSION AND RELIEF REQUESTED

The determination of domicile has traditionally been a factual one, based on numerous factors such as the intent of the individual to remain indefinitely in the insured's household, the formality of the relationship between the individual and the members of the household, whether the place where the individual lives is in the same house, within the same curtilage, or upon the same premises as the insured, and the existence of another place of lodging for the individual. *Workman v DAIIE,* 404 Mich 477, 496–497; 274 NW2d 373 (1979). "In considering these factors, no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others." *Workman*, 404 Mich at 496. Cases involving minor children of divorced parents who are eligible for no-fault benefits should not be evaluated by exclusive reference to the child custody order, but rather by evaluation of these factors and others – including the child custody order – to reach a fair and equitable result. To hold otherwise stretches the family court's determinations under the Child Custody Act beyond the scope of its intended purpose and places an unworkable burden on divorced parents.

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The Michigan Association for Justice and the Family Law Section of the State Bar of Michigan respectfully request that this Court consider their position in this case, and on review, adopt the rule advanced by Justice Zahra in his concurrence in *Grange Ins Co of Mich v Lawrence,* which creates a presumption of domicile based on child custody orders that may be rebutted when the child's actual living arrangements are so clearly inconsistent with the custody order that it is reasonable to conclude that the parents have expressly or impliedly reached an agreement regarding the child's domicile.

Respectfully submitted,

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Date: January 21, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in MCR 7.212(B) and (H). I certify that this document contains 1,735 countable words. The document is set in Georgia Pro, and the text is in 12-point type with 18-point line spacing and 12 points of spacing between paragraphs.

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