RECEIVED by MSC 4/7/2025 3:04:26 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

MCKENNA L. FROWNFELTER,

Plaintiff/-Appellant

MI COA: 366118
OCCC Case No. 20-184089-NF
OCCC Hon. Kwame L. Rowe

-vs-

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant/Appellee,

And

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Third-Party Plaintiff/Appellee,

-vs-

PROGRESSIVE MICHIGAN INDSURANCE COMPANY, FARMERS INSURANCE COMPANY, And AUTO-OWNERS INSURANCE COMPANY,

Third-Party Defendants/Appellees

MCKENNA FROWNFELTER

Plaintiff/-Appellant

MI COA: 366120
OCCC Case No. 22-192235-NI
OCCC Hon. Kwame L. Rowe

-vs-

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

_____/

RECEIVED by MSC 4/7/2025 3:04:26 PM

PHILLIP S. SERAFINI (P45085)
SEAN M. SERAFINI (P86251)
Attorneys for Plaintiff
SERAFINI, MICHALOWSKI,
DERKACZ & ASSOCIATES, P.C.
44444 Mound Road, Suite 100
Sterling Heights, MI 48314
(586) 264-3756 / F (586) 264-3783
phils@smdalaw.com
darren@smdalaw.com

TIMOTHY W. MIZEROWSKI (P43772)
WILLIAM L. PARKER (P51485)
AARON W. HINMAN (P77723)
MIZEROWSKI THON & PARKER PC
Attorneys for Esurance
43155 Main St, Ste 2200B
Novi, MI 48375-1778
734-656-1500 / F: 734-656-1505
wparker@tmizlaw.com
ahinman@tmizlaw.com
nschirmer@tmizlaw.com

LYNNE S. DeBELL (P64728)
Attorney for Third-Party
Defendant Farmers
Offices of Paul R. Knight
P.O. Box 258829
Oklahoma City, OK 73125-8829
P: (248) 244-8931 / Fax: (855) 472-9294
lynne.debell@farmersinsurance.com

KAREN W. MAGDICH (P62746)
KATRINA A. MURREL (P53831)
MAGDICH LAW
Attorneys for 3rd-Party Def PMIC
17177 North Laurel Park Dr, Ste. 401
Livonia, Michigan 48152
(248) 344-0013 / Fax: (248) 344-0133
kmurrel@magdichlaw.com

CHRISTOPHER P. ENDRES (P75954)
ANSELMI MIERZEJEWSKI
RUTH & SOWLE P.C.
Attorney for 3rd-Party Def Auto-Owners
1750 South Telegraph Road, Suite 306
Bloomfield Hills, MI 48302
(248) 338-2290 – Fax: (248) 338-4451
cendres@a-mlaw.com
cpe.sec@a-mlaw.com

/

Appellant's Application for Appeal

ORAL ARGUMENT REQUESTED

RECEIVED by MSC 4/7/2025 3:04:26 PM

Table of Contents

INDEX OF AUTHORITIES iv

JUDGMENT APPEALED FROM AND RELIEF SOUGHT vi

JURISDICTION STATEMENT vi

QUESTIONS PRESENTED viii

INTRODUCTION 1

STATEMENT OF FACTS 1

I. FACTUAL BACKGROUND 1

II. PROCEDURAL BACKGROUND OF DOCKET NO. 366118 3

A. Initiation of the case 3

B. Esurance filed a Motion for Summary Disposition 4

C. The Circuit Court denied the Motion for Summary Disposition 4

D. The parties entered into a Stipulated Judgment for purposes of appeal 5

III. PROCEDURAL BACKGROUND OF DOCKET NO. 366120 5

A. Ms. Frownfelter intiated the case in Oakland County Circuit Court 5

B. Appellant/Plaintiff filed a Motion for Summary Diposition 6

C. The Circuit Court denied the Motion for Summary Disposition 6

D. Plaintiff/Appellant filed a motion for reconsideration 7

E. The Circuit Court Denied Appellant's Motion for Reconsideration 7

F. The Parties entered into a Stipulated Judgment 8

IV. THE COURT OF APPEALS AFFIRMS THE TRIAL COURT 8

RECEIVED by MSC 4/7/2025 3:04:26 PM

ARGUMENT 9

I. LEAVE TO APPEAL SHOULD BE GRANTED BECAUSE PLAINTIFF/APPELLANT MEETS THE STANDARDS OF MCR 7.305(B)..... 9

II. THE COURT OF APPEALS DECISION ON DOCKET NO. 366118 WAS CLEARLY ERRONEOUS AND MUST BE REVERSED..... 10

A. The Court of Appeals erred in finding Plaintiff/Appellant McKenna Frownfelter was "domiciled" with her father, Cory Frownfelter, at the time of the subject January 8, 2020 motor vehicle collision..... 10

B. The Court of Appeals clearly erred by reading language into the divorce judgment relevant to the instant case that is simply not present in that judgment..... 13

C. The Court of Appeals should have used the *Workman* and *Dairyland* analysis to determine Appellant's domicile..... 14

III. THE COURT OF APPEALS DECISION ON DOCKET NO. 366120 WAS CLEARLY ERRONEOUS AND MUST BE REVERSED..... 18

A. The Court of Appeals erred in finding Plaintiff Appellant McKenna Frownfelter a "resident" of Appellee Cory Frownfelter at the time of the January 8, 2020 motor vehicle collision pursuant to the agreement and intent of Appellee Esurance and Appellee Cory Frownfelter..... 18

B. The Court of Appeals erred in finding that the undefined term "resident" in the policy of automobile insurance contract issued by Defendant Appellee Esurance to Plaintiff-Appellant's father was not ambiguous..... 25

i. The Court of Appeals further erred by equating domicile to residence and holding that the domicile determination controlled the meaning of "resident" in the subject insurance policy..... 26

ii. The term "resident" in the subject policy is ambiguous and must be construed against the drafter, Appellee Esurance..... 28

C. The Court of Appeals erroneously held Appellant to have been Domiciled with Appellee Cory Frownfelter at the time of the subject motor vehicle collision.....33

RELIEF REQUESTED.....34

RECEIVED by MSC 4/7/2025 3:04:26 PM

RECEIVED by MSC 4/7/2025 3:04:26 PM

Index of Authorities

Cases

Corbin v. Meemic Ins. Co.,
340 Mich. App. 140; 985 N.W. 2d 217 (2022) 12-14, 17

Dairyland Ins. Co. v. Auto-Owners Ins. Co.,
123 Mich. App. 675; 333 N.W. 2d 322 (1983) 13-18, 31-32

Dancey v. Travelers Prop. Cas. Co. of America,
288 Mich. App. 1, 8; 792 N.W. 2d 372 (2010) 18, 22

Engle v. Zurich-American Ins. Group,
216 Mich. App. 482, 487 (1996) 25

Farm Bureau Mut. Ins. Co. v. Nikkel,
460 Mich. 558, 563; 596 N.W. 2d 915 (1999) 25

Fresard v. Mich. Millers Mut. Ins. Co.
414 Mich. 686, 694; 327 N.W. 2d 286 (1982) 20

Goldstein v. Progressive Cas. Ins. Co.,
218 Mich. App. 105, 112; 553 N.W. 2d 353 (1996) 10

Grange Ins. Co. of Mich. v. Lawrence,
494 Mich. 475, 490; 835 N.W. 2d 363 (2013) 8, 10-15, 27

Group Ins. Co,. of Mich. v. Czopek,
440 Mich. 590, 597; 489 N.W. 2d 444 (1992) 20, 23

Hastings Mut. Ins. Co. v. Safety King, Inc.,
778 N.W. 2d 275, 282; 286 Mich. App. 287 (2009), citing to *Shumake, supra*.....26

Heniser v. Frankenmuth Mut. Ins. Co.,
449 Mich. 155, 172; 534 N.W. 2d 502 (1995) 20

Hunt v. Drielick, 496 Mich. 366, 372; 852 N.W. 2d 562 (2014)(emphasis added),
quoting *Auto-Owners Ins. Co. v. Churchman*, 440 Mich. 560, 566; 4
89 N.W. 2d 431 (1992) 18-21, 23, 26, 28

Mapp v. Progressive Ins. Co.,
__ Mich. App. __; __ N.W. 2d__ (2023) 14-15, 23-24, 26-28

McDonald v. Farm Bureau Ins. Co.,
480 Mich. 191, 197; 747 N.W. 2d 811 (2008) 19

RECEIVED by MSC 4/7/2025 3:04:26 PM

McJimpson v. Auto Club Group Ins., 315 Mich. App. 353, 360; 889 N.W. 2d 724 (2016),
citing to *Royal Prop. Group, LLC v. Prime Ins. Syndicate, Inc.*,
267 Mich. App. 708, 7114; 706 N.W. 2d 426 (2005) 18, 22

Montgomery v. Hawkeye-Security Ins. Co.
52 Mich. App. 457, 460; 217 N.W. 2d 449 (1974) 27

Ortman v. Miller, 33 Mich. App. 451, 454-455 (1971),
citing to 77 CJS, Resident, pp 305 306 28

Rory v. Continental Ins. Co.,
473 Mich. 457, 461; 703 N.W. 2d 23 (2005) 19

Royal Property Group, LLC v. Prime Ins. Syndicate, Inc.,
267 Mich. App. 708, 715; 706 N.W. 2d 426 .....18, 22

Shumake v. Travelers Ins. Co.,
147 Mich. App. 600, 608 (1985) 26, 29

St. Clair Intermediate School Dist. V. Intermediate Ed. Ass'n,
458 Mich. 540, 570-572; 581 N.W. 2d 707 (1998) 19, 23

Terrien v. Zwit,
467 Mich. 56, 71; 648 N.W. 2d 602 (2002) 19

Twin City Pipe Line Co. v. Harding Glass Co.,
283 U.S. 353, 356; 51 S. Ct. 476; 75 L. Ed. 1112 (1931) 19

Vanguard Ins. Co. v. Racine, 224 Mich. App. 229, 231; 568 N.W. 2d 156 (1997)
(emphasis added), citing to *Shumake v. Travelers Ins. Co.*,
147 Mich. App. 600, 608; 383 N.W. 2d 259 (1985) 26, 28-29, 33

Wells Fargo Bank, NA v. Null,
304 Mich. App. 508, 519; 847 N.W. 2d 657 (2014) 19, 27

Wilkie v. Auto-Owners Ins. Co., 469 Mich. 41, 51; 664 N.W. 2d 776 (2003),
citing to *Archambo v Lawyers Title Ins. Corp.*,
466 Mich. 402, 408; 646 N.W.2d 170 (2002) 16

Wilkie v. Auto-Owners Ins. Co., 469 Mich. 41, 51; 664 N.W. 2d 776 (2003),
citing to *Evans v. Norris*, 6 Mich. 369, 372 (1859) 19, 23, 25

Workman v. DAIIE,
404 Mich. 477; 274 N.W. 2d 373 (1979) 13-18, 31

RECEIVED by MSC 4/7/2025 3:04:26 PM

Court Rules/Statutes/Other Authorities

MCL 168.11 30
MCL 257.402 21
MCL 500.3114 26
MCL 500.3114(1) ....., 5, 8, 17, 18, 34
MCL 722.26a(7) 11-12

MCR 7.305(B) 9
MCR 2.116(I)(2) 5

Black's Law Dictionary 27
Webster's New World Dictionary, Second College Edition (1970).....27

RECEIVED by MSC 4/7/2025 3:04:26 PM

STATEMENT OF JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Appellant, McKenna Frownfelter, seeks leave to appeal the Opinion of the Court of Appeals, *Frownfelter v Esurance Property and Casualty Ins Co,* at *7 (Mich Ct App Docket Nos. 366118 and 366120, unpublished, 2025) (**Exhibit I**).

Relevant to Docket No. 36618, Appellant requests that this opinion be reversed, and that this Court find as a matter of law that Appellant Frownfelter was "domiciled" with her mother, Stephanie Lawrence, at the time of the subject collision, rendering Defendant/Appellee Auto-Owners highest in the order of priority for the payment of McKenna's PIP benefits pursuant to MCL 500.3114(1).

Relevant to Docket No. 366120, Appellant requests that this opinion be reversed; that this Court find Appellant was not a "resident" of Defendant/Appellee Cory Frownfelter's household as a matter of law per the terms of the contract of automobile insurance issued by Defendant/Appellee Esurance; and that the family "step-down" provision in Defendant/Appellee's contract of insurance with Defendant/Appellee Cory Frownfelter does not apply to Appellant McKenna Frownfelter.

This Court has jurisdiction to hear this appeal under MCR 7.303(B)(1).

RECEIVED by MSC 4/7/2025 3:04:26 PM

QUESTIONS PRESENTED BY DOCKET NO. 366118

I. Whether or not Appellant was "domiciled" with her father, Cory Frownfelter, rather than her mother, Stephanie Lawrence, at the time of the January 8, 2020 motor vehicle collision.

Plaintiff/Appellant says: No.

Defendants/Appellees say: Yes.

The trial court said: Yes.

The Court of Appeals said: Yes.

II. Whether the order for filiation between Cory Frownfelter and Stephanie Lawrence conclusively established the domicile of the minor children, including Appellant McKenna Frownfelter, at the time of the subject motor vehicle collision?

Plaintiff/Appellant says: No.

Defendants/Appellees says: Yes.

The trial court said: Yes.

The Court of Appeals said: Yes.

RECEIVED by MSC 4/7/2025 3:04:26 PM

QUESTIONS PRESENTED BY DOCKET NO. 366120

I. Whether Appellant was a "resident" of Defendant/Appellee Cory Frownfelter at the time of the January 8, 2020 motor vehicle collision pursuant to the terms of Defendant/Appellee Esurance's policy of automobile insurance contract with Defendant/Appellee Cory Frownfetler?

Plaintiff/Appellant says: No.

Defendants/Appellees say: Yes.

The trial court said: Yes.

The Court of Appeals said: Yes.

II. Whether the term "resident" in Defendant/Appellee Esurance's policy of automobile insurance contract with Appellee/Defendant Cory Frownfelter is ambiguous?

Plaintiff/Appellant says: Yes.

Defendants/Appellees says: No.

The trial court said: No.

The Court of Appeals said: No.

RECEIVED by MSC 4/7/2025 3:04:26 PM

INTRODUCTION

This appeal involves two cases, consolidated for the purposes of appeal. Docket No. 366118 involves Plaintiff-Appellant's claim for PIP benefits. Docket No. 366120 involves Plaintiff-Appellant's third-party bodily injury claims and uninsured/underinsured motorist claims. Both cases were decided in a single Court of Appeals opinion, *Frownfelter v Esurance Property and Casualty Ins Co,* at *7 (Mich Ct App Docket Nos. 366118 and 366120, unpublished, 2025) **(Exhibit A)** which Plaintiff-Appellant now appeals from.

These cases involve issues surrounding the domicile and residency of a minor child of divorced parents. The outcome will determine which insurance company is responsible for paying PIP benefits, and whether McKenna Frownfelter is limited to $20,000 under the family member step-down provision of her father's bodily injury insurance policy or whether she can pursue the full $250,000 that her father paid for.

STATEMENT OF FACTS

I. FACTUAL BACKGROUND

On January 8, 2020, Appellant McKenna Frownfelter was the passenger of a 2002 Ford Explorer vehicle being driven by her brother, Hunter Frownfelter, when Hunter negligently operated the vehicle, losing control and causing it to leave the road and strike a tree. **Exhibit B – McKenna Frownfelter Deposition, at pgs. 18-22.** As a result of Hunter's negligent actions, Appellant sustained severe, debilitating and life-altering injuries that led to a spinal surgery.

The vehicle Hunter Frownfelter was operating at the time of this collision was owned by their father, Cory Frownfelter. **Exhibit C – Cory Frownfelter Deposition, at pg. 16.** The vehicle was insured by a policy of automobile insurance issued by Defendant/Appellee Esurance to Cory Frownfelter. **Exhibit D – Esurance Declaration Page.** At the time of this collision, Appellant's

RECEIVED by MSC 4/7/2025 3:04:26 PM

mother, Stephanie Lawrence, was insured by a policy issued by Defendant/Appellee Auto-Owners. **Exhibit E – Auto-Owners Dec Page.**

Stephanie Lawrence and Cory Frownfelter have been divorced since 2011. **Exhibit F – Custody Order**. The order for filiation entered into by Stephanie Lawrence and Cory Frownfelter awards each of them Joint Physical Custody over McKenna and her brother, Hunter, until they reach the age of majority. **Id, at pg. 3.** Further, as it relates to Parenting Time, the order only indicates that the parties shall have parenting time as agreed upon by the parties. **Id.** There has been no known modification to this Order, and no other Order discussing parenting time or physical custody of the children.

Plaintiff/Appellant, McKenna Frownfelter, was born on March 30, 2004. **Exhibit B – McKenna Frownfelter Deposition, at pg. 6.** Stephanie Lawrence is her mother, and Defendant/Appellee Cory Frownfelter is her father. Her parents were divorced in 2011 when McKenna was just seven (7) years old. **Exhibit G – Stephanie Lawrence Deposition, at pg. 21.** Stephanie testified that, at the time of the divorce, there was a 50/50 custody split, but that evolved over time and McKenna spent more time at her house than with her dad. **Id.** It was approximately a 75% - 25% split in the years leading up to the subject January 8, 2020 collision, with 15 year old McKenna staying with her mother the greater portion of the time. **Id.** McKenna and Cory Frownfelter both agreed with this assessment at their depositions. **Exhibit B, at pgs. 8, 27; Exhibit C – Cory Frownfelter Deposition, at pg. 15.**

It was not just the amount of time physically spent with each parent that favored Stephanie Lawrence's home, as McKenna's place of domicile either. In the time leading up to the subject collision, McKenna used Stephanie Lawrence's address on her records at the school, as well as medical records. **Exhibit G, at pg. 79-82.** McKenna was on her mom's cell phone plan, not her

RECEIVED by MSC 4/7/2025 3:04:26 PM

father's. **Id.** While McKenna had a bank account in her name, her mother's name was also on the account, her father was not. **Id.** Stephanie claimed McKenna on her taxes as a dependent. **Id. at pg. 87.** McKenna's Social Security Card was kept with her mom for safe keeping. **Id. at 86.** As Stephanie put it, she was McKenna's primary care provider. **Id. at pg. 85.**

After the subject collision, the actions of the parents made this even more clear. Once McKenna was released from the hospital, she stayed at her mother's house exclusively for approximately four (4) months. **Id. at pg. 24.** Due to the severity of McKenna's injuries and disabilities, home modifications were necessary to accommodate her, which were completed at her mother's home, but not her dad's. **Id. at pg. 66; Exhibit C, at pg. 32.** All the medical bills from the subject accident were sent to her mom's house. **Exhibit G, at pgs. 79-82.** When McKenna needed to go the gym to do home exercise programs for her injuries, she went to Planet Fitness on her mom's gym membership. **Id. at 78.** McKenna's mom was at all but one medical appointment with her doctors after this accident. **Id. at 59.** Her dad, Cory, testified he took her to only one appointment, in approximately August 2021. **Exhibit C, at pgs. 24-25.**

While McKenna continued to recover from her injuries, her time spent with each parent reverted back to what it was prior to the subject collision, about 75% of the time with her mom and 25% of the time with her dad. **Exhibit G at pgs. 78, 87.** Moreover, as McKenna recovered and she reached the appropriate age, she was able to obtain her driver's license, which had her mom's address on it. **Id. at 79-82.** In fact, McKenna was listed on her mother's car insurance, not her father's. **Id. at 87.**

RECEIVED by MSC 4/7/2025 3:04:26 PM

II. PROCEDURAL BACKGROUND OF COA DOCKET NO. 366118 BEFORE THE TRIAL COURT

a. Initiation of the Case.

This case was originally filed in the Oakland County Circuit Court in 2020 to recover outstanding PIP benefits incurred by Plaintiff/Appellant against Appellee Esurance as a direct and proximate result of injuries sustained in the subject January 8, 2020 collision. **Exhibit H – Appellant's PIP Complaint**. Thereafter, Appellee Esurance filed a Third-Party Complaint against Appellee's Auto-Owners, Progressive and Farmers to recoup some of the benefits it felt it had wrongly paid. **Exhibit I – Esurance Third-Party Complaint.** Appellant followed suit, filing Complaints against Third-Party Defendants Auto-Owners, Progressive and Farmers for the same outstanding PIP benefits. **Exhibit J – Appellant's PIP Complaints v. Third-Parties.**

b. Esurance filed a Motion for Summary Disposition

On December 3, 2021, Defendant/Appellee Esurance filed a Motion for Summary Disposition in the PIP case, arguing that Appellant was domiciled with her mother, Stephanie Lawrence, at the time of the subject motor vehicle collision, rendering Appellee Auto-Owners, as Lawrence's automobile insurer, highest in the order of priority to pay Appellant's PIP benefits pursuant to MCL 500.3114(1). **Exhibit K – Esurance MSD**. Defendant/Appellee Auto-Owners argued that the custody order of Appellant's divorced parents, Stephanie Lawrence and Cory Frownfelter, was a 50/50 split, and McKenna was domiciled with her father, who was insured by Esurance, Progressive and Farmers, and they were highest in the order of priority for PIP payments pursuant to MCL 500.3114(1). **Exhibit L – Auto-Owners Response to MSD**

c. The Circuit Court Denied the Motion for Summary Disposition

On February 24, 2022, following oral arguments, the Circuit Court denied Appellee Esurance's Motion for Summary Disposition. Instead, it granted Summary Disposition in Appellee

RECEIVED by MSC 4/7/2025 3:04:26 PM

Auto-Owner's favor under MCR 2.116(I)(2), finding that Appellant was domiciled with her father, Cory Frownfelter, and the time of the subject motor vehicle collision. **Exhibit M – Order re Domicile.** Specifically, the trial Court found that the custody order was a true 50/50 split, leaving Appellant with a rolling domicile of which ever parent she was with and, given that she had just left the home of Cory Frownfelter at the time of this collision, it was his home where she was domiciled as a matter of law for the purposes of MCL 500.3114(1). **Id.; Exhibit N – Transcript of Hearing.**

d. The Parties to the PIP Action Entered Into A Stipulated Judgment for purposes of appeal.

On or about April 24, 2023, after Appellee Auto-Owners was dismissed from the case, the remaining parties to the PIP action entered into a Stipulated Judgment in the amount of $7,292.82 in favor of Appellant McKenna Frownfelter. **Exhibit O – Stipulated Judgment**. Specifically, the parties entered into said Stipulated Judgment to preserve Plaintiff/Appellant's ability to appeal the Circuit Court ruling on Appellee Esurance's Motion for Summary Disposition, and for the Court of Appeals to determine the "domicile" of Appellant at the time of the subject motor vehicle collision.

III. PROCEDURAL BACKGROUND OF COA DOCKET NO. 366120 BEFORE THE TRIAL COURT

a. Ms. Frownfelter initiated the case in Oakland County Circuit Court.

This third-party automobile negligence case was originally filed in the Oakland County Circuit Court to recover damages incurred by Plaintiff/Appellant as a direct and proximate result of Defendants/Appellee Cory Frownfelter's negligent actions or inactions on January 8, 2020. Appellant's Complaint also had a count asking for Declaratory Judgment that Defendant/Appellee Esurance's "step-down" provision did not apply, and Defendant/Appellee Cory Frownfelter had

RECEIVED by MSC 4/7/2025 3:04:26 PM

$250,000 per person Bodily Injury Liability coverage from Defendant/Appellee Esurance, as opposed to Esurance's claim of only $20,000 per person Bodily Injury Liability coverage. **Exhibit P – Appellant's Complaint.**

b. Appellant/Plaintiff filed a Motion for Summary Disposition

On March 9, 2022, Plaintiff/Appellant filed a Motion for Summary Disposition as to the amount of Bodily Injury Liability coverage Defendant/Appellee Esurance was to provide Defendant/Appellee Cory Frownfelter for Appellant's damages stemming from the subject January 8, 2020 motor vehicle collision. **Exhibit Q – Motion for Summary Disposition (Exhibits Omitted).** Appellant argued that she was not a "resident" of Appellee Cory Frownfelter under the terms of the Esurance policy of insurance and, thus, Appellee Cory Frownfelter was to be provided $250,000 per person Bodily Injury Liability coverage from Appellee Esurance.

c. The Circuit Court Denied the Motion for Summary Disposition

On September 8, 2022, following oral arguments, the Circuit Court denied Plaintiff/Appellant's Motion for Summary Disposition, finding that Appellant was a "resident" of Appellee Cory Frownfelter within the meaning in the contract, triggering the "step-down" provision in Appellee Esurance's policy of insurance and providing Appellee Cory Frownfelter with only $20,000 per person in Bodily Injury Liability coverage as it pertained to McKenna Frownfelter and the subject January 8, 2020 motor vehicle collision. **Exhibit R – Opinion and Order Denying Summary Disposition.** Specifically, the Circuit Court found as a matter of law that Appellant was domiciled, pursuant to the custody agreement then in place, with Appellee Cory Frownfelter at the time of the subject motor vehicle collision, and Appellant must be considered a "resident" of Appellee Cory Frownfelter's home under the terms of the Esurance policy of

RECEIVED by MSC 4/7/2025 3:04:26 PM

insurance if that was Appellant's domicile. **Exhibit R; Exhibit S – Transcript of Circuit Court Hearing.**

d. Plaintiff/Appellant filed a Motion for Reconsideration

On September 29, 2022, within the timeframe allowed under MCR 2.119(F)(1), Plaintiff/Appellant filed a Motion for Reconsideration as to the Circuit Court's denial of Appellant's Motion for Summary Disposition regarding the Bodily Injury Liability coverage Appellee Esurance was to provide Appellee Cory Frownfelter. **Exhibit T – Motion for Reconsideration (Exhibits Omitted)**. Specifically, Plaintiff/Appellant argued that the Circuit Court erred, and that Appellant McKenna Frownfelter was not required to be deemed a "resident" of Appellee Cory Frownfelter's home under the terms of the insurance contract issued by Appellee Esurance merely because the Circuit Court deemed her to have been domiciled there at the time of the subject January 8, 2020 motor vehicle collision. Moreover, Plaintiff/Appellant argued that the terms of the contract controlled, which did not name Appellant as a "resident" of the household, and also that the term "resident," undefined in the contract, was ambiguous, requiring the Court to find in favor of Appellant and for additional liability coverage from Appellee Esurance.

e. The Circuit Court denied Appellant's Motion for Reconsideration.

In its Opinion and Order dated December 22, 2022, the Circuit Court denied Plaintiff/Appellant's Motion for Reconsideration. **Exhibit U – Opinion & Order Denying Reconsideration.** Specifically, the Circuit Court continued to hold that it could not find that Appellant McKenna Frownfelter was not a "resident" of Appellee Cory Frownfelter's home on the day of the subject January 8, 2020 motor vehicle collision under the terms of Appellee Esurance's policy of automobile insurance after previously ruling that Appellant was domiciled at Appellee

RECEIVED by MSC 4/7/2025 3:04:26 PM

Cory Frownfelter's home for the purposes of MCL 500.3114(1) and the Order of Priority of the payment of Michigan No-Fault Personal Protection Insurance ("PIP") benefits.

f. The Parties entered into a Stipulated Judgment

On or about April 24, 2023, the parties to this action entered into a Stipulated Judgment in the amount of $250,000 in favor of Appellant McKenna Frownfelter and against Appellee Cory Frownfelter. **Exhibit V – Stipulated Judgment.** Specifically, the parties entered into said Stipulated Judgment to preserve Plaintiff/Appellant's ability to appeal the Circuit Court ruling on Appellant's Motion for Summary Disposition, and so that the appeals process could determine the correct amount of Bodily Injury Liability coverage for Appellee Esurance to provide to Appellee Cory Frownfelter for the damages Appellant McKenna Frownfelter sustained in the January 8, 2020, subject motor vehicle collision.

IV. THE COURT OF APPEALS AFFIRMS THE TRIAL COURT

Both cases were appealed and consolidated on appeal. On February 24, 2025, the Court of Appeals issued an unpublished decision affirming the trial court's finding that Appellant was domiciled with her father because this was "one of the rare situations contemplated in *Grange [Ins Co of Mich v Lawrence,* 484 Mich 475, 512 n 78 (2013)] where the divorce judgment allowed for a true 50/50 split, so her domicile was determined by whichever parent she had most recently stayed with. *Frownfelter v Esurance Property and Casualty Ins Co,* at *7 (Mich Ct App Docket Nos. 366118 and 366120, unpublished, 2025) **(Exhibit A.)** The court also held that the terms of the insurance contract between Appellant's father and Esurance were unambiguous and that the term "resident" in the policy was controlled by the determination of domicile. *Id.* at *8-10.

RECEIVED by MSC 4/7/2025 3:04:26 PM

Judge Letica concurred in the holding of the case entirely but wrote separately to raise the issue of recission based on Apellant's father's failure to list her as a household member, *sua sponte*. *Id.*, Letica concurring.

Judge Garrett concurred regarding the determination of domicile but dissented as to the issue of residence under the terms of the insurance policy. She noted that "domicile and residence are distinct concepts," and "because the policy specifically stated that the application, along with other documents, formed the policy, plaintiff [appellant] was not a resident of [her father] Frownfelter's household under the policy and was therefore not a "family member" for purposes of the step-down provision." Accordingly, she would have reversed and remanded for further proceedings on this issue. *Id.*, Garret concurring in part and dissenting in part, at *2.

This appeal follows.

ARGUMENT

I. LEAVE TO APPEAL SHOULD BE GRANTED BECAUSE PLAINTIFF-APPELLANT MEETS THE STANDARDS OF MCR 7.305(B)

MCR 7.305(B) sets forth the standards that parties must meet for the Supreme Court to grant their application for leave to appeal. The application must evidence one or more of the following:

> . . .
> (3) the issue involves a legal principle of major significance to the state's jurisprudence;
> . . .
> (5) in an appeal of a decision of the Court of Appeals,
> (a) the decision is clearly erroneous and will cause material injustice, or
> (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals . . . .

RECEIVED by MSC 4/7/2025 3:04:26 PM

As detailed below, this standard is met. The Court of Appeals decision is clearly erroneous, and it should be reversed. The Court should grant the application for leave to appeal and reverse the Court of Appeals.

II. THE COURT OF APPEALS DECISION ON DOCKET NO. 366118 WAS CLEARLY ERRONEOUS AND MUST BE REVERSED

A. The Court of Appeals erred in finding Plaintiff/Appellant McKenna Frownfelter was "domiciled" with her father, Cory Frownfelter, at the time of the subject January 8, 2020 motor vehicle collision.

Plaintiff-Appellant acknowledges that, generally, a domicile determination is a question of fact, and this Court "will not reverse a trial court's determination unless the evidence clearly preponderates in the opposite direct." *Goldstein v. Progressive Cas. Ins. Co.*, 218 Mich. App. 105, 112; 553 N.W. 2d 353 (1996). However, where the underlying facts are not in dispute, the determination of domicile **is a question of law this Court reviews de novo.** *Grange Ins. Co. of Mich. v. Lawrence*, 494 Mich. 475, 490; 835 N.W. 2d 363 (2013).

In *Grange*, this Court, regarding the difference between residence and domicile for the purposes of MCL 500.3114(1), as follows:

> 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. Similarly, a person's domicile has been defined to be that place where a person has voluntarily fixed his abode and not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time. In this regard, the Court has recognized that it may be laid down as a settled maxim that every man must have such a domicile somewhere. It is equally well settled that no person can have more than one such domicile, at one and the same time. *Id.* at 493-494 (quotation marks and citations omitted).

This Court further noted, relative to the instant case, that following the above principle, a minor child of divorced parents "may have a single domicile at any point in time that continues until the child acquires a different one." *Id.* at 496. Moreover, the common law recognizes three

RECEIVED by MSC 4/7/2025 3:04:26 PM

ways of acquiring a domicile, generally applicable to all persons depending on their factual circumstances: "(1) domicile of origin or nativity; (2) domicile of choice; and (3) domicile by operation of law." *Id.* at 501.

However, determining the domicile of a minor child of divorced parents differs from determining the domicile of an adult. Relevant to the instant case, this Court held in *Grange* that "a child's domicile, upon divorce or separation of the child's parents, is the same as that of the parent whose custody he has been legally given pursuant to a custody order." *Id.* at 504. That is, "a child's domicile, upon… entry of a custody order is established by operation of law consistent with the terms of the custody order." *Id.* at 505. In such a case, "parents are legally bound by the terms of the custody order," and may not alter the child's domicile to be consistent with their own. *Id.* at 508.

The custody order, thus, "negates the parent's legal capacity, which is necessary to establish a domicile of choice for the minor child that is different from that established in the custody order." *Id.* 508-509. "Therefore, courts presiding over an insurance coverage dispute involving the minor child of divorced parents must treat a custody order as conclusive evidence of a child's domicile." *Id.* at 511. In those situations, "the factual circumstances or the parents' or child's intention are irrelevant to the domicile determination." *Id.*

What, though, are the courts to do in such a situation in which the custody order grants joint physical custody and equal physical control? This Court gave lower courts instructions on how to handle such situations, and stated in full as follows:

> Although not presently before this Court, we recognize that determining domicile by reference to a custody order may appear to lead to a perplexing result where the order grants each parent joint physical custody under MCL 722.26a(7) and creates an equal 50/50 division of physical custody. To begin with, we emphasize that an award of joint physical custody alone does not automatically create this potential perplexing situation because although an

RECEIVED by MSC 4/7/2025 3:04:26 PM

> order may award joint physical custody, ***it may also establish that one parent has primary physical custody***. Alternatively, ***the details of the physical custody division may reveal that one parent has physical custody of the child more often than the other parent despite the joint physical custody arrangement.*** Thus, it is only in the very rare event that a custody order awards joint physical custody ***and grants both parents an equal amount of time to exercise physical custody that this issue arises***. Indeed, MCL 722.26a(7) does not require that parents share equal physical custodial time for a court to award joint physical custody; rather, [MCL 722.26a(7)(a)] merely defines joint physical custody as an order "[t]hat the child shall reside alternatively for specific periods with each of the parents." Emphasis added. The statute does not, however, require that the child reside with each parent for an equal amount of time to constitute joint physical custody.
>
> In the unusual event that a custody order does grant an equal division of physical custody, ***and only in this instance***, then the child's domicile would alternate between the parents so as to be the same as that of the parent with whom he is living at the time. Restatement, § 22 (1971). Thus, the child's domicile is with the parent who has physical custody as established by the custody order at the specific time of the incident at issue. This approach is consistent with the terms of the custody order and avoids a finding that the child has dual coexisting domiciles." *Id.* at 512, n 78 (emphasis added).

The *Grange* Court made it very clear: a child has alternating domicile only if the custody order awards joint physical custody, ***AND*** grants both parents an equal amount of time to exercise physical custody. *Id.* Joint physical custody alone is not enough.

Recently, the Court of Appeals looked at a custody order similar to the one at issue in this case in *Corbin v. Meemic Ins. Co.*, 340 Mich. App. 140; 985 N.W. 2d 217 (2022). In *Corbin*, the custody order at issue indicated that the parents would have "joint legal and physical custody" of the minor children. *Id.* at 147. Further, the custody order indicated that the "non-custodial parent shall have reasonable parenting time until further order of the Court." *Id.* at 148. There is no other mention of physical custody over the children mentioned in the opinion of the court in reference to the custody order.

The *Corbin* court opined, in relation to the above, that "the order of filiation ***did not establish a primary custodial parent or otherwise fix a parenting time schedule***. That is,

RECEIVED by MSC 4/7/2025 3:04:26 PM

plaintiff's schedule was left to her parents so long as they continued to cooperate and work together." *Id.* **The *Corbin* court specifically rejected the trial court's conclusion in that case that the custody order was dispositive, rejected the idea that footnote 78 of *Grange, supra*, applied, and rejected the idea that the minor child's domicile was with whichever parent had actual custody at the time of the motor vehicle collision.** ***Id.***

Instead, the Corbin court held that footnote 78 did "not apply to the above arrangement," "by its own terms." *Id.* The court directly distinguished *Grange* by stating that "[t]his is not such a case, ***as the order of filiation left parenting time to the discretion of the parents***." *Id.* The telling words of the *Corbin* Court are as follows:

> The order ***did not set forth a parenting time schedule, let alone one that required equal parenting time. This alone takes the order outside what was addressed in footnote 78***.
>
> With that in mind, we hold that the trial court needed to look beyond the order of filiation to determine plaintiff's actual domicile, as the order of filiation was not dispositive. To do so, the trial court should have reverted to the traditional multifactored analyses from *Workman v. Detroit Auto Inter-Insurance Exch.*, 404 Mich. 477; 274 N.W. 2d 373 (1979), and *Dairyland Ins. Co. v. Auto Owners Ins. Co.*, 123 Mich. App. 675; 333 N.W. 2d 322 (1983), to determine plaintiff's domicile. See *Grange,* 494 Mich. at 497 n. 41 ("The *Workman-Dairyland* multifactored framework comprises the one now commonly employed by Michigan Courts when a question of fact exists as to where a person is domiciled.").
>
> Here, there was a substantial amount of testimony to suggest that plaintiff's father had always operated as plaintiff's primary custodian, and that both parents intended to continue that arrangement before and after the subject automobile accident." *Id.* (emphasis added).

B. The Court of Appeals clearly erred by reading language into the divorce judgment relevant to the instant case that is simply not present in that judgment.

In the instant case, the order of filiation is substantially similar to the one at issue in the Corbin case cited above. Appellant's parents had an order from the Court that stated "**IT IS FURTHER ORDERED AND ADJUDGED** that the Plaintiff and the Defendant shall have joint

RECEIVED by MSC 4/7/2025 3:04:26 PM

physical custody of the minor children.... Until the minor children attains the age of eighteen (18) years... **Exhibit F, at pg. 3**. Moreover, the order stated that "**IT IS FURTHER ORDERED AND ADJUDGED** that the parties shall have parenting time with the minor children, to wit:... herein at such times and places as shall be agreed upon by the parties. **Id**. That is it.

The order makes no other mention of physical custody or awarding parenting time, just as there was no other mention of it in the *Corbin* case. The Court of Appeals acknowledged that "like in *Corbin*...the order of filiation [in the present case] left parenting time to the discretion of the parents." *Frownfelter,* at *6. The court then distinguished *Corbin* from the instant case by finding that the order in the instant case "stated plaintiff had a legal residence with each parent, 50% of the time." *Id.* **However, the language the Court of Appeals quotes and attributes to the custody order in the present case never appears anywhere in that order.** It is unclear where the Court of Appeals got this language from since it did not provide a citation for its source. **The Court of Appeals clearly erred when it read language into the divorce judgment that plainly does not exist in said judgment.** Accordingly, the Court of Appeals also erred in this case by declining to follow *Corbin,* and instead finding that the order of filiation was dispositive and the instructions in *Grange*'s footnote 78 applied to the facts of the case.

Further, the Court of Appeals erred by equating residence to domicile, because, as acknowledged by Judge Garret in her dissent, "[d]omicile and residence are distinct concepts..." *Frownfelter,* Garret dissenting, at *3. See also *Mapp v. Progressive Ins. Co.*, __ Mich. App. __, slip op at 9; __ N.W. 2d__ (2023).

C. The Court of Appeals should have used the *Workman* and *Dairyland* analysis to determine Appellant's domicile.

Instead of just determining that the term "residence" in the custody order meant domicile and that the order provided for a split 50/50 domicile, the Court of Appeals should have looked at

RECEIVED by MSC 4/7/2025 3:04:26 PM

the factors enumerated in *Workman* and *Dairyland* to determine Appellant's domicile at the time of the subject motor vehicle collision. In such a situation, while the issue of domicile is ordinarily reserved for the trier of fact, *Grange*, 494 Mich. at 490, the facts of the instant case make clear the Appellant's domicile was with her mother as a matter of law. This Court may find the domicile of a person as a matter of law when, under the facts of the case, the issue cannot be reasonably disputed. *Mapp v. Progressive Ins. Co.*, __ Mich. App. __, slip op at 9; __ N.W. 2d__ (2023). The *Grange* Court adopted the following factors from Workman to determine domicile:

> (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. *Grange*, 494 Mich. at 497, quoting *Workman*, 404 Mich. at 496-497 (citations omitted).

This Court further adopted an additional five factors laid out by the Court of Appeals in *Dairyland*, with a particular focus on children of an insured who may have complicated living arrangements:

> Other relevant indicia of domicile include such factors as [1] whether the claimant continues to use his parents' home as his mailing address, [2] whether he maintains some possessions with his parents, [3] whether he uses his parents' address on his driver's license or other documents, [4] whether a room is maintained for the claimant at the parents' home, and [5] whether the claimant is dependent upon the parents for support. *Grange*, 494 Mich. at 497 n. 41, quoting *Dairyland*, 123 Mich. App. at 682.

No one factor listed above is, in itself, determinative, but each factor must be balanced and weighed with the others. *Workman, supra.*

There is no question that when the above factors are applied in the instant case, they would favor McKenna's mother's home, and not that of her father's, as her domicile at the time of the

RECEIVED by MSC 4/7/2025 3:04:26 PM

subject motor vehicle collision. As it pertains to the subjective or declared intent of the person remaining, McKenna's testimony regarding her clothing items is telling. Despite having a dresser to put her clothes in, Mckenna does not keep many clothes at her father's house, saying that she mainly transfers clothes over there and then she will "bring them ***back home***." **Exhibit B at pg. 36.** This testimony from McKenna, as well as the fact she stayed with her mom exclusively after the subject accident, and the other facts of this case, weigh heavily in favor of a finding that McKenna was not domiciled at her father's household.

The informality of the relationship between McKenna and Cory Frownfelter, as well as the fact they would stay in the same house when McKenna visits, is not surprising given the father-daughter relationship. But, as McKenna had another place of lodging available to her and to which she stayed at more frequently, the *Dairyland* factors become relevant and telling for the minor child of divorced parents.

McKenna, as a minor, is obviously dependent upon both of her parents for support (thankfully this has never been an issue following the divorce). So that factor does not weigh in either direction. McKenna also has her own room at both locations. However, while she has some personal belongings at both homes, the majority of her possessions and clothes are kept at her mom's house, and she would take them with her to her dad's house when she visited over there. **Exhibit B at pgs. 35-38.** This factor would weigh in favor of her mom's house.

That all being said, every other aspect of McKenna's life before the subject incident, and the actions of the parties after the incident, weigh in favor of McKenna's mother's home, and not her father, for the purposes of her domicile. As noted previously, McKenna uses her mom's address for medical purposes, on file at school, and on her driver's license. **Exhibit G at pgs. 79-82.** Any mail McKenna may receive, though limited given her age, goes to her mom's address.

RECEIVED by MSC 4/7/2025 3:04:26 PM

Id.; Exhibit C at pg. 39. McKenna's also is listed under her mom's addresses and as a dependent of her mom for tax purposes. **Exhibit G at pg. 87.**

In addition to the above uses of an address, various aspects of McKenna's life point in favor her mom's home over her dad. McKenna is on her mom's gym membership. **Id. at pg. 78.** She is on her mom's cell phone plan. **Id. at pgs. 79-82.** Her mom is on her bank account, while her father is not. **Id.** McKenna, once she began driving, was put on her mother's car insurance, not her father's. **Id. at pg. 87.** Moreover, after the subject collision, McKenna stayed 100% of the time at her mother's home while she recovered from the severe and debilitating injuries she sustained. **Id. at pg. 78.** McKenna's mom's home was modified in ways to accommodate McKenna and her needs following this collision, her father's home was not. **Id. pg. 66; Exhibit C at pg. 32.** Her mom was with her at essentially every doctor appointment and treatment session following this collision, while her father took her only one appointment in August 2021. **Exhibit G at pg. 59; Exhibit C at pgs. 24-25.**

Given the above undisputed facts, there is no genuine issue of material fact that Appellant's mother, Stephanie Lawrence, was Appellant's "primary custodian, and that both parents intended to continue that arrangement before and after the subject-automobile accident." *Corbin*, 340 Mich. App. at 149. As such, there is no genuine issue of material fact that Appellant McKenna Frownfelter was domiciled with her mother, Stephanie Lawrence, at the time of the subject motor vehicle collision, and Defendant/Appellee Auto-Owners is highest in the Order of Priority for the payment of McKenna's PIP benefits pursuant to MCL 500.3114(1).

The Court of Appeals clearly erred by declining to follow *Corbin* and failing to conduct the *Workman/ Dairyland* analysis. The Court of Appeals' holding that Appellant was "domiciled" with Cory Frownfelter as a matter of law were incorrect on many levels. The court erred by finding

RECEIVED by MSC 4/7/2025 3:04:26 PM

that the order of filiation conclusively established a true 50/50 split of parenting time, and that Appellant's "domicile" was with which ever parent she happened to be with at the time of the accident. As made clear above, the order for filiation left the actual amount of physical control over Appellant to the discretion of the parents, and using the *Workman* and *Dairyland* facts as a guide, there is no genuine issue of material fact that Appellant was domiciled with her mother, and Appellee Auto-Owners is highest in the order of priority for the payment of PIP benefits under MCL 500.3114(1). There is no doubt that the method the Court of Appeals used to determine domicile in this case is far easier and more expedient than going through the *Workman/Dairyland* analysis, but it is the wrong method to use for this case.

III. THE COURT OF APPEALS DECISION ON DOCKET NO. 366120 WAS CLEARLY ERRONEOUS AND MUST BE REVERSED

A. The Court of Appeals erred in finding Plaintiff Appellant McKenna Frownfelter a "resident" of Appellee Cory Frownfelter at the time of the January 8, 2020 motor vehicle collision pursuant to the agreement and intent of Appellee Esurance and Appellee Cory Frownfelter.

An insurance policy is a contractual agreement, and, thus, the Court's role is to "determine what the agreement was and ***effectuate the intent of the parties***." *Hunt v. Drielick*, 496 Mich. 366, 372; 852 N.W. 2d 562 (2014)(emphasis added), quoting *Auto-Owners Ins. Co. v. Churchman*, 440 Mich. 560, 566; 489 N.W. 2d 431 (1992). Likewise, the general principles of contract interpretation apply to insurance policies. *McJimpson v. Auto Club Group Ins.*, 315 Mich. App. 353, 360; 889 N.W. 2d 724 (2016), citing to *Royal Prop. Group, LLC v. Prime Ins. Syndicate, Inc.*, 267 Mich. App. 708, 7114; 706 N.W. 2d 426 (2005).

The Court is to read an insurance contract "as a whole, with meaning given to all of its terms." *McJimpson, supra*, citing to *Dancey v. Travelers Prop. Cas. Co. of America*, 288 Mich. App. 1, 8; 792 N.W. 2d 372 (2010). Policy language should be given its plain and ordinary

RECEIVED by MSC 4/7/2025 3:04:26 PM

meaning. *Wells Fargo Bank, NA v. Null*, 304 Mich. App. 508, 519; 847 N.W. 2d 657 (2014). The Courts must construe and apply unambiguous contract provisions as written, unless the provision violates the law or one of the traditional defenses to the enforceability of the contract applies. *Rory v. Continental Ins. Co.*, 473 Mich. 457, 461; 703 N.W. 2d 23 (2005).

A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written. *Id.* at 468-469. The rights and duties of parties to a contract are derived from the terms of the agreement. *Wilkie v. Auto-Owners Ins. Co.*, 469 Mich. 41, 51; 664 N.W. 2d 776 (2003), citing to *Evans v. Norris*, 6 Mich. 369, 372 (1859). The "general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the court." *Id.*, quoting *Terrien v. Zwit*, 467 Mich. 56, 71; 648 N.W. 2d 602 (2002) and *Twin City Pipe Line Co. v. Harding Glass Co.*, 283 U.S. 353, 356; 51 S. Ct. 476; 75 L. Ed. 1112 (1931).

Under the above described legal principals, the parties are generally free to agree to whatever they like, and, in most circumstances, it is beyond the authority of the courts to interfere with the parties' agreement. *St. Clair Intermediate School Dist. V. Intermediate Ed. Ass'n*, 458 Mich. 540, 570-572; 581 N.W. 2d 707 (1998). Respect to the freedom to contract entails that we enforce only those obligations ***actually assented to by the parties***. *Wilkie, supra*, citing to *Evans, supra* at 372

The proper interpretation of contracts and the legal effects of contractual provisions are questions of law for the Court to decide. *McDonald v. Farm Bureau Ins. Co.*, 480 Mich. 191, 197; 747 N.W. 2d 811 (2008). As stated above, the court's role is to "determine what the agreement was and effectuate the intent of the parties." *Hunt v. Drielick*, 496 Mich. 366, 372; 852 N.W. 2d 562 (2014), quoting *Auto-Owners Ins. Co. v. Churchman*, 440 Mich. 560, 566; 489 N.W. 2d 431

RECEIVED by MSC 4/7/2025 3:04:26 PM

(1992). The Court is to deploy a two-part analysis to determine the intent of the parties. *Hunt, supra,* citing to *Heniser v. Frankenmuth Mut. Ins. Co.*, 449 Mich. 155, 172; 534 N.W. 2d 502 (1995).

First, it must be determined whether the policy provides coverage to the insured and, second, whether that coverage is negated by an exclusion. *Hunt, supra.* It is the insured's burden to establish the claim falls within the terms of the policy, *Id.*, "[t]he insurer should bear the burden of proving an absence of coverage." *Id.*, citing to *Fresard v. Mich. Millers Mut. Ins.* Co. 414 Mich. 686, 694; 327 N.W. 2d 286 (1982). Additionally, exclusionary clauses in insurance policies are ***strictly construed in favor of the insured***. *Hunt, supra*, citing to *Churchman*, 440 Mich. at 567; 489 N.W. 2d 431 (Emphasis added). See, also, *Group Ins. Co,. of Mich. v. Czopek*, 440 Mich. 590, 597; 489 N.W. 2d 444 (1992)

In the instant case, there is no debate that the policy provides coverage to Defendant Cory Frownfelter for the subject collision. Defendant Esurance's policy, as it pertains to liability coverage, is pictured below:

PART I: LIABILITY COVERAGE

INSURING AGREEMENT - RESIDUAL LIABILITY COVERAGE

Subject to the Limits of Liability, *"we"* will pay damages for *"bodily injury"* and *"property damage"* for which any *"insured"* becomes legally responsible because of an *"auto" "accident"*. Damages include prejudgment interest awarded against the *"insured"*. *"We"* will settle or defend as *"we"* deem appropriate, any claim or lawsuit asking for these damages. However, *"we"* will not pay for punitive damages under **Part** I. In addition to *"our"* limit of liability, *"we"* will pay costs *"we"* incur when *"we"* defend an *"insured"*. *"Our"* duty to settle or defend ends when *"our"* limit of liability for this coverage has been exhausted by payment of judgments or settlements, or the limit is paid into a court that has jurisdiction. *"We"* have no duty to defend any lawsuit or settle any claim for *"bodily injury"* or *"property damage"* not covered under this policy.

Exhibit M at pg. 3. "Bodily Injury" is defined in the policy to be "bodily harm, sickness, or disease, including death that results from bodily harm, sickness, or disease. **Id. at pg. 1**. "Insured" for Liability Coverage, **Id. at pg. 4**, is shown below:

RECEIVED by MSC 4/7/2025 3:04:26 PM

ADDITIONAL DEFINITIONS FOR PART I: LIABILITY COVERAGE

I. ***"Insured"*** as used in **Part** I means:

A. ***"You"*** or any ***"family member"*** for the ownership, maintenance, or use of any ***"auto"*** or ***"trailer";***

B. Any person using a ***"covered auto"*** with permission from ***"you"*** or a ***"family member";***

C. For a ***"covered auto",*** any other person or organization but only with respect to legal responsibility for acts or omissions of an insured person described in **1.A** or **1.B** above; or

D. For any ***"auto"*** or ***"trailer"*** other than a ***"covered auto",*** any other person or organization but only with respect to legal responsibility for the acts or omissions of ***"you"*** or a ***"family member"*** covered under this **Part** I. This Provision **1.D.** applies only if the person or organization does not ***"own"*** or hire the ***"auto"*** or ***"trailer".***

Based on the above provisions of the policy, the first part of the analysis indicated in *Hunt* is satisfied as there is no question, and Appellee Esurance does not dispute, that they would provide coverage to Appellee Cory Frownfelter for Appellant McKenna Frownfelter's damages. McKenna without question suffered bodily injury within the meaning of the policy. Appellee Cory Frownfelter, as Esurance's Named Insured, is clearly an "insured" under the liability portion of the policy. And, finally, as the owner of the vehicle negligently operated causing McKenna's "bodily injury," Appellee Cory Frownfelter is legally responsible to McKenna for her "bodily injury" under Michigan's Owner's Liability Statute, MCL 257.402, The Owners Liability Act.

The second part of the analysis indicated by the Michigan Supreme Court in *Hunt* regarding exclusions is where Appellee Esurance is hanging their proverbial hat on refusing to provide the coverage shown in the Declaration Page, **Exhibit D**, of $250,000 per person / $500,000 per accident. The exclusion, **Exhibit W at pg. 6**, is shown below:

To the extent that the limits of liability for this coverage exceed the ***"minimum limits"*** of liability required by the financial responsibility law of the state in which a ***"covered auto"*** is principally garaged, ***"we"*** do not provide Liability Coverage for any ***"insured":***

A. For ***"bodily injury"*** to ***"you"*** or any ***"family member"*** for any damages in excess of the ***"minimum limits".***

B. Arising out of the ***"use"*** of a ***"covered auto"*** which is leased or rented to others.

RECEIVED by MSC 4/7/2025 3:04:26 PM

Pursuant to the Esurance Policy of Automobile Insurance issued to Cory Frownfelter, the key word is given a specific meaning that will the pivotal play a role in deciding the current issue. **Exhibit W at pg. 1.** The definition is as follows:

- (9) ***"family member"*** means: **A.** Any person related to ***"you"*** by blood marriage, or adoption who is a resident of ***"your"*** "household."

Appellee Esurance, as previously noted, has taken the position that Appellant McKenna Frownfelter, then a minor, was a "family member" of Appellee Cory Frownfelter under the terms of the policy, invoking the above exclusionary provision that reduces coverage in this case by $230,000. The question before this Court, and the deciding factor of this issue, is whether then minor Appellant McKenna was a "resident" of Appellee Cory Frownfelter's household.

The term "resident" is not defined in the policy of insurance. How, then, is this Court to determine what was agreed to, or what the intent of the parties were, when they entered into this contract? By reading the contract as a "whole." *McJimpson, supra*, citing to *Dancey v. Travelers Prop. Cas. Co. of America*, 288 Mich. App. 1, ***8; 792 N.W. 2d 372 (2010). The Application*** for Insurance, Declaration Page and the policy itself construed together constitute the contract. Royal Property Group, LLC v. Prime Ins. Syndicate, Inc., 267 Mich. App. 708, 715; 706 N.W. 2d 426 (2005) (emphasis added).

On page 2 of the Application, attached hereto as **Exhibit X**, there is a heading entitled "Driver and Resident Information." Cory and Hunter Frownfelter are the only two names listed, McKenna is not. **Id.** Towards the bottom of the Application under this heading, it indicates residents "14 years or older" were to be listed. **Id.** On page 8 of the Application is the signature page of Appellee Cory Frownfelter. **Id. at pg. 8.** This Court will note that the application was signed and effective December 19, 2018. **Id.**

RECEIVED by MSC 4/7/2025 3:04:26 PM

As noted earlier, then minor Appellant McKenna Frownfelter was born on March 30, 2004. Simple math tells us that Appellant McKenna Frownfelter was *14 years, 8 months, and 20 days old when Appellee Cory Frownfelter and Appellee Esurance entered into their contract of insurance*. Thus, by the very terms of the contract entered into between the parties, if Appellant McKenna Frownfelter was to be contracted for as a "resident" under the policy, she was to be listed, since she was over 14 years of age, under the "Driver and Resident Information" heading in the Application for Insurance.

Michigan jurisprudence is clear: the parties to a contract are generally free to agree to whatever they like, and, in most circumstances, it is beyond the authority of the courts to interfere with the parties' agreement. *St. Clair Intermediate School Dist. V. Intermediate Ed. Ass'n*, 458 Mich. 540, 570-572; 581 N.W. 2d 707 (1998). Respect to the freedom to contract entails that we enforce only those obligations ***actually assented to by the parties***. *Wilkie, supra*, citing to *Evans, supra at 372*. And exclusionary clauses in insurance policies are strictly construed in favor of the insured, who in this case is Appellee Cory Frownfelter. *Hunt, supra*, citing to *Churchman*, 440 Mich. at 567; 489 N.W. 2d 431. See, also, *Group Ins. Co,. of Mich. v. Czopek*, 440 Mich. 590, 597; 489 N.W. 2d 444 (1992)

In the instant case, Appellee Esurance and Appellee Cory Frownfelter agreed to a contract wherein then a minor Appellant McKenna Frownfelter was not insured as a "resident" of the household. The obligations of the parties that were agreed upon and contractually entered into did not include Appellant McKenna Frownfelter as a "resident" of Appellee Cory Frownfelter's household.

Recently, in *Mapp v. Progressive Ins. Co.*, __ Mich. App. __; __ N.W. 2d__ (2023), the Court of Appeals looked at similar language in an Application for Insurance in deciding a dispute

RECEIVED by MSC 4/7/2025 3:04:26 PM

if a person was a "resident" under the policy. While deciding in the context of a PIP claim, the holding of that case is telling. As in the instant case, the Application for Insurance at issue in *Mapp* had a section entitled "Drivers and resident relative." *Mapp,* __ Mich. App., slip op at 14. While the Court in *Mapp* could not determine if the contract required listing only those that were both drivers and resident relatives, it found that issue to be ambiguous and construed against the drafter. *Id.* However, that would not be an issue in the instant case, as Esurance *specifically required all those 14 years of age and older to be listed*, which obviously would include those who cannot yet drive. **Exhibit X.**

Next, the *Mapp* Court noted that a challenge it had in the case was as follows:

> [I]f we read the heading as establishing all persons listed, including plaintiff, are resident relatives, this becomes more of an estoppel argument than a coverage argument. That is, as discussed at length above, the policy language grants coverage to relatives of named insureds. The policy provides a definition of "relative" that plaintiff meets, however, only if she resides in the same household as a named insured listed on the declarations page. Thus, the argument would be that Progressive, having listed plaintiff as a "resident relative" ***is now estopped from arguing that she is not a relative who is a resident of the household.*** Farm Bureau does not present this as an estoppel argument but rather as an "intent to insure" argument. *Id.*, slip op at 14.

While Appellant has admittedly also argued this issue as an "intent to insure" argument, it also presented the trial court with opportunity address an estoppel argument. Merriam-Webster dictionary defines "estoppel" to mean "a legal bar to alleging or denying a fact because of one's own previous actions or words to the contrary." In the Reply Brief Appellant filed with the Circuit Court to Appellee Esurance's Response to the Motion for Summary Disposition on this issue, Appellant specifically made this argument:

> Defendant has provided this Honorable Court with no documentation or evidence to indicate that the parties contracted for minor McKenna Frownfelter to be insured as a "resident" of the household. She was of age, and should have been listed if that was to be the agreement. She was not. Her brother, who also lived in both houses, was. The parties contracted to

RECEIVED by MSC 4/7/2025 3:04:26 PM

> insure Hunter Frownfelter, not McKenna, and Esurance cannot now try to reap the advantage of an agreement they never made.

Based on the above, there is no genuine issue of material fact that Appellant McKenna Frownfelter was not contracted for as a "resident" of Appellee Cory Frownfelter's household and, therefore, McKenna does not meet the definition of "family member" in the Esurance policy at issue, precluding Appellee Esurance from invoking the above discussed exclusionary provision.

B. The Court of Appeals erred in finding that the undefined term "resident" in the policy of automobile insurance contract issued by Defendant Appellee Esurance to Plaintiff-Appellant's father was not ambiguous.

Appellant firmly believes the contract entered into between Appellee Cory Frownfelter and Appellee Esurance is clear in that the parties did not agree to, nor intended to, insure Appellant McKenna Frownfelter as a "family member" or "resident' of Appellee Cory Frownfelter's household at the time of the subject collision. However, in addition to this argument, looking at the policy language and exclusionary language on its own, at best there is an ambiguity as to whether Appellant McKenna Frownfelter qualifies as a "family member" pursuant to the terms of this contract.

The proper interpretation of a contract is a question of law for the Court to decide. *Wilkie v. Auto-Owners Ins. Co.*, 469 Mich. 41, 43; 664 N.W. 2d 776 (2003), citing to *Archambo v. Lawyers Title Ins. Corp.*, 466 Mich. 402, 408; 646 N.W. 2d 170 (2002). Whether the terms of an insurance policy are ambiguous is a question for the Court. *Wilkie, supra*, citing to *Farm Bureau Mut. Ins. Co. v. Nikkel*, 460 Mich. 558, 563; 596 N.W. 2d 915 (1999). A provision is considered ambiguous when its ***words can reasonably be understood in different ways***. *Wilkie*, 469 Mich. at 51. (emphasis added). See also *Engle v. Zurich-American Ins. Group*, 216 Mich. App. 482, 487 (1996).

RECEIVED by MSC 4/7/2025 3:04:26 PM

Additionally, exclusionary clauses in insurance policies are strictly construed in favor of the insured. *Hunt*, Mich. at 371, citing to *Auto-Owners Ins. Co. v. Churchman*, 440 Mich. 560, 567; 489 N.W. 2d 431 (1992). The general rule is that, unless the language of an insurance policy so unambiguously requires, ***a policy should not be construed to defeat coverage***. *Vanguard Ins. Co. v. Racine*, 224 Mich. App. 229, 231; 568 N.W. 2d 156 (1997)(emphasis added), citing to *Shumake v. Travelers Ins. Co.*, 147 Mich. App. 600, 608; 383 N.W. 2d 259 (1985). The purpose of insurance is to insure. *Hastings Mut. Ins. Co. v. Safety King, Inc.*, 778 N.W. 2d 275, 282; 286 Mich. App. 287 (2009), citing to *Shumake, supra.*

As previously mentioned, the exclusionary clause at issue, which would drop the available liability coverage to Appellee Cory Frownfelter from $250,000 per person / $500,000 per accident, to the state minimum at the time of the collision, $20,000 per person / $40,000 per accident, would apply to Appellant McKenna Frownfelter's claims if she is deemed a "family member" under the terms of the Esurance policy. "Family member" is defined in the policy as "Any person related to "***you***" by blood marriage, or adoption who is a resident of "***your***" "household." **Exhibit W at pg. 1**. The word "resident" is not defined. **Id.**

i. The Court of Appeals further erred by equating domicile to residence and holding that the domicile determination controlled the meaning of "resident" in the subject insurance policy.

Mapp v. Progressive Ins. Co., supra, was published by the Court of Appeals **AFTER** the hearings and opinions of the trial court on this issue. That case dealt with the battle of "resident" v. "domicile" in the context of a PIP case and MCL 500.3114, and it is telling that the Court of Appeals' refused to publish its decision in the present case, where it found Appellant to be a "resident" of somewhere other than her "domicile", in light of its holding in the published *Mapp* decision. This holding is, in relevant part, as follows:

RECEIVED by MSC 4/7/2025 3:04:26 PM

> The *Grange* Court held that, in order to be "residing in the same household with a named insured, " under the Uniform Motor Vehicle Reparations Act, "a person need only reside in the same household as the policy holder to be considered a basic reparation insured who may claim benefits against the policyholder's insurance company." We also look to the dictionary definition of "resident" and similar terms. Black's Law Dictionary defines "residence" as "[t]he act or fact of living in a given place for some time" or "the place where one actually lives," explaining as follows:
>
> > *Residence* usu. Just means bodily presence as an inhabitant in a given place; *domicile* usu. Requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes though the two terms are used synonymously.
>
> Likewise, *Webster's New World College Dictionary* (3d ed.) defines the term "reside" as "to dwell for a long time; have one's residence; live (in or at)." And, in *Montgomery v. Hawkeye-Security Ins. Co.* [52 Mich. App. 457, 460; 217 N.W. 2d 449 (1974)], this Court referred to the dictionary definition of "resident" in *Webster's New International Dictionary* (2d ed.), as follows:
>
> > Dwelling, or having an abode, for a continued length of time;... one who resides in a place; one who dwells in a place for a period of more or less duration. Residence usually implies more or less performance of an abode, but is often distinguished from inhabitant as not implying as great fixity or permanency of abode. [Quotation marks and citations omitted; alteration in original.]
>
> Given the clear distinction between "reside" and "domicile" in *Grange*, as well as the common or popular definitions of those terms by our courts, the term "reside" can be understood as meaning living in a place for a substantial time beyond mere transient physical presence.
> ...
>
> A flexible approach should be employed in determining whether relatives are "residing in the same household," considering the circumstances of the living arrangement. One could conceivably reside only in one's domicile, reside in two households, ***or reside outside of one's domicile***. *Mapp*, __ Mich. App., slip op at 12-13.

The *Mapp* court gave several different acceptable definitions of "resident" in its opinion, including a finding that a person could reside outside of one's domicile, contrary to the belief of the trial court. The above holding from Mapp, combined with the prior binding precedent

RECEIVED by MSC 4/7/2025 3:04:26 PM

established in *Vanguard*, make clear that the term "resident" in Appellee Esurance's policy of insurance, left undefined, is ambiguous, and must be construed against Appellee Esurance and in favor of full coverage to Appellee Cory Frownfelter. *Hunt, supra; Vanguard, supra.*

The Court of Appeals erred in the present case by determining that "once the trial court determined…that plaintiff was domiciled with [her father] at the time of the accident, it necessarily followed that she resided with him. *Frownfelter,* at *9. Again, though this is an expedient way to decide this issue, it is incorrect. As the Court of Appeals determined in *Mapp,* this is not the law, and domicile does not necessarily equate to residence. *Mapp, supra.*

ii. The term "resident" in the subject policy is ambiguous and must be construed against the drafter, Appellee Esurance.

The issue in the present case is what is meant by the term "resident" in the Esurance Policy for the definition of "family member," and does Appellant McKenna Frownfelter, a minor of divorced parents who primarily lives with her mother and sometimes stays with her father, qualify as a "family member" under the policy. "Resident," importantly, is **NOT** defined in the Esurance policy of insurance. The term "resident" has been discussed by the Michigan Courts and ***considered an ambiguous term*** in an insurance policy.

> "Resident" has no technical meaning, and ***no fixed meaning applicable to all cases, but rather it has many meanings***, and is used in different and various senses, and it has received various interpretations by the courts. Generally, the construction or signification of the term is governed by the connection in which it is used, and depends on the context, the subject matter, and the object, purpose, or result designed to be accomplished by its use, and its meaning is to be determined from the facts and circumstances taken together in each particular case. *Ortman v. Miller*, 33 Mich. App. 451, 454-455 (1971), citing to 77 CJS, Resident, pp 305-306.

Further, in an extremely similar factual scenario to the instant case, and with essentially the same policy language at issue, the Court of Appeals ***in a binding and published opinion*** has previously held that the term "resident," left undefined, was ambiguous. *Vanguard Ins. Co. v.*

RECEIVED by MSC 4/7/2025 3:04:26 PM

Racine, 224 Mich. App. 229, 231; 568 N.W. 2d 156 (1997). In *Vanguard,* the Court of Appeals was dealing with an insurance policy that defined the term "insured" as "means you and residents of your household who are: (a) your relatives; or (b) other persons under the age of 21 in the care of any person named above." *Id.* The term "resident" was not defined. *Id.* The court in *Vanguard* was dealing with the claim of a minor child of divorced parents against one of those parents, and if the minor child was an "insured" so as to exclude insurance coverage for the damages claim under a homeowner's policy for the parent who caused his injuries. *Id.*

In *Vanguard,* the court found the term "residents" to be ambiguous under the facts of the case, as the term was not defined and was susceptible to two different meanings. The court noted that it could have meant the meaning put forth by either of the parties. *Id.* The court, indicating either proposed definition be an acceptable application of the term resident found, that "Because the policy terms are susceptible to two different meanings under the facts of this case, they ***must be construed against plaintiff as the drafter of the insurance*** contract and in favor of coverage for defendants." *Id.*

Of great significance to the present case are the Court of Appeals comments in *Vanguard* regarding "Michigan precedents addressing similar insurance policy language." The Court of Appeals in *Vanguard* stated as follows:

> However, all these precedents concern situations in which, if the person in question was held to be a "resident" of the household of the insured, or "domiciled" there, insurance coverage was afforded. Here, the opposite result obtains; if decedent was a resident of his father's household, there is no coverage.
>
> We find these decisions inapposite, considering the general rule that, unless the language of an insurance policy unambiguously so requires, ***a policy should not be construed to defeat coverage***. *Shumake v. Travelers Ins. Co.*, 147 Mich. App. 600, 608 (1985). Previous holdings regarding the "resident" question are not helpful, because in each case the Court properly strove to

RECEIVED by MSC 4/7/2025 3:04:26 PM

> find that the individual in question was a resident and thus eligible for benefits.

Id.

In the instant case, Appellant can put forth several meanings to apply to the word "resident" that would be an acceptable application and necessitate this Court reaching the conclusion that then minor Appellant McKenna Frownfelter was not a "resident" of Appellee Cory Frownfelter's household. First, Appellant contends that deciding if she is a resident of Appellee Cory Frownfelter's home should be based on the address to be used for voting purposes under Michigan Election Laws. MCL 168.11 describes such a place for registration and voting purposes as:

> "means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a person has a residence separate from that of his or her spouse, that place at which **the person resides the greater part of the time shall be his or her official residence** for the purposes of this act."

According to the State of Michigan, voters in Michigan must use the same residential address for voter registration and driver's license purposes. **Exhibit Y – SOS Residential Address**. As noted previously, Appellant McKenna testified at her deposition that she has her mother's address on her Driver's License. **Exhibit B at pg. 35.** When asked why, she was clear it was because *that was where she stayed the most*. **Id.** In addition to McKenna, her mother Stephanie Lawrence and Appellee Cory Frownfelter both testified that McKenna stayed with her mom significantly more than she stayed with her dad. **Exhibit G at pg. 33; Exhibit C at pg. 15.** Thus, McKenna's Driver's License and amount of time spent at each home alone in this situation, *where the living situation is the same as at the time the contract was entered into by Appellees and at the time of the subject collision*, establishes that she was a resident of her mother's home, not that of Appellee Cory Frownfelter, under Michigan Election Laws.

RECEIVED by MSC 4/7/2025 3:04:26 PM

Moreover, Appellant contends that the term "resident" in the Esurance policy at issue should be decided using the factors set forth in *Workman v. DAIIE*, 404 Mich. 477; 274 N.W. 2d 373 (1979) and *Dairyland Ins. Co. v. Auto-Owners Ins. Co.*, 123 Mich. App. 675; 333 N.W. 2d 322 (1983). The *Workman* factors enumerated included the following:

- The subject or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place at issue;
- The formality or informality of the relationship with the members of the household;
- Whether the place where the person lives is in the same house, within the same curtilage or upon the same premises;
- The existence of another place of lodging by the person other than the place at issue. *Workman*, 404 Mich. at 496-497; 274 N.W. 2d 373.

The *Dairyland* Court, while dealing with children, established additional factors to use, and they were enumerated as follows:

- Whether the person uses the parent's home for his mailing address;
- Whether they maintain some possessions with the parent;
- Whether they use the parent's address on his driver's license or other documents;
- Whether a room is maintained for the child at the parent's home;
- Whether the child is dependent upon the parent for support. *Dairyland,* 123 Mich. App. at 682.

As noted previously, while one factor above is, in itself, determinative, but each factor must be balanced and weighed with the others. *Workman, supra*. There is no question that when the above factors are applied in the instant case, they would favor McKenna's mother's home, and not that of her father's. As it pertains to the subjective or declared intent of the person remaining, McKenna's testimony regarding her clothing items is telling. Despite having a dresser to put her

RECEIVED by MSC 4/7/2025 3:04:26 PM

clothes in, Mckenna does not keep many clothes at her father's house, saying that she mainly transfers clothes over there and then she will "Bring them ***back home***." **Exhibit B at pg. 36.** This testimony from McKenna, as well as the fact she stayed with her mom exclusively after the subject accident, and the other facts of this case, weight heavily in favor of a finding that McKenna was not a resident of her father's household.

The informality of the relationship between McKenna and Appellee Cory Frownfelter, as well as the fact they would stay in the same house when McKenna visits, is not surprising given the father-daughter relationship. But, as McKenna had another place of lodge available to her and to which she stayed at more frequently, the *Dairyland* factors become relevant and telling for the minor child of divorced parents.

McKenna, then a minor, was obviously dependent upon both of her parents for support (thankfully this has never been an issue following the divorce). So that factor does not weigh in either direction. McKenna also has her own room at both locations. However, while she has some personal belongings at both homes, the majority of her stuff/clothes are kept at her mom's house, and she will transfer them to her dad's when she visits over there. **Exhibit B at pgs. 35-38**. This factor, thus, would weigh in favor of her mom's house.

That all being said, every other aspect of McKenna's life before the subject incident, and the actions of the parties after the incident, weigh in favor of McKenna's mother's home, and not her father, Appellee Cory Frownfelter. As noted previously, McKenna uses her mom's address for medical purposes, on file at school, and on her driver's license. **Exhibit G at pgs. 79-82**. Any mail McKenna may receive, though limited given her age, goes to her mom's address. **Id.; Exhibit B at pg. 39.** McKenna's also is listed under her mom's addresses and as a dependent of her mom for tax purposes. **Exhibit G at pg. 87.**

RECEIVED by MSC 4/7/2025 3:04:26 PM

In addition to the above uses of an address, various aspects of McKenna's life point in favor her mom's home over her dad. McKenna is on her mom's gym membership. **Id. at pg. 78.** She is on her mom's cell phone plan. **Id. at pgs. 79-82.** Her mom is on her bank account, while her father is not. **Id.** McKenna, once she began driving, was put on her mother's car insurance, not her father's. **Id. at pg. 87**. Moreover, after the subject collision, McKenna stayed 100% of the time at her mother's home while she recovered from the severe and debilitating injuries she sustained. **Id. at pg. 78**. McKenna's mom's home was modified in ways to accommodate McKenna and her needs following this collision, her father's home was not. **Id. pg. 66; Exhibit C at pg. 32**. Her mom was with her at essentially every doctor appointment and treatment session following this collision, while her father took her only one appointment in August 2021. **Exhibit G at pg. 59; Exhibit C at pgs. 24-25.**

Appellant is confident that Appellee Esurance will be able to provide this Court with alternate meanings of the word "resident" that would qualify McKenna to be considered same with her dad. That same argument was explored under a similar situation in *Vanguard* and rejected, however. Appellant has provided at least two acceptable applications of the undefined term "resident" in the at-issue policy of insurance that would provide Appellee Cory Frownfelter with the full $250,000 per person Liability Coverage with respect to McKenna's claims that he contracted for. As the law of this State makes clear, this Court must construe this ambiguous policy language in a way that provides coverage, and in this case that is to find McKenna to NOT be a "resident" of Appellee Cory Frownfelter.

C. The Court of Appeals erroneously held Appellant to have been Domiciled with Appellee Cory Frownfelter at the time of the subject motor vehicle collision

Appellant stands by its position that she was not a "resident" of Appellee Cory Frownfelter's household at the time of the subject motor vehicle collision as that term is used in

RECEIVED by MSC 4/7/2025 3:04:26 PM

Appellee Esurance's policy of insurance. Both due to the parties failing to contract for Appellant to be considered a "resident" despite having the opportunity to do so, and also due to the ambiguity in the contract in failing to define "resident." This position is regardless of if Appellant is deemed to have been "domiciled" at Appellee Cory Frownfelter's home when this collision took place.

Nonetheless, if this Court finds that Appellant was actually domiciled with her mother at the time of this collision, and not Appellee Cory Frownfelter, the arguments presented above would only be strengthened.

RELIEF REQUESTED

With respect to Docket No. 366118, Plaintiff/Appellant requests that this Court vacate the Court of Appeals opinion, and remand this matter back to the Circuit Court with the following instructions:

- That Appellant McKenna Frownfelter was "domiciled" as a matter of law with her mother, Stephanie Lawrence, at the time of the subject motor vehicle collision.

- That Defendant/Appellee Auto-Owners, as the insurer of Stephanie Lawrence, is the insurer highest in the order of priority for the payment of PIP benefits pursuant to MCL 500.3114(1).

With respect to Docket No. 366120, Plaintiff/Appellant requests that this Court vacate the Court of Appeals opinion, and remand this matter back to the Circuit Court with the following instructions:

- That Appellant McKenna Frownfelter was not a "resident" of Appellee Cory Frownfelter at the time of the subject collision under the terms of Appellee Esurance's policy of insurance, as the Application for Insurance establishes as a matter of law that the parties did not agree, or intend to agree, to insure Appellant as a "resident" of the household.

- That, under the facts and circumstances of this case, the term "resident" in Appellee Esurance's policy of insurance issued to Appellee Cory Frownfelter is ambiguous, and the exclusionary clause must be construed against the drafter and in favor of coverage.

- That Appellee Esurance is required, under its policy of insurance, to provide Appellee Cory Frownfelter with up to $250,000 of Bodily Injury Liability coverage as it relates to the claims of Appellant McKenna Frownfelter stemming from the subject January 8, 2020 motor vehicle collision.

WORD COUNT

The word count for the brief is 11,604.

Respectfully Submitted,
SMDA, P.C.

/s/ Phillip S. Serafini
PHILLIP S. SERAFINI (P45085)
SEAN M. SERAFINI (P86251)
44444 Mound Road, Suite 100
Sterling Heights, MI 48314
(586) 264-3756

DATED: April 4, 2025

RECEIVED by MSC 4/7/2025 3:04:26 PM