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STATE OF MICHIGAN

IN THE SUPREME COURT

MCKENNA L. FROWNFELTER,

Plaintiff/Appellant,

v.

Supreme Court No. 168356
COA No.: 366118
Case No. 2020-184089-NF
Hon. Kwame L. Rowe

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant/Appellee.

And

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,

Third-Party Plaintiff/Appellee,

v.

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

Third-Party Defendant/Appellees

**APPELLEE ESUARNCE PROPERTY AND CASUALTY INSURANCE COMPANY'S RESPONSE TO APPEALLANT MCKENNA FROWNFELTER'S APPLICATION FOR LEAVE TO APPEAL**

---

MCKENNA L. FROWNFELTER,

Plaintiff/Appellant,

v.

COA No.: 366120
Case No. 2022-192235-NI
Hon. Kwame L. Rowe

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

Defendants/Appellees.
_____/

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**APPELLEE ESUARNCE PROPERTY AND CASUALTY INSURANCE COMPANY'S RESPONSE TO APPELALLANT MCKENNA FROWNFELTER'S APPLICATION FOR LEAVE TO APPEAL**

***ORAL ARGUMENT REQUESTED***

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**The Trial Court and Court of Appeals did not commit reversible error when it ruled that, under the terms of the Esurance Policy, Plaintiff/Appellant Frownfelter was a "resident" of Defendant/Appellee Corey Frownfelter at the time of the January 8, 2020 motor vehicle accident which reduced the available policy limit from $250,000.00 per person to $20,000.00 per person in accordance with the "step-down" provision of the Esurance Policy. Therefore, Leave to Appeal should be denied**……21

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## STATEMENT OF JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Plaintiff/Appellant, McKenna Frownfelter, seeks leave to appeal the Opinion of the Court of Appeals in *Frownfelter v. Esurance Prop. And Cas. Ins. Co., et. al.*, (Mich. Ct. App. Docket Nos. 366118 and 366120, unpublished February 24, 2025).

Relevant to Docket No. 366118, Defendant/Appellee Esurance requests that this opinion be affirmed, and that this Court find as a matter of law that Plaintiff/Appellant Frownfelter was "domiciled" with her father, Corey Frownfelter, at the time of the subject accident for purposes of first-party no-fault benefits pursuant to MCR 500.3101 et. seq.

Relevant to Docket No. 366120, Defendant/Appellee Esurance requests that this opinion be affirmed, and that this Court find that Plaintiff/Appellant was a "resident" of Defendant/Appellee Corey Frownfelter's household as a matter of law per the terms of the contract of automobile insurance issued by Defendant/Appellee Esurance. Further, Defendant/Appellee Esurance requests that this opinion be affirmed as to the applicability of the family "step-down" provision in Defendant/Appellant Esurance's contract of insurance with Defendant/Appellant Corey Frownfelter.

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

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## QUESTIONS PRESENTED BY DOCKET NO. 366118

I. Was Plaintiff/Appellant McKenna Frownfelter "domiciled" with her father, Corey Frownfelter, at the time of the January 8, 2020 motor vehicle accident?

| | |
|---|---|
| Plaintiff/Appellant says: | No |
| Defendant/Appellee Esurance says: | Yes |
| Trial Court says: | Yes |
| Court of Appeals says: | Yes |

II. Was the Custody Order between Corey Frownfelter and Stephanie Lawrence dispositive as to the domicile of Plaintiff/Appellant McKenna Frownfelter at the time of the subject motor vehicle accident?

| | |
|---|---|
| Plaintiff/Appellant says: | No |
| Defendant/Appellee Esurance says: | Yes |
| Trial Court says: | Yes |
| Court of Appeals says: | Yes |

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## QUESTIONS PRESENTED BY DOCKET NO. 366120

I. Was Plaintiff/Appellant McKenna Frownfelter a "resident" of Defendant/Appellee Corey Frownfelter' household at the time of the subject accident pursuant to the terms of the automobile insurance contract between Defendant/Appellee Esurance and Defendant/Appellee Corey Frownfelter?

| | |
|---|---|
| Plaintiff/Appellant says: | No |
| Defendant/Appellee Esurance says: | Yes |
| Trial Court says: | Yes |
| Court of Appeals says: | Yes |

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

| | |
|---|---|
| Plaintiff/Appellant says: | Yes |
| Defendant/Appellee Esurance says: | No |
| Trial Court says: | No |
| Court of Appeals says: | No |

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## INTRODUCTION

This appeal concerns a priority dispute between four (4) insurers regarding payment of first-party no-fault (hereinafter "PIP") benefits and a policy language interpretation for a "step-down provision" for Uninsured/Underinsured motorist benefits following a January 8, 2020 motor vehicle accident ("the Accident"). The sole issues in this appeal are the domicile and residency, on the date of the Accident, of Plaintiff/Appellant McKenna Frownfelter (hereinafter "Plaintiff").

***Plaintiff/Appellant's Domicile***

At the time of the Accident, Plaintiff was a minor living part of the time with her father, Corey Frownfelter ("Mr. Frownfelter") and part of the time with her mother, Stephanie Lawrence ("Ms. Lawrence"), based, in part, on a Judgment of Divorce that awarded joint physical and legal custody to her parents. The Judgment of Divorce left the issue of parenting time to the discretion of Plaintiff's parents.

The Trial Court found that the Judgment of Divorce controlled for purposes of domicile, finding that Plaintiff's domicile shifted to the residence of the parent where she was currently living, relying on Michigan Supreme Court's ruling in *Grange Ins. Co. v. Lawrence*, 494 Mich. 475, 835 NW2d 363 (2013), specifically footnote 78 which set forth that a minor's domicile would shift to the parent the child is living with if the custody order grants joint physical custody and an equal "50/50" division of physical custody. The trial rejected or failed to consider this Court's ruling in *Corbin v. Meemic Ins. Co.*, 340 Mich. App. 140 (2022), wherein it was held that if there was no established primary custodial parent or a fixed parenting time schedule in the custody order, the custody order was not dispositive on the issue of domicile and the child's domicile must be determined based on the framework set forth in *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.

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App. 675; 333 N.W.2d 322 (1983). The Trial Court correctly found that Plaintiff was domiciled with her father on the date of loss. This decision was affirmed by the Court of Appeals.

***Plaintiff/Appellant's Residency***

Plaintiff brought an action pursuant to MCL 500.3135 alleging that her brother, Hunter Frownfelter, was negligent in causing her injuries and her father, Mr. Frownfelter, was liable for Hunter's[1] negligence pursuant to MCL 457.401 as the owner of the vehicle. Mr. Frownfelter had procured a policy of insurance, Policy No. PAMI-007954837 (hereinafter "Esurance Policy") through Esurance Property and Casualty Insurance Company (hereinafter "Esurance") to cover the vehicle involved in the Accident. The Esurance Policy contains a "step-down" provision which reduced the policy limits from $250,000.00 per person/$500,000.00 per occurrence to minimum state limit of $20,000.00 per person/$40,000.00 per occurrence[2] if the claimant was an insured under the terms of the Esurance Policy. If Plaintiff was a resident of Mr. Frownfelter's household, she would be an insured under the terms of the Esurance Policy and the step-down provision would apply.

The Trial Court ruled that Plaintiff was a resident of Mr. Frownfelter's household, triggering the step-down provision which reduced the liability coverage available to indemnify Mr. Frownfelter to $20,000.00/$40,000.00. This decision was affirmed by the Court of Appeals.

## STATEMENT OF FACTS

### a. Accident

The underlying lawsuit seeking PIP and Uninsured/Underinsured motorist benefits arises out of a motor vehicle accident that occurred on January 8, 2020 (hereinafter "Accident"). Plaintiff was the back seat passenger of the 2002 Ford Explorer ("Involved Vehicle") being operated by her

[1] Plaintiff did not bring suit against Hunter, who was in the armed services at the time suit was filed.
[2] At the time of the accident, MCL 500.3009(1)(a) set the minimum compulsory limits at $20,000.00 per person/$40,000.00 per occurrence for an "automobile liability policy or motor vehicle liability policy."

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brother, Hunter Frownfelter. The Involved Vehicle was owned by Mr. Frownfelter. According to the police investigative report, the Involved Vehicle was traveling on Rood Road in Holly Township, Michigan when Hunter Frownfelter lost control, spun out and struck a tree. No other vehicles were noted as being involved in the accident. **(Exhibit A, Police Report)**. Plaintiff sustained injuries requiring medical treatment as a result of the accident.

**b. Domicile**

**i. The Judgment of Divorce/Custody Order**

On June 7, 2011, Ms. Lawrence and Mr. Frownfelter divorced and a Judgment of Divorce was entered in the Genesee County Circuit Court. **(Exhibit B, Judgment of Divorce)**. Along with the other terms of the divorce, the Judgment of Divorce set forth the terms of custody regarding Ms. Lawrence and Mr. Frownfelter's minor children. The Judgment of Divorce states:

**CUSTODY**

**IT IS FURTHER ORDERED AND ADJUDGED** that the Plaintiff and the Defendant shall have joint legal custody of the minor children, to wit: Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004).

---

**PHYSICAL CUSTODY**

**IT IS FURTHER ORDERED AND ADJUDGED** that the Plaintiff and the Defendant shall have joint physical custody of the minor children, **Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004)**, until the minor children attains the age of eighteen (18) years. or until the children attains the age of nineteen (19) years and six (6) months (19 ½) of age if the child is residing with the payee and regularly attending high school on a full time basis with the reasonable expectation of completing sufficient credits to graduate from high school whichever is later or until further order of the Court.

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**PARENTING TIME**

**IT IS FURTHER ORDERED AND ADJUDGED** that the parties shall have parenting time with the minor children, to wit: Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004) herein at such times and places as shall be agreed upon by the parties.

---

**(Exhibit B)**.

**ii. Parenting Time**

On the date of loss, Plaintiff resided with her mother, Ms. Lawrence, part of the time and with her father, Mr. Frownfelter, part of the time.

***a. Custody Arrangement – Stephanie Lawrence***

Ms. Lawrence testified that the custody arrangement following the divorce consisted of Monday to Monday, alternating weeks with alternating holidays which occurred for several years. **(Exhibit C, Stephanie Lawrence Deposition Transcript, pp. 20-21)**. However, at the time of the accident, Plaintiff was spending approximately seventy-five percent (75%) of her time with Ms. Lawrence and twenty-five percent (25%) of her time with Mr. Frownfelter.

> Q. So I'm going to get into some details about that 24 if you're okay with it, okay? All right. First off, when you say 50/50, was there -- were there particular schedules such as you had the kids one week and Corey had them the next week? Or they were every other weekend and holidays? How was it split?
>
> A. Originally it was Monday to Monday, week on and week off. That's how we had originally set it up. Along with the holiday alternating years, just like, you know, the normal standard court, but that -- that wasn't the case. I'm the mom, so school stuff, doctor stuff, kids sick, needing care, you know, she was at my house more than at Corey's.
>
> Q. Okay.
>
> A. The day of the accident she was -- she spent the night at Corey's.

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> Q. Gotcha. So leading -- so I guess within the six months leading up to the accident, if you can remember, how much time was McKenna at your residence versus Corey's residence?
>
> A. I would say an average of she was at my house about 75 percent of the time and his 25.
>
> Q. All right. And then so tell me about -- McKenna lives -- you had her one week on, one week off. And then when the accident happened you said she 18 was at your house about 75 percent of the time?
>
> A. No, prior to the accident she was physically at my 20 house about 75 percent of the time. After the 21` accident for about three months she was at my 22 house 100 percent of the time. And then still to this day it's about, you know, 75/25.

**(Exhibit C, pp. 20-21, 78)**.

Plaintiff had her own room at Ms. Lawrence's home, her own bed and her own dresser. **(Exhibit C, p. 79)**. Plaintiff used Ms. Lawrence's address for school. Plaintiff is on Ms. Lawrence's cellular phone plan. Plaintiff's license lists Ms. Lawrence's home as Plaintiff's residence. Important documentation is mailed to Ms. Lawrence's home. **(Exhibit C, pp. 79-80)**. Ms. Lawrence is named on Plaintiff's bank account to have access. **(Exhibit C, pp. 80-81)**. Ms. Lawrence has always claimed Plaintiff on her taxes as a dependent and when Plaintiff began driving, Ms. Lawrence placed Plaintiff on her automobile insurance. **(Exhibit C, p. 87)**. This arrangement did not change through any amendment to the Judgment of Divorce or custody order. **(Exhibit C, pp. 21-22)**.

***b. Custody Arrangement – Corey Frownfelter***

Mr. Frownfelter is a hardworking man who works from 7:00 a.m. until between 6:00 p.m. and 8:00 p.m. most days, six days per week. **(Exhibit D, Corey Frownfelter's Deposition Transcript, pp. 9-10)**. There are also occasions where he would work until midnight and not have days off for three weeks. **(Exhibit D, pp. 9-10)**. Mr. Frownfelter confirmed the terms of the

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custody arrangement that Ms. Lawrence had testified to. **(Exhibit D, pp. 14-15)**. He also confirmed that at some point after the divorce and prior to the Accident, Plaintiff began living with her mother more often, primarily due to Mr. Frownfelter's work schedule. **(Exhibit D, p. 15)**.

When Plaintiff was scheduled to visit Mr. Frownfelter for his scheduled week in the years prior to the accident, she would stay at his home two (2) to four (4) days per week. **(Exhibit D, p. 35)**. This arrangement had started at least a few years before the Accident. **(Exhibit D, p. 36)**. Mr. Frownfelter estimated Plaintiff was spending between sixty and sixty-five percent (60-65%) of her time at Ms. Lawrence's home prior to the Accident. **(Exhibit D, p. 36)**. No change to the Judgment of Divorce or custody arrangement was made in writing. Mr. Frownfelter and Ms. Lawrence agreed to the arrangement verbally. **(Exhibit D, p. 38)**. Plaintiff does not receive mail at Mr. Frownfelter's home, except for possibly report cards. **(Exhibit D, pp. 36-37)**.

***c. Custody Arrangement – Plaintiff***

Plaintiff also confirmed the above custody arrangement between her parents in her own deposition. **(Exhibit E, Plaintiff's Deposition Transcript, pp. 8-9)**. Specifically, Plaintiff confirmed that she would spend her full week with Ms. Lawrence and spend three (3) to four (4) days of her allotted week with Mr. Frownfelter. **(Exhibit E, p. 9)**. She also confirmed that, at the time of the Accident, the arrangement between Ms. Lawrence and Mr. Frownfelter would be that Plaintiff would live with Ms. Lawrence seventy-five percent (75%) of the time. **(Exhibit E, p. 8)**. Plaintiff had her own room at Mr. Frownfelter's home. She had a dresser where she kept clothing and kept toiletries there for her use. She also had her own TV and a desk. **(Exhibit E, pp. 35-36)**.

***d. No-Fault Insurance***

On the date of loss, the Involved Vehicle was covered by a policy of no-fault insurance issued by Esurance to Mr. Frownfelter, Policy No. PAMI-007954837. **(Exhibit F, Esurance Policy)**. On the date of the accident, Mr. Frownfelter also maintained an active policy of

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automobile insurance with Progressive Michigan Insurance Company (hereinafter "Progressive"), Policy No. 924966465AA211810 **(Exhibit G, Progressive Declarations Page)** and Farmers Insurance Company (hereinafter "Farmers"), Policy No. 196048608. **(Exhibit H, Farmers Declarations Page)**.

On the date of loss, Ms. Lawrence maintained an active policy of automobile insurance with Auto-Owners Insurance Company (hereinafter "Auto-Owners"), Policy No. 51-755-049-00.

***e. Residency***

On the date of loss, the Involved Vehicle was covered by a policy of no-fault insurance issued by Esurance to Mr. Frownfelter **(Exhibit F)**. The Policy states, in pertinent part:

**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 F, bates stamp p. 0009).**

There is no dispute that Mr. Frownfelter was an "insured" entitled to coverage. Under the Esurance Policy, "**you**" is defined as the named insured(s) shown on the Declarations Page and your spouse if a resident of the insured's household. **(Exhibit F, bates stamp p. 0007).** "**Family member**" is defined as any person related to "**you**" by blood, marriage, or adoption who is a resident of "**your**" "**household**." **(Exhibit F, bates stamp p. 0008).** "**Household**" consists of "**you**", a "**family member**" and any domestic partners, unrelated roomers, boarders, live-in employees and other people who are not related to "**you**", who live together in the same housing unit. **(Exhibit F, bates stamp p. 0008).**

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Relevant to this matter, the Esurance Policy contained a step-down provision as follows:

> 3. 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.

**(Exhibit F, bates stamp p. 0012).**

## PROCEDURAL HISTORY FOR DOCKET NO. 366118

Plaintiff filed this action seeking PIP benefits against Esurance on October 16, 2020. On May 26, 2021, Esurance filed a Third-Party Complaint against Auto-Owners, Progressive and Farmers. In the Third-Party Complaint, Esurance alleged that Auto-Owners was a higher priority insurer for payment of Plaintiff's PIP benefits. In the alternative, if Plaintiff was determined to be domiciled with Mr. Frownfelter, Esurance alleged that Progressive and Farmers were equal in priority to Esurance.

Following discovery, on December 3, 2021, Esurance filed its Motion for Summary Disposition arguing that Plaintiff was domiciled with her mother, Ms. Lawrence, at the time of the accident, resulting in Auto-Owners being the highest priority insurer for payment of Plaintiff's PIP benefits as Ms. Lawrence's no-fault automobile insurer pursuant to MCL 500.3114(1). **(Exhibit I, Esurance's Motion for Summary Disposition)**.

Auto-Owners responded, arguing that the custody provisions in the Judgment of Divorce controlled as to the issue of "domicile" of Plaintiff resulting in Esurance, Progressive and Farmers being the highest priority insurers for payment of Plaintiff Appellant Frownfelter's PIP benefits. Auto-Owner's requested summary disposition pursuant to MCR 2.116(I)(2). **(Exhibit J, Auto-Owner's Response to Esurance's Motion for Summary Disposition)**.

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On February 24, 2022, the Oakland County Circuit Court heard arguments regarding Esurance's Motion for Summary Disposition. The Trial Court denied Esurance's Motion for Summary Disposition but granted Summary Disposition to Auto-Owners pursuant to MCR 2.116(I)(2), finding that Plaintiff was domiciled with her father, Mr. Frownfelter, on the date of loss. **(Exhibit K, Order Denying Esurance's Motion for Summary Disposition)**. Specifically, the Trial Court found that the Judgment of Divorce split custody of the minor children equally between Mr. Frownfelter and Ms. Lawrence. As a result, Plaintiff's domicile shifted between the homes of Mr. Frownfelter and Ms. Lawrence depending on where Plaintiff was living on that particular date. **(Exhibit K)**. Plaintiff was living with Mr. Frownfelter on the date of loss. Therefore, the Trial Court determined Esurance, Progressive and Farmers were the highest priority insurers for payment of Plaintiff's PIP benefits.

Based upon this determination, Auto-Owners was dismissed from the case. The remaining parties entered into a Stipulated Judgment regarding payment of Plaintiff's PIP benefits. **(Exhibit L, Stipulated Judgment)**. This Stipulated Judgment preserved the parties' ability to appeal the Trial Court's ruling regarding Esurance's Motion for Summary Disposition for this Court to determine the proper domicile of Plaintiff on the date of loss, January 8, 2020.

## PROCEDURAL HISTORY FOR DOCKET NO. 366120

Plaintiff filed her declaratory action on January 25, 2022 seeking non-economic damages for injuries sustained in the Accident from her father, Mr. Frownfelter, as the owner of the Involved Vehicle. Her Complaint included a request for declaratory judgment against Esurance that the "step-down" provision within the Esurance Policy did not apply. If the "step-down" provision was inapplicable, the coverage available to Mr. Frownfelter would include $250,000.00 per person Bodily Injury Liability coverage. If the "step-down" provision is applicable to Plaintiff, the coverage would be reduced to $20,000.00 per person Bodily Injury Liability coverage.

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On March 9, 2022, Plaintiff filed a Motion for Summary Disposition as to the application of the "step-down" provision within the Esurance Policy. Plaintiff argued that she was not a resident of Mr. Frownfelter on the date of loss pursuant to the terms of the Esurance Policy. Therefore, Mr. Frownfelter was to be afforded $250,000.00 in Bodily Injury Liability coverage through his Esurance Policy. Esurance responded arguing that Plaintiff was indeed a resident of Mr. Frownfelter on the date of loss, as she had been staying with Mr. Frownfelter at the time of the accident pursuant to the Judgement of Divorce/Custody Order and the Oakland County Circuit Court had determined that Plaintiff was domiciled with Mr. Frownfelter at the time of the accident.

On September 8, 2022, the Oakland County Circuit Court heard arguments regarding Plaintiff's Motion for Summary Disposition and correctly denied said Motion, finding that Plaintiff was a resident of Mr. Frownfelter on the date of loss within the meaning of the Esurance Policy. As a result, the "step-down" provision applied to the accident and Mr. Frownfelter's coverage was reduced to $20,000.00 per person in Bodily Injury Liability coverage for Plaintiff's motor vehicle accident.

On September 29, 2022, Plaintiff filed a Motion for Reconsideration of the trial court's denial of her Motion for Summary Disposition, arguing that the trial court erred in determining that Plaintiff was a resident of Mr. Frownfelter on the date of loss. Plaintiff also argued that the Esurance Policy was ambiguous as it applied to the term "resident," requiring the trial court to rule in favor of Plaintiff. Again, the trial court correctly denied Plaintiff's Motion for Reconsideration on December 22, 2022.

On April 24, 2023, the parties entered into a Stipulated Judgment in the amount of $250,000.00 in favor of Plaintiff against Mr. Frownfelter, but only following Plaintiff's appeal of the trial court decision regarding the "step-down" provision.

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The Court of Appeals affirmed both Trial Court decisions in an opinion and order dated February 24, 2025. **(Exhibit M – Court of Appeals Opinion and Concurrence)**.

## ARGUMENT

### I. The Trial Court and Court of Appeals correctly decided that McKenna Frownfelter was "domiciled" with her father, Corey Frownfelter, as a matter of law, on the date of loss, January 8, 2020. Therefore, Leave to Appeal should be denied.

MCL 500.3114(1) states:

> Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

As indicated, in determining Plaintiff's domicile, the Trial Court relied on *Grange.* In *Grange*, Edward Lawrence and Laura Rosinski were married in 1997. They had two daughters, Katelyn and Josalyn. Lawrence and Rosinski divorced in 2005. Rosinski remained in the marital home and Lawrence moved into his parents' home, both located in Muskegon, Michigan. The judgment of divorce granted Lawrence and Rosinski joint legal custody of Josalyn and Katelyn, but Rosinski was given "primary physical custody" of their daughters. The judgment of divorce provided Lawrence with frequent parenting time, including alternating weekends, Wednesday evenings, alternating holidays, liberal phone contact and liberal parenting time when Rosinski was unavailable. The Judgment of Divorce further provided:

> A parent whose custody or parenting time of a child is governed by this order, shall not change the legal residence of the child except in compliance with [MCL 722.31], which prohibits moving a child out of the State of Michigan or greater than 100 miles from the non-custodial parent without a court order. The party awarded custody must notify the Friend of the Court, in writing, immediately, when the minor child is moved to another address.

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On September 24, 2009, eight-year-old Josalyn was a passenger in a car owned and driven by Rosinski when another driver ignored a stop sign and hit Rosinski's vehicle, resulting in fatal injuries to Josalyn. Rosinski and Lawrence were appointed as joint personal representatives of Josalyn's estate.

After the accident, Rosinski and Lawrence submitted claims for PIP benefits to their respective insurers. Rosinski was the named insured on an automobile insurance policy issued by Farm Bureau General Insurance Company of Michigan (hereinafter "Farm Bureau"); Lawrence was the named insured on an automobile insurance policy issued by Grange Insurance Company (hereinafter "Grange").

Subsequently, Farm Bureau asserted that Grange was in the same order of priority for the payment of PIP benefits because, in its view, Josalyn was "domiciled" in both parents' homes pursuant to MCL 500.3114(1). Farm Bureau thus sought pro rata reimbursement of benefits pursuant to MCL 500.3115(2) from Grange. Grange denied the claim and filed a complaint for declaratory relief, seeking a declaration that Josalyn was domiciled with Rosinski, not Lawrence, at the time of the accident. Grange asserted that it was not required to reimburse Farm Bureau for any of the PIP benefits that Farm Bureau had paid because Josalyn was not domiciled with Lawrence at the time of the accident as required by MCL 500.3114(1) and Michigan law does not recognize dual domiciles. Grange further asserted that it was not obligated to pay PIP benefits for Josalyn's injuries because Josalyn was not a named insured under its policy.

Both insurance companies filed motions for summary disposition pursuant to MCR 2.116(C)(10). The Trial Court granted summary disposition to Farm Bureau applying the factors that are traditionally used to determine domicile under the no-fault act as set forth in *Workman v Detroit Automobile Inter-Insurance Exchange* 404 Mich 477, 496-497 (1979) and *Dairyland Insurance Co v Auto-Owners Insurance Co.* 123 Mich App 675, 682 (1983). The Trial Court

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concluded that Josalyn was domiciled with both parents at the time of the accident. The Trial Court ordered Grange to reimburse Farm Bureau for 50 percent of the PIP benefits Farm Bureau had paid and 50 percent of Farm Bureau's processing expenses.

Grange appealed to the Court of Appeals, which affirmed. The Court of Appeals rejected Grange's argument that Michigan law does not recognize dual domiciles for a minor child of divorced parents because "[t]he Michigan Supreme Court has . . . determined . . . for purposes of the no-fault act, [that] the terms 'domicile' and 'residence' are 'legally synonymous'" and:

> nothing in MCL 500.3114(1) . . . limits a minor child of divorced parents to one domicile or defines domicile as a 'principal residence.'" After applying the domicile factors from *Workman* and *Dairyland*, the Court of Appeals concluded that the undisputed evidence established that Josalyn resided with both parents. Regarding the effect of the judgment of divorce, which established primary physical custody with Rosinski, the Court of Appeals stated, "that order does not change the fact that the evidence showed that Josalyn actually resided with both her parents, which is the relevant inquiry under the no-fault act." *Grange*, p. 485.

Grange appealed to the Michigan Supreme Court. Following a comprehensive analysis of legislative intent and statutory construction, the *Grange* Court determined that a child of divorced parents, who has more than one legal residence, may have only a single domicile that continues until the child acquires a different domicile. *Grange* at 496.

In analyzing the domicile of a child, the Court stated:

> Regarding children, a child's ability to acquire a new domicile is limited in ways that an adult's ability to acquire a domicile is not. This is because, for purposes of our legal system, an unemancipated child, unlike a competent adult, lacks the legal capacity to make legally binding determinations for him or herself and, therefore, a child lacks the *capacity* to acquire a domicile of choice. Thus, while intent is critical for determining the domicile of an adult, a child's intent regarding domicile is simply irrelevant, and the traditional factors applied in determining an adult's domicile are likewise irrelevant. Instead, the child's domicile is determined by reference to the domicile of his or her parents. For instance, our common law has recognized that when a child is born, the child acquires a

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> domicile of origin, which is that of his father. The child's domicile of origin remains the child's domicile until a new domicile is acquired through the actions of the child's parents or until that point in time when the minor, either through emancipation or by reaching the age of majority, can acquire a domicile of choice. *Grange* at 502-503.

With that in mind, the *Grange* Court analyzed the domicile of a child with respect to child custody agreements within the Child Custody Act and came to the following conclusion:

> We thus believe that our prior conclusion—that in the instance where a child's parents are divorced, the family court's custody order entered pursuant to the Child Custody Act establishes the child's domicile by operation of law and is determinative of the child's domicile for purposes of the no-fault act—is consistent with the Child Custody Act itself. This holding gives the best effect to the provisions of the Child Custody Act, which entrusts courts with making custody determinations in a child's "best interests," including those related to living arrangements. Any contrary rule could foster noncompliance with custody orders entered under the Child Custody Act by implicitly sanctioning conduct that might establish a minor child's domicile in contravention of a controlling custody order. Instead, adherence to the rule that the custody order controls the determination of a minor child's domicile encourages compliance with legally binding court orders and statutory law.
>
> 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. Where a court order sets a child's custody or domicile by operation of law, the factual circumstances or the parents' or child's intentions are irrelevant to the domicile determination. Rather, the appropriate analysis is focused on the terms of the custody order. In directing courts to abide by the custody order, we are cognizant that the Child Custody Act draws a distinction between physical custody and legal custody: Physical custody pertains to where the child shall physically "reside," whereas legal custody is understood to mean decision-making authority as to important decisions affecting the child's welfare. Because the focus under our common law with respect to domicile mostly concerns a question of location and the same is true with respect to a child's domicile in the instance that the parents are divorced, the relevant consideration is which parent has *physical custody* under the terms of the order. By way of example, a child's domicile will be with a parent if the custody order

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> grants that parent primary or sole physical custody, or expressly establishes domicile with that parent through a domicile provision, regardless of whether the parents share joint legal custody. *Grange* at 511-512.

In applying this determination to the facts in *Grange*, the Court ruled that Josalyn was domiciled with Rosinski pursuant to the divorce decree, as Roskinski was granted primary physical custody. As such, Grange was not in the order of priority for payment of PIP benefits.

In this case, Plaintiff is a child of divorced parents. A Judgment of Divorce was entered between Ms. Lawrence and Mr. Frownfelter on June 7, 2011, which the parties testified has not been modified. **(Exhibit B); (Exhibit C, pp. 21-22); (Exhibit D, p. 35)**. The Judgment of Divorce grants both parents joint legal and joint physical custody. As indicated, parenting time is specifically described in the Judgment of Divorce:

**PARENTING TIME**

**IT IS FURTHER ORDERED AND ADJUDGED** that the parties shall have parenting time with the minor children, to wit: Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004) herein at such times and places as shall be agreed upon by the parties.

---

**(Exhibit B)**.

In *Grange*, footnote 78 states:

> 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 potentially perplexing situation because although an 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

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> 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 *alternately 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. Such a rule is consistent with *In re Volk* and retains our traditional understanding that a person can only have one domicile at a time. **(Emphasis added)**

This footnote is dicta as the issue of a completely equal custody arrangement was not "presently before [the] court." However, the Trial Court relied on *Grange* to determine that the Judgement of Divorce granted equal parenting time and custody.

Just weeks before the Trial Court heard arguments in this matter, this Court issued its opinion in *Corbin*. In *Corbin*, the minor plaintiff was injured in an automobile accident. Plaintiff's parents shared joint legal and physical custody of plaintiff pursuant to a consent order entered in 2010. At the time of the accident, plaintiff was living with her mother who lacked no-fault automobile insurance. As a result, plaintiff's mother filed an application for no-fault benefits on plaintiff's behalf with the Michigan Assigned Claims Plan ("MACP"), which then assigned the claim to Farm Bureau.

Plaintiff, through her father as her next friend, filed a lawsuit for first-party no-fault benefits against Farm Bureau and Meemic. Plaintiff argued she was the resident relative of her great-grandmother who was insured by Meemic and alternatively argued that Farm Bureau was liable for her benefits after having been assigned the plaintiff's claim by the MACP. Farm Bureau

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moved for summary disposition. Meemic filed a countermotion, contending that, under *Grange*, because a custody order was in place that granted joint physical and legal custody of plaintiff to her parents, her domicile for no-fault purposes was with whichever parent had actual custody at the time of the accident. The Trial Court agreed and dismissed Meemic from the case. An appeal from Farm Bureau followed arguing that the Trial Court's application of *Grange* was wrong and its treatment of the consent order as conclusive evidence of plaintiff's domicile was inappropriate.

After a lengthy discussion of *Grange*, which involved two plaintiffs, the *Corbin* Court noted that the *Grange* Court determined domicile based on the language of the custody order. Specifically, the custody orders in the consolidated *Grange* cases granted primary physical custody to one parent. This Court analyzed Footnote 78 in *Grange*, which is discussed above.

In its analysis of the custody order before the Court in *Corbin*, the panel noted there was no established primary custodial parent or a fixed parenting time schedule. The custody order stated:

> CUSTODY
>
> The parties shall have joint legal and physical custody of said minor child(ren) until further order of the Court.
>
> * * *
>
> DOMICILE
>
> The domicile or residence of the child(ren) may not be moved from Michigan without the approval of this Court and the custodian shall promptly notify the Court when the child is moved to another address.
>
> A party whose custody or parenting time of a child is governed by this Order shall not change the legal residence of the child, except in compliance with section 11 of the Child Custody Act of 1970, 1970 PA 91, MCL 722.31.
>
> A parent of a child whose custody is governed by Court order shall not change a legal residence of the child to a location that is more

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> than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued, except in compliance with section 11 of the Child Custody Act of 1970, 1970 PA 91, MCL 722.31.
>
> PARENTING TIME
>
> The non-custodial parent shall have reasonable parenting time until further order of the Court. *Corbin*, pp. 151-152.

The *Corbin* Court determined that Footnote 78 was not applicable to the facts of the case. The *Corbin* Court explained:

> As the Trial Court recognized, the order of filiation did not establish a primary custodial parent or otherwise fix a parenting time schedule. That is, plaintiff's schedule was left to her parents so long as they continued to cooperate and work together. The Trial Court nonetheless concluded that the order of filiation was dispositive, and that, pursuant to the instructions contained in footnote 78 of *Grange*, plaintiff's domicile was with whichever parent had actual custody at the time of the automobile accident.
>
> The conclusions set forth in footnote 78 do not apply to the above arrangement. The dispositive fact in *Grange* was that both of the custody orders awarded primary physical custody to one parent. *Grange*, 494 Mich at 513-515. And footnote 78 does not apply by its own terms. The *Grange* Court referred in that footnote to the unusual situation in which a custody order ***awards both joint physical custody and equal parenting time***. *Id*. at 512 n 78. "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." *Id*. (second emphasis added). ***This is not such a case, as the order of filiation left parenting time to the discretion of the parents.*** (Emphasis added)

This Court concluded that the Trial Court needed to look beyond the custody order to determine plaintiff's actual domicile, as the custody order was not dispositive. The Court stated that the Trial Court should have reverted to the multifactored analysis from *Workman* and *Dairyland* to determine plaintiff's domicile. **This analysis was directly followed by the Court of Appeals which affirmed the decision of the Trial Court**.

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In this case, Plaintiff's parents were granted equal physical and legal custody of Plaintiff and left the parameters of parenting time up to the parents. This created a 50/50 split between the parents until the relationship and circumstances evolved, without amending the Custody Order. The residency provision in the Judgment of Divorce is irrelevant to this issue as domicile is the determining factor under MCL 500.3114(1). Given the facts presented above, the trial court properly determined that Plaintiff was domiciled with Mr. Frownfelter on the date of loss.

## II. The Trial Court and Court of Appeals did not commit reversible error when it ruled that, under the terms of the Esurance Policy, Plaintiff/Appellant Frownfelter was a "resident" of Defendant/Appellee Corey Frownfelter at the time of the January 8, 2020 motor vehicle accident which reduced the available policy limit from $250,000.00 per person to $20,000.00 per person in accordance with the "step-down" provision of the Esurance Policy. Therefore, Leave to Appeal should be denied.

### a. Applicable Legal Standards

Plaintiff does not properly frame out the legal issues before this Court. Plaintiff would have the Court analyze this matter in the context of whether coverage exists and whether there is an exclusion under the policy to that coverage. What is before the Court is the question of how much coverage there is under the policy. There is no dispute that the policy provided coverage to Mr. Frownfelter. The dispute is over whether amounts in excess of the minimum compulsory limits are available to indemnify him. The issue concerns optional coverage. Plaintiff cites no case law to support her position that the step-down provision is an exclusion under the policy.[3] The step-down provision is not an exclusion, it is simply part of the contract that sets the policy limit. As such, an exclusion to coverage is not at issue.

[3] Esurance acknowledges that the step-down provision is under the exclusion section of the Esurance Policy. However, it is not an exclusion to coverage as coverage is provided at the minimum compulsory limits.

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Michigan law is clear that insurance policies are contracts and that in the absence of an applicable statute are "subject to the same contract construction principles that apply to any other species of contract." *Rory v Continental Ins Co*, 473 Mich 457, 461 (2005). Unless a contract provision violates law or one of the traditional defenses to enforceability, a court must construe and apply unambiguous contract provisions as written. *Id* at 461. The principles of construction governing other contracts apply also to insurance policies. *Arco Industries Corp v American Motorist Ins Co*, 448 Mich 395, 402 (1995). Where no ambiguity exists, a court must enforce the contract as written. *Morely v Automobile Club of Mich* 458 Mich 459 (1998).

An insurance contract expresses the intent of the parties to be bound to specific terms and in that way is no different from any other contract. *Walden General Contractors Inc v Michigan Mutual Ins Co* 227 Mich App 683, 686 (1998). Consequently, a court must determine what the parties intended by their writings and apply that intention to resolve the issues in dispute. *Id*. Michigan courts have held: "an insurance policy is an agreement between the parties in which a court must determine what the agreement was and effectuate the intent of the parties." *Auto Owners Ins Co v Churchman*, 440 Mich 560, 566 (1992). The court must look at the policy as a whole and give meaning to all terms. *Id*. Any clause in an insurance policy is valid as long as it is clear, unambiguous and not in contradiction of public policy. *Id* at 567. An ambiguity will not be created when none exists. *Id*. While linguistic ambiguities should not be construed against the contract drafter, where policy language is unambiguous, a court must enforce language as written. *McGrath v Allstate*, 290 Mich App 434, 439 (2010).

*Grange Ins. Co. of Michigan v. Lawrence*, 494 Mich 475 (2013) which analyzed the issue of domicile of a minor child of divorced parents in the context of the No-Fault Act for purposes of MCL 500.3114 priority. Generally, *Grange* stands for the proposition that when a child is living with both parents pursuant to a custody agreement, the custody agreement determines the domicile

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of the child. If the custody agreement is silent as to domicile, the Court looks to the surrounding circumstances of parenting time and living situation to determine domicile. If the custody agreement provides joint physical and legal custody and equal parenting time, domicile is determined to be the residence that the child is residing at the time of the accident.

Plaintiff relies on *Vanguard Ins. Co. v. Racine*, 224 Mich. App. 229 (1997) for the argument that because "resident" is not defined in the Esurance Policy, it is susceptible to multiple different meanings and is therefore ambiguous. However, in *Vanguard,* the Court was making a determination of whether coverage was excluded under the policy. In this case, there is coverage, the question is the *amount* of coverage. More importantly, the law regarding residence and domicile has significantly evolved since this Court's decision in *Vanguard* in 1997. Specifically, in *Vanguard,* the Court stated that the term "residence" could have two different meanings. The term could mean domicile or it could mean "relatives who periodically stay in a home indefinitely, but maintain a legal domicile at some other location during the same period." *Id*, pp. 233-234. Since *Vanguard* was issued, the Michigan Supreme Court has specifically addressed the distinction between residence and domicile in *Grange.* In *Vanguard*, the Court noted the then applicable law concerning the difference between residence and domicile, stating "usually, the terms 'residence' and 'domicile' are legally synonymous." *Id*, p. 233. The Court further stated: "A party generally has only one legal residence or domicile." *Id.*

In *Grange*, the Michigan Supreme Court clarified that residence and domicile are not synonymous. The Court ruled that while a person only has one domicile, he or she can have multiple residences. *Id*, p. 495. Indeed, the Court stated:

> Our holding thus clarifies, that to the extent that *Workman* has been understood to imply that "domicile" and "residence" retain no independent significance for the purposes of the no-fault act, such a conclusion is not valid and that "domicile" must be understood consistent with its historical underpinnings. Further, although *Workman* recognized that "domicile" and "residence" are

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> often used interchangeably by the Legislature in other contexts and, therefore described the terms as synonymous in those situations, *Workman* also explained that it is often necessary to distinguish between the terms consistent with the Legislature's intent, as in the instant case.
>
> The Court of Appeals in *Grange* therefore erred by interpreting *Workman* to mean that domicile is the equivalent of residence and that a minor child can be "domiciled" for purposes of MCL 500.3114(1) in multiple residences. Neither *Workman* nor the plain language of MCL 500.3114(1) support this conclusion. The Court of Appeals' holding in *Grange*, and Farm Bureau's adherence to that position, is plainly inconsistent with our jurisprudence regarding the meaning of "domicile" and the clear language of MCL 500.3114(1) which, as we have explained, incorporates the common-law meaning of that term. *Grange*, pp. 500-501.

The ruling in *Vanguard* was based on prior interpretations of the differences, or lack thereof, between a residence and a domicile and is therefore distinguishable from the case at bar. The "two different meanings" the *Vanguard* Court ascribed to the term "residence" are no longer valid as *Grange* clarified that the terms are not synonymous and therefore, there is no ambiguity.

Plaintiff's reliance on the recently decided case of *Mapp v. Progressive Ins. Co.*, ___ Mich. App. ___ (2023)(Docket No. 359889 and 360828) is also misplaced. *Mapp* dealt primarily with whether a no-fault automobile insurance policy may provide for greater personal protection insurance benefits than those mandated by the No-Fault Act. The *Mapp* Court ultimately determined that an automobile insurance contract could expand the no-fault benefits provided to an insured above and beyond those required by the No-Fault Act. However, the *Mapp* Court found an issue of fact as to whether plaintiff was entitled to benefits under the policy at issue, even with the expanded coverage.

In evaluating the "residence" issue, the *Mapp* Court analyzed *Grange*. Specifically, the *Mapp* Court noted:

> The *Grange* Court held that, in order to be "residing in the same household with a named insured," under the Uniform Motor Vehicle

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> 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*, 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 permanence of abode, but is often distinguished from inhabitant as not implying as great fixity or permanency of abode. [Quotation marks and citation 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 substantial time beyond mere transient physical presence.

Further, the *Mapp* Court determined that a "flexible approach should be employed in determining whether relatives are 'residing in the same household,' considering the circumstances of the living arrangement." *Mapp* at 25. In this case, there is no question that Plaintiff was residing in her father's household. Based on the testimony of Plaintiff, Ms. Lawrence and Mr. Frownfelter,

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it is clear that Plaintiff lived with Mr. Frownfelter at least twenty-five to forty percent (25% to 40%) of the time. As such, unlike the situation in *Mapp*, there is no question Plaintiff was a resident of Mr. Frownfelter's household on the date of loss.

Contrary to Plaintiff's claim that *Mapp* found the term "residence" ambiguous, the Court made no such ruling. There is no finding that the term was ambiguous. Instead, the Court set forth the above commonly accepted definitions of "residence." Given the ruling in *Grange*, it is clear that the current law is that the term "residence" is not ambiguous because it has a commonly accepted meaning as was found by the *Mapp* Court.

**b. Plaintiff was a Resident of Mr. Frownfelter's Household.**

Under the terms of the Esurance Policy, Plaintiff was a resident of Mr. Frownfelter's home on the date of the Accident. As indicated above, based on the testimony, Plaintiff clearly lived with Mr. Frownfelter twenty-five to forty percent (25% to 40%) of the time. She had a room, clothes, toiletries and possessions at his home. As Plaintiff clearly lived at Mr. Frownfelter's home at least twenty-five percent (25%) of the time, she was a resident of his household, regardless of which definition of "residence" is considered.

The Trial Court ruled Plaintiff was a resident of Mr. Frownfelter's household under the terms of the Esurance Policy based primarily on its earlier ruling in the action seeking No Fault benefits (Oakland County Circuit Court case no. 2020-184089-NF Court of Appeals No.366118)(hereinafter "PIP Action"), where it found Plaintiff was domiciled with Mr. Frownfelter at the time of the Accident because the Judgment of Divorce between Mr. Frownfelter and Ms. Lawrence provided joint physical and legal custody. Pursuant to footnote 78 in Grange, the Trial Court determined that Plaintiff's domicile shifted to the home of the parent where she was currently living. The Trial Court held that because of its prior finding that Plaintiff was domiciled with Mr. Frownfelter, Plaintiff was a resident of Mr. Frownfelter's household.

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Plaintiff has also filed an appeal of the Trial Court's ruling in the PIP Action challenging the ruling that Plaintiff was domiciled with Mr. Frownfelter. The Trial Court allegedly failed to take into account this Court's ruling in *Corbin v. Meemic Ins. Co.*, 340 Mich. App. 140 (2022) wherein this Court ruled that if the custody agreement allowed the parties to determine their own parenting time, as was the case here, the custody agreement did not control domicile. Even if this Court reverses the Trial Court with regard to the domicile issue, the Trial Court's ruling in this action was correct, albeit for different reasons. Plaintiff was clearly a resident of the households of both of her parents.

The fact that Plaintiff stayed at her mother's home more after the accident is simply irrelevant. The analysis regarding domicile and/or residence concerns the facts at the time of the Accident. Plaintiff received her driver's license eight months after the Accident, making the address on her license irrelevant. Further, she was unable to vote for more than two years after the accident, making any election laws irrelevant as well.

**c. The Agreement of the Parties.**

Plaintiff suggests that because Mr. Frownfelter failed to list Plaintiff as a resident, the parties did not intend the "step-down" provision to apply to her. Mr. Frownfelter's failure does not change the language of the Esurance Policy. Plaintiff is attempting to suggest that Mr. Frownfelter's failure to list Plaintiff should inure to his benefit by providing additional coverage. Plaintiff cannot cite any law to establish that Mr. Frownfelter's failure to disclose a household resident can benefit him.

## RELIEF REQUESTED

Defendant/Appellee Esurance requests that this Honorable Court deny Plaintiff/Appellant's Application for Leave to Appeal, affirm the Court of Appeal's decision as to

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domicile and residency, and hold that Plaintiff was domiciled with Mr. Frownfelter and was a resident of Mr. Frownfelter's household on the date of loss.

Respectfully submitted,

**MIZEROWSKI THON PARKER & DIMARCO, P.C.**

/s/ Aaron W. Hinman
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Dated: May 5, 2025

## CERTIFICATE OF COMPLIANCE

I certify that the Appellee Esurance Property and Casualty Insurance Company's Response to Appellant McKenna Frownfelter's Application for Leave to Appeal complies with the type-volume limitation set forth in MCR 7.212(B). This brief uses a 12-point proportional font (Times New Roman), and the word count, based on the word count of the word-processing system used to produce this document, for this brief is **7,946** words.

Respectfully submitted,

**MIZEROWSKI THON PARKER & DIMARCO, P.C.**

*/s/ Aaron W. Hinman*
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Dated: May 5, 2025

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**Certificate of Service**

I hereby certify that on May 5, 2025 I electronically filed and served the following with the Clerk of the Court using the Court e-filing system which will send notification of such filings to the attorneys of record in the captioned matter: Appellee Esurance Property and Casualty Insurance Company's Response to Appellant McKenna Frownfelter's Application for Leave to Appeal, Index of Exhibits, and this Certificate of Service.

/s/Cameron Dahl
Cameron Dahl, Legal Assistant