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STATE OF MICHIGAN
IN THE SUPREME COURT

MCKENNA L. FROWNFELTER,

Plaintiff/Appellant,
v.

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 Defendants/Appellees,

Michigan Supreme Court No: 168356
Court of Appeals Case No: 36618
Lower Court Judge: Kwame' L. Rowe
Lower Court Case No: 2020-184089-NF

MCKENNA FROWNFELTER,

Plaintiff/Appellant,
v.

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

Defendants/Appellees.

Court of Appeals Case No: 366120
Lower Court Judge: Kwame' L. Rowe
Lower Court Case No: 22-192235-NI

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DEFENDANT/APPELLEE/THIRD-PARTY DEFENDANT APPELLEE AUTO-OWNERS ANSWER TO PLAINTIFF/APPELLANT FROWNFELTER'S APPLICATION FOR LEAVE TO APPEAL

*****ORAL ARGUMENT REQUESTED*****

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COUNTERSTATMENT OF JURISDICTION

Defendant/Appellee agrees with Plaintiff/Appellant to the extent that this Court has jurisdiction over this matter pursuant to MCR 7.303(B)(1), if this court grants its Application for Appeal.

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COUNTER-STANDARD OF REVIEW

Plaintiff/Appellant must show that the court of appeals made a decision that was clearly erroneous and that it will cause material injustice. MCR 7.305(B)(5). Clear error exists only when the appellate court is left the definite and firm conviction that a mistake has been made. *Herald Co, Inc v Eastern Mich University Bd of Regents*, 475 Mich 463, 470; 719 NW2d 19 (2006). Here, no such error was made by the Court of Appeals.

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STATEMENT AS TO WHY LEAVE SHOULD BE GRANTED FOR 366120 AND DENIED FOR 366118

In regards to appeal docket number 366120, that appeal addresses Plaintiff/Appellant's residency vis-à-vis her father's policy. Specifically, whether the Plaintiff/Appellant is considered a "resident" pursuant to the clear and unambiguous language contained in that insurance policy. This is a question of great importance as it would affect any severely injured individuals seeking to collect liability coverage under a policy from a family member. Furthermore, it was clearly erroneous for the Court of Appeals to hold that Plaintiff was "resident" of her father's household by relying the definition of domicile, when there was an applicable policy. This policy did not define the term resident and Plaintiff/Appellant was not listed as a resident in that policy. The Court of Appeals made a clear error by not enforcing the agreement between the two parties, Plaintiff/Appellant's father and Progressive, by limiting resident to only those listed on the policy. Thus, leave for 366120 should be granted.

Because this Court has already conclusively answered the question presented in appeal docket number 361668, it should be denied. This Court addressed this exact factual situation in *Grange*. The trial court applied *Grange* and the Court of Appeals relied on *Grange* in its holding. Thus, because this Court already addressed this situation and the Court of Appeals correctly applied *Grange*, no error was made and this application for docket number 366118 should be denied. The entire Court of Appeals panel agreed that *Grange* controlled. The Court of Appeals then held that the insurance policy's step-down provision was triggered because it determined that Plaitniff/Appellant was a resident. The Court further held that the term "resident" was unambiguous. Garrett J., dissented, stating that the terms of the policy control the outcome of whether the step-down is triggered. Further, because the mutually agreed upon insurance policy

terms were that only Appellant's father and brother were residents, Appellant was necessarily not a resident.

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COUNTER QUESTIONS PRESENTED IN DOCKET NO. 366118

I. Did the Trial Court Properly Hold that Plaintiff Was Domiciled with her Father on the Date of Loss by Operation of Law?

Trial Court: Yes

Defendant/Appellee Auto Owners: Yes

Plaintiff/Appellant: No

Court of Appeals: Yes

This Court should Answer: Yes

II. Did the Trial Court Properly Hold that the "Facts and Circumstances" Surrounding Plaintiff's Domicile Were Irrelevant?

Trial Court: Yes

Defendant/Appellee Auto Owners: Yes

Plaintiff/Appellant: No

Court of Appeals: Yes

This Court should Answer: Yes

COUNTER-STATEMENT OF QUESTIONS PRESENTED IN DOCKET NO.366120

I. Did the Trial Court Properly Hold That The Step-Down Provision Of Esurance's Policy Was Triggered As A Result Of The January 8, 2020 Motor Vehicle Accident, Thereby Triggering Auto Owners Underinsured Coverage?

Trial Court says: Yes

Plaintiff/Appellant says: No.

Defendant/Appellee Auto-Owners says: No.

Court of Appeals: No

This Court should Answer: No

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COUNTER STATEMENT OF FACTS

This lawsuit stems from a January 8, 2020, motor vehicle accident. The Plaintiff/Appellant (hereinafter "Appellant") was a passenger in the involved motor vehicle operated by her brother. Appellant is the daughter of two divorced individuals. **Appellant's Appx, Exhibit F, P. 54.** At the time of the accident, she split her time between her mother and her father's residence. This split is pursuant to a divorce decree which unequivocally states Plaintiff shall reside 50% of the time with her mother. **Appellant's Appx, Exhibit F, P. 54.** Regardless whether the Appellant may spend more time with her mother, this 50/50 split is how all parties involved have agreed that the custody arrangement was actually decided. **Appellant's Appx, Exhibit G, P. 72; Appellant's Appx, Exhibit C, P. 32.**

It is undisputed that for the 24 hours preceding the accident, Appellant was at her father's house. **Appellant's Appx, Exhibit B, P. 20.** She was at his house on that day because "that was his week." **Appellant's Appx, Exhibit B, P. 20.** Plaintiff filed suit against her father's insurer, Esurance for reimbursement of PIP benefits, and Esurance filed suit against her mother's insurer Auto-Owners claiming that Appellant was domiciled with her mother by application of the traditional *Dairyland/Workman* factors. Plaintiff only filed suit against Auto-Owners after Progressive filed suit. **Appellant's Appx, Exhibit H, P. 97.**

On January 8, 2020, the Appellant alleged she was involved in a motor vehicle accident. As a result of that motor vehicle accident, she filed a lawsuit against her father. **Appellant's Appx, Exhibit H, P. 97.** This lawsuit alleged that her father had negligently entrusted her brother with the vehicle. **Appellant's Appx, Exhibit H, P. 97.** This negligent entrustment was the proximate cause of the Appellant's injuries, which she is claiming meet the threshold for noneconomic

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damages under MCL 500.3153. **Appellant's Appx, Exhibit H, P. 97.** Additionally, she brought a count for underinsured motorist coverage against Auto-Owners to the extent that Appellant's father's policy would not cover her claim. **Appellant's Appx, Exhibit H, P. 97.**

The limit of bodily injury recovery from the Esurance policy was $250,000.00. **Appellant's Appx, Exhibit D, P. 45.** The limit under the underinsured motorist coverage of the Auto-Owners policy was $100,000.00. **Appellant's Appx, Exhibit E, P. 48.** Esurance and the trial court agreed, that the step-down provision of Esurance's policy was triggered, lowering the bodily injury recovery. **Appellant's Appx, Exhibit R, P. 248.** This step-down provision limits a relative's claim for bodily injury to the statutory minimum amount possible if they are a "resident" of its insured's household's. Esurance claims that Appellant was a resident of her father's home on the date of loss. Therefore, the amount recoverable under its policy would be the state minimum of $20,000.00[1].

The trial court held that the step-down provision applied to Appellant and that her recovery from Esurance was limited to $20,000. **Appellant's Appx, Exhibit R, P. 248.** Appellant then argued that Auto-Owners was liable for the $80,000 difference between the underinsured limits and the newly "stepped down" recovery available to Appellant. Appellant filed its Appeal.

[1] As this motor vehicle accident occurred on January 8, 2020, the prior version of MCL 500.3009(1) applies and the minimum was $20,000.00.

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COUNTER STATEMENT OF PROCEDURAL HISTORY

Auto-Owners received a third-party complaint in June of 2021 from Esurance alleging Auto-Owners was the insurer of highest priority for Appellant's PIP benefits. This was followed by Plaintiff/Appellant filing a lawsuit against Auto-Owners which it labeled a "third-party Defendant" on July 9, 2021. On December 3, 2021, Progressive filed a Motion for Summary Disposition alleging that Plaintiff was domiciled with Auto-Owners, making Auto-Owners the insurer of highest priority. Auto-Owners filed a response, which argued that Plaintiff was domiciled with Esurance's insured as a matter of law on the date of the accident. It also asked for disposition of this matter pursuant to MCR 2.116(I)(2). Plaintiff also filed a response stating "Plaintiff leaves it to this Honorable Court to make correct determination of this issue consistent with the laws of this state and facts of this action" and asked that there be an order determine priority. Then at oral argument, Plaintiff argued that Auto-Owners should be first in priority. The trial court granted dispositive relief to Auto-Owners and entered an order naming Esurance as the insurer of highest priority. The court subsequently dismissed Auto-Owners from this matter.

Following a stipulated order closing the case in the trial court, Appellant appealed. The Court of Appeals affirmed the holding of the trial court. Relying on this Court's decision in *Grange*, the Court of Appeals affirmed the holding of the trial court.

Also, at issue in this matter was Appellant's bodily injury claim. On April 6, 2022, the Appellant filed a Motion for Summary Disposition. Appellant argued that she was not a "resident" of Esurance's insured. Appellant argued that Esurance did not list her as a resident and it did not define resident. Auto-Owners responded agreeing with Plaintiff that the term "resident" was ambiguous and should be construed against the drafter, Esurance. Auto-Owners also argued that

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its policy does not apply to the underinsured in the context of this case. Finally, Auto-Owners argued that the underinsured clause was not triggered due to the availability of the bodily injury under the Esurance policy. Esurance argued that despite "resident" not being defined, Appellant was a resident of Esurance insured's household. It further argued that Plaintiff was a resident at both of her parent's homes despite being domiciled with her father.

The court agreed with Esurance denying Appellant's Motion for Summary Disposition. The trial court further held that Appellant was a resident of Esurance's insured's house, which triggered the step-down provision within Esurance's policy of insurance.

On October 12, 2022, Appellant filed a motion for reconsideration In the motion, Appellant argued that the trial court made a palpable error when it held that she was a resident of her father's home. The Appellant argued that the court was confused between the legal definition of domicile and legal residency and the term "resident" in the policy language. The court denied the motion stating that it was not confused and there was no palpable error committed by the court.

Auto-Owners then filed a Motion for Summary Disposition arguing that the policy limits of the Esurance policy were not lowered and that the underinsured section of Auto-Owners' policy did not apply. If the actual policy limits were not lowered the underinsured section of the Auto-Owners policy would not apply. Auto-Owner's second argument was based on the contract language that vehicles belonging to individuals living with the insured are excluded from being considered uninsured. Thus, because Appellant's brother was living with his mother, his vehicle should be excluded from the underinsured clause. Appellant cited the court's prior holding stating that since she is domiciled with her father then so is her brother, therefore, he was not living with his mother. Appellant also argued that the amount of coverage available to her under Esurance's policy is the amount available after the step-down provision. Esurance filed a response taking no

position on Auto-Owner's arguments, but requested that the court find that Appellant and her brother were both residents of both parents. The court denied Auto-Owners Motion for Summary Disposition.

Auto-Owners filed a motion for reconsideration arguing that the court had committed a palpable error in holding that the term "living with" is synonymous with domicile. The court denied this motion and stated that the court ruled that "living with" was ambiguous and that it should be construed against Auto-Owners to provide coverage.

Appellant filed her claim of appeal on May 15, 2023. A settlement between all parties was reached on June 16, 2023. Appellant filed her brief on November 6, 2023. Oral Argument was held on September 4, 2024. The court of appeals issued an opinion on February 24, 2025. Relying on the hold in *Grange*, the Court of Appeals affirmed the holding in the trial court in both dockets. The court used domicile to conclude that Appellant was also a resident.

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COUNTER-STATEMENT OF LAW AND ANALYSIS 366118

I. Did the Trial Court Properly Hold that Plaintiff Was Domiciled with her Father on the Date of Loss by Operation of Law?

a. Domicile

The Michigan No-Fault Act dictates the priority of insurers to provide no-fault benefits. It states, in relevant part;

> 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.

MCL 500.3114(emphasis added).

It is well-settled law in Michigan that an individual may only have one domicile. *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 494; 835 NW2d 363 (2013). Further, "[A] person can only have a single domicile at any given point in time." *Id.* In other words, everyone has a domicile in the eyes of the law, and "a person may have one—and *only* one—domicile." *Id.* The traditional approach for determining the domicile of an individual pursuant to MCL 500.3114 is outlined in both *Workman v Detroit Automobile Inter-Ins Exch,* 404 Mich 477; 274 NW2d 373 (1979) and *Dairyland Ins Co v Auto-Owners Ins Co,* 123 Mich App 675; 333 NW2d 322 (1983). These enumerated a list of factors to determine where an individual is domiciled. Here, there is no genuine question of fact in dispute that the Plaintiff is related to both Esurance and Auto-Owners insureds. However, the question before this court is simply whether *Workman/Dairyland* factors or *Grange* applies. *Grange* was a case decided in 2013 which established that domicile for purposes MCL 500.3114 *by operation of law.*

Specifically, the *Grange* court held that when domicile is decided by a custody agreement, the factual considerations enumerated in *Workman/Dairyland* are **irrelevant.** *Grange* and its

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progeny make it clear that, in the instant case, that the custody agreement controls Appellant's domicile rather than the facts and circumstances surrounding the accident. Because *Grange,* rather than, *Workman* and *Dairyland* apply, Appellant was domiciled with her father as a matter of law.

b. *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (Mich Ct App 2013).

The Supreme Court of Michigan in *Grange* decided the domicile of a child of divorce. *Id.* The trial court had erroneously held that a child could have two domiciles. *Id.* at 481. The Supreme Court corrected this by holding that if there is a custody agreement the child would be domiciled by operation of law where the custody agreement determined as the primary residence. *Id.* The Supreme Court included a footnote to specifically address a situation where a decree of divorce creates a situation where each parent shares joint physical custody and creates an equal 50/50 division of physical custody. *Id.* at 512 fn. 78. The court held that in this unusual event, the domicile would alternate between the parents and be established with the parent whom he or she is living at the time of the motor vehicle accident. i.e. one week domiciled with the mother and the next week domiciled with the father. *Id*.

c. *Home-Owners v Frankenmuth Mutual* Unpublished Opinion of Court of Appeals, November 21, 2017, Docket No. 334349.

In 2017, the Court of Appeals addressed a situation involving *Home-Owners v Frankenmuth Mutual*, while not published is an illustrative case on how the court applied *Grange* to fact patterns described in foot note 78. Unpublished Opinion of Court of Appeals, November 21, 2017, Docket No. 334349. In *Home-Owners,* Samantha, was the child of divorced parents, Robert and Lisa. *Id.* In the divorce proceedings, the court awarded Lisa and Robert joint legal and physical custody and equal parenting time, just like in the instant case. *Id.* On the day of the accident, Samantha was living with her father, pursuant to the custody agreement. *Id.*

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The *Home Owners'* court did not weigh the details of the physical custody division, as Co-Appellee requested this Honorable Court to do. *Id.* Instead, the court followed footnote 78 from *Grange*, quoting "where 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." *Grange,* 494 Mich at 511.

The defendant in that case argued that because Samantha spent her snow days, school holidays, including summer break with her mother, she was domiciled with her mother. The court looked exclusively at the custody order and concluded, "'the factual circumstance' of this practical arrangement had no legal effect and did not alter the parent's equal physical custody." The court concluded that "the trial court correctly applied footnote 78 of the *Grange* opinion. Samantha's domicile alternates between her parents depending on which parent she is living with at the time, and ruled that the extra time spent was parenting time, not physical custody. Thus, her domicile alternated between her parents, depending on which parent she is living with at the time.

d. *Corbin by Next Friend Corbin v Meemic Ins Co*, 340 Mich App 140; 985 NW2d 217 (Mich Ct App 2022).

In *Corbin,* the child was injured in a motor vehicle accident, while residing with her mother. *Id.* at 2. Her parents shared joint legal and physical custody. *Id.* The mother did not have no fault insurance, so she applied to the MAIPF and State Farm was assigned. *Id.* State Farm then filed suit against the father's insurance company, stating that pursuant to the custody order she was living with her mother and thus, the child was domiciled with her mother on the date of the accident. *Id.*

The Court of Appeals discussed *Grange* in this action. *Id.* at 3-8. Specifically citing the 78th footnote in *Grange* and held.

> 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

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> 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 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.

Id.(emphasis added)

The *Corbin* court concluded that *Grange* did not apply, it stated that the custody order "reserved to the parents their right to determine both residence and domicile, with some limitations." *Id.* at 7. The *Corbin* court went through the custody, domicile, and parenting time sections of the custody agreement. *Id.* at 3-8. The custody agreement gave both parents joint physical and legal custody of the minor, and left the parents to come up with how the custody was going to work. *Id.* Further, the court went through the parenting time section which stated simply, "the non-custodial parent shall have reasonable parenting time until further order of the Court." *Id.* The court further read through the domicile agreement within the custody agreement. *Id.* The domicile agreement restated the law regarding domicile that an individual may not move a child

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more than 100 miles or out of Michigan without court approval. *Id.* This rule is not applicable because the order of filiation did exactly what the custody orders in *Grange* did not: it reserved to the parent their right to determine both residence and domicile with some limitations.

The court concluded that the footnote in *Grange* did not apply by its own terms. *Id.* (citing *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013)). The footnote only applies "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 of the parent with whom he is living." *Id.* at 7. The *Corbin* court ruled that if the custody agreement reserves the right to determine both residence and domicile, then the *Grange* footnote does not apply. *Id.* Thus, that case was remanded to the lower court to apply the *Workman v Detroit Auto Inter-Insurance Exch,* 404 Mich 477; 274 NW2d 373 (1979) and *Dairyland Ins Co v Auto Owners Ins Co,* 123 Mich App 675; 333 NW2d 322 (1983) factors.

Here, Plaintiff's parents divorced in June of 2011. Following the divorce, they entered into a custody agreement. **Appellant's Appx, Exhibit F, P. 54.** The custody agreement stated the following regarding legal custody:

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).

It then stated the following regarding physical custody:

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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.

Thus, the court granted joint legal to both Appellant's mother and father, exactly as in the *Grange* footnote. Pursuant to the *Grange* decision, footnote 78 only applies when a custody order awards joint physical custody *and* grants both parents an equal amount of time to exercise physical custody. The agreement in this matter, however, went on to do what the *Corbin* court did not: establish the legal residence of Appellant.

CURRENT ADDRESS, EMPLOYMENT AND SOCIAL SECURITY NUMBERS

That the present resident address of the Defendant, Corey Frownfelter, social security number: [redacted], currently resides at 917 Delphine, City of Holly, County of Oakland, and in the State of Michigan and is presently employed at MRCC, located at 3800 Woodward Ave., Suite 200 Detroit Michigan.

The resident address of the Plaintiff, Stephanie A. Frownfelter, social security number: [redacted], is 1767 Taylor Lake Rd., City of Holly, County of Oakland and State of Michigan and is currently employed at Mass Mutual, DFG-33533 W. 12 Mile Rd., Farmington Hills, Michigan.

The residence of the minor children, Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004) shall be with the Plaintiff, at her current address at 1767 Taylor Lake Rd. Holly, County of Oakland and State of Michigan 50% of the time and with the defendant, at his current address at 917 Delphine Holly, MI 48442.

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The custody agreement states that parenting time shall be at the agreement of the parties. However, the custody agreement establishes the legal residence of both children. Further, beyond the four corners of the indicates that the meeting of minds was that the split was legally 50/50. The testimony in this case makes it abundantly clear that the agreement of parenting time was a 50/50 split at the agreement of the mother and father.

Plaintiff's mother testified to the following:

Q. Could you please tell me the custody arrangement that you and Mr. Frownfelter had at the time of this accident?
A. 50/50 custody.

Appellant's Appx, Exhibit G, P. 72 Plaintiff's father testified to the following:

follow-up questions in that regard.
You had indicated that according to your divorce decree it was a fifty/fifty split custody?
A. Correct.
Q. Did that ever change?
A. I can't hear you.
Q. Did that ever change in writing?
A. Did it ever change in writing?
Q. Yeah.
A. No.

Q. And it is my understanding that that custody arrangement

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was fifty/fifty according to the custody order; is that correct?

A. Yes.

Q. And it would be Monday to Monday alternating weeks, correct?

A. Yes.

Q. And then alternating holidays; is that correct?

A. Yes.

Appellant's Appx, Exhibit C, P. 32

Thus, there is no question that the parties who entered in into the agreement agreed to a 50/50 custody split. This agreement between the parties was clearly was a 50/50 custody split. Additionally, this agreement never legally changed through the date of the accident.

Furthermore, the agreement legally established the domicile of Appellant split between the parents. It is undisputed that all parties testified that Appellant was with her father on the date of loss *because of the custody agreement*. The caselaw is clear that a custody agreement controls domicile and when there is a fifty/fifty split. Thus, the only conclusion that could be made is that by operation of law, Appellant was domiciled with her father on the date of loss.

II. Did the Trial Court Properly Hold that the "Facts and Circumstances" Surrounding Plaintiff's Domicile Were Irrelevant?

The trial court properly concluded that the domicile factors were not applicable in this matter. "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." *Grange Ins Co of Michigan v Lawrence*, 494 Mich 475; 865 NW2d 363 (2013).

Here, the lower court concluded that Plaintiff was domiciled with her father as a matter of law. The clear guidance of *Grange* is that the facts and circumstances surrounding the arrangement

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become irrelevant. The lower court also correctly concluded that *Corbin* is factually distinguishable from the instant case. The custody agreement entered into between the parents clearly established the residence of the minor children of which Appellant. Therefore, the facts and the circumstances outlined in *Dairyland* and *Workman* are irrelevant as the trial court correctly held.

LAW PROHIBITING 100 MILE MOVE
(DOMICILE)

IT IS FURTHER ORDERED AND ADJUDGED that pursuant to P.A. 422 of 2000, a child whose parental custody is governed by this Court Order has a legal residence with each parent. A parent of a child whose custody is governed by this Court Order shall not change a legal residence or domicile of a child to a location that is more than 100 miles from the child's legal residence without approval of the Judge who awarded custody or his/her successor.

CURRENT ADDRESS, EMPLOYMENT AND SOCIAL SECURITY NUMBERS

That the present resident address of the Defendant, Corey Frownfelter, social security number: [redacted], currently resides at 917 Delphine, City of Holly, County of

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Oakland, and in the State of Michigan and is presently employed at MRCC, located at 3800 Woodward Ave., Suite 200 Detroit Michigan.

The resident address of the Plaintiff, Stephanie A. Frownfelter, social security number: [redacted], is 1767 Taylor Lake Rd., City of Holly, County of Oakland and State of Michigan and is currently employed at Mass Mutual, DFG-33533 W. 12 Mile Rd., Farmington Hills, Michigan.

The residence of the minor children, Hunter Frownfelter (DOB: 02/06/02) and McKenna Frownfelter (DOB: 03/30/2004) shall be with the Plaintiff, at her current address at 1767 Taylor Lake Rd. Holly, County of Oakland and State of Michigan 50% of the time and with the defendant, at his current address at 917 Delphine Holly, MI 48442.

IT IS FURTHER ORDERED AND ADJUDGED that neither party who's custody or parenting time of the minor child is governed by this order shall change the legal residence of this child except with compliance with Section 11 of the Child Custody Act of 1970, 1970 PA 91, MCL 722.31.

IT IS FURTHER ORDERED AND ADJUDGED that the parties shall keep the office of the Genesee County Friend of the Court and each other informed at all times of their employment and any change of address.

The plain language of the custody agreement under a subsection labeled domicile dictates that the minor children's residence is split 50% between the parents. It is undisputed that Appellant was a minor child on the date of loss. Thus, the terms of the custody dictate the following: there is joint legal custody, there is joint physical custody, and there is a 50/50 split between the parents' homes. Thus, there is no question that footnote 78 of *Grange* is applicable to the facts of the current case. This is the rare situation as outlined in that footnote, which evenly divides the time the child is domiciled with each parent. Therefore, because footnote 78 of *Grange* controls there is no question of fact that Appellant was domiciled with her father on the date of loss by operation of law.

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Here, it is clear that the domicile is by operation of law. The lower court correctly held the *Corbin* is inapplicable to the facts of the instant case. Like the instant case, *Corbin* involved the domicile of a child of divorce. There was a custody agreement; however, this custody agreement left the parenting time up to the parents to decide based upon the 50/50 split. The *Corbin* court applied the *Dairyland/Workman* factors to determine the domicile of the child.

There is a clear demarcation of where the child shall be 50% of the time. This is fatally inapposite to the facts of *Corbin.* The agreement is further supported by the understanding of all parties to the decree. Every party was aware that the split was 50/50 thus, making it an even split. Therefore, the trial court's holding that the facts and circumstances are irrelevant was correct.

Pursuant to the custody order Appellant spent alternating weeks with each parent. On the date of loss, she was staying with her father. She was staying with her father because it was "his week". Further, the decree establishes a 50/50 split. Thus, Appellant was domiciled with her father as a matter of law, regardless of any of the surrounding facts and circumstances.

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COUNTER-STATEMETN OF LAW AND ANALYSIS 663120

I. Did the Trial Court Properly Hold That the Step-Down Provision Of Esurance's Policy Was Triggered As A Result Of The January 8, 2020 Motor Vehicle Accident, Thereby Triggering Auto Owners Underinsured Coverage?

Whether a contract is ambiguous is a question of law, while determining the meaning of ambiguous contract language becomes a question of fact." *Zwiker v Lake Superior State University*, 340 Mich App 448, 474; 986 NW2d 427, 448 (2022) (citing *Bodnar v St. John Providence, Inc*, 327 Mich App 203, 220; 933 NW2d 363 (2019)). A contract is ambiguous when its provisions are capable of conflicting interpretations. *Farm Bureau Mut Ins Co of Mich v Nikkel*, 460 Mich. 558, 566; 596 NW2d 915 (1999).

Here, the term at issue is "resident." Resident is not defined within Esurance's policy of insurance. However, this alone does not make the term ambiguous as the Michigan Supreme Court stated in *Henderson v State Farm Fire and Cas Co*, 460 Mich 348; 596 NW2d 190 (1999). Where a term is not defined in a contract, courts will interpret such term in accordance with its commonly used meaning. *Bloomfield Estates Improvement Ass'n , Inc v City of Birmingham*, 497 Mich 206; 737 NW2d 670 (2007). Whether the term resident is ambiguous is a question of whether the contract's provisions are capable of conflicting interpretations.

Resident is defined in Oxford's dictionary as "a person who lives somewhere permanently or on a long-term basis." Black's Law Dictionary defines it as "[s]omeone who lives permanently in a particular place; specif., a person who has established a domicile in a given jurisdiction." Further, if we look at the case law defining domicile, it is clear that residency is necessary for domicile. The court in *Mapp v Progressive*, 346 Mich App 575; 13 NW3d 643 (2023), stated that domicile and residency have different meanings according to caselaw, "but domicile is acquired

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by the combination of residence and the intention to reside in a given place." Thus, making Appellant necessarily a resident of her domicile as a matter of case law. *Id.*

However, unlike *Mapp*, Appellant was not listed as a resident on Esurance's policy of insurance. **Appellant's Exhibit L; Appellant's Exhibit J.** Appellant is not identified in the Esurance policy. A logical reading of the policy could define the term "resident" to mean an individual listed as living at the policy address within the four corners of the contract. If this were the case, this would mean that only Appellant's father and brother were "residents" of the household on the date of loss. Further, if this is the case, then the "step-down" provision of the contract would not be triggered, as Appellant would not be a resident of the household. Thus, allowing Appellant to recover the limits of $250,000 from the Esurance policy.

Because "resident" could be either considered as defined by law or simply as an individual listed within the four corners of the policy it is ambiguous. It is a bedrock principle of American jurisprudence an ambiguity in a contract is construed against its drafter. *Klapp v United Ins Group Agency Inc*, 468 Mich 459; 663 NW2d 447 (2003). Here, the contract would be construed against Esurance allowing Plaintiff to recover all benefits from Esurance and not triggering the step-down. The terms of the policy, rather than the general definition should control rather than the general legal definition.

To the extent that Appellant argues that she was domiciled with her mother, Auto-Owners responds that Appellant was domiciled with her father as a matter of law. There is no question as to Appellant's domicile based upon the holdings of *Grange* and its progeny. To the extent that Appellant argues that regardless of where she was domiciled, she was not a resident of her father's home, Auto-Owners agrees. The language of the contract rather than the overarching legal interpretation of "resident" should control because the policy terms as the intent of parties must

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control. Therefore, because Appellant was not listed in the policy, she was not a resident regardless of where she was domiciled.

CONCLUSION AND RELIEF REQUESTED

For these reasons stated herein, Auto-Owners respectfully requests this Court deny Plaintiff's application for leave to appeal Docket no. 366118 and grant it leave to appeal Docket no. 366120

Respectfully Submitted,

ANSELMI MIERZEJEWSKI
RUTH & SOWLE P.C.

Dated: May 5, 2025

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CERTIFICATE OF COMPLIANCE

I certify that the Defendant/Appellee's Brief on 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 brief, is 5449.