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STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPLICATION FOR LEAVE TO APPEAL

MCKENNA L. FROWNFELTER,
Plaintiff-Appellant

-vs-

SC: 168356
COA: 366118
Oakland CC: 2020-184089-NF

ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY,
Defendant-Appellee/Third-Party Plaintiff-Appellee,
and

PROGRESSIVE MICHIGAN INDSURANCE COMPANY, FARMERS INSURANCE COMPANY, And AUTO-OWNERS INSURANCE COMPANY,
Third-Party Defendants/Appellees

MCKENNA FROWNFELTER
Plaintiff-Appellant

-vs-

SC: 168357
COA: 366120
OCCC Case No. 22-192235-NI

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

_____/

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

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

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

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

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

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Appellant's Supplemental Brief

Oral argument has been granted on the application pursuant to this Court's September 26, 2025 order.

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STATEMENT OF JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Appellant, McKenna Frownfelter, seeks leave to appeal the Opinion of the Court of Appeals, *Frownfelter v Esurance Property and Casualty Ins Co,* at *7, unpublished opinion of the Court of Appeals, issued February 24, 2025 (Docket Nos 366118 and 366120) (**Exhibit A)**.

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

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

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

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QUESTIONS PRESENTED BY DOCKET NO. 168356

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

Plaintiff/Appellant says: No.

Defendants/Appellees say: Yes.

The trial court said: Yes.

The Court of Appeals said: Yes.

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

Plaintiff/Appellant says: No.

Defendants/Appellees says: Yes.

The trial court said: Yes.

The Court of Appeals said: Yes.

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QUESTIONS PRESENTED BY DOCKET NO. 168357

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

Plaintiff/Appellant says: No.

Defendants/Appellees say: Yes.

The trial court said: Yes.

The Court of Appeals said: Yes.

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

Plaintiff/Appellant says: Yes.

Defendants/Appellees says: No.

The trial court said: No.

The Court of Appeals said: No.

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I. INTRODUCTION

This Court's September 26, 2026 Order directed Appellant to file a supplemental brief addressing whether the lower courts erred in concluding that: (1) the appellant was domiciled with her father, Corey Frownfelter, at the time of the January 8, 2020 motor vehicle accident, see *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 512 n 78 (2013); but see *id*. at 516-519 (ZAHRA, J., concurring); and (2) the appellant was a resident of Frownfelter's household at the time of the accident.

Appellant's position on these issues is hereby supplemented as follows.

II. THE MAJORITY'S HOLDING IN *GRANGE*

In *Grange,* 494 Mich 475, as a matter of first impression, a majority of this Court, consisting of Justices Kelly, Young, M. F. Cavanagh, and Viviano, set forth a rule for determining the domicile of a child of divorced parents, for purposes of the no-fault system. This rule, on its face, is simple: "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." *Id.* at 512. More specifically, the relevant consideration was what the custody order had to say about physical custody, not legal custody. *Id.*

However, as this Court recognized, custody orders do not have to delineate physical custody or domicile to one parent, or even one parent more so than the other. Many custody orders obliquely state that the parents are provided joint physical and legal custody, or, like the one at issue in the present appeal, can be interpreted in such a way. Hamstrung by the fact that this particular issue was not before the *Grange* Court,[1] this Court nonetheless admirably attempted to

[1] *Id.* at 512 n 78.

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provide guidance to lower courts on how to deal with this issue when it inevitably arose; stating that "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...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." *Id.* at 512 n 78.

Appellant appreciates this Court's attempt to provide some direction to lower courts on what was believed to be a remote, and seldom seen, potential consequence created by the overarching holding. Unfortunately, because this particular issue was "not presently before th[e] Court" in *Grange*, this guidance was delivered summarily and without a full analysis. An inherent flaw of dealing in hypothetical scenarios, without concrete facts to analyze and realized consequences to weigh is that the full impact of the majority's holding in *Grange* was not realized at that time.

In fact, Justice Zahra predicted at that time that the primary issue presented in this case would eventually rear its head as a result of the rule, and primarily its shifting-domicile rule, adopted by the *Grange* majority. Time has shown that Justice Zahra was correct, and that the majority's attempt to provide the lower courts with a path to follow in this situation has unfortunately had the opposite effect, confusing insureds, insurers, and our courts. This has led to anomalous, unintended consequences for the minor children of divorced parents, like McKenna Frownfelter, that betray the parent's reasonable expectations of coverage.[2]

[2] Protecting the reasonable and legitimate expectations of the public, and more specifically insurance policyholders, is one of the basic functions of the law and one of this Court's stated goals. *Vanguard Ins Co v Clarke*, 438 Mich 463, 472 (1991). See also *Lytle v Malady,* 579 NW2d 906, 913 n 17 (1998).

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In his concurrence, Justice Zahra, joined by Justices Markman and McCormack, aptly noted that the majority's rule did not reflect reality, where "[i]t is common for parents, after the bitterness of a custody dispute has subsided, to resolve their differences over time and to reach an agreement regarding the living arrangements for their child," and that these "amicable, private agreements" often "conflict with an existing family court order." *Id.* at 532-33 (ZAHRA, J., concurring). Accordingly, adhering strictly by the terms of the custody order is an unrealistic way to determine domicile for a minor child of divorced parents. The effects of the majority's rule are felt here, where McKenna Frownfelter was clearly and indisputably primarily living with her mother. Yet, the Court of Appeals applied the majority rule, albeit arguably incorrectly, to reach the opposite conclusion: that McKenna was primarily living with her father, at a house she did not consider her home, a house where she only spent 25% of her time at, and a house that she kept so few belongings at that she had to pack a suitcase to go to when she went to visit. **Exhibit D – Deposition Transcript of McKenna Frownfelter, pgs. 8, 27, 35-38; Exhibit E – Deposition Transcript of Stephanie Lawrence (Frownfelter), pg. 21; Exhibit F – Deposition Transcript of Corey Frownfelter, pg. 15.**

III. THE UNINTENDED IMPACT OF THE MAJORITY'S RULE

Though this issue is relatively rare in the litigious world of no-fault disputes, this scenario has presented itself more often than Court may have expected.[3] Given the volume of car accidents in this state and the mandatory no-fault coverage requirement, it still affects a large number of persons in a particularly vulnerable class; that being minor children of divorced parents are not

[3] Counsel's office currently employs only two attorneys to work on no-fault and personal injury cases. Even so, besides the instant appeal, counsel's office has two other cases currently pending that involve a domicile concern for a child of divorced parents. Therefore, while encountering this issue is certainly not as common as disputes over the fee schedule, for example, it is a constant issue for no-fault attorneys. Considering the fact that not all claims denials result in litigation, the true impact of the current rule is likely underrepresented by this issue's prevalence in the legal system.

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able to choose their own domicile, like McKenna Frownfelter, who was fourteen years old at the time of the collision. At least until they turn sixteen, these children are unable to drive or buy their own car insurance. And it would be ridiculous to expect these children to obtain and then evaluate their parents' respective car insurance policies to ensure they are covered.

Therefore, they are left at the mercy of the decisions made by their parents in regard to insurance. Parents, who – by the very nature of the issue presented here – are, at the very least, living separately, and not communicating in the manner or frequency that a married couple generally would. Sometimes, and as is often the case, the parents do not speak to each other at all. On top of this, it is unrealistic to expect the average person shopping for car insurance to consider the impact of a footnote in an opinion issued twelve years ago that dealt with a highly technical and almost wholly non-publicized issue. In other words, it is unrealistic to expect that divorced parents are talking to each other about their respective car insurance policies, much less the specific policy terms contained therein, and it cannot be said that they are in a position to adequately evaluate whether a scenario that is relatively rare in the already highly-specialized world of no-fault law affects the coverage they are buying for themselves and their children.

The current rule does not only harm insureds. Insurance companies, too, are harmed by this rule as it effects their ability accurately assess the risk they take on when issuing an insurance policy. As demonstrated in both the present case and *Grange,* the insurers in both cases were totally unaware of the custody order's impact on the coverage they may be liable to provide. As noted by Justice Zahra in his *Grange* concurrence, it is unrealistic and unfair to expect insurers "to inquire about, obtain, and interpret family court orders." *Id.* at 518 (ZAHRA, J., concurring). Moreover, as he correctly predicted, the agents and the underwriters involved in issuing the policies in the present case never thought to request the custody order.

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Further proving that the *Grange* rule is overly burdensome and unworkable, often even for the most well-versed in this issue, is the fact that courts have struggled to apply it consistently. Of particular concern is the fact that the *Grange* rule *requires* civil judges, many of whom have very limited experience dealing with family law, to interpret and apply the language of these orders. See *Corbin v Meemic Ins Co*, 340 Mich App 140 (2022) (interpreting the custody order at issue and finding that it "did not establish a primary custodial parent..." when the order stated that the parents would have "joint legal and physical custody" of the minor children.); *Lawrence v Schauf*, unpublished opinion of the Court of Appeals, issued February 10, 2022 (Docket No 354872) (holding that this Court's inclusion of the term "whom he lives" in the *Grange* test meant that an analysis should be conducted of who the child was actually living with, not just staying with most recently); *Davis v Auto Club,* unpublished opinion of the Court of Appeals, issued June 23, 2025 (Docket No 370748) (holding, pursuant to *Grange,* that a child cannot be domiciled anywhere other than the child's parents' residences, regardless of where the child was actually living.)[4] A related issue is the fact that custody orders do not contain uniform, standard language. They are not perfect. Further, while Appellant asserts that is unfair to burden family courts with taking *Grange* into account when drafting custody orders, in the instant case, the family court actually could not have considered *Grange* because the custody order was entered two years before *Grange* was decided. See **Exhibit J – Custody Order.**

Accordingly, this rule has proved itself generally unworkable for all of the affected persons, classes, and institutions that have come into contact with it. In fact, several of the appellees are not expected to file oppositional briefing, and Appellee AAA does not dispute the rule change on a

[4] The *Davis* holding is particularly problematic because the court used the *Grange* rule to justify denying coverage for two children who primarily lived with their aunt, on the basis that the court believed *Grange* stood for the proposition that children must be domiciled with at least one parent.

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policy level. AAA's opposition is limited to the fact that it does not want to pay the $250,000 stipulated judgment it agreed to, but it cannot point to any broader reason that the current rule should be left intact.

IV. JUSTICE ZAHRA'S CONCURRENCE IN *GRANGE* SETS FORTH A RULE THAT WOULD SOLVE THESE ISSUES

Though Justice Zahra concurred in the majority's ultimate conclusions as to the domiciles of the minor children in *Grange*, he set forth a completely separate rule that avoided the pitfalls inherent to the majority rule. Justice Zahra agreed with the majority that domicile and residency were separate terms, and that the terms could represent different concepts in different contexts.[5] Therefore, he found it relevant to consider that domicile determination in the no-fault context usually involved analyzing "the factual circumstances surrounding the party's living situation and by balancing and weighing several factors, none of which is determinative on its own." *Id.* at 522 (ZAHRA, J., concurring), citing *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich. 477, 496 (1979). He also recognized that "[u]nder [the Child Custody Act] MCL 722.31, where the parents of a child share joint legal custody and parental custody of that child is governed by a court order, the child is considered to have a legal residence with each parent for purposes of evaluating a parent's action to change the child's legal residence." *Id.* at 525 (ZAHRA, J., concurring)

Notably, Justice Zahra disagreed with the idea that a child could have a shifting domicile. As he stated, such a concept would allow a child to have two different domiciles:

> And while legal residence is often equated with domicile, because there can be only one domicile, where two legal residences exist, it is axiomatic that only one can be determined to be the domicile. The fact that a domicile determination is

[5] See *Id.* at *Id.* at 522 (ZAHRA, J., concurring) (finding that domicile had its own distinct meaning and method of determination in the no-fault context: "Generally speaking, domicile determinations for purposes of assessing insurer liability in the no-fault context are made by considering the factual circumstances surrounding the party's living situation and by balancing and weighing several factors, none of which is determinative on its own"); *Id.* at 526-27 (recognizing that residence may be defined differently in different legal contexts, such as with "legal residence" under the Child Custody Act); and *Id.* at 527 (recognizing that that in general, residence was a different concept than domicile.)

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> complicated by the factual circumstances of the inquiry does not constitute a sound reason to depart from the established principle that a person can have only one domicile. Therefore, even where a child is considered to have a legal residence with each parent, his or her domicile must be that of only *one* of the child's parents.

Id. at 526 (ZAHRA, J., concurring). Accordingly, though Justice Zahra agreed with the majority that a person could only have one domicile, he asserted that the majority's "alternating-domicile theory" was actually *violative* of this principle as it effectively "permitted dual domiciles" for children of divorced parents. *Id.* Additionally, Justice Zahra raised the concern that this theory undermined the permanence underpinning the theory of domicile, and that to depart from this was "unprecedented in the domicile jurisprudence of this state, which views domicile as that place where a person ultimately returns, despite going elsewhere for a period of time." *Id.*

Importantly, Justice Zahra raised all of the policy concerns that Appellant has also raised in this appeal, namely that insurers were unduly burdened by the majority's rule[6], that the rule did not reflect the reality that parents of divorced children often mutually agree to stray from the strict terms of a custody order[7], and that the rule needlessly departed from familiar, established principles for determining domicile[8].

---

[6] *Id.* at 530 ("Moreover, the majority rule now requires insurance companies to inquire about custody orders, obtain a copy of those orders, and interpret those orders to properly assess its risks, which unduly burdens insurers and injects unreasonable uncertainty into an insurer's risk-assessment process. The majority's rule prevents an insurer from being able to simply ask, "Who resides with you?" to assess its risks. Ultimately, the majority's rule, in my view, is inconsistent with the no-fault act, which provides PIP protection "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*...." Under the majority's rule, a child could be "domiciled" in one state pursuant to a custody order, but actually live in another state. It is difficult to discern how such a situation could constitute being domiciled *in the same household.*")

[7] *Id.* at 532-33 ("I recognize the reality that, with the passage of time, a child's living situation will not always align with the family court's orders, despite the general rule that a party must follow the orders of a court. It is common for parents, after the bitterness of a custody dispute has subsided, to resolve their differences over time and to reach an agreement regarding the living arrangements for their child. Parents commonly reach amicable, private agreements, reflective of their joint intent, that conflict with an existing family court order.")

[8] *Id.* at 537 ("In determining whether this presumption can be rebutted, I would have courts look to the traditional nonexclusive factors for determining domicile for purposes of no-fault insurance articulated by this Court in *Workman* and, particularly, those articulated by the Court of Appeals in *Dairyland,* which specifically address whether a child is domiciled with his or her parents under the no-fault act.")

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With these concerns and governing principles in mind, Justice Zahra crafted a rule that avoided the pitfalls of the majority rule by staying consistent with time-tested and tried methods for determining domicile in the no-fault context.[9] Specifically, Justice Zahra would have held that:

> where the facts of the child's living arrangements are so clearly inconsistent with the family court's orders that it is reasonable to conclude that the child's parents have expressly or impliedly reached an agreement regarding the child's domicile that differs from the domicile indicated by the family court's orders, the presumption of domicile created by the family court's orders would be rebutted. Under this rule, courts would make domicile determinations in light of the actual facts of the custodial situation, rather than solely on a court order that may have little relevance to the actual living situation of the child after the passage of time, namely, with regard to which parent actually has physical custody of the child.

Id. at 534-36 (ZAHRA, J., concurring). Accordingly, because this was only a presumption, it could be rebutted by "look[ing] to the traditional nonexclusive factors for determining domicile...in *Workman*[10] and....*Dairyland*[11], to be modified by the fact that since a child cannot determine their own domicile, "the appropriate inquiry instead focuses on whether the *child's parents* have reached a joint intent regarding the child's domicile that differs from the domicile indicated by the family court's orders." *Id.* at 537. Additionally, other relevant factors to be considered include "where the child actually spends the majority of his or her time," and "where the child actually sleeps the majority of the nights of the week." Justice Zahra emphasized that none of these factors would alone be determinative, and should be analyzed in their totality. *Id.*

[9] It should further be noted that, while not ostensibly a primary goal of Justice Zahra's proposed rule, the proposed rule would also make the method of determining domicile in the present context more similar to how domicile is determined in the family law context, and allow parents some flexibility to agree to modify the strict terms of the custody order, as intended by the law; in effect, harmonizing no-fault law with family law on this issue that implicates both of these areas. See *Id.* at 533-34 (ZAHRA, J., concurring).

[10] *Workman v Detroit Auto Inter–Ins Exch*, 404 Mich 477, 496–497 (1979).

[11] *Dairyland Ins Co v Auto–Owners Ins Co*, 123 Mich App 675, 682 (1983).

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V. COMPARATIVE ANALYSIS OF THE PRESENT FACT PATTERN UNDER BOTH RULES

A. Majority Rule/ Shifting-Domicile Rule

The first step in the majority's analysis involves looking to the terms of the divorce decree and/or custody order to see if it determines domicile, and "the relevant consideration is which parent has physical custody under the terms of the order." *Grange, supra*, at 512. In relevant part, the custody order states as to physical custody is merely "joint physical custody of the minor children..." Regarding parenting time, it states that "the parties shall have parenting time...herein at such times and places as shall be agreed upon by the parties." **Exhibit J – Custody Order.** It then states that "the residence of the minor children...shall be with [the mother] 50% of the time and with [the father]." Interestingly*, the order does not expressly extend the 50% time provision to McKenna's father*, Corey Frownfelter; it merely states that she shall have *some* residence with her father. Accordingly, when read as a whole, a reasonable interpretation of this order is that it allows the parents to determine who will have primary physical custody, subject to the provision that, at the most, the parents shall have split physical custody of the children, but *not less than* 50% physical custody with their mother.

In other words, this order provides the parents flexibility to determine the parenting arrangement, and the 50% provision is not intended to act as a mandate for a 50/50 split in physical custody, but instead acts as a floor on the mother's share of physical custody. And, as detailed in the application, the reality of the situation was that the parents were cooperating just as the order had contemplated, and had set their own mutually agreed upon boundaries in regard to McKenna's physical location, with McKenna spending the vast majority of the time at her mother's house. This interpretation is consistent with the Court of Appeals' decision in *Corbin,* where the court found that a similar order should be read as leaving "parenting time to the discretion of the

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parents," and thus holding that the shifting-domicile provision in footnote 78 of *Grange* did not apply. *Corbin v Meemic Ins Co*, 340 Mich App 140 (2022).

Appellant strongly disagrees with the Court of Appeals' finding that the term "residence" in the custody order at issue in the present case was actually intended to mean "domicile." As Justice Zahra noted, the terms are not synonymous, and "residence" actually has a specialized definition in the family law context. See note 5. This issue is briefed in Appellant's application for appeal, most relevantly at page 14 of same. In short, the Court of Appeals erroneously read the term "legal residence" into the custody order when that term does not appear in content of the order, and erroneously read into the order that physical custody was split between each parent "50% of the time." Neither of these provisions expressly appear in the order, as the court wrongly asserted that they did.

The order actually provides for "joint physical custody," with the specific division to be determined by the parents amongst themselves. Therefore, the Court of Appeals did not actually follow the *Grange* majority's rule, since note 78 states that courts are only to apply the "shifting-domicile" provision when "a custody order awards joint physical custody and grants both parents an equal amount of time to exercise physical custody." *Id.* at 512, n 78. That is plainly not the case here, and the Court of Appeals erred in applying the shifting domicile rule to hold that McKenna Frownfelter was domiciled with her father at the time of the subject collision merely because she had stayed at his house the night prior to the collision.

Despite Appellant's disagreement with the Court of Appeals, in fairness to this Court and its request for supplemental briefing, Appellant will address both the possibility that the custody order contemplated a 50/50 split of physical custody, and that it did not.

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i. Outcome if the custody order intended for a 50/50 split of physical custody

It should go without saying at this point that if this Court finds that the custody order did consider a split 50/50 divide of physical custody, pursuant to the *Grange* majority's rule, the Court of Appeals potentially reached the correct conclusion that McKenna was domiciled with her father. Pursuant to the principles outlined in *Grange* at 512, n 78, McKenna would have a shifting domicile, that attaches to whichever parent "with whom [she was] living at the time."

Appellant uses the term "potentially" because the *Grange* Court did not explain what it meant by "living with". Certainly, most people would not consider McKenna to be living with her father at the time of the collision. As stated in the application, she only had a few items of spare clothing at her father's house, kept all of her important belongings at her mother's house, and, most importantly, spent the majority of her time at her mother's house. This is also consistent with the analysis the Court of Appeals undertook in *Mapp v Progressive,* 346 Mich App 575 (2023), discussing what it means to "live" somewhere and how that affects residence and domicile. This would suggest that McKenna was "living" with her mother at the time of the collision, regardless of the fact that she had been visiting her father the night before. Under such an interpretation, footnote 78 of *Grange* would mandate that McKenna's domicile was with her mother, since that is who she was "living" with. Obviously, should this Court adopt a definition of the term "living with" that is synonymous with "last physically stayed with", then McKenna's domicile with be with her father, since that is where she slept the night before.[12]

The result aside, it should be clear from the analysis that this rule is difficult to apply consistently. Not only does the outcome depend on the consistent interpretation of non-

[12] Notably, should this Court not want to fully overrule *Grange, supra,* footnote 78's inclusion of the term "living at the time" provides an alternative solution. The benefit of "living at the time" being undefined is that this Court now has the option to clarify the term to incorporate the factors listed in Justice Zahra's concurrence regarding domicile determination.

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standardized terms in each individual custody order, which are almost always at least partly ambiguous, but it then turns on the interpretation of the meaning of the footnote in *Grange.* As noted above, the concept set forth in this footnote was not fully developed as that specific sub-issue was not actually before this Court at that time. Therefore, at the very least, there is significant ambiguity surrounding the application of the *Grange* rule that is not resolved by the mere nine sentences that comprise footnote 78.

B. Justice Zahra's Proposed Rule

Under Justice Zahra's proposed rule, the only conclusion that can be reached is that McKenna was domiciled with her mother at the time of the collision. As detailed above, Justice Zahra's proposed rule would have the Court initially look to the terms of the custody order, but where the terms of the order are unclear or provide for discretion of the parents, then the Court would look to the *Workman/Dairyland* factors, plus the additional 2 factors Justice Zahra listed. The *Workman* factors include the following:

1. The subject or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place at issue;

2. The formality or informality of the relationship with the members of the household;

3. Whether the place where the person lives is in the same house, within the same curtilage or upon the same premises;

4. The existence of another place of lodging by the person other than the place at issue.

Workman, 404 Mich at 496-497. The *Dairyland* Court, which faced a different set of facts than *Workman* in that it was dealing with children, established additional factors to use, and they can be enumerated as follows:

5. Whether the person uses the parent's home for his mailing address;

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6. Whether they maintain some possessions with the parent;

7. Whether they use the parent's address on his driver's license or other documents;

8. Whether a room is maintained for the child at the parent's home;

9. Whether the child is dependent upon the parent for support.

Dairyland, 123 Mich App at 682. Justice Zahra then proposed the addition of the following two factors:

10. Where the child actually spends the majority of his or her time;

11. Where the child actually sleeps the majority of the nights of the week.

Grange, supra, at 537 (ZAHRA, J., concurring). Thus, there are eleven total factors to consider. Again, none of these factors are dispositive alone, and must be viewed as a whole. *Id.; Dairyland, supra; Workman, supra.*

In the present case, when viewing these factors as a whole, the overwhelming conclusion is that McKenna was domiciled with her mother at the time of the collision. As to the first factor, McKenna intended for her mother's house to be her home. See **Exhibit D, pg. 36** (McKenna's testimony that she would bring clothes to her father's house and then "bring them back home"). In fact, she proved this when she chose to remain at her mother's house 100% of the time after the collision. In addition, her mother's house, but not her father's house, was modified to accommodate her limitations as a result of this collision. **Exhibit E pg. 66; Exhibit F at pg. 32**. The second and third factors are inapplicable here. Although the fourth, sixth, and eighth factors do not strongly point one way or the other, they do slant in favor of her mother' s home. McKenna had her own bedroom at her mother's house prior to the collision. She spent the majority (75%) of her time at her mother's house before the collision, and kept the overwhelming amount of her possessions there. In contrast, while she also had a room at her father's house prior to the collision,

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she spent limited time there and only kept a few possessions there. **Exhibit D at pgs. 8, 27, 35-38; Exhibit E, at pg. 21; Exhibit F, at pg. 15.**

Moreover, the remaining factors (five, seven, nine, ten, and eleven) heavily favor her mother's house. McKenna used her mom's address for medical purposes, had her mom's address on file at school, and put her mom's address on her driver's license. **Exhibit E at pgs. 79-82**. Any mail McKenna received, though limited given her age, went to her mom's address. **Id.; Exhibit F at pg. 39.** McKenna's also is listed at her mom's address and as a dependent of her mom for tax purposes. **Exhibit E at pg. 87.** McKenna is on her mom's gym membership**. Id. at pg. 78.** She is on her mom's cell phone plan. **Id. at pgs. 79-82.** Her mom is on her bank account, while her father is not. **Id.** Once she began driving, McKenna was added to her mother's car insurance, not her father's. As mentioned, McKenna spent the majority of time at her mother's house, and spent most nights at her mother's house, with the split being about 25% at her father's house and 75% at her mother's house. Notably, McKenna, her father, and her mother all agreed with this assessment at their respective depositions. **Exhibit E, at pg. 21; Exhibit D, at pgs. 8, 27; Exhibit F, at pg. 15.** Her mother also provided the majority of her support. As noted above, McKenna's mother provided her with a cell phone and car insurance, helped her set up a bank account, managed her school and medical records, and held her social security card; as well as the fact that McKenna's mom was at all but one medical appointment with her doctors after this accident**. Exhibit E, pg. 59**. Her father, Cory, testified he took her to only one appointment, in approximately August 2021. **Exhibit F, pgs. 24-25.**

Accordingly, the totality of these factors is strongly indicative of McKenna's domicile being with her mother, not her father. Of the nine relevant factors, six of them weigh heavily in favor of McKenna's domicile being with her mother. The remaining three factors do not heavily

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favor one house over the other, but do slant in favor of McKenna being domiciled with her mother. Therefore, under Justice Zahra's proposed rule, McKenna's domicile would clearly be with her mother for purposes of the no-fault act.

VI. LACK OF IMPACT OF THE PROPOSED RULE CHANGE ON RESIDENCY

As both the *Grange* majority's holding and Justice Zahra's proposed alternate rule are limited strictly to determining domicile, and domicile and residency are separate terms under the no-fault jurisprudence, there will be no generalized impact on the determination of residency if Justice Zahra's rule is adopted.

This determination will still be fact specific, and in this case, will still fall on the issues outlined in Appellant's application. As this Court has held, an individual can have multiple residences, but only one domicile. The Court of Appeals apparently took this to mean that a person necessarily must have at least one residence, that residence being their domicile. However, this is a non-sequitur. As recently confirmed by the Court of Appeals in a published decision, a person does not necessarily reside at their domicile. *Mapp v Progressive,* 346 Mich App 575 (2023). This is most clearly evident from the string of decisions issued by the Court of Appeals concerning the residency and domicile of college students that live away from home during the school year, with the rule being that though these students do not reside at their parents' house during the school year, but in a dorm or apartment, their domicile is nonetheless their parents' house. In fact, this very proposition was implicitly affirmed by the *Grange* majority through reference and citation. See *Grange, supra*, at 523, n 21, citing *Goldstein v Progressive Cas Ins Co,* 218 Mich App 105, 112 (1996) (finding that the plaintiff, a college student who lived away from home while he was in school, was domiciled in his parents' home because he kept the majority of his personal belongings at his parents' house, listed his parents' address on his driver's license, maintained a

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bedroom at his parents' house, returned to his parents' house to live on breaks from school, and was financially dependent upon his parents).

Appellant will not waste this Court's time by reciting the arguments raised in her application. Plaintiff hereby reincorporates same as if recited herein in full. However, in summary, these arguments concern the fact that the term "resident" as used in the subject insurance policy is at the very least ambiguous, and any ambiguity should be construed against Appellee Esurance as the drafter. The Esurance policy did not define resident in a way that obviously includes McKenna, and Corey Frownfelter did not list McKenna on the policy as a resident. Therefore, because a policy should not be construed to defeat coverage, and parties should receive the coverage they reasonably expected they were buying, Corey Frownfelter's policy should not be restricted to $20,000.00 as it pertains to McKenna, and instead he should be able to provide McKenna with access to the full $250,000.00 in bodily injury coverage he believed he was paying for. *Vanguard Ins Co v Racine*, 224 Mich App 229, 231 (1997).

VII. CONCLUSION

The current rule for determining domicile for children of divorced parents not only imposes an unrealistic standard on divorced parents by expecting them to completely abide by the terms of an often outdated custody order, but it burdens insurance companies with the "unreasonable burden" of inquir[ing] about, obtain[ing], and interpret[ing] family court orders" in order to accurately assess the risks they take on when entering into insurance agreements.

Twelve years ago, Justice Zahra's concurrence in *Grange* recognized the impracticality of the majority rule. At the same time, he provided a fully developed alternative rule which, if adopted, would reduce uncertainty for insurance companies, bring the factors for no-fault domicile determination into line with the factors traditionally used to determine the domicile of minor

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children in the family law context, and promote this Court's goal of favoring legal adaptability through the adoption of rebuttable presumptions over hard-and-fast rules. Justice Zahra's rule is a realistic rule, that "address[es] the practical realities of post-divorce familial relationships," and recognizes the value to the insurance industry provided by increased certainty.

Rarely is this Court presented with the chance to change the law in a way that benefits so many groups and harms none. However, that is the situation here. The revised rule will allow no-fault insurers to more accurately assess risk, will allow parents of divorced children the freedom to agree to stray from the strict terms of the custody order without unknowingly placing their child at risk of being uninsured or underinsured, and it will eliminate the unrealistic burden placed on family courts to consider the no-fault law when issuing a custody order. This is truly a no-lose scenario for all classes of persons whose interests are involved in this case.

RELIEF REQUESTED

With respect to Docket No. 168356, Plaintiff/Appellant requests that this Court vacate the Court of Appeals' opinion, and remand this matter back to the Circuit Court with the following instructions:

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

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

With respect to Docket No. 168357, Plaintiff/Appellant requests that this Court vacate the Court of Appeals' opinion, and remand this matter back to the Circuit Court with the following instructions:

- That Appellant McKenna Frownfelter was not a "resident" of Appellee Cory Frownfelter at the time of the subject collision under the terms of Appellee

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Esurance's policy of insurance, as the Application for Insurance establishes as a matter of law that the parties did not agree, or intend to agree, to insure Appellant as a "resident" of the household.

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

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

Respectfully Submitted,
SMDA, P.C.

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

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