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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.

APPELLEE ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY'S SUPPLEMENTAL BRIEF PURSUANT TO MCR 7.312(E)

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

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 ESURANCE PROPERTY AND CASUALTY INSURANCE COMPANY'S SUPPLEMENTAL BRIEF PURSUANT TO MCR 7.312(E)

Oral argument was previously granted on Appellant's Application pursuant to this Court's September 26, 2025 Order.

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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 Docket Nos. 366118 and 366120, unpublished February 24, 2025).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 MCL 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. 168356

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. 168357

III. 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

IV. 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 ("PIP") benefits and a policy language interpretation for a "step-down provision" for bodily injury liability coverage following a January 8, 2020 motor vehicle accident ("the Accident"). The sole issues before the Court are domicile and residency of Plaintiff/Appellant McKenna Frownfelter ("Plaintiff") on the date of the Accident.

Plaintiff/Appellant's Domicile

At the time of the Accident, Plaintiff was a 14-year-old 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 on a Judgment of Divorce that awarded joint physical and legal custody to her 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 the 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 legal custody and an equal "50/50" division of physical custody. 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

[1] Plaintiff did not bring suit against Hunter, who was in the armed services at the time suit was filed.

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procured a policy of insurance from Esurance Property and Casualty Insurance Company ("Esurance"), Policy No. PAMI-007954837 ("Esurance Policy"), to cover the vehicle involved in the Accident. **(Exhibit A)**. The Esurance Policy contains a "step-down" provision which reduced the bodily injury policy limits from $250,000.00 per person/$500,000.00 per occurrence to the minimum compulsory 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. The applicable provision of the Esurance Policy states:

> 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**".

(Exhibit A, bates stamp page 0011).

Under the Esurance Policy, "**you**" is defined as the named insured(s) shown on the Declarations page. **(Exhibit A, bates stamp page 0006).** "**Family member**" is defined as any person related to "**you**" by blood, marriage, or adoption who is a resident of "**your**" "**household**". **(Exhibit A, bates stamp page 0007).** "**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 A, bates stamp page 0007).**

[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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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 because it had ruled that she was domiciled with Mr. Frownfelter and therefore an insured under the policy. Being an insured under the Esurance Policy triggered the step-down provision which reduced the policy limit for bodily injury liability coverage available to indemnify Mr. Frownfelter to $20,000.00/$40,000.00. This decision was affirmed by the Court of Appeals.

This Honorable Court has requested supplementary briefing as to the application of the Majority Opinion provided in *Grange* in comparison to potential application of the Honorable Justice Zahra's Concurring Opinion to the facts of this case for purposes of Plaintiff's domicile and residency.

THE MAJORITY'S HOLDING IN *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

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> must notify the Friend of the Court, in writing, immediately, when the minor child is moved to another address.

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 ("Farm Bureau"); Lawrence was the named insured on an automobile insurance policy issued by Grange Insurance Company ("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*

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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 concluded that Josalyn was domiciled with both parents at the time of the accident. The Trial Court ordered Grange to reimburse Farm Bureau 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 sought leave to appeal to the Michigan Supreme Court, which was granted. 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

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> 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 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

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> 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 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.

JUSTICE ZAHRA'S CONCURRENCE IN *GRANGE*

While Justice Zahra concurred in the result held by the majority in *Grange*, he nevertheless disagreed with the determination that the custody order/divorce decree issued by a court under the Child Custody Act should be dispositive of the domicile issue for minor children of divorced parents. Instead, Justice Zhara's concurrence would make the custody order/divorce decree a rebuttable presumption of domicile:

> "[w]hen the child's actual living arrangements are so clearly inconsistent with the family court's custody order that it is reasonable to conclude that the parents have expressly or impliedly reached an agreement regarding the child's domicile. To rebut this presumption, I would require courts to consider the factors traditionally used to assess domicile to determine the domicile of the minor children."

Grange at 518.

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Following a similar analysis as the majority regarding *residence* and *domicile*, Justice Zahra arrived at the same conclusion that a child cannot have dual domiciles. This is where Justice Zahra diverges with the majority explaining that:

> "[t]he majority's alternating-domicile theory for children whose parents share joint physical custody contradicts this longstanding principal and in substance permits dual domiciles for such children."

Grange at 528.

Ultimately, Justice Zahra's apprehension with the majority opinion stems from the majority rule requiring 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." *Grange* at 530.

Therefore, Justice Zahra concluded:

> "[i]n my view, the determination of the domicile of a child with two legal residences requires a review of all the facts and circumstances to determine whether the evidence that the child is domiciled in one legal residence outweighs the evidence that this child is domiciled in another legal residence. But in light of the family court's involvement in determining where a child resides, and the deference owed to that court's determinations, an inquiry into where a child is domiciled also necessarily involves consideration of the family court's orders relating to custody of a child and a child's legal residence(s). While generally no one factor is conclusive in determining domicile, in this unique context, a family court's custody and residence determinations are the starting point for determining a child's domicile because "[a] party must obey an order entered by a court with proper jurisdiction." Therefore, I would begin with the presumption that the parties to family court orders relating to custody and residence of the child have in fact obeyed and implemented those orders."

Grange at 531.

As a result, the rule developed by Justice Zahra was stated as follows:

> "I would hold that, for purposes of determining domicile under the no-fault act, where the facts regarding the child's living

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> arrangements are reasonably consistent with the provisions of the family court's orders, those orders will be determinative of the child's domicile. However, 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. This presumption would promote certainty regarding domicile determinations in the no-fault context, maintain the long-standing character of the no-fault domicile inquiry as an inquiry focused on the actual facts of the situation, and afford the appropriate deference that custody and legal-residence determinations ought to be given outside the domestic relations context.
>
> 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. While *Dairyland* involved a child that had reached the age of majority, I find these factors to be similarly relevant for determining the intent of a minor child's parents regarding the child's domicile because they focus on objective indicators of the intent to have the child remain permanently in a given home. Additionally, there are other relevant factors that are unique to the context of minor children whose parents share joint custody: (1) where the child actually spends the majority of his or her time, and (2) where the child actually sleeps the majority of the nights of the week. It bears repeating, however, that none of these domicile factors would alone be determinative.

In her supplemental brief, Plaintiff makes numerous unsupported references to the number of cases where the decision in *Grange* is at issue. Plaintiff also makes unsupported claims as to how the *Grange* rule affects minors and insurers. As explained in *Grange*, minors do not have the ability to "make legally binding determinations for him or herself and, therefore, a child lacks

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the *capacity* to acquire a domicile of choice." *Grange*, p. 503. Plaintiff's complaints about the fairness to minors about what his or her parents are doing are simply a basic part of Michigan law because a minor lacks the capacity to make certain decisions. This fact goes far beyond the issue of domicile as a parent's decisions concerning their children cover a broad spectrum of family life and decisions.

Justice Zahra and Plaintiff both claim the *Grange* decision will affect the ability of an insurer to assess risk. However, an insurer's ability to assess risk is primarily based on its insured's representations on the application for insurance. Few, if any, insurers request that applicants identify persons domiciled in their homes. In virtually every case, the applicant is asked to disclose residents at the policy address. If a custody agreement provides for the child to reside with both parents at certain times, it would be incumbent upon both parents to disclose the child as a resident. In practicality, the existence of a custody agreement would provide more clarity than the simple representations of an applicant. If an insurer obtains a custody agreement and interprets it to mean that both parents share custody, it can accurately assess its risks because it will know the child is a resident of the applicant.

Further, with all due respect, the analysis suggested by Justice Zahra complicates that analysis because it would still require insurers to obtain a custody agreement and then to further determine if the parents have deviated from the agreement. By making the language of a custody agreement a rebuttable presumption, it has added information and analysis an insurer must do to assess risk.

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COMPARISON OF THE PRESENT CASE UNDER THE *GRANGE* OPINION AND JUSTICE ZAHRA'S CONCURRENCE

Majority Analysis

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 **(Exhibit B, Judgment of Divorce)**, which has not been modified. **(Exhibit C, Stephanie Lawrence Deposition Transcript, pp. 21-22) (Exhibit D, Corey Frownfelter's Deposition Transcript, p. 35)**. The Judgment of Divorce grants both parents joint legal and joint physical custody.

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 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

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> 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* [254 Mich 25; 235 NW2d 854 (1931), overruled in part on other grounds by *Hentz v. Hentz*, 371 Mich 335; 123 NW2d 757 (1963)] and retains our traditional understanding that a person can only have one domicile at a time. *Grange,* p. 512 n 78, emphasis in original.

The Trial Court relied on *Grange* to determine that the Judgement of Divorce granted equal parenting time and custody, which meant that, on the date of the accident, Plaintiff was domiciled with Mr. Frownfelter, as she had spent the prior night at his home on the date of loss as part of Mr. Frownfelter's parenting time. Plaintiff's argument that the *Grange* Court's use of the words "with whom [she was] living at the time" somehow would mean that Plaintiff was residing with Ms. Lawrence are directly contrary to the *Grange* ruling. To accept Plaintiff's proposition would be to disregard the entire ruling of *Grange* as Plaintiff is attempting to ignore the custody agreement and simply focus on other domicile factors, which the *Grange* Court rejected. Thus, given that the scenario set forth in *Grange* at footnote 78 exists in this case, under the Majority analysis, there is no question that Plaintiff was domiciled with Mr. Frownfelter on the date of loss, as she had stayed with him from the prior evening through the time the accident occurred.

In this case, Plaintiff's parents were granted equal physical and legal custody of Plaintiff. This created a 50/50 split for custody between the parents, unless the parents amended the Custody Order, which did not occur. Given the facts presented above, the Trial Court properly determined that Plaintiff was domiciled with Mr. Frownfelter on the date of loss as Mr. Frownfelter had direct custody of Plaintiff at the time of the Accident.

Plaintiff argues that the Court of Appeals erred when it argued that the Judgment of Divorce stated that Plaintiff was to reside with Ms. Lawrence 50% of the time and with Mr. Frownfelter 50% of the time. The order states:

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> 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.

(Exhibit B, p. 4).

Plaintiff suggests that because "50% of the time" was not included at the end of the paragraph, Plaintiff was not to reside with Mr. Frownfelter 50% of the time. Reading the order as a whole, there is no question that the order required Plaintiff to reside with Mr. Frownfelter 50% of the time and there is no other residence envisioned by the order. The order clearly called for Plaintiff to reside with each parent 50% of the time.

The facts of this case fit squarely into the fact pattern set forth in footnote 78 of *Grange.* The order required joint physical custody and required Plaintiff to reside with each parent 50% of the time without designating a primary custodial parent.

Justice Zahra Concurrence Analysis

Justice Zahra's concurrence does not provide any additional clarity to the very specific issue in this case. The rule created by Justice Zahra would not alleviate his fears as to the alleged burden placed on an insurer when assessing risk of a minor child of divorced parents for insurance purposes.

The Footnote discussion in *Grange* occurred as a hypothetical in a situation where the custody order/divorce decree provided equal legal custody and equal physical custody between the parents of a minor child without designating a primary custodian between the parents. It is only in this specific situation that Footnote 78 in *Grange* would apply the alternating domicile analysis for the minor child. Rather than provide a bright line rule, as the Majority does, in this very specific and unique situation, Justice Zahra's concurrence would create further steps that an insurer would

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be required to take to determine if it were responsible for payment of PIP benefits. The Majority in *Grange* addresses this issue in Footnote 73. Specifically, the majority states:

> Despite this clear directive, the concurrence argues that our holding injects uncertainty into the realm of no-fault law. We believe that it is the concurrence's rebuttable presumption test that would create uncertainty because it would require insurers to evaluate parents' claims of domicile or leave an insurer guessing regarding its risk of exposure to liability.

Grange at Footnote 73.

Applying Justice Zahra's concurrence, if an insurer received a claim from a minor child of divorced parents, the initial step still requires analysis of the custody order/divorce decree to determine whether a rebuttable presumption of domicile has been explicitly or impliedly established either through an express provision in the custody order/divorce decree, or by designation of a primary custodian. If domicile of the minor child cannot be determined through analysis of the custody order/divorce decree, the majority opinion establishes a single, alternating domicile for the minor child dependent on where the minor resides at the time the loss occurred. However, Justice Zahra's concurrence would require the insurer to go a step further and obtain statements and/or testimony from the parents of the minor child to determine the living situation of the minor child at the time a policy is incepted or on the date an accident occurs. This would create uncertainty and additional litigation as to the interpretation of the living situation within the *Workman* and *Dairyland* factors, thus complicating the issue further.[3]

CONCLUSION REGARDING DOMICILE

In this case, the Majority opinion in *Grange* provides a clear and unambiguous rule for courts to follow in a very specific and unique situation. Where a custody order/divorce decree

[3] Justice Zahra's concurrence also assumes that the facts in a given situation are so "clearly inconsistent with the family court's custody order" that domicile can be easily ascertained. However, as this Honorable Court is well aware, litigation is rarely so black and white.

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allows for equal legal custody and equal physical custody without designating a primary custodian for a minor child, the singular domicile of the minor child is the residence of the custodial parent at the time the incident occurs. If Justice Zahra's concurrence is followed, courts would still be required to review the custody order/divorce decree to determine if domicile has been established. If not, courts would be required to analyze the testimony of the parents regarding the living situation of the minor child and determine whether the living situation is "so clearly inconsistent" with the custody order/divorce decree that "the parents have expressly or impliedly reached an agreement regarding the minor child's domicile" under the factors 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. App. 675; 333 N.W.2d 322 (1983). Application of Justice Zarha's concurrence would lead to uncertainty and additional litigation in several respects, including whether the custody order/divorce decree does or does not establish domicile and what is considered "so clearly inconsistent" with the custody order/divorce decree, making Justice Zahra's rule impractical to use in such an exceptional situation.

RESIDENCY

In this case, the Judgment of Divorce issued by the family court is unambiguous as to Plaintiff's residency at the time of the Accident. Specifically, the divorce decree/custody order states:

> **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.

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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 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.

Plaintiff's reliance on the recently decided case of *Mapp v. Progressive Ins. Co.*, 346 Mich. App. 575 (2023) is also misplaced. Indeed, it clearly supports that Plaintiff was a resident of Mr. Frownfelter's home. *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. In *Mapp*, the Claimant, Delisa Mapp, resided with her ex-husband, who was a named insured on the Progressive policy. Their daughter, DeAndrea was also a named insured on the Progressive policy. DeAndrea had moved out of their home in 2017 and moved into an apartment with her husband. The question became what Claimant resided with her daughter.

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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. Indeed, the *Mapp* Court found that DeAndrea was not domiciled with the Claimant. However, the *Mapp* Court found an issue of fact as to whether plaintiff was a resident relative of her daughter and thereby entitled to benefits pursuant to the language in the Progressive policy that extended coverage to resident relatives of the named insured.

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 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

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> 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, 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.

Plaintiff also misstates *Mapp* in claiming that "a person does not necessarily reside at their domicile." In *Mapp*, DeAndrea testified she considered her the apartment she shared with her husband to be her primary and permanent residence. The Court nevertheless held that there was a question of fact as to whether DeAndrea also resided with her parents. *Mapp* simply indicates that a person can have multiple residences but only one domicile.

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Plaintiff's reference to cases concerning college students that live away from home when school is in session is also simply incorrect. Plaintiff states that the *Grange* Court impliedly affirmed this through reference to *Goldstein v. Progressive Cas Ins Co.*, 218 Mich App 105, 112 (1998). *Goldstein* analyzed whether a *nonresident* was domiciled with his parents who lived in Maryland. The primary issue in the case was whether his parents' insurer, who had filed the certificate required by the version of MCL 500.3163 in effect on the date of the accident, was liable for payment of PIP benefits. It is axiomatic that the Claimant had to be a non-resident for MCL 500.3163 to apply.

In this case, the Court of Appeals determined that the Esurance Policy did not specifically define the term "residency" with regard to application of its step-down provision. As a result, the panel looked to *Grange* and *Mapp* to determine Plaintiff's proper residency. In the absence of a definition of "residency" in the Esurance Policy, the panel looked to other sources, which included the Trial Court's domicile opinion as well as the Judgment of Divorce, which provided residency with both parents. Further, the facts clearly establish that Plaintiff resided with Mr. Frownfelter at least part of the time as she had her own room in his home, kept belongings there and stayed in his home at least 25% of the time.

As such, the Trial Court and Court of Appeals were correct in determining that Plaintiff resided with Mr. Frownfelter on the date of the Accident and the step-down provision in the Esurance Policy was applicable.

CONCLUSION REGARDING RESIDENCY

The Judgment of Divorce unambiguously states that the minor child has residence with both parents. The holding in *Grange* is clear that while a minor child can only have one domicile, the child can have multiple residences. Further, the facts clearly establish residency with Mr.

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Frownfelter. As such, the Trial Court and Court of Appeals' decision that Plaintiff's residence with Mr. Frownfelter on the date of loss must be upheld.

RELIEF REQUESTED

Defendant/Appellee Esurance requests that this Honorable Court deny leave to appeal the decisions of the Court of Appeals as to domicile and residency. Alternatively, should this Court elect to overturn *Grange* and craft a different analytical framework to determine the domicile of a minor of divorced parents, Defendant/Appellee Esurance requests that this Honorable Court deny leave on the residency issue, as it is clear Plaintiff was a resident of her father's household on the date of the Accident.

Respectfully submitted,
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/s/ Aaron W. Hinman

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CERTIFICATE OF COMPLIANCE

I certify that the Appellee Esurance Property and Casualty Insurance Company's Supplemental Brief Pursuant to MCR 7.312(E) 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 **6643** words.

{Signature to Follow}

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Certificate of Service

I hereby certify that on November 26, 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 Supplemental Brief Pursuant to MCR 7.312(E), Index of Exhibits, and this Certificate of Service.

/s/Cameron Dahl
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