STATE OF MICHIGAN

COURT OF APPEALS

SCOTT CHAMPAGNE,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee,

and

MEEMIC INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
April 27, 2006

No. 257119
Sanilac Circuit Court
LC No. 03-029237-CK

Before: Bandstra, P.J., and White and Fort Hood, JJ.

PER CURIAM.

Defendant Meemic Insurance Company (Meemic) appeals as of right from a judgment in favor of plaintiff. Meemic challenges the trial court's grant of summary disposition for defendant State Farm Mutual Automobile Insurance Company (State Farm) pursuant to MCR 2.116(I)(2). Meemic also challenges the trial court's award of attorney fees, costs, and interest to plaintiff. We affirm.

Plaintiff was injured when a car driven by his friend accidentally rolled over plaintiff's foot. State Farm insured the vehicle involved in the accident. Meemic insured plaintiff's mother. Meemic and State Farm filed cross-motions for summary judgment. Meemic argued that plaintiff was not domiciled with its insured, plaintiff's mother, and therefore it was not responsible for plaintiff's personal injury protection benefits. State Farm argued that plaintiff was domiciled with his mother, and therefore, it was not responsible for the benefits. After a hearing, the trial court held that plaintiff was domiciled with his mother at the time of the accident, and therefore, plaintiff was entitled to coverage from Meemic as her resident relative.

Plaintiff later filed a motion for attorney fees, costs, and interest pursuant to MCL 500.3142(3) and MCL 600.6013. Meemic argued that its denial of benefits was reasonable under the circumstances, and therefore it was not responsible for plaintiff's attorney fees. State Farm argued that its denial of benefits was also reasonable, but further argued that if the court

awarded plaintiff any fees or interest, Meemic should have to pay them because it was found liable for the no-fault benefits. After a hearing, the court granted plaintiff's motions for attorney fees, costs and interest and required Meemic and State Farm to share equally in paying these amounts.

This Court reviews a grant of a motion for summary disposition de novo. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). In this case, the parties essentially agree on the material facts. "Generally, the determination of domicile is a question of fact. However, where, as here, the underlying facts are not in dispute, domicile is a question of law for the court." *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002).

The courts consider a number of factors in determining an individual's domicile. The court must weigh and balance these factors because no one factor is determinative. *Regents of Univ of Michigan v State Farm Mut Ins Co*, 250 Mich App 719, 730; 650 NW2d 129 (2002). The court in *Fowler, supra* at 364-365, set forth the relevant factors as follows:

> (1) the subjective or declared intent of the claimant to remain indefinitely in the insured's household, (2) the formality of the relationship between the claimant and the members of the household, (3) whether the place where the claimant lives is in the same house, within the same curtilage, or upon the same premises as the insured, and (4) the existence of another place of lodging for the person alleging domicile. *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979).
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> When considering whether a child is domiciled with the child's parents, other relevant indicia include: (1) whether the child continues to use the parents' home as the child's mailing address, (2) whether the child maintains some possessions with the parents, (3) whether the child uses the parents' address on the child's driver's license or other documents, (4) whether a room is maintained for the child at the parents' home, and (5) whether the child is dependent upon the parents for support.

The courts have noted that young adults who live in a number of different households for short periods of time pose unique challenges when applying the above factors. *Dobson v Maki*, 184 Mich App 244, 254; 457 NW2d 132 (1990). Following a de novo review of the deposition testimony, the trial court did not err in granting summary disposition in favor of State Farm.

In *Dobson*, the Court cited the following facts for concluding that the 21 year old child was domiciled in his father's home at the time of the accident: (1) he would stay with his father a couple days out of the week and stay with friends for the remainder of the week; (2) he did not intend on staying with his father permanently; (3) he was not financially dependent upon his father; (4) he was allowed to do his laundry and eat at his father's house; (5) he put his father's address down on his unemployment records; and (6) he received mail at his father's house. *Dobson, supra* at 253-254. The *Dobson* Court recognized that "the facts of this case may not fall neatly within the factors as enunciated in *Workman, supra* . . . . However, we must take into consideration the realities of young adulthood which may involve differing degrees of separation from the parental home." *Id.*

Similarly, in this case, the trial court found: (1) plaintiff received mail at his mother's house; (2) other than a bag of clothing, all of plaintiff's personal possessions remained at his mother's house; (3) plaintiff listed his mother's address on his medical records; (4) plaintiff intended on residing with his mother; and (5) plaintiff did not have any other place he could call his domicile.

Meemic heavily relies on *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675; 333 NW2d 322 (1983), and argues that the facts of this case are very similar. However, in *Dairyland*, the child had not lived with his mother for a number of months, expected to indefinitely live in his grandfather's trailer, and had no expectations of returning to his mother's house. *Id.* at 684. In this case, plaintiff would frequently return to his mother's house on the weekends,[1] did not have any other place he could call his domicile, and intended to live with his mother again. Based on the facts available, *Dobson* is controlling. Accordingly, the trial court properly determined that plaintiff was domiciled with his mother and is entitled to personal injury protection benefits under her no-fault policy.

Meemic next argues that the court's award of attorney fees was improper because its denial of personal injury protection benefits was reasonable under the circumstances. We disagree. This Court reviews a trial court's finding of reasonable refusal or delay of insurance claims for clear error. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 316-317; 602 NW2d 633 (1999). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

This Court has repeatedly held that "when the only question is which of two insurers will pay, it is unreasonable for an insurer to refuse payment of benefits." *Regents of Univ of Michigan, supra* at 737, citing *Darnell v Auto-Owners Ins Co*, 142 Mich App 1, 12; 369 NW2d 243 (1985); *Bach v State Farm Mut Auto Ins Co*, 137 Mich App 128; 357 NW2d 325 (1984); *Kalin v DAIIE*, 112 Mich App 497; 316 NW2d 467 (1982). In this case, plaintiff was undoubtedly entitled to no-fault benefits. Regardless of the dispute as to where plaintiff was domiciled, the only question that remained was which of the two defendant insurance companies was responsible for the payments. Therefore, the trial court's finding that defendants acted unreasonably in denying plaintiff's claims was not clearly erroneous. We hold that Meemic has established no error in the award of attorney fees to plaintiffs.

Although State Farm's brief also advances arguments challenging the imposition of attorney fees, costs, and interest against it, counsel conceded at argument that State Farm had not properly pursued a cross-appeal in this case. Thus, because State Farm is merely an appellee, and not also a cross-appellant, it cannot properly seek to obtain a decision more favorable to it than that rendered by the trial court, i.e., State Farm cannot properly seek to have the trial court's imposition of attorney fees, costs, and interest against it eliminated or reduced. See *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1998) (explaining that "a cross appeal

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[1] Although we acknowledge that his mother testified that he did not necessarily return to her home on weekends, but may have stayed with friends.

is necessary to obtain a decision more favorable than that rendered by the lower tribunal").

Affirmed.

/s/ Richard A. Bandstra
/s/ Helene N. White
/s/ Karen M. Fort Hood