

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY GOODSON,
Plaintiff,

UNPUBLISHED
February 17, 2011

v

FARMERS INSURANCE EXCHANGE,

No. 292652
Wayne Circuit Court
LC No. 08-114980-NF

Defendant/Cross-Plaintiff-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant/Cross-Defendant-
Appellant.

GETWELL MEDICAL TRANSPORTATION,
SUNCARE REHABILITATION, and DR.
DAWIT TEKLEHAIMANOT,

Plaintiffs,

v

FARMERS INSURANCE EXCHANGE,

No. 294236
Wayne Circuit Court
LC No. 08-110942-NI

Defendant-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

In Docket Nos. 292652 and 294236,¹ defendant/cross-defendant, State Farm Mutual Automobile Insurance Company (“State Farm”), appeals by leave granted² from the trial court’s order granting summary disposition in favor of defendant/cross-plaintiff, Farmers Insurance Exchange (“Farmers”). On appeal, State Farm argues that there remains a genuine issue of material fact regarding where plaintiff, Anthony Goodson, was domiciled at the time he was injured in an automobile accident, for purposes of priority between defendant insurers. We agree. This matter is reversed and remanded for further proceedings.

State Farm argues that the trial court improperly resolved factual questions regarding Goodson’s domicile when it granted summary disposition in Farmers’ favor. MCL 500.3114(1), in the no-fault act, provides:

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

This issue, and this entire case, hinges on whether Goodson was domiciled with his parents (“Wisconsin address”) or his girlfriend (“Santa Barbara address”) at the time he was injured in the auto accident—July 17, 2006. The trial court concluded that, although there was conflicting evidence, a reasonable jury could only conclude that Goodson lived with his parents at the Wisconsin address at the time of the accident. We disagree.

Domicile, as used in MCL 500.3114(1) is legally synonymous with “residence” in Michigan law. *Cervantes v Farm Bureau Gen Ins Co*, 272 Mich App 410, 414; 726 NW2d 73 (2006). Further, the phrase “domiciled in the same household” is to be “viewed flexibly.” *Id.* Courts have developed a series of non-exclusive factors for determining a party’s residence or domicile, including “the subjective or declared intent of the person,” “the formality or informality of the relationship between the person and the members of the household,” “the existence of another place of lodging by the person alleging . . . ‘domicile’ in the household,” “whether the person maintains possessions at the” residence, “whether the insured’s address appears on the person’s driver’s license and other documents,” the maintenance of a bedroom at the residence, and “whether the person is dependent upon the insured for financial support or

¹ These cases were consolidated in the trial court. This Court consolidated the appeals on November 24, 2010. *Goodson v Farmers Ins Exchange*, unpublished order of the Court of Appeals, entered November 24, 2010 (Docket Nos. 292652 and 294236).

² *Goodson v Farmers Ins Exchange*, unpublished order of the Court of Appeals, entered November 10, 2009 (Docket No. 292652); *Getwell v Farmers Ins Exchange*, unpublished order of the Court of Appeals, entered November 10, 2009 (Docket No. 294236).

assistance.” *Id.* at 414-415 (quoting *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477, 495; 274 NW2d 373 (1979), and *Williams v State Farm Mut Auto Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993)). Finally, a party’s domicile is generally a question of fact, unless the facts are not in dispute, in which case it is a question of law for the court. *Fowler v Auto Club Ins Assoc*, 254 Mich App 362, 364; 656 NW2d 856 (2002).

The primary evidence in support of the Wisconsin address is that Goodson testified that he lived at the address, and the traffic report from the accident indicated that he lived at that address. Additionally, his address of record for purposes of his parole and social security benefits is the Wisconsin address. Goodson also testified that he had previously stated that he lived at the Santa Barbara address, but only because his father asked him to do so.

Goodson’s father testified that Goodson did not live at the Wisconsin address at the time of the accident. Goodson’s mother, on the other hand, gave equivocal testimony. She stated that “he lived there and he lived here,” saying that he has a bed, television, and some clothes in the basement of the house, contrary to the father’s testimony. She concurred that he did not have a key to the house. Further complicating her testimony, she later signed a confirmation of interview clearly indicating that Goodson’s “permanent address” was the Wisconsin address.

State Farm also presented documentary evidence showing that Goodson’s address after the accident was the Santa Barbara address. Finally, a psychologist’s summary of Goodson’s description of the accident indicated that Goodson was leaving his house to go to his mother’s house at the time of the accident.³

Much of State Farm’s evidence pertains to Goodson’s domicile after the accident. By itself, this does not raise a genuine issue of material fact regarding his domicile *at the time of* the accident because it is common sense that someone may change their domicile at any time. The testimony of Goodson’s parents, however, is problematic.

Goodson’s father plainly testified that Goodson moved out of the Wisconsin address before the accident. This testimony is partially contradicted by Goodson’s mother and directly contrary to Goodson’s testimony. A court may not make credibility determinations when deciding a motion for summary disposition. *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004). While there is a believable narrative—raised by Goodson’s later testimony to this effect—that all three deponents lied about Goodson’s domicile at their depositions because his parents feared their premiums would go up, it is not for the court to resolve the incumbent questions of credibility in order to reach this conclusion. Further, questions of intent and motive—like credibility—should generally not be decided on summary disposition. *Foreman v Foreman*, 266 Mich App 132, 135-136; 701 NW2d 167 (2005).

³ State Farm also attached additional exhibits to their brief on appeal that were not presented to the trial court. A party may not expand the record on appeal. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). We have not considered these exhibits in this appeal.

Here, there is unequivocal testimony from one inhabitant of the Wisconsin address that Goodson did not live there at the time of the accident, and equivocal testimony from the other. Both raise the possibility that Goodson lived at least part of the time with his girlfriend at the Santa Barbara address. And there is considerable evidence that he lived at that address after the accident. Because there is a clear dispute in the facts, granting summary disposition in favor of Farmers was not proper in this case. See *Fowler*, 254 Mich App at 364.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause