STATE OF MICHIGAN

COURT OF APPEALS

ALFRONIA CARTER,

Plaintiff,

v

CHRYSLER INSURANCE COMPANY, f/k/a DAIMLER CHRYSLER INSURANCE COMPANY,

Defendant-Appellee,

and

AMERICAN INTERNATIONAL INSURANCE COMPANY, a/k/a AIG,

Defendant/Cross-Defendant-Appellant,

and

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 21, 2012

No. 300808
Wayne Circuit Court
LC No. 08-123351-NF

Before: GLEICHER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

In this insurance priority dispute, defendant American International Insurance Company, a/k/a AIG ("AIG"), appeals as of right the circuit court's order granting summary disposition in favor of defendant Chrysler Insurance Company ("Chrysler") and ordering AIG to reimburse defendant Allstate Insurance Company ("Allstate") for amounts that it paid as the Michigan Assigned Claims Facility's assignee. Because AIG was first in priority to pay plaintiff's no-fault insurance benefits since plaintiff was a domiciled, resident relative of AIG's named insureds, we affirm.

This case stems from an automobile accident that occurred on September 18, 2007, in Detroit. At the time of the accident, plaintiff was driving a vehicle insured by Chrysler. Also at the time of the accident, plaintiffs' parents owned a vehicle insured by AIG and were named

insureds on the policy. Plaintiff filed an action for first party no-fault benefits against several insurers, including Chrysler and AIG. Because there was a dispute regarding which insurer was responsible for plaintiff's no-fault benefits, plaintiff filed a claim with the Michigan Assigned Claims Facility,[1] which assigned plaintiff's claim to Allstate.

Relying on plaintiff's February 19, 2008, examination under oath, AIG moved for summary disposition, arguing that it was not responsible for plaintiff's no-fault benefits because plaintiff was not a named insured, or a resident relative or spouse of a named insured, on the AIG policy as required for coverage under MCL 500.3114(1). The trial court denied the motion without prejudice to AIG refiling the motion after discovery. Following discovery, Chrysler moved for summary disposition under MCR 2.116(C)(10), arguing that AIG was first in priority to pay plaintiff's claim because there was no genuine issue of material fact that plaintiff resided with his parents, AIG's named insureds, at the time of the accident. The trial court agreed, granted Chrysler's motion, and ordered AIG to reimburse Allstate the amount of benefits paid, in addition to costs and attorney fees associated with plaintiff's claim. AIG now appeals the trial court's decision.

We review de novo a trial court's decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). In reviewing a motion under MCR 2.116(C)(10), we review "the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id.* "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

AIG argues that the trial court erroneously determined, as a matter of law, that plaintiff lived with his parents on Warwick street at the time of the accident and was, therefore, entitled to coverage under the AIG policy as a resident relative of his parents. MCL 500.3114(1) provides, in relevant part:

> [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.]

Thus, if plaintiff was a domiciled, resident relative of his parents at the time of the accident, AIG was first in priority to pay his claim. Generally, the determination regarding a person's domicile is a question of fact, but, when the underlying facts are not in dispute, it is a question of law for the court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). Here, the parties do not dispute the underlying facts, but rather, dispute the legal outcome derived from those facts. Therefore, the trial court properly decided the domicile issue as a question of law.

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[1] MCL 500.3172 allows a person injured in an automobile accident to obtain no-fault benefits through the Assigned Claims Facility if no insurance is applicable or can be identified, the insurance applicable cannot be ascertained because of a dispute between insurers, or the insurance is inadequate.

Several factors should be considered when determining whether a person is a domiciled, resident relative of a named insured, and each factor should be weighed and balanced against the others "because no one factor is determinative." *Fowler*, 254 Mich App at 364. In *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), our Supreme Court articulated the following factors to consider when determining a person's domicile:

> (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household";
>
> (2) the formality or informality of the relationship between the person and 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 alleging "residence" or "domicile" in the household.

"These four factors do not make a comprehensive and exclusive list; they are merely '[a]mong the relevant factors' to be considered." *Cervantes v Farm Bureau Gen Ins Co of Michigan*, 272 Mich App 410, 415; 726 NW2d 73 (2006), quoting *Workman*, 404 Mich at 496 (brackets in original). This Court has articulated the following five additional factors:

> (1) the person's mailing address;
>
> (2) whether the person maintains possessions at the insured's home;
>
> (3) whether the insured's address appears on the person's driver's license and other documents;
>
> (4) whether a bedroom is maintained for the person at the insured's home; and
>
> (5) whether the person is dependent upon the insured for financial support or assistance. [*Williams v State Farm Mut Auto Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993).]

Balancing the above factors, the trial court properly determined that the Warwick address was plaintiff's domicile at the time of the accident. Plaintiff testified at his deposition that he lived in his parents' home at 9951 Warwick at the time of the accident and considered that residence to be his permanent address. He denied living at any other residence from June 2007 to the end of September 2007 and kept all of his belongings at the Warwick residence. Plaintiff's parents also testified that, when the accident occurred, plaintiff was living with them in their home. Plaintiff had his own bedroom where he kept his furniture and all of his possessions. He also had a key to the home and could come and go as he pleased. Jasmine Gibson, plaintiff's girlfriend of two years at the time of her deposition, further testified that plaintiff was living in the Warwick home when the accident occurred. Gibson cleaned plaintiff's bedroom and did his

laundry for him after the accident. Moreover, plaintiff received mail at the Warwick address. Plaintiff's 2007 tax return, a bank statement, and medical bills were sent to the Warwick address. In addition, plaintiff's parents helped him financially from June 2007 through September 2007 because he was not working during that time.

AIG argues that plaintiff was bound by his examination under oath ("EUO"), which showed that he was not living at the Warwick residence at the time of the accident. During his EUO, on February 19, 2008, plaintiff stated that he was currently living on Eddington Drive in Northville. However, he also denied that he was living there "most of the time." He maintained that he lived at the Eddington Drive address "at a time before the accident," but his driver's license indicated that he was living on Asbury Park when the accident occurred. On November 8, 2007, he changed the address on his driver's license to the Eddington Drive address, although he stated that he had been primarily residing with his parents on Warwick since the September 18, 2007, accident. Contrary to AIG's argument, plaintiff's EUO did not demonstrate with any certainty where he was living at the time of the accident and did not definitively establish that he was not living with his parents at the Warwick residence.

At his deposition, plaintiff clarified statements made during his EUO. Plaintiff testified that he never lived at the Eddington Drive address and that he had always lived at the Warwick residence. He maintained that he often "visited" at Eddington Drive and had "stayed there some nights," but that he did not live there. According to plaintiff, from June 2007 through the date of the accident, he spent the night at the Eddington Drive home "on and off maybe once or twice a week." Plaintiff also testified that the Warwick residence was the only place where he kept his personal belongings, he had no possessions at the Eddington Drive residence at the time of the accident, and he did not have a key to that residence. The only mail that he received at the Eddington Drive address was "something pertaining to [his] truck," which he owned together with the woman who lived at that address. Further, although his driver's license indicated that he had previously lived on Asbury Park, plaintiff claimed that he never lived at that address. He admitted that he had changed his address on his driver's license to places where he did not reside. Thus, applying the nine factors set forth in *Workman* and *Williams*, plaintiff was a domiciled, resident relative of his parents, the named insureds on the AIG policy. Accordingly, the trial court properly granted Chrysler's motion for summary disposition and ordered AIG to reimburse Allstate.

Affirmed. Chrysler and Allstate, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Elizabeth L. Gleicher
/s/ Patrick M. Meter
/s/ Pat M. Donofrio