STATE OF MICHIGAN

COURT OF APPEALS

GRANGE INSURANCE COMPANY OF MICHIGAN,

Plaintiff/Counter-Defendant-Appellant,

v

EDWARD LAWRENCE, Individually and Joint Personal Representative of the ESTATE OF JOSALYN A. LAWRENCE, and LAURA ROSINSKI, Individually and Joint Personal Representative of the ESTATE OF JOSALYN A. LAWRENCE,

Defendants-Appellees,

and

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Defendant/Counter-Plaintiff – Appellee.

FOR PUBLICATION
April 24, 2012
9:00 a.m.

No. 303031
Muskegon Circuit Court
LC No. 10-047159-CK

Advance Sheets Version

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this case, involving personal protection insurance benefits under the Michigan no-fault act, MCL 500.3101 *et seq.*, plaintiff, Grange Insurance Company of Michigan, appeals as of right the order regarding motions for summary disposition. We affirm.

On September 24, 2009, Laura Rosinski was driving with her minor child, Josalyn Lawrence, in a vehicle insured by Farm Bureau General Insurance Company of Michigan. They were in a motor vehicle accident that resulted in the death of Josalyn. At the time of the accident, Josalyn's parents, Edward Lawrence and Rosinski, were divorced. Pursuant to the judgment of divorce, the parents shared joint legal custody but Rosinski had primary physical custody. Although Josalyn slept at Rosinski's home during the week, Edward saw Josalyn

almost every day. Josalyn had a room and personal belongings at Edward's home, although her pets were at Rosinski's home. Josalyn usually stayed with Edward every other weekend, but Edward and Rosinski were flexible with their parenting agreement. There was no intention of changing this parenting-time arrangement. Edward also took Josalyn on vacations in the summer. The small amount of mail Josalyn received went to Rosinski's home. Rosinski's address was usually listed as Josalyn's home address.

At the time of the accident, Edward was a named insured on an automobile policy, which included personal protection insurance, with plaintiff. Rosinski was the named insured on an automobile policy, which included personal protection insurance, with defendant Farm Bureau. Farm Bureau paid first-party benefits on behalf of Josalyn and claimed plaintiff was equal in priority and should pay a portion of the benefits. Plaintiff denied Farm Bureau's request for reimbursement. Plaintiff's policy included a provision within the definition of "[f]amily member," stating that "[i]f a court has adjudicated that one parent is the custodial parent, that adjudication shall be conclusive with respect to the minor child's principal residence."

The instant lawsuit was initiated when plaintiff filed a complaint for declaratory relief, seeking an adjudication of whether Josalyn was an "insured" under its policy for purposes of the Michigan no-fault act, MCL 500.3101 *et seq.*

The trial court granted summary disposition in favor of Farm Bureau and determined that plaintiff was liable for 50 percent of the first-party benefits paid by Farm Bureau. On appeal, plaintiff argues that the trial court erred because no Michigan law recognizes dual domiciles for a minor child of divorced parents for purposes of the no-fault act and the trial court incorrectly applied the facts to the law. We disagree.

A trial court's decision to grant or deny a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008) (citation omitted). Summary disposition pursuant to MCR 2.116(C)(10) is proper "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. Questions of statutory interpretation are questions of law that are reviewed de novo. *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010) (citation omitted). "[W]here contract language is neither ambiguous, nor contrary to the no-fault statute, the will of the parties, as reflected in their agreement, is to be carried out, and thus the contract is enforced as written." *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002) (citations omitted). The no-fault act is remedial and should be construed in favor of those it is intended to benefit. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 28; 528 NW2d 681 (1995) (citation omitted).

MCL 500.3114(1) provides that a personal protection insurance policy applies to the named insured, the insured's spouse, "and a relative of either domiciled in the same household . . . ." The Michigan Supreme Court has considered the phrase "domiciled in the same household" and determined that for purposes of the no-fault act, the terms "domicile" and "residence" are "legally synonymous." *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477, 495; 274 NW2d 373 (1979). To determine if someone is "domiciled in the same household" as an insured, the *Workman* decision articulated four factors to be considered:

> (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. [*Id*. at 496-497 (citations omitted).]

Additional factors helpful when determining if a minor child is domiciled with the child's parents were articulated in *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983):

> Other relevant indicia of domicile include such factors as whether the claimant continues to use his parents' home as his mailing address, whether he maintains some possessions with his parents, whether he uses his parents' address on his driver's license or other documents, whether a room is maintained for the claimant at the parents' home, and whether the claimant is dependent upon the parents for support.

There is nothing in MCL 500.3114(1) or *Workman* or *Dairyland* that limits a minor child of divorced parents to one domicile or defines domicile as a "principal residence." The *Workman* decision recognized that "domiciled in the same household," does not have a fixed meaning and may vary with the circumstances. *Workman*, 404 Mich at 495. The undisputed circumstances in the instant case establish that Josalyn was domiciled, meaning had a residence, in the homes of each of her parents. With regard to the *Workman* factors: (1) there was no evidence of an intention to change the parenting arrangement; (2) the same formal relationship existed between Josalyn and her two parents; (3) at both homes, Josalyn lived in the house; and (4) as to both homes, Josalyn had another place at which she stayed. With regard to the *Dairyland* factors: (1) what little mail Josalyn received came to Rosinski's home, (2) Josalyn had possessions at both homes, (3) Josalyn primarily used Rosinski's address, (4) Josalyn had a room at both homes, and (5) Josalyn was dependent on both parents for support.

The undisputed evidence clearly shows that Josalyn resided with both parents and, as such, the issue of domicile was properly determined as a question of law by the trial court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). Although the judgment of divorce awarded Rosinski primary physical custody, 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. There remained no issue of material fact and the trial court did not err when it granted summary disposition in favor of Farm Bureau on the issue of reimbursement. *Latham*, 480 Mich at 111.

Additionally, plaintiff argues that its policy provision, stating that a court's adjudication of custody is conclusive of a child's principal residence, should control. However, MCL 500.3114(1) does not impose a requirement that coverage extends only to a relative whose "principal residence" is with the insured. "To the degree that the contract is in conflict with the statute [the no-fault act], it is contrary to public policy and, therefore, invalid." *Cruz*, 466 Mich

at 601. In this case, because plaintiff's policy would limit plaintiff's obligation where the no-fault act does not, that provision is invalid.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause