STATE OF MICHIGAN

COURT OF APPEALS

IAN ROSSMANN,

Plaintiff,

v

TITAN INSURANCE COMPANY,

Defendant,

and

AUTO CLUB GROUP INSURANCE COMPANY,

Defendant-Appellant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Third-Party Plaintiff-Appellant,

v

BRISTOL WEST INSURANCE COMPANY, a/k/a BRISTOL WEST PREFERRED INSURANCE COMPANY,

Third-Party Defendant-Appellee.

UNPUBLISHED
May 15, 2012

No. 302720
Macomb Circuit Court
LC No. 2009-002168-NF

Before: MURPHY, C.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Defendant and third-party plaintiff Auto Club Insurance appeals as of right the trial court's order granting summary disposition under MCR 2.116(C)(10) in favor of third-party defendant Bristol West Insurance Company. The order also denied Auto Club's competing

motion for partial summary disposition. We reverse and remand for entry of judgment in favor of Auto Club relative to domicile and the issue of insurer priority.

Plaintiff Ian Rossmann was struck by a motor vehicle after exiting a bus and while walking across the street. Rossmann did not own a vehicle, nor did he have his own automobile insurance. The vehicle that struck Rossmann was not insured. Given the apparent absence of any available personal protection insurance (PIP) benefits, Rossmann sought PIP benefits through the Assigned Claims Facility pursuant to MCL 500.3172, and defendant Titan Insurance Company became the assigned-claims insurer. Rossmann and Titan failed to reach agreement on the payment of PIP benefits, and Rossmann filed suit against Titan. However, it was later discovered that the vehicle that hit Rossmann was co-owned by a person who also owned a different vehicle for which he had a no-fault insurance policy issued by Auto Club. Rossmann amended his complaint to add Auto Club as a defendant. Auto Club subsequently filed a third-party complaint against Bristol West, which had issued an automobile insurance policy covering Rossmann's father as a named insured. Auto Club took the position that the Bristol West policy also covered Rossmann as a resident relative in relationship to his father, thereby making Bristol West the priority insurer.

MCL 500.3114(1) provides in pertinent part that "a personal protection insurance policy . . . 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 Rossmann was indeed domiciled in his father's household at the time of the accident,[1] the Bristol West policy would be implicated. Furthermore, MCL 500.3115(1) provides in relevant part:

> *Except as provided in subsection (1) of section 3114*, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
>
> (a) Insurers of owners or registrants of motor vehicles involved in the accident. [Emphasis added.]

Under the facts recited above, MCL 500.3115(1)(a) would pertain to the Auto Club policy, where there is no dispute that Auto Club was the insurer of the co-owner of the vehicle that struck Rossmann in the accident. However, for purposes of priority, MCL 500.3115(1)(a) is subject to the applicability of MCL 500.3114(1), as indicated in the prefatory language to § 3115. Therefore, if § 3114(1) applies, which is dependent upon whether Rossmann was domiciled in his father's household, the Bristol West policy would have priority, and Bristol West would be required to pay all of the PIP benefits. If Rossmann was not so domiciled, Auto Club would be solely responsible for the payment of PIP benefits under MCL 500.3115(1)(a) (insurer of owner of motor vehicle involved in accident). The parties agree that this case turns

[1] There is no dispute of course that Rossmann and his father are relatives.

on whether Rossmann's domicile was his father's home at the time of the accident. The parties stipulated to the dismissal of Titan from the lawsuit.

Auto Club moved for partial summary disposition under MCR 2.116(C)(10) with respect to the issue of domicile, and Bristol West also moved for summary disposition under MCR 2.116(C)(10) on the domicile matter. After consideration of the domicile factors set forth in the caselaw in conjunction with the deposition testimony and other documentary evidence, the trial court found as a matter of law, under the totality of the circumstances, that Rossmann was not domiciled in his father's home at the time of the accident. Accordingly, the trial court granted Bristol West's motion for summary disposition while denying Auto Club's competing motion. The third-party complaint against Bristol West was therefore dismissed with prejudice. Subsequently, Rossmann and Auto Club stipulated to the dismissal of Rossmann's complaint, which closed the case.

On appeal, Auto Club argues that the trial court erred in finding as a matter of law that, at the time of the accident, Rossmann was not domiciled in his father's household. This Court reviews de novo a ruling on a motion for summary disposition. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 363; 656 NW2d 856 (2002).[2] "Generally, the determination of domicile is a question of fact." *Id.* at 364. However, when "the underlying facts are not in dispute, domicile is a question of law for the court." *Id.*, citing *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111-112; 553 NW2d 353 (1996), and *Williams v State Farm Mut Automobile Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993). We note that this Court has also stated that "the determination of domicile is a question of fact for trial court resolution." *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 684; 333 NW2d 322 (1983). The Legislature used the term "domiciled" in MCL 500.3114(1), and there is no statutory definition of "domicile" in the no-fault act, MCL 500.3101 *et seq.* In *Fowler*, 254 Mich App at 364-365, this Court stated:

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[2] MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The trial court is not permitted to assess credibility, to weigh the evidence, or to resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). *Skinner*, 445 Mich at 161; *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

> Several factors should be considered in determining domicile, and these factors should be weighed or balanced with each other because no one factor is determinative.
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> The relevant factors in deciding whether a person is domiciled in the same household as the insured include: (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. [Citations omitted.]

Here, the accident occurred on January 20, 2009, and there is no dispute that at the time of the accident, Rossmann, who was in his early 20s, was living at Leonard House, which Rossmann described as "transitional housing for drug rehabilitation." A letter from Leonard House indicated that Rossmann stayed there from December 25, 2008, until January 23, 2009, and that he resided there for a second stint from April 10, 2009, until May 22, 2009.[3] Rossmann testified that he could have stayed at Leonard House for up to a year. Prior to Rossmann's time at Leonard House, he was enrolled in an inpatient drug rehabilitation program at Sacred Heart in Memphis. He stayed at Sacred Heart from December 3 through December 24, 2008. According to Rossmann, he spent two days at his father's house directly before going to Sacred Heart.[4] Rossmann used his father's address as Rossmann's mailing address while at Sacred Heart and Leonard House. Rossmann testified that he was homeless beginning in October 2008 and remained homeless until he stayed with his father those two days before leaving for Sacred Heart. Rossmann indicated that prior to becoming homeless, he lived off and on with his father and with friends. To the best of his memory, he recalled living with his father for about two or

[3] The letter further provided:

> At Leonard House[,] residents are required to attend 12 step meetings, outpatient counseling, and be gainfully employed. We insist our clients behave appropriately and keep their personal space and themselves clean in every sense of the word. They are responsible for daily chores and following stringent guidelines that are enforced rigorously.

[4] Rossmann recalled spending Christmas Eve and Day 2008 at his sister's house.

three months total in 2008. Rossmann testified that he served time in jail from September 2007 until May 2008, that he committed a felony after being released, that he was subsequently arrested by police on that felony sometime in August 2008, and that he was later released on a personal recognizance bond.

Rossmann's father testified that his son had lived in the father's home off and on pretty much his entire life and that Rossmann lived in the house for two or three months in the summer of 2008, leaving sometime in August, which testimony would be consistent with his son's testimony. Rossmann's father recalled that his son served time in jail in either 2008 or 2009. The father testified that Rossmann never spent the night at his house after leaving in August 2008 and prior to the date of the accident. The elder Rossmann additionally testified that his son visited and picked up his mail a few times during that timeframe and that Rossmann regularly lived with friends. Rossmann testified that he bounced around between the homes of friends and acquaintances, but returned to his father's house time and time again. The father-son relationship was contentious, and Rossmann would leave his father's house after arguments or after being told to leave. Rossmann testified that he considered his father's house to be his home base. But he then somewhat altered that testimony by indicating that it might be more accurate to say that his father does not want to see Rossmann on the streets, and Rossmann added that his stays with his father were "never a long term situation." With respect to Rossmann's living situation after the accident, following the two or three days that he was hospitalized, he went to live with his sister for a month or so and then moved in with his father. It appears that thereafter Rossmann resided at Leonard House for the second time as referenced above in the Leonard House letter. Rossmann testified that after leaving Leonard House, he again proceeded to live with his father before moving out to live with other individuals. However, by the time of his deposition, Rossmann had once again moved in with his father. Rossmann stated that he did not receive financial support from his father. He further testified that he had a Bridge Card and was classified as "homeless" by the Family Independence Agency (FIA), now known as the Department of Human Services (DHS).

There was testimony that Rossmann used or gave his father's address for purposes of the crash report relative to the accident, his state identification card, his driver's license (until it was suspended), his voter registration card, his general mailing address,[5] his jailings, and bills. According to his father, Rossmann used his father's address for everything, regardless of where he was living. The father testified that when Rossmann was residing with him in the summer of 2008, Rossmann lived in the home's finished basement, which had a full bath and was comparable to an apartment; Rossmann slept on an inflatable mattress.[6] Rossmann's father further testified that he had converted Rossmann's childhood bedroom into an office, that

[5] Rossmann, who has been jailed several times, recalled being released from jail in May 2007 and moving into an apartment. Rossmann changed his address on various documents to the location of the apartment; however, he was evicted after three months for not paying rent, and he changed his address back to his father's address relative to the documents. That was the only time Rossmann had signed a lease, and he has never owned his own home.

[6] Rossmann testified about occasionally sleeping on a couch while at his father's house.

Rossmann's dresser remained in the basement, that the dresser contained some of Rossmann's clothes, that some of Rossmann's things remained in a closet, and that when Rossmann left in August 2008, he took the inflatable mattress and most of his clothes. Rossmann himself testified that he kept some clothes and possessions at his father's house. According to his father, Rossmann never carried a house key around even when living with his father, but one was kept near the door, as Rossmann had a bad habit of losing things.

A primary argument made by Auto Club is that every person must have a domicile and that the only location that could conceivably have been Rossmann's domicile was his father's house. In *People v Dowdy*, 489 Mich 373, 385; 802 NW2d 239 (2011), our Supreme Court addressed the meaning of "domicile" for purposes of the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, which was undefined in the SORA, and the Court made the following observations regarding how the term has generally been defined:

> Michigan courts have defined "domicile" as that place where a person has voluntarily fixed his abode not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time. Similarly, a domicile is the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time. . . . [I]t has long been the law of this state that every person must have a domicile somewhere. A person may have only one domicile, which continues until the person acquires a different one. Thus, the essential characteristic of a "domicile" that separates it from a "residence" is that, under Michigan law, *every* person has a "domicile." [Citations and internal quotations deleted; emphasis in original.]

This passage is consistent with Auto Club's argument. *Dowdy*, however, would appear to have limited application because the Court there was focused on the proper interpretation of the SORA, not the no-fault act, and because the *Dowdy* Court found it necessary to distinguish a "domicile" from a "residence," given that the SORA utilized both terms in the disjunctive and a synonymous interpretation of the terms would be improper. *Id.* at 384-385. The Court in *Dowdy* found support for its proposition that every person has a domicile in *Beecher v Common Council of Detroit*, 114 Mich 228, 230; 72 NW 206 (1897). *Dowdy*, 489 Mich at 385. Auto Club cites and relies on *Beecher*. However, *Beecher* concerned the taxation of personal property, and, of course, had nothing to do with the no-fault act, which was enacted nearly 80 years later. Auto Club also relies on *Dobson v Maki*, 184 Mich App 244; 457 NW2d 132 (1990); however, *Dobson* simply does not express the proposition that every person must have a domicile for purposes of the no-fault act.[7]

[7] In *Workman*, 404 Mich at 495, the Supreme Court, construing MCL 500.3114(1), found that although the Legislature used the term "domiciled" in the statute, it was appropriate to analytically apply the body of law pertaining to the definition of a "residence." The Court stated that "in this state, the terms 'domicile' and 'residence' are legally synonymous (except in special circumstances)." *Id.*

Assuming for the sake of argument that MCL 500.3114(1) and the phrase "domiciled in the same household" require a court to make a finding of a domicile at one place or another consistent with *Dowdy*, as opposed to simply determining whether a person was domiciled in the household of a named insured, it would appear that the only logical and viable place to designate as Rossmann's domicile at the time of the accident was his father's household. The only potentially conceivable alternative would be Leonard House, but Leonard House does not satisfy the applicable criteria. Rossmann was residing at Leonard House for "a mere special or temporary purpose," i.e., to ostensibly seek recovery related to drug problems. *Dowdy*, 489 Mich at 385. There was no intention, nor was it possible given the nature of Leonard House as transitional housing for drug treatment, that Leonard House would be Rossmann's home either permanently, indefinitely, or for an unlimited length of time. *Id.*; *Fowler*, 254 Mich App at 364. And it cannot be said that, with respect to Leonard House, Rossmann had no intention of leaving. *Dowdy*, 489 Mich at 385; *Fowler*, 254 Mich App at 364. Additionally, the evidence reflected that Rossmann did not use the Leonard House address for any purposes. *Id.* If mandated to identify a domicile, with an inability to find "no domicile," the home of Rossmann's father is the only viable alternative.

We find it unnecessary to resolve whether *Dowdy* or *Beecher* have any application here, where, under a straightforward analysis of the traditional factors recited in *Fowler*, we find that Rossmann was domiciled in his father's household. In other words, assuming that a domicile need not be identified, we nonetheless hold that Rossmann's domicile was his father's house. A person may be considered domiciled in a household even though he or she is "not actually living in the . . . household." *Dairyland Ins*, 123 Mich App at 681. Examining the various factors, there was evidence that Rossmann used his father's address as his mailing address, that Rossmann maintained some possessions in his father's house, that Rossmann used his father's address on Rossmann's driver's license and other documents, and that an area in the basement of the house was available for Rossmann's use, which area the elder Rossmann described as "pretty much an apartment." *Fowler*, 254 Mich App at 364-365. Although Rossmann moved around quite often and did not view his father's home as a permanent abode, the fact is that his father's house remained the one constant in his life and his father's house is where Rossmann returned to repeatedly through his young troubled life. We note that, with respect to the factor touching on a person's intent to remain "indefinitely" in a household, it should not be given too much weight as to children, especially young adults, where most children do not intend to reside indefinitely with their parents. We acknowledge that not all the factors support Auto Club's position, e.g., Rossmann's father provided no financial support, but overall the factors support a conclusion that Rossmann's domicile at the time of the accident was his father's house.

Although *Dairyland Ins*, 123 Mich App 675, might suggest a different outcome in the case at bar, given that this Court rejected a claim that a 20-year-old male was domiciled in his mother's household under circumstances that have some similarities to the instant case, it is distinguishable based on the following facts noted in the opinion:

> He had lived in the grandfather's trailer more than six months at the time of the accident. He ate his meals there (except for the meals he obtained at the restaurant where he was employed), slept there, and traveled from there to his job and back. He was satisfied with the arrangement and had no plans to terminate it. [*Id.* at 679-680.]

We find that *Dobson*, 184 Mich App 244, is the case that most closely parallels the situation here. In *Dobson, id.* at 252-254, this Court stated:

> USF & G further contends that the trial court erred in finding that DesRochers was domiciled in his father's home at the time of the accident. . . . DesRochers was twenty-one years old at the time of the automobile accident involved in this case. The accident occurred on March 14, 1987. DesRochers' mother and father are divorced, but both reside in the Baraga County area. In the late summer of 1984, DesRochers lived and worked with his father for approximately one month. When this arrangement did not work out, DesRochers went to live in a trailer located on his mother's property. In January of 1985, DesRochers moved to Green Bay, Wisconsin. He lived and worked in Green Bay until he was laid off from his job and moved back to Baraga County in January of 1987.
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> Upon arriving back in the area DesRochers stayed with his father for several days. Thereafter he stayed several days a week with his father and spent the rest of his nights at various friends' homes. DesRochers testified that it was never his intention to remain in Baraga County. He intended to stay only until he was called back to work in Green Bay. He testified that it was not his intention to reside permanently or indefinitely with his father. He had brought only his clothes with him from Green Bay and had left his other possessions there.
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> DesRochers testified that when he slept at his father's he did not have a room but slept on the couch. He did not have a dresser for his possessions nor did he have a key to the house. He received no financial support from his father but was allowed to do his laundry and eat whatever food was available in the house when he was there. DesRochers received mail at his father's home and had directed that his unemployment checks be sent there. He also listed his father's address as his own when he applied for a bank loan in February of 1987. Shortly after the automobile accident DesRochers was arrested and he listed his father's address as his residence.
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> [W]hile much of the subjective evidence supports USF & G's claim of no domicile, all of the objective evidence, DesRochers' mailing address and designation on the bank loan, supports the proposition that he was domiciled at his father's home. It is apparent to us that DesRochers, at the time of the accident, would not have considered himself to be without a home. Instead it appears as though he considered himself to officially reside at his father's home but that he could sleep wherever he chose on any given night. We recognize that the facts of this case may not fall neatly within the factors as enunciated in *Workman, supra,* and *Dairyland, supra.* However, we must take into consideration the realities of young adulthood which may involve differing degrees of separation from the parental home. Accordingly, we affirm the decision of the trial court finding that DesRochers was domiciled in his father's home at the time of the accident.

We find that the thoughtful analysis and reasoning in *Dobson* is equally applicable here. Although this case presents a close call, we hold that Rossmann was domiciled in his father's household at the time of the accident. Therefore, Bristol West is fully responsible for paying PIP benefits pursuant to MCL 500.3114(1) and MCL 500.3115(1). The trial court erred in granting Bristol West's motion for summary disposition and in denying Auto Club's motion for partial summary disposition. Accordingly, we reverse the trial court's order and remand for entry of judgment in favor of Auto Club relative to domicile and the issue of insurer priority.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. Having fully prevailed on appeal, Auto Club is awarded taxable costs pursuant to MCR 7.219.

/s/ William B. Murphy
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan