STATE OF MICHIGAN

COURT OF APPEALS

WOLVERINE MUTUAL INSURANCE COMPANY, Plaintiff-Appellee, v STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant-Appellant, and NORMAN EARL ADCOCK, BEVERLY JEAN ADCOCK, and SHAWNAH-MAY LUCKY MARKLE, Defendants.	UNPUBLISHED July 21, 2015 No. 322318 Kent Circuit Court LC No. 13-001014-NF

Before: SERVITTO, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Defendant State Farm Mutual Automobile Insurance Company (State Farm) appeals as of right the trial court's judgment holding that it is in a higher order of priority for payment of no-fault benefits than plaintiff, Wolverine Mutual Insurance Company. We vacate the judgment and remand for further proceedings.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On August 4, 2012, defendant Norman Earl Adcock was driving his motorcycle; Norman's wife, defendant Beverly Jean Adcock, was a passenger on the motorcycle. On the same date, Jonathan Porter was driving a Dodge Stratus that was owned by, and registered to, his girlfriend, defendant Shawnah-May Lucky Markle. Jonathan attempted to make a left turn, and in doing so, the Stratus struck the Adcocks' motorcycle. The Adcocks sustained injuries in the collision.

At the time of the accident, Jonathan did not have automobile insurance. Likewise, Shawnah-May did not have insurance for the Stratus. When she obtained the automobile from

James Markle, her father, in 2010, it was insured on James's policy with State Farm. Shawnah-May lived with James and her mother, Judy Markle, in 2010. In approximately November 2011, Shawnah-May moved out of her parents' home, and James removed the Stratus from his policy with defendant; Shawnah-May was to be responsible for maintaining insurance on the automobile. Her insurance coverage lapsed in 2012, before the accident in question.

After moving out of her parents' home, Shawnah-May moved into an apartment situated above the home of Harold and Katherine Porter, Jonathan's parents. They lived in the apartment until the end of June 2012 because Jonathan's parents had mandated that they move out of the apartment by July 1, 2012. Upon moving out, Shawnah-May and Jonathan began living in an apartment with Brooke Bush, Shawnah-May's co-worker, and Bush's boyfriend. Bush informed Shawnah-May and Jonathan that they could only live with her for a few months and that they should begin looking for a new place to live. Shawnah-May and Jonathan lived with Bush through August 2012, which included the date of the accident.

Plaintiff insured the Adcocks and initially paid for the costs associated with their injuries. In February 2013, plaintiff brought the present action seeking a determination by the trial court that State Farm was in a higher order of priority than plaintiff for payment of insurance benefits. Plaintiff alleged in its complaint that State Farm had priority through its policy with James, as it alleged that Shawnah-May was domiciled with James and Judy and therefore was covered under James's policy.

With regard to injured motorcycle passengers seeking personal protection insurance (PIP) benefits, MCL 500.3114(5) provides that the operator or passenger of a motorcycle "shall claim" PIP benefits in the following order of priority:

> (a) The insurer of the owner or registrant of the motor vehicle involved in the accident.
>
> (b) The insurer of the operator of the motor vehicle involved in the accident.
>
> (c) The motor vehicle insurer of the operator of the motorcycle involved in the accident.
>
> (d) The motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident.

After the close of discovery, plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10) and argued that under either James' State Farm policy or Harold's State Farm policy, State Farm was higher than plaintiff in order of priority for payment of no-fault benefits. State Farm opposed the motion, arguing that Shawnah-May was not domiciled with James and Judy at the time of the accident. In addition, it argued that plaintiff never alleged in its complaint that State Farm could be liable for the accident under Harold's State Farm policy; therefore, the applicability of Harold's policy was not at issue.

At a hearing on plaintiff's motion, plaintiff argued that Shawnah-May and Jonathan had one of three possible domiciles: (1) with Shawnah-May's parents; (2) with Jonathan's parents, or (3) with Bush. According to plaintiff, if Shawnah-May was not domiciled with Bush, State Farm

was liable, either through James's State Farm policy or Harold's State Farm policy. After hearing arguments, the trial court stated, "there's no way that this—they were domiciled at the Bush apartment. Therefore, I'm—I'm granting the motion." The trial court subsequently entered a written order granting summary disposition to plaintiff pursuant to MCR 2.116(C)(10). The trial court's order stated that State Farm had higher priority than plaintiff for the payment of first-party no-fault benefits for the accident involving the Adcocks. However, the trial court did not state on which of the two State Farm policies its holding was based.[1] In a subsequent order denying State Farm's motion for reconsideration, the trial court stated that its earlier ruling "eliminated one of the three possible domiciles only; it did not address which State Farm policy was ultimately responsible for payment of the no-fault benefits[.]" Implicit in the trial court's ruling was that State Farm was liable, either based on Shawnah-May residing with her parents, or Jonathan residing with his parents. Ultimately, on May 27, 2014, the trial court entered a declaratory judgment holding that State Farm was in a higher order of priority than plaintiff for payment of first party no-fault benefits to, or on behalf of, the Adcocks arising out of the accident on August 4, 2012.

II. ANALYSIS

State Farm first argues that the trial court erred when it granted plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) because there is no genuine issue of material fact and that Shawnah-May was not insured by James' State Farm policy. Pursuant to MCR 2.116(C)(10), summary disposition should be granted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When deciding a motion for summary disposition under MCR 2.116(C)(10), a court considers the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

Michigan's no-fault act, MCL 500.3101, *et seq.*, establishes priority for payment of no-fault benefits when an individual driving or riding on a motorcycle is injured in an accident that involves a motor vehicle. Pursuant to MCL 500.3114(5), an injured motorcycle operator or passenger shall claim personal protection insurance benefits from insurers in the following order of priority: the insurer of the owner or registrant of the motor vehicle involved in the accident; the insurer of the operator of the motor vehicle involved in the accident; the motor vehicle insurer of the operator of the motorcycle involved in the accident; and the motor vehicle insurer of the owner or registrant of the motorcycle involved in the accident. To determine whether an event is covered by an automobile insurance policy, a court must first determine whether the event is within the scope of the policy coverage. *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 115; 617 NW2d 725 (2000). The scope of coverage is determined by examining the plain language of the terms of the policy. *Id.*

[1] In addition, we note that State Farm's policy with Harold and Katherine does not appear anywhere in the record.

A. FIRST TIER OF PRIORITY

Looking to the first tier of priority under MCL 500.3114(5)(a), we consider whether "[t]he insurer of the owner or registrant of the motor vehicle involved in the accident" is liable under the terms of the pertinent insurance policy. Shawnah-May was the owner and registrant of the Stratus, and the only possible insurer of Shawnah-May was State Farm pursuant to James' State Farm policy. The liability coverage section of James' State Farm policy provided that State Farm would "pay damages an *insured* becomes legally liable to pay" because of bodily injury and property damage "caused by an accident that involves a vehicle for which that insured is provided" coverage. (Emphasis added). An "insured" was defined as James and his "resident relatives," and a "resident relative" was defined as a person who was "domiciled in the same household with" James and who was related to James by blood, marriage, or adoption. State Farm has not disputed whether Shawnah-May would be covered under James's policy if she were domiciled with James and Judy. The only dispute is whether Shawnah-May was domiciled with James.

The term "domicile" is not defined in the policy. In considering a person's domicile, our Supreme Court has articulated the following multi-factor test:

> (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. [*Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979) (citations omitted).]

The list is not intended to be exhaustive, and no single factor is to be determinative. *Grange Ins Co v Lawrence*, 494 Mich 475, 497; 835 NW2d 363 (2013). In addition, when determining the domicile of young adults, which can sometimes be difficult because of their complicated and sometimes fluid living situations, this Court has considered the following, additional factors:

> 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. [*Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983).]

Again, no single factor is determinative, and the factors must be weighed against each other. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). When the underlying facts are not in dispute, the determination of an individual's domicile for purposes of an automobile insurance policy is a question of law for the court. *Id.*

We find that there is no genuine issue of material fact and that, as a matter of law, Shawnah-May was not domiciled in James and Judy's home at the time of the accident. Shawnah-May moved out of her parents' home in approximately November 2011. She testified in her deposition that she intended the move to be permanent and that she never intended to return to her parents' home. Further, she discussed the move with her parents, and all parties agreed that the move was to be permanent. James testified that he understood the move was to be permanent as well. Even after Shawnah-May had to move out of Harold and Katherine's home and she knew that her time was running short in Bush's apartment, she did not intend to move back into her parents' home. Shawnah-May testified, and James confirmed, that James and Judy would not allow her to live in their home with Jonathan as long as Shawnah-May and Jonathan were not married.

Shawnah-May retained a key to her parents' home, but it is undisputed that she took all of her belongings with her when she left. Although she occasionally visited her parents' home after she moved out, she never spent the night at the home. James testified that he turned Shawnah-May's old bedroom into an office/guest room after she left. In addition, while James and Judy occasionally gave Shawnah-May small sums of money[2] after she moved out, both James and Shawnah-May testified that Shawnah-May was not financially dependent upon her parents.

The record reveals that Shawnah-May initially filled out a change-of-address form and had her mail diverted to Harold and Katherine's home after she moved into the apartment with Jonathan. Not long after, Katherine began throwing away Shawnah-May's mail because their relationship soured. Nevertheless, Shawnah-May still had some important paperwork, such as Medicaid forms, sent to Harold and Katherine's home. She also had some of her mail sent to her parents' home. And, she listed her parents' address on job applications and on her driver's license at the time of the accident. She testified that she could not have her mail sent to Bush's apartment because she was not supposed to be living there.[3]

On these undisputed facts, we agree with State Farm that, as a matter of law, Shawnah-May was not domiciled with her parents at the time of the accident. Although no factor is to be dispositive, our Supreme Court in *Grange Ins Co*, 494 Mich at 502, stated that "the question of intent" is "a preeminent concern in determining an adult's domicile." Here, it was undisputed that Shawnah-May intended that her move out of her parents' home was to be permanent. She never returned there nor intended to return there, despite needing to find a new place to live on two occasions after she moved out in November 2011. Instead, Shawnah-May always had

---

[2] Shawna-May testified that her parents gave her money a few times, for a total of somewhere in the range of $150 to $350, but not over $500. James testified that he gave her "probably around five hundred bucks." Although he stated that it "would get into the thousands," he explained that this occurred after Shawna-May moved out of Bush's apartment and began living in hotels, which occurred after the accident.

[3] Shawnah-May testified that "legally, [Bush] didn't want me to have any address. Because the apartment could only allow two people."

another place to live, be it with Jonathan's parents or with Bush. Her intent and maintenance of a separate residence weigh in favor of finding that she was not domiciled with her parents. See *id.* See also *Workman*, 404 Mich at 496-497. Further, the remaining *Workman* factors do not weigh in favor of finding that Shawnah-May was domiciled with her parents. And, concerning the *Dairyland* factors, while Shawnah-May received mail at her parents' home, this was largely a matter of convenience, as she was told she could not list Bush's apartment as her mailing address and because Katherine threw away her mail. In addition, Shawnah-May never kept any possessions at her parents' home after she left, her room was no longer kept as a bedroom, but was instead converted to an office, and she was not dependent upon her parents for financial support at the time of the accident. See *Dairyland Ins Co*, 123 Mich App at 682 (discussing pertinent factors used in determining domicile). Taking this evidence in the light most favorable to State Farm as the non-moving party, there is no genuine issue as to the material fact that Shawnah-May was not domiciled with James at the time of the accident. See *id.* at 684 (finding that although the individual used his mother's home as his mailing address, he was not domiciled with his mother because, at the time of the accident, he had not lived in his mother's house for six months, was not dependent upon his mother for financial support, and did not intend to return to his mother's home). Cf. *Dobson v Maki*, 184 Mich App 244, 254; 457 NW2d 132 (1990) (finding that, in spite of subjective evidence, such as the individual's stated intent to not live with his parents, certain objective evidence, such as the fact that the individual slept at his father's home at times, kept his mailing address at his father's home, and applied for a bank loan at his father's home demonstrated that the individual was domiciled at his father's home); *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 112; 553 NW2d 353 (1996) (finding that the plaintiff, a college student who lived away from home while he was in school, was domiciled in his parents' home because he kept the majority of his personal belongings at his parents' house, listed his parents' address on his driver's license, maintained a bedroom at his parents' house, returned to his parents' house to live on breaks from school, and was financially dependent upon his parents). Therefore, James' State Farm policy did not provide coverage to Shawnah-May, and State Farm was not liable for payment of no-fault benefits to the Adcocks based on James' State Farm policy.

B. SECOND TIER OF PRIORITY

Because James' State Farm policy did not provide coverage for the accident, the Adcocks were next required to look to the insurer of the *operator* of the Stratus, i.e. Jonathan, for payment of no-fault benefits. MCL 500.3114(5)(b). There was no dispute that, at the time of the accident, Jonathan's parents insured their personal vehicles under Harold's State Farm policy, and there is no dispute that the only possible insurer of Jonathan was State Farm pursuant to Harold's State Farm policy. However, Harold's State Farm policy is not part of the record[4] and plaintiff did not offer any evidence to support its argument that if Jonathan was domiciled with the Porters at the time of the accident, then Jonathan was insured under Harold's State Farm policy. Indeed, there is no record evidence that would allow a determination of whether

[4] While plaintiff represented that Harold's policy was identical to James's policy, we find no basis in the record to support this assertion.

Jonathan was covered under such a policy. And, assuming that such a policy existed and that liability could be predicated on Jonathan's domicile, we note there are still questions of fact remaining as to where Jonathan was domiciled. Additionally, with regard to domicile, the record evidence reveals that the apartment in which Jonathan stayed was situated *above* his parents' house; there is no indication in the record regarding the impact of this nuance on the question of whether Jonathan was domiciled with his parents. See *Fowler*, 254 Mich App at 364-365 (holding that an adult child who lived in a carriage house next to his parents' house was not domiciled with his parents, based on the facts of that case). In other words, there was insufficient evidence in the record to support a finding that Jonathan was, or even could be, insured under his parents' State Farm policy. And, there was no evidence presented that Jonathan was insured under any other State Farm policy. Therefore, nothing in the record supports a finding that plaintiff was entitled to summary disposition as a matter of law based on a finding that Harold and Katherine's State Farm policy was higher in priority.

III. CONCLUSION

As a matter of law, State Farm was not liable for payment of no-fault benefits under James' State Farm policy. And, there was nothing in the record to support a finding that, as a matter of law, State Farm was liable for the payment of no-fault benefits under Harold's State Farm policy. Because these are the only two policies on which the trial court could have found that State Farm was in a higher order of priority than plaintiff for payment of no-fault benefits arising out of the accident, the trial court erred when it granted plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10) and entered a declaratory judgment finding that State Farm was in a higher order of priority than plaintiff for the payment of no-fault benefits.

We vacate the trial court's declaratory judgment and reverse the trial court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We remand for entry of an order finding that, as a matter of law, James' State Farm policy did not provide coverage for the accident. On remand, the trial court may conduct further proceedings, including giving plaintiff an opportunity to amend its complaint to specifically allege that Harold's State Farm policy covered the accident at issue and amending the scheduling order to permit discovery limited to this issue.

Vacated and remanded. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Jane M. Beckering
/s/ Mark T. Boonstra