STATE OF MICHIGAN

COURT OF APPEALS

FARMERS INSURANCE EXCHANGE,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED
November 17, 2015

No. 322955
Wayne Circuit Court
LC No. 12-010769-NF

Before: SHAPIRO, P.J., and O'CONNELL and GLEICHER, JJ.

PER CURIAM.

Jessica Peregord was injured while a passenger in a vehicle owned by her boyfriend's grandmother. As Peregord did not possess a no-fault insurance policy, she sought coverage through the policy secured by the vehicle's owner and then through her father's no-fault insurer, both of which rejected her claim. Peregord applied for and was granted benefits through the Michigan Assigned Claims Facility (MACF). The MACF assigned the claim to Farmers Insurance Exchange, which sought reimbursement from either the vehicle owner's policy or Peregord's father's policy. The trial court resolved the ensuing priority dispute by finding that Peregord was not her father's resident relative at the time of the accident and ordering the insurer of the involved vehicle to reimburse Farmers. We affirm.

I. BACKGROUND

Peregord was seriously injured while a passenger in a vehicle driven by her boyfriend. Before the accident, Peregord lived for approximately two months in a family friend's apartment in Woodhaven, caring for the friend's cat. She also paid a small amount of rent. Peregord changed her mailing address at school, had her name placed on the apartment's mailbox, and changed the address on her driver's license. Before moving into the Woodhaven apartment, Peregord had lived with her father in Wyandotte. After her move, Peregord's father kept a room for her at his home, but she did not keep any belongings there. Immediately after the accident,

Peregord moved into her boyfriend's home because she was unable to care for herself due to her injuries. Approximately four weeks later, Peregord returned to her father's home as she needed more assistance than her boyfriend could provide.

Peregord initially filed a claim for personal protection insurance (PIP) benefits from Allstate Insurance Company. Allstate insured the vehicle in which Peregord was travelling at the time of the accident. Allstate denied coverage, citing its belief that Peregord was a resident relative of her father and that his no-fault policy secured through Auto Club Insurance Association (ACIA) was in the priority position to pay benefits. ACIA also denied Peregord's claim, after determining that Peregord was not domiciled with her father at the time of the accident. Only then did Peregord resort to benefits from the MACF, which assigned the claim to Farmers. In her MACF application, Peregord listed her father's address as her residence at the time of the accident.

Farmers subsequently sought reimbursement of the benefits it paid on Peregord's behalf. Allstate and ACIA continued to dispute which insurer was liable. Farmers filed suit to resolve the priority dispute. The sole issue before the court was whether Peregord was domiciled with her father at the time of the accident. If she was, then ACIA would take priority and be liable to reimburse Farmers; if not, Allstate would bear that duty.

ACIA filed a summary disposition motion, arguing that the undisputed facts supported that Peregord was not domiciled with her father at the time of the accident and therefore was not entitled to benefits through ACIA as a resident relative. The court agreed. The court noted Peregord's testimony regarding her "subjective intent" that "she was living in Woodhaven." The court acknowledged that Peregord listed her father's address on her MACF application. However, the court noted that Peregord testified that she actually lived in Woodhaven and that her boyfriend had picked her up for school on the day of the accident at the Woodhaven apartment. The court further emphasized that Peregord kept no belongings at her father's home, but had moved them all to the Woodhaven apartment. She had changed her mailing address and driver's license address to that of the Woodhaven apartment. Moreover, the court cited evidence that Peregord was financially self-sufficient and not reliant on her father for income. Peregord's father corroborated her testimony by asserting that she did not move back to his home until a month after the accident. The court therefore ordered Allstate to reimburse Farmers. Allstate now appeals.

II. ANALYSIS

We review de novo a circuit court's resolution of a summary disposition motion. *Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013).

> A motion under MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim." "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to

> warrant a trial." "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." [*Id.* at 139-140 (citations omitted).]

MCL 500.3114 governs the order of priority to determine which insurer is responsible for providing PIP benefits to a person suffering accidental bodily injury as a passenger during a motor vehicle accident. MCL 500.3114(1) states, in pertinent part, that "a [PIP] 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.) MCL 500.3114(4) continues:

> Except as provided in subsections (1) to (3), a person suffering accidental bodily injury arising from a motor vehicle accident while an occupant of a motor vehicle shall claim [PIP] benefits from insurers in the following order of priority:
>
> (a) The insurer of the owner or registrant of the vehicle occupied.
>
> (b) The insurer of the operator of the vehicle occupied.

Therefore, according to MCL 500.3114(1), Peregord was required to first look to her own no-fault insurance policy, or the policy of a family member with whom she was domiciled, for PIP benefits. If no such insurer existed, only then would then the insurer of the owner of the vehicle occupied become obligated to pay PIP benefits.

A person's domicile is generally a question of fact; but where the "material facts are not in dispute," the issue becomes one of law for the court's resolution. *Grange Ins Co v Lawrence*, 494 Mich 475, 490; 835 NW2d 363 (2013). A person's domicile is that "place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Id.* at 493 (quotation marks and citation omitted). The *Grange* Court distinguished a person's domicile from his residence, stating that "a person may have only one domicile, but more than one residence . . . . The traditional common-law inquiry into a person's 'domicile,' then, is generally a question of intent, but also considers all the facts and circumstances taken together." *Id*. at 495.

In determining where an individual is domiciled for purposes of the no-fault act, Michigan courts have applied the tests set forth in *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477; 274 NW2d 373 (1979), and *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675; 333 NW2d 322 (1983). The *Workman* Court directed that the issue must be viewed flexibly, balancing several relevant factors:

> In considering these factors, no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others. Among the relevant factors are the following: (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*, 404 Mich at 496-497 (citations omitted).][1]

Subsequently, in *Dairyland*, this Court relied on the *Workman* factors in resolving the issue of domicile but also noted "the particular problems posed by young people departing from the parents' home and establishing new domiciles as part of the normal transition to adulthood and independence." *Dairyland*, 123 Mich App at 681. In addition to the *Workman* factors, the *Dairyland* Court directed lower courts to consider

> 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. [*Id*. at 682.]

ACIA first argues that we should not reach the merits of whether Peregord was domiciled with her father at the time of the accident because Allstate did not specifically challenge the basis of the trial court's decision. This argument is disingenuous. The trial court considered the various factors outlined in *Workman* and *Dairyland* in reaching its decision. Allstate, in challenging ACIA's summary disposition motion, addressed the relevant facts and their application to these factors. Allstate has reiterated its arguments in its appellate brief. Allstate therefore has not abandoned its appellate challenges.

In any event, the trial court correctly determined that no triable issue remained regarding Peregord's domicile at the time of the accident. At her deposition, Peregord stated that her subjective intent before the accident was to live in her friend's apartment indefinitely. She indicated that she had intended to remain in residence to care for her friend's cat and to assist in his moving business. Peregord discontinued using her father's address as her mailing address. She moved all of her possessions out of her father's home. She also changed her address on her driver's license. The only factor weighing in favor of domicile with her parent is that Peregord's father retained her room in his home. Given the vast evidence that Peregord intended to remain independent and not retake residency in her childhood bedroom, this single factor cannot tip the scales in favor of finding domicile with Peregord's father.

Allstate contends that a factual dispute remains because Peregord's father had kept a room at his house for her and because Peregord returned to her father's home one month after the accident. Allstate further argues that Peregord would have to cede possession of the apartment when her friend returned to the area. Despite the uncertain amount of time that Peregord would be permitted to live in her friend's apartment, Peregord clearly testified that she intended the apartment to be her "principal establishment" and the place to which, whenever she was absent, she had the intention of returning. *Grange*, 494 Mich at 493. Peregord indicated that she had been staying there every day for two months leading up to the accident and was upset that she could not return due to her injuries after the accident. Even after the accident, Peregord did not

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[1] The second and third *Workman* factors are not relevant to this appeal.

return immediately to her father's home. Instead, Peregord tried to continue her independence by moving in with her boyfriend. Accordingly, the evidence supports Peregord's stated intent that the Woodhaven apartment be her domicile.

We affirm.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher