STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE DAHLMANN,

Plaintiff-Appellant/Cross-Appellee,

v

GEICO GENERAL INSURANCE COMPANY, d/b/a GEICO CASUALTY COMPANY,

Defendant-Appellee/Cross-Appellant,

and

FRANKENMUTH MUTUAL INSURANCE COMPANY,

Defendant/Cross-Appellee.

UNPUBLISHED
March 22, 2016

No. 324698
Ottawa Circuit Court
LC No. 13-003393-NF

MICHELLE DAHLMANN,

Plaintiff-Appellant,

v

GEICO GENERAL INSURANCE COMPANY, d/b/a GEICO CASUALTY COMPANY,

Defendant-Appellee,

and

FRANKENMUTH MUTUAL INSURANCE COMPANY,

Defendant.

No. 325225
Ottawa Circuit Court
LC No. 13-003393-NF

Before: BECKERING, P.J., and GLEICHER and M. J. KELLY, JJ.

GLEICHER, J. (*concurring*).

The majority holds that the "undisputed facts" of this no-fault insurance coverage dispute demonstrate that plaintiff Michelle Dahlmann "had established her domicile in Lansing, Michigan just before her accident." I do not share this assessment. In my view, the question of Dahlmann's domicile is rife with factual conflict, rendering this an unsatisfactory ground for deciding this case.

As the majority acknowledges, a person's intent to create a settled connection with one place factors prominently in every determination of domicile. Permanency, too, plays a role in the calculus. And domicile is not necessarily synonymous with residence, as a person may have more than one residence at the same time. *In re Scheyer's Estate*, 336 Mich 645, 651-652; 59 NW2d 33 (1953).

Dahlmann denied any intent to stay in Michigan permanently, or even for a settled period of time. The trial court found that Dahlmann leased the East Lansing apartment as a "temporary expedient" rather than a domicile, and that "uncontradicted evidence supports this characterization." In my estimation, the trial court's depiction of the record is as accurate as the majority's. During the six months before the accident, Dahlmann and her children drove around the country in her minivan visiting friends and family in Georgia, Wyoming and Michigan, awaiting the end of Adam Dahlmann's naval deployment. She resided in the East Lansing apartment for a total of three days before the accident, and planned to stay there only until her husband was assigned his next duty station. Virtually all of her belongings remained in Virginia, her minivan was licensed in that state, and likely she planned to return there to collect her possessions and possibly her husband.

"A domicile determination is generally a question of fact; however, where the underlying material facts are not in dispute, the determination of domicile is a question of law for the circuit court." *Grange Ins Co of Michigan v Lawrence*, 494 Mich 475, 490; 835 NW2d 363 (2013). I would hold that the material facts *are* in dispute in this case, primarily whether Dahlmann intended to remain in Michigan indefinitely or only for a short period of time, and whether Dahlmann viewed Virginia rather than Michigan as her state of domicile. The trial court's determination that Dahlmann was not domiciled in Michigan substantiates that the facts do not point in a single direction. During the six months before the accident, Dahlmann was a rolling stone who either gathered serial domiciles or remained domiciled in Virginia as she wandered. The facts support either conclusion.

But we need not further concern ourselves with Dahlmann's domicile, because this case can and should be decided on an alternate ground.

Dahlmann owned a Virginia automobile insurance policy issued by defendant Geico General Insurance Company. Geico sells auto insurance in Michigan and has officially certified that it will provide no-fault coverage in Michigan if an eligible insured sustains covered injuries in this state. Under MCL 500.3163(1), coverage is required if the injured party qualifies as an "out-of-state resident" whose injuries arise "from the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle." Dahlmann's domicile aside, her injuries did not arise from the operation or use of her minivan. Accordingly, Geico is off the hook.

My conclusion is guided by the Supreme Court's decision in *Morosini v Citizens Ins Co of America*, 461 Mich 303; 602 NW2d 828 (1999), which is directly on point. The plaintiff in *Morosini* was injured after a second vehicle struck the plaintiff's vehicle from behind. The parties stopped their cars and the plaintiff exited to examine the damage. *Id*. at 305. The second motorist assaulted the plaintiff, who sustained injuries and later sought recoupment of $,2500 in no-fault insurance benefits under his own policy. *Id*. His carrier refused to pay, contending that Mr. Morosini's injuries did not arise from the "ownership, operation, maintenance or use of a motor vehicle as a motor vehicle" under MCL 500.3105(1).[1] *Id.*

The district court found in Mr. Morosini's favor, ruling that "a sufficient nexus between the injuries and the use of a motor vehicle as a motor vehicle." *Id*. at 306. "The court reasoned that the traffic accident gave rise to a statutory obligation to stop and exchange information, and that the assault occurred as Mr. Morosini was 'in the process of fulfilling his obligations as an operator of a motor vehicle. . . .'" *Id*. (omission in original). The circuit court affirmed this ruling, observing that "the accident precipitated the assault, and the assault occurred as an integral part of the continuum of the accident." *Id*. This Court, too, held that the circumstances demonstrated that Mr. Morosini's injuries arose from the use of his vehicle as a motor vehicle. *Id.* We reasoned that because the injuries "arose from an activity normally associated with the use of a vehicle as a motor vehicle," they were compensable under Mr. Morosini's no-fault policy. *Morosini v Citizens Ins Co of America*, 224 Mich App 70, 85; 568 NW2d 346 (1997). The Supreme Court remanded the case to the Court of Appeals for reconsideration in light of *McKenzie v ACIA*, 458 Mich 214; 580 NW2d 424 (1998). This Court stuck with its original conclusion and on second look, the Supreme Court reversed.

Drawing from precedent, the Court instructed that the proper focus under § 3105(1) "is on the relationship between the injury and the use of a motor vehicle as a motor vehicle, not on the intent of the assailant." *Morosini*, 461 Mich at 310. A second governing principle, the Court explained, dictates that the "[i]ncidental involvement of a motor vehicle does not give rise to coverage under the language enacted by the Legislature, even if assaultive behavior occurred at more than one location, and the vehicle was used to transport the victim from one place to the other." *Id*.

Applying prior caselaw to the facts of *Morosini*, the Supreme Court concluded that although "[i]n the mind of the second motorist, the assault may have been motivated by closely antecedent events that involved the use of a motor vehicle as a motor vehicle, . . . the assault itself was a separate occurrence. The plaintiff was not injured in a traffic accident—he was injured by another person's rash and excessive response to these events." *Id*. at 310-311 (emphasis omitted). As the Court had established in *McKenzie*, 458 Mich at 225-226, "whether an injury arises out of the use of a motor vehicle 'as a motor vehicle' under § 3105 turns on whether the injury is closely related to the transportational function of motor vehicles."

[1] Although a different statute is at issue here, MCL 500.3163(1), the pertinent language is identical.

Unlike in *Morosini*, the instrument of Dahlmann's assault was a motor vehicle rather than a driver's fists. But that is a distinction without a meaningful difference, as Dahlmann's entitlement to benefits depends on whether her injuries arose from *her* use or operation of her Geico-insured minivan. MCL 500.3163(1). Dahlmann's injuries stemmed from Gregory Romig's use of his vehicle as a motor vehicle, but that does not matter because Dahlmann's gateway to benefits opens only if *her* vehicle precipitated the injuries. Guided by *Morosini*, I would hold that Dahlman's vehicle played only an inconsequential part in the chain of events that led to her injuries. Accordingly, I would reverse the trial court and remand for entry of judgment in favor of Geico on this ground, and therefore concur with the majority in result.

/s/ Elizabeth L. Gleicher