STATE OF MICHIGAN

COURT OF APPEALS

UNIVERSAL REHABILITATION SERVICES, INC.,

Plaintiff,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant/Cross-Defendant-Appellee,

and

STARR INDEMNITY & LIABILITY COMPANY,

Defendant/Cross-Plaintiff-Appellant,

and

TITAN INSURANCE COMPANY,

Defendant.

UNPUBLISHED
June 26, 2014

No. 314273
Wayne Circuit Court
LC No. 11-004417-NF

SHARON BRANDYWINE and GREAT LAKES TRANSPORTERS, LLC.,

Plaintiffs,

v

JOHN DOE,

Defendant,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

No. 314274
Wayne Circuit Court
LC No. 11-004649-NI

Defendant/Cross-Defendant-
Appellee,

and

STARR INDEMNITY & LIABILITY COMPANY,

Defendant/Cross-Plaintiff-
Appellant,

and

TITAN INSURANCE COMPANY,

Defendant.

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

PER CURIAM.

In these consolidated appeals[1] involving a coverage dispute between insurers, Starr Indemnity & Liability Company appeals by right the trial court's opinion and order declaring Starr Indemnity to be first in priority for the payment of personal protection insurance benefits—commonly referred to as PIP benefits—for Sharon Brandywine under Michigan's no-fault law. On appeal, Starr Indemnity argues that the trial court erred when it determined that Brandywine was not domiciled with her mother. Because the undisputed evidence showed that Brandywine was domiciled with her mother, Starr Indemnity maintains, the trial court should have determined that State Farm Mutual Automobile Insurance Company, which insured Brandywine's mother, was first in priority for the payment of PIP benefits on Brandywine's behalf. Because the evidence presented on the motion for summary disposition gave rise to competing inferences concerning Brandywine's domicile, the trial court erred when it determined as a matter of law that Brandywine was not domiciled with her mother at the time of the accident. For that reason, we reverse and remand for further proceedings.

I. BASIC FACTS

In June 2010, Lashan Henry was driving her Ford Explorer in Detroit, Michigan. Brandywine and Andrew Love were passengers in the Explorer. According to an accident investigation report, Henry indicated that an unknown SUV sideswiped her Explorer and caused

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[1] See *Universal Rehab Services, Inc v State Farm Mutual Auto Ins Co*, unpublished order of the Court of Appeals, entered January 23, 2013 (Docket No. 314273); *Brandywine v John Doe*, unpublished order of the Court of Appeals, entered January 23, 2013 (Docket No. 314274).

her to leave the road and strike a vacant building. They called the police department, but left after no officers showed. Brandywine and Henry eventually filed police reports and sought medical treatment for injuries that they allegedly sustained in the accident. Brandywine later alleged that she suffered injuries to her arm, shoulder, neck, and back.

The Assigned Claims Facility initially assigned Titan Insurance to pay no-fault benefits on Brandywine's behalf. But it was later determined that Henry had a no-fault insurance policy through Starr Indemnity. Although Brandywine did not have no-fault coverage of her own, it was also determined that Brandywine might have lived with her mother, Catherine Fletcher, on Ranch Hill in Southfield, Michigan. Because Fletcher had a no-fault policy through State Farm, if Brandywine was domiciled with her mother, Brandywine would have coverage under that policy. However, there was also evidence that Brandywine alternated living at her mother's home and at the home formerly occupied by her uncle on Greenlawn in Detroit, Michigan. Therefore, it was unclear which insurer had an obligation to pay PIP benefits on Brandywine's behalf.

In April 2011, Brandywine sued the unknown driver for negligence in the case that was eventually assigned Docket No. 314274 on appeal. She also sued State Farm, Starr Indemnity, and Titan Insurance for personal protection insurance benefits. Finally, she alleged that State Farm and Starr Indemnity had to pay her uninsured motorist benefits. Later that same month, in the case that was eventually assigned Docket No. 314273 on appeal, Universal Rehabilitation Services, Inc. sued State Farm, Starr Indemnity, and Titan Insurance to recover payment for medical treatment that it provided to Brandywine.

In July 2011, State Farm moved to consolidate Brandywine's case with the case filed by Universal Rehabilitation. The trial court granted the motion in August 2011 and ordered the cases consolidated "for all purposes."

In December 2011, Starr Indemnity moved for leave to file a cross-claim against State Farm. Specifically, it noted that it had been paying PIP benefits on Brandywine's behalf even though it appeared that State Farm should have been paying those benefits. As such, it wanted to file a cross-claim seeking reimbursement for the payments that it made to Brandywine. The trial court granted Starr Indemnity's motion.

The parties stipulated to the dismissal of Brandywine's uninsured motorist claim against Starr Indemnity in January 2012.

Starr Indemnity moved for summary disposition under MCR 2.116(C)(10) in May 2012. It argued that the undisputed evidence showed that Brandywine was domiciled with her mother, Catherine Fletcher, in June 2010. Because Fletcher had a no-fault insurance policy with State Farm at that time, Starr Indemnity maintained that State Farm was first in priority to pay no-fault benefits on Brandywine's behalf. See MCL 500.3114(1). Starr Indemnity asked the trial court to enter an order declaring State Farm to be highest in priority for the payment of PIP benefits and dismissing Brandywine's claims against Starr Indemnity.

In June 2012, the trial court held a hearing on Starr Indemnity's motion. At the hearing, the parties discussed the evidence that tended to show that Brandywine lived with her mother in Southfield and at her uncle's home in Detroit. After hearing that Brandywine signed an affidavit of no insurance where she indicated that she lived at the Detroit address, the trial court determined that the affidavit was dispositive on the issue: "If she signed an affidavit that she lived on the Detroit address, the Court will go by that." It then denied Starr Indemnity's motion for summary disposition and granted summary disposition in State Farm's favor.

The parties stipulated to the dismissal of the claims against Titan Insurance and the trial court entered an order to that effect in June 2012.

In July 2012, the trial court entered an order denying Starr Indemnity's motion for summary disposition and granting summary disposition in favor of State Farm on the issue of priority.

In September 2012, Great Lakes Transporters, L.L.C., moved for permission to intervene as a plaintiff in the case assigned Docket No. 314274 on appeal. Great Lakes Transporters sought compensation for transportation services that it rendered as part of Brandywine's care, recovery, and rehabilitation.

In December 2012, the trial court entered a final judgment for both cases.[2] The trial court first dismissed the claims and cross-claim against State Farm on the basis of its previous determination that it was not first in priority for the payment of PIP benefits on Brandywine's behalf. After the remaining parties stipulated to the amount of benefits payable on Brandywine's behalf, the trial court entered judgment against Starr Indemnity in favor of Brandywine, Universal Rehabilitation, and Great Lakes Transporters. It ordered Starr Indemnity to pay Brandywine $32,500, to pay Universal Rehabilitation $35,000, and to pay Great Lakes Transporters $10,500 for PIP benefits arising from June 2010 to October 2012.

Starr Indemnity now appeals to this Court.

II. NO-FAULT INSURER PRIORITY

A. STANDARDS OF REVIEW

Starr Indemnity argues on appeal that the trial court erred when it determined that Starr Indemnity, as the insurer of Henry's vehicle, was first in priority to pay PIP benefits for Brandywine. Specifically, Starr Indemnity contends that the undisputed evidence showed Brandywine was domiciled at her mother's residence on Ranch Hill and, because State Farm insured her mother, State Farm was first in priority to pay Brandywine's PIP benefits. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618

[2] The trial court did not address Brandywine's claims against the unknown driver of the vehicle that allegedly caused the accident.

(2009). This Court also reviews de novo whether the trial court properly selected, interpreted, and applied the relevant statutes. *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013).

B. PRIORITY

Under Michigan's no-fault law, a personal injury protection policy covering injuries arising from a motor vehicle accident 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." MCL 500.3114(1). Accordingly, Brandywine would normally be required to seek PIP benefits from her own insurer or the insurer who provided coverage to her spouse or a relative with whom she is domiciled. Brandywine did not have her own personal injury protection policy and was not married, but there was evidence that she resided and perhaps domiciled with her mother. If she was "domiciled in the same household" as her mother, Brandywine would have to seek PIP benefits from her mother's insurer, State Farm. *Id.* If Brandywine, however, was not domiciled with her mother, she would then have to seek PIP benefits from the "insurer of the owner or registrant of the vehicle occupied", MCL 500.3114(4)(a), which in this case was Starr Indemnity.

In order to determine which insurer—State Farm or Starr Indemnity—is obligated to pay Brandywine's PIP benefits, the trial court had to determine whether Brandywine was domiciled with her mother at the Ranch Hill address or domiciled on her own at the Greenlawn address. A person's domicile is generally a question of fact. *Grange Ins Co v Lawrence*, 494 Mich 475, 490; 835 NW2d 363 (2013). However, where the underlying material facts are not in dispute, a person's domicile is a question of law for the courts. *Id.*

C. DOMICILE

As our Supreme Court has explained, "[f]or over 165 years, Michigan courts have defined 'domicile' to mean 'the 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, quoting *In re High*, 2 Doug 515, 523 (Mich, 1847). Every person has a domicile and no person can have more than one domicile at any given time. *Grange*, 494 Mich at 493-494. Further, a person's domicile must be distinguished from his or her residence because a person can have more than one residence. *Id.* at 494. Although it is not the only factor, the key inquiry is the person's intent to permanently reside at a particular place: " 'domicile is acquired by the combination of residence and the intention to reside in a given place . . . . If the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short, will establish a domicile.' " *Id.* at 495, quoting *Beecher v Common Council of Detroit*, 114 Mich 228, 230; 72 NW 206 (1897).

The phrase "domiciled in the same household" does not itself have a fixed meaning; rather, it "may vary according to the circumstances." *Workman v Detroit Automobile Inter-Insurance Exchange*, 404 Mich 477, 495; 274 NW2d 373 (1979) (citations and quotation marks omitted). The meaning must be "viewed flexibly, 'only within the context of the numerous factual settings possible'." *Id.* at 496, quoting *Montgomery v Hawkeye Security Ins Co*, 52 Mich App 457, 461; 217 NW2d 449 (1974). Because it must be viewed flexibly, our Supreme Court

determined that courts should evaluate whether a person is domiciled in a particular household by balancing all the 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 (internal citations omitted).]

The evidence that Starr Indemnity submitted to the trial court showed that Brandywine had two residences. At her deposition, Brandywine testified that she resided at both her mother's residence on Ranch Hill and at the residence on Greenlawn in Detroit. She explained that she went "back and forth from Ranch Hill to Greenlawn" and that she had a bedroom at both residences. She stated that, on the day of the accident, she was living "on Greenlawn." She also testified she received mail at both addresses. Indeed, she received her application for food stamps at her Ranch Hill residence. Brandywine also stated that she never paid for utilities at either address.

Consistent with that testimony, Brandywine identified her residence in her complaint as being in Southfield and on her application for no-fault benefits, which she filed with the Assigned Claims Facility in January 2011, Brandywine stated that she currently resided on Ranch Hill, but had resided on Greenlawn at the time of the accident.

Although there was evidence that Brandywine had two residences, Star Indemnity presented evidence that Brandywine had historically domiciled with her mother at the Ranch Hill residence. Brandywine testified that she had lived at the Ranch Hill residence from the time that her mother stayed there, which was 16 years. Brandywine's mother, Catherine Fletcher, similarly testified that Brandywine would come and go between the Ranch Hill and Greenlawn residences, but that Brandywine nevertheless lived with her in June 2010. She did not know how long Brandywine had been travelling between the two residences "because basically she stayed with me." Indeed, Fletcher stated that her daughter would never stay long at the Greenlawn address—she would come back in "a day"—because she was Fletcher's caregiver. Fletcher explained that her daughter did not come over just to help out; she stayed at the house the whole night. If her daughter did leave for Greenlawn, she would stay for at most a couple of days; the longest she ever stayed away was one week.

Starr Indemnity also presented evidence that in May 2010, Brandywine received mail concerning her Medicaid health plan at the Ranch Hill address.[3] Moreover, Brandywine listed the Ranch Hill address as her home on her application for social security disability benefits, which she first submitted before the June 2010 accident.[4] In a social security administration function report that Brandywine dated June 29, 2010, which is the day of the accident at issue, Brandywine listed her Ranch Hill address as her residence and she noted that she lived with family and cared for her mother. Starr Indemnity also presented evidence that Brandywine had listed her address as Ranch Hill on her voter registration and state identification since March 2003. This evidence permitted an inference that Brandywine had historically domiciled with her mother—that is, it supported a finding that her formal residence, the one to which she habitually returned, was the residence on Ranch Hill, and that she used the residence on Greenlawn as a more informal place to stay. *Grange*, 494 Mich at 493.

In response to Starr Indemnity's motion, State Farm relied on Brandywine's testimony that she "lived" at the Greenlawn residence on the day of the accident along with the evidence that she listed Greenlawn as her address when applying for no-fault benefits. The evidence that Brandywine used the Greenlawn address on some forms and testified that she "lived" at the Greenlawn address is consistent with her testimony that she used both residences.

State Farm also relied on testimony by Brandywine's nephew, Jamelle Graham. Graham testified, "as far as I know", Brandywine was staying with his "grandmother's brother" and he lived on Greenlawn. Accordingly, he concluded that she must have been living on Greenlawn. This testimony was again consistent with Brandywine's testimony that she used both residences. Moreover, Graham's testimony that he helped Brandywine move her furniture and personal effects to Greenlawn in January 2011 suggests that Brandywine had at some point decided to make a permanent move to the house on Greenlawn.

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[3] In considering a motion for summary disposition, this Court is limited to reviewing the evidence that the parties actually presented to the trial court. *Barnard Mfg*, 285 Mich App at 380-381. In addition, in order to properly be before the trial court, the substance of the evidence must be plausibly admissible. *Id.* at 373. Because the investigation reports prepared by the insurance companies were prepared in anticipation of litigation and contain multiple levels of hearsay, we have limited our review to those parts of the reports that might plausibly be admissible with a proper foundation, such as the photo of Brandywine's mail. See MRE 801; MRE 802; MRE 803; MRE 804; see also *Attorney General v John A Biewer Co, Inc*, 140 Mich App 1, 17-18, 363 NW2d 712 (1985) (noting that documents that are prepared in preparation for litigation are not inherently trustworthy and, for that reason, are generally inadmissible under the hearsay exceptions).

[4] The records show that, on June 8, 2010, the disability determination service sent Brandywine a letter at her Ranch Hill address noting that her claim was incomplete.

When combined with the evidence that Brandywine had herself indicated—in testimony and on documents—that she lived on Greenlawn, a reasonable finder of fact could conclude that Brandywine had made the decision to permanently move to the residence on Greenlawn at some point prior to the accident at issue, but did not complete the move until later. If she had begun to reside at the residence on Greenlawn with the intent to make that her permanent residence, the combination of a change in residence with the intent to stay there permanently would be sufficient to change her domicile. *Id.* at 495. Nevertheless, a reasonable finder of fact could also find from the totality of the evidence that Brandywine was still domiciled with her mother at the time of the accident. Accordingly, because there was a question of fact as to where Brandywine had her domicile at the time of the accident, the trial court erred when it determined that Brandywine was not domiciled with her mother as a matter of law. *Barnard Mfg*, 285 Mich App at 369.

III. CONCLUSION

Although the parties did not dispute the individual underlying facts concerning Brandywine's multiple residences, those facts gave rise to competing inferences concerning whether she was domiciled with her mother on Ranch Hill, or domiciled in her uncle's former house on Greenlawn. Consequently, the question concerning Brandywine's domicile must be resolved by trial on the merits. See *Hartzler v Radeka*, 265 Mich 451, 452; 251 NW 554 (1933). For these reasons, we reverse the trial court's decision to grant summary disposition in State Farm's favor. We also vacate the trial court's judgment premised on its erroneous determination that Starr Indemnity is liable for the payment of Brandywine's PIP benefits and remand this case for further proceedings consistent with this opinion.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, Starr Indemnity may tax its costs. MCR 7.219(A).

/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly