

STATE OF MICHIGAN
COURT OF APPEALS

WESTFIELD INS CO,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INS CO,

Defendant-Appellee.

UNPUBLISHED
December 13, 2016

No. 329822
Washtenaw Circuit Court
LC No. 14-000648-NF

Before: M. J. KELLY, P.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

In this action for the partial recoupment of no-fault benefits, plaintiff Westfield Insurance Company (Westfield) appeals by right the trial court's order granting summary disposition in favor of defendant Progressive Michigan Insurance Company (Progressive). For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

On February 21, 2009, Curtis Stanley, his wife Sheila Stanley, and two of their children were injured in a motor vehicle accident.¹ The parties agree that the vehicle the Stanleys were traveling in, a 1996 Ford Windstar, was uninsured at the time of the accident. Curtis Stanley, however, owned other motor vehicles that were insured by Westfield, and Westfield paid all no-fault benefits incurred by Sheila Stanley and the children.²

After paying the no-fault benefits, Westfield determined that Discount Towing, Progressive's insured, was an owner and registrant of the vehicle at the time of the accident, and that, as a result, Progressive was an equal priority insurer under MCL 500.3114(4)(a). Westfield, therefore, filed suit seeking partial recoupment of the no-fault benefits it paid on behalf of the Stanleys. Discovery was conducted and, although Curtis Stanley failed to appear for his

¹ Sheila Stanley's mother was also in the vehicle, but she did not make a claim for no-fault benefits with either Westfield or Progressive.

² The parties agree that Curtis Stanley was disqualified from recovering no-fault benefits under MCL 500.3113(b) because he was an owner of the uninsured vehicle involved in the accident.

deposition and was held in contempt for the failure, Westfield decided to move for summary disposition based on the evidence already discovered.

On summary disposition, Westfield argued that Discount Towing was a registrant and owner of the Windstar at the time of the accident, so it was in the same priority level and was required to pay an equal portion of the no-fault benefits. Progressive filed a cross-motion for summary disposition, asserting that under MCL 500.3114(1) Westfield was in a higher order of priority because Curtis Stanley's domicile was with his wife and children even though he was separated from his wife and living with his parents at the time of the accident. After oral argument, the trial court found that Westfield "is the insurer of higher priority . . . for No-Fault PIP benefits" for Sheila Stanley and the children.

II. MCL 500.3114(1)

A. STANDARD OF REVIEW

On appeal, Westfield argues that the trial court erred in granting Progressive summary disposition with respect to its claim for partial recoupment of no-fault benefits paid on behalf of the Stanley children.³ "This Court reviews de novo whether a trial court properly granted a motion for summary disposition." *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369, 775 NW2d 618 (2009). In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court considers "affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (internal quotations and citations omitted). A motion for summary disposition "tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). "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 Mich v Lawrence*, 494 Mich 475, 490; 835 NW2d 363 (2013).

B. ANALYSIS

MCL 500.3114(1) provides:

(1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) 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. . . .

³ Westfield concedes that it is the higher priority insurer for no-fault benefits paid on behalf of Sheila Stanley because, at the time of the accident, she was married to Curtis Stanley. See MCL 500.3114(1).

This provision requires that a “relative” of the insured or the insured’s spouse must be “domiciled in the same household” as the insured in order to recover no-fault benefits from the insured’s insurer. See *Grange Ins Co of Mich*, 494 Mich at 490-492. Accordingly, if Curtis Stanley was domiciled with his wife and children in Canton, then Westfield would be a higher priority insurer and would not be entitled to partial recoupment.

Westfield, however, argues that Curtis Stanley had not lived with his wife and children for about one year before the accident and that, during that time, he established his domicile with his parents while his children remained domiciled with their mother. It is undisputed that during that time Curtis Stanley was residing in Ypsilanti with his parents, while his children were residing in Canton with his wife. Westfield further directs us to a Westfield insurance policy covering Curtis Stanley’s other vehicles. The policy was issued several months before the accident and provided that Curtis Stanley’s address was in Ypsilanti, not Canton.⁴ These facts, however, only show that Curtis Stanley was residing with his parents. The terms “residence” and “domicile” are not synonymous, *id* at 498-501, and the mere fact that Curtis Stanley was residing with his parents is insufficient to establish that he was also domiciled with them.

“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 (citation and internal quotation marks omitted). “Similarly, a person’s domicile has been defined to be 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.” *Id.* (citation and internal quotation marks omitted). “A removal which does not contemplate an absence from the former domicile for an indefinite and uncertain time is not a change of it.” *Beecher v Common Council of Detroit*, 114 Mich 228, 231; 72 NW 206 (1897) (quotation omitted). When determining whether a relative is “domiciled in the same household” as an insured, the following factors can be considered:

- (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

⁴ Additionally, Westfield directs us to several events occurring after the accident as further proof that Curtis Stanley’s domicile was with his parents. First, in a 2010 letter to the Wayne County Circuit Court, he used his parents’ address and requested that his son, who resided at the Canton address, to be left out of the proceedings. Second, in a 2011 deposition, he testified that he was still residing with his parents in Ypsilanti while his wife and children continued to reside in Canton. Third, a few days after the accident, he used the Ypsilanti address when he applied for the title to the Windstar. However, given that the relevant question is where Curtis Stanley was domiciled on the date of the accident, we do not consider these facts arising after the accident.

person alleging “residence” or “domicile” in the household[.] [*Workman v Detroit Auto Inter-Ins Exchange*, 404 Mich 477, 496-497; 274 NW2d 373 (1979) (citations omitted).]

In this case, although Curtis Stanley had a familial relationship with both his parents in Ypsilanti and with his wife and children in Canton, his declared intent was to remain married with his wife and work out their issues. Based on the Stanleys’ deposition testimony, Curtis Stanley was living with his parents while they worked on those differences, but he left a vehicle for his wife and children to use. He would also provide transportation for his wife when she needed it by coming to the Canton residence and allowing her to drive his vehicle. He paid for the insurance on the vehicles the family used. Further, he testified that he had purchased the Windstar with the intent of giving it to his wife. Curtis Stanley also continued the children on his health insurance, continued working in Canton, and remained an owner of the Canton home. Likewise, the police accident report provided that his address was in Canton, which strongly suggests that he did not update his driver’s license to reflect that he was residing in Ypsilanti. Finally, although they had been separated for about a year, Sheila Stanley testified that since their marriage in 1988, they had lived together on and off, which indicates that the parties understood the separation to be temporary, not permanent. Thus, although Curtis Stanley was residing in a different residence in a different city, on this record he did not intend to live indefinitely with his parents and instead intended to return to the marital home. As such, the trial court did not err in finding that he was domiciled with his children and that, as a result, Westfield was the higher priority insurer under MCL 500.3114(1).⁵

Affirmed.

/s/ Michael J. Kelly
/s/ Peter D. O’Connell
/s/ Jane M. Beckering

⁵ Given our resolution of this issue, we do not address Westfield’s remaining arguments on appeal.