STATE OF MICHIGAN

COURT OF APPEALS

KRYSTINE M. MUHA,

Plaintiff,

v

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant/Third-Party Plaintiff-Appellee,

and

WALID ODEH,

Third Party-Defendant,

and

PIONEER STATE MUTUAL INSURANCE COMPANY,

Garnishee Defendant-Appellant.

UNPUBLISHED
December 16, 2021

No. 354476
Macomb Circuit Court
LC No. 2012-004960-CK

Before: K. F. KELLY, P.J., and JANSEN and RICK, JJ.

PER CURIAM.

Garnishee defendant, Pioneer State Mutual Insurance Company (Pioneer), appeals as of right the trial court's July 22, 2020 order granting summary disposition in favor of defendant/third-party plaintiff, Allstate Property and Casualty Insurance Company (Allstate). In addition, Pioneer challenges the trial court's earlier order, entered September 3, 2019, denying its motion for summary disposition against Allstate. Finding no errors warranting reversal, we affirm both orders.

I. FACTUAL AND PROCEDURAL BACKGROUND

This garnishment action is related to events transpiring approximately 10 years ago. On November 22, 2011, a home owned by Krystine Muha located on Margaret Avenue, in Macomb, was destroyed by fire. It is undisputed that at the time of the fire Muha lived in the home with her five children. What has been highly contested is whether the children's father, Walid Odeh, also resided in Muha's home or whether he resided in the home owned by his mother, Connie Odeh (Connie). Connie's home was located on North Selfridge Boulevard, in Clawson. At the time of the fire, Muha's homeowner's insurance was through Allstate. Connie was the named insured under a homeowner's policy issued by Pioneer.

Initially, Allstate denied coverage to Muha after it concluded that the fire was of suspicious origins. Allstate accused Odeh of intentionally setting the fire. Consequently, on October 31, 2012, Muha filed a complaint against Allstate to enforce the provisions of the insurance policy. The matter was assigned to then Macomb Circuit Court Judge David F. Viviano, but eventually reassigned to Judge Jennifer M. Faunce. Then, sometime during its investigation, Allstate concluded that the fire was, at the least, caused by Odeh's negligence. Thus, on June 28, 2013, by stipulation and order, Allstate was granted leave to file a third-party subrogation complaint against Odeh based on negligence. Odeh forwarded the third-party complaint to Pioneer, requesting that it defend and indemnify him. Connie's Pioneer policy provided liability and indemnification coverage to all "insureds." The policy provided:

> 3. "insured" means you and residents of your household who are:
>
> a. your relatives; or . . .

Apparently, Odeh believed that he qualified as an "insured" under his mother's policy.

On October 24, 2013, Pioneer filed a declaratory-judgment action against Odeh in the Macomb Circuit Court seeking to determine the rights of the parties related to the insurance policy that Pioneer issued to its insured, Connie. At issue in that case was whether Odeh, as a relative that allegedly resided with Connie, was insured under the Pioneer policy. Inexplicably, the case was assigned to Judge Mark S. Switalski. It is notable that Pioneer served Odeh with a copy of the complaint at Connie's North Selfridge address in Clawson.

It is undisputed that Pioneer did not name Allstate, Connie, or Muha as party-defendants. Consequently, Allstate was never served with a copy of the complaint in the declaratory-judgment action. Nevertheless, Pioneer asserts that Allstate was aware of the action because Pioneer served a subpoena for records on Allstate. However, Pioneer admitted that the subpoena was returned because it was sent to an inaccurate address and never reached Allstate. Further, the subpoena was not sent to counsel representing Allstate in the third-party action, an individual known to Pioneer. Finally, Allstate asserts that the subpoena did not contain any information that would put Allstate on notice that Pioneer had filed a declaratory-judgment action against Odeh.

Pioneer and Allstate have taken diverging positions regarding the resolution of the declaratory-judgment action and the implications of that resolution. This quarrel is at the heart of the present appeal. At a hearing on March 11, 2014, Pioneer's counsel represented that Pioneer and Odeh, who was proceeding *in propria persona*, had reached a settlement of the declaratory-

judgment action. Apparently, they agreed that Pioneer would continue to provide Odeh with a defense in Allstate's third-party action against Odeh; in exchange for being provided a defense, Odeh agreed to surrender any other rights he might have had under his mother's policy. Specifically, Odeh agreed that he would be personally responsible for any judgment entered against him. In a written agreement executed by the parties, Odeh agreed to surrender any claim for indemnity under the policy issued to Connie. Odeh further agreed to release Pioneer "from any and all obligations Pioneer may have had to protect him or to compensate others who may have been injured by his acts or omissions, specifically including, but not limited to, his potential liability to Krystine Muha and/or her insurers, sureties, or creditors for property damage" suffered as a result of the November 22, 2011 fire. The final order, however, entered on March 24, 2014, simply provided:

> UPON AGREEMENT OF THE PARTIES, the parties have resolved their differences and the court being fully advised in the premises, THEREFORE IT IS ORDERED that this case is hereby DISMISSED with prejudice and without costs to any party.

This "final order" entered in the declaratory-judgment action was later provided to Allstate's counsel during a court-ordered settlement conference in the underlying action. Thereafter, on April 10, 2014, Allstate moved to intervene in the declaratory-judgment action and to set aside the order of dismissal. On July 1, 2014, Judge Switalski denied Allstate's request.

Also on July 21, 2014, Muha settled her claims against Allstate, with Allstate agreeing to pay Muha the sum of $420,000. Muha's complaint was dismissed on July 22, 2014. The matter proceeded to a bifurcated bench trial on Allstate's third-party complaint against Odeh. At the conclusion of the liability phase of the trial, the court found that the fire was caused by Odeh's negligence. Then, between February 2015 and December 2015, the court took testimony regarding damages. The court found Odeh liable for damages to Allstate in the amount of $388,631.42. A judgment was entered on April 27, 2016.[1]

On May 25, 2016, Allstate filed a request and writ for garnishment on garnishee defendant, Pioneer. On June 5, 2016, Pioneer filed the Garnishee Disclosure wherein it indicated that because of the "settlement agreement" and "final order" in the declaratory-judgment action, it was not indebted to Odeh, nor did it possess or control any of Odeh's property.

On August 2, 2019, garnishee defendant Pioneer filed its motion for transfer or summary disposition or both. Initially, as to the procedural matter, it argued that the garnishment action should be transferred to Judge Switalski's docket. Then Pioneer argued that the garnishment action should be dismissed because it constituted an impermissible collateral attack on the declaratory judgment. Allstate responded that Pioneer should not be permitted to rely on the judgment in the

[1] Although Odeh had rejected the $120,000 case evaluation amount, the trial court denied Allstate's request for attorney fees. Allstate appealed the trial court's denial. This Court then reversed and remanded for further proceedings. *Muha v Allstate Property and Casualty Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued October 26, 2017 (Docket No. 332801).

declaratory-judgment action to bar the garnishment where Allstate was not a party to that action, and Pioneer had opposed Allstate's intervention in the case.

It its written opinion denying Pioneer's motion for summary disposition, the trial court distinguished the legal authority cited by Pioneer, and found that the declaratory-judgment action would not bar Allstate's garnishment action. On October 14, 2019, Pioneer filed with this Court an application for leave to appeal the trial court's September 13, 2019 order. The application was denied on February 7, 2020.[2]

On May 14, 2020, Allstate moved for summary disposition under MCR 2.116(C)(10), arguing that because Odeh was a resident relative, he was covered under the Pioneer policy, and there were no genuine issues of material fact in this regard. Allstate asserted that an individual could have more than one residence. Accordingly, Allstate reasoned that because one of Odeh's residences was the property he shared with his mother, he was an "insured" under the policy and, therefore, entitled to liability coverage. In response, Pioneer continued to assert that the garnishment action was an impermissible collateral attack on the declaratory judgment. The trial court agreed with Allstate's position and consequently granted summary disposition in Allstate's favor. The trial court made the following findings:

> There is no dispute that Walid Odeh is a relative of Connie Odeh. The Opinion and order dated October 10, 2014[,] concluded that Walid Odeh was negligent in causing the fire; there has been no finding that he intentionally set the fire.
>
> The evidence clearly establishes Walid Odeh routinely lives and dwells at the Margaret house. Indeed, he spends much of the time during the school year staying at the house to take [sic] of his and Krystine Muha's children. Walid Odeh admitted keeping personal property and receiving bills at the house; he registered [his business] Real Restoration there.
>
> The evidence also clearly establishes Walid Odeh lives and dwells at his mother's house. He has his own bedroom and keeps some personal property there. He uses his mother's address for his license, his voter registration and tax purposes.
>
> Therefore, reasonable minds could only conclude that Walid Odeh resided at both the Margaret house and his mother's house on November 22, 2001 [sic] when the fire occurred. Consequently, he is an insured under the plain language of Pioneer's policy.

The court further found that Pioneer was obligated as a garnishee for the judgments against Odeh. This appeal followed.

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[2] *Muha v Allstate Property and Casualty Ins Co*, unpublished order of the Court of Appeals, entered February 7, 2020 (Docket No. 350912).

II. ANALYSIS

A. RES JUDICATA AND COLLATERAL ESTOPPEL

For its first issue on appeal, Pioneer argues that because Allstate's garnishment action was barred by the doctrines of collateral estoppel and res judicata, the trial court erred when it denied Pioneer's motion for summary disposition. We find no merit to Pioneer's arguments. Where necessary elements of each doctrine were lacking, neither collateral estoppel nor res judicata could properly be invoked to preclude Allstate's current garnishment action.

The applicability of legal doctrines such as res judicata and collateral estoppel are questions of law to be reviewed de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008). A trial court's decision on a motion for summary disposition is also reviewed de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007). Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred by res judicata or collateral estoppel. *Id.* A motion brought under MCR 2.116(C)(7) "may be supported by affidavits, depositions, admissions, or other documentary evidence." *Trowell v Providence Hosp & Med Ctrs, Inc*, 502 Mich 509, 519 n 20, 918 NW2d 645 (2018) (quotation marks and citation omitted). The contents of the complaint must be accepted as true unless contradicted by the documentary evidence, which must be viewed in a light most favorable to the nonmoving party. *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008). If there is no factual dispute, the determination whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law. *Id.*

Collateral estoppel is designed to avoid relitigation of issues previously decided. *Wilcox v Sealey*, 132 Mich App 38, 46; 346 NW2d 889 (1984).[3] "Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004) (quotation marks, citation, footnote, and brackets omitted). "Mutuality of estoppel requires that in order for a party to estop an adversary from relitigating an issue that party must have been a party, or in privy to a party, in the previous action. In other words, the estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him." *Id.* at 684-685 (quotation marks, citations, and brackets omitted). In this case a necessary element was not met: Allstate was not a party to the declaratory-judgment action and it did not have a full and fair opportunity to litigate the question of whether Odeh resided in his mother's home and was, thereby, insured under Connie's Pioneer policy.

Pioneer did not name Allstate, Muha, or Connie as defendants in the declaratory-judgment action. Indeed, Allstate was unaware of the declaratory-judgment action until after it was concluded. Pioneer contends that Allstate received notice of the action when Pioneer served upon

[3] "Although cases decided before November 1, 1990, are not binding precedent, MCR 7.215(J)(1), they nevertheless can be considered persuasive authority." *In re Stillwell Trust*, 299 Mich App 289, 299 n 1; 829 NW2d 353 (2012).

Allstate a subpoena for records. However, Pioneer admitted that the subpoena was returned because it was mailed to the wrong address. In an effort to deflect from this fact, Pioneer contends that the subpoena was also sent by facsimile. However, there is no evidence in the record that this fax was actually sent to and received by Allstate. Further, Allstate contends that it was not aware of the declaratory-judgment action until copies of the "settlement agreement" were distributed during a settlement conference in the underlying case. Then, when Allstate attempted to intervene in the declaratory-judgment action, after Judge Switalski entered an order closing the case, Pioneer actively opposed Allstate's motion to intervene. Under these circumstances, Pioneer's deliberate actions denied Allstate a full and fair opportunity to litigate the issue of Odeh's coverage under the Pioneer policy. Accordingly, the second element necessary to the application of collateral estoppel has not been satisfied.

Pioneer cites to this Court's opinion in *Wilcox*, 132 Mich App 38. However, after examining this Court's analysis in *Wilcox*, it is clear that Pioneer's reliance on *Wilcox* is misplaced. Indeed, the rationale employed by the Court in reaching its holding actually supports a finding that the collateral estoppel doctrine, as well as res judicata, do not apply to the circumstances in this case.

In *Wilcox*, *id*. at 40, plaintiff Angela Wilcox's home caught fire allegedly as a result of the negligence of the defendants, Harry and Orpha Sealey. Wilcox's home was insured by plaintiff Pioneer State Mutual Insurance Company. *Id*. After the plaintiffs sued the Sealeys, the Sealeys demanded that the garnishee defendant, Auto Owners Insurance Company, defend them and pay any possible judgment. *Id*. When Auto Owners refused to do so, the Sealeys filed a complaint for declaratory relief. *Id*. After a bench trial, a declaratory judgment was entered in Auto Owner's favor. *Id*. The trial court held that the Sealeys' policy neither covered the plaintiff's claims nor required Auto Owners to defend. *Id*. After the declaratory judgment was entered, the plaintiffs settled the claim against the Sealeys. *Id*. The plaintiffs then garnished Auto Owners under the insurance policy. *Id*. at 41. Auto Owners filed a disclosure denying liability, claiming, among other things, that the matter was decided by the declaratory judgment previously rendered in its favor. *Id*. In *Wilcox,* the plaintiffs were not made a party to the declaratory-judgment action in which the coverage issue was decided. *Id.* However, they knew of the action. *Id*. Consequently, the trial court quashed the writ of garnishment. *Id*. The trial court noted that the plaintiffs knew and could have intervened in the declaratory-judgment action if they wished to do so. *Id*.

On appeal, this Court held that because the parties in the declaratory-judgment action and garnishment matter were not the same, the declaratory judgment was not res judicata as to Wilcox. *Id*. at 46. However, this Court further held that Wilcox had waived her right to deny the binding effect of the declaratory judgment. *Id*. Indeed, the Court held that Wilcox was "collaterally estopped from denying the validity and binding effect of the declaratory judgment on her." *Id*. Central to the Court's holding was the fact that Wilcox had notice of the prior action, and an opportunity to intervene, yet she failed to do so. *Id*. The Court concluded that Wilcox had no legal excuse for not asserting her rights in the declaratory-judgment action. *Id*. It is this factor that distinguishes *Wilcox* from the present case.

Pioneer initiated the declaratory-judgment action, and failed to give notice to Allstate, despite knowing that Allstate had an interest in any declaration regarding insurance coverage. Pioneer then settled with Odeh, who, notably, appeared *in propria persona*. Only after these events

did Pioneer reveal the existence and resolution of the declaratory-judgment action. Pioneer then sought to prevent Allstate from intervening in the declaratory judgment case. Under these circumstances, unlike in *Wilcox*, it cannot be said that Allstate waived its rights or should be collaterally estopped from denying the validity and binding effect of the declaratory judgment.[4]

Similarly, the doctrine of res judicata cannot be invoked to bar Allstate's garnishment action. "The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action." *Washington*, 478 Mich at 418 (quotation marks and citation omitted). The doctrine bars a second, subsequent action when "(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Id*. (quotation marks and citation omitted). For purposes of this appeal, the first case was the declaratory-judgment action initiated by Pioneer against Odeh. The second case is the present garnishment action filed by Allstate against Pioneer. Again, it must be noted that Allstate was not a party to the declaratory-judgment action. Further, contrary to Pioneer's arguments, Allstate was not in privity with Odeh.

To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert. *Baraga Co v State Tax Comm*, 466 Mich 264, 269-270; 645 NW2d 13 (2002). The outer limit of the doctrine traditionally requires both a "substantial identity of interests" and a "working or functional relationship" in which the interests of the nonparty are presented and protected by the party in the litigation. *Id*. at 270 (quotation marks and citations omitted).

Allstate was not in privity with Odeh. Allstate was Muha's, i.e., its insured's, subrogee. Because Allstate paid a loss under the policy issued to Muha, it then stood in the shoes of its insured. Allstate was entitled to all the rights and remedies belonging to the insured against a third party with respect to a loss covered by the policy. *State Auto Ins Cos v Velazquez*, 266 Mich App 726, 729; 703 NW2d 223 (2005). It is manifest that an injured party has a potential interest in an insurance policy. See *Allstate Ins Co v Hayes*, 442 Mich 56, 61-75; 499 NW2d 743 (1993). In this case, Allstate was, for all practical purposes, the "injured party." Moreover, it cannot be forgotten that Odeh was the tortfeasor. There could be no privity between Allstate, the injured party, and Odeh, the alleged tortfeasor, because of the obvious adversarial relationship. The truth of this assertion is borne out by the events that transpired in the declaratory-judgment action. Without any input from Allstate, Odeh managed to negotiate a settlement with Pioneer that

[4] For similar reasons, an unpublished decision cited by Pioneer is distinguishable. In *Braverman v Auto Owners Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued August 20, 2013 (Docket No. 306492), p 5, the defendant insurance company sought discovery regarding whether the plaintiff's decedent had insurance coverage at the time of the motorcycle accident that caused her death. If the decedent did not have proper coverage, then the plaintiff could not recover PIP benefits. *Id*. Applying the collateral estoppel doctrine, this Court held that the trial court abused its discretion when it precluded the defendant from conducting discovery or raising at trial the issue of the decedent's insurance coverage at the time of the accident. *Id*. at 5-6. This Court noted that the defendant had had "a fair and full opportunity" to litigate the coverage issue in the underlying declaratory action between the plaintiff and the decedent's insurance provider. *Id.* at 6.

protected many of his interests, but directly compromised Allstate's interest. Odeh did not present nor protect Allstate's interests during the declaratory-judgment action. He surrendered a claim for indemnification in exchange for Pioneer agreeing to present and pay for Odeh's defense. Odeh acted in what he perceived to be his best interests, not those of Allstate. Allstate's interests were not identical with Odeh's. Because Allstate was not a party to the declaratory-judgment action, nor was it in privity with Odeh, a necessary element to the application of res judicata was not present. Accordingly, the doctrine could not be invoked to preclude Allstate's garnishment action.

This Court's decision in *Cloud v Vance*, 97 Mich App 446; 296 NW2d 68 (1980), not only bolsters the conclusions reached above, its holding is dispositive. In *Cloud*, the plaintiff sued the defendant, Felton Vance, for damages incurred as a consequence of an automobile accident. *Id*. at 448. The garnishee defendant, Travelers Insurance Company, retained an attorney and filed an appearance on behalf of Vance. *Id*. Thereafter, Vance's counsel successfully moved to withdraw because Vance was not cooperating in his own defense. *Id*. Sometime later, Travelers filed a declaratory-judgment action against Vance seeking a ruling that it had no further obligations under the insurance policy issued to Vance. *Id*. After Vance failed to answer, Travelers obtained a declaratory judgment relieving it of any liability under the insurance policy. *Id*. The plaintiff was not a party to the declaratory-judgment action, and claimed that no notice was given to him until after the judgment was entered. *Id*. Shortly thereafter, the plaintiff obtained a default judgment against Vance and then, by way of a writ of garnishment, sought collection from Travelers on the liability insurance policy. *Id*. at 448-449. Similar to the present case, Travelers filed a disclosure denying liability to the defendant, and then moved for summary disposition on the garnishment. *Id.* at 449. The trial court granted Travelers' motion noting that, based on Travelers' declaratory judgment against Vance, Vance was uninsured at the time of the accident. *Id.*

On appeal, this Court reversed the trial court's order and held that the plaintiff was not precluded from a hearing on the merits regarding any obligations owed by the garnishee defendant Travelers. *Id*. at 452. The Court specifically rejected the garnishee defendant's argument that the doctrines of res judicata and collateral estoppel precluded the plaintiff from attacking that judgment in a subsequent garnishment. *Id*. at 451-452. The Court found that res judicata did not apply because the action was not between the same parties or their privies. *Id*. at 451. Similarly, the Court rejected the application of the doctrine of collateral estoppel. *Id.* at 452. The Court then held that when a plaintiff has a substantial interest in the proceeds of an insurance policy, and the insurance company has knowledge of the existence of the plaintiff's claim, the plaintiff is entitled to notice from the insurance company of the declaratory-judgment action and an opportunity to intervene. *Id.* at 449-450. The Court further stated:

> Thus, while the declaratory judgment would be a valid defense against defendant Vance, it is not a valid defense against plaintiff. To hold otherwise would give an insurance company an easy out to escape liability to plaintiffs who successfully assert claims against the insured. All such an insurance company would have to do would be to obtain a default declaratory judgment against its own insured in order to escape such responsibility. [*Id*. at 452.]

The Court then specifically stated that under the facts in that case, facts substantially similar to those in the present case, "we do not permit defendant insurance company to defeat a possible,

known claim against it by plaintiff in a declaratory judgment action processed without either notice to plaintiff or an opportunity to plaintiff to intervene and be heard." *Id*.

This Court's decision in *Cloud* is dispositive. Pioneer knew of Allstate's claim against Odeh, yet it did not provide meaningful notice to Allstate. Allstate was denied the right to intervene, and deprived of a full and fair opportunity to litigate the question of whether Odeh resided in his mother's home and was, thereby, insured under Connie's Pioneer policy. Accordingly, the trial court did not err when it denied Pioneer's motion for summary disposition.

B. FAILURE TO PURSUE APPELLATE REVIEW

As an alternative ground to support its claim that the trial court erred when it denied its motion for summary disposition, Pioneer next argues that Allstate's failure to pursue appellate review of the order denying its motion to intervene in the declaratory-judgment action renders the instant garnishment action an impermissible collateral attack on the settlement between Pioneer and Odeh. We disagree.

"It is well established in Michigan that, assuming competent jurisdiction, a party cannot use a second proceeding to attack a tribunal's decision in a previous proceeding." *Workers' Compensation Agency Director v MacDonald's Industrial Prod, Inc (On Reconsideration)*, 305 Mich App 460, 474; 853 NW2d 467 (2014). Such a "collateral attack" on the earlier decision is generally impermissible; rather, a party aggrieved by that decision has resort to the appellate process. See *id*. at 475.

On March 24, 2014, Pioneer and Odeh entered into a settlement agreement, the terms of which provided that Odeh would surrender any claim he may have for indemnity under the policy of insurance Pioneer issued to Connie. The same day, Judge Switalski issued a "final order" dismissing the declaratory-judgment action based upon the agreement of the parties resolving their differences. It is this order that Pioneer asserts is being impermissible collaterally attacked by the garnishment action. However, Allstate was not a party to the declaratory-judgment action; therefore, its actions do not fall within the axiom that "a party cannot use a second proceeding to attack a tribunal's decision in a previous proceeding." *Id*. at 474. Further, the collateral attack prohibition is warranted because an aggrieved party typically has the right to an appeal. In this case, however, because of Pioneer's intentional omission, Allstate was not a party to the declaratory-judgment action. Therefore, Allstate could not have directly appealed the decision resolving the issue of insurance coverage between Pioneer and Odeh. When appellate review was not available or afforded to Allstate, it is now difficult to conclude that Allstate's garnishment action was an *impermissible* collateral attack on the court's judgment.

Admittedly, Allstate could have appealed the denial of the motion to intervene; however, a review of the merits of the declaratory judgment or settlement agreement would not have been within the scope of that appeal. In its opinion and order denying Allstate's motion to intervene, the court did not rule on the issue of insurance coverage. Instead, the court found that Allstate's interest was conditional, that Pioneer and Odeh had entered into a settlement agreement, and to reopen the closed declaratory-judgment action to allow Allstate to intervene would be against the interests of justice. The trial court did not specifically rule on the issue whether Odeh was covered

under the policy Pioneer issued to Connie. Consequently, the failure to pursue an appeal of the only order Allstate could have appealed appears inconsequential.

Pioneer has not persuasively explained how this garnishment action constituted an *impermissible* collateral attack of an order of the lower court. Pioneer has not addressed how the prohibition against collaterally attacking a judgment is implicated when the circumstances presented do not allow a party to resort to the appellate process for relief. *Id*. at 474. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

C. SUMMARY DISPOSITION

Because the doctrines of res judicata and collateral estoppel did not preclude Allstate's garnishment action, it is necessary to consider the merits of the trial court's decision granting Allstate's motion for summary disposition with respect to whether Odeh had coverage under the liability policy issued by Pioneer to Connie. Because there was no genuine issue of material fact in this regard, the trial court did not err when it granted summary disposition in Allstate's favor.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Dextrom v Wexford Co*, 287 Mich App 406, 416; 789 NW2d 211 (2010). Summary disposition is proper under MCR 2.116(C)(10) if, "[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 reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a court must examine the documentary evidence presented and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists." *Dextrom*, 287 Mich App at 415-416. "As a general rule, a motion for summary disposition under MCR 2.116(C)(10) is premature if discovery has not been completed, unless there is no fair likelihood that further discovery will yield support for the nonmoving party's position." *Kern v Kern-Koskela*, 320 Mich App 212, 227; 905 NW2d 453 (2017) (quotation marks and citation omitted). A party claiming that summary disposition is premature must "identify[ ] a disputed issue and support[ ] that issue with independent evidence." *Meisner Law Group PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 724; 909 NW2d 890 (2017) (quotation marks and citation omitted).

The policy issued by Pioneer to Odeh's mother, Connie, provided, in relevant part, that the term "insured" means "you and the residents of your household" who are "your relatives." There is no dispute that Odeh is related to his mother; the only question is whether he was a resident of Connie's household at the time of the fire.

The Pioneer policy does not define the term "resident." Nor does it define related terms like "resides" or "residence." When a term is not defined in an insurance policy, it may be given its commonly understood meaning by referring to its dictionary definition. *Brown v Farm Bureau Gen Ins Co of Mich*, 273 Mich App 658, 662; 730 NW2d 518 (2007). Merriam-Webster defines "resident" to mean "living in a place for some length of time" and "one who resides in a place." *Merriam-Webster's Collegiate Dictionary* (11th ed). Similarly, "residence" means "the act or fact

of dwelling in a place for some time" and "the place where one actually lives as distinguished from one's domicile or a place of temporary sojourn." *Merriam-Webster's Collegiate Dictionary* (11th ed).

The Michigan Supreme Court in *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013), offers additional guidance. In that case, the Court considered the definition of "residence" in comparison to "domicile":

> 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.' " In this regard, the Court has recognized that "[i]t may be laid down as a settled maxim that every man must have such a national domicile somewhere. It is equally well settled that *no person can have more than one such domicile, at one and the same time*." From this settled principle, it follows that
>
> > a man retains his domicile of origin [upon his birth] until he changes it, by acquiring another; and so each successive domicile continues, until changed by acquiring another. And it is equally obvious that the acquisition of a new domicile does, at the same instant, terminate the preceding one.
>
> In this way, our common law has recognized that from the time of a person's birth—from childhood through adulthood—a person can only have a single domicile at any given point in time. Indeed, there are few legal axioms as established as the one providing that every person has a domicile, and that a person may have one—*and only one*—domicile.
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> In furtherance of this understanding of domicile, the common law has necessarily distinguished between the concepts of "domicile" and "residence:"
>
> > The former, in its ordinary acceptation, was defined to be, 'A place where a person lives or has his home,' while '[a]ny place of abode or dwelling place,' however temporary it might have been, was said to constitute a residence. A person's domicile was his legal residence or home in contemplation of law.
>
> Stated more succinctly, a person may have only one domicile, but more than one residence. For purposes of distinguishing "domicile" from "residence," this Court has explained that "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 493-495 (footnotes omitted).]

Moreover, where the underlying facts are not in dispute, as is the case here, whether Odeh was a resident of the named insured's household is a question of law for the courts. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). Applying the foregoing principles, we

conclude that the trial court did not err when it found, among other things, that Odeh was a "resident" of his mother's household.

Odeh gave a deposition on April 24, 2013, and a sworn statement on August 26, 2013. During these proceedings, Odeh testified that that he resided with his mother, Connie, at the North Selfridge address. He had a bedroom there, and the room was furnished with a complete bedroom set and a small television. Odeh kept clothing and toiletries at his mother's home. Odeh had no formal lease agreement with any one. Odeh produced his Michigan Driver's License which indicated his address was 1400 North Selfridge Boulevard in Clawson, the home owned by his mother. Odeh used his mother's address for income tax purposes, his driver's license, and his voter registration. Odeh also claimed that he operated his restoration business out of the North Selfridge address. From July to November he would mostly be at the North Selfridge home. He spent more time at the North Selfridge address during this time of year because his children played football in the city of Clawson's recreational football league. After football season passed, Odeh did not have a regular schedule for when he would sleep at one house or the other. He would stay wherever it was easiest for him to take care of the children. Odeh did not know of any bills that came to him at his mother's house.

Odeh denied living with Muha and his children at the Margaret Avenue address. In the course of his 20-year relationship with Muha, he would sometimes stay overnight at Muha's home. Odeh testified that he might have received a Comcast bill for the children's internet at the Margaret Avenue address. However, none of the other bills at the Margaret Avenue address were in his name. Odeh did not own any of the furniture at Muha's house. Odeh kept a few items of clothing and some toiletries at the Margaret Avenue house. He might have some items of clothing stored there as well. Odeh admitted that he was at Muha's home a lot, including weekends, taking care of their children. Odeh usually saw his children every day either at their house or at his mother's house on North Selfridge. He did laundry for the children at both houses.

While giving his sworn statement, Odeh recalled helping his mother file an insurance claim with Pioneer a few years earlier. During a recorded statement taken in 2008, Odeh reported that he resided at "50339 Margaret Avenue." Odeh did not recall making that statement. When the audio recording from the statement was played for him, Odeh explained that he did not understand the question posed, and that he had things in his mother's home that would not have been covered if he were not living there.

In addition to Odeh's testimony, Allstate cited to testimony given by Muha and Jacob Muha (Jacob), Odeh's son. Muha testified that at the time of the fire, she lived at the Margaret Avenue address with her five children. She had a mortgage on the home and the deed was in her name. Muha further testified that she sometimes identified Odeh as her husband because she was embarrassed that she was unmarried with five children. Muha testified that Odeh lived at 1500 North Selfridge in Clawson. Muha explained that Odeh owned a cleaning service and a restoration company, and that Odeh used her address for the restoration company's address. According to Muha, Odeh came to the Margaret Avenue house almost daily to take care of their younger children. She admitted that he sometimes stayed over at the Margaret Avenue address, maybe three nights a week. When Jacob was asked who lived in the family home, he identified his mother and his siblings. He agreed that Odeh stayed there occasionally to take care of the children.

On August 26, 2013, Connie testified under oath that she owned and lived at the home on North Selfridge in Clawson. Although Odeh stayed at both houses, he primarily stayed at her house. Odeh had his own bedroom in the home. Odeh received mail at North Selfridge. Odeh did not pay rent, but he took care of household-related paper work. He mowed the lawn, shoveled the snow, and took care of home repairs. Odeh had a computer at both houses, and he had two houses from which to conduct his businesses. Odeh kept most of his clothes at North Selfridge. Because they both would come and go, Connie did not know the frequency with which Odeh stayed at either house. Connie explained that she had a recurrence of a brain tumor. She was a devout Catholic. Connie sometimes wondered if Odeh did not completely cohabitate with Muha out of respect for Connie's religious beliefs.

William Comstock, Pioneer's claim representative, signed an affidavit dated June 1, 2020. In this affidavit, Comstock stated that following the settlement conference in the declaratory-judgment action, he spoke with Odeh in the hallway. When he asked Odeh why he was so intent on arguing that he did not "reside" with Muha and the children, Odeh disclosed that he resided with Muha and his children. However, he went on to explain that because he was facing multiple tax issues, he feared that in the event the IRS came after him, they would seek to levy against the Margaret Avenue property. Odeh stated to Comstock that because they wanted to protect their property, everything was in Muha's name, and Odeh was maintaining that he did not reside with her and the children.

While the parties disagree concerning the significance of the facts pertaining to Odeh's residence, the facts themselves are not seriously in dispute. Further, as noted above, while an individual can only have one domicile, he can have more than one residence. *Grange*, 494 Mich at 493-495. Considering the record in its totality, we agree with the trial court's finding that Odeh routinely lived and dwelled, i.e., resided, at both the house on Margaret Avenue and his mother's house on North Selfridge. Odeh kept personal possessions at both houses. He spent considerable amounts of time at both houses, including overnights There was evidence that Odeh received mail at both addresses. He used his mother's address for his driver's license, voter registration, and for tax purposes. However, he used the Margaret Avenue home for the registered address of his restoration business. Odeh did not have a formal lease at either house, and it does not appear that he contributed to the household expenses at either address. Odeh simply resided at both houses, splitting his time between the two addresses for his convenience and for the benefit of his partner, the children, and his mother.

Viewing the evidence in the light most favorable to Pioneer, the trial court did not err by finding that Odeh simultaneously maintained two residences, one of them being the home that he shared with his mother. As such, he is an "insured" under the plain language of the policy Pioneer issued to Connie. Accordingly, the trial court did not err when it denied Pioneer's motion for summary disposition and granted summary disposition in Allstate's favor under MCR 2.116(C)(10).

As a final note, Pioneer argues for the first time on appeal that summary disposition was premature where discovery "had barely begun" under MCR 3.101(M)(2). It further suggests, with no elaboration, that Pioneer's disclosure should be deemed admitted, and Allstate's garnishment action should, thereby, be dismissed. This issue was not raised or addressed below, nor is the

record adequately developed to enable this Court to decide the issue. Accordingly, we decline to review this issue. *Richards v Pierce*, 162 Mich App 308, 316; 412 NW2d 725 (1987).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ Michelle M. Rick