

STATE OF MICHIGAN
COURT OF APPEALS

JASON TEEPLE,

Plaintiff-Appellee,

v

PIONEER STATE MUTUAL INSURANCE
COMPANY,

Defendant-Appellant,

and

STATE FARM INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 17, 2009

No. 291159
Chippewa Circuit Court
LC No. 07-009493-NF

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendant Pioneer State Mutual Insurance Company (Pioneer) appeals as of right the trial court's order granting the motion for summary disposition filed by defendant State Farm Insurance Company (State Farm) and denying Pioneer's cross-motion for summary disposition in this action pertaining to the availability of no-fault benefits. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Jason Teeple suffered a shoulder injury while riding in a car driven by John Bowen on September 19, 2006. At the time of the accident plaintiff did not have a driver's license, did not own a car, and did not have automobile insurance. Bowen was insured through Pioneer. However, when Teeple attempted to obtain personal insurance protection (PIP) benefits from Pioneer, Pioneer raised the question of whether Teeple was domiciled with his mother, Julie Timmer, at the time of the accident, and thus would have no-fault PIP coverage through Timmer's policy with State Farm. Following cross-motions for summary dispositions by State Farm and Pioneer, the trial court determined that plaintiff was not domiciled with Timmer as of the date of the accident.

We review the trial court's decision regarding a motion for summary disposition *de novo*. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In deciding a motion brought under MCR 2.116(C)(10), the trial court considers the documentary evidence

submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

Because plaintiff did not have his own insurance policy, the priority provisions in MCL 500.3114 determine whether Pioneer or State Farm is responsible for paying plaintiff PIP benefits. MCL 500.3114 provides in pertinent part:

(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. . . .

* * *

(4) 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 personal protection insurance benefits from insurers in the following order of priority:

(a) The insurer of the owner or registrant of the vehicle occupied.

Thus, whether plaintiff was domiciled with Timmer is the central issue to resolve the priority question.

"Domicile [is] 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." *Henry v Henry*, 362 Mich 85, 101-102; 106 NW2d 570 (1960), quoting *Williams v North Carolina*, 325 US 226, 236; 65 S Ct 1092; 89 L Ed 1577 (1945) (internal quotation marks omitted). See, also, *Beecher v Common Council of Detroit*, 114 Mich 228, 230-231; 72 NW 206 (1897). A person's "existing domicile continues until he acquires another, and, vice versa, by acquiring a new domicile he relinquishes his former one." *Beecher, supra* at 230, quoting Cooley, *Taxation* (2d ed, p 369). In *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362; 656 NW2d 856 (2002), this Court provided the following discussion concerning deciding questions of domicile:

Generally, the determination of domicile is a question of fact. However, where, as here, the underlying facts are not in dispute, domicile is a question of law for the court. *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111-112; 553 NW2d 353 (1996); *Williams v State Farm Mut Automobile Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993). Several factors should be considered in determining domicile, and these factors should be weighed or balanced with each other because no one factor is determinative. *Univ of Michigan Regents v State Farm Mut Ins Co*, 250 Mich App 719, 730; 650 NW2d 129 (2002).

The relevant factors in deciding whether a person is domiciled in the same household as the insured include: (1) the subjective or declared intent of the claimant to remain indefinitely in the insured's household, (2) the formality of the relationship between the claimant and the members of the household, (3) whether the place where the claimant lives is in the same house, within the same curtilage, or upon the same premises as the insured, and (4) the existence of another place of lodging for the person alleging domicile. *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979).

When considering whether a child is domiciled with the child's parents, other relevant indicia include: (1) whether the child continues to use the parents' home as the child's mailing address, (2) whether the child maintains some possessions with the parents, (3) whether the child uses the parents' address on the child's driver's license or other documents, (4) whether a room is maintained for the child at the parents' home, and (5) whether the child is dependent upon the parents for support. *Goldstein, supra* at 112, citing *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983). [*Id.* at 364-365.]

In addition, "the place of [instant] residence is prima facie the domicile, unless there be some motive for that residence not inconsistent with a clearly-established intention to retain a permanent residence in another place." *Beecher, supra* at 231, quoting Jacobs, *Law of Domicile*, § 378.

In this case, plaintiff was 34 years old at the time of the accident. At that time, he was living on a state campground in a recreational vehicle with his girlfriend, Georgina White. The pair had been living there since July of 2006. Prior to July 2006, plaintiff was living with a friend "on and off for a year" in another trailer "down on the beach." He had come to the area to attend Bay Mills Community College, and to work as a construction contractor for the college and others. Prior to that time, plaintiff was in the Ann Arbor area "for a year and a half" where he was employed as a carpenter. Prior to that, plaintiff lived with friends, before going to Appleton, Wisconsin for eight months to work. When asked whether he also stayed at his mother's home¹ during this time before he went to Ann Arbor, plaintiff replied that he stayed with her one or two weekends a month, "whenever [he] got visitation with [his] child."

Plaintiff did not have a driver's license; however, his Tribal ID card contained his mother's address, and that address continued to be where plaintiff received his mail. He stated that he continued to keep Timmer's address as his mailing address because she knew how to reach him, and it was an easy place to reach her if anything important came in or if he received a message. Plaintiff also used Timmer's address for Friend of the Court purposes. Plaintiff stated that the last time he had stayed with Timmer full time was 15 years ago. He used his mother's address for most of that time, except for three years around 1998 when he was living with his fiancée. He testified that he was still able to use his old bedroom at Timmer's home during his visits. He also stored some of his belongings, including tools and off-season clothing, at the home. When he was not using the bedroom, it was used for storage. He did not pay rent to his

¹ Timmer resides in Brimley, Michigan.

mother, but had to perform chores around the house during his visits. He stayed with his mother after the accident for a few days, because Georgina was working and it was a comfortable place to stay. Plaintiff stated that his mother occasionally provided him with \$20. He maintained that he had had no intent to remain in his mother's home or reside there for many years. The deposition testimony of Georgina White and Julie Timmer were similar to plaintiff's. Timmer acknowledged that plaintiff stayed with her occasionally, when he was not staying with friends.

We find that the trial court did not err when it determined that plaintiff was no longer domiciled with Timmer. The trial court's finding that plaintiff was a "free spirit" who moved around a majority of the time is an accurate one.² The fact that he maintained his mother's address as his mailing address appears to be a recognition that even a free spirit needs a regular place to collect mail. His monthly return to the home to visit with his daughter also appeared to be driven by convenience or a desire to have his mother participate in the visits. Plaintiff does not rely on Timmer for support and has claimed to have had no intention to remain domiciled with her. In addition, while Pioneer claims that Timmer's home is the only permanent address plaintiff has ever had, it ignores plaintiff's three-year residence with his ex-fiancée in their house. Plaintiff obviously intended to remain indefinitely at that location. Nothing in the facts presented showed a clear intent to return his domicile to Timmer's home afterward, or to maintain it as such once he moved on to his next residence. As stated in *Dairyland Ins Co*, "[s]torage of some of his belongings at his mother's home, use of such home as a mailing address, and the knowledge that he could and would return to live with her if forced to do so by adverse circumstances, are insufficient to constitute him a member of his mother's household." *Id.* at 684. We thus find that the circumstances do not rebut the prima facie conclusion that plaintiff intended to reside with White indefinitely, if not permanently, at the time of the accident.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Donald S. Owens

² Apparently, plaintiff has either not yet abandoned, or has simply embraced, the "floating intentions" [that] are typical of the recently emancipated young adult." *Dairyland Ins Co*, *supra* at 683-684 (quotation omitted).