

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN
COURT OF APPEALS

BOARD OF HOSPITAL MANAGERS FOR THE
CITY OF FLINT, doing business as HURLEY
MEDICAL CENTER,

Plaintiff-Appellant,

v

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

Defendant-Appellee,

and

MICHIGAN AUTOMOBILE INSURANCE
PLACEMENT FACILITY AND MICHIGAN
ASSIGNED CLAIMS PLAN,

Defendant.

Before: METER, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

In this first-party no-fault action, plaintiff appeals as of right the trial court's orders granting defendant Farm Bureau's motion for summary disposition pursuant to MCR 2.116(C)(10) and denying plaintiff's cross-motion for summary disposition. Brandon Gault, and later plaintiff as his assignee, sought coverage from defendant, the insurer of Gault's mother's vehicles. Defendant denied coverage, asserting that it was not first in priority because Gault was not domiciled with his mother. The parties stipulated to the facts in the record and presented the question to the trial court for a legal determination as to domicile. The trial court recognized that it could not conclude that Gault had no domicile or that he had more than one domicile. Neither party contended that Gault was domiciled with anyone besides his parents. Thus, the court had to find either that Gault was domiciled with his father or with his mother. It concluded that Gault was domiciled with his

father based upon his unknown period of residence with his father that ended three years before the collision. For the reasons set forth below, we reverse.

I. BACKGROUND

On April 8, 2017, Gault, 19 years old at the time, was injured while a passenger in a motor vehicle collision.¹ He suffered severe jaw injuries and was airlifted to plaintiff Hurley Medical Center in Flint for surgery. Gault did not own a vehicle and so did not have his own no-fault policy. His mother, Kimberly Rupright, owned a vehicle and was insured by defendant Farm Bureau General Insurance Company of Michigan. After the accident, Gault filed his claim for personal protection insurance (PIP) benefits with defendant pursuant to MCL 500.3114(1)'s provision that an insured's policy "applies to accidental bodily injury to the person named in the policy . . . and a relative . . . domiciled in the same household . . ." Defendant denied the claim. Gault executed an assignment of benefits to plaintiff who filed this suit seeking payment for the medical services it provided to Gault following the collision.²

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(10) (no genuine issue of material fact), arguing that as a matter of law, Gault was domiciled with his father, not his mother. Plaintiff filed a cross-motion for summary disposition. At the motion hearing, counsel for both parties agreed with the trial court's statement that "the underlying facts are well settled, established. You both agree on the facts, but you just have a different [view] of the ruling I should make on those facts." Following a hearing, the trial court found that Gault had been domiciled with his father at the time of the accident and entered orders granting defendant's motion for summary disposition and denying plaintiff's motion for summary disposition "for the reasons stated on the record."

Plaintiff appeals, arguing that the trial court erred by finding that Gault was domiciled with his father, rather than his mother.

II. STANDARD OF REVIEW

"Generally, the determination of domicile is a question of fact." *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). However, when the underlying facts are not disputed, "domicile is a question of law for the court." *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 490; 835 NW2d 363 (2013). Questions of law are reviewed de novo. *Id.* at 491; *Cooper v Auto Club Ins Ass'n*, 481 Mich 399, 406; 751 NW2d 443, 447 (2008).

III. ANALYSIS

Michigan's no-fault act requires "insurance companies to provide first-party insurance benefits for accidental bodily injury arising out of the use of a motor vehicle, which are commonly referred to as [PIP] benefits." *Grange*, 494 Mich at 490. The act further provides that a PIP policy

¹ Gault died in an unrelated accident in April 2018.

² Plaintiff also named the Michigan Automobile Insurance Placement Facility as a defendant in the action, but 12 days later stipulated to dismissal of this claim with prejudice.

“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.” MCL 500.3114(1). Thus, a relative other than a spouse must be domiciled in the same household as the person named in the policy to be eligible for PIP benefits under that policy. *Auto Club Ins Ass’n v State Farm Ins Co*, 221 Mich App 154, 165; 561 NW2d 445 (1997), overruled on other grounds *CAM Constr v Lake Edgewood Condo Ass’n*, 465 Mich 549; 640 NW2d 256 (2002).

Determining domicile is not always straightforward, particularly in the case of young adults who often have a variable and unpredictable lifestyle. However, “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.” *Grange*, 494 Mich at 494. Thus, when determining whether a claimant was domiciled at the home of an insured, a court may not find the presence or absence of a particular domicile in a vacuum. It must consider the competing potential domiciles and, based on well-established factors, must determine which is the claimant’s one and only domicile.

The cases that set forth the relevant factors are *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), and *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983). In *Workman*, 404 Mich at 495-496, the Supreme Court noted that the term “domiciled in the same household as an insured” has “no absolute meaning” and its “meaning may vary according to the circumstances.” (Quotation marks and citation omitted). The Court recognized that other courts addressing the issue “have articulated a number of factors relevant to this determination,” and stated that “no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others.” *Id.* at 496. The Court listed four factors relevant to the inquiry: “(1) the subjective or declared intent of the person seeking to establish domicile; (2) the formality of the relationship between that person and the members of the household; (3) whether that person lives in the same house, within the same curtilage, or upon the same premises; and (4) whether that person maintained another place of lodging.” *Id.* at 496-497 (citations omitted).

Four years after *Workman*, in *Dairyland*, 123 Mich App at 681, this Court considered “the particular problems posed by young people departing from the parents’ home and establishing new domiciles as part of the normal transition to adulthood and independence.” *Dairyland* held that the factors stated in *Workman* are not exclusive, and that

[o]ther relevant indicia of domicile include such factors as whether the claimant continues to use his parents’ home as his mailing address, whether he maintains some possessions with his parents, whether he uses his parents’ address on his driver’s license or other documents, whether a room is maintained for the claimant at the parents’ home, and whether the claimant is dependent upon the parents for support.” [*Id.*]

Applying the *Dairyland* factors, we conclude that they all support the conclusion that Gault was domiciled with his mother, not his father. First, Gault used his mother’s address for receipt of mail, including bills and mail from his father. There is no evidence that he used his father’s address to receive mail. In fact, there is no evidence as to the father’s whereabouts for three years prior to the accident nor any evidence as to his place of residence at the time of the accident.

Second, Gault's mother maintained a bedroom for him at her home, and there is no evidence that his father did so at his unknown place of residence. The same is true as to his clothing and possessions. Though staying in various locations with friends, co-workers and his grandmother while not with his mother,³ Gault kept some clothes and possessions at his mother's home while defendant has not offered any evidence that Gault had any clothing or possessions at his father's unknown place of residence. Gault did not have a driver license or state ID but the hospital records listed his mother's home as his address and a physician's consult note written during the hospitalization states, "Pt lives with his mom in Bellaire MI. . . . Pt address is correct." Gault then stayed at this mother's home following his hospitalization.

Turning to the *Workman* factors, we agree with plaintiff that the relationship between Gault and his mother was informal, which favors a finding of domicile, see *Salinger v Hertz Corp*, 211 Mich App 163, 166; 535 NW2d 204 (1995), and that although Gault spent most nights with various friends and co-workers, his one consistent bedroom was in his mother's home. Gault had several places of lodging, but not one was with his father. Regarding Gault's subjective intent, the record is mixed given his lifestyle, but there is no evidence that he took any action that could be construed as demonstrating an intention to establish domicile with his father. To the contrary, there is no evidence that at the time of the accident Gault viewed his father's home (wherever it was) as his primary home or his home at all. As demonstrated by the *Dairyland* and *Workman* factors, to the degree that Gault had a "true, fixed permanent home," *Grange*, 494 Mich at 493, it was with his mother.⁴

Defendant has not offered any evidence to support a finding of domicile with Gault's father. Rather, defendant relies solely on the fact that for some time while in high school—until dropping out in the 11th grade—he lived with his father. Then his father "left" and the record does not contain any evidence of his whereabouts.⁵ Defendant argues that Gault is domiciled with his father even though he stopped living with his father while still a minor and has never lived there as an adult. Defendant relies primarily on *Grange's* holding that, as a matter of law, a *child's* domicile is determined by the custody provisions in the parents' judgment of divorce. *Id.* at 511-512. However, that holding has no applicability here. At the time of the accident, Gault was an

³ In a phone conversation with defendant's agent, Gault's mother stated that "[Gault] is at the house sometimes [but] not all the time."

⁴ This is particularly so when Gault was a young adult who did not have a stable living situation. This case is similar to *Rossman v Titan Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued May 15, 2012 (Docket No. 302720), p 7, where "[a]lthough [the plaintiff] moved around quite often and did not view his father's home as a permanent abode, the fact is that his father's house remained the one constant in his life and . . . is where [the plaintiff] returned to" Unpublished opinions are not binding precedent but may be considered for their persuasive value. *Sau-Tuk Indus, Inc v Allegan Co*, 316 Mich App 122, 137; 892 NW2d 33 (2016).

⁵ There is no information in the record from which we can determine if Gault's father established a new domicile after he left. Given that, a finding that Gault was domiciled with him would be incongruous, at best.

adult, not a child. Moreover, there is no evidence that his parents were ever married. Certainly, the record does not contain a judgment of divorce or custody orders. Contrary to defendant's argument, *Grange* does not disturb the fact that once a minor becomes an adult, the *Workman* and *Dairyland* factors control. Upon obtaining the age of majority, a person's domicile is determined by those factors, not by a custody order or the intention of the child's parents. This is not to say that a child's domicile with a parent ends as soon as the child turns 18. However, it is the newly-minted adult's actions and intent that determine his domicile rather than an action of law pursuant to a custody order or his parents' wishes. "[D]omicile by operation of law, [is] established when a person under legal disability lacks the capacity to establish a domicile of choice." *Id.* at 501-502. Once a child is an adult, he is no longer "under legal disability."⁶

Defendant places substantial reliance on *Farm Bureau General Insurance Company of Michigan v Progressive Michigan Insurance Co*, unpublished per curiam opinion of the Court of Appeals, issued April 25, 2017 (Docket No. 331215). As an unpublished case we are not bound by it. MCR 7.215(C)(1). Nevertheless, we note that it is factually distinguishable from the instant case. In that case, the claimant, Vern Sehl, had lived with his grandparents until three months before the subject accident (the opinion does not reveal his age). He continued to receive mail there, but it was clear that he did not intend to return and he took his possessions with him. His grandparents converted his bedroom into a sewing room. Like Gault, Sehl had been "couch surfing" and none of the places he passed through could qualify as his domicile.⁷ *Id.* at 1-3. Because a person must have a domicile, the Court had little choice but to find that his domicile was with his grandparents. *Id.* at 4. It was either that or conclude, contrary to law, that Sehl had no domicile at all. That is not so in the instant case. We are not presented with a choice between finding Gault was domiciled at his father's home or finding that he had no domicile at all. Rather, the choice here is finding that Gault was domiciled with his father or alternatively with his mother. As between those two choices, it is clear on this record, that Gault was domiciled with his mother.⁸

IV. CONCLUSION

Given the stipulated facts, we conclude that the trial court made an error of law in finding that Gault was domiciled with his father, rather than his mother, at the time of the auto accident.

⁶ The phrase "domicile by choice" does not mean that a person must "choose" or somehow declare a domicile as one might "choose" a candidate in an election. An adult's domicile is established or "chosen" by their acts and intentions, whether or not there is a conscious choice or even contemplation about the effects of one's actions on a potential legal determination of domicile.

⁷ In a phone conversation with defendant's agent, when Gault was asked when he moved back with his mother prior to the accident, he said, "I was staying all kinds of places. Half the time I really didn't have a home" and that he was "hopping back and forth."

⁸ At oral argument, defense counsel suggested for the first time that Gault's domicile may have been domiciled with a co-worker where he often stayed to get a ride to work in the morning. However, this was not raised before the trial court nor in defendant's brief to this Court. Indeed, defendant's entire theory of the case was that Gault had not established a domicile anywhere since he stopped living with his father.

Accordingly, we reverse the grant of summary disposition to defendant and remand for entry of summary disposition in favor of plaintiff. We do not retain jurisdiction. Plaintiff, having prevailed in full, may tax costs pursuant to MCR 7.219(F).

/s/ Patrick M. Meter

/s/ Douglas B. Shapiro