STATE OF MICHIGAN

COURT OF APPEALS

QUATINA WILLIAMS,

Plaintiff-Appellant,

v

THERESA BLINCOE,

Defendant,

and

LM GENERAL INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 19, 2020

No. 349953
Wayne Circuit Court
LC No. 17-016271-NI

Before: BOONSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant, LM General Insurance Company, in this no-fault action on the ground that plaintiff was not entitled to personal injury protection (PIP) benefits under her stepfather's insurance policy. We affirm.

On November 18, 2016, plaintiff was injured in a motor vehicle accident while she was driving a rental vehicle. Her stepfather, Ronald Canty, had rented the vehicle for plaintiff to drive, but she did not have a driver's license or automobile insurance in her name. After the accident, plaintiff sought PIP benefits under Canty's no-fault insurance policy issued by defendant. The mailing address for Canty on that insurance policy was 25254 Hoover, Apt 201, in Warren, Michigan. That policy provided insurance coverage to Canty, as well as any "family member," which was defined as "a person related to you by blood, marriage or adoption who is a resident of your household." Plaintiff submitted a sworn affidavit to defendant that was dated December 21, 2016, which stated that on the date of the accident she "resided at 25254 Hoover Rd in Warren, Michigan." The affidavit further provided that on the date of the accident, the following persons also resided with plaintiff at that address: Shanna Martin (step-sister), Ronald Canty (stepfather), Elijah Williams (son), De`Ijuan Williams (son), and Landonis Williams (son). Thereafter, plaintiff

obtained PIP benefits from defendant under Canty's insurance policy in an amount exceeding $250,000, until defendant denied the payment of further benefits. This lawsuit was then filed on November 13, 2017.

During this litigation, plaintiff's deposition was taken on March 26, 2018. Plaintiff testified that before the accident she had been evicted from a home she had been renting in Inkster. Plaintiff stayed with her friend Delishia on Lauder Street in Detroit for about three or four weeks. After leaving there, she had been staying at her stepfather's house for about two weeks when she was in this car accident. Plaintiff did not know the address of her stepfather's residence, but it was a house and not an apartment. Her stepfather lived there, as did plaintiff's step-sister Shanna. Plaintiff's children were with plaintiff's aunt and did not stay with plaintiff at her stepfather's house. After the accident, plaintiff testified, she did not return to her stepfather's home. Plaintiff admitted that she did not intend to remain at Canty's home; her stay was temporary until she could get her own place and she did not change her address to Canty's address for any purposes.

On June 28, 2018, plaintiff's stepfather's deposition was taken. Canty testified that on the date of plaintiff's accident he lived on Tacoma Street in Detroit with his daughter, Shayna, and Shayna's children. Canty testified that plaintiff did not live with him on Tacoma Street; he thought she may have lived on St. Mary's Street in Detroit at the time of her accident.[1] Plaintiff did not even spend one night at his home. Canty further testified that before this accident, he did not have any conversation with plaintiff about her moving in with him. In fact, there was no room for her at his home. Canty moved out of the Hoover Square Apartments that are located in Warren about four-and-one-half years ago. He then lived with his niece on East Outer Drive in Detroit for about two years before moving to the Tacoma address about two-and-one-half years ago.

After the depositions were completed, defendant filed a motion for summary disposition arguing, in part, that plaintiff was not entitled to PIP benefits under Canty's insurance policy because she was not domiciled with him at the time of the automobile accident. The trial court agreed and granted defendant's motion. Citing MCL 500.3114, the trial court held that even assuming plaintiff did live with Canty for two weeks before this accident—which he denied—it was clear from plaintiff's "deposition testimony that her intent was not to make his residence her domicile." Further, the court noted, it was also clear from plaintiff's actions that her intent was not to make Canty's residence her domicile because her children did not live with her at his home, she did not even know the address to that home, and she never changed her mailing address to Canty's address. Therefore, on September 25, 2018, the trial court entered an order granting defendant summary disposition under MCR 2.116(C)(10), holding that plaintiff "was not domiciled with Ronald Canty (LM General's insured) at the time of the accident as a matter of law." Accordingly, plaintiff's claim against defendant was dismissed. Plaintiff's motion for reconsideration was denied, and this appeal followed.

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[1] Plaintiff's reliance on "log notes" allegedly entered by defendant's adjuster—which state that the "insured" was contacted and confirmed plaintiff's residency at the time of the accident—is overstated. These "log notes" do not equate with the *sworn* deposition testimony of Canty that he did not speak to a representative of defendant about plaintiff's claim, and there is no indication that the "insured" purportedly spoken with was actually Canty.

Plaintiff argues that the trial court erred because there is a genuine issue of material fact as to whether she was domiciled with Canty at the time of the accident. We disagree.

A trial court's decision on a motion for summary disposition is reviewed de novo. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). "A motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim." *Id*. at 160 (emphasis omitted). "When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id*. Summary disposition under MCR 2.116(C)(10) is only appropriate if "there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160 (quotation marks and citation omitted). Further, while a determination as to domicile is generally a question of fact, where the material facts are undisputed the determination is a question of law for the circuit court. *Grange Ins Co v Lawrence*, 494 Mich 475, 491; 835 NW2d 363 (2013).

Under Michigan's no-fault act, MCL 500.3101 *et seq*., "insurance companies are required 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." *Lawrence*, 494 Mich at 490. A no-fault policy "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), as amended by 2002 PA 38.[2] See also *Lawrence*, 494 Mich at 490-492. While "domiciled" is not defined by the no-fault act, domicile "has a precise, technical meaning in Michigan's common law, and thus must be understood according to that particular meaning." *Id*. at 493. Michigan courts have developed numerous formulations of the term "domicile":

> For 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." 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." [*Id*. at 493-494 (some quotation marks omitted; citations omitted; emphasis omitted; alteration in original).]

A person's intent is an important consideration when determining where his or her domicile is as a matter of law. *Id*. at 495.

[2] While the Legislature amended MCL 500.3114(1) twice after the date of the accident in this case, it did not change the language relevant to the issue raised here. Compare 2002 PA 32 with 2016 PA 347 (effective March 21, 2017) and 2019 PA 21 (effective June 11, 2019).

The multi-factor tests articulated in *Workman v Detroit Auto Inter-Ins Exchange*, 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), should be considered in determining whether the insured and the claimant are domiciled in the same household. See *Lawrence*, 494 Mich at 497. These factors should be carefully weighed and balanced, but no one factor is determinative. *Id*. The factors set forth in *Workman* are:

> (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[.] [*Id*., quoting *Workman*, 404 Mich at 496-497 (citations omitted).]

The factors set forth in *Dairyland* are:

> (1) the person's mailing address; (2) whether the person maintains possessions at the insured's home; (3) whether the insured's address appears on the person's driver's license and other documents; (4) whether a bedroom is maintained for the person at the insured's home; and (5) whether the person is dependent upon the insured for financial support or assistance. [*Id*. at 497 n 41, quoting *Dairyland*, 123 Mich App at 682.]

In this case, shortly after the accident plaintiff submitted a sworn affidavit to defendant stating that she lived with Canty at 25254 Hoover Road in Warren, along with her children and step-sister. However, Canty testified in his deposition that he had not lived at that location for a couple of years before plaintiff's accident. Plaintiff also testified that it was a house and it actually was an apartment—apartment number 201. Further, plaintiff testified in her deposition that when she stayed with Canty at this Warren address, only her step-sister lived there and plaintiff's children were living with plaintiff's aunt—contrary to her sworn affidavit. Clearly, plaintiff's sworn affidavit contained information that was inconsistent with plaintiff's deposition testimony. Moreover, Canty testified in his deposition that at the time of plaintiff's accident he lived on Tacoma Street in Detroit with his daughter and her children, but not plaintiff. In fact, Canty testified, plaintiff had not even spent a single night at his home, he had never discussed plaintiff moving in with him, and there was actually no room for plaintiff in his home. Plaintiff did not submit any documentary evidence that she lived in the Hoover Road apartment with Canty at the time of this accident. Further, she submitted no documentary evidence that she lived with Canty at the Tacoma Street address at the time of this accident.

In any case, even if we assume that plaintiff stayed with Canty for two weeks before this accident—as the trial court assumed—it is clear that plaintiff was not "domiciled" in the same household as Canty at the time of her accident. With regard to the applicable *Workman* and *Dairyland* factors, (1) plaintiff testified in her deposition that she did not intend to remain at Canty's home and was only there temporarily until she could get her own place; (2) she had also stayed at her friend Delishia's home for weeks; (3) plaintiff's children did not stay with her at

Canty's home but instead stayed with plaintiff's aunt; (4) plaintiff did not know the address of Canty's home and did not change her address to his mailing address; (5) no documentation was presented which showed that plaintiff had ever used Canty's address on important documents; and (6) when plaintiff was discharged from the hospital she did not return to Canty's home. Thus, as the trial court concluded, it was clear from both plaintiff's deposition testimony as well as her actions that Canty's home was not plaintiff's "true, fixed, permanent home, and principal establishment, and to which whenever [s]he is absent, [s]he has the intention of returning." *Lawrence*, 494 Mich at 493. Rather, if she stayed with Canty, she did so for a temporary purpose and with no intention of making it her home, either permanently or for an indefinite period of time. See *id*. at 494. Viewing the evidence in the light most favorable to plaintiff, reasonable minds could not differ regarding whether plaintiff was domiciled with Canty at the time of the accident. See *El-Khalil*, 504 Mich 160. The trial court properly concluded that no genuine issue of material fact existed that plaintiff was not domiciled with Canty at the time of her accident, and accordingly, defendant was entitled to summary disposition of plaintiff's claim.

Affirmed.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello