STATE OF MICHIGAN

COURT OF APPEALS

BRONSON HEALTH CARE GROUP, INC., doing business as BRONSON METHODIST HOSPITAL,

Plaintiff,

and

BORGESS MEDICAL CENTER,

Intervening Plaintiff,

v

FARM BUREAU GENERAL INSURANCE COMPANY OF MICHIGAN,

Defendant/Third-Party Plaintiff-Appellant,

and

FREMONT INSURANCE COMPANY,

Third-Party Defendant-Appellee.

UNPUBLISHED
January 19, 2017

No. 330436
Kalamazoo Circuit Court
LC No. 2014-000120-CZ

Before: MURPHY, P.J., and METER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant and third-party plaintiff, Farm Bureau General Insurance Company of Michigan (Farm Bureau), appeals as of right the trial court's order granting summary disposition in favor of third-party defendant, Fremont Insurance Company (Fremont), in this dispute between insurers under the no-fault act, MCL 500.3101 *et seq.* This case arises out of an incident in which a pedestrian, Kayla Simpson, was struck and injured by a motor vehicle. It was a hit-and-run accident that occurred on November 26, 2013, and the motorist and the vehicle were never identified. Simpson, who was living a transient and nomadic lifestyle involving constant changes with respect to where she stayed and slept, including stints in jail, did not have an insurance policy of her own. She received medical treatment and services for her injuries from plaintiffs Bronson Health Care Group, Inc., and Borgess Medical Center, which entities

stipulated to the dismissal of their subrogated claims for personal protection insurance benefits, commonly referred to as PIP benefits, after settling their claims with Farm Bureau. The Michigan Assigned Claims Facility (MACF), see MCL 500.3171 *et seq.*, had assigned any claims for PIP benefits to Farm Bureau, given the unidentified motorist and the apparent absence of any available no-fault policy. Subsequently, Farm Bureau filed a third-party complaint against Fremont, which insured Simpson's grandparents, upon discovery of evidence that led Farm Bureau to believe that Simpson's domicile had been her grandparents' home at the time of the accident. The issue in this case is whether Simpson, who is of course a "relative" of her grandparents, was "domiciled" in her grandparents' household for purposes of MCL 500.3114(1),[1] such that Fremont was the priority insurer under MCL 500.3114(1) and MCL 500.3115(1).[2] The trial court granted summary disposition in favor of Fremont, finding that Simpson was "homeless" and domiciled in the city in which she was homeless, not her grandparents' home. We affirm, albeit for different reasons.

We review de novo a trial court's ruling on a motion for summary disposition. *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 489; 835 NW2d 363 (2013). "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." *Id.* at 490. This Court reviews de novo issues of statutory interpretation. *Id.*[3]

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[1] MCL 500.3114(1) states in relevant part:

> Except as provided in subsections (2), (3), and (5) [all inapplicable], 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. [Emphasis added.]

[2] MCL 500.3115(1) provides in pertinent part:

> *Except as provided in subsection (1) of section 3114*, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority . . . . [Emphasis added.]

[3] With respect to a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court in *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013), set forth the governing principles:

> In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect

In *Grange Ins*, *id.* at 492-494, the Michigan Supreme Court construed MCL 500.3114(1) and the phrase "domiciled in the same household," ruling:

> Notably, the no-fault act does not define the term "domiciled." . . . When construing this statutory language, our main objective is to discern the Legislature's intent through the language plainly expressed. Normally, this Court will accord an undefined statutory term its ordinary and commonly used meaning. However, where the Legislature uses a technical word that has acquired a particular meaning in the law, and absent any contrary legislative indication, we construe it according to such peculiar and appropriate meaning. The term "domicile" is just such a word that has a precise, technical meaning in Michigan's common law, and thus must be understood according to that particular meaning.
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> 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 it 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
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> "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."
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> 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. [Citations, quotation marks, and alteration brackets omitted.]

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to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). [Citations and quotation marks omitted.]

The *Grange Ins* Court noted that it had previously articulated a flexible multi-factor test to be employed by courts in determining domicile under MCL 500.3114(1), including:

> "(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." [*Grange Ins*, 494 Mich at 497 (citation omitted).[4]]

The trial court found that Simpson had established a domicile at her grandparents' home in 2012 when she lived there from April to August of that year; however, the court ruled that Simpson had "renounced her domicile at her grandparent[s'] house and established a new domicile in the city where she was homeless." The trial court relied on *People v Dowdy*, 489 Mich 373; 802 NW2d 239 (2011), with respect to its "homeless" analysis and finding. We hold that, on the basis of the existing record, there was a lack of evidence sufficient to survive summary disposition showing that Simpson was ever domiciled in her grandparents' household, let alone at the time of the accident. Accordingly, it is unnecessary for us to resolve whether Simpson renounced, by way of her actions, the purported 2012 domicile at the grandparents' home and whether Simpson established a subsequent or new domicile elsewhere, including under the designation as "homeless" in Kalamazoo. Therefore, we need not determine whether *Dowdy* and its discussion of domicile and homelessness under the Sex Offenders Registration Act, MCL 28.721 *et seq*., have any application in the context of the no-fault act and MCL 500.3114(1).

The record reflects that Simpson lived with her grandparents from April 20, 2012, to August 14, 2012, but she did so because she was on a court-ordered tether. This is nearly akin to one staying at the county jail for four months with respect to freedom of movement. There was no evidence presented indicating that Simpson had lived with her grandparents before April 20, 2012, and her grandmother kicked her out of the house on August 14, 2012, because of her conduct. As to the four-month period, there is nothing in the record suggesting that the

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[4] The Court, citing *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983), also recognized five additional factors for determining no-fault domicile with respect to adult children who have complicated living arrangements, observing:

> Other relevant indicia of domicile include such factors as [1] whether the claimant continues to use his parents' home as his mailing address, [2] whether he maintains some possessions with his parents, [3] whether he uses his parents' address on his driver's license or other documents, [4] whether a room is maintained for the claimant at the parents' home, and [5] whether the claimant is dependent upon the parents for support. [*Grange Ins*, 494 Mich at 497 (citations omitted).

grandparents' house was Simpson's "true, fixed, permanent home, and principal establishment, and to which, whenever [she] [was] absent, [she] ha[d] the intention of returning." *Grange Ins*, 494 Mich at 493 (citation and quotation marks omitted). It simply cannot be said that the grandparents' home, in the April to August 2012 timeframe, was a place where Simpson "ha[d] voluntarily fixed h[er] abode not for a mere special or temporary purpose, but with a present intention of making it h[er] home, either permanently or for an indefinite or unlimited length of time." *Id.* (citations and quotation marks omitted). There was nothing voluntary about Simpson's 2012 stay with her grandparents; it was for a mere special or temporary purpose associated with the tether, and even then Simpson could not conform her conduct to that demanded by her grandparents, losing the tether and winding up in jail.

Furthermore, as to the period after Simpson left her grandparents' house in August 2012, the couple of overnight stays on a couch and the use of her grandparents' address relative to a Michigan identification card and court proceedings clearly did not establish Simpson's domicile in her grandparents' household. For the year 2013 – the year of the accident, there truly was no connection between Simpson and her grandparents' home other than the minimal use of the address. Simpson did not stay there, did not have possessions there, did not have a bedroom or designated space there, did not eat or do laundry there, was actually not welcome there because of her lifestyle, and she did not use the address for mailings associated with welfare benefits and DHHS documents. There is also nothing in the record revealing that her grandparents provided Simpson with financial support.

In sum, Farm Bureau failed to submit evidence sufficient to create an issue of fact concerning whether Simpson was ever domiciled in her grandparents' home, let alone at the time of the accident on November 26, 2013. Therefore, albeit for different reasons, the trial court did not err in denying Farm Bureau's motion for summary disposition and in granting summary disposition in favor of Fremont.

Affirmed. Having fully prevailed on appeal, taxable costs are awarded to Fremont under MCR 7.219.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Amy Ronayne Krause