STATE OF MICHIGAN

COURT OF APPEALS

HARBANS KAUR,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY OF THE MIDWEST,

Defendant/Third-Party Plaintiff-Appellant,

and

MEEMIC INSURANCE COMPANY,

Third-Party Defendant-Appellee.

UNPUBLISHED
April 21, 2022

No. 355683
Wayne Circuit Court
LC No. 17-014352-NI

Before: BORRELLO, P.J., and MARKEY and SERVITTO, JJ.

PER CURIAM.

Defendant, Citizens Insurance Company of the Midwest (Citizens), appeals by leave granted[1] three separate orders of the trial court that (1) granted plaintiff's motion for partial summary disposition, which contended that there was no question of material fact that plaintiff's injuries arose out of the use of a motor vehicle; (2) granted third-party defendant Meemic Insurance Company's (Meemic) motion for partial summary disposition, which argued that plaintiff's domicile was in Canada; and (3) required plaintiff to submit supplemental discovery responses but denied Citizens' request for plaintiff to sit for another deposition or independent medical examination (IME). We reverse all three challenged orders and remand for proceedings consistent with this opinion.

[1] *Kaur v Citizens Ins Co of the Midwest*, unpublished order of the Court of Appeals, entered February 22, 2021 (Docket No. 355683).

I. BASIC FACTS

This case was previously before this Court in *Kaur v Citizens Ins Co of the Midwest*, unpublished per curiam opinion of the Court of Appeals, issued June 18, 2020 (Docket Nos. 346926 and 349344). The case arises from an incident that took place on October 6, 2016. Plaintiff alleges that she was struck by a vehicle driven by Kishore Yerukola while she was walking across a neighborhood street in Canton, Michigan. *Id*. at 1. After this incident, plaintiff initiated three separate lawsuits, essentially suing each potential defendant separately. *Id*. at 1-2.

The first case filed by plaintiff was against the driver, Yerukola, and Meemic, who insured one of plaintiff's sons, Jagdeep Singh (Jagdeep). *Id*. at 2. This case was resolved by a stipulated order of dismissal, *id*., and is of no significance to the issues on appeal.

Plaintiff's second case was a first-party suit filed against Meemic, seeking personal protection insurance (PIP) benefits. This suit was premised on the belief that plaintiff's domicile was with Jagdeep in Canton at the time of the accident, which would have entitled her to benefits under Jagdeep's policy as a resident relative under MCL 500.3114(1). Meemic moved for summary disposition, arguing that plaintiff actually resided with her other son, Gurpreet Singh (Gurpreet), in Ontario, Canada. *Id*.

While Meemic's motion for summary disposition was pending, plaintiff filed her third lawsuit, this time against Citizens, who insured Yerukola. *Id*. Citizens moved to consolidate the third and second lawsuits, but the trial court denied the motion. *Id*. The court, however, granted a separate motion by Citizens seeking leave to file a third-party complaint against Meemic in the third lawsuit. *Id*. Meanwhile, the trial court granted Meemic's motion for summary disposition in the second lawsuit under MCR 2.116(C)(10), determining that plaintiff was not domiciled in Michigan at the time of the incident. *Id*.

In the third lawsuit, Meemic moved for summary disposition on the issue of domicile on the basis of res judicata (from the court's decision in the second lawsuit), and the trial court granted the motion. *Id*. Citizens sought leave to appeal in this Court, which granted leave to appeal and reversed the grant of summary disposition because, with Citizens not being a party to the second lawsuit, res judicata was not applicable.[2] *Id*. at 2, 5-6. Although Citizens had asked this Court to resolve the domicile dispute, this Court declined, stating that it would be "appropriate for the trial court to rule on the domicile issue in the first instance on remand, with both Citizens and Meemic having an opportunity to litigate the question before the trial court in the same case." *Id*. at 7.

On remand from this Court, the trial court vacated the award of summary disposition in favor of Meemic in the second case and consolidated that case with the third case. At issue in this appeal are the trial court's decisions on three motions that were filed on remand.

Meemic moved for summary disposition on the issue of domicile. Meemic argued that there was no genuine issue of material fact that plaintiff's domicile was in Canada, with her son

[2] This Court also held that the trial court's grant of summary disposition in favor of Meemic on the basis of the court's earlier ruling deprived Citizens of due process. *Kaur*, unpub op at 6.

Gurpreet. Citizens argued in response that it was entitled to summary disposition under MCR 2.116(I)(2) because the evidence showed that plaintiff considered Jagdeep's home in Canton to be her domicile.

Plaintiff moved for summary disposition arguing that there was no genuine issue of material fact that the accident arose out of a motor-vehicle accident.[3] Plaintiff argued that even if there was no contact between the vehicle and herself, her injuries still arose out of the use of a motor vehicle as a motor vehicle and therefore were covered under the no-fault act.

Citizens moved to compel supplementation of discovery. Citizens noted that plaintiff last provided discovery in 2018, but because of delays due to appeals to this Court, the information regarding her medical condition and treatment was now "stale." Citizens requested that plaintiff provide updated information regarding her medical treatment and that she sit for another deposition pursuant to MCR 3.206 and attend another IME.

The trial court decided all the motions on November 16, 2020. Regarding the question of domicile, the trial court granted Meemic's motion for summary disposition, ruling that plaintiff's domicile was in Canada at the time of the accident. The court also granted plaintiff's motion for summary disposition, ruling that there was "no genuine issue of material fact as to whether the accident arose out of the use or operation of a motor vehicle" and that regardless of whether the vehicle struck plaintiff, a motor vehicle was actively involved. Finally, the trial court granted in part and denied in part Citizens' motion related to the compelling of discovery. The court ordered plaintiff to provide supplemental discovery responses related to her updated medical records, treatment, and outstanding bills, but was not required to submit to another deposition or IME.

This appeal followed.

II. MOTIONS FOR SUMMARY DISPOSITION

A trial court's decision on a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW23d 201 (1998). A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). When deciding whether summary disposition is proper under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties in a light most favorable to the party opposing the motion. MCR 2.116(G)(5); *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). A motion under this subrule is properly granted if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Michalski v Bar-Levav*, 463 Mich 723, 730; 625 NW2d 754 (2001).

[3] This motion was filed in response to some arguments that both Citizens and Meemic had raised previously that plaintiff was not entitled to any PIP benefits because there was evidence to show that Yerukola's vehicle never touched or struck plaintiff, and that she injured herself when she fell while hurrying to exit the street.

A. PLAINTIFF'S MOTION—MOTOR VEHICLE INVOLVEMENT

Citizens argues that the trial court erred when it granted plaintiff's motion for partial summary disposition on the issue whether plaintiff's injuries arose from the use of a motor vehicle. We agree.

Liability for no-fault personal protection benefits is governed by MCL 500.3105. Pursuant to MCL 500.3105(1), PIP benefits are available "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle."

We first note that there is conflicting evidence regarding whether Yerukola's vehicle made contact with plaintiff. At her August 7, 2017 deposition, plaintiff stated that she did not specifically recall what happened to her at the time of the incident. She stated that she never saw a vehicle leading up to when she fell to the ground, but that she knew that something had hit her because she felt a push or sudden "jolt" before falling to the ground. Plaintiff testified that she temporarily lost consciousness and, when she came to, she was lying "in front of the car." Plaintiff said that she first learned that she had been hit by a car from what her husband told her. Mohinder Singh, plaintiff's husband, testified that he was about 50 feet away from the incident, was talking to a neighbor at the time, and did not see the vehicle make contact with plaintiff. Instead, what brought his attention to the incident was that he had heard a loud "bang" sound and, upon looking immediately, he could not see much of plaintiff because she was lying on the ground in front of the car by that time. Although this is all indirect evidence, when viewed in a light most favorable to Citizens, it is evidence that Yerukola's car had hit plaintiff.[4]

In contrast, Yerukola testified that while driving down Brookside Drive in Canton, he saw plaintiff walk into the road with her head down. Yerukola said that he was traveling around 15 miles per hour; came to a controlled, normal stop; and did not make contact with plaintiff. Yerukola explained that when plaintiff suddenly realized that a car was approaching, she hurried to turn and go back the way she came and fell (and injured herself) in the process.[5]

In sum, there is conflicting evidence whether Yerukola's vehicle touched plaintiff. But this is not dispositive because actual physical contact is not a prerequisite for a motor vehicle to be considered involved in an accident. See *Detroit Med Ctr v Progressive Mich Ins Co*, 302 Mich App 392, 395-396; 838 NW2d 910 (2013) ("Actual physical contact . . . is not required to establish the requisite involvement of a motor vehicle in an accident . . . ."). This Court has explained what type of nexus must exist for there to be liability under MCL 500.3105:

---

[4] Plaintiff also relied on other documentary evidence, namely a police report, but the author of that report had no personal knowledge of what happened and instead primarily relied on the representations of Singh.

[5] Plaintiff's potential "fault" in not noticing the oncoming vehicle is not relevant because, as long as the injury "[arose] out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle," MCL 500.3105(1), PIP benefits are due "without regard to fault," MCL 500.3105(2).

> There is no "iron-clad rule" as to what level of involvement is sufficient under MCL 500.3105. However, while the automobile need not be the proximate cause of the injury, there still must be a causal connection between the injury sustained and the ownership, maintenance or use of the automobile and which causal connection is more than incidental, fortuitous or but for. The injury must be foreseeably identifiable with the normal use, maintenance and ownership of the vehicle. The causal connection between the injuries and the motor vehicle cannot be extended to something distinctly remote[.] Moreover, the injuries must be more than tangentially related to the use of an automobile to trigger the entitlement to no-fault benefits. Actual physical contact between a motorcycle and a motor vehicle is not required to establish the requisite involvement of a motor vehicle in an accident as long as the causal nexus between the accident and the car is established. For a motor vehicle to be involved in an accident, it must actively, as opposed to passively, contribute to the accident, and have more than a random association with the accident scene. There must be some activity, with respect to the vehicle, which somehow contributes to the happening of the accident. [*Id*. at 395-396 (quotation marks, citations, and brackets omitted).]

Put another way, "an injury arises out of the use of a motor vehicle when the causal connection between the injury and the use of a motor vehicle as a motor vehicle is more than incidental, fortuitous, or 'but for.' " *McPherson v McPherson*, 493 Mich 294, 297; 831 NW2d 219 (2013) (citation and some quotation marks omitted).

Citizens relies on *Detroit Med Ctr* for the proposition that there was an insufficient nexus between Yerukola's vehicle and plaintiff's injuries for PIP benefits to be applicable. In *Detroit Med Ctr*, a motorcyclist was traveling nearly 100 miles an hour on a dark and deserted side street in Detroit. *Detroit Med Ctr*, 302 Mich App at 394. The motorcyclist saw bright headlights from an oncoming motor vehicle and applied his brakes, which caused him to lose control and crash, all without coming into contact with the motor vehicle. *Id*. This Court held that there was no causal connection between the motorcyclist's injuries and the use of a motor vehicle as a motor vehicle. *Id*. at 397. Although the motorcyclist took evasive action in response to seeing the moving vehicle's headlights, that did not mean that the motor vehicle was causally connected to the motorcyclist's injuries. *Id*. This Court explained that the injuries did not "originate[] from" or "gr[o]w out of" the use of the vehicle as a motor vehicle. *Id*. Instead, any causal connection between the "injuries and the motor vehicle was merely incidental, fortuitous, or 'but for.' " *Id*. This Court found it important that there was no evidence to show that the motorcyclist needed to take evasive action to avoid the motor vehicle, concluding that a person's "subjective, erroneous perceived need to react to [a] motor vehicle" is insufficient to create the necessary nexus between the injuries and the use of the vehicle. *Id*. at 398. "That is, there must be some activity by the motor vehicle that contributes to the happening of the accident beyond its mere presence." *Id*. at 398-399. Specifically, there must be an "actual, objective need" to take evasive action. *Id*. at 399.

In this case, assuming without deciding that there was no contact between the motor vehicle and plaintiff, there still remains a question of fact whether plaintiff had an "actual, objective need" to take evasive action. Accepting Yerukola's version of the events as true, that he was traveling slowly and made a normal, unhurried stop short of plaintiff without making contact, it is

questionable whether an objective person in plaintiff's position would have concluded that there was a need to take evasive measures.

It is true that Yerukola's vehicle, after braking, appears to have come to a stop close to plaintiff. From Singh's vantage point, which was approximately 50 feet from the rear of the vehicle but off to an angle, he could not see plaintiff lying in the road in front of the stopped vehicle and was only was able to see her after running up close to the location, indicting she was very close to the vehicle. And plaintiff testified that when she regained consciousness, she saw that she was "lying in front of the car." Thus, the situation could be one in which the vehicle posed an immediate danger to plaintiff and she fell when trying to avoid being hit by the car.

However, Yerukola also testified that he clearly saw plaintiff in the road and that he saw her fall as he was applying his brakes and ultimately came to a complete, controlled stop before reaching her. Yerukola stated, "I was able to stop the vehicle. Luckily, I would say really lucky that, uh the vehicle got stopped" which could indicate his relief that, having seen plaintiff fall to the ground, he stopped in sufficient time to avoid running her over. And Singh clearly testified that he did not see the incident occur. Rather, he assumed she had been hit by the vehicle after hearing a sound and thereafter seeing plaintiff on the ground. Taking the evidence in a light most favorable to Citizens, which the court was required to do, it is plausible that plaintiff misjudged whether any evasive action on her part was necessary, and in an effort to get out of the road, simply fell. This is an admittedly close question, but a question nonetheless. Thus, in our view, the evidence leaves questions of material fact concerning whether the motor vehicle posed a danger to plaintiff. Consequently, the trial court erred in weighing the evidence and by granting plaintiff's motion for summary disposition on this issue.

B. MEEMIC'S MOTION—DOMICILE

Citizens next argues that the trial court erred when it granted Meemic's motion for partial summary disposition on the issue of plaintiff's domicile at the time of the October 2016 incident. We agree.

The parties agree that if plaintiff's injuries arose out of the use or operation of a motor vehicle, plaintiff's domicile ultimately controls which insurer is responsible for plaintiff's PIP benefits. If plaintiff's domicile is in Canton, Michigan, with Jagdeep, then Meemic, as Jagdeep's no-fault insurer, is responsible for the PIP benefits.[6] Conversely, if plaintiff's domicile is not with

[6] At the time of the accident, MCL 500.3114(1) provided, in pertinent part:

> Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in [MCL 500.3101] 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.]

Jagdeep, then Citizens, who is the insurer of Yerukola, is responsible for the PIP benefits.[7] See also *Kaur*, unpub op at 4.

At the outset, the terms "domicile" and "residence" are not synonymous. A person may have more than one residence, but can only have one domicile. *Grange Ins Co of Mich v Lawrence*, 494 Mich 475, 494; 835 NW2d 363 (2013). That is because "domicile" has a particular meaning as "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." *Id*. at 493 (quotation marks and citations omitted). Thus,

> "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." [*Id*. at 494, quoting *In re High*, 2 Doug 515, 523 (Mich, 1847).]

Consequently, "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." *Grange*, 494 Mich at 495 (quotation marks and citation omitted); see also 2 Doug at 323. Thus, the inquiry into a person's domicile generally is a question of intent, while taking into consideration all the surrounding facts and circumstances. *Grange*, 494 Mich at 495.

The determination of domicile generally is a question of fact. *Id*. at 490. But if the underlying material facts are not in dispute, then the determination of domicile is a question of law for the court to resolve. *Id*. Because the trial court ruled that plaintiff's domicile was in Canada, it necessarily found that the underlying material facts were not in dispute.

In this Court's previous opinion in this case, it described the relevant factors to consider when determining one's domicile:

> When determining whether a person is domiciled in the same household as the insured, the relevant factors include (1) the claimant's subjective or declared intent to remain indefinitely in the insured's household, (2) the formality of the relationship between the claimant and the insured, (3) whether the place the

---

[7] At the time of the accident, MCL 500.3115 provided, in pertinent part:

> (1) Except as provided in [MCL 500.3114(1)], 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:
>
> (a) Insurers of owners or registrants of motor vehicles involved in the accident.
>
> (b) Insurers of operators of motor vehicles involved in the accident.

> claimant lives is within the same house, curtilage, or premises as the insured, and (4) whether the claimant has another place of lodging. *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979). This Court also has identified other factors relevant to the determination of domicile, being (1) the claimant's mailing address, (2) whether the claimant maintains possessions at the insured's home, (3) whether the claimant's driver's license and other documents indicate the home of the insured as the claimant's address, (4) whether a bedroom is maintained for the claimant in the insured's home, and (5) whether the claimant is dependent upon the insured for financial support or assistance. *Cervantes v Farm Bureau Ins Co*, 272 Mich App 410, 415; 726 NW2d 73 (2006). [*Kaur*, unpub op at 5.]

Meemic contends that the trial court properly resolved the issue of domicile because the underlying facts are not in dispute. We cannot agree. Although the facts regarding where plaintiff and her husband *physically resided* from the time they moved from India to North America are not materially in dispute, the evidence shows that plaintiff's *intent* is in dispute.

Plaintiff and her husband initially moved to Canada around 1989 and became Canadian citizens in 1995. They later purchased a house, but sold it in 2000 and moved into Gurpreet's home in Niagara Falls, Canada. Thus, up until 2009, with no significant contact with or presence in the United States, there is no question that plaintiff's domicile was in Niagara Falls, Canada.

Plaintiff testified that as of June 2009, she and her husband started residing at Jagdeep's home in Canton, Michigan, and they would travel back and forth to Niagara Falls as they pleased. She explained that "when we came back [from their most recent trip to Canada in May 2016], *I came with an idea to stay in Canton*." (Emphasis added.) Similarly, plaintiff's husband, Singh, testified that before 2009, they simply had "visit[ed]" Michigan, but in 2009, they "permanently" moved to the Canton residence. At a different deposition, Singh also stated that he considered the Canton house to be his "home" as of 2009. Indeed, on June 12, 2009, both plaintiff and her husband received their immigration "green cards," which showed them as being "permanent" residents of the Unites States.

Since 2009, plaintiff and her husband have gone back to Canada for a few months at a time. Their intention was to spend about six months in Canada and six months in the United States. Notably, they receive mail at both addresses, have bedrooms at both addresses, visit Temple at both addresses, and have banks accounts in each country. Further, plaintiff had a primary care physician in Canton, and she and her husband did not have any plans to travel outside of Michigan that they had to cancel when plaintiff could no longer travel as a result of the injuries she sustained from the accident.

One of the factors to consider when evaluating domicile is where a person keeps his or her possessions. *Cervantes*, 272 Mich App at 415. There is conflicting evidence on this factor. There was evidence that plaintiff and her husband kept some of their possessions in Canton and some in Niagara Falls, but Singh also testified that at the time of the October 6, 2016 accident "all of our belongings" were at the Canton address. Accordingly, when viewing the evidence in a light most favorable to Citizens, as the nonmoving party, there is a factual dispute regarding where plaintiff's and Singh's possessions were located.

And more importantly, there also is a question of fact regarding plaintiff's intent. As previously discussed, plaintiff testified that after returning to Michigan in May 2016, she had the intent to "stay" in Canton and considered the Canton address to be her "home." In another deposition, plaintiff testified that she considered both the Canton home and the Niagara Falls home to be her "main home." Likewise, her husband testified that he had lived at the Canton address for 10 years, and although he sometimes traveled to Canada, Canton is the place he resides. Singh stressed that before 2009, he and his wife would occasionally "visit" Jagdeep in Michigan, but in 2009, they "permanently" moved to Jagdeep's Canton home. Yet later, Singh stated that he considered both Niagara Falls and Canton to be their permanent residences. Viewing the evidence in a light most favorable to Citizens, there is too much inconsistency and contradiction in the record evidence to conclude that there are no questions of fact on the key matter of plaintiff's intent. Consequently, the trial court erred by granting Meemic's motion for summary disposition on the issue of domicile. Accordingly, we reverse that order. We decline, however, Citizens' invitation to grant summary disposition in its favor on this issue. The questions of fact make summary disposition inappropriate for any party.

III. MOTION FOR SUPPLEMENTAL DISCOVERY

Citizens also argues that the trial court abused its discretion when it granted in part and denied in part its motion regarding discovery. We agree.

"This Court reviews a trial court's decision to grant or deny discovery for an abuse of discretion." *Shinkle v Shinkle*, 255 Mich App 221, 224; 663 NW2d 481 (2003). A court abuses its discretion when it selects an outcome falling outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

"The trial court should consider whether the granting of discovery will facilitate or hamper the litigation. Factors such as the timeliness of the request, the duration of the litigation[,] and the possible prejudice to the parties should also be considered." *Nuriel v Young Woman's Christian Ass'n of Metro Detroit*, 186 Mich App 141, 146; 463 NW2d 206 (1990).

We first note that the trial court did not deny Citizens' motion outright; instead, the court denied the request for another deposition of plaintiff, but granted Citizens' requests to have plaintiff provide "supplemental discovery responses regarding updated medical records and treatment [and] outstanding bills" and to have plaintiff "update any stale authorizations."[8] Citizens argued in the trial court that another deposition was necessary because Citizens was "unaware of Plaintiff's current condition or what, if anything, has changed in the preceding two years." Plaintiff has been deposed in the past, but because of the appellate proceedings, it has been several years since she has been deposed. As Citizens explains in its reply brief, plaintiff would presumably be seeking to recover benefits for services provided over the past few years—i.e., since her last deposition. It appears fundamentally unfair to preclude Citizens from obtaining meaningful

[8] Citizens cited MCR 3.206 as authority for permitting a court to compel a person to sit for a deposition. Because this court rule does not govern depositions and instead applies to the initiation of domestic-relations cases, we assume Citizens meant to cite MCR 2.306, which does govern depositions.

discovery from plaintiff, personally, at this point in time; that would leave Citizens somewhat blind in trying to defend against these claims. Citizens could not question plaintiff regarding any more recent and potentially confusing, inconsistent, uncertain, or disputed documents relative to the prior few years, for example.

Likewise, Citizens may be prejudiced if plaintiff did not submit to another IME. While Citizens will be afforded more information through supplemental discovery responses regarding plaintiff's medical situation, without another IME Citizens would be left to accept without question any documents submitted by plaintiff and would be denied an opportunity to obtain independent information concerning any recent changes in plaintiff's medical status or treatments and thus to meaningfully contest plaintiff's claims. As a result, we conclude that the trial court abused its discretion when it denied Citizens' request for another IME.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Jane E. Markey
/s/ Deborah A. Servitto