STATE OF MICHIGAN

COURT OF APPEALS

FARM BUREAU INSURANCE COMPANY,

Plaintiff-Appellee,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellant.

FOR PUBLICATION
December 4, 1998
9:00 a.m.

No. 199615
Cass Circuit Court
LC No. 95-000443 CK

Before: Markey, P.J., and Griffin and Whitbeck, JJ.

MARKEY, P.J.

In this declaratory judgment action, Allstate appeals as of right from a determination that it is required to pay no-fault personal protection benefits to a person who was a Michigan resident at the time of the pertinent automobile accident under an automobile insurance policy issued in another state which does not require the maintenance of no-fault insurance. We reverse.

The trial court did not clearly err when it determined that Allstate's insured was a resident of Michigan who was domiciled with the accident victim, also a Michigan resident, and that the accident victim was a resident relative of Allstate's insured, MCL 500.3114; MSA 24.13114, in light of the following facts: that she spent a significant amount of time at the Cass County, Michigan, Chain Lake Road residence, that she frequently slept at this residence, that she received public assistance from the State of Michigan and that the public assistance checks were mailed to the Chain Lake Road residence, the infrequency of Allstate's insured's stays with relatives in Elkhart, Indiana, and the fact that her children's school had the telephone number of the Chain Lake Road residence as a number to use to contact Allstate's insured in the case of an emergency. MCR 2.613(C); *Arco Industries Corp v American Motorists Ins Co*, 448 Mich 395, 410; 531 NW2d 168 (1995); *Witt v American Family Mutual Ins Co*, 219 Mich App 602, 605-606; 557 NW2d 163 (1996).

However, because Allstate's insured was a resident of Michigan domiciled in this state, she was not a nonresident for purposes of the no-fault act. *Wilson v League General Ins Co*, 195 Mich App 705, 709-710; 491 NW2d 642 (1992). Accordingly, because Allstate's insured was not a nonresident within the meaning of the no-fault act, MCL 500.3163; MSA 24.13163 has no application on the facts of this case and may not be used to impose responsibility for payment of PIP benefits on Allstate. Further, Allstate's insured did not own or operate any of the motor vehicles involved in the pertinent accident. Thus, on that basis as well, under the plain language

I agree with the majority that MCL 500.3163(1); MSA 24.13163(1)[4] is not directly applicable in light of the finding that Toni Boothe was a Michigan resident and therefore not "an out-of-state resident." However, I would affirm based on a rationale different than the lower court. It is well settled that "[w]here a trial court reaches the correct result for the wrong reason, its decision need not be reversed on appeal." *In re People v Jory,* 443 Mich 403, 425; 505 NW2d 228 (1993). See also *Porter v Royal Oak,* 214 Mich App 478, 488; 542 NW2d 905 (1995). Here, the lower court reached the right result.

II

The majority reaches an incongruous result by concluding that an automobile insurance policy issued to an out-of-state resident must be reformed to comply with Michigan law (MCL 500.3163(1); MSA 24.13163(1)) while a policy issued to a Michigan resident need not. Overlooked or ignored is the Legislature's intent and goal of providing a system of compulsory no-fault insurance for all Michigan motorists. *Shavers v Attorney General,* 402 Mich 554, 578-579; 267 NW2d 72 (1978). Under the present circumstances, I would hold that the public policy of the state of Michigan, as reflected by our insurance code and our case law, compels that the Boothe insurance policy be reformed to comply with Michigan law.[5]

The no-fault act, MCL 500.3101(1); MSA 24.13101(1), provides in pertinent part:

> The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under personal protection insurance, property protection insurance, and residual liability insurance.

The motor vehicle code, MCL 257.216(a); MSA 9.1916(a), exempts "nonresidents" from the Michigan registration requirement. "Nonresident" is straightforwardly defined by MCL 257.34; MSA 9.1834 as "every person who is not a resident of this state."

In the context of required liability insurance, the insurance code provides:

> *Such a liability insurance policy issued in violation* of sections 3004 through 3012 *shall, nevertheless, be held valid but be deemed to include the provisions required by such sections,* and when any provision in such policy or rider is in conflict with the provisions required to be contained by such sections, the rights, duties and obligations of the insured, the policyholder and the injured person shall be governed by the provisions of such sections: Provided, however, That the insurer shall have all the defenses in any action brought under the provisions of such sections that it originally had against its insured under the terms of the policy providing the policy is not in conflict with the provisions of such sections. [MCL 500.3012; MSA 24.13102.] [Emphasis added.]

Here, Toni Boothe was a Michigan resident. Because her vehicle was required to be registered in Michigan, her insurance must conform to the minimum requirements of the Michigan Insurance Code. Otherwise, the insurance contract violates public policy and subjects Toni Boothe to misdemeanor criminal liability. MCL 500.3102; MSA 24.13102.

> Given this clear purpose and the mandatory language of the statute, such language must be read into those provisions of a policy of insurance that differ or vary from the statutory language. [*Id.*]

In our view, the portion of *Blakeslee* cited by the dissent stands for the basic principle that an insurer purporting to provide a Michigan no-fault automobile insurance policy may not include provisions that reduce the benefits an insured may obtain below the amount to which the insured would be entitled under the no-fault act. We cannot construe *Blakeslee* as requiring an insurance policy issued in good faith by an insurer outside this state to a person who provides no indication to the insurer of being a Michigan resident as if it were a Michigan no-fault insurance policy.

It is common knowledge that Michigan "no-fault" automobile insurance polices are generally more expensive than automobile insurance policies from states such as Indiana that do not have "no fault" laws. To generally hold that such an out-of-state policy entered into by a Michigan resident would be treated as if it were a Michigan "no-fault" policy might well assist some unscrupulous Michigan residents to obtain a Michigan no-fault policy at the lower rate of an out-of-state policy. We will not construe § 500.3012 in such a manner and, thus, we conclude that it has no application to the Indiana insurance policy that Allstate issued to its insured in this case. See, e.g. *McAuley v General Motors Corp,* 457 Mich 513, 518; 578 NW2d 282 (1998) ("[s]tatutes should be construed so as to prevent absurd results, injustice, or prejudice to the public interest").[2]

From the record developed below, it is evident that Allstate's insured presented herself to an insurance agent who worked in some manner with Allstate in Indiana and obtained an Indiana automobile insurance policy. From all indications, Allstate's insured only used an Indiana address in connection with the transaction. Thus, Allstate could not reasonably have been expected to have known when the policy was issued that its insured was actually a Michigan resident. The dissent would effectively require an insurer, at least one that does business both in Michigan and in other states, to routinely investigate every person who seeks automobile insurance outside Michigan while using a non-Michigan address to determine whether that person is a Michigan resident. Such an investigation would be required for the insurer to avoid being treated as if it had issued a Michigan no-fault policy in the event that the insured turns out to have been a Michigan resident when the policy was issued. We do not believe that a reasonable construction of the plain language of the no-fault act and pertinent case authority supports imposing such an onerous burden on insurers.

Reversed and remanded for entry of an order granting summary disposition in favor of Allstate. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ William C. Whitbeck

[1] Under the trial court's "non-clearly erroneous" finding, that we must respect.

[2] We emphasize that a case in which an insurer is aware that it is dealing with a Michigan resident and nevertheless issues an out-of-state automobile insurance policy that does not comply with Michigan's no-fault act would be a far different circumstance.

violate the insurance code are void and that such contracts must be reformed to comply with compulsory insurance requirements.

In the present case, I would follow these authorities and hold that the auto insurance policy issued by defendant to Michigan resident Toni Boothe must be reformed to comply with the compulsory Michigan no-fault automobile insurance law. After doing so, it is clear that defendant Allstate is first in priority for the benefits at issue because the injured party was a relative domiciled in the same household of the named insured. MCL 500.3114(1); MSA 28.13114(1).

For these reasons, I respectfully dissent. I would affirm.

/s/ Richard Allen Griffin

[1] Both parties moved for summary disposition pursuant to MCR 2.116(C)(10). The stipulated facts contain no indication of fraud or misrepresentation by Toni Boothe. Were fraud or material misrepresentation proved, our disposition would likely be different.

The majority implies that Toni Boothe may have had an economic motive in securing the Indiana Allstate automobile insurance policy. There is no record evidence to support such conjecture. Further, I note that "[t]he no-fault insurance act was intended to provide prompt monetary relief for losses sustained in vehicular accidents *at the lowest cost to the system and the individual.*" *Walker v Farmers Ins Exchange*, 226 Mich App 75, 78; 572 NW2d 17 (1997) (emphasis added). Cost-savings was one of the reasons the Michigan insurance industry supported the enactment of the no-fault automobile insurance statute. See, generally, *Shavers v Attorney General*, 402 Mich 554; 267 NW2d 72 (1978).

[2] Throughout this opinion I use the terms "resident" and "domicile" synonymously.

[3] The stipulated set of facts contain the following relevant information regarding the domicile of Toni Boothe:

Toni Boothe had several addresses at which she has spent time other than the Chain Lakes Road [Michigan] address in the last two years. Her driver's license shows an address of 401 State Street, Apt. 1, Elkhart, Indiana. She would also occasionally stay with her sister and family at 637 James Street; Elkhart, Indiana. Ms. Boothe used that address as her Indiana vehicle registration address and the address she used for her automobile insurance with Allstate.

At her sister's address in Elkhart, Toni Boothe received mail, had clothes at that location, and had a place to stay in the basement with a bed. She also gave her sister money, whatever she could, in the way of "rent" to stay there.

Toni testified that she also occasionally stayed with her son Walter in Elkhart. Toni Boothe also spent time at the Chain Lakes Road address in Cassopolis, Michigan. She estimated that in the three and a half months of 1994 prior to the automobile accident, she spent probably most of the time, half the time or more, at the Chain Lakes Road address. She maintained custody of her three children who resided at the Chain Lakes Road address and went to school in Cassopolis. The school had emergency phone numbers where Ms. Boothe could be reached, that included the