STATE OF MICHIGAN

COURT OF APPEALS

TED A. MORSE,

Plaintiff-Appellee/
Cross-Appellant,

-v- No. 95489

AUTO-OWNERS INSURANCE COMPANY,

Defendant-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant/
Cross-Appellee.
_____/

BEFORE: Beasley, P.J., and MacKenzie and R.P. Hathaway*, JJ.

PER CURIAM

Defendant State Farm Mutual Automobile Insurance Company (State Farm) appeals by right from a March 23, 1984 determination by the circuit court that it is liable for personal injury protection benefits to plaintiff under a policy issued by State Farm to plaintiff's father. Additionally, plaintiff cross-appeals from a September 9, 1986 judgment, entered following a bench trial, denying plaintiff's claim for medical expenses, granting plaintiff $16,330 for lost wages, and awarding plaintiff $7500 in attorney fees and $295 in costs. We affirm the 1984 determination and 1986 judgment of the circuit court.

This appeal involves a determination as to which of three insurance companies is responsible for payment of plaintiff's no-fault auto insurance personal injury protection (PIP) benefits. On September 21, 1981, plaintiff was a passenger in an automobile which was involved in a serious accident. Plaintiff did not own a car at the time and was not covered by any no-fault insurance policy. Defendant Auto-Owners Insurance Company carried the policy of the driver and owner of the car in which

*Circuit judge, sitting on the Court of Appeals by assignment.

plaintiff was a passenger at the time of the accident. Defendant State Farm carried the policy of Sheridan Morse, plaintiff's father. At the time of the accident plaintiff was in the military, stationed at Fort Campbell in Kentucky.

One of the three insurance companies was dismissed, leaving State Farm and Auto-Owners. Plaintiff and the two insurance companies then agreed to submit the issue of liability for payment of no-fault benefits to plaintiff to the circuit court based on plaintiff's deposition. In an opinion issued March 23, 1984, the circuit court found that at the time of the accident plaintiff was domiciled in his parents' home, thus, State Farm was primarily liable for payment of plaintiff's no-fault benefits under plaintiff's father's policy. The court noted that when plaintiff entered the army he registered as having his home at his parents' address. Additionally, he renewed his driver's license, obtained his automobile insurance, and filed his tax return using this address.

The court denied State Farm's motion for reconsideration and reaffirmed its ruling that plaintiff did not lose his place of domicile merely because he was in the military, stationed in Kentucky. Further, the court stated that a careful study of the record indicates that plaintiff intended to retain his parents' house as his domicile while in the military even though he, his wife and two children lived in a series of rented mobile homes obtained during and incident to his service in the military.

On appeal, defendant State Farm contends that the trial court erred in ruling that plaintiff's domicile was with his parents in Michigan. We do not agree.

Domicile under §3111 of Michigan's no-fault act, MCL 500.3101 et seq.; MSA 24.13101 et seq., is a question of fact for trial court resolution and will not be reversed on appeal unless the evidence clearly preponderates in the opposite direction.

See Dairyland Ins v Auto-Owners, 123 Mich App 675, 684; 333 NW2d 322 (1983). Here, evidence supports the trial court's finding.

In Workman v DAIIE, 404 Mich 477; 274 NW2d 373 (1979), our Supreme Court identified the relevant factors to consider in determining whether a person is "domiciled in the same household" as the insured and thus covered by the insured's no-fault policy. Among the relevant factors were (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 persons and the members of the household, (3) whether the place where the person lives is in the same household, within the same curtilage or same premises, and (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household. Workman, supra, at 496-497.

This Court in Bryant v Safeco Ins Co, 143 Mich App 743, 746; 372 NW2d 655 (1985), wrote that this list was not exhaustive and that all relevant factors should be considered. In Dairyland, supra, at 681-682, a panel of this Court stated that other relevant indicia of domicile for purposes of a no-fault automobile policy 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.

Considering these factors we cannot declare that the trial court erred. Plaintiff had not declared an intent of remaining in Kentucky. Plaintiff received his mail at his parents' home while in the service. Additionally, his tax forms and driver's license included his parents' address. His parents

kept a room for him at the house and plaintiff testified that his father gave him support while he was in the service following his marriage. Military personnel are treated differently for residential/domiciliary purposes. See Soldier and Sailor's Relief Act, 50 USC 501 et seq. and MCL 168.11; MSA 6.1011. While these statutes do not specifically apply to the instant case, they are persuasive that plaintiff should not lose his prior residency status by joining the military. Accordingly, we affirm the circuit court's March 1984 determination that plaintiff was domiciled at his parents' residence at the time of the accident.

Next, State Farm contends that even if it owes no-fault insurance benefits to plaintiff, it does not owe actual attorney fees pursuant to MCL 500.3148; MSA 24.13148 since the delay in payment was not unreasonable as it was the product of a legitimate question of statutory construction. In the September 9, 1986 judgment the court ordered that plaintiff be awarded attorney fees in the amount of $7500 pursuant to §3148 of the no-fault act. We agree with the award of attorney fees.

This Court in Darnell v Auto-Owners Ins Co, 142 Mich App 1, 11-12; 369 NW2d 243 (1985), rejected State Farm's argument, ruling that problems of priority among insurers should not cause delay in payment of benefits to which the claimant is entitled. Rather, priority claims should be handled by paying the insured and having the insurance companies thereafter dispute their liabilities, i.e., in an action of subrogation. Id. Following Darnell, supra, the trial court's finding of unreasonableness in delaying payment was not clearly erroneous and the award of attorney fees to plaintiff is proper.

On cross-appeal, plaintiff first contends that the trial court erred in setting off military medical benefits plaintiff received from the United States government as a member of the armed services. We disagree. Our Supreme Court recently

declared that medical care provided a member of the armed forces pursuant to 10 USC 1071 et seq. is a benefit provided under the laws of the federal government required to be subtracted from medical no-fault benefits otherwise payable when neither the insured person, his spouse, nor a relative domiciled in the same household owns an automobile insured under the no-fault act. See Crowley v DAIIE, 428 Mich 270, 271-272; 407 NW2d 372 (1987).

Finally, plaintiff contends that the trial court erred in awarding interest on plaintiff's $16,330 award for lost wages from February 6, 1985 (thirty days after plaintiff provided proof of loss to State Farm) rather than from January 20, 1983, the date State Farm denied coverage.

Section 3142(2) of the no-fault act provides that personal protection insurance benefits be paid within thirty days after an insurer receives reasonable proof of the fact and of the amount of loss sustained. Here, it was not until after the trial court determined State Farm to be liable for plaintiff's no-fault benefits that State Farm requested proof of loss from plaintiff. Plaintiff provided proof of loss on January 8, 1985.

It is clear that under the no-fault act proof of the fact and the amount of loss sustained triggers payment of personal protection insurance benefits. The 30-day period set forth in §3142(2) is not triggered by a claimant's application for benefits. Here, plaintiff did not provide proof of loss until January of 1985. As such, the trial court properly granted interest from February 8, 1985. Plaintiff's application and plaintiff's proof of loss are separate and distinct and under the statute only the latter is dispositive.

Accordingly, we affirm the trial court's 1984 determination that State Farm was liable for plaintiff's no-fault benefits under State Farm's policy issued to plaintiff's father. Further, we affirm the trial court's September 9, 1986, judgment.

/s/ William R. Beasley
/s/ Barbara B. MacKenzie
/s/ Richard P. Hathaway