STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellant,

v   No. 103539

FARMERS INSURANCE GROUP,

Defendant-Appellee.

Before: Shepherd, P.J., and Gribbs and G.S. Allen, Jr.,* JJ.

PER CURIAM.

Plaintiff, Citizens Insurance Company of America, appeals as of right from a Genesee Circuit Court judgment of no cause of action entered in favor of defendant, Farmers Insurance Group. We affirm.

Plaintiff insured the owner and driver of a car which struck and seriously injured a pedestrian, Dorothy Nelson. At the time of the accident, Nelson owned no automobile insurance policy. Nelson was a mentally ill resident of the Hotchkiss Adult Foster Care Home (Home) which was owned by Lyle Hotchkiss and his wife, Ellen. One of the employees at the Home was the Hotchkisses daughter, Julie Jackson. Julie Jackson and her husband, Steve, lived in a separate apartment above the Home's garage.

This case arose from plaintiff's claim that, at the time of the accident, defendant insured Nelson under the no-fault automobile insurance policy which defendant issued to Steve Jackson. Plaintiff based this claim on an argument that Nelson was Julie Jackson's ward. Plaintiff further claimed that defendant was liable to Nelson for benefits resulting from the accident, and had to reimburse plaintiff for her benefits which plaintiff paid under its no-fault policy. The lower court rejected plaintiff's claims and issued a judgment of no cause of action in favor of defendant.

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

Sections 3114 and 3115 of the Insurance Code, MCL 500.3114; MSA 24.13114, and MCL 500.3115; MSA 24.13115, govern the priority of insurance coverage where more than one insurance policy provides coverage for an accident. Section 3115 provides in relevant part:

> "(1) 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:
>
> "(a) Insurers of owners or registrants of motor vehicles involved in the accident.
>
> "(b) Insurers of operators of motor vehicles involved in the accident."

Subsection (1) of §3114 provides:

> "Except as provided in subsections (2), (3), and (5), 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. A personal injury insurance policy described in section 3103(2) 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 motorcycle accident. When personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and shall not be entitled to recoupment from the other insurer."

In <u>Esquivel</u> v <u>American Fidelity Fire Ins Co</u>, 90 Mich App 56; 282 NW2d 240 (1979), this Court discussed the relationship between §§3114 and 3115. There, the plaintiff was a pedestrian who was struck by an automobile. The plaintiff sought personal protection insurance benefits from the defendant under a policy of insurance covering an automobile owned by the plaintiff but not involved in the accident. The <u>Esquivel</u> Court held that the plaintiff was entitled to claim personal protection benefits from the defendant after stating:

> "We are of the opinion that §3115 establishes priorities for those nonoccupants who are not otherwise covered, as, for example, where neither the nonoccupant nor anyone in his household owns an automobile. Where the nonoccupant is covered either as owner or registrant of an insured motor vehicle or as a member of the same household as an owner or registrant, §3114 provides that his own insurer must pay him personal protection benefits." 90 Mich App 59-60.

Plaintiff claims that defendant insured Nelson through the no-fault policy which defendant issued to Steve Jackson. Plaintiff relies on Hartman v Ins Co of North America, 106 Mich App 731; 308 NW2d 625 (1981), lv den 414 Mich 890 (1982), in support of this claim. There, an automobile collided with a bicycle operated by William Prince, a mentally incompetent adult who was injured in the accident. Prince was living at a private group living facility owned by Mary Baumgarten and operated for profit by her and her husband. The defendant, Insurance Company of North America (INA), was the no-fault insurer of automobiles owned by the Baumgartens at the time of the accident. The Hartman Court concluded that INA was liable for no-fault benefits because Prince was the Baumgartens' ward and a resident of their household. The facts upon which liability was based in Hartman do not exist in this case. Therefore, we conclude that defendant is not liable to Nelson for no-fault benefits.

Under §3114 of the Insurance Code, a personal protection insurance 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); MSA 24.13114(1).

The insurance policy which defendant issued to Steve Jackson defined "relative":

> "'relative' means a person related to the named insured by blood, marriage or adoption (including a ward or foster child) who is a resident of the same household as the named insured."

The insurance policy in Hartman included the same definition of "relative." 106 Mich App 738. The Hartman Court interpreted the term "ward", as used in that definition, according to its common meaning. A "ward" is "'a person...under the protection or tutelage of a person'." Hartman, supra, p 739, quoting Webster's Third New International Dictionary (1965), p 2575.

The Hartman Court examined the factual context of that case to determine whether Prince was a "ward" of the Baumgartens.

The Hartman Court noted that the Center for Human Development contracted with Mrs. Baumgarten for the basic care of individuals placed with her by the Center. The residents of the Baumgarten Homes came to the Baumgartens for advice and called them "mom" and "dad." The Baumgartens took the men on occasional outings and had Christmas parties for them. Mrs. Baumgarten saw to it that the residents bathed, shaved, and changed their clothes. She also administered medicine to Prince as necessary. 106 Mich App 739. Prince's social worker testified that Prince was placed in the Baumgarten Homes to put him in an atmosphere where he could experience some of the attributes of living with other people in a less restricted setting and could experience as close a relationship to a family as was possible under the circumstances. The Hartman Court concluded that under all of the facts and circumstances of that case, Prince was a "ward" of the Baumgartens. 106 Mich App 740.

The facts and circumstances of this case differ significantly from those of Hartman. Julie Jackson did not own the Home in which Nelson lived. Julie Jackson was merely an employee there. Plaintiff argues that Nelson was Julie Jackson's ward because her job responsibilities included laundry, cooking, cleaning, and the general care of the residents. We disagree. Julie Jackson's employment at the Home did not make Nelson her ward. Julie Jackson did not run errands for the residents or take them on outings. She generally did not give the residents advice or eat with them. Plaintiff points out that testimony indicated that the environment in the Home was meant to be like a home. However, Julie Jackson testified that some of the residents could not cope with it and moved out because the Home's size and rules made them feel that it was more like an institution. Nothing in the record indicates that the residents of the Home had the sort of close relationship with Julie Jackson that existed in Hartman. The lower court correctly found that Nelson was not Julie Jackson's ward.

Defendant claims that the determination of whether Nelson was Julie Jackson's ward is irrelevant to this case. Defendant argues that because the named insured was Steve Jackson and Nelson was not his ward, Nelson was not his relative and defendant cannot be liable under the clear language of the policy which it issued to Steve Jackson. The lower court did not address this argument and we decline to elaborate upon it. We note, however, that Nelson was not Steve Jackson's ward based on our previous analysis of the wardship issue and the facts that Steve Jackson did not work at the Home and had little contact with the residents. For purposes of this analysis, we assume that Julie Jackson was included within the term "named insured" under defendant's insurance policy.

Even if Nelson had been a "ward" and therefore a "relative" of the named insured, Nelson must also have been a "resident of the same household as the named insured" in order to qualify for personal protection insurance benefits under defendant's insurance policy. Hartman, supra, p 740. Our Supreme Court set forth a standard for determining whether a person is a "resident" of an insured's household:

> "Our review of both Michigan opinions and opinions of our sister state courts first reveals the general principle that the terms 'resident' of an insured's 'household' or, to the same effect, 'domiciled in the same household' as an insured, have 'no absolute meaning', and that their meaning 'may vary according to the circumstances'. Cal-Farm Ins Co v Boisseranc, 151 Cal App 2d 775, 781; 312 P2d 401, 404 (1957). The 'legal meaning' of these terms must be viewed flexibly, 'only within the context of the numerous factual settings possible'. Montgomery v Hawkeye Security Ins Co, 52 Mich App 457, 461; 217 NW2d 449 (1974).
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> "Accordingly, both our courts and our sister state courts, in determining whether a person is a 'resident' of an insured's 'household' or, to the same analytical effect, 'domiciled in the same household' as an insured, have articulated a number of factors relevant to this determination. In considering these factors, no one fact is, in itself, determinative; instead, each factor must be balanced and weighed with the others. Among the relevant factors are the following: (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; * * *." Workman v DAIIE, 404 Mich 477, 495-497; 274 NW2d 373 (1979). (footnotes omitted).

There is no dispute here with regard to the first and fourth factors. Nelson believed that the Home was her permanent residence and she had no other place of lodging.

The Hartman Court found that Workman's second factor, the formality or informality of the relationship between the person and the members of the household, indicated that Prince was a "resident" of the Baumgarten Homes. The Hartman Court based its finding of a relatively informal atmosphere at the Baumgarten Homes upon the same type of facts which supported its finding that Prince was the Baumgartens' ward. 106 Mich App 742. The relationship between Prince and the Baumgartens differed significantly from the relatively formal relationship between Nelson and the Jacksons. The facts upon which we based our conclusion that Nelson was not Julie Jackson's ward also support a finding that Nelson was not a resident of the Jackson's household under the second Workman factor.

Plaintiff points out that an intercom connected the Jackson's apartment to the Home and employees of the Home could call Julie Jackson if she was needed at night, when she was not working. However, she was never called. The residents were not allowed to come to the Jackson's apartment at night and apparently never came there. We are also unpersuaded by facts which indicate that Nelson might have been the Hotchisses' ward and a resident of their household. These matters are irrelevant to this appeal. Julie Jackson was merely an employee of the Home. She had a relatively formal relationship with the Home's residents. This relationship indicates that Nelson was not a resident of Julie Jackson's household.

With regard to the third Workman factor, the Hartman Court found that Prince lived "upon the same premises" as the insured even though the Baumgartens had separate living quarters for themselves in the Baumgarten Homes. The Hartman Court based its finding on the fact that both the Baumgartens and the men for

whom they cared occupied the same house. 106 Mich App 743. Here, the Jacksons lived in an apartment above the Home's garage. The apartment had a separate entrance and its own kitchen, dining area, bathroom, living room and bedrooms. As the lower court noted, Julie Jackson had her separate little home. We question whether the Hartman Court's broad interpretation of the third Workman factor is appropriate. See Bryant v Safeco Ins Co, 143 Mich App 743; 372 NW2d 655 (1985) (where a house contains separate living units, the fact that it is located in an area zoned for single family residences is not sufficient to establish, for purposes of a summary judgment motion, that persons living in the house are members of the same household within the meaning of MCL 500.3114(1); MSA 24.13114(1)). In any event, this factor is not determinative with regard to whether a person is a "resident" of an insured's household. Workman, supra, p 497 n 6.

We conclude that the lower court correctly found that Nelson was not Julie Jackson's ward. Nelson was also not a resident of the insured's household. Therefore, defendant is not liable to Nelson for insurance benefits or to plaintiff for the reimbursement of benefits which plaintiff paid to Nelson. The lower court properly entered a judgment of no cause of action in favor of defendant.

Affirmed.

/s/ John H. Shepherd
/s/ Roman S. Gribbs
/s/ Glenn S. Allen, Jr.