

STATE OF MICHIGAN
COURT OF APPEALS

DEBBIE ASSI,

Plaintiff-Appellee,

v

No. 106554

CAROLYN TUCKER and LORICON, INC
d/b/a MIDAS TOUCH LOUNGE,

Defendants,

and

FRANKENMUTH MUTUAL INSURANCE COMPANY
and TRANSAMERICA INSURANCE COMPANY,

Defendants-Appellees,

and

FARMERS INSURANCE GROUP,

Defendant-Appellant.

DEBBIE ASSI,

Plaintiff-Appellee,

v

No. 108158

CAROLYN TUCKER, LORICON, INC.,
d/b/a MIDAS TOUCH LOUNGE,
FRANKENMUTH MUTUAL INSURANCE
COMPANY, and TRANSAMERICA
INSURANCE COMPANY,

Defendants,

and

FARMERS INSURANCE GROUP,

Defendant-Appellant.

Before: Gribbs, P.J., and Gillis and Sullivan, JJ.

PER CURIAM.

In Docket No. 106554, Farmers Insurance Group appeals as of right from the circuit court's order granting Frankenmuth Mutual Insurance Company's and Transamerica Insurance Company's motions for summary disposition pursuant to MCR 2.116(C)(10). In Docket No. 108158, Farmers appeals as of right from the

circuit court's order granting Debbie Assi's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff Debbie Assi was seriously injured when she was struck by an automobile driven by defendant Carolyn Tucker, an allegedly intoxicated driver, or by plaintiff's mother's automobile which was struck by Tucker's automobile. Plaintiff sued Tucker and Loricon, Inc., d/b/a Midas Touch Lounge under the dramshop act. Plaintiff also sued all three insurance companies alleging that they had unreasonably denied her no-fault benefits. Farmers insured Mohamad Assi's automobile. Mohamad Assi was plaintiff's husband. Transamerica insured plaintiff's brother-in-law's automobile. Frankenmuth insured plaintiff's mother's vehicle.

Plaintiff lived with her mother, her sister and her sister and brother-in-law; however, it appears that plaintiff spent most of her time living with her sister and brother-in-law. Mohamad Assi, who is from Lebanon, is plaintiff's brother-in-law's nephew. Mohamad Assi was attending college in Canada on a student visa and receiving a substantial monthly stipend. Mohamad Assi wrote to his uncle and he and plaintiff subsequently began corresponding by letter. In May, 1986, Mohamad Assi came to the United States to visit his sister and his uncle. He and plaintiff fell in love and were married on May 17, 1986, by plaintiff's brother in a ceremony which took place in plaintiff's mother's home. The couple honeymooned and, while plaintiff had initially agreed to accompany Mohamad to Canada so that he could continue his education, she later refused to leave the United States. So, the couple lived with plaintiff's sister and brother-in-law until June 1 when they moved into their own apartment. In late September or early October, plaintiff asked Mohamad to leave their apartment which was located at 8051 Schaefer. Plaintiff left the marital residence one week later and moved back into her sister and brother-in-law's flat at 4650 Jonathon. Plaintiff decided that she wanted a divorce.

Mohamad Assi purchased a vehicle during the couple's separation and obtained a no-fault insurance policy from Farmers in early December. While Mohamad testified that he told the insurance agent that he was married, Mohamad's application states that his marital status is "S" which Farmers claims indicates that he was single. Mohamad also listed himself as the only licensed driver in his household. At the time Mohamad filled out the application, he initially gave his marital address as his home address, but subsequently crossed that address out and gave his sister's address as his home address.

On February 18, 1987, plaintiff filed for divorce. On February 23, 1987, plaintiff moved out of her sister's two-bedroom flat and into an apartment at 14900 Tireman. Plaintiff was going to take over the lease of her former boyfriend, whom she had dated after her separation with Mohamad and whose relationship with plaintiff may have led to the couple's separation. Plaintiff was to assume the lease on March 1 and her former boyfriend was going to leave her his security deposit. While plaintiff had been unemployed, she was to begin a new job on February 25. Plaintiff's former boyfriend moved out of the apartment on February 23 and so plaintiff decided to move in on that day.

Plaintiff had moved all of her furniture which had been stored in her sister's basement into the Tireman apartment except for her waterbed, which had to be filled before it could be used. Plaintiff may have left some clothes or other personal items in her sister's flat, but she believed that she had moved out. Plaintiff's sister asked plaintiff to spend the night in the flat because plaintiff was upset because she had had contact with Mohamad. Plaintiff declined to spend the night, indicating that at her age it was time to be out on her own. We note that plaintiff shared a bedroom with her sister's three children from a prior marriage when she stayed in the two-bedroom flat.

Plaintiff took a shower in the Tireman apartment, put on her night clothes and was planning to sleep on the couch when she decided to move her mother's automobile, which she had borrowed move her belongings, to a side street. Plaintiff was opening the door to her mother's automobile when she observed Tucker's vehicle approaching. Plaintiff attempted to run between her mother's vehicle and another parked car and was injured. When plaintiff's sister learned the extent of plaintiff's injuries, she asked plaintiff's friends to move plaintiff's belongings back into her flat. Subsequently, plaintiff moved in with her sister in a new home so that her sister could provide the care that plaintiff needed.

We also note that plaintiff had her marital address on her driver's license. While plaintiff received mail and telephone calls at her sister's flat, the post office listed her marital residence as her address. Furthermore, plaintiff denied knowing Mohamad's legal status in the United States. In fact, Mohamad had obtained a green card following his marriage to plaintiff. Mohamad did not want a divorce and noted that plaintiff's attitude toward him changed after she acquired a boyfriend subsequent to their marriage. Mohamad denied marrying plaintiff in order to gain entry to this country, noting that he was well off in Canada with his student visa and could have easily obtained immigrant status there. Mohamad was also considering returning to Canada. Plaintiff testified that she and Mohamad lived as husband and wife in the flat and their marital apartment. Plaintiff's and Mohamad's divorce was final on September 4, 1987.

Plaintiff moved for summary disposition against Farmers, claiming that it was the insurer with the highest priority. MCL 500.3114(1) and (4); MSA 24.13114(1) and (4). In the alternative, plaintiff requested summary judgment against Transamerica or Frankenmuth. Id. Subsequently, Frankenmuth moved

for summary disposition claiming that it was the lowest priority insurer even if plaintiff was treated as an occupant of her mother's motor vehicle. Id. Transamerica also moved for summary disposition, claiming that plaintiff was no longer a resident relative of its insured (i.e., plaintiff's brother-in-law) when she moved into the Tireman apartment and, therefore, it was not obligated to pay no-fault benefits. MCL 500.3114(1); MSA 24.13114(1).

Farmers responded to these motions by claiming that Transamerica was equal in priority to it because plaintiff was a resident relative of its insured. MCL 500.3114(1) and (4); MSA 24.13114(1) and (4). Farmers also claimed that it was not liable because plaintiff's marriage was fraudulently entered into to avoid the immigration laws and because Mohamad had materially misrepresented his marital status. Hence, Farmers argued that either Transamerica or Frankenmuth was liable. Id.

The circuit court ruled that the court must decide the issue of plaintiff's residence and then it held that plaintiff was no longer a resident relative under Transamerica's policy at the time of the accident. Moreover, because Farmers failed to provide the circuit court with any authority on point, it ruled that Farmers' mere claim that plaintiff's marriage was fraudulent because its purpose was to avoid the immigration laws was insufficient to show that plaintiff's marriage was void.

Farmers first claims that the circuit court erred when it ruled that the issue of plaintiff's domicile was a matter of law for it to decide. Farmers then argues that a jury question was presented because there was a factual dispute as to whether plaintiff was a resident relative of her sister and brother-in-law when the accident occurred. We believe that the circuit court properly ruled that plaintiff's domicile could be determined as a matter of law. Hartzler v Radeka, 265 Mich 451; 251 NW 554 (1933). Moreover, we believe that the circuit court

properly applied the factors in Workman v Detroit Automobile Inter-Ins Exchange, 404 Mich 477, 496-497; 274 NW2d 373 (1979) and Dairyland Ins Co v Auto-Owners Ins Co, 123 Mich App 675; 333 NW2d 322 (1983), and, therefore, correctly ruled that plaintiff was not domiciled in her brother-in-law's and sister's flat at the time the accident occurred, but was instead domiciled in the Tireman apartment. Hence, the circuit court properly granted Transamerica's motion for summary disposition.

Farmers next claims plaintiff was not Mohamad's legal spouse because there is a factual issue as to whether their marriage was a sham entered into for the purpose of avoiding the immigration laws. Farmers relies on 8 USC § 1251(c). We believe that this section does not apply. Id. Ciani v Adkins, 126 F Supp 828 (1954). But now see 8 USC § 1186a. In any event, we believe that Farmers' allegations are insufficient to create a genuine issue of material fact as to whether plaintiff's and Mohamad's marriage was a sham. Plaintiff testified that she and Mohamad lived together as husband and wife in their own apartment and Mohamad testified that it was plaintiff's subsequent involvement with another man that ended their marriage. Farmers produced no evidence that plaintiff and Mohamad did not intend to live as husband and wife after their marriage. Compare United Services Automobile Ass'n v Akers, 729 P2d 495 (Nev 1986).

Finally, Farmers claims that plaintiff is not entitled to no-fault benefits pursuant to the policy issued to Mohamad because he materially misrepresented his marital status. Even assuming that Mohamad committed fraud, we do not believe that this precludes recovery by plaintiff, an innocent party. Darnell v Auto-Owners Ins Co, 142 Mich App 1; 369 NW2d 243 (1985). Consequently, the circuit court properly granted plaintiff's motion for summary disposition against Farmers and, therefore, properly granted Frankenmuth's motion for summary disposition

because Frankenmuth was the lower priority insurer pursuant to
MCL 500.3114(4); MSA 24.13114(4).

Affirmed.

/s/ Roman S. Gibbs
/s/ John H. Gillis
/s/ Joseph B. Sullivan