STATE OF MICHIGAN

COURT OF APPEALS

MIC GENERAL INSURANCE CORPORATION,

Plaintiff-Appellant,

v No. 107332

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

Before: Shepherd, P.J., and Beasley and Gribbs, JJ.

PER CURIAM.

Plaintiff, MIC General Insurance Corporation, appeals as of right from a declaratory judgment in favor of defendant, State Farm Mutual Automobile Insurance Company. We affirm.

This action involves a dispute as to which insurer, plaintiff or defendant, is liable to pay no-fault personal injury protection (PIP) benefits for injuries sustained by Marc Magnusson (age 34) on July 27, 1986, when, as a pedestrian, he was struck by a car. Defendant was the no-fault insurer of the driver who struck Marc Magnusson. Plaintiff was the no-fault insuror of Marc's father, Roland Magnusson. Under MCL 500.3114 (1); MSA 24.13114(1), plaintiff is liable if Marc was "domiciled in the same household" as his father at the time of the accident. If Marc was not domiciled in the same household as his father, defendant is liable for the benefits.[1]

The meaning of the phrase "domiciled in the same household" is not absolute. Rather, it is flexible and varies according to the circumstances.[2]

Marc's parents, Mr. and Mrs. Magnusson, have been married since 1950. For many of their years together, the couple, along with their son Marc, lived in a house on Green Lake Road. Mrs. Magnusson's mother lived five miles away in her house on South Williams Lake Road. In view of her mother's failing

health, Mrs. Magnusson, a homemaker, took care of the house on Williams Lake Road and cared for her mother's needs. When her mother died in March, 1981, Mrs. Magnusson and her sister, who lived in California, inherited the Williams Lake house. Thereafter, Mrs. Magnusson began staying at the house. She slept most nights there, sleeping at the Green Lake house only four or five nights per month. Mr. Magnusson, on the other hand, slept exclusively at the Green Lake house. Mrs. Magnusson did the house cleaning at both houses and prepared daily meals for her husband at the Williams Lake house. Mr. Magnusson worked the afternoon shift at a GMC plant and would stop at the Williams Lake house each day on his way to work to eat dinner. Mrs. Magnusson also would prepare his lunches there. Both Mr. and Mrs. Magnusson had complete access to both houses. They had no plans to sell the Williams Lake house, and Mrs. Magnusson planned to continue staying there for the foreseeable future. They do not plan to divorce.

In March, 1983, Marc had moved from the Green Lake house to the Williams Lake house. The move was apparently triggered by a falling out between Marc and his father relating to Marc's continued unemployment. Marc ate all of his meals there. The meals were prepared by his mother and funded by his father, who was the sole source of support for Mrs. Magnusson. Mrs. Magnusson did Marc's laundry for him, and Marc helped to maintain the William Lake house by cutting the lawn. Marc was unemployed, never married, and owned no car. His only outside source of income was the collection of returnable bottles and cans. On the infrequent occasions when Marc needed clothing, his parents would cover any costs not met by Marc's bottle money. Marc had complete access to both homes, though it appears that he seldom, if ever, visited the Green Lake house after moving to the Williams Lake house.

The trial court determined that both houses constituted one "household", stating as follows:

> [T]his Court is not persuaded that his mother's house and his father's house should be treated as separate households.

> Rather this Court finds that there was one extended household for both. The father provided for the mother, the mother cooked, cleaned, and did household chores for the father in both homes.
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> His father ate at the mother's house. His mother slept at both houses. More frequently at the Williams Lake Road house. His father insured his mother's vehicle. In the absence of any specific guiding case law, this Court does not think that the Magnason [sic] family can be disected [sic] into two separate households under the facts that it has before it.
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> The son was fed, clothed, and provided for financially by his father through the vehicle of the mother. The mother performed all of her wifely chores for the father and they just happened to have two separate houses.

In Workman v DAIIE,[3] the Supreme Court discussed several factors which may be considered in determining whether a person is "domiciled in the same household" as the insured:

> In considering these factors, no one factor 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;[6] * * * (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household; * * *.
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> 6 We emphasize, again, that "no one factor is, in itself, determinative" in making a determination of whether a person is a "resident" of an insured's household. For an example of a case in which a person did not "live in the same house, within the same curtilage or upon the same premises" as an insured but was found by the court to be, nevertheless, a "resident" of the insured's "household", on balance of other relevant factors, see Montgomery v Hawkeye Security Ins Co, [52 Mich App 457; 217 NW2d 449 (1974), lv den 392 Mich 769 (1974)]. In other words, analytically, if a person does, in fact, "live in the same house, within the same curtilage or upon the same premises" as an insured, there is more weight in support of the conclusion he is a "resident" of the insured's "household". [Footnotes and citations omitted.]

In Montgomery, supra, this court affirmed the trial court's determination that a full-time college student away at school was a resident of his parent's household and, thus, was covered under their homeowner's policy. There, we rejected a construction that would limit coverage to those actually occupying the physical premises named in the policy.[4]

Here, as in Montgomery, the individual concerned (Marc) did not occupy the physical premises named in plaintiff's policy. Here, as in Montgomery, we, nevertheless, affirm the trial court's determination that Marc was domiciled in the same "household" as his father.

At the outset, we note that the appropriate inquiry here is whether Mr. Magnusson's "household" included the Williams Lake house, and not, as plaintiff's arguments imply, whether Marc resided in the Green Lake house. That is to say, we focus our attention not upon Marc's connections with the Green Lake house, but upon his father's (the insured's) connections with the Williams Lake house.

We do not believe the trial court erred in finding that the two houses comprised one "household". Mr. Magnusson's wife was a co-owner of the Williams Lake house. Mr. Magnusson helped his wife maintain that property by performing small repairs. His income paid for the food and other necessities consumed and utilized at the Williams Lake house. Mr. Magnusson ate dinner there every night. He also had complete access to the house and was free to come and go as he pleased. There was no plan to alter this arrangement. In sum, Mr. and Mrs. Magnusson seem to have treated the two houses not as two separate households, but as one "household" containing two houses. They maintained both homes and spent time at each.

Having recognized that Mr. Magnusson's "household" included the Williams Lake house, we now address the question of whether Marc was "domiciled" in that household. Applying the factors set forth in Workman, supra, we think it clear that he was. First, it was apparently Marc's intent to remain at the Williams Lake house for an indefinite period of time. There is no indication that he was planning to move somewhere else. Second, his presence at the Williams Lake house was clothed in informality. He was free to come and go as he pleased. He slept there, ate his meals there, and other members of the household regularly provided for his daily needs. Third, he lived in the

Williams Lake house itself. Fourth, Marc had no other place of lodging.

We affirm the trial court's determination that Marc was, at the time of the accident, "domiciled in the same household" as his father.[5] As such, under MCL 500.3114(1); MSA 24.13114(1), plaintiff was responsible to pay PIP benefits. The declaratory judgment in favor of defendant is affirmed.

Affirmed.

/s/ John H. Shepherd
/s/ William R. Beasley
/s/ Roman S. Gribbs

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1 MCL 500.3115(1); MSA 24.13115(1).

2 Workman v DAIIE, 404 Mich 477, 495-496; 274 NW2d 373 (1979); Montgomery v Hawkeye Security Ins. Co., 52 Mich App 457, 459-461; 217 NW2d 449 (1974), lv den 392 Mich 769 (1974).

3 Supra at 496-497.

4 Montgomery, supra, at 459.

5 We need not address plaintiff's second issue on appeal, which is stated to be conditional upon our finding that Marc was not domiciled in his father's household.