STATE OF MICHIGAN

COURT OF APPEALS

KHOA TAN RATHBONE,

Plaintiff-Appellee,

v

TODD WARREN,

Defendant,

and

AUTO-OWNERS INSURANCE COMPANY,

Garnishee Defendant-Appellant.

October 26, 1992

No. 127817

UNPUBLISHED

Before: Marilyn Kelly, P.J., and McDonald and G.S. Allen, Jr.*, JJ.

PER CURIAM.

Garnishee defendant Auto-Owners Insurance Company appeals as of right a judgment awarding plaintiff $25,000 in damages and an order denying its motion for new trial. We affirm.

This case arises out of an automobile accident involving defendant Todd Warren. Following a default judgment against Warren in favor of plaintiff in the amount of $150,000, plaintiff instituted a garnishment action against defendant Auto-Owners on the theory defendant issued a policy of automobile insurance to Warren's grandparents providing coverage for relatives residing in the same household. Auto-Owners disputed coverage of Warren, arguing he was not a resident of his grandparents' household. Following a trial on the merits the trial judge concluded Warren was within the coverage of the policy and entered judgment in favor of plaintiff.

On appeal, defendant challenges the factual findings of the trial court. First, defendant argues the trial court erred in denying defendant's motion for directed verdict. Viewing the evidence in a light most favorable to the nonmoving party, we conclude a question of fact existed at the close of plaintiff's proofs regarding whether or not Warren was a resident of his grandparent's household. Stoken v JET Electronics & Technology, Inc, 174 Mich App 457, 463; 436 NW2d 389 (1988), lv den 432 Mich 930 (1989). The trial court correctly denied defendant's motion.

Defendant next claims the trial court's finding that Warren was a resident in the home of his grandparents for purposes of coverage was against the great weight of the evidence. We find it was not. This determination of residency is a question of fact for the trial court and will not be reversed unless the evidence clearly preponderates in the opposite direction. Hicks v Auto Club Ins Ass'n, 189 Mich App 420, 422; 473 NW2d 704 (1991).

At trial, plaintiff presented documentary evidence establishing that Warren continuously listed his address as his grandparents' residence. A person's use of a given address on his or her driver's license and other official documents may be considered as an indication of the place of his or her residence. Dobson v Maki, 184 Mich App 244, 252; 457 NW2d 132 (1990). Defendant presented testimony by Warren's grandmother showing Warren had moved out of her home prior to the accident. Warren was not available during trial and did not testify.

---

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

The trial judge resolved the conflict in plaintiff's favor by determining that Warren's grandmother was not a credible witness. Giving deference to the trial court's opportunity to hear the witnesses and its unique qualification to assess credibility, Kochoian v Allstate Insurance Co, 168 Mich App 1, 11; 423 NW2d 913 (1988), we cannot say the evidence preponderates opposite to the trial court's determination that Warren's grandmother was simply not credible.

The final issue raised by defendant is whether the trial court erred in denying defendant's motion for a new trial based on newly discovered evidence. The new evidence consisted of an affidavit by Warren, essentially confirming his grandmother's testimony. We agree with the trial court's conclusion that this new evidence was merely cumulative and would not change the result on retrial. People v Bradshaw, 165 Mich App 562, 567; 419 NW2d 33 (1988). We find no abuse of discretion by the trial court in its denial of defendant's motion.

Affirmed.

/s/Marilyn Kelly
/s/Gary R. McDonald
/s/Glenn S. Allen, Jr.