STATE OF MICHIGAN

COURT OF APPEALS

AMERICAN STATES INSURANCE COMPANY,

Plaintiff/Counter-Defendant/
Appellant/Cross-Appellee,

v

USAA CASUALTY INSURANCE CORPORATION,

Defendant/Counter-Defendant/
Appellee/Cross-Appellee,

and

RONALD W. EVASIC, as Guardian of
the Estate of ROBERT FRANCIS EVASIC,
an incapacitated person,

Defendant/Counter-Plaintiff/
Appellee/Cross-Appellant.

May 23, 1994

No. 146539
LC No. 89-363709-CK

Before: Jansen, P.J., and Holbrook, Jr. and E.C. Penzien,* JJ.

PER CURIAM.

Plaintiff American States Insurance Company appeals as of right from an order of the Oakland Circuit Court granting summary disposition to defendant USAA Casualty Insurance Corporation. Defendant Ronald Evasic has also cross-appealed the order granting summary disposition. We affirm.

This case arises out of an automobile accident involving Robert Evasic in Michigan on February 11, 1988. Robert was seriously injured as a result of the accident while he was en route to a job interview. At the time of the accident, Robert was staying with his mother, Margaret Smith, in South Lyon, Michigan. Robert had been living with his father, Ronald Evasic, in Ada, Oklahoma. American States provided automobile insurance to Ronald Evasic and USAA provided no-fault automobile insurance for Margaret Smith.

There is no dispute that Robert is entitled to no-fault benefits as a result of the automobile accident. The question on appeal is whether American States or USAA is liable to pay the benefits and this issue turns on Robert's domicile. The trial court held that Robert was domiciled with his father in Ada, Oklahoma and that American States was liable to pay the benefits, which have apparently amounted to approximately $475,000. We affirm the trial court's grant of summary disposition pursuant to MCR 2.116(C)(10) in USAA's favor.

We review the trial court's grant of summary disposition de novo as we must review the record to determine whether the successful party was entitled to judgment as a matter of law. Adkins v Thomas Solvent Co, 440 Mich 293, 302; 487 NW2d 715 (1992).

The trial court did not err in determining that Robert was domiciled in Oklahoma. The determination of domicile is a question of fact to be resolved in the trial court, and this Court will not reverse the trial court's determination of domicile unless the evidence clearly preponderates in the opposite direction. Bronson Methodist Hospital v Forshee, 198 Mich App 617, 631; 499 NW2d 423 (1993). In determining whether a person is domiciled in the same household as the insured, the following factors should be

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

considered: (1) the subjective or declared intent of the person to remain indefinitely or permanently in the insured's 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, and (4) the existence of another place of lodging by the person alleging domicile in the household. Workman v DAIIE, 404 Mich 477, 496-497; 274 NW2d 373 (1979). Other relevant factors include: (1) the person's mailing address, (2) whether the person maintains possessions in the insured's home, (3) whether the insured's address appears on the person's driver's license and other documents, (4) whether a bedroom is maintained for the person at the insured's home, and (5) whether the person is dependent on the insured for financial support. Dobson v Maki, 184 Mich App 244, 252; 457 NW2d 132 (1990).

The evidence supports the trial court's conclusion that Robert was domiciled in Oklahoma. Ronald Evasic and Margaret Smith divorced in 1982. Robert moved to Oklahoma to live with his father to attend college in 1983. Robert qualified for resident tuition in Oklahoma and graduated in 1987. He continued to live in his father's house after graduation. In early 1988, Robert went to Michigan to look for work. He stayed with his mother, his brother, and a friend while in Michigan. Robert had a girlfriend in Oklahoma and they had discussed getting married.

At the time of the accident, Robert had a Oklahoma driver's license, had a checking account in Oklahoma, was registered to vote in Oklahoma, and considered his father's house to be his home base and his legal residence. The majority of Robert's possessions were at his father's house in Oklahoma, including his bedroom. Robert received mail at both addresses. Finally, Robert had no permanent intention of remaining at his mother's house. Although Robert indicated that he probably would have moved to Michigan had he received the job to which he was going for the interview, Robert had not definitively decided whether to accept the job and, in fact, the job was never actually offered to Robert.

Based on this evidence, we cannot say that the evidence clearly preponderates in the opposite direction. Contrary to American States' argument, Williams v State Farm Mutual Automobile Ins Co, 202 Mich App 491; 509 NW2d 821 (1993), is not controlling because the plaintiff in that case clearly evidenced an intent to leave Nevada and move into his parents' house in Michigan. Accordingly, the trial court did not err in finding that Robert was domiciled in Oklahoma and that American States was liable to pay his no-fault benefits.

American States further argues that even if Robert is found to be domiciled in Oklahoma, it is not liable to pay because Robert is not an insured under the policy. We disagree.

Because American States is an out-of-state insurer, liability for no-fault benefits is imposed by MCL 500.3163(1); MSA 24.13163(1). The insurer cannot write out mandatory provisions of coverage provided by the no-fault act. Rohlman v Hawkeye-Security Ins Co, 442 Mich 520, 525; 502 NW2d 310 (1993); American National Fire Ins Co v Frankenmuth Mutual Ins Co, 199 Mich App 202, 212; 501 NW2d 237 (1993). Moreover, the exclusion cited by American States excludes liability coverage for bodily injury, i.e., coverage for the insured when he or she is liable as a tortfeasor. The liability exclusion simply does not apply to this case.

American States also argues that liability is precluded under the "other insurance" provision of the policy. We again disagree.

This provision provides:

> Other insurance: If there is other applicable or similar insurance, we will pay only our share. Our share is the proportion our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible insurance.

This provision does not apply because there is no other collectible insurance. Robert was domiciled in his father's household and American States is therefore primarily liable as between it and USAA. MCL 500.3114(1); MSA 24.13114(1).

American States last argues that if the family exclusion and other insurance provisions do not apply, then this Court should find that Robert should be considered a dual resident of Michigan and Oklahoma so that American States and USAA would share the claim on a pro rata basis. We decline to adopt or apply any concept of dual residency to this case. The evidence in this case quite clearly shows that Robert was domiciled in Oklahoma and was not a resident of Michigan. Because the trial court did not err in finding that Robert was domiciled in Oklahoma, we need not apply the concept of dual residency to this case.

In light of our disposition of the issues raised by American States, we need not address the issues raised by cross-appellant Ronald Evasic.

Affirmed.

/s/ Kathleen Jansen
/s/ Donald E. Holbrook, Jr.
/s/ Eugene C. Penzien