

**STATE OF MICHIGAN
COURT OF APPEALS**

AUTO OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellant,

and

GARY JOHNSON,

Defendant.

UNPUBLISHED

August 18, 1994

No. 146484

LC No. 90-013509-CK

AUTO OWNERS INSURANCE COMPANY,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellee,

and

GARY JOHNSON,

Defendant-Appellee.

No. 149491

LC No. 90-013509-CK

Before: Gribbs, P.J., and Weaver and R. P. Hathaway, * JJ.

PER CURIAM.

This case arises out of a May 29, 1989 car accident. At that time, Gary Johnson was struck and severely injured by Gordon Wade. Johnson applied for benefits from both Auto Owners Insurance Co., who insured Wade, and Citizens Insurance Co., who insured Johnson's mother. Auto Owners paid the benefits and initiated a declaratory judgment action to determine which insurer was first in priority of liability. The court granted Auto Owner's motion for summary disposition, ordering Citizens to reimburse Auto Owners. Citizens now appeals as of right. Auto Owners cross-appeals the trial court's denial of its motion for twelve percent no fault act interest and attorney fees. We affirm.

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

I

Citizens argues the court erred in ruling that there was no material question of fact. Specifically, Citizens asserts Johnson was not domiciled in the same household as his parents. Summary disposition is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Pantily v Garris, Garris and Garris, PC, 180 Mich App 768; 447 NW2d 864 (1989).

The question here is whether Johnson was domiciled in the same household as his mother. The factors to consider include the subjective or stated intent of the person to remain in the household, permanently or indefinitely, the level of formality between the person and members of the household, whether the living space is in the same house, the existence of another place which could be considered the person's domicile or residence, whether the injured person uses the insured's address as his mailing address, whether he keeps possessions in the insured's house, whether the insured maintains a room for the person inside the home, and whether the person depends on the insured for support. Workman v DAIE, 404 Mich 477; 274 NW2d 373 (1979), and Dairyland Ins Co v Auto Owners Ins Co, 123 Mich App 675; 333 NW2d 322 (1983). Here, Johnson was staying with his mother for an indefinite amount of time. Johnson maintained a close relationship with his mother and her husband, living in a basement room of their house. Johnson had no other place to live, received mail at his mother's address, and kept his possessions there. Johnson depended on his mother for at least partial support.

We find the court did not err in determining that Auto Owners was entitled to judgment as a matter of law. Brown v Yousif, 198 Mich App 667; 499 NW2d 446 (1993).

II

Citizens asserts the court improperly looked only at the facts regarding Johnson's domicile which existed on the actual date of loss. The record does not bear out this allegation.

III

Auto Owners contends the court erred in denying its request for no fault insurance act interest and attorneys' fees. We disagree.

This Court has previously held that the interest penalty set forth in MCL 500.3142; MSA 24.13142 does not apply to subrogation actions between insurers. Allstate Ins Co v Citizens Ins Co of America, 118 Mich App 594; 325 NW2d 505 (1982).

MCL 500.3148(1); MSA 24.13148(1) does not provide for an award of attorneys' fees when the insurer had not advised or represented the claimant. Hicks v Automobile Club Ins Ass'n, 189 Mich App 420; 473 NW2d 704 (1991).

We affirm.

/s/ Roman S. Gribbs
/s/ Elizabeth A. Weaver
/s/ Richard P. Hathaway

¹ Johnson had no insurance of his own.