

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID SALINGER,

Plaintiff-Appellee,

v

HERTZ CORPORATION,

Defendant-Appellant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee.

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UNPUBLISHED

April 12, 1995

No. 157072

LC No. 91-116447-CK

Before: Connor, P.J., and Wahls and Saad, JJ.

PER CURIAM.

Plaintiff brought this declaratory action to determine which one of the two defendants - both automobile insurers - is responsible for plaintiff's medical expenses which arose out of injuries sustained during an automobile accident. Under the provisions of Michigan's No Fault Act, MCL 500.3114(1); MSA 24.13114(1), this determination depends upon plaintiff's place of domicile, which is not defined in the statute. If plaintiff's domicile was in Michigan, then defendant Auto Club is responsible under no-fault policies issued to plaintiff's parents and/or brother. If plaintiff's domicile was not in Michigan, then defendant Hertz is responsible as a self-insurer of the rental vehicle which plaintiff drove at the time of the accident. On cross motions for summary disposition, the trial court determined that plaintiff was domiciled outside of Michigan at the time of the accident. We reverse the decision of the trial court for the reasons stated below.

At the outset, we should note that there is no dispute that this case depends upon a determination of plaintiff's domicile, in accordance with MCL 500.3114(1); MSA 24.13114(1). The parties are in agreement on the underlying facts, and the question of plaintiff's domicile is a matter of law for the Court.

This Court recently summarized the factors which should be considered in determining a person's domicile under MCL 500.3114; MSA 24.13114, as follows:

In determining whether a person is domiciled in the same household as the insured, the following factors should be 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 insured's household; (3) whether the place where the person lives is in the same house, within the same curtilage, or upon the same premises as the insured; and (4) the existence of another place of lodging for the person alleging domicile in the household.

Workman v DAIE, 404 Mich 477, 496-497; 274 NW2d 373 (1979); Dobson v Maki, 184 Mich App 244, 252; 457 NW2d 132 (1990). This Court has stated that the following factors are also relevant in determining the domicile of an individual: (1) the person's mailing address; (2) whether the person maintains possessions at 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 upon the insured for financial support or assistance. Id.; Dairyland Ins Co v Auto-Owners Ins Co, 123 Mich App 675, 682; 333 NW2d 322 (1983). [Williams v State Farm Mutual Automobile Ins Co, 202 Mich App 491, 494-495; 509 NW2d 821 (1993).]

In addition to the factors outlined in Williams, supra, plaintiff's military status is also relevant to the question of domicile. Due to the fact that military personnel often do not have a choice of where they are stationed, there is a presumption in favor of retaining domicile in one's home state. Cf. MCL 168.11; MSA 6.1011 (Michigan's election laws); 50 USC App 574 (Soldiers' and Sailors' Civil Relief Act of 1940); Trotter v Trotter, 503 So 2d 1160, 1162 (La App, 1987); Trezza v State Farm Mutual Auto Ins Co, 519 So 2d 649, 651-652 (Fla App, 1988).

After reviewing the various factors for determining domicile under Williams, supra, and considering plaintiff's military status, we conclude that plaintiff was domiciled in Michigan at the time of the accident.

Under the first factor of Williams, supra, concerning plaintiff's "subjective or declared intent", there is no evidence that plaintiff intended to create a domicile outside of Michigan. Although plaintiff was stationed with the military in Maryland at the time of the accident, plaintiff's temporary military address does not affect his domicile. The parties are in general agreement that plaintiff was domiciled in Michigan before he enlisted in the military. Thus, this factor tends to favor Hertz.

Next, under the second factor, concerning the "formality or informality of the relationship between the person and the members of the insured's household", this factor favors Hertz because there were informal family relationships between plaintiff and his brother, and plaintiff and his parents, such that plaintiff was free to treat his relatives' homes as his own.

Under the third factor, it is clear that plaintiff resided at the same premises with his family while he was staying in Michigan. Thus, this factor favors Hertz.

Fourth, it is true that plaintiff had "another place of lodging" with the military in Maryland. However, as discussed above, that place of lodging does not demonstrate an intent to create a new domicile because of the transitory nature of military service.

Fifth, plaintiff's permanent mailing address at his parents' home in Michigan supports Hertz' argument that plaintiff was domiciled in Michigan.

The sixth factor also favors Hertz because plaintiff maintained some of his personal possessions with his family in Michigan.

Under the seventh factor, plaintiff used his parents' address on both his driver's license and his voter registration. The fact that plaintiff used his parents' address in Michigan for these official documents strongly suggests that plaintiff's domicile was in Michigan.

Under the eighth factor, it does not appear that a separate room was maintained for plaintiff by his family in Michigan. However, plaintiff did have the use of the guest room in his parents' house.

Finally, under the ninth factor, there was no evidence that plaintiff's family in Michigan provided him with any financial support or assistance. As such, this factor tends to favor Auto Club. However, it is the balance of all of the factors which determines domicile.

After considering all of the relevant factors - and, particularly, in light of plaintiff's military status - we hold that the finding below, though a close question of law, should have been that plaintiff was domiciled in Michigan. The majority of the factors from Williams, supra, weigh in favor of Hertz. The evidence demonstrates that plaintiff was domiciled in Michigan originally; and, plaintiff did not revoke that domicile when he joined the military.

Accordingly, we reverse and remand to the trial court for entry of judgment in favor of appellant Hertz Corporation.

/s/ Michael J. Connor  
/s/ Myron H. Wahls  
/s/ Henry William Saad