STATE OF MICHIGAN

MICHIGAN SUPREME COURT

GERARDO LORENZO TIENDA, and
SILVIA LOPEZ GOMEZ,

Plaintiffs- Appellees,

-vs-

INTEGON NATIONAL INSURANCE COMPANY, a GMAC Insurance Company,

Defendant-Appellees,

and

TITAN INSURANCE COMPANY, as Assignee of the Michigan Assigned Claims Facility,

Intervening Defendant-Appellant.

Supreme Court Case No.: 147483

Court of Appeals Case No.: 306050

Lower Court Case No.: 10-46088-NF

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147483

INTERVENING DEFENDANT-APPELLANT TITAN INSURANCE COMPANY'S SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL
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FURTHER ISSUES REGARDING STANDARD OF REVIEW

As an aside, Intervening Defendant-Appellant would like to address the issue of the appropriate standard of review, as this issue was raised by Intervening Defendant-Appellant Titan Insurance Company in its Brief on Appeal, filed with the Court of Appeals, but was not addressed by the Court of Appeals in its decision.

As previously noted, the issues were submitted to the Allegan County Circuit Court by way of Cross-Motions for Summary Disposition. As has been well established, the lower court's decision on a summary disposition motion is reviewed by appellate courts *de novo*. However, to the extent that the lower court may have engaged in a balancing of the factors to be considered when determining an individual's domicile or residence, such findings of fact are reviewed under a different standard.

Indeed, in *Gilmore v Nationwide Ins. Co., Court of Appeals docket no. 244825, unpublished decision rel'd January 15, 2004*, attached as **Exhibit 1**, the Court of Appeals was reviewing a decision of the circuit court regarding whether or not a young college student was a "resident" of her parents' household, for purposes of providing liability coverage to her as the result of a motor vehicle accident. In order to resolve this issue, the circuit court essentially engaged in a fact-finding process, weighing and balancing the various residency factors enunciated by this Court in *Workman v DAIIE, 404 Mich 477, 274 NW 2d 373 (1979)* and the Court of Appeals in *Dairyland Ins. Co. v Auto-Owners Ins. Co., 123 Mich App 675, 333 NW 2d 322 (1983)*. Accordingly, upon review of the lower court's decision, which found that the young college student was a "resident" of her parents' household, the Court of Appeals enunciated the following standard of review:

> "In light of the stipulation, we are not reviewing a judgment predicated on summary disposition analysis, but rather a judgment for declaratory relief predicated on the evidence presented as if a

trial had occurred. In *Ladd v Ford Consumer Finance Co. Inc., 217 Mich App 119, 133; 550 NW 2d 826 (1996), rev'd on other grounds 458 Mich 876 (1998)*, this Court stated:

> 'A circuit court's decision whether to grant declaratory relief under MCR 2.605 is reviewed for an abuse of discretion. *Allstate Ins. Co. v Hayes, 442 Mich 56, 74; 499 NW 2d 743 (1993).* Although this Court has sometimes opined that declaratory judgments are reviewed *de novo*, see e.g., *Michigan Residential Care Ass'n v Dep't of Social Services, 207 Mich App 373, 375; 526 NW 2d 9 (1994)*, the Supreme Court's decision regarding the governing standard of review plainly controls. *Hauser v Reilly, 212 Mich App 184, 187; 536 NW 2d 865 (1995).* Therefore, we are constrained to apply an abuse of discretion standard.
>
> The determination of domicile is a question of fact for the trial court to resolve, and the court's decision will not be reversed on appeal unless the evidence clearly preponderates in the opposite direction. *Goldstein v Progressive Cas. Ins. Co., 218 Mich App 105, 111; 553 NW 2d 353 (1996)*; *Bronson Methodist Hosp. v Forshee, 198 Mich App 617, 631; 499 NW 2d 423 (1993)*; *Dairyland Ins. Co. v Auto-Owners Ins. Co., 123 Mich App 675, 684; 333 NW 2d 322 (1983)*"
>
> *Gilmore, slip opinion at pp 6-7.*

Accordingly, the Court of Appeals, by utilizing a *de novo* standard of review, may not have accorded sufficient deference to the findings of the lower court.

LEGAL ARGUMENT

I. BECAUSE THE LEGISLATURE CHOSE TO USE THE PHRASE "OUT-OF-STATE RESIDENT" IN MCL 500.3163(1), THE PHRASE MUST BE INTERPRETED WITH AN EYE TOWARD ACCOMPLISHING "THE OBJECT, PURPOSE, OR RESULT" INTENDED BY MCL 500.3163(1); I.E., TO ENSURE THAT THOSE INDIVIDUALS WHO HAVE NO INTENTION OF MAKING MICHIGAN THEIR "HOME BASE" OR PERMANENT ABODE WOULD STILL HAVE ACCESS TO MICHIGAN NO-FAULT INSURANCE BENEFITS FROM THEIR OWN INSURANCE COMPANY IF SAID INSURER HAS FILED A CERTIFICATE OF COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE MICHIGAN NO-FAULT INSURANCE ACT, MCL 500.3101 *et seq*

As this Court is well aware, Intervening Defendant-Appellant Titan Insurance Company filed an Application for Leave to Appeal with this Court on July 26, 2013, following an adverse decision from the Michigan Court of Appeals, which held that Plaintiffs-Appellees Gerardo Lorenzo Tienda and Sylvia Lopez Gomez, as well as the owner of the vehicle they were occupying, Salvador Lorenzo (all of whom were part of a group of migrant farm workers), were residents of the State of Michigan, thereby rendering MCL 500.3163(1) inapplicable. As a result, the vehicle owner's out-of-state insurer, Defendant-Appellee Integon National Insurance Company (which had been paid a premium for North Carolina automobile liability coverage) was not responsible for paying Michigan no-fault insurance benefits to the injured occupants of the North Carolina-insured vehicle. See *Tienda v Integon Nat'l Ins. Co., 300 Mich App 605, 834 NW 2d 908 (2013).*

On February 5, 2014, this Court issued an Order directing the clerk of this Court to schedule oral argument on whether or not to grant Intervening Defendant-Appellant's Application for Leave to Appeal or to take other action pursuant to MCR 7.302(H)(1). The Order further provided:

> "The parties shall submit supplemental briefs within 42 days of the date of this Order addressing the issue of whether the insured upon

> whose policy the Plaintiffs seek the payment of benefits was an "out-of-state resident", as that term is used in MCL 500.3163(1) at the time of the Michigan accident giving rise to Plaintiffs' claim."

Intervening Defendant-Appellant Titan Insurance Company now takes the opportunity to elaborate upon the purpose of the legislature's use of the phrase "out-of-state resident" in MCL 500.3161(1). After reviewing this Supplemental Brief, Intervening Defendant-Appellant Titan Insurance Company is confident that this Court will ultimately hold that the purpose of this provision, based on the language of the statutory provision itself, is to ensure that those individuals who have no intention of remaining permanently in the State of Michigan, or even for an extended or indefinite period of time, will nonetheless receive Michigan no-fault insurance benefits from their own out-of-state insurer, provided that said insurer has filed a Certificate of Compliance under the terms and conditions of the Michigan No-Fault Insurance Act under MCL 500.3163(1). Accordingly, the Court of Appeals' decision must be reversed and the Judgment of the Allegan County Circuit Court, in favor of Intervening Defendant-Appellant Titan Insurance Company, must be reinstated.

A. ANALYSIS OF THE STATUTORY PHRASE "OUT-OF-STATE RESIDENT" AND THE WORD "RESIDENT."

The Michigan No-Fault Insurance Act does not define the phrase "out-of-state resident" or the word "resident," as these words are used in MCL 500.3163(1). It is interesting to note, though, that in enacting MCL 500.3163(1), the legislature did not utilize the term "domiciliary" or the phrase "out-of-state domiciliary." Indeed, as this Court observed in *Grange Ins. Co. of Michigan v Lawrence, 494 Mich 475, 835 NW 2d 363 (2013)*, the legislature specifically rejected the use of the term "residence" for purposes of the priority provisions of the Uniform Motor Vehicle Reparations Act, in favor of the phrase "domiciled in the same household," as utilized in MCL 500.3114(1).

It has been said by the Michigan Court of Appeals in *Ortman v Miller, 33 Mich App 451, 190 NW 2d 242 (1971)*, that:

> "The term 'residence' and 'resident' have no fixed meaning in the law. They have variable meanings depending upon the context in which the words are used and the subject matter:
>
> > 'Resident' has no technical meaning, and no fixed meaning applicable to all cases, but rather it has many meanings and is used in different and various senses, and it has received various interpretations by the Courts. Generally the construction or signification of the term is governed by the connection in which it is used, and depends upon the context, the subject matter, and the object, purpose or result designed to be accomplished by its use, and its meaning is to be determined from the facts and circumstances taken together in each particular case.' "
>
> *Ortman, 190 NW 2d at 244, quoting 77 CJS Resident, pages 305-306.*

The Nebraska Supreme Court has described the terms "reside" and "residence" as "chameleon-like" concepts taking their "color of meaning from the context in which they are found." *Amco Ins. Co. v Norton, 243 Neb 444, 500 NW 2d 542, 545 (1993).* The Missouri Court of Appeals has likewise observed:

> "We hesitate to essay any definition of 'residence,' for the word is like a slippery eel, and the definition which fits one situation will wriggle out of our hands when used in another context or in a different sense."
>
> *Missouri v Tustin, 322 SW 2d 179, 180 (Mo. Ct. App., 1959)*

A Florida Court of Appeals judge has similarly observed:

> "I would liken the concept of residence to the sands of a warm sunny beach, shifting in the gentle breezes and lapping tides."
>
> *Maldonado v Allstate Ins. Co., 789 So 2d 464 (Fla. Ct. F App. 2001)*

However, it is incumbent upon this Court to attempt to give some meaning to the phrase "resident," as utilized in the phrase "out-of-state resident" set forth in MCL 500.3163(1). Otherwise, one risks the specter of having individuals who spend most of their time away from

the State of Michigan suddenly being deemed to be Michigan residents upon their arrival in Michigan and their establishment of nothing more than a temporary place of abode in this State. The answer to this question is found by focusing on the individual's **intent** to avail himself or herself of the advantages of living in Michigan and their intent to make Michigan their permanent or indefinite place of residence, even if not to the extent of establishing a permanent domicile in this state. **As demonstrated below, one's mere presence in this state, even if for purposes of securing temporary employment is insufficient to establish oneself as a "resident" of this state.** Otherwise, a resident of another state, who comes to Michigan on a 6 month work assignment, and establishes a "residency" at an "extended stay" hotel, would suddenly become a Michigan resident, even though that individual has no intention of ever remaining in this state.

B. FEDERAL AND STATE LAWS HAVE CONSISTENTLY UTILIZED SOME DEGREE OF PERMANENCE IN CONJUNCTION WITH THE TERM "RESIDENCE."

The Migrant and Seasonal Agricultural Worker Protection Act, 29 USC 1801 et seq is a federal statute designed to protect the rights of migrant and seasonal agricultural workers. Section 1802 of the Act defines the term "migrant agricultural worker" (which would include the vehicle owner, Salvador Lorenzo, as well as the two injured Plaintiffs (Tienda and Gomez) as follows:

> "Except as provided in subparagraph (B), the term 'migrant agricultural worker' means an individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his **permanent place of residence**."
>
> 29 USC §1802(8)(A).

This definition stands in contrast to the term "seasonal agricultural worker" which is defined as:

> "Except as provided in subparagraph (B), the term 'seasonal agricultural worker' means an individual who is employed in agricultural employment of a seasonal or other temporary nature

> and is not required to be absent overnight from his permanent place of residence . . ."
>
> 29 USC §1802(10)(A).

In other words, one's status as a "migrant agricultural worker" or a "seasonal agricultural worker" is determined by whether or not they are "required to be absent overnight from his permanent place of residence."

In this regard, the circuit court judge got it right when he opined that if asked to make a call on Salvador Lorenzo's residency, he would be deemed a resident of the State of Florida because that is where he spent most of his time. By contrast, the Court of Appeals erred when it observed that "the duration of time Lorenzo lived in Florida is of little consequence." *Tienda, 834 NW 2d at 918.* **Under the Court of Appeals' ruling in this case, because Lorenzo allegedly did not have a "permanent place of residence," he would not be considered a "migrant agricultural worker" and therefore entitled to the protections of the Migrant and Seasonal Agricultural Worker Protection Act.** Surely, this is an absurd result, and one that will be inconsistent with the goals of the federal legislation in protecting the rights of migrant agricultural workers. By remaining in the State of Florida for six to seven months out of the year, it is far more logical that Florida be established as Lorenzo's "home base" or his "permanent place of residence," subject only to the short periods of time that he spent harvesting crops in North Carolina (from March through June) and in Michigan (from July through October).

State law likewise imports some concept of permanency or intent to remain in Michigan for an indefinite period of time when defining the term "residence." For example, MCL 168.11, governing Michigan elections, defines the term "residence" as follows:

> "'Residence', as used in this Act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects and has a regular place of lodging. If a person has more than one residence, or if a person has a

> residence separate from that of his or here spouse, that place at which the person resides the greater part of the time shall be his or her official residence for purposes of this Act. This section does not affect existing judicial interpretation of the term 'residence.'"

Although not explicitly stated by the circuit court judge, it certainly appears that Judge Cronin was alluding to the concept embodied in MCL 168.11, to the effect that the place at which the person spends the greater part of his time shall be considered his official residence. In this case, once again, the vehicle owner, Salvador Lorenzo, spent the vast majority of his time in the State of Florida, harvesting crops near Dover and Plant City. He and his companions did do on a year in and year out basis. Even putting aside the temporal references, Michigan election law requires some intent to remain in Michigan for either a permanent or indefinite length of time, as embodied in the use of the phrases "habitually sleeps" or "a regular place of lodging," in order to be considered a "resident" of this state.

Similarly, for purposes of income taxation, MCL 206.18 defines the term "resident" as follows:

> "Resident means:
>
> (a) An individual domiciled in this state. 'Domicile' means the place where a person has his true, fixed and permanent home and principal establishment to which, whenever absent therefrom he intends to return, and domicile continues until another permanent establishment is established."

Again, the Court is asked to take notice of the concept of some degree of permanency, or intent to return to that place of residence "whenever absent" embodied in this statute. Surely, in this regard, the circuit court judge reached the right result when he opined that this group of migrant farm workers fully intended to return to Florida and essentially used Florida as their "home base" for purposes of determining that this group of migrant farm workers, including Salvador Lorenzo, were out-of-state residents (and even residents of the State of Florida) for purposes of triggering application of MCL 500.3163(1).

The Social Welfare Act, MCL 400.1 *et seq* likewise indicates that in order to benefit from the wide variety of social services provided by the Michigan government, one must intent to make Michigan his or her home, not just a place of temporary abode. Specifically, MCL 400.32(2) states:

> "**For purposes of the family independence program and medical assistance under this act, a resident of this state is a person who is living in this state voluntarily with the intention of making his or her home in this state and not for a temporary purpose and who is not receiving assistance from another state.**"

Surely, under the circumstance of this case, neither Salvador Lorenzo nor the other occupants of the vehicle were living in the apartment in Grand Rapids (with other Hispanic speaking individuals) "with the intention of making his or her home in this state." Indeed, they were here for a temporary purpose, only – harvesting fruits on the west side of the state for three months, just as they had done in years past.

Other examples in which the legislature has imported the concept of an intent to remain in this state into the definition of the term "resident" include the following:

> MCL 409.222 (Michigan Youth Corps Act):
>
> "Resident" means an individual who has in this state the individual's true, fixed, and permanent home and principal establishment to which the individual intends to return whenever absent.
>
> MCL 409.321(f) (Michigan Civilian Conservation Corps Act)
>
> "Resident" means an individual who has in this state the individual's true, fixed, and permanent home and principal establishment to which the individual intends to return whenever absent.

For purposes of the Elder Prescription Insurance Coverage Act, the term "Michigan resident" is defined as follows:

> "'Michigan resident' means an individual who establishes residence for a period of 3 months in a settled or permanent home

or domicile within the state **with the intention of remaining in this state**."

See MCL 550.2002(g).

As can be seen in these examples, merely being present in the State of Michigan, even for purposes of employment, is not sufficient to render one a "resident" of this state. **Simply relocating temporarily to the State of Michigan, for purposes of seeking employment in this state, is not sufficient to establish residency in this state.** *Guibord v Farmers Ins. Exch., 110 Mich App 218, 312 NW 2d 219 (1981),* cited with approval *Mills v Auto-Owners Ins. Co., 413 Mich 567, 321 NW 2d 651 (1982).* As noted by the Michigan Attorney General, residence, in fact, depends upon a presence in the state and an intention to remain in this state for a permanent or indefinite period of time, and acceptance of employment alone does not establish one as a resident. *Op. Atty. Gen. 1952-1954 no. 1821, page 408.*

When seen in this light, neither the vehicle owner, Salvador Lorenzo, nor the other occupants of his vehicle, including Plaintiffs Tienda and Gomez, could be considered residents of the State of Michigan. They had absolutely no intention of making the State of Michigan their home. They had absolutely no intention of establishing the State of Michigan as their "home base." They were in the State of Michigan for a temporary purpose only – to secure employment in the agricultural fields on the west side of the state for a very limited period of time – July through October. After their work in the fields was completed, this group of migrant farm workers did, in fact, return to their "home base" in Florida, where they spent the vast majority of their time. In this regard, the Court of Appeals erred when it determined that the vehicle owner, Salvador Lorenzo, was a "resident" of the State of Michigan at the time of the accident, even though he had only been in the State of Michigan for less than thirty days before his involvement in the subject accident.

C. CASE LAW HAS LIKEWISE ESTABLISHED AN ELEMENT OF EITHER PERMANENCY, OR INTENT TO REMAIN IN MICHIGAN FOR AN EXTENDED OR INDEFINITE PERIOD OF TIME, IN ORDER TO BE CONSIDERED A "RESIDENT" OF THIS STATE.

Having established that both federal and state legislatives acts have required some degree of permanency or an intent to remain in the State of Michigan for an extended or indefinite length of time, Intervening Defendant-Appellant Titan Insurance Company directs this Court's attention to the various cases that have discussed this concept. After reviewing the cases cited below, Intervening Defendant-Appellant Titan Insurance Company is confident that this Court will conclude that, in fact, the vehicle owner, Salvador Lorenzo, cannot be considered a resident of the State of Michigan, under any circumstances, at the time of this occurrence. Therefore, the Court of Appeals erred when it concluded otherwise.

In the case of *In Re Scheyer's Estate, 336 Mich 645, 50 NW 2d 33 (1953)*, this Court had the opportunity to weigh in on the issue of whether or not one could be considered a resident of the State of Michigan where the individual spent less than five months throughout the year in this state. *Scheyer's Estate* involved a will contest, which had incorporated a marriage settlement, in which the wife Marion Scheyer bequeathed to her husband the following:

> "Any home belonging to me in which we are residing at the time of my death."

The Scheyers had purchased a home in Atlanta, Georgia, as well as a summer home in Lake Leelanau. Mr. Scheyer was actually employed in Puerto Rico and did not spend any time in Michigan, at the Lake Leelanau cottage, during many of the years preceding Mrs. Scheyer's death. Upon her death, her two children from a prior marriage attempted to take possession of the Lake Leelanau summer home by arguing that the only home that Mr. and Mrs. Scheyer resided in was the home in Atlanta, Georgia. After noting that Mr. and Mrs. Scheyer had spent

seven and eights months of the year together in Atlanta, this Court went on to note the lack of any permanency with regard to their residence in the State of Michigan:

> "In contrast, the cottage on Lake Leelanau in Michigan was occupied by Ms. Scheyer during four or five months of each summer from 1942 through 1948. During that same period, Mr. Scheyer spent not to exceed a total of six months in Michigan. While Ms. Scheyer admittedly was fond of the summer cottage, she returned each fall to the Atlanta home and eventually died in that city. **There was no element of permanence in the occupancy of the Michigan dwelling, no thought of remaining there the year around. No extensive period of residence was had by the husband and wife as a family unit.**
>
> We conclude, therefore, that the dwelling owned by the deceased in Atlanta, Georgia, was the home in which the husband and wife resided at the time of the wife's death and that only the use of that dwelling was bequeathed to the husband, Walter Rudolph Scheyer."
>
> *In Re Scheyer's Estate, 59 NW 2d at 37* (emphasis added)

Just as in the summer cottage on Lake Leelanau, there was certainly "no element of permanence" with regard to Salvador Lorenzo's occupancy of the apartment in Grand Rapids, which was inhabited by other migrant farm workers seeking a temporary place of lodging. There was "no thought of remaining there the year around" on the part of this group of migrant farm workers. Indeed, there was "no extensive period of residence" by anyone in this group of migrant farm workers in the State of Michigan. Whatever state they would be considered residents of – Florida, North Carolina or even the Country of Mexico– this group of migrant farm workers could certainly not be considered "Michigan residents" under this analysis.

Similarly, in *Ortman, supra,* the issue presented was whether or not two injured Plaintiffs, who were making claims under the Motor Vehicle Accident Claims Fund, would be considered "residents" of the State of Michigan when they were serving in the U.S. Air Force and stationed at Selfridge Air Force Base in Mt. Clemens. Both servicemen had been living in Michigan for approximately five months before the accident. One of the servicemen married a

Michigan resident after the accident and lived with her off base in Mt. Clemens until he was discharged from the Air Force. He then remained in Mt. Clemens, where he obtained private employment. The other injured serviceman remained in Michigan for approximately seven months after the accident, at which time he married a North Carolina resident and returned with her to Mt. Clemens, where he continued to reside until he was transferred by the Air Force to another base. Because both of these individuals intended to remain in Michigan for an indefinite length of time, without any plans to leave in the future, the Court of Appeals concluded that these individuals were, in fact, "residents" of the State of Michigan:

> The exclusion of nonresidents from the protection of the Act was meant to exclude residents of other states whose relationship to Michigan is transitory and lacks any degree of permanence. Ortman's and Ford's employment had taken them to Michigan and at the place of the accident their actual place of abode was Michigan. **They had been here for a substantial period of time and when they entered Michigan they did so without formulated plans to leave shortly thereafter.**
>
> *Ortman, 190 NW 2d at 247* (emphasis added)

By contrast, when Salvador Lorenzo, Plaintiffs and their companions arrived in Michigan a couple of weeks prior to their involvement in the accident, they knew, full well, that their time in Michigan would be temporary. They knew that, when the harvest season ended, they would be returning to their "home base" in the State of Florida – just as they had done for many years in the past. Surely, their presence in Michigan was "transitory and lack[ed] any degree of permanence." Once again, the Court of Appeals erred by concluding that these individuals were, in fact, residents of the State of Michigan.

In *School District #1 Fractional of Mancelona Tp. v School District #1 of Custer Tp., 236 Mich 677, 211 NW 60 (1926),* this Court likewise held that some degree of permanence, or intention to remain for an indefinite period of time, was necessary to establish oneself as a "resident" of a school district, even where one's domicile was in a different location. In

Mancelona Tp., the student and his parents lived in the City of Stover, in the Mancelona Township school district. However, the student's parents owned a farm in the Custer Township school district. The student and his parents had lived on the farm for many years. However, at some point, the parents moved to Stover so that the father could secure employment with an electric lighting company in that city. **He did, in fact, secure employment and had no intention of leaving that employment.** However, the family continued to vote in the school district where the farm was located. Because the family members were "good faith residents" of the Mancelona Township school district and because the family "[had] no present intention of removing therefrom," they were deemed to be residents of the Mancelona Township school district. **By comparison, the vehicle owner, Salvador Lorenzo, and this group of migrant farm workers had all "present intention of removing [themselves] therefrom" the City of Grand Rapids, and the State of Michigan, once the harvesting was completed in October.** In fact, they did so in this case, except for Plaintiff Tienda, who had to stay behind for medical reasons.

The Court of Appeals has noted that according to the dictionary definition of the term "resident," there must be some "more or less permanence of abode." In *Stadelmann v Glen Falls Ins. Co. of Glen Falls, 5 Mich App 536, 147 NW 2d 460 (1967)*, one Ruth Stadelmann was visiting her older brother in Michigan. At some point during Ms. Stadelmann's six to eight-week stay with her brother, someone broke into her brother's vehicle and stole her suitcase. She made a claim under her brother's homeowner's insurance policy, which only provided coverage if the victim was a "resident of his household." The Court of Appeals initially examined the dictionary definitions of the term "resident" and noted the following:

> "'Resident' is defined in *Webster's New International Dictionary* as:
>
> > 'Dwelling, or having an abode, for a continued length of time; . . . one who resides at a place; one who dwells in a

> place for a period of more or less duration. Residence usually implies more or less permanence of abode, but is often distinguished from inhabitant as not implying as great fixity or permanency of abode.'
>
> 'Resident' is defined in *Black's Law Dictionary, 4th Ed.* page 1473 as follows: 'One who has his residence in a place.'

Under these circumstances, the Court of Appeals determined that the victim was not a "resident" of her brother's household, as she simply was part of another household and, in fact, an actual resident of a foreign country, even though she intended to stay with, and remained with, her brother for two months.

Given this case law, the following principles emerge. To be considered a resident of the State of Michigan, it requires physical presence in this state **plus** an intention to remain in this state. *Leader v Leader, 73 Mich App 276, 280-281; 251 NW 2d 288 (1977)*; *Hartzler v Radeka, 265 Mich 451, 251 NW 2d 554 (1933)*; *Reaume & Silloway Inc. v Tetzlaff, 315 Mich 95, 23 NW 2d 219 (1946).* "Neither can there be any question that temporary abode in a place does not establish a residence there." *Beecher v Common Counsel of Detroit, 114 Mich 228, 72 NW 206 (1897).* Given these guidelines, how can it be said that Salvador Lorenzo exhibited any "intention to remain" in the State of Michigan? How can it be said that he established anything more than a "temporary abode" in the State of Michigan? How can it be said that his presence in the State of Michigan was for anything other than to secure temporary employment for just three months, harvesting crops in the State of Michigan, in accord with his status as a migrant farm worker? Whatever state or country he and his companions may have been residents of, he certainly could not be considered a "resident" of the State of Michigan at the time of this occurrence, as he clearly lacked any intention to remain in the State of Michigan for an indefinite or prolonged period of time.

D. Application of Residency Analysis to Migrant Farm Workers and Potentially Illegal Aliens

Having examined statutory law and case law impacting on the issue of what it takes to become a Michigan resident (as opposed to being an out-of-state resident), Intervening Defendant-Appellant Titan Insurance Company directs this Court's attention to the handful of cases that specifically discuss domicile and residency in the context of migrant farm workers and potentially illegal aliens – *Cervantes v Farm Bureau Gen'l Ins. Co., 272 Mich App 410, 726 NW 2d 73 (2007), lv app den'd 478 Mich 934, 733 NW 2d 392 (2007)* (Markman, J., joined by Corrigan, J., dissenting) and *Soto v Dept of Social Services, 73 Mich App 263, 251 NW 2d 292 (1977)*.

Cervantes involved a group of illegal aliens who were traveling in the State of Michigan. Two of the Plaintiffs, Leonila Robles-Macias and Etelbina Robles-Macias lived with their brother, Salvador Robles-Macias. Two other individuals, Fidel Martinez and Joel Martinez, lived with one Sebastian Martinez Lopez. Both Salvador Robles-Macias and Sebastian Martinez Lopez had motor vehicles which were insured with Farm Bureau. The four injured Plaintiffs made a claim for Michigan no-fault insurance benefits with Farm Bureau, arguing that the four injured Plaintiffs were "domiciled in the same household" as Farm Bureau's named insureds under MCL 500.3114(1). Both the lower court and Court of Appeals held that, even though the four individuals were present in the State of Michigan illegally, they were still not disqualified from recovering benefits under their relatives' insurance policies under MCL 500.3114(1). In other words, the Court of Appeals determined that their status as illegal aliens was not an impediment to their receipt of Michigan no-fault insurance benefits under MCL 500.3114(1) and, in doing so, the Court of Appeals rejected Farm Bureau's argument to the contrary:

> "Thus, we must reject Farm Bureau's argument that an illegal alien cannot be domiciled in the household of a Michigan insured because, being subject to apprehension and deportation, that person

> can have no intention of remaining within the state. Farm Bureau's argument would exalt the subjective intent of a person to a determinative status in contravention of *Workman [v DAIIE, 404 Mich 477, 496; 274 NW 2d 373 (1979)]*. As this Court stated in *Williams [v State Farm, 202 Mich App 491, 494-495, 509 NW 2d 821 (1993)]*, giving special weight to the intent factor is improper."
>
> *Cervantes, 272 Mich App 410, 415-416*

With regard to the elevation of the intent factor to dispositive status, this Court in *Grange Ins. Co., supra,* has at least tilted the scales in favor of focusing on the intent of the person claiming domicile and, by implication, residency. *Grange Ins. Co., 835 NW2d @ 373* (" The traditional common-law inquiry into a person's "domicile", then, is generally a question of intent, but also considers all the facts and circumstances taken together.")

Farm Bureau filed an Application for Leave to Appeal with this Court. This Court denied the Application for Leave to Appeal. However, Justice Markman, joined by former Justice Corrigan, dissented from the denial of the Application for Leave to Appeal. In doing so, Justice Markman noted that, when speaking in terms of "domicile" and "residence," an individual who is in the State of Michigan illegally simply cannot be considered either a domiciliary of, or a resident of, the State of Michigan as such an individual cannot manifest an intent to remain in the state for a period of time. As noted by Justice Markman in his dissent:

> Persons who are in the United States unlawfully simply cannot be considered to permanently reside in this state. As I observed in my dissenting statement in *Sanchez v Eagle Alloy Inc., 471 Mich 851, 852-853 (2004)*, 'the illegal alien is in violation of the law, and subject to immediate arrest and incarceration or deportation.' The illegal alien is essentially a fugitive whose presence in Michigan is at all times in violation of the law and who, if apprehended, would be subject to immediate deportation from this country. His status thus is of a transient nature, because he can only remain in this state as long as he can avoid detection. He cannot be considered a 'legal' resident of this country or this state, or otherwise to be dwelling within this country or this state in "contemplation of law."
>
> *Cervantes, 733 NW 2d at 395* (Markman, J. Dissenting)

Perhaps the time has come for this Court to re-examine the issue of the presence of illegal aliens in the State of Michigan, and whether or not they can be considered a "resident" or "domiciliary" of this State. As noted in Defendant-Appellant's Application for Leave to Appeal, and the deposition transcripts of Plaintiffs-Appellees, their counsel refused to allow Plaintiff-Appellees to answer any questions regarding their status in the United States, relying on the Court of Appeals decision in *Cervantes, supra.*

However, such a re-examination may not be necessary in light of the fact that Salvador Lorenzo and his companions, including the two injured Plaintiffs herein, must still be considered "out-of-state residents" under MCL 500.3163(1). The dictionary defines the term "out-of-state" as "Of, relating to, or being from another state." *Webster's II New College Dictionary, pg. 779.* For purposes of this argument, it does not matter precisely where these individuals are residents of – Florida or North Carolina. In fact, a strong argument could be made that each of these individuals are "residents" of the Country of Mexico, as they are certainly citizens of that country. Regardless of whether they are considered residents of Florida, North Carolina or Mexico, the fact of the matter remains that these individuals cannot be considered "residents" of the State of Michigan.

Throughout the course of this litigation, Intervening Defendant-Appellant Titan Insurance Company has taken exception to Defendant-Appellee Integon National Insurance Company's attempt to bootstrap the residency of Plaintiffs – Appellee's Gerardo Lorenzo Tienda and Sylvia Lopez Gomez onto the residency status of the vehicle owner, Salvador Lorenzo. It appears that the Court of Appeals may have considered the residency of all three individuals in determining that Salvador Lorenzo was, in fact, a resident of the State of Michigan at the time of this occurrence. Defendant-Appellee Integon National Insurance Company continues to reference the residency of all 3 individuals in its Answer to Intervening Defendant-Appellant Titan Insurance

Company's Application for Leave to Appeal. Therefore, a brief discussion of Salvador Lorenzo and the two Plaintiffs' connections to the Country of Mexico are in order at this point.

In her deposition taken on August 18, 2010, Plaintiff-Appellee Sylvia Lopez Gomez alluded to the fact that Salvador Lorenzo, like her, was a citizen of the Country of Mexico. When discussing Salvador Lorenzo's visit with her in Florida in January or February of 2010 – six to seven months post accident:

Q Okay. In October of 2009 after the accident you went to Florida; right?

A Yes.

Q Okay. And you stayed in Florida. For how long did you stay in Florida?

A I would say until the 17th of May.

Q Okay.

A That would be 2010.

Q During that time did you see Mr. Salvador Lorenzo in Florida?

A Yes.

Q Where did you see Mr. Salvador Lorenzo?

A He – he came to visit me because I had had an accident.

Q Were you working in Florida from October '09 to May of 2010?

A No.

Q **Okay. Was Salvador Lorenzo working in Florida?**

A **In – in January or February Sr. Salvador arrived from Mexico.**

Q Okay. That's when he came to visit you?

A Yes.

Deposition of Sylvia Lopez Gomez, 8/18/2010, pp 73-74

Similarly, in Plaintiff-Appellee Gerardo Lorenzo Tienda's deposition, he likewise alluded to the fact that Salvador Lorenzo is actually a citizen of the County of Mexico:

Q How would you today get in touch with Salvador Lorenzo, if you needed to?

A I wouldn't know how to do it because I don't know where he lives now.

Q **You don't know any of his cousins or brothers?**

A **No. Because his brothers are all in Mexico.**

Deposition of Gerardo Lorenzo Tienda, 8/18/2010, p 22

Indeed, even during Salvador Lorenzo's Statement Under Oath, which was taken during the course of this litigation on February 7, 2011,[1] Salvador Lorenzo likewise alluded to the fact that he was a resident of Mexico because after his involvement in the subject accident, he had to return to Mexico in late October 2009 to tend to his son who had an emergency:

Q Okay. How long did he stay in Michigan in 2009?

A Until the 20th or 25th of October. Then he had to go to Mexico. He had an emergency with his son.

* * *

Q When he moved from Michigan to Florida in 2009, did he take all of his worldly possessions with him down to Florida?

A He said that year he left at the end of October, 20th or 25th, and he went to Mexico that time because of that emergency.

* * *

Q How did he get to Mexico?

A On a bus, and to Monterrey and wait, and I went on the bus to Puertuca.

Statement under Oath of Salvador Lorenzo Guzman, pp 10, 17 and 19, attached as Exhibit C to Integon National Insurance Company's Answer to Titan Insurance Company's Application for Leave to Appeal.

[1] Intervening Defendant- Appellant Titan Insurance Company questions the use of a Statement Under Oath as part of the litigation process, in lieu of a deposition. Essentially, by taking a Statement Under Oath and having it admitted as substantive evidence, it deprived counsel for Defendant-Appellant of a meaningful opportunity to cross-examine this witness, contrary to the intent of the Michigan Court Rules regarding discovery.

The fact that Salvador Lorenzo has a son in Mexico who required medical treatment during the fall of 2009, lends credence to the fact that Salvador Lorenzo was, in fact, a resident and citizen of the Country of Mexico

Likewise, Plaintiff Gerardo Lorenzo Tienda admitted that he is a citizen of the Country of Mexico. During his deposition taken on August 18, 2010, Mr. Lorenzo presented counsel with his "credential from Mexico," which appears to be some type of voter registration card, complete with a fingerprint. See **Exhibit 2**. Utilizing *Google Translate*, the card is translated as follows:

> Federal Electoral Institute
> Federal Register of Voters voter card
> Name: Lorenzo Tienda Gerardo
> Domicile: San Felipe AV17
> Barr AH 43710 La Palma Sta
> Tulancingo De Bravo HGO
> See **Exhibit 3**.

Please note that Plaintiff Tienda's home city of Tulancingo De Bravo is located in the Mexican State of Hidalgo, northeast of Mexico City. See **Exhibit 4**, results of internet search for "Tulancingo De Bravo, Mexico."

Similarly, Sylvia Lopez Gomez testified, in her deposition, that she was born in Mexico, which is confirmed by a store-bought photo identification card.[2] See **Exhibit 5**. Again, for purposes of this discussion, it does not matter precisely where Salvador Lorenzo and his companions were residents of- Florida, North Carolina or Mexico. They simply are not "residents" of the State of Michigan.

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[2] Contrary to the statements made by Defendant-Appellee Integon National Insurance Company, in its Answer to Titan's Application for Leave to Appeal, the ID card presented by Sylvia Gomez was **not** an authorized State of Michigan identification card. In her deposition, she was asked "who issued this Michigan photo identification card" and she replied, "a – a store in Grand Rapids." (Deposition of Sylvia Lopez Gomez, 8/18/2010, p 32.) The Court can take judicial notice of the fact that state ID cards are not issued out of party stores, but rather out of the Secretary of State's Office. Furthermore, a closer examination of the ID card, attached as **Exhibit 4**, reveals that it is "non-US. Government" and the serial number is obviously meaningless, as State ID cards, issued by the State of Michigan, always bear the first letter of the individual's last name, followed by 12 numbers- just like a driver's license.

The only other case that discusses the issue of an out-of-state resident, in the context of a migrant farm worker, is the Court of Appeals' decision in *Soto, supra.* This case was discussed at some length in the Court of Appeals' Opinion in this matter but, for inexplicable reasons, was not followed. In *Soto*, Plaintiff, a Mexican-American farm worker, traveled to Michigan from Texas with his wife and three of his four minor children in June of 1974, in order to secure employment as a fruit picker. Due to his illness, he was unable to continue with his employment and his wife filed an ADC application. The caseworker denied Plaintiff application for ADC benefits on the basis that Plaintiff was not a resident of the State of Michigan. Plaintiff then requested a hearing before an administrative law judge in September of 1974 and the administrative law judge upheld the caseworker's denial of assistance. The administrative law judge's decision was approved by the Michigan Department of Social Services in November of 1974. Plaintiff appealed to the Van Buren County Circuit Court, which likewise affirmed the decision of the Department of Social Services.

On appeal, the Court of Appeals likewise affirmed and, in doing so, the Court of Appeals relied upon federal regulations regarding assistance payments – 45 CFR 233.40(a)(1)(2)(1976)- to determine that Plaintiff was not a "resident" of this State at the time he applied for assistance. The federal regulation defining "resident' is nearly identical with the Michigan statutory definition of the term "resident" found in the Social Welfare Act, MCL 400.32(2):

> "A resident of a state is one who is living in the state voluntarily with the intention of making his home there and not for a temporary purpose."

In affirming the decision of the Department of Social Services to deny benefits to these out-of-state residents, the Court of Appeals cited, with approval, the opinion of the caseworker who initially denied the claim:

> "The reason that I denied them was because of the law that says a resident of a state is one who is living in the state voluntarily with

> the intention of making his home here and not for a temporary purpose."
>
> *Soto, 251 NW 2d at 295.*

After examining the basis for the initial denial, including the fact that the Sotos continued to have connections in the State of Texas, the caseworker went on to note that a few months after the initial denial, the Sotos moved to **permanent housing in Van Buren County** and, at that point, they were approved for benefits. **Again, the importance of the *Soto* decision is that, in order to qualify as a Michigan resident, there must be some indication, on the part of the individual claiming residency, that he or she is not just physically present in the State of Michigan, but also intends to make his or her home here.** By contrast, neither Salvador Lorenzo nor the two injured Plaintiffs ever had any intention of making their home in the State of Michigan. Again, simply staying in the State of Michigan for a temporary purpose, such as securing seasonal employment consistent with one's status as a migrant farm worker, is simply not sufficient to establish one's self as a "resident" of this state.

In fact, the State of Michigan itself draws a distinction between "residents" and "migrants," for purposes of providing public assistance, as manifested in the documentation attached to Defendant-Appellee Integon National Insurance Company's Answer to Titan Insurance Company's Application for Leave to Appeal – Exhibit F. Exhibit F consists of a copy of Sylvia Gomez' "Michigan personal identification card" (see Defendant-Appellee Integon National Insurance Company's Answer to Titan Insurance Company's Application for Leave to Appeal, page 9), which Titan has already established is not an official identification card. More interesting, though, is the letter from Kate White R.D., the WIC Coordinator with the InterCare Community Health Network dated October 8, 2010. This letter states, in pertinent part:

> "I was able to find some registration and benefit documents related to Sylvia Lopez and her participation in the WIC program in Michigan. The InterCare Community Health Network WIC

> Program is located in six counties and ten locations throughout southwest Michigan. We service a large **migrant** as well as **resident** population in these areas.
>
> Sylvia is on WIC as a **migrant** participant in the Bangor clinic."

In other words, for purposes of providing WIC assistance, the State of Michigan and its affiliated agencies have drawn a distinction between a **migrant** participant and a **resident** participant. Therefore, neither Sylvia Gomez nor, by implication, her companions would be considered "residents" for the purpose or providing public assistance as they are, in fact, "migrants."

Indeed, attached as **Exhibit 6**, are the "migrant family eligibility" guidelines for receiving WIC benefits, effective June 1, 2009. These eligibility criteria were in effect at the time of the subject accident, and were established "to provide a uniform state-wide process for addressing the special concerns of migrant WIC families." The policy statement indicates that, when a migrant worker and their family apply for benefits, they are designated as **"migrants"** on the enrollment form – **not residents**. Their "migrant status" is verified at each certification. Policy A.3. further provides that:

> "Migrant farm workers and their family members may be certified when there is no proof or identity or residency. In these cases, the client/authorized person shall sign the No Proof of Identity and/or No Proof of Residency Attestation form."

Again, these eligibility criteria are attached as **Exhibit 6**, and simply reinforce the point that migrant farm workers, while eligible for public assistance due to the "special concerns of migrant WIC families," are simply not deemed to be "residents" of the State of Michigan because, as noted above, they simply have no intention of remaining in the State of Michigan for an extended or indefinite period of time.

CONCLUSION AND RELIEF REQUESTED

Again, for purpose of this analysis, it does not matter to Titan whether Salvador Lorenzo is a resident of the State of Florida, a resident of the State of North Carolina or a resident of the Country of Mexico. Under any scenario, Salvador Lorenzo is an "out-of-state resident," for purposes of MCL 500.3163(1). He had addresses in all three states, and probably has an address in Mexico as well. He is "of, relating to, or being from another state," to again quote the dictionary definition of the term "out-of-state" referenced *supra*. In fact, according to his Statement Under Oath, attached as Exhibit C to Integon National Insurance Company's Answer to Titan Insurance Company's Application for Leave to Appeal, Salvador Lorenzo now has "a permanent residence in Florida or North Carolina" and he has had the same since 2010:

> Q When he resided in Michigan during 2009, did he maintain a permanent residence in Florida or North Carolina?
>
> A He said yes, in 2010. Now he has a son who lives there and rents a place.
>
> Statement Under Oath of Salvador Lorenzo Guzman 2/7/2011, p 10.

Under these circumstances, the vehicle owner, Salvador Lorenzo, simply had no intention of making Michigan his home. At best, it was a temporary place of abode, and his presence in Michigan was necessitated solely by his migrant farm worker status. Under these circumstances, the Allegan County Circuit Court reached the right result, for the right reason, when it indicated that Salvador Lorenzo was not a resident of the State of Michigan, but was rather an out-of-state resident for purposes of MCL 500.3163(1). Accordingly, Intervening Defendant-Appellant Titan Insurance Company respectfully requests that this honorable Court grant it the relief requested in its Application for Leave to Appeal, reverse the decision of the Court of Appeals and to remand this matter back to the Allegan County Circuit Court with a reinstatement of that Court's Order granting summary disposition in favor of Intervening Defendant-Appellant Titan Insurance

Company, together with such other relief from this Court as may be deemed warranted under these circumstances.

Respectfully Submitted,

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Dated: 3/18/2014

STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF CHARLES H. GILMORE, by Personal Representative Mike Wilson, ESTATE OF JASON L. MEAD, by Personal Representative Ronald Mead, ESTATE OF MELISSA T. HANSEN, by Personal Representative Nancy Hansen, and CALVIN W. SCHALK, JR.,

Plaintiffs-Appellees,

v

NATIONWIDE INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED
January 15, 2004

No. 244825
Mecosta Circuit Court
LC No. 01-014750-AZ

Before: Markey, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Defendant insurance company appeals as of right a declaratory judgment entered in favor of plaintiffs in this action involving an automobile accident with multiple fatalities and the interpretation of insurance policies. Julie Erke, a college student, was driving the vehicle when it veered off the roadway and crashed. Specifically, the issue presented is whether Erke was a "resident" of the household where her parents and brother lived in Rogers City at the time of the accident. The trial court concluded that Erke was a "resident" for purposes of coverage under insurance policies issued by defendant and held by Erke's parents and brother, such that those policies would cover Erke's liability to plaintiffs for any negligence that may have caused the accident. We affirm, concluding that, under the totality of the circumstances and the relevant factors enunciated in case law, and giving the required deference to the trial court's findings, there was sufficient evidence to support the court's ruling that Erke was a "resident" with respect to the insurance policies.

I. BASIC FACTS

A. The Accident

On July 30, 2000, in the Big Rapids area, Erke was operating a Chevy Malibu, owned by Edward Langworthy, who was one of the passengers. Also in the vehicle were Calvin Schalk, Charles Gilmore, Jason Mead, and Melissa Hansen. According to the police report, the vehicle, going in excess of the speed limit, crossed the centerline, veered back into the right lane, ran off

1

the shoulder of the road, rolled over, and struck a rock and a tree. Gilmore, Mead, and Hansen all died as a result of the accident, and Schalk sustained serious injuries. Erke and Langworthy survived the crash. Plaintiffs asserted that Erke's negligence in operating the vehicle caused the accident, and that there was liability on Langworthy's part as owner of the Chevy Malibu.

B. The Insurance Policies

Erke had automobile liability coverage through a policy issued by defendant, and the policy limits provided coverage of $100,000 for each person injured and $300,000 for each accident. Defendant has offered the policy limit of $300,000 to settle the claims against Erke. Langworthy was insured through Allstate Insurance Company with policy limits identical to Erke's insurance coverage. Allstate has offered the policy limit of $300,000 to settle the claims against Langworthy.

Erke's parents and brother also had automobile insurance policies issued by defendant that were in effect on July 30, 2000. These policies provide that defendant will "pay damages for 'bodily injury' or 'property damage' for which any 'insured' becomes legally responsible because of an auto accident." The policies define "insured" as including any "family member." "Family member" is defined as "a person related to you by blood, marriage or adoption who is a *resident of your household.*" (Emphasis added). The parties agree that the issue presented below and on appeal solely involves whether Erke was a "resident" of her parents' and brother's household at the time of the accident. There is no dispute that Erke is "related" to the policy holders of the insurance policies in question, i.e., her parents and brother, nor any dispute that her parents and brother were residents of the family farmhouse in Rogers City when the accident occurred. Thus, we must review Erke's intentions, movements, and actions, including where she was staying or living, during the relevant time frame.

C. Julie Erke's College Years

Erke was born in 1979, and she lived in her parent's farmhouse in Rogers City with her parents and brother until she left for college. Erke graduated from high school in the spring of 1998. In the fall of 1998, she began attending Ferris State University in Big Rapids, where she lived in the dormitories ("dorms") as required by the university.[1] From fall of 1998 to spring of 1999, Erke lived in the dorms, and visited home during the Thanksgiving and Christmas vacation breaks. During the summer of 1999, she returned home from college and lived in the family household. Pursuant to university policy, as testified to by Erke, she could not stay in the dorms during summer months, and she was still required to live in the dorms when she went back to school in the fall of 1999.

During the 1999-2000 school year, Erke lived in the dorms and again visited home during the Thanksgiving and Christmas holiday breaks. After Erke completed her sophomore year in

[1] According to Erke, Ferris does not permit students to live outside of the dorms until they have accumulated 56 credit hours and reached the age of 20. Further, students could not remain in the dorms during the Thanksgiving and Christmas holidays.

the spring of 2000, she was no longer required to live in the dorms. In February 2000, in anticipation of the 2000-2001 school year, Erke signed a lease agreement to rent an apartment ("Rapids Apartments") in Big Rapids with the rental period commencing in mid-August 2000. Her father signed as a surety and guarantor on the lease. For the summer of 2000, Erke chose to take courses at Ferris. These courses started in mid-May 2000, and Erke decided to live with friends in a rental home on Madison Avenue in the Big Rapids area ("Madison home") until she could move into the Rapids Apartments in August; she did not stay at the Rogers City home in the summer of 2000. Erke was not named on any lease agreement covering the Madison home rental. Rather, when a friend moved out of the home, she took his place and simply paid rent directly to one of the other tenants (comparable to a sublessee). The utility bills were also not in her name. It was during the period of time that Erke was living at the Madison home, and before she was scheduled to move into the Rapids Apartments, that the accident occurred – July 30, 2000.

After the accident, Erke spent a week in a psychiatric hospital, and later chose not to move into the Rapids Apartments for which she had signed a lease. She spent about three weeks in August 2000 staying with the parents of a friend, and then started her junior year at Ferris at the end of August. Erke lived with three friends during the 2000-2001 school year in a double-wide trailer which they rented. She visited her family during the Thanksgiving and Christmas holiday breaks. Erke subsequently graduated from Ferris in May 2001 with an Associate's Degree. After graduation, Erke returned home and lived there until mid-August 2001, at which point she left to begin attending Central Michigan University.

Erke testified in her deposition that when she returned to her parents' home for the holidays during her freshman year, she slept on a couch in the living room for the Thanksgiving break but occupied her old bedroom during the Christmas break. With respect to the holidays during Erke's sophomore year, she slept on a couch.[2] Her mother had started using her old bedroom as a workshop for a home business. Erke testified, however, that her old bed still remained in the room.[3] She made the following statements in her deposition regarding her departure to Ferris:

> Yeah, I took – I don't own a lot. So when I moved out of the dorms – or when I moved to college, I took everything I owned to college with me, and I just carry – I still just carry – wherever I move I carry all my stuff with me. I don't own a lot of stuff.
>
> My first year in college, I took everything. I eventually had to take some stuff home because of the overcrowding in the dorms. But I mean, I took all my yearbooks, all of my plaques from high school. . . .

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[2] The deposition testimony reflected that Erke did not return to her parents' home at Easter.

[3] Erke testified that on one of the 1999 holiday visits her boyfriend slept in her old bedroom while she slept on the couch as her parents did not want them sleeping together.

Yeah, I mean everything with the exception of – like, work clothes for home or clothes that I've never worn are probably still there, if not thrown away. Stuff I never wanted to use again I didn't take.

I was a freshman in college. When I first moved to college, I took everything I had with me, thinking that I was never coming home again, 'cause I didn't know better.

[W]hen I moved out to go to college my first year, I came back, like, a week later to get something, and they had already put stuff in my room. I think we both were under the understanding that I wasn't coming back to ever live – occupy that room permanently. And eventually I stopped coming home altogether for a long time.

According to Erke, at the time of the accident, her belongings, for the most part, were kept at the Madison home. She stated, however, that some high school mementos, beanie babies, and other odds and ends remained in a closet in her old bedroom. Erke did not take a cat, given to her by a boyfriend, nor her dog when she moved to the dorms because animals were not allowed. Erke indicated that, with respect to her numerous moves, she simply hauled her belongings, which were not substantial, from place to place. Concerning Erke's intent, she provided the following deposition testimony:

Q. Was it your intention that, once you left home to begin college, that that was basically a severance and that your plans were to get your college education and degree and then continue with your life outside of Rogers City?

A. Yeah. All my life I've wanted to leave Rogers City. Yeah, I really had no intention of going back.

* * *

Q. And in fact, that summer of 2000 you stayed in Big Rapids once your courses were done from the winter semester?

A. Right; yes.

Q. No intention of going back home?

A. Winter of 2000?

Q. I mean, when the courses ended in the spring of 2000 and the summer began, you told us that you --

A. I only had a week off, and I started summer classes.

Q. And your intention was to stay in Big Rapids?

A. Yeah. That – I had no intention of ever going back and living at my house; to visit yes but –

Erke's deposition testimony, however, also reflected that she thought of her parents' home as her permanent address.[4] The affidavit of Erke's father provided that "[w]hen Julie moved out from my house in August 1998, I had no reason to believe that she ever intended to return to my house to live on a permanent basis."

At the time of the accident, Erke's driver's license reflected that her address was her parents' home in Rogers City, as did the police report concerning the accident. In May 2000, Erke's father purchased a car for Erke, and the title document, which was in her name, indicated that her address was that of her parents. The loan for the car was in her father's name and he paid the insurance, although Erke was to make payments to her father to cover the loan and insurance. The certificate of no-fault insurance and the insurance policy declaration sheet (issued by defendant) for the vehicle listed Erke's address as being that of her parents. At the time of the accident, Erke was covered under her parents' medical insurance. Although she never exercised her right to vote, Erke was registered to vote in Rogers City. Erke's parents claimed her as a dependent on their 1998 and 1999 tax returns but not on their 2000 tax return for which year she filed her own return. On Erke's 2000 tax return and her 2000 financial aid application for college, she listed the address of her parents as her address.

During Erke's first two years of college and up until the accident, her bills and personal mail were received at her dorm, or, later, at the Madison home. Unsolicited or junk mail for Erke was still being delivered to her parents' home. When the accident occurred, Erke was working two jobs in Big Rapids and paying her living expenses, including tuition, room and board, food, and utilities. Erke testified that, during all of college, she paid for all of her living expenses.

D. Trial Court's Ruling

We first note that defendant incorrectly frames the issue on appeal as being whether the trial court erred in denying defendant's motion for summary disposition under MCR 2.116(C)(10) and in granting plaintiffs' cross motion for summary disposition as to plaintiffs' action for declaratory relief. As accurately pointed out by plaintiffs, despite the filing of cross motions for summary disposition, the parties stipulated to have the trial court render a judgment, not in the analytical framework of a summary disposition motion pursuant to MCR 2.116(C)(10), but rather on the basis of a preponderance of the evidence with consideration of all the documentary evidence submitted just as if a trial had occurred. The parties agreed that the trial court had before it, all the evidence the parties wished to present, and all that remained was a

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[4] Erke testified as follows:

Q. Okay. So when you said your home address, you're talking Rogers City?

A. Yeah; my permanent address.

ruling on the effect of that evidence with respect to whether Erke was a "resident" of her parents' and brother's household.

All parties affirmatively indicated their approval of the following statement made by the trial court:

> The parties have done extensive discovery in preparation for the summary disposition motions. And, if I understand correctly, counsel – and please correct me if I misstate this – you're simply going to argue the question of the residency of the individual in question, with the plaintiffs going first, defendant responding, and me making the decision, doing so not in the C-10 analytical construct of giving either of you the benefit of the doubt, so to speak, but basically simply deciding, once all of the arguments are done and the evidence reviewed, whether, on a preponderance analysis, residency has or has not been established.

In rendering its decision from the bench, the trial court spent a considerable amount of time carefully and thoughtfully reviewing the facts in relation to the numerous factors espoused in case law, which we shall explore infra, regarding the determination of residency. The trial court rejected any argument that college students, as a matter of law, remained residents of their parents' household. The court stated that, in all candor, the case was very close. The trial court ruled that Erke was a "resident" of her parents' and brother's household.[5] Defendant appeals as of right.

II. ANALYSIS

A. Standard of Review

In light of the stipulation, we are not reviewing a judgment predicated on summary disposition analysis, but rather a judgment for declaratory relief predicated on the evidence presented as if a trial had occurred. In *Ladd v Ford Consumer Finance Co, Inc*, 217 Mich App 119, 133; 550 NW2d 826 (1996), rev'd on other grounds 458 Mich 876 (1998), this Court stated:

> A circuit court's decision whether to grant declaratory relief under MCR 2.605 is reviewed for an abuse of discretion. *Allstate Ins Co v Hayes*, 442 Mich 56, 74; 499 NW2d 743 (1993). Although this Court has sometimes opined that declaratory judgments are reviewed de novo, see, e.g., *Michigan Residential Care Ass'n v Dep't of Social Services*, 207 Mich App 373, 375; 526 NW2d 9 (1994), the Supreme Court's decision regarding the governing standard of review plainly controls. *Hauser v Reilly*, 212 Mich App 184, 187; 536 NW2d 865 (1995). Therefore, we are constrained to apply an abuse of discretion standard.[6]

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[5] The trial court's analysis of residency factors and details concerning the court's reasoning for its decision are discussed infra.

[6] In *Allstate Ins, supra* at 74, our Supreme Court ruled that "[a]ssuming the existence of a case or
(continued...)

The determination of domicile[7] is a question of fact for the trial court to resolve, and the court's decision will not be reversed on appeal unless the evidence clearly preponderates in the opposite direction. *Goldstein v Progressive Cas Ins Co,* 218 Mich App 105, 111; 553 NW2d 353 (1996); *Bronson Methodist Hosp v Forshee,* 198 Mich App 617, 631; 499 NW2d 423 (1993); *Dairyland Ins Co v Auto-Owners Ins Co,* 123 Mich App 675, 684; 333 NW2d 322 (1983).

B. Pertinent Case Law

We begin by reviewing the case law regarding the factors that should be considered in determining whether a person is a "resident" of a household. In *Workman v Detroit Automobile Inter-Ins Exch,* 404 Mich 477, 496-497; 274 NW2d 373 (1979), our Supreme Court stated:

> [B]oth our courts and our sister state courts, in determining whether a person is a "resident" of an insured's "household" or, to the same analytical effect, "domiciled in the same household" as an insured, have articulated a number of factors relevant to this determination. 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; (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household. [Citations omitted.]

In *Dairyland, supra* at 678-679, an argument was made, in a case involving competing insurance companies, that the injured party, though living in a trailer with his sister and grandfather in Petosky, was "domiciled" at his mother's household in Harbor Springs. The *Dairyland* panel noted that "this Court has not had the opportunity to consider the particular problems posed by young people departing from the parents' home and establishing new domiciles as part of the normal transition to adulthood and independence." *Id.* at 681. This Court, after first acknowledging the factors cited in *Workman,* added:

> Other relevant indicia of domicile include such factors as whether the claimant continues to use his parents' home as his mailing address, whether he maintains some possessions with his parents, whether he uses his parents' address on his driver's license or other documents, whether a room is maintained for the

---

(...continued)

controversy within the subject matter of the court, the determination to make such a declaration [declaratory judgment] is ordinarily a matter entrusted to the sound discretion of the court."

[7] The Michigan Supreme Court has indicated that residency and domicile are to be analyzed similarly. *Workman v Detroit Automobile Inter-Ins Exch,* 404 Mich 477, 496; 274 NW2d 373 (1979).

claimant at the parents' home, and whether the claimant is dependent upon the parents for support. [*Dairyland, supra* at 681-682.]

We now turn to a review of cases that specifically address college students. In *Montgomery v Hawkeye Security Ins Co,* 52 Mich App 457, 458-459; 217 NW2d 449 (1974), a civil action for assault and battery was filed against the plaintiff, and the plaintiff sought coverage to defend under his parents' homeowner's policy. The defendant insurance company maintained that the plaintiff was not a "resident" of his parent's household; therefore, it had no duty to defend or pay for any injuries. *Id.* at 459. The trial court found that the plaintiff was covered by the insurance policy, and this Court affirmed, stating:

> At the time of the incident Larry [the plaintiff] was 22 and a full-time student at Ferris State in Big Rapids, Michigan. Larry had lived at home with his parents in Flint except when in the service or, in this case, away at school. Larry's education at Ferris was being financed by G.I. benefits and support from his parents. His parents paid the rent on Larry's apartment at school. [*Id.*]

The *Montgomery* panel rejected the insurer's argument that a resident means only those actually dwelling in or occupying the physical premises named in the policy. *Id.* This Court stated that the term "resident" has no fixed meaning in the law; it has variable meanings depending on the context in which the word is used, and the meaning is to be determined from the facts and circumstances taken together in each particular case. *Id.* at 460-461, quoting Justice Levin in *Ortman v Miller,* 33 Mich App 451, 454-455; 190 NW2d 242, 244 (1971).

In *Goldstein, supra* at 107, the plaintiff, an automobile passenger, was injured in a head-on collision occurring on I-94 in Detroit. Besides the insurance policy covering the vehicle involved in the accident, the plaintiff sought coverage under a liability insurance policy issued by the defendant to the plaintiff's father. *Id.* The plaintiff's father resided in Maryland, and the plaintiff was a college student living in Missouri at the time of the accident. *Id.* The plaintiff had previously resided in Maryland in his parents' home before going off to college. *Id.*

The *Goldstein* panel, addressing the question whether the plaintiff was "domiciled" in the same household as his parents for purposes of the insurance policy, relied on the factors enunciated in *Workman* and *Dairyland, supra. Goldstein, supra* at 111-112. This Court concluded:

> Here, the evidence indicated that plaintiff kept the majority of his personal possessions at his parents' home in Maryland, used his parents' address on his Maryland driver's license, had his own bedroom at his parents' home, which remained empty in his absence, and returned to Maryland during holiday breaks and between school years. The evidence further established that plaintiff was financially dependent upon his parents, who were paying for his college education, and that plaintiff's father claimed him as a dependent on his tax returns.
>
> Given the above evidence, we cannot say that the evidence clearly preponderates in the opposite direction. Consequently, we find no error in the

trial court's determination that plaintiff was domiciled with his parents at the time of the accident. [*Id.* at 112.]

C. Application and Discussion

Taking into consideration the language and factors from *Workman, Dairyland, Montgomery,* and *Goldstein,* we shall now review those factors in the context of the evidence presented to the trial court and the court's findings.

1. *The subjective or declared intent of Erke.*

The trial court first noted that teens or young adults often leave for college intending never to return, "only to find themselves pulled back almost inexorably from time to time to the nest, whether they want to or not, either by circumstances beyond their control, or their changing feelings toward that nest which they tried to leave." With regard to this factor, the trial court found that Erke's declared intent was not to move back home, but when one looked at the facts which evolved after she left home, Erke repeatedly returned to her parents' home. The trial court stated that there was nothing in the record to suggest any intent to permanently remain in the Big Rapids area.

It is true that Erke declared that it was her intention not to return to Rogers City and her parents' home; however, she also stated that she "didn't know better," and that she considered her parents' home as her permanent address. Moreover, as recognized by the trial court, intent must take into consideration the actual actions taken by Erke, which would reflect and have a bearing on her intent. Here, the reality was that Erke was a college student bouncing often from one place to another, including times when she returned to the security of her parents' home. Erke also used her parents' address for purposes of car insurance, her license, loan applications, tax returns, and other items. These events and facts suggest an intent to use her parent's home as an "anchor" in her life or a place to reside at times until she had found permanence in another location, which apparently has not yet occurred. The trial court did not make a specific finding on this factor, but the court's ultimate determination implicitly recognized that the facts surroundings Erke's life during the relevant time frame reflected an intent to use her parents' farmhouse as a home base.[8] We cannot conclude that the evidence clearly preponderates in the opposite direction.

2. *The formality of the relationship between Erke and the members of the household.*

The trial court found that the relationship between Erke and her parents and brother was "about as formal as it comes." The court stated "[i]t's genetic, biological; parent, child, sibling . . ." We agree and conclude that this factor clearly favors plaintiff as Erke is directly related by blood to her parents and brother, and grew up in their presence in the family

[8] We give little weight to the affidavit of Erke's father because it reflects his perspective and not the relevant perspective, i.e., Erke's.

farmhouse. On the other hand, Erke was merely living with friends and acquaintances in the Madison home and in the dorms. These relationships were very informal.

3. *Erke's lodging or living arrangements at the time of the accident.*

The trial court acknowledged that at the time of the accident, Erke was living in the Madison home and not at her parents' home. The trial court's conclusion is accurate, and this factor favors defendant's position.

4. *Erke's mailing address.*

The trial court found that Erke used as a mailing address, the dorms and the Madison home. But the court further found that she also used her parents' mailing address for various purposes. The trial court did not specifically rule whether this factor favored one party or the other.

Many of Erke's bills and personal mail were delivered to the dorms, and later to the Madison home. Unsolicited or junk mail was still delivered to Erke's parents' home. Additionally, documents related to Erke's 2000 tax return, her license, the Secretary of State, and car insurance were mailed to her parents' home. The trial court stated that the important documents referenced in the preceding sentence bore on her intent to use her parents' house as a home base. The evidence did not clearly preponderate in a direction opposite to the factual findings made by the trial court.

5. *The place where Erke kept her possessions.*

The trial court found that Erke maintained some possessions at her parents' home, although at this stage of her life, Erke did not have many possessions. The trial court did not specifically rule whether this factor favored one party or the other.

Erke stated that some high school mementos, beanie babies, and other odds and ends remained in a closet in her old bedroom. Her cat and dog remained at her parents' home. It appears that the majority of her possessions were kept with her from move to move, but as the court noted, Erke did not have a significant amount of possessions. Weighing this factor, we conclude that it favors a finding of non-residency, though we give it little weight considering the small amount of possessions owned by Erke.

6. *Address on Erke's driver's license and other documents*

In regard to this factor, the trial court stated:

> She did use her parents' address for her driver's license, voter registration [and] other important things in life, such as other forms of insurance . . ., and indeed this insurance.

The record supports the trial court's factual findings. Erke's driver's license contained the address of the farmhouse in Rogers City. Erke also used her parents' address with respect to car title and insurance documents. Further, Erke used her parents' address for purposes of

college loan applications, tax returns, and voter registration. This factor favors plaintiffs and a finding that she was a "resident" of her parents' home.

7. *The maintenance of a room for Erke in the Rogers City farmhouse.*

Regarding this factor, the trial court simply indicated that Erke's room at her parents' home was "in a state of flux."

The evidence indicates that, while Erke's old bedroom was used by her mother for a home business at one time, Erke's bed remained in the room for use. Also, Erke used the bedroom subsequent to the accident. The evidence supports the trial court's finding that the room was in a state of flux, and we conclude that this factor favors neither party and should be given little weight.

8. *Erke's dependence on financial support from her parents for living expenses and school.*

The trial court found that Erke was providing the bulk of her own support. We agree that the evidence supports this conclusion; however, there was evidence that Erke was not totally financially independent of her parents. Erke's father bought her a car in the summer of 2000 shortly before the accident, and he also paid for the insurance, although Erke explained that she was to repay her father. Further, Erke's father signed as a surety and guarantor on the lease for the Rapids Apartments. Moreover, at the time of the accident, her parents provided her with medical insurance. We also note that Erke's father paid for attorney bills that arose out of the unfortunate tragedy.

III. CONCLUSION

After analyzing the relevant factors, the trial court summed up its reasoning in support of the conclusion that Erke was a "resident" of her parents' and brother's household. The trial court stated:

> Under the totality of the circumstances that I have commented on and been referred to, I believe that the preponderance of the evidence is that Julie Erke still remained in resident status with her parents' household at the time of this accident. She was striving to be otherwise, but had not crossed that threshold in terms of this policy language.
>
> Principal among the factors in my mind, the one that I have given the greatest weight, although not the entire weight, because none is controlling, is that for the most important things of life, her parents' address is the one that she relied upon. It was what I referred to as the anchor in her life. She was, I'll use the word, bouncing, although that really doesn't capture it, from location to location while a student. There was no permanence in her residency while a student, other than the security of her home base with her parents. And that's, in my mind, what the final analysis actually comes down to. And that covers a vast amount of information which has been provided to me. That is the bottom line.

> As such, I find that plaintiffs have established their proposition that Julie Erke was a resident, under this policy language, of her parents' household, also her brother's household, at the time of this accident.

We agree with the trial court's belief that this case presented a close call. We opine that the trial court's analysis of the relevant factors, overall, was consistent with the record. We further opine that the trial court displayed sound, logical reasoning in providing a basis for its conclusion that Erke was a resident of the family farmhouse. The evidence did not clearly preponderate in the opposite direction,[9] nor was it an abuse of discretion to grant declaratory relief in favor of plaintiffs. To conclude otherwise would render the review standards meaningless.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Michael J. Talbot

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[9] We note the following language in *Bronson, supra* at 631, which was an action where there was evidence, as here, supporting the residency arguments of both parties:

> In the case at bar, there are certainly facts that support both the conclusion that Mark Forshee was domiciled with his mother and that he was not domiciled with his mother. The trial court resolved the facts in favor of the conclusion that Mark Forshee was domiciled with [his mother]. While there were facts to support the opposite conclusion, we cannot say on review that the evidence clearly preponderated in the opposite direction. Accordingly, we affirm the finding of the trial court.

Here, giving the required deference to the trial court's findings, we also affirm.

EXHIBIT 1
Tienda
8/18/10

INSTITUTO FEDERAL ELECTORAL
REGISTRO FEDERAL DE ELECTORES
CREDENCIAL PARA VOTAR

NOMBRE
LORENZO
TIENDA
GERARDO
DOMICILIO
AV SAN FELIPE 17
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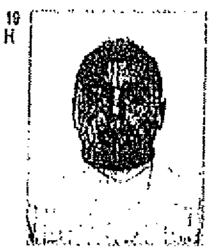
TULANCINGO DE BRAVO ,HGO.

EDAD 19
SEXO H



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ESTADO 13 DISTRITO
MUNICIPIO 070 LOCALIDAD 0002 SECCIÓN 1644

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2

Translate

Instituto federal electoral	Federal Electoral Institute
Registro Federal De Electores	Federal Register Of Voters
Credencial para votar	Voter card
nombre	name
Lorenzo	Lorenzo
Tienda	shop
Gerardo	Gerardo
Domicile	domicile
AV San Felipe 17	San Felipe AV 17
Barr La Palma Sta AH 43710	Barr AH 43710 La Palma Sta
Tulancingo De Bravo, HGO	Tulancingo De Bravo, HGO
Folio 0713042108359	Folio 0713042108359
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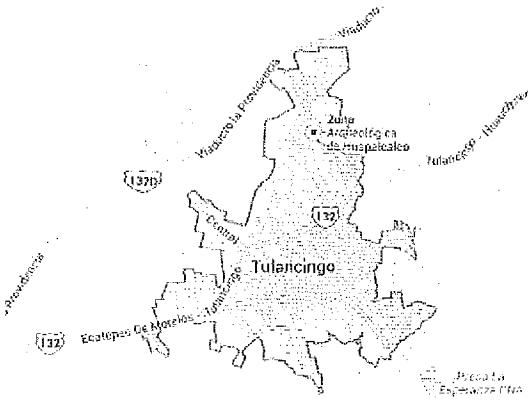


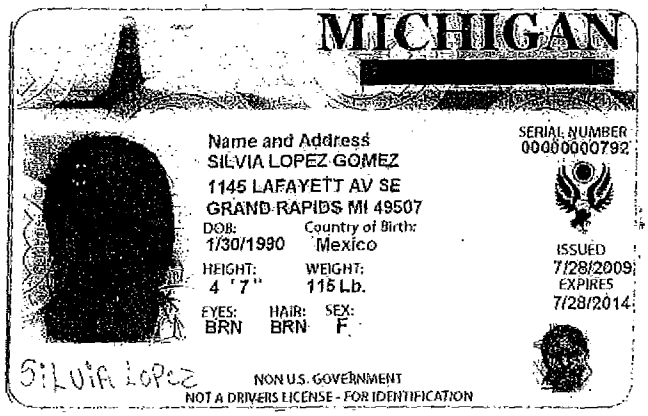
4

Tulancingo, HGO
Mexico

Directions

Getting around
Terrain

Ex 1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1145 LAFAYETT AV SE
GRAND RAPIDS MI 49507
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Country of Birth: Mexico
HEIGHT: 4 '7"
WEIGHT: 115 Lb.
EYES: BRN
HAIR: BRN
SEX: F
SERIAL NUMBER
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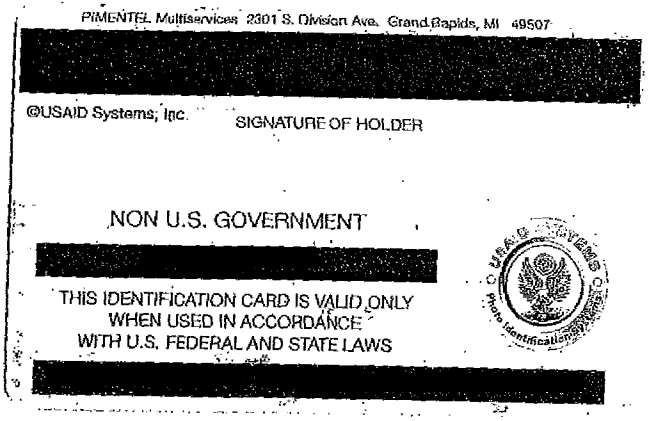
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2.0 Certification/Eligibility *Effective Date: 6/1/09*

2.12 Migrant Family Eligibility

PURPOSE: To provide a uniform statewide process for addressing the special concerns of migrant WIC families.

A. POLICY

1. Migrant workers and their families shall be designated as migrants upon enrollment, and migrant status shall be verified at each certification.

2. Migrant farmworkers and their families shall be given an appointment within 10 days of their request for WIC services. (See Policy 3.01 Processing Standards and Appointment Scheduling)

3. Migrant farmworkers and their family members may be certified when there is no proof or identity or residency. In these cases, the client/authorized person shall sign the No Proof of Identity and/or No Proof of Residency Attestation form. (See Policies 2.02 Residency, 2.03 Identity, and 2.04 Income Determination)

   a. Residency requirements mean that applicant/client currently resides in Michigan without regard to immigration status.

4. Income shall be determined for migrant farmworkers once every 12 months. An in-stream migrant farmworker, who has a Verification of Certification that indicates income verification has been performed with the last 12 months, is income eligible.

5. The income documentation requirement does not apply to a migrant family for whom the necessary documentation is not available or for whom the agency determines the income documentation requirement would present an unreasonable barrier to participation (See Policy 2.04 Income Determination).

   Income may be self-declared where no proof of income exists. When income is self-declared, the client/authorized person must sign the No Proof of Income Attestation form.

6. The date of income verification shall be documented.

7. Local agencies shall accept Verification of Certification cards from migrant clients or their family members (See Policy 3.05 Transfers).

8. Local agencies shall issue a completed VOC for every migrant family member currently certified at each certification or upon request. (See Policy 2.19 Verification of Certification)

B. DEFINITIONS

Migrant farmworker An individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last 24 months, and who establishes, for the purposes of such employment, a temporary abode.

References:
7 CFR 246.7(c)(2)(i), (d)(2)(ix), (f)(2)(iii)(A), (k)(2)

Cross-References:
- 2.02 Residency
- 2.03 Identity
- 2.04 Income Determination
- 2.19 Verification of Certification
- 3.01 Processing Standards and Appointment Scheduling
- 3.05 Transfers