

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA ARMISTED, as next of friend of
JONATHAN BOYCE,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Cross-Defendant-
Appellant,

and

MIC GENERAL INSURANCE COMPANY, a
GMAC Insurance Company,

Defendant-Cross-Plaintiff-Appellee,

and

ALLSTATE INSURANCE COMPANY,

Defendant-Cross-Defendant-
Appellee.

UNPUBLISHED
September 20, 2005

No. 262037
Oakland Circuit Court
LC No. 2003-054394-NF

Before: Fitzgerald, P.J., and Cooper and Kelly, J.J.

PER CURIAM.

This is a priority dispute between no-fault automobile insurance companies regarding personal protection insurance benefits (PIP) owed to Jonathan Boyce. In granting defendant Allstate Insurance Company's motion for summary disposition, pursuant to MCR 2.116(C)(10), the trial court ruled that defendant State Farm Mutual Automobile Insurance was responsible for

PIP benefits because, although Boyce was living with foster parents¹ at the time of the accident, he was permanently domiciled in the home of his mother, State Farm's insured. The issue on appeal is whether Boyce was "domiciled" in his mother's home or at the foster home at the time of the accident for purposes of determining PIP benefits under MCL 500.3114(1). We affirm.

Allstate moved for summary disposition under MCR 2.116(C)(8) and (C)(10). However, because the trial court relied on matters outside the pleadings, review under MCR 2.116(C)(10) is appropriate. *Driver v Hanley (After Remand)*, 226 Mich App 558, 562; 575 NW2d 31 (1997). We review de novo a trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Summary disposition should be granted under MCR 2.116(C)(10) when review of the admissible evidence in a light most favorable to the nonmoving party demonstrates there is no genuine issue of material fact that would preclude judgment to the moving party. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (2003).

State Farm argues that defendant MIC General Insurance Company (MIC) was responsible for Boyce's PIP benefits because the policy MIC issued to the foster parents provided coverage for a "family member" which was defined in the policy as including "a ward or foster child" who was a "resident" of the household. We disagree.

MCL 500.3114(1) provides in relevant part:

Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

Accordingly, in determining whether an insurer is liable for PIP benefits, under MCL 500.3114(1), there must be a determination of (1) whether a party is a relative of the insured and (2) whether the party is domiciled in the same household as the insured. It is undisputed that Boyce is considered a relative of his foster parents. *USF & G v Citizens Ins Co*, 241 Mich App 83, 86-89; 613 NW2d 740 (2000). The question remains whether he was "domiciled in the same household." *Id.*

The determination of domicile is generally a question of fact. However, when the underlying facts are not in dispute, domicile is a question of law for the court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002).

The relevant factors in deciding whether a person is domiciled in the same household as the insured include: (1) the subjective or declared intent of the

¹ MIC General Insurance Company insured the foster parents, Marelene and Heyward Williams. Allstate insured the driver of the vehicle that was involved in the accident in which Boyce was injured.

claimant to remain indefinitely in the insured's household, (2) the formality of the relationship between the claimant and the members of the household, (3) whether the place where the claimant 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.

When considering whether a child is domiciled with the child's parents, other relevant indicia include: (1) whether the child continues to use the parents' home as the child's mailing address, (2) whether the child maintains some possessions with the parents, (3) whether the child uses the parents' address on the child's driver's license or other documents, (4) whether a room is maintained for the child at the parents' home, and (5) whether the child is dependent upon the parents for support. [*Id.* at 364-365 (citations omitted).]

“In considering these factors, no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others.” *Workman v DAIIE*, 404 Mich 477, 496; 274 NW2d 373 (1979).

In this case, it was ordered that Boyce be removed from Armisted's home to “temporary” custody of the court. Moreover, the social services report indicates that “Jonathan would like to return home.” Boyce in fact returned home after only three months at the foster home. Boyce testified at his deposition that while he was a temporary ward in the Williams' foster home, he was permitted to go back and visit his mother on weekends about every two weeks. Boyce also indicated that he maintained his bedroom at his mother's house with computer, clothes, wall decorations, dresser and other “kid stuff.” Boyce testified that while he was staying with the foster home, he frequently shared his room with two other foster boys, although he had his own room which he could have used. Boyce stated that the only thing he had that was his own at the Williams' home was his clothing. Boyce also testified that when he was at the Williamses, they provided money for him if he needed it. But Armisted testified at her deposition that the \$200 per month in Social Security money she received for Boyce was sent to the Williamses to be given to Boyce. On the basis of this evidence, we conclude that the trial court correctly determined that plaintiff was domiciled at his mother's home at the time of the accident. Therefore, the trial court did not err in granting summary disposition to Allstate and ruling that State Farm was responsible for Boyce's PIP benefits.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jessica R. Cooper

/s/ Kirsten Frank Kelly