STATE OF MICHIGAN

COURT OF APPEALS

VINCENT CHANEY, Plaintiff-Appellant,	UNPUBLISHED January 7, 2014
v	No. 311513 Wayne Circuit Court
TITAN INDEMNITY COMPANY, Defendant-Appellee.	LC No. 11-008013-NF

Before: M. J. KELLY, P.J., and CAVANAGH and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court order that granted summary disposition in favor of defendant on plaintiff's action for personal protection insurance (PIP) benefits under his mother's no-fault policy. The controlling question concerns plaintiff's domicile at the time of accident, when he was still a minor. Because there is a court order indicating that, as a matter of law, he was domiciled with his mother, we reverse and remand for further proceedings.

On July 3, 2010, plaintiff, while a minor, was a passenger in a car that was involved in a motor vehicle accident. Plaintiff suffered injuries to his shoulder and head. At the time of the accident, plaintiff lived with his half-sister in a home owned by his mother at 16701 Greydale Avenue in Detroit. His mother lived in a home in Grand Blanc. There was evidence that his mother spent two or three weekends per month at the Detroit home. Plaintiff sought PIP benefits under his mother's insurance policy with defendant as "a relative . . . domiciled in the same household" under MCL 500.3114(1). Defendant refused to pay and plaintiff timely filed suit. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10) on the grounds that plaintiff was not domiciled with his mother.

We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(10). *Ernsting v Ave Maria College*, 274 Mich App 506, 509; 736 NW2d 574 (2007). "When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party." *Id*. at 509-510. All reasonable inferences are to be drawn in favor of the nonmoving party. *Dextrom v Wexford Co*, 287 Mich App 406, 415; 789 NW2d 211, lv den 488 Mich 853 (2010).

"Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled

to judgment as a matter of law." *Ernsting*, 274 Mich App at 509. "This Court is liberal in finding genuine issues of material fact." *Jimkoski v Shupe*, 282 Mich App 1, 5; 763 NW2d 1 (2008). "A genuine issue of material fact exists when the record, giving the benefit of any reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ." *Ernsting*, 274 Mich App at 510.

Critical to our decision is the Supreme Court's opinion in *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013), issued after the trial court's ruling and during the pendency of this appeal. In *Grange*, the Court addressed the question of "whether a family court order establishing the custody of minor children is conclusive evidence of a child's domicile for purposes of determining coverage under MCL 500.3114(1)[,]" and concluded:

> We hold, consistent with traditional definitions of the term "domicile" under the common law and as that term is used in MCL 500.3114(1), that a child of divorced parents has only one domicile at any given point in time. Further, in the event that the child's parents are divorced and a family court has entered an order relating to custody, we hold, consistent with the common law of domicile as it pertains to minors and the legally binding nature of custody orders, that the child's domicile is established by operation of law and that the custody order is thus determinative of the child's domicile for all purposes, including the no-fault act. [*Id*. at 481.]

At oral argument in the instant matter, plaintiff presented this Court with a default judgment of divorce, dated October 21, 1993[1] and requested that we take judicial notice of it. MRE 201(e); see also *People v Burt*, 89 Mich App 293, 297; 279 NW2d 299 (1979). That judgment provided that plaintiff's mother "is awarded the care, custody, maintenance and education of" plaintiff.

Absent subsequent changes to that custody order, we would conclude, consistent with *Grange*, that on the date of the accident plaintiff was domiciled with his mother as a matter of law for purposes of MCL 500.3114(1).[2] Although defendant did not object to plaintiff's presentation of the judgment of divorce at oral argument, defendant remains entitled to challenge the authenticity of the judgment and to introduce any subsequent orders modifying that judgment.

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[1] *Chaney v Fields*, unpublished default judgment of divorce of the Wayne Circuit Court, issued October 21, 1993 (Docket No. 98-218457 DM).

[2] Defendant acknowledges that plaintiff is domiciled at the Detroit address, but argues that his mother is not. Accordingly, defendant asserts, plaintiff is not domiciled with his mother under MCL 500.3114(1). We reject this argument because, under *Grange*, plaintiff is domiciled with his mother as a matter of law given the custody order; where plaintiff or his mother currently "reside" is irrelevant. 494 Mich at 481. If plaintiff's mother ever changed plaintiff's residence, she may have violated the judgment of divorce. However, that violation would not change plaintiff's domicile absent a court order to the contrary.

Accordingly, we reverse the trial court's grant of summary disposition in favor of defendant and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Douglas B. Shapiro