STATE OF MICHIGAN

COURT OF APPEALS

LORI CALDERON, Guardian of the estate of ARTHUR KRUMM, a Legally Incapacitated Person, Plaintiff/Counter-Defendant/Appellee,	UNPUBLISHED April 24, 2014
v	No. 313367 Wayne Circuit Court
AUTO-OWNERS INSURANCE COMPANY, Defendant/Counter-Plaintiff/Appellant.	LC No. 06-602100-NF

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

In this first-party suit to recover personal protection insurance (PIP) benefits, defendant/counter-plaintiff Auto-Owners Insurance Company (defendant) appeals by leave granted an October 29, 2012 trial court order entering judgment in favor of plaintiff/counter-defendant Lori Calderon, guardian of the estate of Arthur Krumm, a legally incapacitated person, on the issue of Arthur's domicile. The trial court entered the order after a jury determined that Arthur was domiciled in Michigan with his grandmother/adoptive mother Beverly Krumm at the time he was involved in a May 2003 automobile accident in North Carolina. For the reasons set forth in this opinion, we affirm.

I. FACTS AND PROCEDURAL HISTORY

This case involves Arthur's attempts to obtain PIP benefits from defendant under his grandmother/adoptive mother Beverly's no-fault automobile insurance policy. It is undisputed that the only insurance available to Arthur is through Beverly's policy and that Arthur is only entitled to coverage if he was domiciled with Beverly at the time of the accident in which he suffered traumatic brain injuries and was rendered a quadriplegic.

Following the accident, defendant initially paid benefits on behalf of Arthur and Arthur was eventually able to move into plaintiff's home where plaintiff and her husband provided 24-hour care. After an internal investigation, defendant ceased paying benefits, claiming that Arthur was not domiciled with Beverly at the time of the accident. Arthur was eventually transferred to

a Medicaid facility and on January 23, 2006, plaintiff commenced this lawsuit seeking to continue benefits; defendant counter-claimed seeking to recover the benefits it had already paid.

On July 30, 2007, the trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). This Court reversed, finding that plaintiff created a genuine issue of material fact for the jury regarding whether Arthur was domiciled with Beverly. *Calderon v Auto-Owners Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2009 (Docket No. 283313). Our Supreme Court denied defendant's application for leave to appeal. *Calderon v Auto-Owners Ins Co*, 488 Mich 984; 791 NW2d 117 (2010).

On remand, the trial court bifurcated the issues and held a four-day jury trial on the issue of domicile. The following is a summary of the evidence introduced at trial.

Beverly was deceased at the time of trial, but the trial court admitted her deposition testimony. Beverly testified that she lived at 5529 Lund Road for the past 30 years. She lived with her husband Lloyd Krumm until he died in 1997. Lloyd and Beverly adopted Arthur when Arthur was four years' old. Arthur lived with her and Lloyd. After graduating high school, Arthur worked in the area until about 2002 or 2003. Beverly testified that in the winter, the builders did not work so about "two or three years ago" Arthur went to Arkansas to visit his friend Bill to do some roofing. Beverly testified that, at some point, Arthur returned to Michigan by bus and helped build a church. She knew of only one other time that Arthur went to visit Arkansas. Arthur did not bring his tools to Arkansas because Bill was going to provide them.

Beverly testified that, prior to going to Arkansas there were only two occasions when Arthur moved out of her home. At one point after high school graduation, Arthur rented a place but he could not afford it and he moved back in with Beverly. On another occasion, after Beverly yelled about alcohol, Arthur moved "down the road" with a friend for about two months but "he always came back home." Arthur also lived with Tonya in an apartment in Kalkaska for two or three months, but he moved back in with Beverly because they kept fighting. Beverly repeated that Arthur, "always came back home" and explained that he "stayed here a lot."

Beverly explained that in about 1997, Tonya Krumm, and her three kids briefly lived with her and Arthur. Beverly kicked Tonya out of the house, but Arthur stayed and continued to live with Beverly. Beverly did not know that Tonya and Arthur were married.

Beverly testified that her house had three bedrooms on the main floor, one of which she always kept for Arthur. Beverly explained that, other than some clothing, Arthur never removed his belongings and he had a bed there. After the accident, Beverly sent Arthur's things to Lori. She had his work tools moved to the shed and she cleaned out his top dresser drawer. Beverly testified that Arthur was not registered to vote, he had checking accounts at a credit union, and the state mailed Arthur something to her residence a few weeks ago. She stated that, one year before the accident, she thought Arthur was residing with her, but stated that she was "not sure." Beverly then testified that Arthur lived with her, but she did not know the dates.

Beverly testified that the longest period of time that Arthur was away from her home was two to three weeks; otherwise, Arthur lived with her and worked in the area for a local builder. After Lloyd died, Arthur helped Beverly around the house and took care of her car. She stated

that Arthur stored his work tools at her house and he was gone for about two to three weeks before he was in the accident.

Plaintiff introduced portions of Tonya's deposition testimony. Tonya testified that she and Arthur went to North Carolina in 1997, where they were married and rented an apartment. Tonya and Arthur stayed there for about a year and Arthur worked for Scott Barber doing roofing. Arthur was extradited back to Michigan where he spent a year in jail. While Arthur was in jail, Tonya and her children stayed with Beverly. After Arthur was released, Tonya and Arthur lived with Beverly for about a year; Tonya testified that, all told, she stayed with Beverly "on and off for awhile." Tonya explained, "There's been so many places that we lived in."

Tonya testified that in July 2002, Arthur borrowed a Ford Explorer from a friend and drove to Arkansas. At the time, Tonya was living with her sister. One month later, in August 2002, Tonya met Arthur in Arkansas and the two stayed there until Arthur was involved in the car accident in May 2003. When Tonya arrived in Arkansas, the Explorer was wrecked and Arthur did not have any means of transportation. He did not return to Michigan. Tonya and Arthur lived at the Chief Motel for two or three weeks, then they rented a place at Pump Station Road. Arthur worked for Larry Corbitt at the time. Tonya testified that she and Arthur lived at the Pump Station Road residence for six months. During that time period when she and Arthur fought, Arthur stayed with either Janice Stunkel or a man named Ron.

After six months, in April 2003, Tonya and Arthur were evicted from the Pump Station Road residence. Tonya explained that Arthur worked and paid the bills, but he eventually failed to pay the rent. Tonya stated that Arthur was "fooling around" and "kept saying he was going to go back to Michigan." Tonya testified that Arthur stated he was tired of Arkansas and planned to return to Michigan. He was "ready to go back home" and go to jail.

During their last month at Pump Station Road, Arthur packed up his stuff to go back to Michigan, but Tonya convinced him to stay and pack everything and go back to Michigan together. She and Arthur were to go back to Michigan and "take care of" legal problems there.

Tonya testified that Arthur kept his belongings, bed, clothes, dressers and collectables at Beverly's house and never moved them out permanently. At the time of the deposition in October 2006, she thought his items were still there. Tonya testified that she and Arthur had "some things" in Arkansas. Arthur did not own any furniture or electronics other than a CD player, but he did have a television set at Beverly's house. Arthur also had furniture in his room at Beverly's house. Tonya explained that it was her understanding and belief that Arthur always considered Michigan his home and always intended to return to Michigan.

The trial court admitted the deposition testimonies of Barber, Corbitt and William Duhaime. Corbitt testified that he lived in Fayetteville, Arkansas, where he did roofing work. Corbitt thought Arthur came to Arkansas in September 2002, and stayed for about six or seven months. Arthur worked for Corbitt in the spring of 2003 on a few jobs before the car accident. Corbitt testified that Arthur never had a steady place to live in Arkansas and he would stay at motels and sometimes at Tonya's or Janice Stunkel's house. Corbitt thought that Arthur went back to Michigan around Christmas time. Corbitt testified that he thought that Arthur came to

Arkansas to get away from Tonya and the law and to get some work. Corbitt stated that Arthur did not plan on living or staying in Arkansas.

Corbitt testified that Arthur left Arkansas for North Carolina to work for Barber. Then, Arthur was going to "make rounds back up . . . to Michigan." Corbitt explained that Arthur took his things and "he had nothing here" when he left for North Carolina. He stated that Arthur never told him that he intended to stay in Arkansas permanently. He understood from talking with Arthur that Arthur always intended to return to Michigan and his home was in Michigan with his grandmother. Corbitt testified that Arthur's things were in Michigan and he came down to Arkansas with his truck, tools and some clothes. His understanding was that Arthur was running from the law and needed to earn some money. Corbitt testified that Arthur never planned to move from Michigan.

Barber testified that he was formerly married to Arthur's wife Tonya with whom he had three children. The two were divorced in 1995. In 2006, at the time of the deposition, Barber lived in Winston-Salem where he worked as a roofer for AAR Roofing. Barber previously lived in Michigan where he attended the same school as Arthur. Barber left Michigan in 1986 and started working for AAR and he eventually became a foreman at the company.

After leaving Michigan, Barber came into contact with Arthur on several occasions. When Arthur began dating Tonya in 1995, Barber would see Arthur on occasion when he picked his kids up in Ohio. Sometimes, Barber went to Beverly's house where Arthur lived to pick up his children. On yet another occasion, Barber hired Arthur to work for him in North Carolina, but Arthur quit after a couple weeks and went back to Michigan. Barber described Arthur as a "drifter" and he thought that Arthur returned to Beverly's house because that was the only place Barber "ever knew he lived" and because he called Beverly's number to get in touch with his kids. The last time he called the kids at Beverly's house was in 1998.

Barber did not have contact with Arthur from about 1998 until about two weeks prior to the accident in May 2003 when Arthur called him and told him that his kids were being mistreated. Barber testified that he and Arthur arranged for Arthur to bring his kids to North Carolina. Then, Arthur was to work for Barber for a couple weeks; Barber would pay Arthur well and then he would be on his way "home" to Michigan, but Barber was not sure of Arthur's plans. He explained, that he thought Arthur was "heading this way to go home" to Beverly's house in Michigan, but he stated, "I don't know for sure." There was no talk of Arthur moving to North Carolina to work permanently for Barber.

About one week before the accident, Crystal Tyner drove Arthur and Barber's children from Arkansas to Barber's home in North Carolina. Arthur was going to start working for Barber in about a week. However, Arthur never made it to work and he was involved in the accident about one week later.

Duhaime testified that he knew Arthur from grade school. Duhaime moved from Michigan to Arkansas in 1995 or 1996 and ran a roofing company. Duhaime did not know the year Arthur came to Arkansas, but he recalled that Arthur contacted him about doing roofing work in Arkansas. Duhaime testified that Arthur drove a Ford Explorer from Michigan to Arkansas and showed up at his house with "all his tools" ready for work. Duhaime did not recall

the month or the time of year that Arthur arrived in Arkansas and he did not recall if Arthur stayed in Arkansas for more or less than a year.

Arthur worked for Duhaime for about a month, but because Arthur had a serious drinking problem, he was of no use to Duhaime. Arthur then went to work for Corbitt. Duhaime testified that Arthur stayed at motels or stayed with various women. Duhaime testified that Arthur would stay a few weeks then go back home to Michigan for a week then come back to Arkansas. Duhaime knew that Arthur went back to his grandmother's house in Michigan because he would contact Arthur by telephone there. Duhaime also testified that when he received calls from Arthur, Beverly's number would appear on his caller ID. Other than the calls to and from Beverly's home, Duhaime did not have any knowledge that Arthur went back to Michigan after he arrived in Arkansas. Duhaime testified that Arthur may have stayed at motels, with friends, or at Tonya's house. Duhaime stated that he knew that Arthur stayed in various places because that is what Arthur told him.

On cross-examination, Duhaime testified that his understanding was that Arthur's home was in Michigan at his grandmother's house. To his knowledge, Arthur kept his belongings there and had a bed there. Arthur brought a "few clothes" and tools with him to Arkansas. He testified that Arthur came down to Arkansas to "work, and hang out, party, do his thing and then go back home." Duhaime never had any knowledge or belief that Arthur intended to stay in Arkansas indefinitely. He explained that, every time Arthur came down to Arkansas, he always went back home to Michigan. Every time Arthur called him from Michigan, Beverly's phone number showed up on his caller ID.

Plaintiff called two of defendant's claim representatives: Glenn Schneider and James Podlesny. Schneider testified that he worked on Arthur's PIP claim at the time it was submitted. Schneider hired Dave Morrisette of Superior Investigations to investigate the claim. Schneider testified that Morrisette interviewed Beverly and confirmed that Arthur had a bedroom, clothing, and a dresser at Beverly's home and mail was addressed to Arthur there. There were clothes "strewn about" the room and items in a closet. Arthur had a Michigan state ID card with Beverly's 5529 Lund Road address on it. Schneider agreed that "6 of the 9 factors" for domicile were met. Schneider testified that defendant stopped paying benefits after it learned that Arthur had bank records, police records, fines, and utility bills in Arkansas. Schneider testified that Arthur had a bank account in Arkansas and had personal checks. The checks listed the Pump Station Road address, but also contained Arthur's Michigan ID number.

Podlesny was assigned the underinsured portion of Arthur's claim. In March 2005, Podlesny hired Midwest Intelligence to investigate the claim. The court did not admit the entire claim file, but allowed plaintiff to direct the witness to certain parts of the file that showed objective evidence related to domicile. Podlesny testified that he relied on reports from the private investigation firm Sapp Bowman & Teague (Teague) in North Carolina. Podlesny reviewed Arthur's criminal records. Podlesny agreed that a report from Teague indicated that from September 1996 through July 2003, Arthur's address was 5529 Lund Road in Fife Lake, Michigan. However, Podlesny agreed with defendant that the report listed many addresses that were linked to Arthur. He agreed with plaintiff that the Lund Road address was listed first. Podlesny did not find anyone to testify that Arthur established domicile in North Carolina.

Robert Calderon testified that he lived with Lori, his wife, in White Lake. He met Lori in 1996 or 1997 and they dated and then married. While he and Lori were dating, he visited Beverly's home and met Arthur and Lori's family. He stated that there was no question that Arthur lived at Beverly's home. Arthur had a bedroom and belongings there and he was present every time Robert visited. Robert testified that he and Lori visited Beverly in the summer and on Thanksgiving. Arthur's belongings were always at Beverly's. Arthur never announced that he was moving out and he did not have a housewarming party. Before the accident, there was no event that led Robert to believe that Arthur had moved out of Beverly's house. Robert did not know that Arthur and Tonya were married. He stated that the two were in an "on-again-off-again" relationship that was not a "pretty sight." Robert did not attend a wedding for the couple.

Lori testified that she went to live with Beverly when she was a child. Shortly thereafter, Arthur came to live with Beverly and Beverly adopted him. Arthur had a bedroom at Beverly's house and kept furniture and personal belongings there. Lori testified that Arthur did not permanently move out of Beverly's house and he did not have another address. Lori testified that Arthur would go to North Carolina when there was no work, but he would always come back. She stated that Arthur also went to do work for Duhaime and would visit friends in North Carolina. Lori testified that she often visited Beverly's house and she last saw Arthur there in the fall of 2002 or the spring of 2003 on a visit. Lori did not know that Arthur married Tonya.

Lori testified that at the time of the accident, police were looking for Arthur and Arthur wanted to come back to Michigan to "make things right." Lori agreed that Arthur's marriage license had a North Carolina address on it and she agreed that Arthur opened a bank account at a bank in Fayetteville. Lori paid Arthur's $28 Waste Management bill from Arkansas. After the accident, Lori arranged to bring Arthur from a clinic to her home. She and her husband picked up Arthur's things from Beverly's home.

Finally, Deputy Kevin Schaub of the Kalkaska County Sheriff's Department (KCSD) testified at a deposition and the deposition was read into the record at trial. Schaub testified that on January 23, 2002, he came in contact with Arthur when Arthur was a passenger in a vehicle. Schaub issued an open intoxication citation to Arthur and he wrote a report. Schaub testified that Arthur told him that he was living at 10549 Grand Kal in Fife Lake and that is the address that Schaub wrote in his police report. However, on the citation, Schaub indicated Arthur's address was 5529 Lund Road SW. Schaub testified that Arthur gave him his state identification card. He stated that state ID cards often contain the wrong address, but he agreed that he could have got the Grand Kal address from somebody other than Arthur.

Following closing arguments, the jury returned a verdict finding that Arthur was domiciled with Beverly at the time of the accident. The trial court memorialized the verdict in its October 29, 2012 order. This Court granted defendant's application for leave to appeal.

II. STANDARD OF REVIEW

Defendant challenges the trial court's decisions regarding the evidence at trial. We review a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Augustine v Allstate Ins Co (After Remand)*, 292 Mich App 408, 424; 807 NW2d 77 (2011). An abuse of discretion occurs when a court's decision falls outside the range of "reasonable and

principled outcomes." *Id*. Preliminary questions of law including the interpretation and application of the rules of evidence are reviewed de novo. *Barnett v Hidalgo*, 478 Mich 151, 159; 732 NW2d 472 (2007). "[A]dmitting evidence that is inadmissible as a matter of law constitutes an abuse of discretion." *Id*. However, error requiring reversal may not be predicated on an evidentiary ruling unless a substantial right was affected or the error appears inconsistent with substantial justice. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004), reh den (2004), citing MCR 2.613(A); MRE 103(a).

III. DOMICILE UNDER THE NO-FAULT ACT

The no-fault provides in relevant part as follows:

> (1) 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. . . . [MCL 500.3114(1).]

Our Supreme Court in *Workman v Detroit Automobile Inter-Ins Exch*, 404 Mich 477, 495-496; 274 NW2d 373 (1979), has interpreted the above statute and determined that courts should flexibly interpret the phrase "domiciled in the same household." The Court recognized that many factual scenarios were possible and that the phrase may vary under different circumstances. *Id*. The Court set forth four factors to aid courts in determining whether a person is domiciled in the same household as an insured:

> (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 cartilage or upon the same premises;
>
> (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household. [*Id.* at 496-497 (citations omitted).]

The above factors are not exclusive. See *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 681-682; 333 NW2d 322 (1983). Later, this Court identified additional factors for courts to consider when identifying the injured person's domicile:

> (1) the person's mailing address;
>
> (2) whether the person maintains possessions at the insured's home;
>
> (3) whether the insured's address appears on the person's driver's license and other documents;

(4) whether a bedroom is maintained for the person at the insured's home; and

(5) whether the person is dependent upon the insured for financial support or assistance. [*Cervantes v Farm Bureau Ins Co*, 272 Mich App 410, 415; 726 NW2d 73 (2006) (citation omitted).]

No single factor is determinative. *Id.*

IV. ANALYSIS

i. "Speculative Testimony"

Defendant contends that the trial court erred in denying its motion to exclude "speculative testimony" regarding Arthur's domicile. Defendant's motion was vague and failed to cite with specificity the proffered testimony that it deemed objectionable. Defendant provided some examples of what it deemed improper testimony that Duhaime, Corbitt and Tonya offered at their depositions.

Plaintiff argued that all of her witnesses had personal relationships with Arthur such that they were in a position to offer relevant lay opinion testimony under MRE 701 and Arthur's statements on his intent or plan to return to Michigan were admissible under MRE 803(3). The trial court denied defendant's motion, citing MRE 803(3).

In its motion, defendant argued that a review of the depositions of Beverly, Tonya, Duhaime, Barber and Corbitt showed that their testimony "is not based on specific facts so it is not relevant." However, defendant failed to cite a single page from either Beverly's or Barber's deposition transcripts. Instead, in its motion, defendant made the bald-assertion that a review of the "deposition testimony" showed that the witnesses "only provide their opinions, feelings and beliefs." Defendant's failure to provide any citations constituted abandonment of its argument with respect to Beverly and Barber. As defendant aptly notes in its brief on appeal, "[t]he movant has the burden of demonstrating that the evidence is inadmissible," and "[t]he court may deny a motion in limine when it lacks the necessary specificity with respect to the evidence to be excluded." *Koch v Koch Indus, Inc*, 2 F Supp 2d 1385, 1388 (D Kan 1998). By failing to cite to a single page of either Beverly or Barber's deposition, defendant wholly failed to meet its burden to demonstrate that these witnesses offered inadmissible testimony. Accordingly, the trial court did not err in denying defendant's motion with respect to these witnesses.

With respect to the challenged testimony that defendant did cite in its motion, the trial court did not commit reversible error in denying the motion.

Defendant cited three excerpts of Duhaime's deposition testimony wherein Duhaime testified that Arthur did not intend to stay in Arkansas. Defendant argued that Duhaime did not provide evidence to support his opinions on Arthur's intent. Defendant argued that Duhaime's testimony was inadmissible under MRE 602, irrelevant, and more prejudicial than probative.

Having reviewed the challenged portions of Duhamie's deposition, we conclude that the testimony was admissible as lay-opinion testimony under MRE 701. Generally, "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the

witness has personal knowledge of the matter." MRE 602. When a witness has personal knowledge, in some circumstances, the witness may testify regarding his or her opinion or inference under MRE 701, which provides:

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Here, Duhaime testified that Arthur did not intend to stay in Arkansas indefinitely and this testimony was rationally based on his own personal knowledge and perceptions. Duhaime was a lifelong friend of Arthur since grade school. Based on his friendship, he was aware that Arthur lived with Beverly. Arthur and Duhaime spoke with each other over the telephone at Beverly's house. When Arthur contacted Duhaime from Michigan, Beverly's phone number appeared on Duhaime's caller ID. Duhaime also testified that Arthur arrived in Arkansas with a "few clothes" and tools. He also knew that Arthur could be contacted at a motel or at friends' homes. Duhaime also testified that Arthur only worked one month for him because of his drinking problem. The fact that Arthur only brought a few personal belongings to Arkansas, coupled with Arthur's transient lifestyle and inability to hold down a job would have allowed Duhaime to reasonably infer that Arthur did not intend to stay in Arkansas. MRE 701.

In addition, Duhaime's testimony was helpful to the determination of a fact at issue. MRE 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." This case turned on Arthur's domiciliary intent. Here, Arthur could not testify regarding his domiciliary intent. Duhaime's testimony shed light on the ultimate issue—i.e. whether Arthur was domiciled in Arkansas or whether he intended to leave Arkansas and return to Michigan. It was therefore relevant under MRE 401 and in turn it was helpful to a determination of a fact at issue in the trial. MRE 701.

Defendant argued that Duhaime improperly offered testimony that he knew Arthur stayed in various motels and with friends based on what Arthur told him. Defendant claimed that this testimony was hearsay and inadmissible under MRE 602. Even assuming this part of Duhaime's testimony was improper because it was not based on personal knowledge as required under MRE 602, any error was harmless where Tonya testified that she and Arthur lived at a hotel and that Arthur stayed at the home of friends.

Defendant objected to Corbitt's testimony that he knew Arthur came down to Arkansas to escape the law in Michigan because he heard that information from another individual. Corbitt also testified that he knew that Arthur did not want to live in Arkansas. He did not know where he learned "these things," about Arthur. Defendant argued that Corbitt's testimony was not based on personal knowledge and was therefore inadmissible and irrelevant.

Corbitt's testimony that Arthur was in trouble and came down to Arkansas to get away from trouble with the law was improperly admitted because Corbitt did not have personal knowledge of the matter. Corbitt agreed that his knowledge came from what Duhaime said. Thus, this aspect of Corbitt's testimony should have been excluded. See MRE 602. However,

any error did not affect defendant's substantial rights. *Craig*, 471 Mich at 76. Tonya and Lori both testified that Arthur had problems with the law in Michigan when he went to Arkansas. Thus, Corbitt's testimony was cumulative. Moreover, evidence that Arthur was running from the law in Michigan was favorable to defendant in that it supported defendant's theory that Arthur did not intend to return to Michigan.

Additionally, other aspects of Corbitt's testimony showed that he had personal knowledge that would allow him to offer lay opinion testimony that Arthur did not intend to stay in Arkansas. Corbitt testified that he spent time with Arthur and worked roofing jobs with him. Arthur never told Corbitt that he intended to stay in Arkansas, and Arthur did not have steady work when he left for North Carolina. Further, Arthur did not leave any belongings in Arkansas when he left for North Carolina. Corbitt's opinions and inferences about Arthur's plans not to stay in Arkansas were rationally based on his own perceptions and were helpful to a determination of a fact at issue—i.e. Arthur's domiciliary intent. MRE 701.

Defendant challenged a portion of Tonya's testimony that was admitted at trial wherein Tonya testified that "[Arthur] kept saying he was going to go back to Michigan," and "He said he was tired of being down here and said he was ready to go back home." Tonya testified, "he said he was ready to go back home," and "This was like in February. He had moved out right before his accident and he said he was going to go back to Michigan." Defendant argued that Tonya's testimony was inadmissible hearsay.[1]

Tonya's testimony concerning Arthur's out-of-court statements was admissible under MRE 803(3) because the statements showed Arthur's then-existing mental state in that they showed Arthur's intent or plan to return to Michigan. MRE 803(3) provides that the following is not excluded by the hearsay rule:

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (*such as intent, plan*, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed. . . . [Emphasis added.]

Here, Arthur stated that he was going to go back to Michigan, that he was tired of being in Arkansas and that he was ready to go back home. These statements concerned Arthur's then-existing mental condition in that they evinced an intent or plan to return to Michigan. Accordingly, the trial court did not err in admitting the statements under MRE 803(3).

Defendant also challenged Tonya's testimony that it was her understanding and belief that Arthur always intended to return to Michigan and that Arthur always considered Michigan his home. Defendant argued that this testimony was hearsay. This part of Tonya's testimony did

[1] In its motion, defendant also challenged testimony from pages 77, 89, 90, and 92 of Tonya's deposition. According to defendant's response to a record request, those pages were not admitted at trial. Thus, there was no error related to those portions of Tonya's testimony.

not contain an out-of-court statement. To the extent that it did, Arthur's statements concerning his intent to return to Michigan and that he considered Michigan his home were admissible under MRE 803(3). These statements showed Arthur's then-existing mental state in that they showed Arthur's intent to return to Michigan. Further, to the extent that Tonya offered lay opinion regarding Arthur's intention and belief, such testimony was admissible under MRE 701. Tonya's testimony was rationally based on her own perceptions and she could have rationally concluded that Arthur considered Michigan his home and intended to return there.

To the extent that defendant raised an MRE 403 challenge, the probative value of Duhaime's, Corbitt's and Tonya's depositions was not outweighed by the danger of unfair prejudice.

MRE 403 provides that relevant evidence may be excluded if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

> An analysis under MRE 403 requires balancing several factors . . . which include the time required to present the evidence and the possibility of delay, whether the evidence is needlessly cumulative, how directly the evidence tends to prove the fact for which it is offered, how essential the fact sought to be proved is to the case, the potential for confusing or misleading the jury, and whether the fact can be proved in another manner without as many harmful collateral effects. [*People v Eliason*, 300 Mich App 293, 302; 833 NW2d 357 (2013) (citations and quotations omitted).]

In this case, there was no issue with respect to the time and delay associated with the challenged testimony. In addition, the evidence was not needlessly cumulative, and it intended to directly prove the fact for which it was offered—i.e. that Arthur did not intend to stay in Arkansas, and that fact was critical to the resolution of the proceedings. Further, there was little danger that the evidence would mislead or confuse the jury. As discussed above, the witnesses offered testimony regarding facts and circumstances that supported their conclusions that Arthur did not intend to stay in Arkansas. Finally, considering that Arthur was unable to testify regarding his intent to remain in Arkansas, there was no other less prejudicial evidence probative of that issue. In short, the probative value of the challenged testimony was not substantially outweighed by the danger of unfair prejudice. MRE 403.

On appeal, defendant baldly asserts that "Plaintiff called multiple witnesses [Beverly, Barber, Corbitt, Duhaime, Robert and Lori] . . . who repeated out-of-court statements . . . regarding [Arthur's] domiciliary intent." Defendant fails to cite specifically where in the record these witnesses offered inadmissible testimony. Instead, like in its lower court motion, defendant cites entire depositions or cites the page numbers where witnesses commenced their testimony.

As discussed above, the trial court did not commit reversible error with respect to the testimony that defendant cited in its lower court motion. To the extent that defendant contends that additional testimony was improperly admitted at trial, defendant's complete failure to cite to the record in support of its argument constitutes abandonment. A party cannot cite entire

transcripts to support an argument that a witness offered inadmissible testimony. Such cursory treatment of an issue constitutes abandonment. As this Court has explained, "'[f]acts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court' . . . We will not search the record for factual support for [an appellant's] claims." *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388-389; 689 NW2d 145 161 (2004), quoting MCR 7.212(C)(7); see also *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008) ("appellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims; nor may they give issues cursory treatment with little or no citation of supporting authority.")

In sum, the trial court did not commit reversible error in denying defendant's motion to preclude "speculative testimony."

ii. Testimony of Beverly Krumm

Before trial, defendant moved to preclude admission of Beverly's deposition testimony, arguing that her lack of memory showed she did not have sufficient personal knowledge. The trial court denied defendant's motion, finding that defendant's concerns went to the weight of the testimony. Defendant argues that the trial court erred.

Defendant essentially contends that Beverly was incompetent to testify because of her age and lack of memory. MRE 601 provides:

> Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

"[The] test of competency of a witness . . . [focuses] . . . on whether a witness has the capacity and sense of obligation to testify truthfully and understandably." *People v Burch*, 170 Mich App 772, 774; 428 NW2d 772 (1988) (quotation omitted). In addition to being competent, witnesses must possess personal knowledge regarding a matter on which they offer testimony. MRE 602.

In this case, while Beverly repeated on several occasions that she did not have a good memory and could not answer many questions due to her inability to remember, on the whole, Beverly was not incompetent to testify and her responses showed that she had personal knowledge of events relevant to the issues. She gave answers to numerous questions—her testimony was 75-pages in total. While she was clearly frustrated, she answered all of the questions to the best of her ability, indicating when she did not remember something and responding with answers when her memory allowed her to. Although Beverly did not recall specific dates, she answered numerous questions and her responses evinced personal knowledge of the issues being discussed. On the whole, although Beverly had trouble remembering things, her memory did not render her incompetent to testify, nor did she display lack of personal knowledge of the matters to which she testified. To the extent that Beverly could not recall certain information, her lack of memory went to the weight of the evidence and the credibility of the witness—issues which fall within the province of the jury. The testimony was not erroneously admitted.

iii. Evidence of Arthur Krumm's Contacts with Police

During discovery, defendant deposed seven police officers from Arkansas and Michigan: Robert Bersi, James Harter, Eric Johnson, David Israel, Paul Gomez, Thomas Bensley, and Schaub. Three of the officers, Schaub, Johnson and Gomez, offered testimony about personal encounters they had with Arthur. The remaining officers testified regarding police reports involving Arthur. The police reports showed that Arthur had several addresses in Arkansas and Michigan. Two of the reports contained Arthur's statements. Specifically, Bersi would have testified to a January 24, 2003, incident where Springdale, Arkansas police officers responded to Arthur and Tonya's Pump Station Road address. The police report of the responding officers indicated that Arthur stated: "This is my f------ house!" and "I pay the f------ bills, I make the f------ money in this house, and I haven't done a f------ thing wrong!" Bensley, of the Grand Traverse County Sheriff's Department, would have testified that on April 22, 2002, officers were dispatched to a home on Grand Kal Road and spoke with Arthur. According to the police report of the responding officer, Arthur stated that he and his wife were fighting because he was late coming home from the bar.

Before trial, plaintiff moved to preclude admission of "any evidence of [Arthur's] criminal record including police reports and testimony of officers," arguing that the evidence amounted to hearsay and was more prejudicial than probative. The trial court granted plaintiff's motion in part and denied it in part. The court held that the actual police reports were inadmissible because, "there's a specific statute . . . saying the police reports won't come in." However, the court allowed the responding officers to testify regarding Arthur's statements and the officers could use their police reports to refresh their recollection. However, non-responding officers could not testify regarding the contents of the reports.

The court excluded reference to Arthur's criminal charges except for an April 2002 domestic assault in Michigan and evidence that Arthur failed to appear for a court date related to the domestic assault. The court explained, "[t]he only criminal matters would be what the wife testified to as to why he was going south, evading some charges, bench warrants, et cetera."

The trial court erred as a matter of law when it held that the police reports were per se inadmissible. Neither the trial court nor plaintiff identified a statute that precludes admission of police reports. Instead, the reports were admissible as business records under MRE 803(6), which provides:

> A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, *all as shown by the testimony of the custodian or other qualified witness* . . . unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. [Emphasis added.]

A police report may be admissible under MRE 803(6) as a business record. *Maiden v Rozwood*, 461 Mich 109, 124-125; 597 NW2d 817 (1999). However, "[w]hen the document to be admitted contains a second level of hearsay, it also must qualify under an exception to the hearsay rule." *Id*.

In this case, the proffered police reports concerned events involving Arthur and they were made contemporaneously by persons with knowledge of the events—i.e. the responding officers. Specifically, the responding officers transcribed events based on their observations and information learned at the scene. They presumably observed Arthur at the addresses contained in the reports. Additionally, the reports were kept in the ordinary course of a regular conducted business activity and it was the respective police departments' regular practice to make the reports. Furthermore, the responding officers were not required to testify about the reports in order for them to be admissible at trial. Rather, the rule allows admission of business records "by the testimony of the custodian or other qualified witness." MRE 803(6). Here, there is no dispute that the officers were custodians or qualified to testify about the police reports. Finally, "the source of information or the method or circumstances of preparation" did not indicate "lack of trustworthiness." MRE 803(6). The reports were prepared well before the present litigation. The officers did not have any external motivation to report Arthur's addresses.

With respect to Arthur's statements contained in the police reports—defendant argues that the statements were admissible under MRE 803(3) because the statements "reflected [Arthur's] then-existing mental state to retain or establish domicile somewhere other than his grandmother's residence. . . ."

Contrary to defendant's argument, Arthur's statements did not show his intent to retain or establish domicile. Rather, Arthur's statements were assertions of "belief to prove the fact . . . believed," and therefore did not fall within MRE 803(3). Nevertheless, even assuming that the reports should have been admitted as business records and Arthur's statements as admissions, MRE 801(d)(2) or under MRE 803(24) (the residual exception), a review of each of the officers' depositions shows that the trial court did not commit error that affected defendant's substantial rights or was inconsistent with substantial justice. *Craig*, 471 Mich at 76.

With respect to Bersi's proposed testimony, at best, the testimony would have shown that on January 1, 2003, January 24, 2003, March 14, 2003, and March 20, 2003, Arthur resided at 2123 Pump Station Road in Springdale, Arkansas. This testimony was cumulative of evidence that was already introduced at trial. The jury was aware that Arthur and Tonya lived at the Pump Station Road residence for six months, that Arthur was in charge of paying the bills associated with the residence, and that Arthur had other connections to the state of Arkansas including bank accounts, checks, bills, police records and fines. Thus, Bersi's testimony that there were four local police reports listing 2123 Pump Station Road as Arthur's address would not have presented anything new to the jury. Similarly, Arthur's profane statements referenced above would have been similar to Tonya's testimony that she and Arthur lived at the residence and that Arthur earned the money and paid the bills. In short, there was no dispute that at the time the police responded to Pump Station Road, Arthur was living there.

Similarly, Harter's proposed testimony concerning Fayetteville police records drafted on October 5, 2002, December 8, 2002, and April 26, 2003 would not have had any impact at trial.

Specifically, Harter testified that the reports contained three addresses linked to Arthur: 2123 Pump Station Road, 5529 Lund Road SW, Fife Lake (i.e. Beverly's address), and 109 North School Ave, No. 7, Fayetteville, Arkansas. The jury was aware that Arthur lived at Pump Station Road in late 2002 and early 2003. Evidence of the Lund Road address would not have been helpful to the defense. Finally, while there was no other evidence linking Arthur to 109 North School Ave, there was significant other evidence showing that Arthur stayed at various residences while he was in Arkansas. Thus, proof that Arthur was linked to 109 North School Ave was not significant evidence.

With respect to Deputy Johnson, of the KCSD, Johnson would have testified that on February 22, 2002, he responded to an address on Grand Kal Road in Fife Lake for an incident involving Arthur. As a responding officer, under the trial court's evidentiary ruling, defendant could have called Johnson to testify at trial and Johnson could have used his report to refresh his recollection. Defendant failed to call Johnson at trial and it therefore waived any claim that the court erred in precluding Johnson because "[t]o hold otherwise would allow counsel to harbor error at trial and then use that error as an appellate parachute." *People v Kowalski*, 489 Mich 488, 505; 803 NW2d 200 (2011) (quotation and citation omitted). "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *Id*. at 503 (quotation and citation omitted); see also *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989) ("A party is not allowed to assign as error on appeal something which his or her own counsel deemed proper at trial since to do so would permit the party to harbor error as an appellate parachute.").

With respect to Israel's testimony, Israel worked for the KCSD and would have linked four new addresses to Arthur from May 1996 through July 1999. Evidence of addresses dated from 1996 and 1999 would not have been highly probative of Arthur's domiciliary intent in May 2003. Moreover, Beverly testified that Arthur tried to move out and live on his own in Fife Lake on two occasions. In addition, Tonya testified that she and Arthur were married in 1997 and lived in "many different" paces and Podlesny testified that a report listed 30 different addresses that were linked to Arthur's name. Thus, the jury was aware that Arthur potentially had different Fife Lake addresses. Furthermore, as discussed below, defendant could have introduced Gomez's testimony to link Arthur to one of addresses on North Main Street, but it failed to do so.

Israel would have also testified regarding a 1998 report that listed Arthur's address as 950 Ziggier, Apartment 3, Winston-Salem, North Carolina, and January 23, 2002 and February 22, 2002 reports listing Arthur's address as 10549 Grand Kal Road. This evidence was cumulative of other evidence introduced at trial. Tonya testified that in 1997 she and Arthur rented an apartment in Winston-Salem, North Carolina for a short time. Schaub testified that Arthur's address in early 2002 was 10549 Grand Kal Road. In short, Israel's testimony would not have made any difference at trial.

Similarly, Sergeant Bensley's proposed testimony was cumulative. His testimony would have placed Arthur at Grand Kal Road on January 31, 2002, February 26, 2002, and April 22, 2002. However, he would have also testified that a January 31, 2002 report and a May 15, 2002 warrant listed Arthur's address as 5529 Lund Road SE (i.e. Beverly's address). Given that Schaub testified that Arthur's address was at Grand Kal Road in early 2002, and considering that

the latter portion of Bensley's testimony would have been harmful to the defense, exclusion of Bensley did not affect defendant's substantial rights.

Finally, with respect to Detective Gomez, Gomez testified that on November 1, 1996, he found and arrested Arthur at North Main Street in Fife Lake. Gomez was a responding officer. Thus, under the trial court's evidentiary ruling, defendant could have called Gomez to testify at trial. Defendant failed to call Gomez and it therefore waived any claim that the court erred in precluding Gomez. See *Kowalski*, 489 Mich at 505; *Dresselhouse*, 177 Mich App at 477.

Defendant contends that the reports were necessary to effectively cross-examine Lori. As discussed above, there was evidence admitted at trial showing that Arthur had numerous addresses and had multiple connections with the state of Arkansas. Defendant had the opportunity to use that evidence to effectively cross-examine Lori.

Defendant also contends that the trial court erred in excluding evidence of Arthur's "criminal record." Defendant argues that the criminal record would have been relevant to show that Arthur was motivated to leave Michigan and possibly not return. This argument lacks merit.

The trial court specifically allowed evidence of the April 2002 domestic assault in Michigan and Arthur's failure to appear for a court date for that offense. To the extent defendant contends that all of the criminal information contained in all of the police reports should have been admitted, defendant cannot show how Arthur's various run-ins with the law were relevant to prove Arthur's domiciliary intent in May 2003. Evidence that Arthur was involved in a simple assault, public intoxication, operating a vehicle without a license, operating a vehicle while intoxicated, a 1996 home invasion, and evidence of booking photographs and a photograph of Arthur when he was shirtless and intoxicated in Arkansas was not probative to Arthur's domicile. Some of these offenses took place in Arkansas and those offenses would not have been relevant to show that Arthur did not intend to return to Michigan. Other offenses occurred in Michigan; however the jury was aware that Arthur had a history of run-ins with the law and that he had legal charges pending in Michigan. Defendant had sufficient evidence regarding Arthur's criminal background in Michigan to argue that Arthur did not intend to return there. The probative value of all the other offenses, if any, would have would have been significantly outweighed by the danger of unfair prejudice. MRE 403.

In sum, the trial court did not commit reversible error in granting in part and denying in part plaintiff's motion in limine to exclude evidence of Arthur's criminal history.

iv. Statement of Janice Stunkel

On January 21, 2007, defendant's private investigator obtained a statement from Stunkel, the sister of Corbitt. Stunkel stated that Arthur lived with her in Arkansas for about three weeks before he went to North Carolina. Stunkel stated that, on the Friday before the accident, Arthur called her and said, "he was coming home. And I'm assuming Arkansas because he wouldn't call me to tell me he was going to Michigan." Stunkel later signed an affidavit wherein she averred that the information in her statement was truthful and honest.

In granting defendant's motion for summary disposition, the trial court found that Stunkel's statement showed that Arthur's "intent was to go back to Arkansas when he left South

Carolina [sic]." *Calderon*, slip op. at 2. In reversing the trial court, this Court referenced Stunkel's statement several times to support that defendant "presented the trial court with a number of facts supporting its position. . . ." See *id*. at 3-4. Ultimately, this Court held that there was a question of fact for the jury. *Id*.

Stunkel died sometime before trial. Defendant sought to admit Stunkel's statement and affidavit. Plaintiff moved to preclude the statement and affidavit, arguing that the statement amounted to inadmissible hearsay prepared specifically for trial. The trial court granted plaintiff's motion on grounds that the statement was inadmissible hearsay.

Initially, to the extent that defendant argues that Stunkel's statement should have been admitted because this Court referenced it in finding a question of fact, defendant's argument is flawed. While defendant correctly argues that a motion for summary disposition must be supported by substantively admissible evidence, the evidence "does not have to be in admissible form." *Bernard Mfg. Co., Inc. v Gates Performance Eng, Inc*, 285 Mich App 362, 373; 775 NW2d 618 (2009). Here, Stunkel's statement showed facts that she could have testified to at trial or at a deposition. Her out-of-court statement was not in admissible form as it was not sworn testimony and it amounted to double-hearsay. Specifically, Stunkel's out-of-court statement was offered to prove the truth of the matter asserted, i.e. that Arthur said he planned to return to Arkansas to prove that Arthur intended to return to Arkansas. See MRE 801.

Further, the statement was not admissible as a business-record under MRE 803(6). Stunkel did not make the statements in the course of her regular conducted business activity. Rather, she made the statement in preparation for litigation at defendant's behest. This fact alone indicates that the "method or circumstances of preparation indicate lack of trustworthiness." MRE 803(6). For the same reason, the statement was not admissible under MRE 803(24), as a statement prepared specifically for the purposes of litigation does not have "equivalent circumstantial guarantees of trustworthiness. . . ."

In sum, the trial court did not abuse its discretion in excluding Stunkel's statement.

v. Internet Report

Defendant argues that the trial court erred in allowing plaintiff to reference an "Internet report" listing multiple addresses that were linked to Arthur. Beverly's Lund Road address was at the top of the list. Defendant does not attach the report to its brief on appeal and the record is unclear as to the nature of the report. However, reviewing the relevant portions of the record indicates that the trial court did not commit reversible error.

Plaintiff's counsel cross-examined Podlesny about a 2005 report that private investigator Teague prepared on behalf of defendant. The report was part of defendant's claim file. Podlesny agreed that the report listed Arthur's address as 5529 Lund Road from September 1996 through July 2003. On direct, defense counsel questioned Podlesny about the report. Podlesny agreed that the report contained 30 different addresses that were linked to Arthur. On re-cross, Podlesny agreed that 5529 Lund Road was listed at the top of the report.

After her close of proofs, plaintiff moved to admit the Internet report into evidence. The trial court refused the request, but stated, "What we will allow you to do is not offer it in. I'm

going to let you use it and read from it during your closing argument listing the specific addresses, the multiple addresses that . . . the jury heard about." During closing argument, plaintiff's counsel referenced the report arguing, "the first address out of the box was 5529 Lund Road, September of 92' to December of 2004." Plaintiff's counsel likened the report to the side of a cereal box, arguing "[w]hat ingredient takes the majority of the ingredients on the side of the box? The first one. Artie's address was 5529; okay?"

Here, the trial court erred as a matter of law when it held that, even though the report was inadmissible, plaintiff's counsel could read from the contents of the report. However, defendant has not shown how the trial court's error affected its substantial rights. The trial court did not admit the report into evidence, but rather allowed a limited reference to the addresses listed therein. Moreover, the evidence was not particularly harmful to the defense. Instead, it showed that Arthur lived at multiple addresses, evidence that supported the inference that Arthur was not domiciled at Lund Road. Furthermore, there was significant other evidence linking Arthur to 5529 Lund Road. Particularly, Arthur's state ID card listed 5529 Lund Road as his address and his ID card was valid at the time of the accident. In addition, witnesses testified that Arthur kept belongings at the Lund Road address and Beverly maintained a room for him there. In short, defendant cannot show that the limited reference to the Internet report affected its substantial rights. *Craig*, 471 Mich at 76.

vi. Cross-Examination of Schneider and Podlesny

Defendant contends that the trial court erred in allowing plaintiff to cross-examine Schnedier and Podlesny "using the hearsay reports of various private investigators."

Defendant fails to cite where in the record plaintiff improperly cross-examined the witnesses. Instead, defendant cites plaintiff's closing argument and leaves it to this Court to parse the record to find where plaintiff improperly questioned the witnesses. Defendant's cursory treatment of this issue constitutes abandonment. See *Derderian*, 263 Mich App at 388-389 ("We will not search the record for factual support for [a party's] claims"); *VanderWerp*, 278 Mich App at 633 ("appellants may not merely announce their position and leave it to this Court to discover and rationalize the basis for their claims[.])." Nevertheless, even if we were to address this argument, defendant has not shown that the trial court abused its discretion.

During Podlesny's cross-examination, he agreed that he hired Midwest Intelligence, a private investigation firm in the course of working on Arthur's claim. Podlesny agreed that Midwest's documents came from the claim file that defendant maintained on Arthur and that they were maintained in the ordinary course of business. Defendant argued that the documents were inadmissible because they contained hearsay within hearsay. The trial court ruled that the documents would not be admitted into evidence, but allowed plaintiff's counsel to cross-examine Podlesny about "any material in those documents that would point to some objective evidence relative to the domicile of the plaintiffs. . . .". On appeal, defendant argues that the trial court allowed plaintiff to introduce hearsay. Defendant's argument lacks merit.

The trial court did not admit the private investigator's reports wholesale, instead, the court limited reference to objective evidence concerning Arthur's domicile. Plaintiff's counsel referenced some of the objective evidence during his closing argument and that evidence was not

hearsay within hearsay. Rather, the evidence related to the observations that defendant's agents made during the course of their regular conducted business activity. Podlesny admitted that the investigative report was kept in the ordinary course of business in conjunction with Arthur's claim. The reports were admissible as business records under MRE 803(6) as they were reports made by a person with knowledge and kept in the course of a regularly conducted business activity. The trial court allowed reference to objective evidence—i.e. observations of the investigators, while precluding reference to hearsay within the reports. The reports were prepared by an agent of defendant in the course of defendant's regular conducted business activity—i.e. claim review. Podlesny and Schneider were qualified witnesses to testify regarding the contents of the reports. The reports were therefore admissible under MRE 803(6).

Alternatively, the reports were admissible under MRE 801(d)(2), as admissions of a party-opponent. MRE 801(d)(2) defines admission to include "a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship. . . ." Here, the private investigators were agents of defendant. The reports were completed during the existence of the relationship and they concerned a matter within the scope of the agency.

To the extent that defendant argues plaintiff disregarded the trial court's evidentiary ruling and referenced hearsay within the reports, defendant fails to cite where plaintiff engaged in such conduct. Therefore, defendant has abandoned that aspect of its argument. *Derderian*, 263 Mich App at 388-389.

Affirmed. Plaintiff having prevailed, may tax costs. MCR 7.219.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly