STATE OF MICHIGAN

COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff-Appellee,	UNPUBLISHED January 5, 2010
v CITY OF WARREN, Defendant-Appellant, and AUTO CLUB INSURANCE ASSOCIATION, Defendant-Appellee.	No. 286396 Macomb Circuit Court LC No. 2007-003075-CK

Before: Shapiro, P.J., and Jansen and Beckering, JJ.

PER CURIAM.

Defendant city of Warren (the "city") appeals as of right the trial court's judgment awarding plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") $468,076.15 in this no-fault priority dispute. We affirm.

I. Underlying Facts and Procedural History

This action arises from an accident in July 2006 in which a police vehicle owned by the city struck and severely injured a bicyclist, Shane Cramer. The city, a self-insured entity, denied liability for Shane's no-fault personal injury protection ("PIP") benefits, as the insurer of the vehicle involved in the accident, claiming that Shane was a resident of his father's household at the time of the accident and was, therefore, covered under a no-fault policy issued to Shane's father, Robert Cramer, by defendant Auto Club Insurance Association ("ACIA"). ACIA claimed that Shane was not domiciled in his father's household at the time of the accident and, therefore, it was not liable for Shane's PIP coverage under the policy issued to Robert. Because insurance coverage applicable to Shane's injuries could not be ascertained, the Michigan Assigned Claims Facility ("MACF") assigned Shane's claim for no-fault benefits to State Farm.

State Farm paid Shane's PIP benefits and then filed this action against ACIA and the city for reimbursement of the amounts paid, arguing that either ACIA or the city was primarily liable

for Shane's PIP benefits. The parties agreed that resolution of the priority dispute depended on whether Shane was domiciled in his father's household at the time of the accident. ACIA moved for summary disposition under MCR 2.116(C)(10), arguing that although Shane continued to list his father's address on his driver's license and state identification card and continued to receive mail at his father's address, the undisputed evidence established that he was not domiciled in his father's household because he had moved out of that home in 1998, and moved in with the family of his girlfriend, Julie Devoll, with whom he was still living at the time of the accident in 2006. The city opposed the motion, relying primarily on the evidence that Shane continued to list his father's address on his state identification card and on various other documents. The trial court determined that there was no genuine issue of material fact that Shane was not domiciled in his father's household at the time of the accident and, accordingly, granted ACIA's motion. The court thereafter denied the city's motion for reconsideration. Following another hearing, the trial court entered a judgment requiring the city to reimburse State Farm for the amount of PIP benefits it had paid on behalf of Shane, and also awarded State Farm interest, costs, and attorney fees.

II. Summary Disposition Motion

The city argues that there is a question of fact whether Shane was domiciled in his father's household at the time of the accident and, therefore, the trial court erred in granting ACIA's motion for summary disposition. We disagree.

This Court reviews a trial court's decision on a summary disposition motion de novo. *Reed v Breton*, 475 Mich 531, 537; 718 NW2d 770 (2006). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006). "When ruling on a motion brought under MCR 2.116(C)(10), the trial court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion." *Reed*, *supra*. Summary disposition is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id*.

MCL 500.3114 and MCL 500.3115 govern the order of priority among insurers potentially liable for PIP benefits when a person not occupying a motor vehicle suffers accidental bodily injury in a motor vehicle accident. A no-fault PIP policy applies to accidental bodily injury to the named insured, the insured's spouse, and a relative of either domiciled in the same household. MCL 500.3114(1). Thus, if Shane was domiciled in his father's household at the time of the accident, he would be covered under his father's policy and ACIA would be first in priority for payment of Shane's PIP benefits. Conversely, if an injured person is not covered by a policy under MCL 500.3114(1), the next insurer in priority is the insurer of the owner or registrant of a motor vehicle involved in the accident. MCL 500.3115(1)(a). See also *Pioneer State Mut Ins Co v Titan Ins Co*, 252 Mich App 330, 335-336; 652 NW2d 469 (2002). Thus, if Shane is not covered under his father's policy, then the city, as the self-insured entity and owner of the vehicle that struck Shane, would be liable for Shane's PIP benefits. Accordingly, ACIA's and the city's respective liability for coverage depends on whether Shane was domiciled in his father's household at the time of the accident. Generally, the determination of domicile is a question of fact, but if 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).

In *Workman v Detroit Automobile Inter-Ins Exch*, 404 Mich 477; 274 NW2d 373 (1979), our Supreme Court concluded that the terms "domicile" and "residence" are legally synonymous, and that the "'legal meaning' of these terms must be viewed flexibly, 'only within the context of the numerous factual settings possible'" when determining a claimant's domicile for purposes of determining insurance coverage. *Id.* at 495-496, quoting *Montgomery v Hawkeye Security Ins Co*, 52 Mich App 457, 461; 217 NW2d 449 (1974). The Court held that factors relevant in determining whether a person is a resident of an insured's household for purposes of determining eligibility for no-fault benefits are: (1) the person's subjective or declared intent to remain in the household for an indefinite or unlimited length of time; "(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;" and (4) whether the person has another place of lodging. *Id.* at 496-497 (citations omitted). No one factor is determinative of residency, and each factor must be balanced and weighed with the others. *Id.* at 496. In *Workman,* it was not disputed that the plaintiff seeking benefits regularly resided in a trailer on her father-in-law's property, but was temporarily staying at her mother's house at the time of the accident. *Id.* at 487. The Court affirmed the trial court's order granting summary disposition for the mother's insurer on the ground that there was no question of fact that the plaintiff was not domiciled with her mother. *Id.* at 488-489, 498.

In *Williams v State Farm Mut Automobile Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993), this Court enumerated additional relevant factors in determining an individual's domicile, namely: (1) the person's mailing address; (2) whether the person keeps possessions at the insured's home; (3) whether the person lists the insured's address on documents such as a driver's license; (4) whether the person maintains a bedroom in the insured's home; and (5) whether the person is financially dependent upon the insured. In *Williams*, the plaintiff seeking benefits from his parents' no-fault insurance carrier had left his home in Nevada to move back to his parents' home in Michigan, but was involved in an accident in Oklahoma before arriving in Michigan. *Id*. at 492-493. This Court affirmed the trial court's summary disposition ruling that the plaintiff was domiciled with his parents at the time of the accident. *Id.* at 493-495.

In *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 682-683; 333 NW2d 322 (1983), this Court commented on the special problems posed by determining the domicile of young adults who have begun, but not completed, the process of leaving their parents' home. The Court identified "other relevant indicia of domicile," including "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 claimant at the parents' home, and whether the claimant is dependent upon the parents for support." *Id*. at 682. The Court in *Dairyland* found that the trial court did not err in making a factual finding that the claimant was not a domiciliary of his mother's household for purposes of claiming coverage under her policy because he had not lived with his mother for six months, he did not depend on her for support, he planned to continue his present living arrangement indefinitely, and he had no plans or expectations to return to his mother's home. *Id.* at 684. The claimant in *Dairyland* stored some belongings at his mother's house, used his mother's address for his driver's license and bank accounts, and believed that he would resume living with her if he became unemployed or some other

contingency occurred, but this Court concluded that this evidence was "insufficient to constitute him a member of his mother's household." *Id*. at 680, 684.

In *Dobson v Maki*, 184 Mich App 244, 247, 254; 457 NW2d 132 (1990), this Court concluded that Paul DesRochers, Jr., a codefendant in a dramshop action, was domiciled in his father's household. DesRochers had previously left his father's home to live in Wisconsin, but moved back to his father's county after becoming unemployed. *Id*. at 253. He divided his nights between his father's house and various friends' homes. *Id*. He intended to return to Wisconsin to resume his employment there, and did not intend to reside permanently or indefinitely with his father. *Id*. He did not have a key to his father's house, or a bedroom there, but did his laundry there, ate his father's food, and used his father's address to receive mail and apply for a bank loan. *Id.* at 253-254. When he was arrested, he gave his father's address as his residence. *Id.* at 254. The trial court denied the father's insurance carrier's motion for summary disposition and found from the evidence that DesRochers was domiciled with his father at the time of the accident. *Id.* at 252, 254. This Court commented that DesRochers "considered himself to officially reside at his father's home" although he did not always choose to sleep there. *Id.* at 254.

In this case, we disagree with the city's argument that Shane's continued use of his father's address established a question of fact whether Shane was domiciled with his father at the time of the accident. The witnesses who testified regarding Shane's domicile all agreed that Shane had left his father's house in 1998, never returned there to live, and never intended to do so. They agreed that he kept no possessions there, had no bedroom there, and only occasionally spent the night there, on which occasions he would sleep on the couch. He did not receive financial support from his father, other than an occasional loan, which he was expected to repay. Their testimony also established that Shane joined the Devoll family's peripatetic household in 1998 and was still living there at the time of the accident. The city relies on evidence indicating that Shane consistently used his father's address to receive mail, and on medical, arrest, and other records, both before and after the accident. However, Shane explained that this was done principally for purposes of convenience, because the Devoll family moved frequently. Regardless, the evidence of Shane's continued use of his father's address does not refute the evidence of Shane's actual living arrangements during the previous eight years.

Unlike the claimant in *Dobson*, who partially reestablished ties to his father's home after returning from Wisconsin, Shane testified that he kept no possessions in his father's home, and stayed overnight only occasionally. Shane's continued use of his father's address on his driver's license, medical records, and other important documents for convenience is more similar to the claimant's use of his mother's address in *Dairyland* than to DesRochers's regard of his father's home as his "official" residence in *Dobson*. Moreover, *Dobson* is distinguishable because DesRochers had no other fixed residence other than his father's home. He divided his time between his father's house and various friends' houses. In contrast, Shane relocated from his father's home to the Devolls' home. Although the Devolls relocated frequently, Shane established himself as a member of their household, wherever it happened to be located. In view of Shane's eight-year physical absence from his father's home, at which he no longer had a bedroom or kept his possessions, evidence that he still used that address for convenience is insufficient to establish his domicile there.

Moreover, we disagree with the city's argument that the documentary evidence showing that Shane continued to use his father's address precludes summary disposition because it tends to undermine the credibility of the witnesses' testimony concerning Shane's actual living arrangements. When the truth of a material factual assertion depends on credibility, a genuine factual issue exists and summary disposition may not be granted. *White v Taylor Distributing Co*, 275 Mich App 615, 625; 739 NW2d 132 (2007), aff'd 482 Mich 136 (2008). In this case, however, Shane never denied using his father's address, but rather explained that he used it for convenience because the Devolls, with whom he was living, frequently relocated. This explanation is not inconsistent with the uncontradicted evidence that Shane left his father's home in 1998 and never returned there to live, nor intended to do so.

Accordingly, the trial court did not err in holding that ACIA was entitled to summary disposition because there was no genuine issue of material fact that Shane was not domiciled in his father's home at the time of the accident.

III. Motion for Reconsideration

Although the city asserts in its statement of questions presented that the trial court erred in denying its motion for reconsideration, it fails to address this issue in the body of its brief, thereby abandoning the issue. *Steward v Panek*, 251 Mich App 546, 558; 652 NW2d 232 (2002). Regardless, the additional evidence on which the city relied in support of its motion was merely redundant of the previously submitted evidence showing that Shane had used his father's address for convenience. The additional evidence did not demonstrate a palpable error by which the court and the parties were misled, or show that a different disposition of the summary disposition motion was required. MCR 2.119(F)(3). The trial court did not abuse its discretion in denying the city's motion for reconsideration. *Amerisure Ins Co v Plumb*, 282 Mich App 417, 424; 766 NW2d 878 (2009).

IV. Reimbursement to State Farm

The city next argues that the trial court erred in denying its request for an evidentiary hearing to determine the appropriate amount for which it was required to reimburse State Farm. The city argues that State Farm, as the servicing insurer, is only entitled to reimbursement for amounts allowed by the no-fault act and, therefore, it was entitled to an evidentiary hearing to determine whether any of the amounts paid by State Farm were not statutorily authorized.

The city contends that State Farm is Shane's subrogee, such that State farm is entitled to receive only what Shane was entitled to receive under the no-fault act. However, State Farm's right to reimbursement does not depend on common-law principles of subrogation, but rather on its statutory right to reimbursement under MCL 500.3172. See *Allen v Farm Bureau Ins Co*, 210 Mich App 591, 596-597; 534 NW2d 177 (1995) (holding that a servicing insurer's statutory right to reimbursement is independent of the party to whom it paid benefits). Thus, State Farm's reimbursement rights are governed by the no-fault act.

When faced with questions of statutory interpretation, a court must discern and give effect to the Legislature's intent as expressed in the words in the statute. *Pohutski v City of Allen Park,* 465 Mich 675, 683; 641 NW2d 219 (2002). Where the language is unambiguous, it must be presumed that the Legislature intended the meaning clearly expressed, and no further judicial

interpretation is permitted. *Id.* "Nothing will be read into a clear statute that is not within the manifest intention of the Legislature, as derived from the language of the statute itself." *King v Reed*, 278 Mich App 504, 513; 751 NW2d 525 (2008).

MCL 500.3173 provides:

> A person who because of a limitation or exclusion in sections 3105 to 3116 is disqualified from receiving personal protection insurance benefits under a policy otherwise applying to his accidental bodily injury is also disqualified from receiving benefits under the assigned claims plan.

MCL 500.3173a provides:

> The assigned claims facility shall make an initial determination of the claimant's eligibility for benefits under the assigned claims plan and shall deny an obviously ineligible claim. The claimant shall be notified promptly in writing of the denial and the reasons for the denial.

MCL 500.3172(3) governs an assigned claims insurer's right to reimbursement from an insurer who is obligated to pay a claimant's PIP benefits under a no-fault policy. MCL 500.3172(3) applies only where, as here, an assigned claims insurer is required to provide PIP benefits because two or more other insurers dispute their obligations to provide coverage. *Spectrum Health v Grahl*, 270 Mich App 248, 255; 715 NW2d 357 (2006). Section 3172(3) provides, in pertinent part:

> (3) If the obligation to provide personal protection insurance benefits cannot be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss, and if a method of voluntary payment of benefits cannot be agreed upon among or between the disputing insurers, all of the following shall apply:
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> (f) After hearing the action, the circuit court shall determine the insurer or insurers, if any, obligated to provide the applicable personal protection insurance benefits and the equitable distribution, if any, among the insurers obligated therefor, *and shall order reimbursement to the assigned claims facility from the insurer or insurers to the extent of the responsibility as determined by the court. The reimbursement ordered under this subdivision shall include all benefits and costs paid or incurred by the assigned claims facility and all benefits and costs paid or incurred by insurers determined not to be obligated to provide applicable personal protection insurance benefits,* including reasonable attorney fees and interest at the rate prescribed in section 3175 as of December 31 of the year preceding the determination of the circuit court. [Emphasis added.]

The correlating administrative rule, 1999 AC, R 11.105, provides:

> The assigned claims facility or the servicing insurer to which the claim is assigned is entitled to reimbursement for the personal protection insurance benefits which are provided and appropriate loss adjustment costs which are incurred from an insurer who is obligated to provide the personal protection insurance benefits under a policy of insurance, but who fails to pay such benefits.

The plain language of § 3172(3)(f) provides that when a claim is assigned to a servicing insurer, that insurer is entitled to reimbursement of "*all* benefits and costs *paid* or incurred" (emphasis added). The phrase "all benefits and costs paid" is not modified, restricted, or limited by any language requiring the servicing insurer to verify that the claimant was statutorily entitled to those benefits, or excusing the responsible insurer from reimbursing for benefits paid in excess of the claimant's entitlement. Although a statutory scheme requiring the servicing insurer to absorb the cost of improperly paid benefits may have certain advantages, it is not the scheme that was enacted by the Legislature. Consequently, the city was required to fully reimburse State Farm, and was not entitled to the opportunity to demonstrate that any benefits were improperly paid.

Furthermore, even if the city were not required to reimburse State Farm for any benefits paid to Shane that were not authorized under the no-fault act, the city failed to demonstrate a need for an evidentiary hearing. The city conceded that State Farm's exhibits accurately reflected the amount of PIP benefits that State Farm paid to Shane. Although the city observes that various statutes restrict or limit a claimant's entitlement to PIP benefits, see, e.g., MCL 500.3105 – MCL 500.3116, the city did not present any factual support for its contention that any of these statutes might arguably apply, or that any of the amounts paid to Shane might not have been permitted. Therefore, the trial court did not err in denying the city's request for an evidentiary hearing.

V. Interest, Costs, and Attorney Fees

Finally, the city argues that the trial court erred in awarding State Farm interest, costs, and attorney fees as part of the reimbursement order. We disagree.

The trial court's award of interest, costs, and attorney fees is expressly authorized by MCL 500.3172(3)(f), which, as set forth above, requires that "[t]he reimbursement ordered under this subdivision shall include all benefits and costs paid or incurred . . . including reasonable attorney fees and interest at the rate prescribed in section 3175 as of December 31 of the year preceding the determination of the circuit court."

The city's reliance on MCL 500.3148(1) to argue that attorney fees are permissible only if the trial court finds that an insurer unreasonably refused to pay a claim is misplaced, because that statute is applicable only to the recovery of attorney fees by an attorney who represents a claimant. Further, as this Court observed in *Michigan Mut Ins Co v Farm Bureau Ins Group*, 183 Mich App 626, 637-638; 455 NW2d 352 (1990), § 3172(3)(f), unlike § 3148(1), "does not require the trial court to find that the insurer 'unreasonably refused' the claim before attorney fees may be charged against the insurer," and nothing may be read into the clear language of a

statute, *King*, *supra*. Thus, the trial court did not err in awarding State Farm interest, costs, and attorney fees as part of the reimbursement order.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Kathleen Jansen
/s/ Jane M. Beckering