STATE OF MICHIGAN

COURT OF APPEALS

UNITED SERVICES AUTOMOBILE ASSOCIATION,

Plaintiff-Appellant,

v

ESTATE OF GALEN McDEVITT by personal representative TERESA LISOWSKI, and WILLIAM LISOWSKI,

Defendants,

and

JORDAN D. FIELD and ANGELICA HERNANDEZ by next friend MARLENE WILLIAMS,

Defendants-Appellees.

UNPUBLISHED
November 27, 2012

No. 307958
Van Buren Circuit Court
LC No. 307958

Before: SERVITTO, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

In this action for declaratory judgment, plaintiff appeals by right the trial court's order granting appellees summary disposition and declaring that on the date of the automobile accident resulting in his death and injury to Jordan D. Field and Angelica Hernandez, Galen McDevitt was a "resident" of the household of his stepfather and mother, William and Teresa Lisowski. Because he was a resident of the Lisowski household on the date of the accident, the trial court further declared that McDevitt was a "covered person" under the liability insurance policy plaintiff issued to William Lisowski. We affirm.

We review de novo a trial court's decision on a motion for summary disposition. *DeFrain v State Farm Mutual Automobile Ins Co*, 491 Mich 359, 366; 817 NW2d 504 (2012). Where, as here, the parties assert that the material facts are not disputed, the motion is considered under MCR 2.116(C)(10) to determine whether the facts sufficiently support a party's claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The trial court properly grants summary disposition under MCR 2.116(C)(10) when there exists no genuine issue

regarding any material fact, and the moving party is entitled to judgment as a matter of law. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011)

This case involves the application of facts to the terms of an automobile insurance policy. The interpretation of contract language presents an issue of law that this Court reviews de novo. *Singer v American States Ins*, 245 Mich App 370, 373-374; 631 NW2d 34 (2001). An insurance contract must be read in the same manner as any other contract, giving its words their plain and ordinary meaning. *DeFrain*, 491 Mich at 367. "The language of insurance contracts should be read as a whole and must be construed to give effect to every word, clause, and phrase. When the policy language is clear, a court must enforce the specific language of the contract." *McGrath v Allstate Ins Co*, 290 Mich App 434, 439; 802 NW2d 619 (2010). If a contract does not define a term, a dictionary may be consulted to determine its plain and ordinary meaning. *Id*.

The automobile insurance policy at issue provides, in pertinent part, that plaintiff "will pay compensatory damages for **BI** [bodily injury] or **PD** [property damage] for which any **covered person** becomes legally liable because of an auto accident." The policy also defines "covered person" as "**[y]ou** or any **family member** for the ownership, maintenance, or use of any auto or trailer." "You" and "your" are in turn defined as "the 'named insured' shown in the Declarations and spouse if a resident of the same household." In this case, the declaration sheet lists William Lisowski as the named insured; his spouse Teresa Lisowski resides with him. Finally, the automobile insurance policy plaintiff issued to William Lisowski defines "family member" as "a person related to **you** by blood, marriage, or adoption who is a resident of **your** household." Because Galen McDevitt was related by marriage to William Lisowski and related by blood to Teresa Lisowski, the parties agree that whether plaintiff's policy provides liability coverage for Galen with respect to the automobile accident that injured Field and Hernandez depends on whether he was a "resident" of the Lisowski household at the time of the accident.

Galen was born in 1989 to Teresa and Patrick McDevitt in Topeka, Kansas. Teresa and Patrick were divorced 1995 and Teresa moved to Las Vegas, Nevada. Galen lived with his father for over a year, but in 1997, Galen went to live with his mother who was then married to William Lisowski. Galen continued to live with the Lisowskis when they moved to Texas and lived in that state for four years. In 2001, the Lisowskis moved with Galen and his siblings to Gobles, Michigan; Galen lived in the Lisowski household in Michigan until he was about 17 years old. Galen then went to live with his father in Kansas, graduated from high school there in 2008, and acquired a Kansas driver's license. His father, however, at some point asked Galen to move out of his home. Galen then resided with his mother's brother for a short time until he was also kicked out of that home. Galen returned to the Lisowski household in Gobles in January 2009. Although his mother welcomed Galen home, she would not permit Galen to simply do nothing. Teresa told Galen that he had 30 days to decide what he would do among various options that included attending college or a trade school, or joining the military. Galen enlisted in the United States Army and reported to boot camp at Fort Benning, Georgia in April 2009. After graduating from boot camp in August 2009, the Lisowskis picked Galen up for a one-week visit at home before he reported to his first duty station at Fort Knox, Kentucky. Galen stayed at Fort Knox in a barracks until returning to Michigan at the end of May 2010 for one week of leave before his scheduled deployment to Afghanistan. Galen visited his sister in Grand Rapids, who allowed him to drive her leased Jeep. Galen was staying with the Lisowskis and driving his sister's Jeep when the accident occurred on June 5, 2010.

Jordan Field commenced an action against Galen's estate seeking damages for his injuries. Plaintiff thereafter commenced this action seeking a declaration that the insurance policy it issued to William Lisowski did not provide bodily injury coverage to Galen's estate for the claims arising out of the accident. After discovery, both plaintiff and appellees moved for summary disposition. The parties filed briefs and presented oral arguments for the court's consideration. In its opinion and order granting summary disposition to appellees, the trial court, after reciting the thumb-nail sketch of Galen's life, opined:

> Prior to his planned deployment to Afghanistan, Galen came back to his home at the Lisowski household for a visit. Galen's personal belongings were still there. While home for this visit is when the accident in question occurred, which resulted in the death of Galen, and injuries to Jordan Field and Angelica Hernandez.
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> After reviewing the affidavits and deposition testimony submitted to the court, and taking into consideration the language and factors enumerated in the cases of [*Workman v Detroit Automobile Inter-Ins Exch (DAIIE)*, 404 Mich 477, 496-497; 274 NW2d 373 (1979); *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 684; 333 NW2d 322 (1983); *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111; 553 NW2d 353 (1996); *Montgomery v Hawkeye Security Ins Co*, 52 Mich App 457, 448-459; 217 NW2d 449 (1974)], the Court makes a finding of fact after considering the totality of the circumstances present in this case, that Galen McDevitt was a resident of the Lisowski household at the time he was in the automobile accident in question. It also is relevant that the Lisowskis also considered their home to be Galen's home. Most of his personal belongings were there, he received some of his mail there, the Lisowskis paid some of his monthly expenses, and he had lived there several months before enlisting in the Army. In addition, it was to the Lisowski home he came to before his deployment to Afghanistan.

Plaintiff first argues that the trial court erred by applying the *Workman-Dairyland* multifactor, totality-of-the-circumstances test developed for determining "domicile" for the purpose of no-fault benefits under MCL 500.3114.[1] Plaintiff contends that although Michigan considers "domicile" and "residence" as synonymous for many purposes, including "voting, eligibility to hold office, taxation, probate and administration of estates," *Gluc v Klein*, 226 Mich 175, 178; 197 NW 691 (1924), it continues to recognize that common-law distinctions exist between these two terms. See *People v Dowdy*, 489 Mich 373, 384; 802 NW2d 239 (2011), citing *Gluc*, 226 Mich at 177-178. Accordingly, plaintiff argues that the construction given to "domicile" under the no-fault act should not be incorporated into the meaning of "resident" in its liability policy. Rather, plaintiff argues, the meaning of "resident" should be discerned by finding its plain meaning in a dictionary. Thus, plaintiff relies on the definition of "reside,"

[1] In general, MCL 500.3114(1) provides that no-fault benefits are available "to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household[.]"

meaning to "'dwell permanently or for a considerable time; live'" or "'to live in a place permanently or for an extended period.'" See *McGrath v Allstate Ins Co*, 290 Mich App 434, 441; 802 NW2d 619 (2010)(citations omitted). Plaintiff argues that the trial court erred by not applying this definition and finding that Galen was not a "resident" of the Lisowski household at the time of the accident because Galen had not lived at the Lisowski household for a considerable time or for an extended period of time before the accident. We disagree with both the premise and the conclusion of plaintiff's argument.

As plaintiff recognizes, Michigan has long considered the terms "resident" and "domicile" as synonymous. See *Dowdy*, 489 Mich at 384 ("[T]his Court has, in several circumstances, treated the terms 'residence' and 'domicile' as synonymous[.]"); *Workman*, 404 Mich at 495 ("[T]he terms 'domicile' and 'residence' are legally synonymous (except in special circumstances)."); *Gluc*, 226 Mich at 178 ("In this State, the words 'domicile' and 'residence' are treated as synonymous terms."); *Dairyland*, 123 Mich App at 680 ("Domicile and residence in Michigan are generally synonymous terms[.]") Indeed, because the terms are synonymous, the *Workman* Court applied the multifactor test courts had developed to determine "whether a person is a 'resident' of an insured's 'household' under particular insurance policies," *Workman*, 404 Mich at 495, to the question of determining "domicile" for the purpose of no-fault benefits. Specifically, the Court drew on the analysis of *Cal-Farm Ins Co v Boisseranc*, 151 Cal App 2d 775, 777; 312 P2d 401 (1957), addressing whether a child was covered under a liability insurance policy extending coverage to relatives "if residents of [the named insured's] household[.]" The *Workman* Court also relied on *Montgomery v Hawkeye Security Ins Co*, 52 Mich App 457, 459; 217 NW2d 449 (1974), which similarly addressed whether a son was covered under a homeowner's insurance liability policy extending coverage to "'residents of his [the *named* insureds'] household[.]'" From these and other cases the Court concluded:

> [B]oth our courts and our sister state courts, in determining whether a person is a "resident" of an insured's "household" or, to the same analytical effect, "domiciled in the same household" as an insured, have articulated a number of factors relevant to this determination. In considering these factors, no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others. [*Workman*, 404 Mich at 496, citing *Montgomery*, 52 Mich App at 461.]

The *Workman* Court went on to list four relevant factors, again emphasizing no one factor was by itself determinative, and noted that it was drawing on case law regarding "whether a person is a 'resident' of an insured's household." *Workman*, 404 Mich at 497 n 6.

This historical review of case law interpreting the terms of insurance policies extending coverage to residents of an insured's household, the long-standing treatment of the terms "domicile" and "residence" as legally synonymous under Michigan law, and the development of the *Workman-Dairyland* totality-of-the-circumstances test, demonstrates that the trial court did not err as a matter of law in applying the totality-of-the-circumstances test to determine whether Galen was a "resident" of the Lisowski household at the time of the accident. Plaintiff's argument that the plain meaning of the word "resident" as used in its liability insurance policy requires a different analysis is without merit.

"The primary goal of contract interpretation is to honor the intent of the parties." *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 132; 602 NW2d 390 (1999). While an insurance policy is an "adhesion contract" that must be enforced according to its plain terms just as any other contract, it is the insurance company that drafts its terms. See *Rory v Continental Ins Co*, 473 Mich 457, 478, 488-489; 703 NW2d 23 (2005). In this case, when plaintiff drafted its liability policy using the term "resident" it must have been aware of Michigan case law interpreting similar terms in insurance policies extending coverage to residents of an insured's household and the long-standing treatment of the terms "residence" and "domicile" as legally synonymous. "'As a general rule, where terms having a definite legal meaning are used in a written contract, the parties to the contract are presumed to have intended such terms to have their proper legal meaning, absent a contrary intention appearing in the instrument.'" *Conagra*, 237 Mich App at 132 (citation omitted); see also *In re Moukalled Estate*, 269 Mich App 708, 721; 714 NW2d 400 (2006). Although plaintiff had the freedom to define the term "resident" or the phrase "resident of [the insured's] household" in a manner different from the longstanding interpretation by Michigan courts of the terms "residence" and "domicile" as synonymous, it did not do so. See *Rory*, 473 Mich at 488; *Singer*, 245 Mich App at 377. Accordingly, we conclude that plaintiff must have intended the phrase "resident of [the insured's] household" to be interpreted in light of Michigan case law equating "residence" and "domicile," and applying a multi-factor, totality-of-circumstances test to determine if a person is a covered resident relative of a household. *Workman*, 404 Mich at 495-497, n 6; *Montgomery*, 52 Mich App at 460-461.

Moreover, even if it we were to accept plaintiff's argument that the phrase "resident of [the insured's] household" in its insurance policy does not equate to "domicile," such a holding would not assist plaintiff in establishing that the trial court erred as a matter of law when it determined that Galen was a "resident" of the Lisowski household at the time of the accident. An essential difference between "residence" and "domicile" is that a person can have only one "domicile" but may have more than one "residence." *Eastman v University of Michigan*, 30 F3d 670, 673 (CA 6, 1994). "[T]he essential characteristic of a 'domicile' that separates it from a 'residence' is that . . . every person has a 'domicile.'" *Dowdy*, 489 Mich at 385. "A person may have only one domicile, which continues until the person acquires a different one." *Id*. A person's domicile is that person's legal residence while any place of abode or dwelling place, even if temporary, could constitute that person's residence. *Gluc*, 226 Mich at 178-179. Here, the facts clearly established that even after Galen enlisted and resided wherever the Army stationed him, he also maintained a residence with the Lisowskis. The facts also established that after his parents' divorce, except for brief sojourns with his father and his mother's brother in Kansas, Galen had always resided with his mother in the Lisowski household. And at the time of the accident, Galen was actually residing with the Lisowskis. Thus, under dictionary definitions, see *McGrath*, 290 Mich App at 441, and *Montgomery*, 52 Mich App at 460, Galen maintained a residence with the Lisowskis even if he also had a residence elsewhere. Consequently, under the plain meaning of the term "resident"—without incorporating the concept that a person may have only one "domicile"—Galen was a "resident" of the Lisowski household.

Plaintiff also argues that the trial court erred as a matter of law by finding under the *Workman-Dairyland* totality-of-the-circumstances test that Galen was a resident of the Lisowski household at the time of the accident. We disagree. Among the relevant factors for determining whether a child is domiciled with, or a resident of his parents' household, are:

> (1) the subjective or declared intent of the person to remain in the place contended to be the domicile; (2) the formality of the relationship between the person and the members of the household; (3) whether the place where the person lives is the same house, within the same curtilage, or upon the same premises; . . . (4) the existence of another place of lodging by the person alleging residence[;] [5] whether the child continues to use the parents' home as the child's mailing address; [6] whether the child maintains some possessions with the parents; [7] whether the child uses the parents' address on the child's driver's license or other documents; [8] whether a room is maintained for the child at the parents' home, and [9] whether the child is dependent upon the parents for support. [*Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111-112; 553 NW2d 353 (1996), citing *Workman*, 404 Mich at 496-497 (factors 1-4), and *Dairyland*, 123 Mich App at 682 (factors 5-9).]

As discussed already, this multi-factor, totality-of-the-circumstances test to determine if a person is a covered resident relative of a household is a flexible approach, which may vary according to the circumstances or factual context. *Workman*, 404 Mich at 496, *Montgomery*, 52 Mich App at 461. While this Court has opined that it is error to accord "special weight" to any one factor, see *Cervantes v Farm Bureau Gen Ins Co*, 272 Mich App 410, 415-416; 726 NW2d 73 (2006), relying on dicta in *Williams v State Farm Mut Automobile Ins Co*, 202 Mich App 491, 495; 509 NW2d 821 (1994), our Supreme Court has instructed only that "no one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others." *Workman*, 404 Mich at 496. Indeed, the Court emphasized twice, "that 'no one factor is, in itself, determinative' in making a determination of whether a person is a 'resident' of an insured's household." *Id*. at 497 n 6. We conclude that while any single factor may not be accorded determinative or preemptive weight, under a flexible approach, all factors need not be accorded equal weight but rather "each factor must be balanced and weighed with the others." *Id*. at 496.

We conclude that the trial court did not err by finding under the totality of the circumstances that Galen was a resident relative of the Lisowski household at the time of the accident. Although the trial court did not delineate its factor-by-factor analysis, we briefly, on de novo review, do so. First, we agree with appellees that the evidence supported finding that Galen intended to remain a resident of the Lisowski household. Except for brief interludes with his father and uncle, Galen had lived his entire life with his mother; he resided with the Lisowskis for four months before joining the Army, which he did in part to comply with his mother's rules to remain in the household, and he returned to the Lisowski household while on leave between Army duty stations. While the evidence does not support finding that Galen intended to permanently reside with the Lisowskis, it does support that Galen intended to maintain his residence with them until he established his own domicile. See *Dowdy*, 489 Mich at 385: "A person may have only one domicile, which continues until the person acquires a different one." The evidence also supports finding that factors 2, 3, and 4 favored the determination that Galen was a resident of the Lisowski household at the time of the accident. The only other possible place that plaintiff suggests as Galen's residence was an Army barracks at Fort Knox, Kentucky, where Galen was stationed in the year preceding the accident. We presume in the absence of evidence to the contrary that a person entering the military intends to maintain their established residence at the time of entry into the service. See *Salinger v Hertz*

Corp, 211 Mich App 163, 166; 535 NW2d 204 (1995). This is because the transitory nature of military service is insufficient to demonstrate the intent to establish a new domicile. *Id*. at 167.

With respect to the *Dairyland* factors (5 through 9), the evidence, in general, either supported finding Galen a resident of the Lisowski household or was neutral because it showed that Galen lived wherever the Army stationed him. Galen received some mail at the Lisowskis; he maintained some possessions at the Lisowskis but took what he could with him to his Army post; Galen generally supported himself with his Army pay, but the Lisowskis also provided him some financial assistance. And, Galen had his own sleeping quarters in the Lisowski residence. Although Galen had not bothered to obtain a new driver's license after moving back to the Lisowski household from Kansas, there was no evidence that he intended to return to Kansas to live with his father or uncle. On balance and weighed with each other, *Workman*, 404 Mich at 496, we conclude that the *Workman-Dairyland* factors support the trial court's determination that Galen was a resident of the Lisowski household at the time of the accident. *Goldstein*, 218 Mich App at 111-112. The trial court properly granted appellees summary disposition and declared that on the date of the automobile accident resulting in his death, Galen McDevitt was a resident relative of the Lisowski household and therefore was a "covered person" under the insurance policy plaintiff issued to William Lisowski.

We affirm. As the prevailing party, defendant-appellees may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Christopher M. Murray