

STATE OF MICHIGAN
COURT OF APPEALS

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

UNPUBLISHED
April 25, 2017

Plaintiff-Appellee,

v

No. 331215
Kent Circuit Court
LC No. 15-004759-CZ

PROGRESSIVE MICHIGAN INSURANCE CO.,

Defendant-Appellant.

Before: BORRELLO, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

In this no-fault priority case, defendant Progressive Michigan Insurance Company (Progressive) appeals as of right an order granting summary disposition and declaratory judgment in favor of plaintiff Farm Bureau General Insurance Company of Michigan (Farm Bureau). For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

On November 24, 2014, Vern Sehl was walking on Beitner Street when he was struck from behind by a motor vehicle driven by Kenneth Gmoser. Sehl was injured as a result of the collision, and sought first-party no-fault benefits from Progressive, his grandparents' insurer. The traffic report stated that at the time of the accident Sehl's address was the address where his grandparents resided.

Progressive denied Sehl's application. Selh then sought no-fault benefits from Farm Bureau, the insurer that provided coverage to Gmoser. After paying more than \$196,000 in benefits to Sehl, Farm Bureau filed a complaint for declaratory judgment, asserting that Progressive was a higher priority insurer under the Michigan No-Fault Act, MCL 500.3101 *et seq.*, and seeking full reimbursement of all benefits paid on Sehl's behalf.

On October 5, 2015, Farm Bureau moved for summary disposition under MCR 2.116(C)(10). Farm Bureau argued that because there was no evidence showing that Sehl had established a new domicile replacing his domicile with his grandparents, at the time of the accident, he remained domiciled with his grandparents. Progressive argued in response that Sehl was not domiciled with his grandparents because three or four months before the accident, he had moved out of their home and did not intend to return. The trial court found dispositive our Supreme Court's recent decision in *Grange Ins Co of Mich v Lawrence*, 494 Mich 475; 835 NW2d 363 (2013). In that case, our Supreme Court stated that a person can only have one domicile and that his or her domicile continues until he or she establishes a new domicile. *Id.* at 493-494. Applying that requirement, the court found that Sehl had established his domicile with his grandparents and that, at the time of the accident, although he had moved out and did not intend to return, he had yet to establish a new domicile. Accordingly, the trial court granted Farm Bureau's motion for summary disposition and granted declaratory judgment in its favor.

II. DOMICILE

A. STANDARD OF REVIEW

Progressive argues that the trial court erred in granting Farm Bureau summary disposition because Sehl was not domiciled with his grandparents on the date of the accident. We review de novo a trial court's decision to grant or deny summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009). Further, "[a] domicile determination is generally a question of fact; however, where the underlying material facts are not in dispute, the determination of domicile is a question of law for the circuit court." *Grange*, 494 Mich at 490.

B. ANALYSIS

In July 2012, Sehl moved into his grandparents' home in Traverse City, Michigan. He kept personal items in their home, had his own bedroom and bed, received mail at their address, and occasionally paid them rent. He resided with them until July 2014, when, according to his grandfather, he decided it would be best if he moved out and stayed with friends. The parties agree that between July 2012 and July 2014, Sehl established his domicile with his grandparents. The parties further agree that if Sehl was domiciled with his grandparents at the time of the accident, then under MCL 500.3114(1), Progressive would be liable for Sehl's no-fault benefits.¹

¹ MCL 500.3114(1) provides:

(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. . . .

However, Progressive asserts that Sehl abandoned his domicile with his grandparents in July 2014 when he moved out.

Domicile is defined to mean “the place where a person has his true, fixed, permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning.” *Grange*, 494 Mich at 493. A person may only have a single domicile at a time. *Id.* at 493-494. Further, it is well-settled that “domicile is acquired by the combination of residence and the intention to reside in a given place If the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short, will establish a domicile.” *Id.* at 495 (alteration in original). In *Grange*, our Supreme Court explained:

a man retains his domicile of origin [upon his birth] until he changes it, by acquiring another; and so each successive domicile continues, until changed by acquiring another. And it is equally obvious that the acquisition of a new domicile does, at the same instant, terminate the preceding one. [*Id.* at 494 (quotation omitted; alteration in original).]

Thus, it is clear that in order to terminate an established domicile, an individual must establish a new domicile through a combination of residency and intent.

The record contains significant evidence regarding Sehl’s residency and intent with regard to his grandparents’ home. In an affidavit, Sehl stated that he had “permanently moved out” of his grandparents’ home to reside with a friend. He added that at the time of the accident he had “no intention of returning to reside” with his grandparents and was instead residing at “3058 Keystone.” Moreover, his grandparents testified that on the date of the accident, Sehl was not living with them. They both explained that he had moved out in July 2014 so that he could live with friends. They did not know the names of the friends he moved in with, nor did they know his address after he left. They both stated, however, that when he left he took some belongings and then returned at a later date to retrieve more belongings.² Sehl’s bedroom was converted into a sewing room after he left, and at some point, his bed was given to a neighbor. Further, his grandparents testified that Sehl continued to receive mail, including subscription magazines and bank statements.

Sehl’s grandmother did not know if he had a physical address to forward his mail to. She heard he might be living at the auto shop where he worked. Further, at some point before the accident, she assumed he was homeless because he was “bouncing around” and not giving a lot of detail with regard to where he was staying. She explained that for all she knew he was “couch surfing.” Sehl’s grandfather added that he did not know where Sehl was living and that Sehl had never given them his new address. He had also heard that Sehl was living at the auto shop on Keystone between the time when he moved out and the date of the accident.

² According to the record, Sehl continues to have a few items at his grandparents’ home, including magazines, a folding chair, and a bike.

Based on the record before us, it is clear that although Sehl no longer planned to permanently reside with his grandparents, he had not yet established a new domicile. He was instead living in various places, including with unknown friends at unknown addresses and at the auto shop where he worked. The transient nature of his living arrangements after moving out of his grandparents' home does not allow for the inference that he was residing at a new place with the intention to remaining permanently or indefinitely. Because *Grange* requires an individual to acquire a new domicile in order to terminate his or her prior domicile, we are constrained to find that despite his clear intent to leave his grandparents' home permanently his domicile nevertheless remained in their home. See *id.* at 494.

Progressive argues that it was only required to prove that Sehl was no longer domiciled with his grandparents and that it had no obligation to further prove exactly where his new domicile was. However, because a person must acquire a new domicile before the old domicile terminates, Progressive necessarily had to establish that Sehl was domiciled at a new location in order to establish that his old domicile was terminated. Progressive was unable to meet that burden.

Progressive also argues that the trial court was required to weigh the domicile factors in *Workman v Detroit Auto Inter-Ins Exchange*, 404 Mich 477, 496-497; 274 NW2d 373 (1979). While we agree that those factors and the factors in *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 681; 333 NW2d 322 (1983) are still applicable to a determination of domicile, in this case, we need not apply them in detail because there is simply no evidence in the record suggesting that Sehl established a new domicile after leaving his grandparents' home.

Affirmed. Farm Bureau, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Stephen L. Borrello

/s/ Michael J. Kelly

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MARKEY, J.(CONCURRING).

I concur in result only.

/s/ Jane E. Markey