

STATE OF MICHIGAN
COURT OF APPEALS

BRADLEY FISK,

Plaintiff-Appellant,

v

CITIZENS INSURANCE COMPANY OF
AMERICA,

Defendant-Appellee.

UNPUBLISHED

March 10, 2005

No. 251605

Wayne Circuit Court

LC No. 02-239292-NF

Before: Murray, P.J., and Markey and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

When plaintiff was twenty-two years old, he was riding on the back of his friend’s motorcycle. A woman pulled her car out in front of the speeding motorcycle, causing a collision that catapulted plaintiff over the motorcycle and the car. Plaintiff shattered his foot. He settled with the insurance company for the car and motorcycle, but the policy limits combined only provided him with \$40,000, so he sought coverage under a policy defendant had issued to his mother, Mary Anne Burskey. The policy covered Burskey as the named insured and any of her family members who resided in her household. The sole issue before the trial court was whether plaintiff was a resident in his mother’s home at the time of the accident.

Plaintiff argues that the trial court erred when it determined, as a matter of law, that plaintiff did not reside with his mother at the time of the accident. We review de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. Summary disposition is appropriate if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). In this case, the parties essentially agree on the material facts, so this case boils down to the legal question of whether plaintiff was a resident in his mother’s home.

It is undisputed that plaintiff did not regularly stay with his mother. His permanent home was with his grandparents until he began dividing his time between his mother’s house and his

girlfriend's apartment. In fact, plaintiff kept clothes and his television at the apartment, received some mail there, and gave the apartment as his address when he arrived at the hospital. In a letter to defendant decrying the lawsuit and disavowing any association, plaintiff's mother emphatically states that plaintiff was not living with her at the time of the accident.

In his deposition testimony, plaintiff admitted that he stayed over at his girlfriend's apartment several nights a week because it was easier for him to get to work, but plaintiff lost his job two months before the accident and still stayed at his girlfriend's apartment frequently. In fact, when the loss of income began straining him financially, he asked his mother and stepfather if he could *come back* to live with them to save on living expenses. He had never lived in his mother's home in any permanent way, because he lived at his grandparents while his mother's house was being built. In a telling episode, his stepfather refused to allow plaintiff to move into the house, which sparked an emotional argument between plaintiff's stepfather and plaintiff's mother that was not resolved until plaintiff called his maternal grandmother. His grandmother calmed his mother down and, with his stepfather, loaned plaintiff enough money so that he could sustain his lifestyle *without* moving in with his mother.

This undisputed episode predated the accident by two weeks and completely contradicts plaintiff's assertions that he resided with his mother at the time of the accident. Plaintiff was a twenty-two-year-old who had supported and housed himself independent of his mother and stepfather. He stayed most nights at his girlfriend's apartment and helped her with its costs. It goes without saying that if plaintiff resided at the home of his mother and stepfather, he would not have needed permission to reside there. While we are not sure what plaintiff's permanent residence was, we are sure that his bare intention eventually to reside at his mother's house did not render him a resident there. We adopted the following language in a similar case:

We are of the opinion that (the daughter's) "floating intentions" are typical of the recently emancipated young adult. Her vague intention of returning 'home' does not support the conclusion that she and her mother were residents of the same household. She was not dependent on her parents for support and had maintained a separate residence in a distant locale for over a year at the time of the accident. [*Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983) (quoting *Old Reliable Ins Co v Brown*, 558 SW2d 190, 191 (Ky App, 1977)).]

The language applies here. Plaintiff sought, and was denied, permission to reside at his mother's house. He accepted a loan as consolation and was admittedly living at his girlfriend's apartment at the time of the accident. Because plaintiff failed to establish that he resided with his mother, the trial court correctly granted defendant's motion for summary disposition.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell