

STATE OF MICHIGAN
COURT OF APPEALS

PHILIP CARL GUNTHER, JR.,
Personal Representative of the Estate of Cory Lee
Gunther, Deceased,

UNPUBLISHED
October 27, 2009

Plaintiff-Appellee,

v

AAA/ACIA,

Defendant-Appellant.

No. 284580
Benzie Circuit Court
LC No. 07-007890-NZ

Before: Hoekstra, P.J., and Bandstra and Servitto, JJ.

PER CURIAM.

Plaintiff was granted partial summary disposition under MCR 2.116(C)(10) based on a determination that Roxanna Tolar was a resident relative of her parents, defendant's insureds, at the time she was involved in an accident with plaintiff's decedent.¹ Once partial summary disposition was granted, the parties stipulated as to the other issues involved and judgment was entered in favor of plaintiff. Defendant appeals as of right that judgment. We affirm.

Defendant argues that the trial court erred in determining that Roxanna was residing with her parents at the time of the accident. We disagree. A trial court's ruling on a motion for summary disposition is reviewed de novo. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion brought under MCR 2.116(C)(10), this Court considers the affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Residence and domicile in Michigan are generally synonymous terms and are defined, for non-insurance purposes, as "the place where a person has his home, with no present intent of

¹ In a consent judgment that resolved the underlying wrongful death claim, Roxanna assigned any insurance rights she had from her parents' policy to plaintiff.

removing, and to which he intends to return after going elsewhere for a longer or shorter period of time.” *Dairyland Ins Co v Auto-Owners Ins Co*, 123 Mich App 675, 680; 333 NW2d 322 (1983) quoting *Hartzler v Radeka*, 265 Mich 451, 452; 251 NW 554 (1933). Generally, the determination of a person’s domicile or residence is a question of fact to be resolved by the trial court, and this Court will not reverse the trial court’s determination unless the evidence clearly preponderates in the opposite direction. *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111; 553 NW2d 353 (1996); *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 631; 499 NW2d 423 (1993). However, where, as here, the determining facts are not in dispute, then it is a question of law for the court. *Fowler v Auto Club Ins Ass’n*, 254 Mich App 362, 364; 656 NW2d 856 (2002).

To determine residence, a number of factors are weighed and balanced against each other and no one factor is determinative. *Univ of Michigan Regents v State Farm Mut Ins Co*, 250 Mich App 719, 730; 650 NW2d 129 (2002). It is error to give any one factor special weight. *Cervantes v Farm Bureau Ins Co*, 272 Mich App 410, 415-416; 726 NW2d 73 (2006). In *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), the Court described the relevant factors in deciding whether a person is domiciled in the same household as the insured: (1) the subjective or declared intent of the claimant to remain either permanently or indefinitely in the insured’s household; (2) the formality or informality of the relationship between the claimant and the members of the household; (3) whether the place where the claimant lives is in the same house, within the same curtilage, or upon the same premises as the insured; and (4) the existence of another place of lodging for the person alleging domicile.

In *Dairyland*, *supra* at 681-682 this Court noted that all relevant factors must be considered, and that the four *Workman* factors were merely among the relevant factors to be considered. This Court cited *Workman* in stating that residency must be viewed flexibly in the context of any number of factual settings. Moreover, in contemplating the particular problems of young people transitioning into independence, the Court formulated additional factors to be considered. *Id.* at 680-681. Of particular note here, in *Dobson v Maki*, 184 Mich App 244, 254; 457 NW2d 132 (1990), this Court observed that the facts of a case, particularly those of young adults with varying degrees of separation from the parental home, do not always fit neatly into the enumerated factors. This Court has listed such other relevant factors as (1) whether the child continues to use the parents’ home as the child’s mailing address; (2) whether the child maintains some possessions with the parents; (3) whether the child uses the parents’ address on the child’s driver’s license or other documents; (4) whether a room is maintained for the child at the parents’ home; and (5) whether the child is dependent upon the parents for support. *Fowler*, *supra* at 364-365, citing *Dairyland*, *supra* at 682.

In the instant case the balance of the factors favors a determination that Roxanna’s residence was at her parents’ home. Therefore, the trial court did not err in granting plaintiff’s motion for partial summary disposition on this issue.

At the time of the accident, Roxanna Tolar was a young adult in transition. She had previously moved from her childhood home in Michigan to Louisiana in June 2003. However, by late June 2005, she could no longer afford to live in Louisiana, and consequently, she returned to Michigan. Upon her return, she typically stayed at her parents’ home, although she also stayed at other homes. She was waiting for an apartment of her own to become available and spoke with her mother about staying at her parents’ home in the meantime. Her parents’ home

had only one bedroom, so Roxanna slept on the floor with some blankets. Roxanna put most of her belongings in a storage facility, but typically kept enough clothing to wear for a week. She also kept her cat at her parents' house and forwarded her mail to their home. She listed her parents' address as her own on forms to obtain employment, open a bank account, and rent the storage facility. When living with her parents, Roxanna had free access to all the amenities of the home, including food. Her father would also transport her when necessary, and she would ride to work with her parents' neighbor. Her father also paid for meals at restaurants, but no other cash assistance was extended to Roxanna.

Roxanna also stayed at her sister's home for 3 to 4 nights to help baby-sit when her sister's husband was not home, and she stayed at least one night at a friend's house. In early August 2005, Roxanna's brother-in-law left town to work in another city for two weeks. Roxanna went to stay with her sister while he was gone to help care for her nephew. Roxanna believed that her apartment would become available during that time. Several days after staying at her sister's house, on August 9, 2005, Roxanna borrowed her sister and brother-in-law's car and was involved in the subject accident.

We note that the first factor for consideration as set forth in *Workman, supra*, subjective or declared intent, favors a finding that Roxana was not a resident of her parents' home at the time of the accident. Roxanna ultimately intended to move into an apartment of her own in Michigan. Prior to arranging this she was not without a residence. She primarily lived at her parents' home and expected to stay there until she moved. However, her plan was to move into the apartment as soon as it was ready, and this occurred during the time she was staying with her sister to help with child-care, nine days after the accident.

The second *Workman* factor, concerning the "formality or informality of the relationship between the person and the members of the insured's household," does not disfavor a finding that Roxana was a resident of her parents' home at the time of the accident. Although there was only an informal relationship between Roxanna and her parents, that relationship allowed her to freely use her parents' home at will. Further, she was able to utilize the parental relationship for no-cost housing, and also for utilities, food, and transportation. In contrast, Roxanna's informal arrangement with her sister had greater limitations; it was based primarily on child-care considerations and Roxanna could not stay there if her sister's husband was home.

The third *Workman* factor, pertaining to whether the claimant lives in the same house or upon the same premises as the insureds, favors a finding that Roxana was a resident of her parents' home at the time of the accident. Roxanna resided in the same house and on the same premises with her parents during the periods she was staying with them.

Likewise, the fourth *Workman* factor also favors a finding that Roxana was a resident of her parents' home at the time of the accident. Roxanna had only limited access to "another place of lodging." As noted, she was able to stay with her sister, primarily to help with child-care, only when her sister's husband was absent. She also stayed with a friend at least once in the nearly two months between arriving in Michigan and obtaining her apartment. She considered residing at a homeless shelter before she was able to stay with her parents.

Turning to the additional factors for consideration identified by this Court in *Dairyland, supra*, we note that, regarding the first factor, Roxanna considered having her mail forwarded to

a post office box, but chose to have her address changed to her parents' home and received her mail there. This further supports plaintiff's argument that Roxanna was a resident of her parents' home at the time of the accident.

The next *Dairyland* factor also slightly favors a finding that Roxanna was a resident of her parents' home at the time of the accident. Roxanna maintained some of her personal possessions at her parents' home. While she stored most of her belongings and kept only what was necessary with her, those belongings she did not place in storage, including a slow cooker and blankets, were kept at her parents' home. She also kept her cat at her parents' home. And, Roxanna's mother testified that Roxanna would come back to her parents' home for clothes when she was staying with her sister.

The third *Dairyland* factor likewise favors a finding that Roxana was a resident of her parents' home at the time of the accident. Roxanna listed her parents' address as her own on bank, rental, and employment documents. She also identified her parents' address as her own to the police at the scene of her accident.

Conversely, the fourth *Dairyland* factor weights slightly in favor of a finding that Roxana was not a resident of her parents' home at the time of the accident. Roxanna did not have a separate room at her parents' home; that home has only a single bedroom. Thus, Roxanna usually slept on the living room floor with her blankets.

Finally, the last *Dairyland* factor also favors a finding that Roxana was not a resident of her parents' home at the time of the accident. Even though she did not pay rent, and received food, utilities, and transportation as needed, Roxanna did not receive direct financial support from her parents.

When determining Roxanna's place of residence, we are required to weigh and balance each of the aforementioned factors against one another; no one factor is determinative and it is error to give any one factor special weight. *Cervantes, supra* at 415-416; *State Farm, supra* at 730. This Court found in *Dobson, supra* at 254, that the young man in transition there would not have considered himself without a home; rather, he actually considered his father's home as his residence even though he slept at various places at different times. Here, too, Roxanna would not have considered herself homeless at the time of the accident. Further, as our Supreme Court has explained, "[e]very person must have a domicile somewhere" and "very slight circumstances must often decide the question." *Beecher v Common Council of Detroit*, 114 Mich 228, 230; 72 NW2d 206 (1897).

There are arguably three places that could have served as Roxanna's residence on August 9, 2005: her parents' home, her sister's home or a friend's home. Roxanna was not a resident of her sister's home. Rather, she was permitted to stay there for the purposes of babysitting, for the convenience of her sister and brother-in-law, only when her brother-in-law was out of town. She did not leave any belongings there and was not generally welcomed to stay there when her brother-in-law was home. And, there is no evidence suggesting that Roxanna was a resident of the home of any friend. Thus, the only supportable conclusion, if only, perhaps, by "very slight circumstances," is that Roxanna resided at her parents' home until she moved into her own apartment shortly following the accident. For that reason, balancing the entire circumstances of Roxanna's life, we conclude that the undisputed facts presented weigh in favor of a

determination that Roxanna resided at her parents' home on August 9, 2005. Therefore, the trial court did not err by concluding that she was a resident relative according to her parents' insurance policy at the time of the automobile accident involving plaintiff's decedent.

We affirm. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Joel P. Hoekstra
/s/ Richard A. Bandstra
/s/ Deborah A. Servitto