

STATE OF MICHIGAN
COURT OF APPEALS

LORI CALDERON, as Guardian of ARTHUR
KRUMM, a Legally Incapacitated Person,

UNPUBLISHED
March 24, 2009

Plaintiff/Counter-Defendant-
Appellant,

and

FUNCTIONAL RECOVERY, INC,

Intervening Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY,

Defendant/Counter-Plaintiff-
Appellee.

No. 283313
Wayne Circuit Court
LC No. 06-602100-NF

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

Plaintiff, Lori Calderon, and intervening plaintiff, Functional Recovery, Inc.,¹ appeal as of right from the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant, Auto-Owners Insurance Company. Because the trial court erred when it concluded that plaintiff had not shown there was a question of fact regarding whether plaintiff's legally incapacitated person, Arthur Krumm, was domiciled at his grandmother's house at the time of the accident, we reverse and remand for trial.

This case concerns the domicile of Krumm, who was injured in an automobile accident while visiting friends in North Carolina in May 2003. Plaintiff is Krumm's sister. The only insurance possibly available to Krumm is that of his grandmother, Beverly Krumm, and then

¹ Intervening plaintiff's claims are derivative in nature, thus we will reference "plaintiff" only in this opinion.

only if he was domiciled with her at the time of the accident. Defendant at first paid benefits but stopped doing so after its investigation led it to conclude that Krumm was not domiciled with his grandmother. When plaintiff sued to continue benefits, defendant counter-claimed for reimbursement of benefits already paid on Krumm's behalf. Defendant moved for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). The trial court granted defendant's motion. Plaintiff now appeals as of right.

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Where the evidence proffered by the opposing party fails to establish a genuine issue regarding any material fact, the motion should be granted if the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). Generally, where a person is domiciled is a question of fact. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). However, if underlying facts are undisputed, domicile becomes a question of law. *Id.* Because the underlying facts in this case are disputed, we review the trial court's findings under the clearly erroneous standard. *Id.*

Personal protection insurance benefits are available to "the person named in the policy, the person's spouse, and a relative of either domiciled in the same household." MCL 500.3114(1). When analyzing whether a person is "domiciled in the same household" as the insured, courts examine a number of factors. These can include:

- (1) the subjective or declared intent of the person to remain indefinitely or permanently in the insured's household;
- (2) the formality or informality of the relationship between the person and the members of the insured's household;
- (3) whether the place where the person lives is in the same house, within the same curtilage, or upon the same premises as the insured;
- (4) the existence of another place of lodging for the person alleging domicile in the household.
- (5) the person's mailing address;
- (6) whether the person maintains possessions at the insured's home;
- (7) whether the insured's address appears on the person's driver's license and other documents;
- (8) whether a bedroom is maintained for the person at the insured's home; and
- (9) whether the person is dependent upon the insured for financial support or assistance.

Williams v State Farm Mut Auto Ins Co, 202 Mich App 491, 494-495; 509 NW2d 821 (1993). These factors do not constitute a comprehensive and exclusive list; they are merely “[a]mong the relevant factors” to be considered. *Workman v Detroit Automobile Inter-Ins Exch*, 404 Mich 477, 495; 274 NW2d 373 (1979). No one factor is, in itself, determinative; instead, each factor must be balanced and weighed with the others. *Id.*

Our Supreme Court has held that every person is domiciled somewhere and that “very slight circumstances must often decide the question.” *Beecher v Common Council of Detroit*, 114 Mich 228, 230; 72 NW2d 206 (1897).

“A removal which does not contemplate an absence from the former domicile for an indefinite and uncertain time is not a change of it. But when there is a removal, unless it can be shown or inferred from circumstances that it was for some particular purpose, expected to be only of a temporary nature, or in the exercise of some particular profession, office, or calling, it does change the domicile.” [*Id.* at 231, quoting Jacobs, Law of Domicile, § 378.]

Put another way, “Domicile [is] that place where a person has voluntarily fixed his abode not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time.” *Henry v Henry*, 362 Mich 85, 101-102; 106 NW2d 570 (1960), quoting *Williams v North Carolina*, 325 US 226, 236; 65 S Ct 1092; 89 L Ed 1577 (1945) (internal quotation marks omitted).

Here, the trial court found as a matter of law that Krumm was not domiciled at his grandmother’s house at the time of the accident. Rather than agreeing with plaintiff’s assertions that she had presented sufficient evidence to create a question of fact with regard to whether Krumm was domiciled with his grandmother, the trial court considered as dispositive the facts that Krumm had a wife, had taken up residence in at least two other states after he was married, and that he apparently left Michigan to avoid legal troubles. In its holding, the trial court expressly credited a statement provided via affidavit by defense witness, Janice Stunkel, that Krumm had stated “specifically that his intent was to go back to Arkansas when he left South Carolina[.]” The trial court recognized that Krumm returned to Michigan at times and stayed at his grandmother’s house, the trial court characterized those periods as “visits.” The trial court ultimately concluded that “it does not appear to this court that a reasonable jury could conclude that he did not abandon the state and take up residence in another state.”

The record reveals that defendant presented the trial court with a number of facts supporting its position that Krumm was not domiciled at his grandmother’s residence at the time of the accident. Although Krumm and his wife, Tonya, met in Fife Lake, they were married in North Carolina in 1997. Krumm was arrested in North Carolina for speeding and extradited to Michigan when an outstanding arrest warrant from Michigan was discovered. When Krumm was released from jail, he and his wife lived in various apartments, rental houses, and trailers, and for a while they lived together with Krumm’s grandmother. However, Tonya and the grandmother did not get along. In August 2002, Krumm went to Arkansas to evade Michigan police and Tonya soon followed. Krumm opened a bank account there, and when police officers were called to investigate a domestic violence complaint at the house that was rented in Tonya’s name, Krumm was there and asserted that it was his house and that he paid the bills there.

Shortly after Krumm went to North Carolina in search of work, he called a friend, Stunkel, back in Arkansas and said things were not working out and he was coming home. Stunkel assumed that by “home” Krumm meant Arkansas because he would not have called to tell her he was going back to Michigan.

However, the record also reveals that in her attempt to avoid summary disposition, plaintiff also submitted evidence to support her position that Krumm was domiciled with his grandmother in Michigan at the time of the accident. Plaintiff admits that Krumm was physically present in Arkansas for several months before the accident, but provided evidence supporting her position that Krumm only visited Arkansas periodically and would always return to his grandmother’s house in Michigan. Krumm was raised by his grandmother in Fife Lake, Michigan. His grandmother and her husband had legally adopted Krumm when he was a young boy, thus the grandmother’s relationship to Krumm was actually that of mother rather than grandmother. The grandmother testified that her opinion was that Krumm still lived in her home. He kept possessions there and had his own room there. Krumm had only one piece of identification, a Michigan ID card listing his grandmother’s address in Michigan. That address was listed also on his voter’s registration. Krumm received mail at that address including collection notices. The last time he was involved in a criminal matter in Michigan, in 2002, he gave his grandmother’s address as his home address. He had a dormant bank account in Michigan. He did not have one set residence in Arkansas, but instead drifted from place to place. He was estranged from his wife and no longer lived with her.

Plaintiff testified specifically that she visited Krumm at their grandmother’s house just six weeks or so before the accident. She also testified that she mailed Krumm things to their grandmother’s address, and believed he intended to come back to Michigan sometime in May. Bill Duhaime, who sometimes employed Krumm as a roofer, testified that Krumm lived in motels, would often go back to his grandmother’s house, and would call from there and receive calls there. Duhaime stated that Krumm would come down to Arkansas to work and party and then “go back home.” A friend of Krumm’s, Larry Corbitt, testified that Krumm’s home was in Michigan. Another friend, Crystal Tyner stated that Krumm said his home was in Michigan and that Krumm gave his grandmother’s address and telephone number as his contact information. Tyner also testified that Krumm told her he was ready to leave Arkansas and wanted to come visit her in North Carolina before he went back home to Michigan. Krumm’s wife, Tonya, testified that she believed Krumm always considered Michigan his home, as did she, and that she planned on returning when she could. Finally, even portions of Stunkel’s testimony support the notion that Krumm drifted from place to place to “[g]et his act together” and find temporary work as a roofer. Moreover, Stunkel testified that even when Krumm was living in Arkansas he stayed mainly in motels or with friends and only lived a month or so with his wife in the house she rented, and even then he was “in and out.”

Based on these facts and other record evidence, the trial court erred in finding as a matter of law that Krumm was not domiciled at his grandmother’s house. Clearly, when viewing the evidence in favor of the non-moving party, while these facts do not prove Krumm resided with his grandmother, they provide a basis for a reasonable jury to conclude that he was domiciled with her at the time of the accident. Krumm plainly lived a transient lifestyle. There was no evidence presented that Krumm planned to remain in Arkansas permanently, but there was evidence presented from multiple sources that Krumm intended to move back to Michigan and

verbally declared that intent. His wife, Tonya, even provided testimony that on the day of the accident, Krumm called her in the evening apologizing to her for their latest fight, and told her that “[h]e was going to come back and me and him were going to go back to Michigan.” At that point, Tonya could not afford the rent on the house she rented when she moved to Arkansas so she lived at hotels until she eventually began staying with Stunkel. Tonya testified that she began packing her things to return to Michigan. There is evidence that even as a married man, when Krumm returned to Michigan, he lived with his grandmother at her home. The grandmother did not like Tonya and even denied they were married. But Tonya testified that she would sometimes stay at her sister’s home while Krumm was with his grandmother and she would sneak in to the grandmother’s home through windows to be with Krumm.

While it certainly appears that the trial court considered the *Williams* factors in deciding whether Krumm was domiciled with his grandmother at the time of this incident, it does not appear that it applied the correct standard in doing so. This is because, when weighing the evidence of intent provided together with evidence presented regarding other *Williams* factors (i.e. the formality of the relationship between Krumm and his grandmother who was actually his adoptive mother, that Krumm had designated living space in his grandmother’s house, he kept possessions at her home, Krumm had no other place of lodging, and that his mailing address and Michigan ID addresses were his grandmother’s address), when viewed in the light most favorable to plaintiff clearly created a genuine issue of material fact for the jury regarding whether Krumm was domiciled with his grandmother in Michigan. Again, the trial court was duty bound to review the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion, plaintiff. MCR 2.116(G)(5); *Maiden, supra* at 120. The trial court did not do so, and instead, impermissibly usurped the role of the jury when it decided this factual question and issues of witness credibility as a matter of law.

Based on the record evidence, we conclude that a factual question was raised regarding Krumm’s domicile at the time of the accident that precludes summary judgment. Thus, the trial court erred when it concluded that plaintiff had not shown there was a question of fact regarding whether Krumm was domiciled at his grandmother’s house at the time of the accident. Accordingly, this case must be reversed and remanded for trial. *Bryant v Safeco Ins Co*, 143 Mich App 743, 748; 372 NW2d 655 (1985).

Reversed and remanded for trial. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering