

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROSCO M. HETTICH, SR., Individually and as  
Personal Representative of the ESTATE OF  
DENISE R. HETTICH, Deceased,

Plaintiff-Appellant,

v

ALLSTATE COUNTY MUTUAL INSURANCE  
COMPANY,

Defendant-Appellee.

and

JAMES WALLING, Deceased,

Defendant.

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UNPUBLISHED  
February 7, 2006

No. 255757  
Ogemaw Circuit Court  
LC No. 03-654810-NF

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to Allstate County Mutual Insurance Company (Allstate County) and James Walling<sup>1</sup> on the basis that Michigan courts lacked personal jurisdiction over them. MCR 2.116(C)(1).<sup>2</sup> We vacate the trial court's order and remand for further proceedings consistent with this opinion.

Before 2003, the plaintiff and his family resided in Texas. Sometime in 2003, the Hettich family moved to Michigan. Plaintiff claims that his family resided in Michigan for all of 2003. Plaintiff further alleges that in June 2003, he and his wife, Denise, added a Michigan-registered Camero to a Texas automobile insurance policy issued by Allstate County, through its insurance

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<sup>1</sup> James Walling is deceased, and has been dismissed as a party to this appeal; plaintiff's late motion to substitute Walling's estate as a party was denied. All that remains to be considered is plaintiff's appeal of right against Allstate County.

<sup>2</sup> The trial court also granted summary disposition in favor of defendant Allstate Insurance Company under MCR 2.116(C)(8) and (10). However, Allstate Insurance Company is not a party to this appeal.

agent James Walling, both doing business in Texas. Correspondence regarding this policy was sent to a Michigan address, including Walling's policy confirmation letter. The Texas Liability Insurance Cards and the Auto Policy Declarations page only bear the Hettich's Michigan address.

On August 4, 2003, Denise Hettich died in a car accident in Michigan while driving the Camero. Plaintiff sued as the personal representative of her estate alleging that the estate and surviving family were entitled to Michigan no-fault benefits under the insurance policy issued by defendant Allstate County. The Texas insurance policy only provides \$5,000 to Denise Hettich's survivors. The complaint alleged that Walling knew, or should have known, that it was illegal to maintain a "Texas automobile policy" on a vehicle registered in Michigan that is owned and operated by Michigan residents. The complaint further alleged that despite the possible loss or forfeiture of no-fault insurance coverage through such a policy, Walling "affirmatively represented to Plaintiff and the Plaintiff's decedent that the Texas automobile insurance policy . . . was legal, in statutory compliance[,] and provided proper coverage to Plaintiff." According to plaintiff, "Walling's negligence and breach of duty" caused plaintiff to suffer "a denial of all benefits available under the Michigan No-Fault Automobile Insurance Act."

Allstate County and Walling moved for summary disposition under MCR 2.116(C)(1), claiming the trial court lacked personal jurisdiction over them. They argued that the requirements of the Michigan long-arm statute had not been met, and that they did not have the requisite minimum contacts with Michigan to satisfy due process. Defendants concede that, after plaintiff requested his mailing address be changed to a Michigan address, all future correspondence in regard to the policy was sent to that address. However, they maintain that the change of address request did not put them on notice of a change of residency, as people often maintain multiple addresses.

Defendants filed for summary disposition and, following a hearing, the trial court granted their motions. The trial court found no basis under the long-arm statute to assert jurisdiction, and added that minimal contacts between defendants and Michigan had not been established.

Plaintiff maintains the trial court prematurely granted defendants summary disposition because discovery was incomplete. Summary disposition is appropriate and should be granted before the completion of discovery "if there is no disputed issue before the court or if further discovery does not stand a fair chance of finding factual support for the nonmoving party." *VanVorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004), citing *Vargo v Sauer*, 215 Mich App 389, 401; 547 NW2d 40 (1996). "[A] party opposing a motion for summary disposition because discovery is not complete must provide some independent evidence that a factual dispute exists." *Id.* quoting *Michigan Nat'l Bank v Metro Institutional Food Service, Inc.*, 198 Mich App 236, 241; 497 NW2d 225 (1993).

Here, the parties submitted competing affidavits. Defendants submitted an affidavit from Walling, which averred that, while "[p]laintiff represented that he was in the process of moving from Texas to Michigan, . . . [h]e had not yet established residency within the State of Michigan." Further, that Walling "specifically instructed Plaintiff to contact an Allstate agent in Michigan in order to have his policy changed to comply with Michigan law, once [plaintiff] established residency in Michigan." Walling also averred that "I do not solicit business within the State of Michigan, nor, to my knowledge does [Allstate County]," and further, that "I did not

knowingly contract to insure any . . . property . . . within the State of Michigan at the time of contracting. To the contrary, I arranged for a policy of insurance to be issued to persons, which I believe resided in the State of Texas.” In addition, Walling averred that “any telephone calls I placed to the HETTICH’S within the State of Michigan were only in response to calls received from [plaintiff] at my business telephone number in Texas,” and that “I did not direct any correspondence pertaining to the policy of insurance at issue to the HETTICH’S within the State of Michigan.”

During oral argument on defendant’s motion for summary disposition, plaintiff argued he should be afforded the opportunity to conduct limited discovery of defendant’s records. In addition, plaintiff submitted an affidavit in opposition to summary disposition that indicated that “Defendant Walling’s affidavit is completely false as it asserts that Plaintiff had not yet established residency in Michigan in June 2003, when in fact Plaintiff and his wife had been living in Michigan the entire year of 2003 and in actuality even prior to that time and Defendant Walling was well aware of this.” Plaintiff also averred that “Defendant Walling told Plaintiff that if a police officer should ever question the Texas proof of insurance in Michigan Plaintiff should advise the officer that Defendant Walling maintained an office in the State of Michigan and that ‘Allstate’ was nationwide.” In addition, plaintiff stated that “Defendant Walling, or his agent, telephoned plaintiff in the state of Michigan on numerous occasions regarding policy issues and premium payments, including the payment of premiums by debit on the telephone.”

Given these competing affidavits, we conclude that limited discovery relating to the issue of defendant’s contacts with Michigan was appropriate. Plaintiff’s request for discovery was supported by evidence independent of plaintiff’s affidavit, including correspondence sent to plaintiff’s Michigan address (Walling’s policy confirmation letter), as well as the Texas Liability Insurance Cards and the Auto Policy Declarations page bearing plaintiff’s Michigan address. Given this evidence, it is reasonable to require defendant to submit to limited discovery directed at the issue whether defendant had sufficient minimum contacts to be subject to the jurisdiction of a Michigan court.

Accordingly, we vacate the trial court’s order granting defendants summary disposition on the basis that Michigan courts lacked personal jurisdiction over them. We remand to the trial court for limited discovery addressing whether defendants are subject to jurisdiction in Michigan. We defer to the trial court to set appropriate time limits and restrictions on the discovery afforded in this matter.<sup>3</sup> After the conclusion of a limited discovery period, the trial

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<sup>3</sup> Defendants may also conduct limited discovery of plaintiff directed toward assessing the veracity of plaintiff’s claims that defendants purposefully availed themselves to the State of Michigan.

court shall make findings of fact and conclusions of law supporting its decision whether defendants are subject to jurisdiction in Michigan.

Vacated and remanded for further proceedings. We do not retain jurisdiction.

/s/ Brian K. Zahra

/s/ William B. Murphy

/s/ Janet T. Neff