

STATE OF MICHIGAN
COURT OF APPEALS

TERESA FROST,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellee,

and

HOME OWNERS INSURANCE COMPANY

Defendant.

UNPUBLISHED

April 20, 2006

No. 266504

Genesee Circuit Court

LC No. 04-079950-NF

Before: Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court order granting summary disposition in favor of defendant under MCR 2.116(C)(10) on plaintiff's claim for no-fault benefits. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E). The essential issue in this case is whether plaintiff was a resident of Michigan at the time of her injury.

Plaintiff Teresa Frost and her husband, Loren Frost, lived near Flint until 1997 when they moved to Tennessee to pursue Loren's job at a Saturn plant. In 2003, Loren transferred from the Saturn plant in Tennessee to a General Motors plant in Lansing, Michigan. Plaintiff also discontinued her employment in Tennessee. After plaintiff and Loren moved back to Michigan in mid-July 2003, Loren began working for General Motors. They stayed with their son and his family in the Flint area while they looked for a house. On August 24, 2003, plaintiff, Loren, their son, and his family were shopping garage sales when they noticed a motor home. Plaintiff, Loren, and their son inspected the motor home. When plaintiff left the vehicle, she slipped on a wooden stool used to step down from the motor home and was injured. Plaintiff was treated at a

hospital and released. When the accident occurred, plaintiff and Loren had not yet registered or insured their cars in Michigan but maintained their Tennessee registrations and insurance.

Plaintiff sued defendant State Farm for no-fault benefits.¹ Defendant moved for summary disposition and argued that (1) plaintiff's injury did not arise out of the use of a motor vehicle as a motor vehicle, (2) plaintiff's State Farm insurance policy issued in Tennessee did not provide no-fault benefits, and (3) plaintiff could not obtain no-fault benefits under MCL 500.3163(1) because she was a Michigan resident. The trial court found that plaintiff was a Michigan resident because she and her husband had returned to Michigan, their former domicile, for the purpose of her husband's re-employment with General Motors and were searching for a home in which to live in Michigan, and their home in Tennessee had been rented out, demonstrating their intent not to stay there. The court reasoned that plaintiff's injury was potentially compensable under the no-fault act by Home Owners. The court granted summary disposition in favor of defendant.

On appeal, plaintiff argues that she and her husband still owned their house in Tennessee, had not yet purchased another home in Michigan, and were staying on a temporary basis at the house of their son and his family. Further, plaintiff maintains that she had not transferred her driver's license, her vehicle insurance, or her vehicle's registration, and that the vehicle insurance was billed to a post office box address in Michigan, not to a permanent residence. Plaintiff points to these facts as evidence that she had not yet established residency in Michigan, so she retained her status as a resident of Tennessee. We disagree. Under MCL 500.3163(1), anyone authorized to sell auto insurance in Michigan must pay Michigan no-fault PIP benefits to out-of-state residents who are injured in an auto accident and insured under one of the insurer's policies. Of course, the same benefits are not extended to a Michigan resident, who is required to maintain no-fault insurance for any motor vehicles the resident owns and operates in the state. MCL 500.3101; MCL 500.3102. Here, defendant State Farm is authorized to sell no-fault automobile insurance in Michigan. State Farm is also authorized to sell automobile insurance in Tennessee, but the automobile liability insurance in Tennessee does not provide no-fault, PIP benefits. So if plaintiff is a Michigan resident, defendant State Farm is not required under MCL 500.3163(1) to pay no-fault benefits to plaintiff.

State residence generally consists of physical presence in the state and an intention to remain. *Leader v Leader*, 73 Mich App 276, 280-281; 251 NW2d 288 (1977). "For many purposes, residence must be considered in light of a person's intent. Presence, abode, property ownership and other facts are often considered, yet intent is the key factor." *Id.* at 281, citations omitted. Generally, the determination of residency or domicile is a question of fact. However, when the underlying facts are not in dispute, the determination of domicile is a question of law for the court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). In determining residency or domicile, courts will consider several factors, including the person's

¹ Plaintiff later added Home Owners Insurance Company, the insurer of the motor home, as a defendant. Home Owners eventually settled with plaintiff. Home Owners is not part of this appeal.

expressed intent to remain either permanently or indefinitely, the relationship between household members, and the existence of other lodgings. *Regents of the Univ of Michigan v State Farm Mut Ins Co*, 250 Mich App 719, 730; 650 NW2d 129 (2002).

In this case, the undisputed facts indicate that plaintiff and her husband Loren were physically present in Michigan when the accident occurred and intended to remain in the state indefinitely. Plaintiff and Loren returned to Michigan for Loren's employment with General Motors in Lansing. Although plaintiff and Loren were residing on a temporary basis with their son and his family at the time of the accident, they were looking for a permanent home in Michigan. Therefore, we conclude that the trial court properly found that plaintiff was a Michigan resident and ineligible for no-fault benefits under her Tennessee State Farm automobile insurance policy.

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray