

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE THOMAS on behalf of
CASSANDRA N. THOMAS, a minor,

Plaintiff-Appellee,

v

STATE FARM MUTUAL INSURANCE CO.,

Defendant/Cross-Defendant/Cross-
Plaintiff-Appellee,

and

FARM BUREAU GENERAL INSURANCE CO.,

Defendant/Cross-Plaintiff/Cross-
Defendant-Appellant.

UNPUBLISHED
April 17, 2008

No. 276109
Monroe Circuit Court
LC No. 02-014645-NF

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

PER CURIAM.

Defendant-appellant, Farm Bureau General Insurance Company (Farm Bureau), appeals by right the trial court's determination that Cassandra Thomas was domiciled with her paternal grandmother, Patricia Uszynski; therefore Farm Bureau, Uszynski's insurer, is liable for Cassandra Thomas's personal injury protection benefits under the no-fault act. We affirm.

Cassandra was severely injured in an automobile accident on December 14, 2001, while a passenger in a car driven by Cale Kehoe. Neither Cassandra nor her mother, Michelle Thomas, carried automobile insurance. Under the no-fault priority of coverage provision, MCL 500.3114, if Cassandra were domiciled with Uszynski, then Uszynski's insurer, Farm Bureau, is liable. On the other hand, if Cassandra was not domiciled with Uszynski, then Kehoe's insurer, defendant-appellee State Farm, is liable.

Farm Bureau argues that the trial court erred by finding that Cassandra was domiciled at the home of Uszynski. We disagree. On appeal from a bench trial, this Court reviews the trial court's factual findings for clear error and conclusions of law de novo. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). 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.* Farm Bureau claims that there are no issues of material fact, but then states, “When Cassandra Thomas was forced to leave the apartment in . . . the fall of 2001, she in fact did move back into the home of her mother, Michelle Thomas.” Farm Bureau also claims that Cassandra stayed at Thomas’s house on every school night. On the other hand, State Farm Mutual Insurance Company notes that Cassandra’s sister, Chantal, testified that “sometimes” Cassandra lived with her and Thomas. But Uszynski’s unequivocal affidavit indicated that Cassandra was staying with her on the date of the accident. Thus, the question of domicile was one of fact. Consequently, this Court reviews the trial court’s findings under the clearly erroneous standard.

A party generally has only one legal residence or domicile. *Vanguard Ins Co v Racine*, 224 Mich App 229, 233; 568 NW2d 156 (1997). In *Workman v Detroit Automobile Inter-Insurance Exch*, 404 Mich 477, 496-497; 274 NW2d 373 (1979), our Supreme Court described four factors to be weighed and balanced in a domicile determination: (1) the subjective or declared intent of the claimant to remain indefinitely in the insured’s household, (2) the formality of the relationship between the claimant and 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. This Court has since addressed additional factors to determine domicile:

- (1) the person’s mailing address;
- (2) whether the person maintains possessions at the insured’s home;
- (3) whether the insured’s address appears on the person’s driver’s license and other documents;
- (4) whether a bedroom is maintained for the person at the insured’s home; and
- (5) whether the person is dependent upon the insured for financial support or assistance. [*Cervantes v Farm Bureau Gen Ins Co*, 272 Mich App 410, 415; 726 NW2d 73 (2006), quoting *Williams v State Farm Mut Automobile Ins Co*, 202 Mich App 491, 494-495; 509 NW2d 821 (1993).]

Cassandra is unable to say what her intent was regarding her domicile because she has no memory of events from the spring of 2001 until after the accident. According to Uszynski, an uninterested party, in November 2001 Cassandra told Uszynski that she had to leave her apartment but did not want to live with either Thomas or her father, Gregory Thomas. She asked if she could stay with Uszynski temporarily until she could find another place to live. Uszynski and her husband, Richard Uszynski, decided that they would allow Cassandra to stay at their house until she moved to Alabama with her friend Kristen Beck at the end of December 2001. Richard’s testimony corroborates Uszynski’s statements. While the evidence may not support the trial court’s finding that Cassandra could stay at Uszynski’s house for as long as she wanted, and while her stay there may not have been permanent, we cannot conclude that it was clear error for the trial court to determine that Cassandra’s intent was to be domiciled at Uszynski’s residence on the day of the accident.

There is conflicting testimony regarding whether Cassandra actually lived at Uszynski's house. Thomas testified that Cassandra stayed at her home on school nights. Chantal testified that Cassandra "mainly" or "sometimes" stayed at Thomas's house; Uszynski testified that Cassandra spent half of her time at Uszynski's house and half at Thomas's house, and Richard testified that Cassandra spent "at least four or five days out of the week" at Uszynski's house. Uncontested testimony includes that of Kehoe, who stated that he picked Cassandra up at Uszynski's house on three occasions and thought she lived there. He telephoned her at Uszynski's house. The night of the accident, he picked her up from Uszynski's house. The accident occurred as he was driving her back to Uszynski's. In addition, Chaplain Shirley Butwin noted in her hospital report that Cassandra lived with Uszynski.

The parties stipulated that between the date that Cassandra left her Michigan Avenue apartment and that of the accident, she slept some nights at Thomas's house and some at Uszynski's. Cassandra moved her love seat, sofa, bed, TV and stereo to Thomas's house from the Michigan Avenue apartment. Chantal testified that Cassandra used the bed and TV when she slept at Thomas's house but her love seat and sofa were stored in an upstairs room. So, although Cassandra had lodging at Thomas's house, she also had clothing and presumably a bedroom at Uszynski's house.

Cassandra continued to receive all her mail at Thomas's house; however, that fact is not dispositive. Cassandra did not change her mailing address when she lived at the Michigan Avenue apartment, but the parties agree that Cassandra was domiciled at the apartment even though she did not change her mailing address.

Cassandra's driver's license was destroyed in the car accident, but Uszynski's address is on the police report of the accident and on Cassandra's hospital records. Kehoe took police to Uszynski's address thinking it was where Cassandra lived, and Gregory Thomas's family members registered Cassandra at the hospital. Thus, as Farm Bureau points out, the addresses on those records were not provided by anyone having personal knowledge of Cassandra's actual address.

Uszynski testified that she did not provide financial support to Cassandra other than that she stayed rent-free at Uszynski's house. Cassandra worked two jobs. There was no evidence that Cassandra received financial assistance from anyone other than Thomas's testimony that she loaned money to Cassandra the morning of the accident.

We cannot find clear error with the trial court's findings that Cassandra intended to be domiciled at Uszynski's house where she had a bedroom and clothing. While she kept most of her personal things at Thomas's house, she had what she needed to live at Uszynski's house. A trial court's factual findings are clearly erroneous where there is no supporting evidence for the findings or the reviewing court is left with a definite and firm conviction that a mistake was made. *Hill v Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007). Here, the trial court found that Cassandra did not want to live with either parent, had nowhere else to go, and was welcomed to stay at Uszynski's house. Thus, there is record evidence to support the trial court's

findings. While the question was close, we are not left with a definite and firm conviction that a mistake was made.

We affirm.

/s/ Deborah A. Servitto

/s/ Jane E. Markey