STATE OF MICHIGAN

IN THE SUPREME COURT

AUTOMOBILE CLUB INSURANCE ASSOCIATION,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Insurance Company,

Defendant-Appellant.

Supreme Court No. 143808

Court of Appeals No. 294324

Ingham County Circuit Court No. 08-1249-NF

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143808

PLAINTIFF-APPELLEE AUTO CLUB'S RESPONSE TO STATE FARM'S APPLICATION FOR LEAVE TO APPEAL

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FILED

OCT 25 2011

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

STATE OF MICHIGAN

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STATEMENT OF THE ORDER BEING APPEALED, SUMMARY OF ARGUMENT, AND RELIEF SOUGHT

Presently pending before this Court is Defendant-Appellant State Farm Mutual Automobile Insurance company's (State Farm's) Application for Leave to Appeal from the Court of Appeals' June 21, 2011, unanimous, unpublished per curiam opinion in this matter (see Appendix J). The Court of Appeals found a genuine issue of material fact regarding the no-fault "domicile" of Sarah Campanelli and, on that basis, reversed the trial court's grant of MCR 2.116(C)(10) summary disposition in favor of State Farm and remanded this case for trial.

State Farm's application takes issue with the Court of Appeals' implementation of the applicable summary disposition and no-fault domicile legal standards. State Farm specifically takes issue with the Court of Appeals' reliance on evidence of Sarah's domicile intent, even though intent is a well-established factor in determining no-fault domicile. State Farm seems to agree with the Court of Appeals that Sarah's domicile intent was unclear, but State Farm argues nonetheless that Sarah's domicile was unquestionably with her mother in Michigan, and therefore the trial court's summary disposition ruling in favor of State Farm should not have been reversed by the Court of Appeals.

State Farm's application argues, in effect, that Sarah, a minor, was domiciled with her mother in Michigan, as a matter of law, because that is where Sarah was undisputedly staying/living at the time of her fatal motor vehicle accident. The obvious problem with

State Farm's position is that it confuses a person's "domicile" with where a person happens to be momentarily or temporarily staying. If domicile were that simple, we wouldn't need the multi-factor Workman-Dairyland test for determining no-fault domicile. Workman v DAIIE, 404 Mich 477, 496-497; 274 NW2d 373 (1979); Dairyland Ins Co v Auto-Owners Ins Co, 123 Mich App 675, 682; 333 NW2d 322 (1983).

While Plaintiff Automobile Club Insurance Association (Auto Club) disagrees with State Farm's factual and legal analysis regarding the issue of Sarah's domicile, and while the Auto Club agrees with the Court of Appeals' reversal of the trial court's grant of summary disposition to State Farm, the Auto Club believes that the Court of Appeals' opinion did not go far enough, and that the issue of Sarah's domicile should have been decided by the trial court and the Court of Appeals as a matter of law, by summary disposition, but in favor of the Auto Club. Accordingly, the Auto Club is simultaneously filing a response to State Farm's application along with the Auto Club's own application for leave to appeal as cross-appellant.

For all of the reasons stated infra, the Auto Club believes that, as a matter of law, Sarah's domicile was with her father, her sole physical custodial parent, in Tennessee, and not with her mother, in Michigan. What follows are a few of the highlights of the domicile analysis.

The Wayne County Circuit Court has had jurisdiction over Sarah's parents' divorce, Sarah's custody, and Sarah's domicile. Multiple (4) orders of that Court

established that, from 1995, when Sarah was 3 and her parents divorced, through 2007, when Sarah died from her motor vehicle accident injuries, Sarah's sole physical custodial parent was her father, and her domicile was her father's household in Tennessee, and not with her Michigan-domiciled mother who had limited visitation rights.

After Sarah's motor vehicle accident and subsequent death, the Livingston County Probate Court held a 2-day evidentiary hearing regarding various matters in connection with her estate, including funeral arrangements. That hearing resulted in the Probate Court's determination that, at the time of her accident/death, Sarah was on an extended, experimental, summer visitation with her mother in Michigan, but that Sarah was a non-resident of Michigan, domiciled with her father in Tennessee.

While the Wayne Circuit and Livingston Probate Courts, supra, did not have jurisdiction over and did not decide the specific issue of Sarah's no-fault domicile, their orders nevertheless did expressly decide the issue of her "domicile," the same basic issue as her no-fault domicile, and both Courts decided that issue contrary to the Ingham County Circuit Court's summary judgment in this no-fault declaratory action.

In reversing the trial court's summary disposition order, in favor of State Farm, that Sarah's no-fault domicile was with her mother in Michigan rather than with her father in Tennessee, the Court of Appeals' at-issue June 21, 2011, opinion stopped short of granting summary disposition to the Auto Club and instead remanded for a trial of the domicile issue solely because the testimony of Sarah's mother conflicted with that of

Sarah's father and sister, and therefore raised a question of fact.

The Auto Club respectfully submits that the conflicting testimony of Sarah's mother did not raise a material factual dispute regarding Sarah's no-fault domicile. Even Sarah's mother never claimed that she had acquired anything more than temporary (1 year, at most) physical custody of Sarah in Michigan (see attached opinion, at p. 4; see also T. 1/23/08, p. 81). And even Sarah's mother, while quibbling over Sarah's specific intent and motives, expressly admitted that, by Thanksgiving or only halfway through Sarah's experimental extended visitation with her mother in Michigan, Sarah was desperate to return to Tennessee:

> "Q. At Thanksgiving time did Sarah discuss with you any wish to move to Tennessee?
>
> A. She wanted to go to Tennessee to see her boyfriend, Matthew.
>
> Q. Did she repeat that wish at Christmastime?
>
> A. I've got paperwork —
>
> Q. Or before Christmas?
>
> MS. MCCLURE: Objection. She —
>
> THE WITNESS: I've got notes that my daughter wrote stating that all she wanted to do is go back to Tennessee and see Matthew. How many more days it was until she was 17 and she could leave by herself and not have —"

(T. 1/23/08, p. 158).

At the time of Sarah's motor vehicle accident, she had been staying in Michigan with her mother, her non-custodial parent, for only 6 months, on an extension of her customary 6-week summer visitation with her mother. This did not constitute a change of Sarah's almost lifelong and court-ordered domicile, supra, with her father, in Tennessee.

Sarah's father and sister both testified that she was returning to Tennessee as soon as possible, which would be at Christmas, after completion of her single Michigan high school semester. There was no testimony that Sarah's move to Michigan was intended to be permanent – i.e., a domicile change from Tennessee to Michigan. The testimony of Sarah's father and sister explicitly rejected that, and even Sarah's mother did not testify in support of that proposition.

State Farm's application relies heavily on the absence of any specific advance re-enrollment of Sarah in her Tennessee public school system as proof that she had permanently moved to and established a new domicile in Michigan. State Farm's argument in that regard is purely speculative and offers no evidence and no reason why Sarah couldn't return to and slip right back into her public Tennessee high school just as easily as she had temporarily transferred out of it to Michigan.

State Farm similarly relies on a raft of evidentiary document-exhibits referencing Sarah's mother's address in connection with Sarah's stay, accident, hospitalization, and death in Michigan. But those documents do not prove a Michigan domicile for Sarah. Rather, they prove what is not in dispute: at the time of her accident and death, Sarah was

visiting and staying temporarily with her mother, her non-custodial parent, who was exercising her court-ordered visitation or parenting-time entitlement. State Farm's exhibits are consistent with and exactly what you would expect for a Michigan stay/visit gone tragic, but not a Michigan domicile, for Sarah.

For all of the foregoing reasons, as more fully explained infra, the Auto Club requests that this Honorable Court, in lieu of granting leave to appeal, (1) peremptorily affirm that portion of the Court of Appeals' opinion that reversed the trial court's grant of summary disposition to State Farm, and (2) peremptorily reverse that portion of the Court of Appeals opinion that declined to grant summary disposition in favor of the Auto Club

In the alternative, the Auto Club requests that this Court grant leave to appeal to both parties regarding the proper disposition of the domicile issue in this case.

As a final alternative, the Auto Club requests that this Court at least let stand the Court of Appeals decision in this matter.

STATEMENT OF THE BASIS OF JURISDICTION

On September 29, 2011, Appellant State Farm filed with this Court an application for leave to appeal from the June 21, 2011, opinion of the Court of Appeals (Appendix J), reconsideration denied, August 18, 2011 (Appendix K).

This Court has discretionary by-leave jurisdiction to entertain such applications. MCR 7.301(A)(2). The application is timely. MCR 7.302(C)(2)(b).

Accordingly, State Farm's application is properly before this Court.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

I. AT THE TIME OF SARAH CAMPANELLI'S MOTOR VEHICLE INJURY-ACCIDENT, WAS HER DOMICILE, FOR PURPOSES OF NO-FAULT PIP BENEFITS, WITH HER MOTHER IN MICHIGAN OR WITH HER FATHER IN TENNESSEE? DID THE TRIAL COURT ERR BY DECLARING SARAH'S DOMICILE TO BE MICHIGAN RATHER THAN TENNESSEE, AND BY GRANTING SUMMARY DISPOSITION TO STATE FARM RATHER THAN THE AUTO CLUB? AND DID THE COURT OF APPEALS ERR BY ONLY REVERSING THE TRIAL COURT'S GRANT OF SUMMARY DISPOSITION TO STATE FARM AND NOT GRANTING SUMMARY DISPOSITION TO THE AUTO CLUB?

Auto Club answers: "Tennessee domicile" and "yes" the trial court and Court of Appeals erred

State Farm answers: "Michigan domicile" and "no" the trial court did not err, and "yes" the Court of Appeals erred in reversing the trial court

II. WHERE THE TRIAL COURT EXPRESSLY FOUND A TESTIMONIAL DISPUTE OR EVIDENTIARY CONFLICT REGARDING SARAH CAMPANELLI'S INTENT TO RETURN TO RESIDE WITH HER FATHER, HER CUSTODIAL PARENT, IN TENNESSEE, DID THE TRIAL COURT ERR IN RESOLVING THAT FACTUAL DISPUTE BY FINDING SARAH'S DOMICILE TO BE IN MICHIGAN AND BY RULING IN FAVOR OF DEFENDANT STATE FARM BY SUMMARY DISPOSITION?

Auto Club answers, "Yes."

State Farm answers, "No."

The Court of Appeals answered, "Yes."

STATEMENT OF FACTS

A. The state of the proceedings and the nature of the dispute

This case is a declaratory action brought by Plaintiff Automobile Club Insurance Association ("Auto Club") seeking a determination that Defendant State Farm Mutual Automobile Insurance Company ("State Farm") or Defendant Allstate Insurance Company ("Allstate") is the no-fault auto insurer responsible for furnishing Sarah Campanelli's no-fault personal protection (PIP) benefits and therefore responsible for reimbursing the Auto Club for having stepped up and furnished those benefits (see Plaintiff's Complaint filed in the Ingham County Circuit Court on September 19, 2008). Defendant Allstate was then dismissed from the case by order entered March 17, 2009, leaving State Farm as the sole remaining party Defendant.

This case arises out of a motor vehicle injury-accident that took place on November 26, 2007, in Livingston County, Michigan (Complaint, ¶ 10). 16-year-old Sarah Campanelli was a passenger in the State Farm-insured accident vehicle. She was seriously injured in the accident and died from her injuries approximately 1 month later, on December 24, 2007 (Complaint, ¶ 11).

Sarah's parents were divorced when she was 3. Her father had always been her sole physical custodial parent, and he was the parent who had raised her. Ever since 1996, Sarah had resided with her father in Tennessee, and she visited her mother in Michigan for 6 weeks in the summers and for alternating Christmas holidays. At the time

of her fatal 2007 accident, Sarah was attending a semester of high school in Michigan and was staying with her mother in the Howell, Michigan, trailer-home of her great uncle, Terry Gravelle, whose household no-fault insurer was the Auto Club.

After Sarah's death, the Livingston County Probate Court held a 2-day trial or evidentiary hearing to decide various matters in connection with Sarah's estate, including funeral arrangements. In a January, 2008, ruling, the Probate Court expressly determined that, at the time of Sarah's death, she was a non-resident of Michigan, domiciled with her father in Tennessee.

Well after the Probate Court's domicile ruling, supra, the Auto Club filed the instant case in the Ingham County Circuit Court on September 19, 2008.

State Farm filed with the Circuit Court an MCR 2.116(C)(10) summary disposition motion. Plaintiff Auto Club filed an answer in opposition and counter-motion for partial summary disposition pursuant to MCR 2.116(I)(2). The parties' cross-motions for summary disposition presented the trial court with a purely legal insurance coverage order-of-priority dispute between the Auto Club and State Farm. There was no dispute that Defendant State Farm is the no-fault insurer of the owner of the accident vehicle occupied by Sarah Campanelli (State Farm's Motion for Summary Disposition, ¶ 4; Complaint, ¶ 8). There was also no dispute that Plaintiff Auto Club is the no-fault insurer of Sarah Campanelli's great-uncle, Terry Gravelle, that Sarah's mother resided with him (her uncle) in his Howell, Michigan, trailer-home, and that, at the time of the November

26, 2007 motor vehicle accident, Sarah was staying with them (State Farm's Motion for Summary Disposition, ¶¶ 2-3; Complaint, ¶ 7).

The disputed insurance coverage/priority issue in this case turns on the legal issue of no-fault "domicile." If Sarah was domiciled with her mother in the household of her great-uncle Terry Gravelle, then the Auto Club is responsible for Sarah's no-fault PIP benefits pursuant to MCL 500.3114(1). But if Sarah was only staying with them temporarily and her legal domicile was elsewhere, then the Gravelle Auto Club policy did not apply to Sarah's fatal accident, and the priority of responsibility for her PIP benefits falls on State Farm, the insurer of the accident vehicle, pursuant to MCL 500.3114(4)(a).

There was no dispute in this case over the Michigan statutory no-fault insurance priority scheme, supra. There was only a dispute over where Sarah was "domiciled." State Farm's summary disposition motion took the position that the undisputed facts overwhelmingly established that Sarah was domiciled in the Michigan household of her mother and great-uncle, and that the Auto Club is therefore liable. The Auto Club's answer and counter-motion for summary disposition took the position that the undisputed facts overwhelmingly established that Sarah was domiciled in the Tennessee household of her father and sister, that the Auto Club policy is therefore inapplicable, and that State Farm bears the no-fault liability here.

The priority/domicile issue was submitted to the trial court pursuant to the parties' cross-motions for summary disposition. The motions were heard by Ingham Circuit

Judge Joyce Draganchuk on August 12, 2009 (Appendix H).

At the conclusion of the hearing and by written order of final judgment dated September 8, 2009, the court ruled in favor of a Michigan domicile for Sarah, granted State Farm's motion for summary disposition, denied the Auto Club's counter-motion, and dismissed the Auto Club's Complaint (Appendix H, pp. 17-23; Appendix I).

The Auto Club appealed of right to the Court of Appeals. In a unanimous, unpublished per curiam opinion dated June 21, 2011 (Appendix J), the Court of Appeals found a genuine issue of material fact regarding Sarah's domicile, reversed the trial court's grant of summary disposition to State Farm, and held that the Auto Club wasn't entitled to summary disposition on the issue either.

State Farm moved for reconsideration, and the Auto Club joined in the motion but requested the opposite relief (summary disposition for the Auto Club). The motion was denied in a non-unanimous order dated August 18, 2011 (Appendix K).

The issue of Sarah Campanelli's no-fault domicile and the correctness of the decisions below is now before this Court on State Farm's application and the Auto Club's cross-application.

B. The undisputed facts pertinent to the disputed legal issue of Sarah Campanelli's no-fault "domicile"

Sarah's father is Frank Campanelli, and her mother is Tina Taylor (formerly, Tina Campanelli). Frank and Tina were divorced way back in 1995 when Sarah was only 3

years old. The January 12, 1995, Wayne County Circuit Court Judgment of Divorce (Appendix A), at p. 2, provided for "joint legal custody" of Sarah and her older sister, Ashley, but awarded sole physical custody to Sarah's father, Frank. Sarah's mother was awarded "reasonable visitation" (Appendix A, p. 2).

1 year later, Sarah's father petitioned the court to allow him, because of a job promotion and transfer, to move with his 2 daughters to Tennessee. The motion was granted by a February 5, 1996, "Order Permitting Defendant to Change Children's Domicile to the State of Tennessee" (Appendix B). The order reiterated that Frank Campanelli had physical custody of Sarah and her sister, authorized the move and change of domicile from Michigan to Tennessee, and provided visitation rights to Sarah's mother consisting of 6 weeks in the summer and alternating one-week vacations (Easter, Christmas, and Winter break).

Thanks to Probate Court proceedings conducted following Sarah's December 24, 2007 death, supra, we have the sworn testimony of Sarah's father, mother, and sister regarding Sarah's life, domicile, and family relationships, from the time of her move to Tennessee in 1996 to her death in 2007. Pursuant to petitions for formal probate, determination of the personal representative, and for funeral arrangements in the matter of the Estate of Sarah Nicole Campanelli, the Livingston County Probate Court conducted a hearing and took the testimony of witnesses on January 17 and 23, 2008. The transcripts of those 2 hearing dates were attached to the Auto Club's answer and counter-motion for

summary disposition as Exhs E and F, respectively.

Sarah's father testified that, after obtaining physical custody of Sarah and her sister, Ashley, in the 1995 divorce judgment and moving to Tennessee with them in 1996, he raised both girls, and, specifically Sarah, from age 3 to her death at 16, on his own, with no help from their mother (T. 1/17/08, 80-85, 103-104). Tina had basically acquiesced in him having custody and never went to court to change that (T. 1/17/08, 80, 82, 96). She was supposed to pay child support but never voluntarily did so (T. 1/17/08, 81-82, 95). The girls saw their mother in Michigan for the 6-week summer visitation periods and only rarely at any other time (T. 1/17/08, 83-84). Over the years, there were extended periods – sometimes as long as 6 months – when the girls did not even hear from their mother (T. 1/17/08, 86, 88-89).

When Sarah went to Michigan in June of 2007 for her (last) visit with her mother, everyone agreed that she could stay on, get to know her mother better, and try school in Michigan for a while (T. 1/17/08, 89-90, 93, 138-139). That stay in Michigan was never intended to be permanent, and Sarah never indicated that she did not want to return home to Tennessee (T. 1/17/08, 89, 100, 138-139). By Thanksgiving, she wanted to return to Tennessee, but her father told her she would have to finish the first semester of school in Michigan before she could return home permanently at Christmas (T. 1/17/08, 98).

Sarah's 2-year-older sister, Ashley, testified that they were the best of friends and that they lived together with their father from 1995 until 2006 when Ashley got married

and left home (T. 1/17/08, 13-15, 73, 75). Ashley testified that both girls looked only to their father and not their mother for guidance, care, and support (T. 1/17/08, 17-18). Ashley testified that she and her sister seldom talked to their mother from Tennessee and that they didn't even spend all of the time they were supposed to with her (T. 1/17/08, 18-20).

Ashley testified that, while they visited their mother in Michigan for 6 weeks in the summer, that was sometimes difficult because their mother didn't have a place of her own (T. 1/17/08, 21). Ashley confirmed that when Sarah went to Michigan to visit their mother in June of 2007, she was not moving out; it was, as usual, only temporary, and that when she stayed on to try school in Michigan for a while, Sarah couldn't even last to Thanksgiving before asking to return home (T. 1/17/08, 21-23, 27-30, 38).

Sarah's mother, Tina, acknowledged that Frank had always been the sole physical custodial parent of both girls in Tennessee, and that although she utilized her 6-week summer parenting time to be with her daughters in Michigan, she never used her other holiday visitation time over the years except for 4 Christmas holidays (T. 1/23/08, 9, 18, 24, 74-75). She also acknowledged that, over the years, other than an apartment she had had for 1½ years, she had never had a residence of her own (T. 1/23/08, 25), and she had not had enough money to pay child support (T. 1/23/08, 60).

Tina disputed the number of times she had contacted or attempted to contact her daughters (T. 1/23/08, 34-36). She also claimed that when Sarah visited her in Michigan

just prior to the accident, Sarah had indicated she didn't want to return home (T. 1/23/08, 42); yet, she contradicted that by also testifying that Sarah wanted to return to Tennessee to see her boyfriend (T. 1/23/08, 82).

Tina also acknowledged that, after Sarah's injury-accident, and after learning that Frank was planning to have Sarah flown back to Tennessee for medical care, Tina hired a lawyer, filed an emergency motion, and obtained a December 18, 2007 Wayne County Circuit Court, "Ex-Parte Order Regarding Custody and Domicile" (Appendix C) that gave her sole custody of Sarah and changed Sarah's domicile to Michigan. Tina further acknowledged that, upon a subsequent hearing, the court reversed itself by January 7, 2008, order (Appendix D) and vacated the order ab initio, declaring that the previous ex parte order was clearly erroneous (T. 1/23/08, 48-49, 75, 84-87, 112-113).

At the conclusion of the Probate Court hearing, Livingston County Probate Judge Carol Hackett Garagiola made a number of rulings, one of which was with regard to Sarah's domicile. The Court ruled that the Wayne County Circuit Court order or orders (Appendices A, B, C, D), supra, made it clear that Sarah's domicile was Tennessee, not Michigan (Appendix E, p. 287). The court also independently weighed the evidence elicited from the 2-day hearing and concluded, again, that Sarah's domicile was Tennessee, not Michigan:

> "With regard to the order of formal proceedings I do find that the decedent was a nonresident of Michigan but left an estate in the above name county. She was domiciled in Tennessee pursuant to the court order of Wayne County. Further she was

> domiciled in Tennessee in light of the testimony that has been presented with regard to her intent and where she was going to reside. Her telephone call to her sister, Ashley, as well as her father indicated her intent to be back in Tennessee to move back home to Tennessee. She did not obtain a drivers license here. She did not do anything that would indicate an intent of a permanent nature to reside in the state of Michigan. She was here on a short term experimental basis by all of the credible testimony that this Court has heard."

(Appendix E, pp. 286-287).

Accordingly, the Probate Court entered orders declaring Sarah "a nonresident of Michigan" (Appendix F) and giving Sarah's father the right to make the decisions regarding Sarah's funeral arrangements (Appendix G).

As indicated supra, Ingham County Circuit Judge Draganchuk, in the present no-fault declaratory action, revisited the domicile issue and all of the above-cited circumstances, and determined that, contrary to the Wayne County Circuit Court orders and the findings of the Livingston County Probate Court, Sarah's domicile, at the time of her motor vehicle accident, was Michigan, not Tennessee (Appendix H, pp. 17-23; Appendix I). The Court of Appeals reversed the trial court's domicile determination, finding a question of fact regarding domicile that precluded summary disposition for either party (Appendices J, K).

ARGUMENT

I. MULTIPLE PRIOR JUDICIAL DETERMINATIONS AS WELL AS THE UNDISPUTED TESTIMONIAL EVIDENCE CLEARLY DEMONSTRATE THAT, AT THE TIME OF HER MOTOR VEHICLE INJURY-ACCIDENT WHILE VISITING OR STAYING WITH HER MOTHER IN MICHIGAN, SARAH CAMPANELLI'S DOMICILE REMAINED WITH HER FATHER, HER CUSTODIAL PARENT, IN TENNESSEE. THE TRIAL COURT ERRED BY RULING TO THE CONTRARY, BY DECLARING SARAH'S DOMICILE TO BE MICHIGAN RATHER THAN TENNESSEE, AND BY GRANTING SUMMARY DISPOSITION TO STATE FARM RATHER THAN THE AUTO CLUB. THE COURT OF APPEALS CORRECTLY REVERSED THE TRIAL COURT BUT ERRED IN NOT GRANTING SUMMARY DISPOSITION TO THE AUTO CLUB.

A. The issue

As indicated supra, the sole disputed legal issue before the trial court, by way of the parties' cross-motions for summary disposition, was Sarah Campanelli's domicile. If she resided with her mother in Michigan, the Auto Club no-fault insurance policy in that household bears the responsibility for Sarah's PIP benefits. But if Sarah's residence or domicile was with her father in Tennessee, then the Auto Club policy is inapplicable and the State Farm policy on the occupied accident vehicle bears the PIP liability. By grant of summary disposition and judgment in favor of State Farm and against the Auto Club, the trial court found Sarah's domicile to have been with her mother in Michigan, not with her father in Tennessee. The Court of Appeals reversed but found a question of fact that

precludes summary disposition. Appellant Auto Club respectfully disagrees.

B. Standard of Review

As indicated supra, the single issue in this case of no-fault insurance coverage (domicile) was presented to and decided by the trial court pursuant to the parties' cross-motions for MCR 2.116(C)(10) [no genuine dispute of material fact and entitlement to judgment as a matter of law] summary disposition.

A C-10 summary disposition motion tests the factual sufficiency of a claim – here, the cross-movants' competing claims regarding Sarah Campanelli's no-fault domicile. A C-10 motion requires the trial court to review all of the parties' proffered evidentiary exhibits in the light most favorable to the non-moving party and then determine whether or not there is a genuine dispute of material fact. Maiden v Rozwood, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

In reviewing and reversing the trial court's summary disposition order, the Court of Appeals invoked the de novo review standard (Appendix J, p. 2). That same standard is applicable to review by this Court.

The Auto Club submits that the pertinent evidence, supra, and the applicable legal standards, explained infra, are sufficiently clear that there is no genuine dispute of material fact, and that this Court should decide this no-fault domicile issue, as a matter of law, by reversing only that portion of the Court of Appeals opinion that found a question of fact and failed to grant summary disposition to the Auto Club.

C. Michigan no-fault law applicable to the issue of domicile

Michigan appellate decisions have repeatedly recognized that, where the pertinent facts are not in dispute, this no-fault domicile issue should be decided by the trial court, as a matter of law, by summary disposition. See, e.g., Fowler v Auto Club Ins Ass'n, 254 Mich App 362, 363-364; 656 NW2d 856 (2002).

The benchmark Michigan case on the no-fault insurance issue of "domicile" is Workman v DAIIE, 404 Mich 477; 274 NW2d 373 (1979). In Workman, the Supreme Court recognized that the term "domiciled in the same household"[1] has no absolute or fixed meaning and must be viewed "flexibly" in the context of the numerous factual settings possible (404 Mich, at 495-496). However, the Court articulated the following non-exhaustive 4-factor test for determining a person's domicile:

> "Among the relevant factors are the following: (1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his 'domicile' or 'household'; *** (2) the formality or informality of the relationship between the person and the members of the household; *** (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises, *** (4) the existence of another place of lodging by the person alleging 'residence' or 'domicile' in the household. . ."

(404 Mich, at 496-497; citations omitted).

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[1] ". . . a personal protection insurance policy . . . applies to accidental bodily injury 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)

Consistent with the Supreme Court's holding that the 4 Workman factors, supra, were not meant to be exclusive, the Court of Appeals, in Dairyland Ins Co v Auto-Owners Ins Co, 123 Mich App 675; 333 NW2d 322 (1983), subsequently added the following 5 more factors to the test for determining no-fault domicile:

> "Other relevant indicia of domicile include such factors as whether the claimant continues to use his parents' home as his mailing address, whether he maintains some possessions with his parents, whether he uses his parents' address on his driver's license or other documents, whether a room is maintained for the claimant at the parents' home, and whether the claimant is dependent upon the parents for support."

(123 Mich App, at 682).

The combined 9-factor Workman-Dairyland test, supra, is by now routinely recognized as the definitive, albeit non-exclusive, test for determining no-fault domicile.

In applying the foregoing domicile test, it is important to also keep in mind the following well-established domicile principles.

The Michigan common law of "domicile" has a couple of longstanding fundamental precepts or tenets: (1) every person has a domicile; and (2) a person can have only one domicile. Beecher v Detroit Common Council, 114 Mich 228, 230; 72 NW 206 (1897); Li v Mich Ins Group (CA No. 285038; rel'd 5/19/09; see attached copy of unpublished opinion – Appendix N, at p. 3).

It is also important to recognize that just because a person happens to be temporarily staying somewhere, that doesn't mean that that location is necessarily the

person's domicile or an additional domicile. In Dairyland, supra, 123 Mich App, at 680, the Court of Appeals stated that a person's domicile has generally been defined as:

> ". . . the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time."

And in Beecher, supra, 114 Mich, at 230, the Supreme Court further held that:

> "[A person's] existing domicile continues until he acquires another, and, vice versa, by acquiring a new domicile he relinquishes his former one."

D. Application of the no-fault law regarding domicile to the pertinent facts of this case

The facts in this case should leave no doubt that, at the time of her motor vehicle injury-accident, Sarah Campanelli was "domiciled" with her father in Tennessee rather than with her mother in Michigan.

First of all, we have a raft of Wayne County Circuit Court divorce-related orders (Appendices A, B, C, D) that unequivocally (1) declare Sarah's father to be her sole physical custodial parent, and (2) declare Sarah's Tennessee home with her father and sister to be her "domicile." These orders apply from the time Sarah was 3 right through the time of her November 26, 2007, motor vehicle accident at age 16. Ironically, even the short-lived and ultimately revoked "ex parte" order (Appendix C), that State Farm relied on to attempt to prove a Michigan domicile, actually proved the Tennessee domicile because that order did not purport to expressly "change" Sarah's custody and domicile to her mother in Michigan until December 18, 2007, after Sarah's November 26, 2007

accident. The Wayne County Circuit Court's subsequent January 7, 2008, repudiation and withdrawal of that order (Appendix D) leaves an uninterrupted Tennessee domicile for Sarah from 1996 through her 2007 accident and death.

Secondly, we have a post-accident and death Livingston County Probate Court hearing of live witness testimony, determination, and express opinion (Appendix E, p. 287) and order (Appendix F) declaring that, at the time of her accident/death, Sarah was a "nonresident of Michigan," domiciled with her father in Tennessee.

Third, we have the testimony of Sarah's family members at the Probate Court evidentiary hearing. Wholly apart from the judicial declarations and determinations of domicile, supra, we have a pretty clear and largely undisputed testimonial picture that: from age 3 through death at 16, Sarah lived with and was raised solely by her father in Tennessee; her relationship with her mother was, for the most part, limited to 6-week summer visits with her mother in Michigan; Sarah considered her "home" to be with her father in Tennessee; at the time of her accident, Sarah was staying with her mother in Michigan on an extended visit that included a semester of school as an experiment; as indicated by her behavior, statements, and phone calls, Sarah was anxious to, could hardly wait to, and expressly intended to, return home to Tennessee at the conclusion of the school semester.

In light of the testimony, it is not surprising that the Probate Court declared:

> "A very brief period of time she was with her mother for a summer visitation that was extended."

(Appendix E, p. 283).

> "With regard to the order of formal proceedings I do find that the decedent was a nonresident of Michigan but left an estate in the above name county. She was domiciled in Tennessee pursuant to the court order of Wayne County. Further she was domiciled in Tennessee in light of the testimony that has been presented with regard to her intent and where she was going to reside. Her telephone call to her sister, Ashley, as well as her father indicated her intent to be back in Tennessee to move back home to Tennessee. She did not obtain a drivers license here. She did not do anything that would indicate an intent of a permanent nature to reside in the state of Michigan. She was here on a short term experimental basis by all of the credible testimony that this Court has heard."

(Appendix E, pp. 286-287).

In an effort to demonstrate a Michigan domicile for Sarah, State Farm's summary disposition motion completely overlooked/ignored the Probate Court proceedings, testimony, and determination, and instead attached a host of evidentiary document-exhibits referencing Sarah's mother's address in connection with Sarah's stay, accident, hospitalization, and death in Michigan. But they did not prove a Michigan domicile for Sarah. Rather, they proved what is not in dispute: at the time of her accident and death, Sarah was visiting and staying temporarily with her mother, her non-custodial parent, who was enjoying and had always had court-ordered visitation or parenting-time entitlement. State Farm's exhibits were consistent with and precisely what you would expect for a Michigan stay/visit gone tragic, but not a Michigan domicile, for Sarah.

State Farm's application certainly does not deal with or recognize all of the domicile evidence. For example, State Farm's application never even mentions Sarah's

sister, Ashley, let alone her on-point domicile testimony. Then, at pages 27-28 of its application, State Farm offers a multi-factor chart of domicile indicators purporting to demonstrate that the factors supporting mom/Michigan outnumber those supporting dad/Tennessee 13 to 2. State Farm's chart, in what must be an attempt at humor, lists "Joint legal custody" and "Natural father" as the only support for a Tennessee domicile. How did State Farm miss sole physical custody . . .

As the minor child of divorced parents, Sarah's declared Tennessee domicile was within the Wayne County Circuit Court's jurisdiction. MCL 722.31. After her motor-vehicle accident death, the Probate Court's Tennessee domicile determination, supra, was within its jurisdiction, MCL 700.1302. While these judicial domicile determinations were not res judicata controlling of the Ingham Circuit Court's no-fault domicile determination, they should have at least been respected. Although not binding precedent, they were nevertheless persuasive.

The Probate Court effectively and correctly performed the Workman-Dairyland multi-factor analysis, supra, in holding that Sarah resided and intended to reside in Tennessee and, while visiting Michigan, did not obtain a Michigan driver's license or do anything of a permanent nature to change her domicile to Michigan.

In Dairyland, supra, 123 Mich App, at 680, the Court of Appeals stated that a person's domicile has generally been defined as:

> ". . . the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time."

That precisely fits Sarah's home in Tennessee which she left to temporarily stay in Michigan.

In Cox v Auto Club Ins Ass'n (CA No. 263235; rel'd 2/23/06; see attached copy of unpublished opinion – Appendix L), the Court recognized that there could be dual residency in the very specific situation of the minor child of divorced parents, but only where custody is equally shared. In Cox, as here, there was no equal custody arrangement, so the Court relied on the single domicile rule of Vanguard Ins Co v Racine, 224 Mich App 229, 233; 568 NW2d 156 (1997), to find that the minor child, although staying with both parents, resided with the mother, and therefore the father's no-fault insurance policy was inapplicable. In short, the Court found that the trial court had erred in concluding that the minor Plaintiff was domiciled, for no-fault insurance purposes, with both parents.

Also instructive to the instant case is the Court of Appeals opinion in Jenks v State Farm Mut Ins Co (CA No. 251522; rel'd 3/15/05; see attached copy of unpublished opinion – Appendix M). There, the injured plaintiff's parents were divorced, his father was the custodial parent, and his mother had visitation rights. Plaintiff sought uninsured motorist coverage/benefits under his mother's State Farm policy. The trial court ruled that Plaintiff was not entitled to the coverage because he was not a resident relative of his mother. The Court of Appeals affirmed, concluding that the visitation arrangement with his mother did not make him a primary resident of her household when he spent the majority of the time living with his father.

Finally, we have the very recent domicile determination in Li v Mich Ins Group (CA No. 285038; rel'd 5/19/09; see attached copy of unpublished opinion – Appendix N). In Li, the Court of Appeals affirmed a summary "Michigan" domicile determination by relying primarily on the deceased claimant's Michigan family (wife and child), his Michigan home, and his intent to some day return to work and live with his family in Michigan, notwithstanding the fact that he had quit his Michigan job and moved from Michigan to live and work 2 jobs, 7 days a week, for 4 years in Arkansas, and even though his driver's license, car registration and insurance, his fatal motor vehicle accident, his funeral and cremation were all tied to and occurred in Arkansas.

E. Where the trial court went wrong

In ruling in favor of a Michigan rather than a Tennessee domicile for Sarah, the Circuit Court basically discarded or disregarded all of the domicile and/or custody orders, opinions, filings, etc., of the Wayne County Circuit Court and the Livingston County Probate Court. (Appendices A through G).

While the Circuit Court was correct that the issue of Sarah's no-fault domicile was within its jurisdiction and was not res judicata controlled by all of the other contrary judicial determinations, the Circuit Court was wrong in believing that those other courts and specifically the Probate Court had not already decided the same issue of "domicile." That is precisely the issue which the Probate Court took testimony on and decided. It is clear from the Workman and Dairyland cases, both supra, that the no-fault issue of domicile is based on longstanding Michigan domicile and residence common law or case

law, not some specific no-fault statute definition. It is that very same Michigan common law of domicile that the Probate Court relied on.

The Circuit Court also erred in not respecting the role and relevancy that those other court determinations have and play in the no-fault domicile determination. In a case such as this involving a deceased minor child of divorced parents, the no-fault domicile analysis should start with and be based on the family and probate court custody and domicile decisions. See, e.g., Cox, supra.

Finally, after implicitly recognizing that the pivotal domicile point was whether Sarah was going to remain permanently with her mother in Michigan or return to live with her father in Tennessee, the Circuit Court was simply wrong in declaring that there was "no real evidence" (Appendix H, p. 20) that Sarah intended to return to her home in Tennessee after her extended summer visitation with her mother in Michigan. The testimony of Sarah's father and sister left no doubt that that was indeed her repeated expressed and even urgent intent/plan. And while Sarah's mother gave Sarah's Tennessee boyfriend, not Sarah's Tennessee family and home, as Sarah's goal, even she conceded that Sarah was anxious to go back to Tennessee. The evidence of Sarah's intent to return to Tennessee as soon as possible was overwhelming and undisputed.

Sarah's father, Frank Campanelli, testified that, when Sarah went to visit her mother in Michigan for their (final) 6-week summer parenting time together, it was just like visitation in previous years (T. 1/17/08, 93). He never indicated that he didn't want to take care of Sarah anymore (T. 1/17/08, 86). Sarah never indicated that she didn't want to

live with him anymore (T. 1/17/08, 89). Sarah was not unhappy with living in Tennessee (T. 1/17/08, 93). Then, while Sarah was staying with her mother, a plan was hatched for Sarah to extend her stay, get to know her mother a little better, and try a term of school in Michigan (T. 1/17/08, 93, 96, 99, 138, 143). Sarah's plan to stay awhile with her mother didn't last long; by Thanksgiving she called and wanted to return to Tennessee; but her father told her that she could not return until Christmas because she had to complete the 1 semester of school she had started (T. 1/17/08, 98, 99, 106). Sarah's father testified that when "she left here it was a temporary thing" and "It was never intended to be permanent" (T. 1/17/08, 100). He considered Sarah's enrollment in a Michigan school to be temporary and expressly said that to both Sarah and her Tennessee school (T. 1/17/08, 138-139).

Sarah's sister, Ashley, testified that she and Sarah were "best friends" and "really close" (T. 1/17/08, 15, 25). Ashley grew up with and lived with Sarah in their father's Tennessee household, from 1995 through 2006 (T. 1/17/08, 14). Even though Ashley eventually got married and moved out, she saw Sarah every day at the same school they attended and saw her father twice a week, in 2007 (T. 1/17/08, 14, 16).

According to Ashley, when Sarah went to stay with her mother in Michigan in 2007, it was summer "parenting time" as usual (T. 1/17/08, 22). Their father was not giving Sarah up (T. 1/17/08, 22, 30). When Sarah's mother and great uncle picked Sarah up from her father's house in Tennessee, they all stopped by for a visit at Ashley's nearby home on their way out of town; there was no discussion that Sarah was leaving for good,

that Sarah was moving out of Tennessee, or that Sarah's father couldn't handle her and was giving her up (T. 1/17/08, 21-23). Ashley testified that, because she and Sarah were not only sisters but best friends, Sarah told her everything, and that if their father was sending Sarah away to Michigan, Sarah would have called her and told her that immediately (T. 1/17/08, 25). According to Ashley, Sarah never told her that she wanted to run away, leave, or get away from their father (T. 1/17/08, 75).

While staying with their mother, Sarah called Ashley and told her that she was going to "try a little stay there. Try school and see how it was. She was wanting to build a relationship with my mother" (T. 1/17/08, 27). But by Thanksgiving, Sarah called and said "she was ready to come home" and that "she was planning on coming home" (T. 1/17/08, 28). Sarah "didn't want to be there any longer. She wanted to come home" (T. 1/17/08, 29). Sarah was so intent on returning that she asked Ashley to come and take her back to Tennessee, but Ashley told her that Sarah would need to talk with their father about that (T. 1/17/08, 28-29). Ashley, Sarah, and their father made plans that Sarah would return at Christmas to her Tennessee home, that she would stay in Tennessee and not return to Michigan after that, and that she would re-enroll in school in Tennessee (T. 1/17/08, 30, 38, 42-43). When asked about Sarah's boyfriend in Tennessee, Ashley quoted Sarah as having said that she and her boyfriend took a break in their relationship while she was in Michigan with her mother (T. 1/17/08, 65). According to Ashley, Sarah wanted to return to Tennessee to see their father, Ashley, and Ashley's baby that Sarah had not yet seen (T. 1/17/08, 64-65).

Sarah's mother, Tina (Campanelli) Taylor, testified that Sarah lived with her and her (Tina's) uncle, Terry Gravelle, in Terry's Michigan trailer-home, from June 5, 2007, through Sarah's motor vehicle accident on November 26, 2007, and eventual death in hospital on Christmas eve (T. 1/23/08, 23). During that time, Tina described herself as not working and on welfare (T. 1/23/08, 23).

At one point in her testimony, Sarah's mother denied that Sarah wanted to return to her father's house (T. 1/23/08, 42). But later, Tina acknowledged that, as early as September, of 2007, Sarah was not happy living with her because of "rules and regulations." Referring to her Michigan residence, Sarah even captioned a picture "I hate this house I'm staying at now." (T. 1/23/08, 98). Tina also agreed that, by Thanksgiving, Sarah wanted to and planned to return to Tennessee, but Tina attributed that to Sarah's interest in seeing her boyfriend, not her family, in Tennessee (T. 1/23/08, 82, 158).

Whatever her precise reason, reasons, or motivation, it was undisputed that Sarah wanted to and planned to return to Tennessee. Being a minor, Sarah would therefore have lived with her father, her sole physical custodial parent, in Tennessee.

F. Where the Court of Appeals opinion did not go far enough

As indicated supra, the Court of Appeals, after reviewing all of the evidentiary record de novo, correctly found the "real evidence" that the trial court overlooked. The Court of Appeals likewise correctly found that there was indeed some conflict in the testimony. Sarah's mother was not on the same domicile page as Sarah's father and

sister.

But what the Court of Appeals failed to see was that the testimonial conflict was not material. As explained in detail supra, in the opening "Statement of the Order Being Appealed, Summary of Argument, and Relief Sought," there was no dispute that, after her somewhat extended visitation with mom, Sarah was going to go home to Tennessee where she would be living with her sole physical custodial parent, her father.

In short, a parenting-time visitation, even an extended one, is not a change of "domicile"; a minor child does not change domiciles every time she leaves her custodial parent to visit her other parent.

II. WHERE THE TRIAL COURT EXPRESSLY FOUND A TESTIMONIAL DISPUTE OR EVIDENTIARY CONFLICT REGARDING SARAH CAMPANELLI'S INTENT TO RETURN TO RESIDE WITH HER FATHER, HER CUSTODIAL PARENT, IN TENNESSEE, THE TRIAL COURT ERRED IN RESOLVING THAT FACTUAL DISPUTE BY FINDING SARAH'S DOMICILE TO BE IN MICHIGAN AND BY RULING IN FAVOR OF DEFENDANT STATE FARM BY SUMMARY DISPOSITION.

A. Introduction

The Auto Club's Issue/Argument I, supra, challenges the trial court's summary disposition of the no-fault domicile issue (Tennessee v Michigan) not because the trial court decided the domicile issue by summary disposition (i.e., as a matter of law), but rather on the basis that the trial court erred by drawing the wrong legal conclusion or by reaching precisely the opposite result of what the evidentiary exhibits called for. In other words, summary disposition should have been granted, but it should have been in favor of the Auto Club and a Tennessee domicile for Sarah Campanelli, not a Michigan domicile and summary judgment for State Farm.

This issue, the Auto Club's Issue/Argument II, is raised in the alternative or as an alternative to the first issue, supra. If the evidentiary exhibits did not compel the legal (i.e., summary disposition) finding of a Tennessee domicile for Sarah, those exhibits were sufficient to at least raise a question of fact (as to whether Sarah's domicile was in Tennessee), thus precluding summary disposition of the domicile issue.

We know that the trial court committed at least this second summary disposition

error because the trial court expressly found a question of fact, and then expressly resolved that question of fact, just before erroneously summarily disposing of the factually disputed issue as a matter of law.

B. Standard of Review

This issue is a challenge to the trial court's summary disposition order that rendered the domicile determination upon which the trial court simultaneously granted judgment in favor of Defendant State Farm (Appendix I). That is the same summary disposition order under challenge in Issue I, supra. Therefore, the same de novo standard of appellate review is applicable to this issue as well. See Maiden v Rozwood, supra.

C. Analysis

We know from the Statement of Facts and Issue/Argument I, supra, that the live witness testimony taken/heard by the judge at the 2-day Probate Court hearing on the issue of domicile unanimously disclosed Sarah Campanelli's anxiousness, while on an extended visitation with her mother in Michigan, to return as early as possible to Tennessee. Sarah's father and sister clearly testified to Sarah's desire to return to her Tennessee home and family immediately, but that she was told she just had to wait for her school semester to be over. Even Sarah's mother, who was campaigning for a Michigan domicile determination so that she could bury her daughter in Michigan, admitted Sarah's desire to return to Tennessee, but attributed that to Sarah merely wanting to see her boyfriend in Tennessee. Based in no small part on all of that testimony, the Probate Court had no hesitation in declaring a Tennessee, not Michigan, domicile for Sarah (Appendices

E, F).

In re-deciding the issue of Sarah's domicile in this no-fault declaratory action, Ingham Circuit Judge Draganchuk reviewed the Probate Court hearing transcript supplied by the Auto Club's summary disposition motion and specifically the testimony of Sarah's father, mother, and sister. The court looked at the unanimous return-to-Tennessee testimony and declared a factual conflict. On the one hand, there was Sarah's father and sister testifying to Sarah's intent to return as soon as possible to live at her family home in Tennessee. On the other hand, there was her mother allegedly testifying to just a Tennessee boyfriend visit. The court then resolved this alleged 2-1 factual dispute over Sarah's intent in favor of the mother's solitary view of a more limited return to Tennessee:

> "Now, the father said that it was never intended that it would be permanent, but I don't think it's necessary that something be intended to be permanent necessarily. He said it was intended that it be for an extended period. There was no definite time period specified. However, at some point Sarah spoke with her sister before Thanksgiving, and she expressed a desire to come home. And even went so far to ask her sister and her husband to come get her. Her sister intended and said I can't do that. So there was some further discussions. And the sister said that in her view a plan was made for Sarah to come back at Christmastime and stay in Tennessee.
>
> The father indicated that Sarah wanted to come back here earlier, but he told her she would have to finish the school semester, and Christmas break was the earliest. However, the testimony went on to indicate that what was consented to, that Sarah at best could come back to see her boyfriend. That is what she wanted to, according to the mother, was come back and see her boyfriend, come back to Tennessee, she actually wanted to, her mother and boyfriend, to pay for the boyfriend to come back to Michigan, and that

was declined.

> So I would assess that there is definitely evidence that Sarah wanted to, hoped to return to Tennessee, to what extent she was going to go, therefore, is not entirely clear, just to see the boyfriend at Christmas, or to stay there.
>
> You know, I'm looking at this case, for instance, that's been given to me, Lee v Michigan Insurance Group. Of course, unpublished. By way of illustration, they make a differentiation in that case between hoping and intending. In this case there is no real evidence that Sarah intended to return to Tennessee to live, what arrangements were made for her to leave school in Michigan and reenroll in school in Tennessee, which would be evidence of intended to return to Tennessee. There was nothing of that sort, what arrangements were made for her to quit her job that she had acquired in Michigan and return to Tennessee. There was no evidence of that sort what arrangements were made for her to resume a residence with her father in Tennessee, there was no clear evidence of that sort. And, as a matter of fact, the father apparently had moved while Sarah was having this visitation that turned into staying with her mother in Michigan. And he no longer lived at the location she had previously lived at. However, I would note she did say she did have a room. But he apparently had remarried or was living with someone. And there was five people in the household, and they had moved to a four-bedroom house, and he had indicated there was a bedroom there for Sarah. But, really, the evidence showed that Sarah wanted to possibly return to Tennessee. But I do not see the evidence that her intent was that she was going to return to Tennessee. There are other factors, of course, besides just the individual's intent."

(Appendix H, pp. 19-21; emphasis added).

In sum, the Circuit Court found a conflict in the family testimony concerning the intensity and extent of Sarah's intent to return home to Tennessee. Then, the court resolved that conflict in favor of the minority view (mom) that Sarah (a minor) just

wanted to be with her boyfriend in Tennessee. Based on that factual determination, the court had no difficulty finding a Michigan domicile for Sarah based on the Michigan documentary evidence that just as easily supported Sarah staying on a temporary visitation with her mother in Michigan.

We know from the standard of review sections, supra, that it is fundamental summary disposition law that all evidentiary inferences have to be drawn in favor of the non-moving party. That means that the unequivocal and emphatic pro-Tennessee-domicile testimony of Sarah's father and sister could not be discarded or superseded by an alleged pro-Michigan inference drawn from the testimony of Sarah's mother. Ironically, the prevailing summary disposition moving party, State Farm, in arguing for a Michigan domicile for Sarah, never mentioned the Probate Court hearing or the testimony of any family witnesses in its motion for summary disposition.

Even more important and dispositive of this issue is the fundamental MCR 2.116(C)(10) summary disposition rule that, in ruling on such a motion, judicial fact-finding and credibility determinations are prohibited. See, e.g., Skinner v Square D Co, 445 Mich 153, 161; 516 NW2d 475 (1994); Jackhill Oil Co v Powell Production, Inc, 210 Mich App 114, 117; 532 NW2d 866 (1995).

That rule was obviously violated here and supports the Court of Appeals decision to vacate the trial court's summary disposition order and remand for trial.

RELIEF

For all of the foregoing reasons, the Auto Club requests that this Honorable Court, in lieu of granting leave to appeal, (1) peremptorily affirm that portion of the Court of Appeals' opinion that reversed the trial court's grant of summary disposition to State Farm, and (2) peremptorily reverse that portion of the Court of Appeals opinion that declined to grant summary disposition in favor of the Auto Club

In the alternative, the Auto Club requests that this Court grant leave to appeal to both parties regarding the proper disposition of the domicile issue in this case.

As a final alternative, the Auto Club requests that this Court at least let stand the Court of Appeals decision in this matter.

Respectfully submitted,

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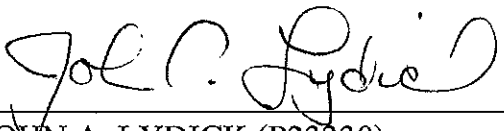

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Dated: October 25, 2011