

STATE OF MICHIGAN
IN THE SUPREME COURT

AUTOMOBILE CLUB INSURANCE
ASSOCIATION,

Plaintiff/Appellee,

vs.

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

Defendant/Appellant.

and Allstate Insurance Company Defendant OK
THOMAS C. LEFLER, JR. (P33735)
SCHOOLMASTER, HOM, KILLEEN, SIEFER,
ARENE & HOEHN
Attorneys for Plaintiff-Appellant
40900 Woodward Ave., Ste. 200
Bloomfield Hills, MI 48304-2255
(517) 622-2425

JOHN A. LYDICK (P23330)
Attorney of Counsel for Plaintiff-Appellee
30700 Telegraph Road, Ste. 3475
Bingham Farms, MI 48025-4571
(248) 646-5255

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*Ingham
J. Prayamchuk*

DALE L. ARNDT (P42139)
BENSINGER, COTANT & MENKES, PC
Attorneys for Defendant-Appellant State Farm
3152 Peregrine Dr., NE, Ste. 210
Grand Rapids, MI 49525
(616) 365-9600

**DEFENDANT-APPELLANT STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY'S APPLICATION FOR LEAVE TO APPEAL**

ORAL ARGUMENT REQUESTED

PROOF OF SERVICE

Submitted by:
Dale L. Arndt (P42139)
Attorney for Defendants-Appellant
BENSINGER, COTANT & MENKES, P.C.
3152 Peregrine Dr., N.E., Ste. 210
Grand Rapids, MI 49525
(616) 365-9600

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THE COURT OF APPEALS REVERSAL OF THE TRIAL COURT’S GRANT OF SUMMARY DISPOSITION IS CLEARLY ERRONEOUS AND CONFLICTS WITH THE ESTABLISHED APPELLATE STANDARD OF REVIEW BY WHICH MOTIONS FOR SUMMARY DISPOSITION ARE TO BE CONSIDERED AND ISSUES OF DOMICILE ARE TO BE DETERMINED CONTRARY TO THE LEGAL FRAMEWORK FOR DETERMINING DOMICILE UNDER *WORKMAN v DAIIE*, 404 MICH 477; 274 NW2d 373 (1979) AND IN REVIEWING SUMMARY DISPOSITION ORDERS UNDER *MAIDEN V ROZWOOD*, 461 Mich 109; 597 NW2d 817 (1999). THE COURT OF APPEALS’ REVERSAL OF THE TRIAL COURT’S GRANT OF SUMMARY DISPOSITION OVERLY WEIGHTED ITS DECISION UPON WHETHER SARAH INTENDED TO REMAIN IN MICHIGAN OR RETURN TO TENNESSEE AT SOME TIME AFTER, THE ACCIDENT, WHICH WAS CLEARLY IMPROPER ESPECIALLY IN LIGHT OF ALL THE OTHER FACTORS TO BE CONSIDERED AND IN EXISTENCE AS OF TIME OF THE ACCIDENT. FURTHER, EVEN CONSIDERING THE CONFLICTING EVIDENCE AS TO SARAH’S INTENTION TO RETURN TO TENNESSEE AT SOME POINT AFTER THE ACCIDENT, THE FACTS ARE UNDISPUTED THAT AS OF THE TIME OF THE ACCIDENT SARAH HAD REMAINED IN MICHIGAN LIVING WITH HER MOTHER. THE TRIAL HAD PROPERLY WEIGHED THE RELEVANT FACTORS FOR DETERMINING SARAH’S DOMICILE, AND IN DOING SO, NOTED THAT “[W]HEN YOU LOOK AT IT IN THE TOTALITY, AND SEE A LACK OF EVIDENCE OF A CLEAR INTENT TO RETURN TO TENNESSEE, AND ANYTHING DONE IN THAT REGARD TO BRING

IN THAT INTENT, AND AT BEST MAYBE A HOPE OR A STATED WISH TO RETURN TO TENNESSEE, AND YOU WEIGH IN THE OTHER FACTORS THAT HAVE TO BE CONSIDERED.” THE COURT OF APPEALS’ ANALYSIS SKEWS THE BALANCING OF FACTORS TO BE EMPLOYED UNDER *WORKMAN, SUPRA*, IN DETERMINING ONE’S LEGAL DOMICILE AND IN CONSIDERING THE MERE POSSIBILITY OF SARAH’S RETURN TO TENNESSEE AFTER THE ACCIDENT TO CREATE A GENUINE QUESTION OF FACT. UNDER THE PROPER BALANCING OF ALL ASSOCIATED FACTORS THERE CANNOT EXIST A GENUINE ISSUE OF MATERIAL FACT AS TO SARAH’S DOMICILE WHEN IT IS UNDISPUTED THAT NO EFFORTS HAD BEEN UNDERTAKEN, EVEN IF CONTEMPLATED, TO MOVE SARAH FROM MICHIGAN AT ANY TIME PRIOR TO OR AT THE TIME OF THE ACCIDENT OR TO DISTURB HER FROM HER LIVING SITUATION AND ARRANGEMENTS THAT EXISTED BOTH PRIOR TO AND AT THE TIME OF THE ACCIDENT WITH HER MOTHER IN MICHIGAN10

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STATEMENT OF QUESTION PRESENTED FOR REVIEW

I. WHETHER THE COURT OF APPEALS APPLIED THE PROPER APPELLATE REVIEW IN REVERSING THE TRIAL COURT'S GRANT OF SUMMARY DISPOSITION TO THE DEFENDANT-APPELLANT CONTRARY TO THE LEGAL FRAMEWORK FOR DETERMINING DOMICILE UNDER *WORKMAN v DAIIE*, 404 MICH 477; 274 NW2D 373 (1979) AND IN REVIEWING SUMMARY DISPOSITION ORDERS UNDER *MAIDEN V ROZWOOD*, 461 MICH 109; 597 NW2d 817 (1999)?

Defendant-Appellant Answers: "NO."

Plaintiff-Appellee Presumably Answers: "YES."

Court of Appeals Answers: "YES."

Trial Court Presumably Answers: "NO."

Statutes

MCL 500.3114.....5,12
MCL 500.3114(1)1,5
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FACTUAL BACKGROUND

Introduction

This Application for Leave to Appeal arises out of a litigated claim involving a dispute concerning priority for payment of personal protection insurance benefits under the Michigan No-Fault Statute stemming from accidental bodily injuries sustained by Sarah Campanelli in an automobile accident that occurred on November 27, 2007. As a result of injuries and complications stemming from her involvement in the motor vehicle accident, Ms. Campanelli eventually passed away, approximately a month after the motor vehicle accident, during her hospitalization.

The central issue concerning liability for payment of the involved insurers, involves a determination as to where Sarah Campanelli would be considered “domiciled” as of the time of the accident in November 2007.

At the time of the motor vehicle accident, Ms. Campanelli, age 16, was living with her natural mother, Tina Taylor, and Sarah’s uncle, Terry Gravelle, at 1701 Fairlawn Road, #33, Howell, Michigan 48443. At the time of the accident, Plaintiff-Appellant Auto Club insured Terry Gravelle under a Michigan no-fault automobile insurance policy, at that same address. (See Exhibit A.)

Defendant-Appellant State Farm insured Debra Hayes, who was the owner of the vehicle in which Ms. Campanelli was riding at the time of the motor vehicle accident.

Under the Michigan No-Fault Statute, a person sustaining accidental bodily injury from a motor vehicle accident recovers personal protection insurance benefits from their own insurer *or an insurer of a resident relative*. MCL 500.3114(1). Specifically, MCL 500.3114(1) provides:

Sec. 3114. (1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) 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, if the injury arises from a motor vehicle accident. A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either. MCL 500.3114(1). (Emphasis added.)

Facts of Loss

At the time of the accident, Sarah Campanelli was 16 years old, born February 7, 1991 to Tina Marie Campanelli a/k/a Tina Taylor and Francis Michael Campanelli, who were divorced prior to the motor vehicle accident. (See Exhibit B and C.) The January 12, 1995 Judgment of Divorce, granted joint legal custody to both parents and physical custody to Mr. Campanelli. (See Exhibit C.) Subsequent to the Judgment of Divorce, in February of 1996, as a result of a job promotion which Frank Campanelli received, he was permitted to remove Sarah to the State of Tennessee to live with him, and a visitation schedule was established for Tina Taylor. (See Exhibit D.) The February 5, 1996 Order, however, did not modify joint legal custody previously awarded. *Id.*

Beginning in approximately the summer of 2007, the records reveal that Sarah moved back to Michigan to live with her mother and uncle. The medical records from Sarah's hospitalization after the accident further confirmed the circumstances of her residency leading up to the accident. In the Lakeland Center medical records, with regards to her "Prior Level of Function, Living Situation" it is recorded that "[Sarah] Patient resided at home with her mother & uncle in a mobile home." (See Exhibit E.) Further, in the progress notes it was recorded:

"Patient moved from Tenn to Michigan on 6/05/07 to live with mother. Per mother D/C plan is for return home with homecare and mother and uncles support. Patient resides in Howell, Mich. in a trailer home with uncle & mother." (See Exhibit F.)

In the summer of 2007, prior to the accident, Sarah had withdrawn from Lebanon High School in Lebanon, Tennessee by way of a formal withdrawal on July 27, 2007, which was signed by her father, Frank Campanelli, indicating that she was "moving to Michigan." (See Exhibit G.) Beginning in August of 2007, Sarah Campanelli was enrolled in the Howell Public Schools in Michigan, at the Parker Campus, in the tenth grade revealing her parent/guardian as Tina Taylor (Campanelli) at 1701 Fairlawn Road, #33, Howell, Michigan 48443. (See Exhibits H and J.) In advance to her enrollment, Sarah's mother, Tina Taylor, had submitted a Residency Affidavit to the Howell Public Schools indicating that "I physically reside at 1701 Fairlawn Road, #33, Howell, Michigan, and that I have no other residence other than that listed at this Affidavit", and also listed Sarah's residence at the same address. (See Exhibit I.) With respect to Sarah's enrollment in the Howell Public Schools for the academic school year of 2007-2008, Ms. Taylor submitted a medical alert and emergency contact form disclosing both herself as an emergency contact, at the address of 1701 Fairlawn Road, #33, along with Sarah's uncle, and Auto Club's insured, Terry Gravelle. (See Exhibit J.)

The police report, with respect to the involved motor vehicle accident, listed and disclosed Sarah Campanelli at her address at 1701 Fairlawn Road, Lot 33, Howell, Michigan, the address of her uncle Terry Gravelle. (See Exhibit K.)

The driver of the vehicle involved in the accident, Kayla Kuikahi-Lalonde, had testified in connection with the wrongful death action, that on the afternoon of the accident she had picked up Sarah at her home, even saying hello to Sarah's mother:

Q Then you went into Sarah's house.

A Yes.

Q What did you do inside?

A I watched Sarah get ready, said "hi" to her mom and then we left.

Q Anything else?

A No.

* * *

Q After you - - how long did you stay in Sarah's house?

A At most - - probably 15 minutes at the most, n longer than that.

Q Then where did you go?

A Then after that me, Sarah, Mikey, Kara and Britney, we all went back to the school. (See Exhibit L, pp 35-36.)

Following the motor vehicle accident and during her hospitalization, a claim for personal protection insurance benefits was filed with Auto Club. The medical authorizations issued by Sarah's mother, Tina Taylor, on December 19, 2007, for release of her medical records, disclosed Sarah's address as 1701 Fairlawn Road, #33, Howell, Michigan. (See Exhibit M.) Auto Club's application for no-fault benefits was sent to Sarah Campanelli at her address at 1701 Fairlawn Road, #33 in Howell and was *signed and submitted by Sarah's father, Frank Campanelli, on or about December 7, 2007*, again listing her address at the Fairlawn address. (See Exhibit N.) The various medical records and billing also listed Ms. Campanelli's address at the Fairlawn address (See Exhibit O) and her death certificate also listed her address at 1701 Fairlawn Road, along with her mother, Tina Taylor. (See Exhibit P.)

Procedural History

Plaintiff initiated this cause of action on September 19, 2008, seeking to recover those personal protection insurance benefits paid to and for Sarah as the result of her accidental bodily injuries.

As Sarah, at the time of the accident, was domiciled in the same household as her mother and uncle, Terry Gravelle, State Farm maintained that Plaintiff-Appellee Auto Club Insurance Company was the sole insurance carrier responsible for payment of personal protection insurance benefits for those accidental bodily injuries sustained, pursuant to MCL 500.3114.

Thus, in the trial court, State Farm moved for entry of summary disposition pursuant to MCR 2.116(C)(10) on the grounds that Auto Club was the proper insurer and had sole priority and liability for payment with respect to those personal protection insurance benefits paid to or for the benefit of Sarah. In response to Defendant State Farm Mutual Automobile Insurance Company's Motion for Summary Disposition, Plaintiff Auto Club filed an Answer opposing Defendant's motion and in response filing a Counter-Motion for Partial Summary Disposition.

In opposition to State Farm's motion, Auto Club relied upon testimony presented in and conclusions of the Livingston County Probate Court regarding a "Petition Regarding Funeral Arrangements and Disposition of Decedent's Body," which had been filed in the Livingston County Probate Court concerning the final resting place of Sarah's body. (See Exhibits R and S.) During the probate court proceedings, testimony had been received for the Probate Court's determinations as to the formal funeral arrangements and disposition of Sarah's body. The Probate Court, in determining that Sarah should be buried in Tennessee, concluded that Sarah's father had the right and power to make the decisions about the financial arrangements and burial, and based upon the earlier Wayne County Order of February 1996 placing domicile with the father in Tennessee. (Exhibit S, p. 287; Exhibit T.)

Auto Club further asserted in response to State Farm's Motion that Sarah was only "visiting" her mother, and that she intended to return to Tennessee at some point in time, based upon the testimony of her father relative during the probate court proceedings. During the

probate court proceeding, Mr. Campanelli indicated that his daughter wanted to return home; Mr. Campanelli testified that there were no definitive plans or arrangements made for moving Sarah out of her mother's home and reenrolling in school back in Tennessee, but that she would have been coming home for her Christmas break:

Q Okay. So you wanted her to finish up school?

A I didn't want her to come in the middle of a semester no.

Q Gotcha. Did she understand or was she upset?

A No she understood that. She knew that basically at her Christmas break from school up there would be the earliest she could come home.

Q Okay. And did you start making plans for Christmas with her?

A Well I mean Christmas was always Christmas with us. I mean it was basically just Christmas. We always had Christmas together with the exception of a few times she was with her mom. Yeah I mean there would've been plans. The same plans there always are. (Exhibit R, pp. 98-99.)

At a hearing in the Ingham County Circuit Court before Ingham County Circuit Court Judge Joyce Draganchuk on August 12, 2009, the trial court indicated it would grant summary disposition to State Farm. The trial court determined that Sarah was domiciled with her mother in the home of Auto Club's insured at the time of the accident. (8/12/09 Motion Hearing Transcript, pp 17-23.) The trial court rejected Auto Club's position that Sarah should be considered domiciled with her father, Frank Campanelli, who resided in Tennessee; the trial court reasoned that Sarah's domicile was in Michigan with her mother and uncle considering she was enrolled in school in Michigan, and her primary living arrangements existed in Michigan, including her place of abode, financial and social support, with no immediate plans to return to Tennessee. Id. The trial court concluded, in pertinent part:

“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.*

And, of course, then we come into the factors that Sarah withdrew from school in Tennessee. She was, of course, enrolled in school in Howell, and was enrolled in school in Howell at the time of the accident. Her mother had signed a residency affidavit for Sarah to be able to attend school in Howell. The school recorded Sarah’s address as being in Howell, and made her mother the number one emergency contact person. Sarah, of course, lived in her mother’s home. She had her own room, she was redecorating, she was, as I indicated, had obtained employment. Her mother, obviously, provided her shelter and food while she was in Michigan. She developed a social network and she had friends that she saw at her mother’s house.

So when you look at it in the totality, and see a lack of evidence of a clear intent to return to Tennessee, and anything done in that regard to bring in that intent, and at best maybe a hope or a stated wish to return to Tennessee, and you weigh in the other factors that have to be considered as well taking into account that this is a minor and she is not going to acquire real estate, as we have in the Lee case, and that, you know, would certainly be a strong factor, when you consider all of those nine factors that are to be considered, I think, as a matter of law, it’s been shown that she had residency in Michigan with her mother and her uncle at the time of the motor vehicle accident.” (8/12/09 Motion Hearing Transcript, pp 21-23; attached hereto as Exhibit U.)

The trial court further dismissed any arguments by Auto Club that, under the principles of res judicata, any determinations made by the Livingston County Probate Court were dispositive of the issues of domicile under the No-Fault statute:

First, I don’t think that the ruling of the Probate Court is dispositive under the principles of res judicata. Clearly, the parties aren’t the same. The matter in dispute here could not have been resolved there. This is entirely a different cause of action. (Exhibit U; 8/12/09 Motion Hearing Transcript, p 17.)

Plaintiff-Appellee Auto Club subsequently appealed as of right to the Michigan Court of Appeals from the September 8, 2009 Order of Judgment entered by the Ingham County Circuit Court granting summary disposition to State Farm and denying Auto Club’s motion for summary disposition.

In its June 21, 2011 unpublished Opinion, a panel of the Michigan Court of Appeals concluded that there existed a genuine issue of material fact for a jury's consideration whether Sarah Campanelli intended to return to Tennessee to live with her father at some point in time following the accident, finding, in pertinent part:

The trial court, while acknowledging that Sarah had in the past maintained her domicile in Tennessee, determined that, as a matter of law, the circumstances of the summer and fall of 2007 changed her domicile to Michigan. We disagree. *It is undisputed that Sarah expressed her intention to return to Tennessee with both her sister and her father. Had she been of majority age, the evidence is sufficient to infer that she would in fact have acted on her intentions. However, as the trial court recognized, Sarah was a minor child, and her legal custodian, her father, told her that she had to finish the school semester in Michigan and was not permitted to return to Tennessee until the Christmas break at the earliest. These circumstances raise genuine issues of material fact related to Sarah's intentions. Rather than the facts simply reflecting a hope to return to Tennessee, the facts could just as easily be interpreted as showing a firm intention to return* that was stifled only by the fact that Sarah was not legally permitted, because of her age, to act on her intention at that time.”

* * *

“It is clear that the trial court based its decision to grant summary disposition in favor of defendant on its finding that there was “no real evidence that Sarah intended to return to Tennessee to live.” However, as noted earlier, while it is true that Sarah's mother stated that Sarah planned to stay with her in Michigan for a year, there was contradictory testimony from her sister and father indicating that Sarah intended to return to Tennessee. Accordingly, because a trial court is not permitted to determine facts or assess credibility on a motion for summary disposition, *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994), there was a genuine issue of material fact, and summary disposition was improper.” (See Exhibit V, p. 4.)

Thereafter, Defendant-Appellant filed a Motion for Reconsideration to the Court of Appeals, which it denied by way of an Order dated August 11, 2011. (Exhibit W.)

At this time, Defendant/Appellant seeks Application for Leave to Appeal from the Orders of the Michigan Court of Appeals. Under the factual record in this case and the basis of the Court of Appeals' reversal of the trial court's grant of summary disposition, further appellate review is mandated and, ultimately, the Opinion of the Michigan Court of Appeals must be

vacated, as its decision is clearly erroneous, will cause a material injustice, and the decision directly conflicts with the established appellate standard of review by which motions for summary disposition are to be considered under the prior decisions of this Court. MCR 7.302(B)(5). *Workman v DAIIE*, 404 Mich 477; 274 NW2d 373 (1979); *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999).

Further facts will be presented were pertinent to a discussion of the issue raised on appeal.

ARGUMENT

THE COURT OF APPEALS REVERSAL OF THE TRIAL COURT'S GRANT OF SUMMARY DISPOSITION IS CLEARLY ERRONEOUS AND CONFLICTS WITH THE ESTABLISHED APPELLATE STANDARD OF REVIEW BY WHICH MOTIONS FOR SUMMARY DISPOSITION ARE TO BE CONSIDERED AND ISSUES OF DOMICILE ARE TO BE DETERMINED CONTRARY TO THE LEGAL FRAMEWORK FOR DETERMINING DOMICILE UNDER *WORKMAN v DAIIE*, 404 MICH 477; 274 NW2d 373 (1979) AND IN REVIEWING SUMMARY DISPOSITION ORDERS UNDER *MAIDEN V ROZWOOD*, 461 Mich 109; 597 NW2d 817 (1999). THE COURT OF APPEALS' REVERSAL OF THE TRIAL COURT'S GRANT OF SUMMARY DISPOSITION OVERLY WEIGHTED ITS DECISION UPON WHETHER SARAH INTENDED TO REMAIN IN MICHIGAN OR RETURN TO TENNESSEE AT SOME TIME AFTER, THE ACCIDENT, WHICH WAS CLEARLY IMPROPER ESPECIALLY IN LIGHT OF ALL THE OTHER FACTORS TO BE CONSIDERED AND IN EXISTENCE AS OF TIME OF THE ACCIDENT. FURTHER, EVEN CONSIDERING THE CONFLICTING EVIDENCE AS TO SARAH'S INTENTION TO RETURN TO TENNESSEE AT SOME POINT AFTER THE ACCIDENT, THE FACTS ARE UNDISPUTED THAT AS OF THE TIME OF THE ACCIDENT SARAH HAD REMAINED IN MICHIGAN LIVING WITH HER MOTHER. THE TRIAL HAD PROPERLY WEIGHED THE RELEVANT FACTORS FOR DETERMINING SARAH'S DOMICILE, AND IN DOING SO, NOTED THAT "[W]HEN YOU LOOK AT IT IN THE TOTALITY, AND SEE A LACK OF EVIDENCE OF A CLEAR INTENT TO RETURN TO TENNESSEE, AND ANYTHING DONE IN THAT REGARD TO BRING IN THAT INTENT, AND AT BEST MAYBE A HOPE OR A STATED WISH TO RETURN TO TENNESSEE, AND YOU WEIGH IN THE OTHER FACTORS THAT HAVE TO BE CONSIDERED." THE COURT OF APPEALS' ANALYSIS SKEWS THE BALANCING OF FACTORS TO BE EMPLOYED UNDER *WORKMAN, SUPRA*, IN DETERMINING ONE'S LEGAL DOMICILE AND IN CONSIDERING THE MERE POSSIBILITY OF SARAH'S RETURN TO TENNESSEE AFTER THE ACCIDENT TO CREATE A GENUINE QUESTION OF FACT. UNDER THE PROPER BALANCING OF ALL ASSOCIATED FACTORS THERE CANNOT EXIST A GENUINE ISSUE OF MATERIAL FACT AS TO SARAH'S DOMICILE WHEN IT IS UNDISPUTED THAT NO EFFORTS HAD BEEN UNDERTAKEN, EVEN IF CONTEMPLATED, TO MOVE SARAH FROM MICHIGAN AT ANY TIME PRIOR TO OR AT THE TIME OF THE ACCIDENT OR TO DISTURB HER FROM HER LIVING SITUATION AND ARRANGEMENTS THAT EXISTED BOTH PRIOR TO AND AT THE TIME OF THE ACCIDENT WITH HER MOTHER IN MICHIGAN.

DISCUSSION

Standard of Review

On appeal, a trial court's ruling on a motion for summary disposition in an action for declaratory relief is reviewed *de novo*. *Little v Kin*, 249 MichApp 502, 644 NW2d 375 (2002), aff'd 468 Mich. 699; 664 NW2d 749 (2003); *United States Fidelity and Guaranty Company v Citizens Insurance Company*, 241 Mich App 83, 85; 613 NW2d 740, 741 (2000). *Glancy v City of Roseville*, 457 Mich 580, 583; 577 NW2d 897 (1998). The question of domicile is a matter of law for determination by the Court where there is no dispute with regard to the underlying facts. *Fowler v Auto Club Insurance Assoc.*, 254 Mich App 362; 656 NW2d 856 (2002); *Salinger v Hertz Corporation*, 211 Mich App 163, 165; 535 NW2d 204 (1995); *Goldstein v Progressive Casualty Insurance Co.*, 218 Mich App 105, 111; 553 NW2d 353 (1996); *Assi v Tucker*, 181 Mich App 685; 450 NW2d 32 (1990).

The court has clearly established the proper legal appellate standard for reviewing and evaluating the evidence in connection to a motion for summary disposition pursuant to MCR 2.116(C)(10), stating:

“The reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion. ***A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules. A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10).*** The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial.” (Emphasis added.) *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817, 824 (1999); *Nastal v Henderson & Associates Investigations, Inc.*, 471 Mich 712; 691 NW2d 1 (2005); *Perry v Golling Chrysler Plymouth Jeep, Inc.*, 2005 WL 2514260 (Ct App #254121, 2005). (Appellant's Appendix pages 26A-28A.)

In making a determination as to whether an individual “is domiciled in the same household” as an insured relative under Section 3114, the Court has identified the following factors which should be considered in making such a determination:

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. *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979).

In determining whether an individual is “domiciled in the same household” as an insured, the Court noted that any of the foregoing factors, alone, are not considered determinative, but must be “balanced and weighed with all the factors” being flexibly . . . ‘within the context of the numerous factual settings possible.’” *Workman, supra* 477 Mich at 496.

Other factors which have been considered as relevant in determining “domicile” include:

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 or 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. *Williams v State Farm*, 202 Mich 491,494-495; 509 NW2d 821 (1993).

Other factors considered under the framework announced by the Court, have included:

1. The amount of time spent at the insured's home;
2. The frequency that the injured party slept at the home; and
3. Where the school for the injured party's children would contact him or her in case of emergency. *Farm Bureau v Allstate insurance Company*, 233 Mich App 38, 40; 592 NW2d 395 (1998).

With respect to determining whether a child is domiciled with a parent, some of the relative factors have been outlined as follows:

“(1) whether the child continues to use the parents’ home as the child’s mailing address; (2) whether the child maintains some possessions with the parents; (3) whether the child uses the parents’ address on the Childs’ driver’s license or other documents; (4) whether a room is maintained for the child at the parents’ home; and (5) whether the child is dependent upon the parents for support.” *Fowler v Auto Club Insurance Association*, 254 Mich App 362, 364; 656 NW2d 856 (2002).

The Court in *Workman, supra*, was clear that “[N]o one factor is in itself, determinative; instead, *each fact must be balanced and weighed with the others.*” *Workman v DAIIE*, 404 Mich 477, 496-497; 274 NW2d 373 (1979).

Application

I. Lower Court Rulings

In granting summary disposition to State Farm, the trial court conducted the following analysis, determining in pertinent part:

[T]he 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.*

And, of course, then we come into the factors that [1]*Sarah withdrew from school in Tennessee*. She was, of course, enrolled in school in Howell, and was [2]*enrolled in school in Howell at the time of the accident*. [3]*Her mother had signed a residency affidavit for Sarah to be able to attend school in Howell*. [4]*The school recorded Sarah's address as being in Howell*, and made [5]*her*

mother the number one emergency contact person. Sarah, of course, [6] *lived in her mother's home*. She [7] *had her own room*, she was redecorating, she was, as I indicated, [8] *had obtained employment*. Her mother, obviously, [9] *provided her shelter and food while she was in Michigan*. She [10] *developed a social network* and she had friends that she saw at her mother's house.

So when you look at it in the totality, and see a lack of evidence of a clear intent to return to Tennessee, and anything done in that regard to bring in that intent, and at best maybe a hope or a stated wish to return to Tennessee, and you weigh in the other factors that have to be considered as well taking into account that this is a minor and she is not going to acquire real estate, as we have in the Lee case, and that, you know, would certainly be a strong factor, when you consider all of those nine factors that are to be considered, I think, as a matter of law, it's been shown that she had residency in Michigan with her mother and her uncle at the time of the motor vehicle accident." (Emphasis added.) (8/12/09 Motion Hearing Transcript, pp 21-23)

In reversing the trial court's grant of summary disposition, the Court of Appeals conducted the following analysis, in pertinent part:

Here, there was extensive testimony regarding the first *Workman* factor, Sarah's subjective or declared intent. Sarah's sister, Ashley, recalled Sarah going to Michigan in the summer of 2007 to stay with their mother and their mother's uncle. Ashley reported that Sarah told her that she was going to try to stay in Michigan for a year to try to build a relationship with their mother and to go to school in Michigan. Ashley said that she later spoke with Sarah around Thanksgiving 2007 and that Sarah stated she wanted to return to Tennessee around Christmas to live and go to school.

Sarah's father, Frank, said there was no intent for Sarah to permanently remain in Michigan. Frank said that Sarah spoke to him on Thanksgiving, requesting to return to Tennessee, but he told her that she would have to finish the semester. Frank believed that Sarah understood that Christmas was the earliest she could return home, and that he probably would have picked Sarah up at that time.

Sarah's mother, Tina Taylor, believed that Sarah wanted to stay in Michigan to get to know her more. Taylor said that Sarah expressed a desire to visit Tennessee over Thanksgiving to see her boyfriend. Taylor stated that Sarah was going to stay with her for a year, and that she was going to Tennessee to visit her boyfriend for Christmas.

The trial court, while acknowledging that Sarah had in the past maintained her domicile in Tennessee, determined that, as a matter of law, the circumstances of the summer and fall of 2007 changed her domicile to Michigan. We disagree. It is undisputed that Sarah expressed her intention to return to Tennessee with both her

sister and her father. Had she been of majority age, the evidence is sufficient to infer that she would in fact have acted on her intentions. However, as the trial court recognized, Sarah was a minor child, and her legal custodian, *her father, told her that she had to finish the school semester in Michigan and was not permitted to return to Tennessee until the Christmas break at the earliest. These circumstances raise genuine issues of material fact related to Sarah's intentions.* Rather than the facts simply reflecting a hope to return to Tennessee, the facts could just as easily be interpreted as showing a firm intention to return that was stifled only by the fact that Sarah was not legally permitted, because of her age, to act on her intention at that time.

The second factor, concerning the “formality or informality of the relationship between the person and the members of the insured's household,” favors neither location because Sarah's residence with both parents was in the context of a minor child living under the care of a parent. Likewise, the third and fourth *Workman* factors favored neither location. Under the third factor, Sarah resided in the same home with the parent with whom she was living. Regarding the fourth factor, there was no testimony about Sarah having access to “another place of lodging.”

Turning to the additional *Fowler* factors, we note there was little evidence in the record regarding what address Sarah used for mailing, for forms, or regarding the status of her possessions or finances. Taylor stated that she enrolled Sarah in a Michigan school, giving the school a Michigan address for Sarah. Sarah began working at a Michigan restaurant and was socially active. Sarah's Tennessee probation officer testified that Sarah told her that she was doing well in Michigan. Although Frank provided for the needs of his daughters in Tennessee and maintained a room for Sarah, Taylor stated that she and Sarah lived with Taylor's uncle in a three-bedroom house trailer in Michigan. Taylor said that Sarah arranged her bedroom and was painting it. Taylor paid Sarah's expenses during her time in Michigan, including medical insurance. (Exhibit V, pp. 3-4.)

II. Balancing of Factors

1. Intent

The Court of Appeals' analysis clearly did not conduct the proper balancing of the factors, at least at the evidence existed under this record, rather, it displaced the trial court's findings improperly focusing upon the questions concerning whether Sarah did or did not want to return to Tennessee. At best, this factor was and could only be considered to be neutral or, in the words of the Court of Appeals' “favoring neither location,” because there was conflicting testimony on whether Sarah was or was not intending to return to Tennessee at some point in the

future. Ms. Taylor testified that her daughter had never given any indication that she did not want to live with her and that her daughter indicated that she was only wanting to go back to Tennessee over the Christmas break to see her boyfriend:

Q And is it your indication that Sarah was happy where she was staying?

A Yes she was happy with me.

Q I didn't ask that. I asked if she was happy where she was staying.

A Yes she was, but she didn't like the rules and regulations to the house.

Q I asked you a simply question. Was she happy where she was staying?

A Yes she was.

Q And did she ever say to you she didn't want to be there?

A No she didn't.

Q And did she ever indicate that she was unhappy living there?

A No she didn't. (Exhibit S, p. 92.)

* * *

Q During September and October and November did she express to you any inclination to return to Tennessee?

A No. She just wanted Matthew to come down here. If we could afford the expenses to bring Matthew down here and at the time we didn't. (Exhibit S, p. 157.)

This was confirmed by Kelsey Baker, Sarah's friend:

Q In the three months that you were best friends with Sarah would she ever mention to you any desire to return to Tennessee?

A She said that she wanted to go back to Tennessee to see her boyfriend, Matthew.

Q Did she ever give you any other reason to go back to Tennessee?

A No.

Q Did she ever mention her father to you?

A Yes she did.

Q What did she tell you about her father?

A That she didn't like him. (Exhibit S, p. 199.)

* * *

Q Did you know if she'd ever go back with her father?

A I - - not that I'm aware of. She never planned on it. (Exhibit S, p. 211.)

The testimony set forth above is noted because the Court of Appeals in its decision stated that "It is undisputed that Sarah expressed her intention to return to Tennessee. . . ." It was and is recognized, both by the trial court and State Farm, that Mr. Campanelli had testified that his daughter wanted to return to Tennessee, but this differing testimony concerning Sarah's intent or desire to return to Tennessee in the future, even accepting it to be true, does not present a *genuine* issue of material fact concerning Sarah's domicile at the time of the accident. As the trial court succinctly highlighted regarding Sarah's intent to return to Tennessee, as of the time of the accident, there was "*a lack of evidence of a clear intent to return to Tennessee, and anything done in that regard to bring in that intent, and at best maybe a hope or a stated wish to return to Tennessee.*" The Court of Appeals based its reversal of the trial court on the grounds that the trial court's decision was based upon a "determination of credibility," concluding that the trial court erred "because a trial court is not permitted to determine facts or assess credibility on a motion for summary disposition." There was no determination by the trial court to assess credibility nor was it required on the factual record presented. The conflicting testimony as to Sarah's intention aside, the fact that was not and could not be disputed is the fact that Mr. Campanelli by his own testimony, confirmed that, as of the time of the accident, there were no

definitive plans or arrangements made for moving out of her mother's home and reenrolling Sarah in school back in Tennessee, but basically that she would be coming home for her Christmas visitation:

Q Okay. So you wanted her to finish up school?

A I didn't want her to come in the middle of a semester no.

Q Gotcha. Did she understand or was she upset?

A No she understood that. She knew that basically at her Christmas break from school up there would be the earliest she could come home.

Q Okay. And did you start making plans for Christmas with her?

A Well I mean Christmas was always Christmas with us. I mean it was basically just Christmas. We always had Christmas together with the exception of a few times she was with her mom. Yeah I mean there would've been plans. The same plans there always are. (Exhibit R, pp. 98-99.)

Moreover, it is clear that absolutely no action was undertaken as of the time of the accident, irrespective of her intent in the future, to remove her from school or reenroll her in school in Tennessee at any time near or prior to the accident. Mr. Campanelli testified that Sarah had requested to remain with her mother after her summer visitation because she wanted to get to know her mother and he had to un-enroll her from school in Tennessee:

Q Why is it that she didn't go back to Tennessee in mid-July of '07?

A Because she wanted to stay to get to know her mother. (1/17/08 Livingston County Probate Court Tr., p. 138; attached hereto as exhibit R.)

* * *

Q Okay. Did you agree that she could be enrolled in school in Howell, Michigan?

A I did eventually agree that she could stay on a temporary basis and enroll in high school. I had to unenroll her from school down here. *Id.*

Yet, the record is absolutely devoid of any evidence even suggesting that Mr. Campanelli had prepared or undertaken any of these steps in advance of the accident to carry out any intent by Sarah to return to Tennessee in the near future. His statements that “there would’ve been plans,” merely confirms that, as of the time of the accident, no immediate plans had been taken or were anyway in place. Furthermore, as of the time of the motor vehicle accident, by Mr. Campanelli’s own testimony, no plans were made and there were no immediate indications, at the time of the accident, that she would be moving out of her mother’s home, because by his own account, he wanted her to finish up the school semester. (Exhibit R, pp. 98-99.)

Under the circumstances of this case, as the Court directed in *Workman, supra*, intent is but only one factor that has to be considered in totality of the circumstances, and as trial court correctly analyzed, considering the lack of any conclusive evidence as to intent, the overall balancing of the relevant factors to be considered, as they existed at the time of the accident, overwhelmingly weigh in favor of a determination of Michigan domicile at the time of the accident. The Court of Appeals in its analysis misapplied both the standards announced by this Court under *Workman, supra* and *Maiden, supra*, as it skewed the weight assigned and to be balanced under the multi-factorial considerations expected under *Workman, supra*, and permitted consideration of the mere possibility that the claim concerning Sarah’s intent could be supported, which is disfavored under *Maiden, supra*.

Putting the factor of intent into its proper perspective, the remaining considerations for determining domicile under the pronouncements of *Workman, supra*, highlight the lack of a qualitative review by the Court of Appeals in consideration of the record presented.

2. Relationship of Parties

Sarah's parents both had joint legal custody, and, it is clear that, as of the time of the accident, Mr. Campanelli, as Sarah's custodial parent, consented to her move, and, thus, was permitted under MCL 722.31. MCL 722.31 specifically provides:

"A parent's change of a child's legal residence is not restricted by subsection (1) ***if the other parent consents to***, or if the court, after complying with subsection (4), permits, the residence change. This section does not apply if the order governing the child's custody grants sole legal custody to 1 of the child's parents." (Emphasis added.)

As both parents possessed joint legal custody and Frank Campanelli consented to Sarah's move with her mother, by operation of law, Sarah would be permitted legal residence with either parent, and in this case, with her mother, Tina, in Michigan. MCL 722.31(1). Nonetheless, a previous panel of the Court of Appeals [Judges Murray, Jansen, and Kelly] noted that domicile is to be determined based upon the factual circumstances of the case as to the circumstances where they are living, rather than what might be provided in a court order. See *Fontana v Maryland Casualty Insurance*, Slip. Op. p. 3, Docket Nos: 264127 and 264128 [Rel'd 1/24/06, unpublished, attached hereto as Exhibit X.]

The record establishes that Sarah was physically present with her mother at her uncle's home, Terry Gravelle, who was insured with Auto Club, and, certainly, Sarah would be considered domiciled within the home as she stayed and lived at the home during all times immediately leading up to the accident, with her uncle and with her mother who had physical custody of her. *Vanguard Insurance Company v Racine*, 224 Mich App 229; 568 NW2d 156 (1997). Sarah was attending school in connection with her residency during the entire school year leading up to the accident, and had moved to Michigan to live with her mother to attend

school in Howell, where she only could and did live with her mother and uncle, with the knowledge, consent and permission of her father.

This factor clearly weighs in favor of a finding of domicile with Sarah's mother at the time of the involved accident.

3. Residing in or upon the same premises/Maintained possessions

There is and can be no dispute that during the time leading up to the motor vehicle accident Sarah remained constantly and continuously at the home of Plaintiff's insured, Terry Gravelle, and Sarah's mother, Tina. In connection with the probate proceedings, Tina Taylor confirmed that Sarah was living with her and Mr. Gravelle:

Q Now Sarah was living here from June 5th, 07 until she passed away correct in November?

A Correct. (1/23/08 Livingston County Probate Court Tr., p. 23; attached hereto as Exhibit S.)

* * *

Q Okay. Terry Gravelle who you live with?

A Yes. (*Id.*, p 70.)

* * *

Q What - - the trailer that you were living in with Terry and Frank for a period of time I guess and Sarah.

A Terry and Frank?

Q Well Terry and Sarah?

A Yes. (*Id.*, p. 90.)

* * *

Q What was that trailer like? Was it a nice place?

A Yes. It's a three-bedroom trailer.

Q Okay. And what did her room look like?

A It looked like any other room. (*Id.*, p. 90.)

Mr. Gravelle also testified:

Q Mr. Gravelle what is your address?

A 1701 Fairlawn Lot 33, Howell, Michigan 48855

Q And after June 5th of '07 who lived there with you?

A Excuse me?

Q After June 5th of '07 who lived there with you?

A Tina and her daughter, Sarah. (*Id.*, p. 233.)

Kelsey Baker, a friend of Sarah's, testified that she would hang out with Sarah at Mr. Gravelle's home, playing games, eating meals and that Sarah had her own bedroom:

Q Where did you eat dinner when you were hanging out with her?

A At her house. (*Id.*, p. 221.)

* * *

Q And you ate mostly at her house?

A Yeah. (*Id.*, p. 221.)

* * *

Q Can you tell me what the condition of the trailer was she was living in?

A It was nice. It was always clean for the most part.

Q Could you walk around the trailer?

A Yeah.

Q What was Sarah's room like?

A A bed, dresser, TV. (*Id.*, pp. 226-227.)

* * *

Q Did Sarah have her own bedroom?

A Yes.

Q How many bedrooms were there?

A Three.

Q How many people when you went over there were living there?
Who was living at that house when you were over there?

A Sarah, Tina, and Terry. (*Id.*, p. 228.)

The testimony further confirms that Sarah enrolled in school, established herself in school activities, and was working:

Q And then she was enrolled in school?

A Yes she as. (sic)

Q What involvement did you have with her schooling?

A I had to go up and enroll and they had to call Mr. Campanelli to release the school records from her old school to the new school.

Q That was accomplished smoothly?

A Yes it was. She was enrolled in school.

Q And the address she gave to the Howell High School was Terry's home address correct?

A Correct.

Q That was your home as well?

A Correct.

Q And that was Sarah's home as well correct?

A Correct.

Q What type of school work was Sarah involved in?

A At first she was in yearbook journalism where she went and took pictures of baseball, the football teams, the volleyball teams, and went around and talked to students you know for the yearly yearbook. And then she decided she wanted to get a job. So school put her on a flex schedule which she would do three hours to four hours in the morning. (Exhibit S, pp. 155-156.)

* * *

Q And what was the job that she had?

A She was working for Crossroads. It's a restaurant.

Q What- - - and what were her hours there?

A They varied. From noon to maybe one or two. It depended on how many people showed up because it was a new establishment.

Q And what about her social life? What was her social life as a Howell High School student? What was that like as you witnessed?

A She was happy. She had lots of friends. Lots of friends. She was one of the types that had friends no matter where she went. (Exhibit S, pp. 156-157.)

There can be no dispute that Sarah resided at all times both at the time of the accident and during the months leading up to the accident resided within the same premise with her mother in her uncle's home, maintained possession in the home and had a designated bedroom for her. Certainly, Sarah's actual living conditions and living arrangements at the time of the accident weighs in favor of a finding of domicile with Sarah's mother at the time of the involved accident.

4. Existence of another place of lodging

There is no question Sarah was only residing, at the time of the accident, with her mother, and it has never been suggested or argued that Ms. Taylor, along with her daughter, did or could have resided at any other location while in Michigan other than the Fairlawn Road address with

Terry Gravelle. Further, Sarah's mother, Tina Taylor's own driver's license listed her residence with Terry Gravelle at 1701 Fairlawn Road, #33, and she was registered to vote with the Howell Township listing her address at the 1701 Fairlawn Road, #33. (See Exhibit Q.) The Residency Affidavit prepared by Tina Taylor and submitted to the Howell Public Schools also indicated that she herself resided "at 1701 Fairlawn Road, #33, Howell, Michigan, and that I have no other residence other than that listed at this Affidavit", and also listed Sarah's residence at the same address. (See Exhibit L.)

Certainly, the lack of any alternative place of lodging or alternative living arrangement for Sarah in Michigan weighs in favor of a finding of domicile with Sarah's mother at the time of the involved accident.

5. Mailing address/Address on Documentation

With respect to this factor the record is replete with verification that Sarah's mother's home and address was formally and repeatedly listed as her mailing and residential address. The medical records from Sarah's hospitalization further confirms the circumstances of her residency leading up to the accident (See Exhibit E and F.) The records from Howell Public Schools in Michigan, reveal her parent/guardian as Tina Taylor (Campanelli) and her address at 1701 Fairlawn Road, #33, Howell, Michigan 48443. (See Exhibits H, I, and J.) With respect to Sarah's enrollment in the Howell Public Schools for the academic school year of 2007-2008, Ms. Taylor submitted a medical alert and emergency contact form disclosing both herself as an emergency contact, at the address of 1701 Fairlawn Road, #33, along with Sarah's uncle, and Auto Club's insured, Terry Gravelle. (See Exhibit J.)

Also, the police report, with respect to the involved motor vehicle accident, listed and disclosed Sarah's address at 1701 Fairlawn Road, Lot 33, Howell, Michigan, the address of her uncle Terry Gravelle. (See Exhibit K.) Auto Club's own application for no-fault benefits listed Sarah at her address at 1701 Fairlawn Road, #33 in Howell and was *signed and submitted by Sarah's father, Frank Campanelli, on or about December 7, 2007*, again listing her address at the Fairlawn address. (See Exhibit N.) The various medical records and billing also listed Sarah's address at the Fairlawn address (See Exhibit O) and her death certificate also listed her address at 1701 Fairlawn Road, along with her mother, Tina Taylor. (See Exhibit P.)

Certainly, the various and multiple forms of documents verifying Sarah's formal place of residence leading up to and at the time of the accident weighs in favor of a finding of domicile with Sarah's mother at the time of the involved accident.

6. Financial Support

During the time Sarah was living with her mother, Tina Taylor provided the sole support.

Ms. Taylor testified:

Q Okay. And what about Terry was he supporting your daughter? Your father's stepbrother or is it half brother?

A It's my brother's father's stepbrother - - - half brother.

Q Your brother's father's step- - -

A It's my father's half brother.

Q Okay. And was he supporting your daughter?

A We split all bills.

Q Including your daughter's expenses?

A No. I paid for my daughter's expenses.

Q Okay. Did you go shopping with her or did you buy her anything?

A Yes. I bought her all of her school clothes, got her ready for school. I took her to the doctors. (Exhibit T, pp. 23.)

Frank Campanelli further agreed that he did not provide any financial assistance for Sarah when she was living with her mother and uncle:

Q Did you offer Tina any financial assistance for Sarah between June 5th and November 26th?

A No I didn't. It wasn't requested. (Exhibit R, p. 128.)

The fact that Tina Taylor was providing all financial support at the time of the accident weighs in favor of a finding of domicile with Sarah's mother at the time of the involved accident.

Balancing of Factors

If the proper analysis and weighing of the factors had been conducted by the Court of Appeals under *Workman, supra*, and in the manner required under *Maiden, supra*, the trial court's analysis and ruling in granting summary disposition to State Farm, was required to be affirmed.

It is clear, based upon a balancing of the factors to be considered under the legal framework of *Workman, supra*, that at the time of the involved motor vehicle accident and during the months leading up thereto, Sarah Campanelli's only place of residency was with her mother and uncle, Terry Gravelle, Auto Clubs insured. An outline of the factors to be balanced with respect to determination of Sarah's place of domicile leaves but one conclusion:

FACTORS IN FAVOR OF DETERMINATION OF DOMICILE WITH TINA TAYLOR/ TERRY GRAVELLE

Joint legal custody

Formal mailing address at Terry Gravelle's address

FACTORS IN FAVOR OF DETERMINATION OF RESIDENCY WITH FRANK CAMPANELLI

Joint legal custody

Natural father

Registered address and contacts with school

Tina Campanelli/Terry Gravelle paid for living expenses and financial support

Maintained possessions within home

Maintained separate bedroom in home

Natural mother

Spent entirety of time at home when not working or going to school

Only place or location within Michigan for residency.

Attending school and working while living in home

Sole place of residency for friends and gathering for food and shelter.

Formal withdraw from Tennessee school and formal enrollment in Michigan school

Father consented to move and change of Residency

Here, the factual record clearly establishes that legal domicile for Sarah Campanelli existed with her mother at her uncle's home, for which sole primary liability would exist with Plaintiff-Appellant Auto Club, and, the Court of Appeals decision to the contrary is clearly erroneous and conflicts with the established appellate standard of review by which motions for summary disposition are to be considered and issues of domicile are to be determined contrary to the legal framework for determining domicile under *Workman, supra*, and in reviewing summary disposition orders under *Maiden, supra*.

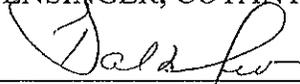
For the foregoing reasons, Defendant-Appellant State Farm requests the Court grant the Application Leave to Appeal, and upon the Court's qualitative review of the record presented, vacate the Court of Appeals' June 21, 2011 Opinion, and reinstate the trial court's grant of judgment to State Farm, as the Court of Appeals' conclusion is contrary to the factual background of this case and the legal analysis to be employed both respect to the scope of the standard of review of the trial court's grant of summary disposition and in weighing the appropriate factors for determination of domicile. *Workman, supra; Maiden, supra; MCR 7.302(B)(5)*.

RELIEF SOUGHT

Defendant-Appellant respectfully requests the Court to grant leave to hear its appeal or, enter an order vacating the Court of Appeals' Opinion and reinstating the grant of summary disposition for Defendant-Appellant.

Respectfully submitted,

BENSINGER, COTANT & MENKES, P.C.



DALE L. ARNDT (P42139)

Attorney for Defendant-Appellant State Farm

Dated: 9/22/11