

STATE OF MICHIGAN
IN THE SUPREME COURT

AUTOMOBILE CLUB INSURANCE
ASSOCIATION,

Plaintiff-Appellee/Cross-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

Defendant-Appellant/Cross-Appellee,

and

ALLSTATE INSURANCE COMPANY,

Defendant.

Supreme Court
No. 143808

Court of Appeals
No. 294324

Ingham County Circuit
Court No. 08-1249-NF

143808
Suppl by PLA
HOM, KILLEEN, SIEFER,
ARENE & HOEHN
BY: CRAIG J. POLLARD (P28452)
Attorneys for Plaintiff-Appellee/
Cross-Appellant
150 West Jefferson, Suite 1500
Detroit, MI 48226
(313) 237-5606

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

BENSINGER, COTANT & MENKES, P.C.
BY: DALE L. ARNDT (P42139)
Attorneys for Defendant-Appellant/
Cross-Appellee
3152 Peregrine Drive, NE, Suite 210
Grand Rapids, MI 49525
(616) 365-9600

**SUPPLEMENTAL BRIEF OF
PLAINTIFF-APPELLEE AND CROSS-APPELLANT
AUTOMOBILE CLUB INSURANCE ASSOCIATION**

PROOF OF SERVICE

FILED

MAY 3 2012

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

STATE OF MICHIGAN
IN THE SUPREME COURT

AUTOMOBILE CLUB INSURANCE
ASSOCIATION,

Plaintiff-Appellee/Cross-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY

Defendant-Appellant/Cross-Appellee,

and

ALLSTATE INSURANCE COMPANY,

Defendant.

Supreme Court
No. 143808

Court of Appeals
No. 294324

Ingham County Circuit
Court No. 08-1249-NF

HOM, KILLEEN, SIEFER,
ARENE & HOEHN
BY: CRAIG J. POLLARD (P28452)
Attorneys for Plaintiff-Appellee/
Cross-Appellant
150 West Jefferson, Suite 1500
Detroit, MI 48226
(313) 237-5606

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

BENSINGER, COTANT & MENKES, P.C.
BY: DALE L. ARNDT (P42139)
Attorneys for Defendant-Appellant/
Cross-Appellee
3152 Peregrine Drive, NE, Suite 210
Grand Rapids, MI 49525
(616) 365-9600

**SUPPLEMENTAL BRIEF OF
PLAINTIFF-APPELLEE AND CROSS-APPELLANT
AUTOMOBILE CLUB INSURANCE ASSOCIATION**

PROOF OF SERVICE

TABLE OF CONTENTS

	<u>PAGE(S)</u>
INDEX OF AUTHORITIES.....	i
STATEMENT OF THE QUESTION PRESENTED.....	ii
STATEMENT OF FACTS.....	1
 ARGUMENT:	
I. THE JUDGMENT OF DIVORCE ENTERED BY THE WAYNE COUNTY CIRCUIT COURT, AS AMENDED, CONCLUSIVELY ESTABLISHED THE LEGAL RESIDENCE AND DOMICILE OF THE INSURED MINOR, SARAH CAMPANELLI, AS BEING HER FATHER’S HOME IN TENNESSEE.....	1
RELIEF.....	9

TABLE OF APPENDICES

1. 3/23/2012 Michigan Supreme Court Order
2. Lexis Nexis – 8 MI Civil Jur Domicile § 7
3. Lexis Nexis – Restat 2d of Conflict of Laws, § 15
4. Lexis Nexis – Restat 2d of Conflict of Laws, § 22
5. Grange Ins Co v Lawrence (CA No. 303031; published opinion rel'd 4/24/2012)

INDEX OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<u>Brausch v Brausch</u> , 283 Mich App 339; 770 NW2d 77 (2009).....	5
<u>Dairyland Ins Co v Auto-Owners Ins Co</u> , 123 Mich App 675; 333 NW2d 322 (1983).....	6, 7
<u>Gluc v Klein</u> , 226 Mich 175; 197 NW 691 (1924).....	2
<u>Grange Ins Co of Mich v Lawrence</u> , __ Mich App __ (No. 303031; rel'd 4/24/2012)....	7, 8
<u>Herring v Mosher</u> , 144 Mich 152; 107 NW 917 (1906).....	2
<u>Lake Farm v District Bd of School Dist No 2, Kalamazoo Twp</u> , 179 Mich 171; 146 NW 115 (1914).....	2
<u>Phillips v Jordan</u> , 241 Mich app 17; 614 NW2d 183 (2000).....	3, 5
<u>Vanguard Ins Co v Racine</u> , 224 Mich App 229; 568 NW2d 156 (1997).....	7
<u>Walbro Corp v Amerisure Co</u> , 133 F3d 961, 967-968 (CA 6, 1998).....	6
<u>Workman v DAIE</u> , 404 Mich 477; 274 NW2d 373 (1979).....	5, 6, 7
 <u>STATUTES, COURT RULES, AND OTHER AUTHORITIES</u>	
MCL 500.3101.....	5
MCL 500.3114(1).....	5, 6, 7
MCL 722.21.....	3
MCL 722.24.....	3
MCL 722.31.....	3
MCR 3.211(C).....	3
Restatement (Second), Conflict of Laws, §§ 15 and 22, comments a and d.....	2
8 Mich Civ Jur, Domicile § 7.....	2

STATEMENT OF THE QUESTION PRESENTED

- I. DID THE JUDGMENT OF DIVORCE ENTERED BY THE WAYNE COUNTY CIRCUIT COURT, AS AMENDED, CONCLUSIVELY ESTABLISH THE LEGAL RESIDENCE AND DOMICILE OF THE INSURED MINOR, SARAH CAMPANELLI, AS BEING HER FATHER'S HOME IN TENNESSEE?

Auto Club answers, "Yes."

STATEMENT OF FACTS

This matter is before this Court on Appellant State Farm's application for leave to appeal and the Auto Club's application for leave to appeal as Cross-Appellant. On March 23, 2012, this Court issued an order (Appendix 1) which directed that this matter be scheduled for oral arguments on the applications, supra, and that the parties file supplemental briefs on an issue specified in the order. This is the supplemental brief of Plaintiff-Appellee and Cross-Appellant Auto Club. This supplemental brief incorporates by reference and will not repeat the contents of the Auto Club's pending cross-application for leave to appeal.

ARGUMENT

I. THE JUDGMENT OF DIVORCE ENTERED BY THE WAYNE COUNTY CIRCUIT COURT, AS AMENDED, CONCLUSIVELY ESTABLISHED THE LEGAL RESIDENCE AND DOMICILE OF THE INSURED MINOR, SARAH CAMPANELLI, AS BEING HER FATHER'S HOME IN TENNESSEE.

At issue in this no-fault automobile insurance declaratory action is the "domicile" of Sarah Campanelli at the time of her November 26, 2007, Michigan motor vehicle accident which resulted in her death on December 24, 2007. There is no dispute that Sarah, at the time of her accident, was an unemancipated minor/child of her divorced parents.

An unemancipated minor/child lacks the necessary legal capacity to choose his/her own domicile. See 8 Mich Civ Jur, Domicile § 7 (Appendix 2), citing Herring v Mosher, 144 Mich 152; 107 NW 917 (1906); Lake Farm v District Bd of School Dist No 2, Kalamazoo Twp, 179 Mich 171; 146 NW 115 (1914); Gluc v Klein, 226 Mich 175; 197 NW 691 (1924). See also Restatement (Second), Conflict of Laws, §§ 15 and 22, comments a and d (Appendices 3, 4).

The domicile of a minor/child of divorced parents is the domicile "of the parent to whose custody he has been legally given." See Restatement (Second), Conflict of Laws, § 22, comment d (Appendix 4, p. 2).

In Michigan, exclusive jurisdiction over the custody and domicile of a minor/child of divorced parents is with the court having jurisdiction over the parents' divorce. See:

Child Custody Act, MCL 722.21, et seq.; MCL 722.24; MCL 722.31; MCR 3.211(C).

There is no dispute in this case that Sarah's parents were divorced by a January 12, 1995, Wayne County Circuit Court judgment (see Appendix A to the Auto Club's pending application for leave to appeal as cross-appellant) that provided for their joint legal custody of Sarah but awarded sole physical custody of Sarah to her father.

There is also no dispute that, on motion by Sarah's father, the divorce judgment, supra, was amended, by Circuit Court order dated February 5, 1996 (see Appendix B to the Auto Club's pending application for leave to appeal as cross-appellant), to explicitly change Sarah's "domicile" to her father's (new) Tennessee address. The order expressly left unchanged the custody provisions of the prior judgment.

As of the date of Sarah's at-issue Michigan motor vehicle accident, the foregoing orders of the Wayne County Circuit Court stood unchanged. According to those orders as well as the foregoing legal analysis, Sarah was in the sole physical custody of her father, and her domicile was her father's Tennessee address.

As demonstrated supra, Sarah, still being a minor, lacked the necessary legal capacity to change her Tennessee domicile with her sole-physical-custodial father. Likewise, her parents, acting alone or together, could not change the above court-ordered custody and domicile conditions of Sarah.

In Phillips v Jordan, 241 Mich App 17; 614 NW2d 183 (2000), Judge (now Justice) Zahra wrote, in his majority opinion, that jurisdiction over the minor child of

divorced parents remains with the Circuit (divorce) Court until the child reaches her majority and that the child's court-ordered custodial environment cannot be changed even by the stipulation or consent of the parents:

“Like contracts, stipulated orders are agreements reached by and between the parties. *Id.* at 378-379. However, contract principles do not govern child custody matters. The Legislature imposed on trial courts, through the Child Custody Act, MCL 722.21 *et seq.*; MSA 25.312(1) *et seq.*, the duty to review proposed changes in child custody to determine whether the changes would be in the best interests of the child. MCL 722.27(1)(c); MSA 25.312(7)(1)(c). While trial courts try to encourage parents to work together to come to an agreement regarding custody matters, the circuit court retains jurisdiction over the child until the child reaches the age of majority. The trial court cannot blindly accept the stipulation of the parents, but must independently determine what is in the best interests of the child. *Lombardo v Lombardo*, 202 Mich App 151, 160; 507 NW2d 788 (1993), citing *West v West*, 241 Mich 679, 683-684; 217 NW 924 (1928), and *Ebel v Brown*, 70 Mich App 705, 709; 246 NW2d 379 (1976).

In *Napora v Napora*, 159 Mich App 241; 406 NW2d 197 (1986), as in this case, the parties agreed to a change of custody that was later disputed by the custodial parent. The *Napora* Court held that the trial court erred in believing that it was required to uphold the stipulation of the parties:

‘Despite any agreement which the parties may reach in regard to the custody of their child, where a custodial environment is found to exist physical custody should not be changed absent clear and convincing evidence that the change is in the best interests of the child.’ [*Id.* at 246-247 (citation omitted)].

See also *In re Ford Estate*, 206 Mich App 705, 708; 522 NW2d 729 (1994), holding, in part, a stipulation between

the parties was not binding because ‘the parties to a civil matter cannot by their mere agreement supersede procedures and conditions set forth in statutes or court rules.’ (citation omitted).

In the present case, the trial court entered the stipulated order to change custody without making any independent determination regarding the best interests of the child pursuant to the Child Custody Act. We conclude that the trial court erred in failing to make such a determination.”

(241 Mich App, at 21-22).

Subsequently, in Brausch v Brausch, 283 Mich App 339; 770 NW2d 77 (2009), a case citing Jordan, supra, the panel held that even if there were errors in the divorce judgment, “until the judgment is set aside, it is valid and binding for all purposes” (283 Mich App, at 353-354).

The above-quoted facts and authorities conclusively establish that, on the date of her motor vehicle accident, Sarah’s “domicile” remained in Tennessee with her sole-custodial father.

This “domicile” conclusion is not in conflict with the No-Fault Act, MCL 500.3101, et seq., under which the present domicile-related no-fault insurance priority dispute was brought. While the pertinent no-fault priority provision, MCL 500.3114(1), refers to “domiciled,” that term is not specially defined in the No-Fault Act.

For the meaning of the no-fault term “domicile,” supra, we normally look to the expressly non-exclusive, flexible, fact-dependent, multi-factor test set forth by this Court’s benchmark decision in Workman v DAIIE, 404 Mich 477; 274 NW2d 373

(1979), and its progeny, including Dairyland Ins Co v Auto-Owners Ins Co, 123 Mich App 675; 333 NW2d 322 (1983) [see the parties' pending cross-applications for leave to appeal in this case].

But in setting up its test or template for determining a person's "domicile" in any particular no-fault case, the Workman opinion imported and expressly relied on the domicile common law or case law of both Michigan and other jurisdictions. Likewise, the Workman opinion allowed for the possibility that "domicile" could have a special meaning in a particular legal context (404 Mich, at 495-496) – e.g., this case.

It should also be emphasized that Workman, supra, dealt with determining the domicile of an adult. Similarly, when Dairyland, supra, added several more factors to the Workman domicile test, it was attempting to accommodate the special problems of determining the domicile of young adults leaving the parental home. Neither decision dealt with determining the domicile of a minor. See, e.g., Walbro Corp v Amerisure Co, 133 F3d 961, 967-968 (CA 6, 1998).

The special common law and the controlling Michigan statutory law, analyzed supra, regarding the domicile of the minor child of divorced parents, conclusively supplies us with the MCL 500.3114(1) meaning of "domiciled" in this case: Sarah's domicile was with her father in Tennessee.

Given a minor's (Sarah's) lack of the necessary capacity to choose a domicile, supra, the Workman-Dairyland focus on such things as a person's subjective domicile

intent is rendered irrelevant here. And given the exclusive jurisdictional control of the divorce court over the minor's (Sarah's) custodial environment, the entire Workman-Dairyland multi-factor analysis is sidestepped in a case such as this.

However, the result here is nevertheless consistent with Workman, supra, and Michigan common law. In Vanguard Ins Co v Racine, 224 Mich App 229; 568 NW2d 156 (1997), the Court construed the terms of a homeowners policy with respect to the residence of a minor (3-year-old) child of divorced parents who shared legal custody while the mother had sole physical custody (224 Mich App, at 230). In passing, the opinion analyzed the child's residence using the Workman no-fault domicile analysis. The Vanguard panel noted that, according to Workman, "domicile" equals "primary residence" and that Michigan generally follows a one-domicile rule (224 Mich App, at 233). The panel then opined that the child's one domicile would be mom's "where [the child] spent the majority of his time and where [mom] had physical custody of [the child] under the divorce judgment" (224 Mich App, at 233).

Finally, a very recent published decision of the Court of Appeals is attached for this Court's consideration: Grange Ins Co of Mich v Lawrence, ___ Mich App ___ (No. 303031; rel'd 4/24/2012) (Appendix 5). It deals with the MCL 500.3114(1) no-fault domicile of a minor child of divorced parents and concludes that the child had dual domiciles – i.e., a domicile with each parent. The Court relied on the facts and applied the Workman-Dairyland test factors.

It should be noted that the Grange opinion seems to conflict with and overlook much of the legal analysis contained in, and the authorities cited in, this supplemental brief. However, even applying Grange to the facts of this case would not affect the outcome argued for by the Auto Club here. Unlike Grange, and any case in which the divorce judgment could be construed as providing or allowing for dual domiciles for the minor child, the instant case features a divorce judgment which awarded sole physical custody to Sarah's father and expressly specified Sarah's "domicile" as being her father's Tennessee address.

RELIEF

For all of the foregoing reasons, the Auto Club requests that this Honorable Court grant the relief requested in the Auto Club's pending application for leave to appeal as cross-appellant.

Respectfully submitted,

HOM, KILLEEN, SIEFER,
ARENE & HOEHN
CRAIG J. POLLARD (P28452)
Attorneys for Plaintiff-Appellee/
Cross-Appellant
150 West Jefferson, Suite 1500
Detroit, MI 48226
(313) 237-5606



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

Dated: May 3, 2012

Order

(1)
Michigan Supreme Court
Lansing, Michigan

March 23, 2012

143808 & (54)

AUTOMOBILE CLUB INSURANCE
ASSOCIATION,
Plaintiff-Appellee/
Cross-Appellant,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Defendant-Appellant/
Cross-Appellee,

and

ALLSTATE INSURANCE COMPANY,
Defendant.

Robert P. Young, Jr.,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

SC: 143808
COA: 294324
Ingham CC: 08-001249-NF

On order of the Court, the application for leave to appeal the June 21, 2011 judgment of the Court of Appeals and the application for leave to appeal as cross-appellant are considered. We direct the Clerk to schedule oral argument on whether to grant the applications or take other action. MCR 7.302(H)(1). The parties shall submit supplemental briefs within 42 days of the date of this order addressing whether legal residence and domicile of the insured minor were conclusively established in Tennessee pursuant to the judgment of divorce entered by the Wayne Circuit Court, as amended, or whether the minor had the capacity to acquire a different legal residence or domicile of choice. See, e.g., *Vanguard Ins Co v Racine*, 224 Mich App 229, 233 (1997); MCR 3.211(C)(1) and (3); 8 Mich Civ Jur, Domicile § 7; Restatement (Second), Conflict of Laws, §§ 15 and 22(1) comments a and d. The parties should not submit mere restatements of their application papers.



p0320

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 23, 2012

Corbin R. Davis

Clerk



Michigan Civil Jurisprudence
Copyright © 2011 West Group

Christine M. Gimeno, J.D., LL.M.

Domicile
II . Domicile of Choice and Change of Domicile

8 MI Civil Jur Domicile § 7

§ 7 Capacity to choose

In order to acquire a domicile of choice, a person must establish a dwelling place with the present intention of making it his or her home. n1 The intention to acquire a new domicile implies three things:

- (1) capacity to choose; n2
- (2) freedom of choice; n3 and
- (3) actual choice. n4

The following persons, subject to the exceptions discussed below, cannot acquire a domicile of choice: (1) one who is not emancipated or who is not capable of managing one's own affairs; n5 and (2) persons who are not of sound mind, that is, persons who lack the mental capacity to choose a home. n6

It is a question of fact whether or not a person who is mentally deficient or of unsound mind is incapable of choosing a home. n7 All of these persons are presumed in law to be lacking the capacity to form the intention requisite for a change of domicile. These persons depend on others who are considered by the law as capable of forming the intention to change their domicile of choice. n8

FOOTNOTES:

n1 West's Key Number Digest, Domicile [westkey]4(1)
Restatement Second, Conflict of Laws § 15.

n2 *Gluc v. Klein*, 226 Mich. 175, 197 N.W. 691 (1924); *Lake Farm v. District Bd. of School Dist. No. 2, Kalamazoo Tp.*, 179 Mich. 171, 146 N.W. 115 (1914).

As to the lack of capacity to choose a new domicile in unemancipated minors, and incapacitated persons, see §§ 20, 28.

n3 *Gluc v. Klein*, 226 Mich. 175, 197 N.W. 691 (1924); *Lake Farm v. District Bd. of School Dist. No. 2*,

Kalamazoo Tp., 179 Mich. 171, 146 N.W. 115 (1914).

As to the presence of a person at a place under compulsion and its effect on acquisition of new domicile, see § 12.

n4 Leonetti v. Tolton, 264 Mich. 618, 250 N.W. 512, 92 A.L.R. 1050 (1933).

n5 Herring v. Mosher, 144 Mich. 152, 107 N.W. 917 (1906).

As to the capacity of an emancipated child to acquire a domicile of choice, see § 28.

n6 Gluc v. Klein, 226 Mich. 175, 197 N.W. 691 (1924).

n7 Restatement Second, Conflict of Laws § 23.

n8 Restatement Second, Conflict of Laws §§ 22, 23.

REFERENCE: West's Key Number Digest, Domicile [westkey]4

MCLA 168.11

A.L.R. Index, Domicile and Residence

West's A.L.R. Digest, Domicile [westkey]4

Am. Jur. 2d, Domicil §§ 14 to 26

C.J.S., Domicile §§ 11 to 17

Establishment of Person's Domicil, 39 Am. Jur. Proof of Facts 2d 587 §§ 4 to 6, 10 to 28

Am. Jur. Pleading and Practice Forms, Domicil §§ 11 to 13

Restatement Second, Conflict of Laws §§ 15 to 18, 22, 23



Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

Case Citations

Chapter 2 - Domicil

Topic 2 - Acquisition and Change of Domicil

Restat 2d of Conflict of Laws, § 15

§ 15 Domicil of Choice

(1) A domicil of choice may be acquired by a person who is legally capable of changing his domicil.

(2) In addition to legal capacity, acquisition of a domicil of choice requires

(a) physical presence as described in § 16, and

(b) an attitude of mind as described in § 18.

(3) The fact of physical presence at the particular place must concur with the existence of the required attitude of mind. If there is such concurrence, and the requisite legal capacity, a change of domicil takes place.

COMMENTS & ILLUSTRATIONS: Comment:

a. Requirements for acquisition of domicil of choice. The requirements for acquiring a domicil of choice are (1) legal capacity to do so, (2) physical presence as described in § 16 and (3) the existence of the attitude of mind described in § 18 toward the place in question. This attitude of mind takes the form of a present intention to make a home in the place. The order of occurrence of these events is not material; if they all eventually coexist, a change of domicil is accomplished. Important evidence looking toward the establishment of the third requirement is the fact that the person has abandoned his former domicil or otherwise can be shown no longer to bear toward that place the requisite attitude of mind.

b. A person may acquire a domicil of choice if

(1) having had a domicil by operation of law, such as a domicil of origin, he acquires a domicil of choice in a place other than his former domicil; or

(2) having had a domicil of choice in one place, he acquires a new domicil of choice in another place.

Illustrations:

Restatement of the Law, Second, Conflict of Laws, § 15

1. A is eight years old. A may not acquire a domicile of choice since he lacks legal capacity to do so.

2. A sells his city house in state X and rents, with an option to purchase, a country house in state Y. When A first moves into his new house, he expects to live there only a month or so since he intends to acquire another city house in X. Up to this time, A has not acquired a domicile in Y. A, while living at his house in Y, decides to buy this house and to make it his home. At the moment A reaches that decision, he acquires a domicile in Y.

3. A has his domicile in state X where his family lives and where he spends most of his time. He has another dwelling place in state Y. He subsequently moves his family to his dwelling place in Y, spends most of his time there, and comes to regard this as his home. A's domicile thereupon is in Y.

Comment:

c. Retention of domicile until a new one is acquired. Although the requisite facts for acquiring a domicile of choice have ceased to exist, the domicile is retained until a new domicile is acquired elsewhere (see § 19).

REPORTERS NOTES: For excellent discussions of the requirements for the acquisition of a domicile of choice, see *Texas v. Florida*, 306 U.S. 398 (1939); *In re Dorrance's Estate*, 115 N.J.Eq. 268, 170 Atl. 601 (1934), *aff'd* 116 N.J.L. 362, 184 Atl. 743 (1935), *cert. den.* 298 U.S. 678 (1936); *In re Dorrance's Estate*, 309 Pa. 151, 163 Atl. 303 (1932). See 1 Beale, *Conflict of Laws* 131-132 (1935); Goodrich, *Conflict of Laws* 40-41 (Scoles, 4th ed. 1964).

Comment c: *In re Estate of Jones*, 192 Iowa 78, 182 N.W. 227 (1921).

CROSS REFERENCES: Digest System Key Numbers:

Domicile 4



Restatement of the Law, Second, Conflict of Laws
Copyright (c) 1971, The American Law Institute

Case Citations

Chapter 2 - Domicil

Topic 3 - Married Women, Infants, Incompetents

Restat 2d of Conflict of Laws, § 22

§ 22 Domicil of Minor

- (1) A minor has the same domicil as the parent with whom he lives.
- (2) Special rules are applied to determine the domicil of a minor who does not live with a parent.

COMMENTS & ILLUSTRATIONS: Comment:

a. Domicil of father. An unemancipated child lacks capacity to acquire a domicil of choice. This was the rule at common law and remains the rule today. The child is assigned the father's domicil when he lives with the father and has the same home as his. Except as stated in § 14, the child takes as his domicil of origin the domicil the father has at the time of the child's birth, and thereafter, upon a change of domicil by the father, the child takes the father's new domicil. The child is also assigned the father's domicil when he lives apart from the father, except as stated below.

b. Domicil on death of father. If the father dies and no guardian of the child's person is appointed, the child has the domicil of his mother, except as stated in Comments *e-i*, provided that this is the place where the mother would be domiciled by application of rules relating to the acquisition of a domicil of choice. So if the father dies before the birth of the child, the child takes the domicil of his mother at the time of his birth as his domicil of origin (see § 14). Similarly, if the father dies after the birth of the child and no legal guardian of the child's person is appointed, the child takes the domicil the mother has at the time. Thereafter the child's domicil will follow that of the mother, whether the child lives with the mother or not, except as stated immediately below and in Comments *e-i*.

The child's domicil will not follow that of a stepfather by operation of law even though it were to be held that the mother's domicil does so (see § 21, Comment *b*). After the mother's remarriage, the child's domicil will be that of the mother provided that this is in a place where the mother would be domiciled by application of the rules relating to the acquisition of a domicil of choice (see § 15). Otherwise, the child's domicil will remain unchanged until such time as he acquires another domicil in one of the ways stated below. Upon the death of the father who has been awarded legal custody of the child or with whom the child has been living, the child's domicil shifts to that of the mother even though the mother's domicil is in another state (see Comment *d*). Upon the death of both parents, the domicil a child has at the time continues to be his domicil until this domicil is changed in one of the ways stated below.

c. Illegitimate child. An illegitimate child has the domicil of his mother, except as stated in Comments *e-i*,

provided that this is in a place where the mother would be domiciled by application of the rules relating to the acquisition of a domicil of choice. At birth an illegitimate child takes the domicil his mother has at the time as his domicil of origin (see § 14). Upon a change of domicil by the mother during the child's minority, the child takes the mother's new domicil whether the child lives with the mother or not, except as stated immediately below and in Comments *e-i*. The child's domicil will not follow that of a stepfather by operation of law even though it were to be held that the mother's domicil does so (see § 21, Comment *b*). After the mother's marriage to a man who is not the child's father, the child's domicil will be that of the mother provided that this is a place where the mother would be domiciled by application of rules relating to the acquisition of a domicil of choice (see § 15). Otherwise, the child's domicil will remain unchanged until such time as he acquires another domicil in one of the ways stated below. Upon the death of the mother, the domicil which an illegitimate child has at the time continues to be his domicil until his domicil is changed in one of the ways stated below.

d. Separation of parents. A child's domicil, in the case of the divorce or separation of his parents, is the same as that of the parent to whose custody he has been legally given. If there has been no legal fixing of custody, his domicil is that of the parent with whom he lives, but if he lives with neither, his domicil is that of his living father, except as stated in Comments *e-i*. Upon the death of the parent to whose custody the child has been awarded or with whom the child has been living, the child's domicil shifts to that of the other parent even though the latter is domiciled in another state.

As to the domicil of a child when abandoned by both parents, see Comment *e*. As to the domicil of a child whose custody has been awarded to someone not a parent, see Comment *h*.

e. Abandoned child. An abandonment, as the term is used here, occurs in two situations. It occurs when the parent deserts the child; it likewise occurs when the parent gives the custody of the child to another with the intention of relinquishing his parental rights and obligations. Whether a child has been abandoned so as to bring the case within the scope of this Comment is a question involving the rules of domicil. The rules of the forum are applied, except as stated in § 8, to determine whether an abandonment has taken place (see § 13).

If a child is abandoned by his father, he takes the domicil of his mother if he has not been abandoned by her. So too, a child domiciled with his mother and abandoned by her takes the domicil of his father if he has not been abandoned by him. Except as stated in Comments *f-i*, a child abandoned by both parents retains the domicil possessed by the parent who last abandoned him at the time of the abandonment; a child abandoned by both parents simultaneously retains the domicil of the father at the time of the abandonment.

Under the local law of many states, a child who has attained years of discretion becomes emancipated upon being abandoned by both parents (see Comment *f*).

f. Emancipated child. An emancipated child may acquire a domicil of choice. A parent has no power to control the domicil of an emancipated child. Hence a change of domicil by the parent will not of itself change the domicil of the child. Determination of the circumstances under which a child becomes emancipated is not within the scope of the Restatement of this Subject. Some states require actual court proceedings, but the majority insist upon no more than that the minor, having attained years of discretion, maintain a separate way of life, either with his parents' consent or because they are dead or have abandoned him. It is frequently held that the contraction of a valid marriage emancipates a minor.

As an original proposition, two approaches could be taken to the question of what law governs emancipation in a case involving the capacity of a child to acquire a domicil of choice. The first is to consider emancipation a question of status to be determined by the law of the state where the parent (and through him the child) was domiciled when the alleged emancipating acts took place. The second is to consider emancipation as an issue bearing upon the capacity of a child to acquire a domicil of choice and hence to be determined by the same law that determines capacity to acquire a domicil in general (see § 13, Comment *d*). The question does not appear to have arisen. The second approach is the one that should be adopted, since emancipation is important in this context only because it gives capacity to acquire a

domicil of choice. The rules of the forum are therefore applied, except as stated in § 8, to determine whether the child is emancipated in the sense that he has capacity to acquire a domicil of choice.

g. Adopted child. An adopted minor child has the domicil of his adoptive parent. The normal effect of an adoption is to substitute a new parent-child relationship in place of that which formerly bound the child to his natural parents. The child, at the moment of adoption, takes the domicil of the adoptive parent and thereafter his domicil follows that of the parent in the same way that it would if a natural parent-child relationship existed between them. If a child is adopted by a husband and wife, the domicil of the adopted child follows that of his adoptive parents. Upon the divorce or separation of the adoptive parents, the domicil of the adopted child is determined by the principles which determine the domicil of a natural legitimate child under such circumstances (see Comment *d*). Upon the death of the adoptive parent, the domicil which the adopted child has at the time continues to be his domicil until this domicil is changed in accordance with the rules stated in this Chapter.

h. Power of guardian over domicil. A person's domicil should usually be in the place to which he is most closely related. This policy, if it stood alone, would lead to the conclusion that a child under guardianship should be domiciled in the place where he has been sent by the guardian to live and make his home. But this policy must give way on occasion to another policy, which is that the child, who is the ward of the appointing court, should not acquire a domicil in a place where that court does not wish him to. Because of this latter policy, the child will be held not to have acquired a domicil in a place where the guardian had no authority to send him in the first instance. And even when the guardian acted within his authority in sending the child to a certain place to live and make a home, the child will be held not to have acquired a domicil in that place if the guardian's authority did not extend to fixing the child's domicil there.

No difficulty arises when the guardian's authority as to the location of the child's domicil is expressly set forth either in the original decree of appointment or in some subsequent order. If, for example, it is clear that the appointing court in state X was willing to have the child's domicil changed to state Y, such a shift will be held to have occurred as soon as the child arrives in Y to make his home there. Usually, however, no express indication of the extent of the guardian's authority over the child's domicil will be available. Here an effort must be made to ascertain this authority by interpreting the court's various orders and decrees in the light of the circumstances attending their issuance. In the absence of any evidence of the court's intentions, the guardian will be held to have the authority to move the child, and shift his domicil, to a new location within the confines of the appointing state. Similar authority to move the child to a new home and domicil in another state, and hence beyond the effective control of the original court, is not so easily inferred. Here the courts are divided. It will usually be held under these circumstances that the guardian was acting within his authority, and that the child's domicil shifted to the other state, if the shift of domicil would be in the best interests of the child and was not made to achieve some selfish purpose of the guardian.

The ward does not take his guardian's domicil by operation of law. If the ward lives with the guardian in the state of appointment, he takes the domicil of the guardian. If he does not live with the guardian he does not take the latter's domicil.

A person may be appointed guardian over either the person or the property of a child or incompetent. Only a guardian of the person may affect the domicil of the ward. As to judicial jurisdiction to appoint a guardian of the person, see § 79. The child's domicil does not follow that of his parents once a guardian of his person has been appointed.

i. "Natural" guardian. If both parents of a child are dead, or if the child is abandoned by both parents or by a surviving parent, and no guardian of the child's person is appointed, the child should acquire a domicil at the home of a grandparent or other person who stands *in loco parentis* to him and with whom he lives. To date, the cases have placed the child's domicil, in the circumstances dealt with here, at the home of a grandparent or other close relative. Absent some compelling reason to the contrary, the child's domicil should be in the place to which he is most closely related. The child should therefore have a domicil at the home of the person who stands *in loco parentis* to him and with whom he lives even though this person is not a blood relative.

Restatement of the Law, Second, Conflict of Laws, § 22

A child's domicile does not, as in the case of a parent (see Comments *a-c*) automatically follow that of a grandparent or other person with whom he lives. The child's domicile is the same as the latter's only if the child actually lives with him in his home. If the child ceases to live in the home of the grandparent or other person, his domicile remains at that place until he acquires a new domicile under the rules stated in this Chapter. This is so even though the grandparent, or other person, subsequently acquires a new domicile, dies or abandons the child.

Comment b: See 1 Beale, Conflict of Laws 220-222 (1935); Goodrich, Conflict of Laws 59 (Scoles, 4th ed. 1964); Stumberg, Conflict of Laws 45-46 (3d ed. 1963).

Comment c: See *In re Estate of Moore*, 68 Wash.2d 792, 415 P.2d 653 (1966); 1 Beale, Conflict of Laws 216-217 (1935); Goodrich, Conflict of Laws 53-57 (Scoles, 4th ed. 1964).

Comment d: See *Ziady v. Curley*, 396 F.2d 873 (4th Cir. 1968); *Boardman v. Boardman*, 135 Conn. 124, 62 A.2d 521 (1948); *Willmore v. Willmore*, 273 Minn. 537, 143 N.W.2d 630 (1966), cert. den. 385 U.S. 898 (1966); 1 Beale, Conflict of Laws 215-216 (1935); Goodrich, Conflict of Laws 57-58 (Scoles, 4th ed. 1964).

Upon the death of the parent to whose custody he has been awarded, the child's domicile shifts to that of his surviving parent. *Clark v. Jellinek*, 90 Idaho 373, 414 P.2d 892 (1966); *In re Guardianship of Skinner*, 230 Iowa 1016, 300 N.W. 1 (1941); *Chumos v. Chumos*, 105 Kan. 374, 184 Pac. 736 (1919); *De Jarnett v. Harper*, 45 Mo.App. 415 (1891); *In re Guardianship of Peterson*, 119 Neb. 511, 229 N.W. 885 (1930); *Matter of Thorne*, 240 N.Y. 444, 148 N.E. 630 (1925); *Peacock v. Bradshaw*, 145 Tex. 68, 194 S.W.2d 551 (1946).

Alternating domicile. A court decree sometimes provides for the division of the child's custody between his parents so that he will live with one parent for a designated portion of each year and with the other parent during the remainder. When, in such a case, the parents live in different states, it has been held for purposes of jurisdiction in a custody action that the child's domicile alternates between these states so as to be the same as that of the parent with whom he is living at the time. *State ex. rel. Larson v. Larson*, 190 Minn. 489, 252 N.W. 329 (1934); *Mills v. Howard*, 228 S.W.2d 906 (Tex.Civ.App.1950); *Goldsmith v. Salkey*, 131 Tex. 139, 112 S.W.2d 165 (1938). This rule might not be applied in a case where one of the parents was entitled to the child's custody only for the period of a month during each year. Cf. *Allen v. Allen*, 200 Or. 678, 268 P.2d 358 (1954).

Comment e: See Goodrich, Conflict of Laws 54-55 (Scoles, 4th ed. 1964).

Comment f: See *Hollowell v. Hux*, 229 F.Supp. 50 (E.D.N.C.1964); 1 Beale, Conflict of Laws 212-215 (1935); Stumberg, Conflict of Laws 43-44 (3d ed. 1963).

Minority was not a status at common law and is determined in each case by the law that governs the issue involved. 2 Beale, Conflict of Laws 661-663 (1935). So, for example, whether a minor has capacity to receive a legacy is determined by the law of the testator's domicile at the time of death. *Boehm v. Rohlfis*, 224 Iowa 226, 276 N.W. 105 (1937); *Harding v. Schapiro*, 120 Md. 541, 87 Atl. 951 (1913). Similarly, whether a minor has capacity to transfer an interest in land is determined by the law of the state where the land is. *Beauchamp v. Bertig*, 90 Ark. 351, 119 S.W. 75 (1909).

Whether a married woman has capacity to acquire a domicile of choice is determined by the law of the forum. *Torlonia v. Torlonia*, 108 Conn. 292, 142 Atl. 843 (1928). Forum law should also determine whether a minor has such capacity.

Comment g: See 1 Beale, Conflict of Laws 217 (1935); Goodrich, Conflict of Laws 54 (Scoles, 4th ed. 1964).

Comment h: For cases holding that, in the absence of any indication of a contrary intention on the part of the appointing court, the child will be held domiciled in the state where he was sent by the guardian to live and make his home if this would be in the best interests of the child and was not made to achieve some selfish purpose of the

Restatement of the Law, Second, Conflict of Laws, § 22

guardian, see *Ricci v. Superior Court*, 107 Cal.App. 395, 290 Pac. 517 (1930); *In re Waite*, 190 Iowa 182, 180 N.W. 159 (1920); *In re Pratt*, 219 Minn. 414, 18 N.W.2d 147 (1945); *First Trust & Deposit Co. v. Goodrich*, 3 N.Y.2d 410, 144 N.E.2d 396 (1957); *In re Kiernan*, 38 Misc. 394, 77 N.Y.Supp. 924 (Surr.Ct.1902); *Wheeler v. Hollis*, 19 Tex. 522 (1857).

Statutes in a few States provide that the guardian of a child's person may not fix the latter's domicile outside of the State without the express permission of the appointing court. See, e. g., Cal. Prob.Code § 1500 (1953); Okla. Stat. Ann. tit. 30, § 15 (1951); S. D.Code § 14.0510 (1939).

Some cases hold that the guardian may not fix the child's domicile outside of the state without the express permission of the appointing court. See *Daniel v. Hill*, 52 Ala. 430 (1875); *Woodward v. Woodward*, 87 Tenn. 644, 11 S.W. 892 (1889); cf. *Lamar v. Micou*, 112 U.S. 452 (1884), reh. den. 114 U.S. 218 (1885).

See *Goodrich*, Conflict of Laws 58-59 (Scoles, 4th ed. 1964); *Paulsen and Best*, Appointment of a Guardian in the Conflict of Laws, 45 Iowa L.Rev. 212, 227-228 (1960); Annotation, 32 A.L.R.2d 863 (1952).

Comment i: See *In re Huck*, 435 Pa. 325, 257 A.2d 522 (1969) (quoting first paragraph of this Comment. One parent dead and the other incompetent; domicile of children found to be with grandparent with whom they lived.) For cases supporting the view that under the circumstances dealt with in this Comment a child acquires a domicile at the home of a close relative, other than a grandparent, with whom he lives, see *Lehmer v. Hardy*, 294 Fed. 407 (D.C. Cir. 1923) (aunt); *Delaware, L. & W. R. Co. v. Petrowsky*, 250 Fed. 554 (2d Cir. 1918) (brother); *Loftin v. Carden*, 203 Ala. 405, 83 So. 174 (1919) (aunt); *Hughes v. Industrial Comm.*, 69 Ariz. 193, 211 P.2d 463 (1949) (aunt); *In re Lancey's Guardianship*, 232 Iowa 191, 2 N.W.2d 787 (1942) (uncle); *Jansen v. Sorenson*, 211 Iowa 354, 233 N.W. 717 (1930) (aunt); *State ex rel. Brown v. Hamilton*, 202 Mo. 377, 100 S.W. 609 (1907) (aunt); cf. *In re Estate of Moore*, 68 Wash.2d 792, 415 P.2d 653 (1966) (child held not domiciled at home of person with whom he lived since latter did not stand in *loco parentis* to him).

For cases suggesting that under the circumstances dealt with here only a grandparent may affect the domicile of a minor child, see *Bjornquist v. Boston & A. R. Co.*, 250 Fed. 929 (1st Cir. 1918); *Hiestand v. Kuns*, 8 Blackf. (Ind.) 345 (1847); *Munday v. Baldwin*, 79 Ky. 121 (1880); *Greene v. Willis*, 47 R.I. 375, 133 Atl. 651 (1926).

REPORTERS NOTES: *Comment a*: See *A. v. M.*, 74 N.J.Super. 104, 80 A.2d 541 (1962); 1 Beale, Conflict of Laws 210-212 (1935); *Goodrich*, Conflict of Laws 53-54 (Scoles, 4th ed. 1964); *Stumberg*, Conflict of Laws 41 (3d ed. 1963).

For a case where an unemancipated minor working in another state was held to have the domicile of his father, see *Taylor v. State Farm Mut. Auto Ins. Co.*, 248 La. 246, 178 So.2d 238 (1965).

CROSS REFERENCES: Digest System Key Numbers:

Domicile 1, 5

(5)

STATE OF MICHIGAN
COURT OF APPEALS

GRANGE INSURANCE COMPANY OF
MICHIGAN,

FOR PUBLICATION
April 24, 2012
9:00 a.m.

Plaintiff/Counter-Defendant-
Appellant,

v

No. 303031
Muskegon Circuit Court
LC No. 10-047159-CK

EDWARD LAWRENCE, Individually and Joint
Personal Representative of the ESTATE OF
JOSALYN A. LAWRENCE, and LAURA
ROSINSKI, Individually and Joint Personal
Representative of the ESTATE OF JOSALYN A.
LAWRENCE,

Defendants-Appellees,

and

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

Defendant/Counter-Plaintiff –
Appellee.

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this case, involving personal protection benefits under the Michigan no-fault act, MCL 500.3101 *et seq.*, plaintiff, Grange Insurance Company of Michigan, appeals as of right the order regarding motions for summary disposition. We affirm.

On September 24, 2009, Laura Rosinski was driving with her minor child, Josalyn Lawrence, in a vehicle insured by Farm Bureau General Insurance Company of Michigan. They were in a motor vehicle accident that resulted in the death of Josalyn. At the time of the accident, Josalyn's parents, Edward Lawrence and Rosinski, were divorced. Pursuant to the judgment of divorce, the parents shared joint legal custody but Rosinski had primary physical custody. Although Josalyn slept at Rosinski's home during the week, Edward saw Josalyn

almost every day. Josalyn had a room and personal belongings at Edward's home, although her pets were at Rosinski's home. Josalyn usually stayed with Edward every other weekend, but Edward and Rosinski were flexible with their parenting agreement. There was no intention of changing this parenting time arrangement. Edward also took Josalyn on vacations in the summer. The small amount of mail Josalyn received went to Rosinski's home. Rosinski's address was usually listed as Josalyn's home address.

At the time of the accident, Edward was a named insured on an automobile policy, which included personal protection benefits, with plaintiff. Rosinski was the named insured on an automobile policy, which included personal protection benefits, with defendant Farm Bureau. Farm Bureau paid first-party benefits on behalf of Josalyn and claimed plaintiff was equal in priority and should pay a portion of the benefits. Plaintiff denied Farm Bureau's request for reimbursement. Plaintiff's policy included a provision within the definition of "family member," stating that "[i]f a court has adjudicated that one parent is the custodial parent, that adjudication shall be conclusive with respect to the minor child's principal residence."

The instant lawsuit was initiated when plaintiff filed a complaint for declaratory relief, seeking an adjudication of whether Josalyn was an "insured" under its policy for purposes of the Michigan no-fault act, MCL 500.3101 *et seq.*

The trial court granted summary disposition in favor of Farm Bureau and determined plaintiff was liable for 50 percent of the first-party benefits paid by Farm Bureau. On appeal, plaintiff argues the trial court erred because no Michigan law recognizes dual domiciles for a minor child of divorced parents for purposes of the no-fault act and the trial court incorrectly applied the facts to the law. We disagree.

A trial court's decision to grant or deny a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008) (citation omitted). Summary disposition pursuant to MCR 2.116(C)(10) is proper "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.* Questions of statutory interpretation are questions of law that are reviewed de novo. *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010) (citation omitted). "[W]here contract language is neither ambiguous, nor contrary to the no-fault statute, the will of the parties, as reflected in their agreement, is to be carried out, and thus the contract is enforced as written." *Cruz v State Farm Mut Auto Ins Co*, 466 Mich 588, 594; 648 NW2d 591 (2002) (citations omitted). The no-fault act is remedial and should be construed in favor of those it is intended to benefit. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 28; 528 NW2d 681 (1995) (citation omitted).

MCL 500.3114(1) provides that the personal protection insurance policy applies to the named insured, the insured's spouse, "and a relative of either domiciled in the same household." The Michigan Supreme Court has considered the phrase "domiciled in the same household" and determined that for purposes of the No-Fault Act, the terms "domicile" and "residence" are "legally synonymous." *Workman v Detroit Auto Inter-Ins Exch*, 404 Mich 477, 495-496; 274 NW2d 373 (1979). To determine if someone is "domiciled in the same household" as an insured, the *Workman* decision articulated four factors to be considered:

(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 cartilage or upon the same premises; (4) the existence of another place of lodging by the person alleging "residence" or domicile" in the household. [*Id.* at 496-497 (citations omitted).]

Additional factors helpful when determining if a minor child is domiciled with the child's parents were articulated in *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983):

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.

There is nothing in 500.3114(1) or *Workman* or *Dairyland* that limits a minor child of divorced parents to one domicile or defines domicile as a "principal residence." The *Workman* decision recognized that "domiciled in the same household," does not have a fixed meaning and may vary with circumstances. *Workman*, 404 Mich at 495. The undisputed circumstances in the instant case establish that Josalyn was domiciled, meaning had a residence, in the homes of each of her parents. As to the *Workman* factors: (1) there was no evidence of an intention to change the parenting arrangement; (2) the same formal relationship existed between Josalyn and her two parents; (3) at both homes, Josalyn lived in the house; and (4) as to both homes, Josalyn had another place she stayed. As to the *Dairyland* factors, (1) what little mail Josalyn received came to Rosinski's home, (2) Josalyn had possessions at both homes, (3) Josalyn primarily used Rosinski's address, (4) Josalyn had a room at both homes, and (5) Josalyn was dependent on both parents for support.

The undisputed evidence clearly shows that Josalyn resided with both parents and, as such, the issue of domicile was properly determined as a question of law by the trial court. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). Although the judgment of divorce awarded Rosinski primary physical custody, that order does not change that the evidence shows Josalyn actually resided with both her parents, which is the relevant inquiry under the no-fault act. There remained no issue of material fact and the trial court did not err when it granted summary disposition in favor of Farm Bureau on the issue of reimbursement. *Latham*, 480 Mich at 111.

Additionally, plaintiff argues its policy provision, stating that a court's adjudication of custody is conclusive of a child's principal residence, should control. However, MCL 500.3114(1) does not impose a requirement that coverage extends only to a relative whose "principal residence" is with the insured. "To the degree that the contract is in conflict with the statute [the no-fault act], it is contrary to public policy and, therefore, invalid." *Cruz*, 466 Mich

at 601. In this case, because plaintiff's policy would limit plaintiff's obligation where the no-fault act does not, that provision is invalid.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause