

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN INSURANCE COMPANY,
a Michigan Insurance Company,

Plaintiff-Appellant,

-vs-

NATIONAL LIABILITY & FIRE INSURANCE
COMPANY, a foreign corporation, licensed to
do business in the State of Michigan,

Defendant-Appellee.

Supreme Court No.
Court of Appeals No. 301980
Lower Court No. 09-104725-NF

Open 2-14-12

Bookman

L. Bookman

OK

KENNETH S. DOMBROWSKI (P55596)

kallas & henk pc

Attorney for Plaintiff-Appellant
43902 Woodward Avenue, Suite 200
Bloomfield Hills, MI 48302

kdombrowski@kallashenk.com

(248) 335-5450, Ext. 210 / (248) 335-9889- Fax

RONALD M. SANGSTER, JR. (P39253)

Law Offices of Ronald M. Sangster, PLLC

Attorney for Defendant-Appellee

901 Wilshire Dr., Ste. 495

Troy, MI 48084

rsangster@sangster-law.com

(248) 269-7040 / (248) 269-7050 - Fax

JAMES G. GROSS (P28268)

Gross & Nemeth, P.L.C.

Attorney for Defendant-Appellee

615 Griswold, Ste. 1305

Detroit, MI 48226

jgross@gnsappeals.com

(313) 963-8200 / (313) 963-9169 - Fax

144771

APPL

4/10

39739

NOTICE OF HEARING

APPLICATION FOR LEAVE TO APPEAL

PROOF OF SERVICE

FILED

MAR - 9 2012

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

TABLE OF CONTENTS

INDEX OF AUTHORITY ii

JUDGMENT OR ORDER BEING APPEALED AND RELIEF SOUGHT vi

STATEMENT OF THE QUESTION INVOLVED vii

STANDARD OF REVIEW AND GROUNDS FOR RELIEF viii

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS 1

ARGUMENT 4

 I. THE TRIAL COURT CORRECTLY GRANTING PLAINTIFF'S-
 APPELLANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION
 BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTED THAT
 STUBBE WAS AN INSURED "FAMILY MEMBER" UNDER THE
 COMMERCIAL AUTO INSURANCE POLICY ISSUED BY DEFENDANT-
 APPELLEE TO QUALITY AFC, HOME, INC., AND THUS DEFENDANT-
 APPELLEE IS HIGHER IN PRIORITY THAN PLAINTIFF-APPELLANT
 TO PAY PIP BENEFITS ON BEHALF OF STUBBE AS A RESULT OF
 THE MOTOR VEHICLE ACCIDENT THAT OCCURRED ON DECEMBER
 27, 2008 5

 A. APPLICABLE CASE LAW SUPPORTS REINSTATING THE
 TRIAL COURT'S WELL REASONED OPINION AND ORDER 7

 B. THE TRIAL COURT CORRECTLY APPLIED MICHIGAN LAW TO
 THE FACTS IN THIS CASE, AND UNDERSTOOD THAT NO
 REASONABLE JURY COULD DISREGARD THE
 OVERWHELMING EVIDENCE THAT DEMONSTRATED THAT
 STUBBE WAS A WARD OF QUALITY AFC HOME, INC 12

 C. THE MEDICAL EVIDENCE SUBMITTED TO THE TRIAL COURT
 SUPPORTS REINSTATING THE ORDER GRANTING
 PLAINTIFF'S-APPELLANT'S MOTION FOR PARTIAL SUMMARY
 DISPOSITION 17

 D. THE TRIAL COURT'S WELL REASONED OPINION AND
 ORDER SHOULD BE REINSTATED 22

CONCLUSION 23

RELIEF REQUESTED 24

INDEX OF AUTHORITY

CASES

PAGE NO.

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242, 247-248; 106 S.Ct. 2505; 91 L.Ed.2d 202 (1986) 5

City of Grosse Pointe Park v. Michigan Muni Liability & Prop Pool,
473 Mich 188, 218-219; 702 NW2d 106 (2005) 15

Coblentz v. City of Novi,
475 Mich 558; 719 NW2d 73 (2006) 22

Cowles v. Bank West,
476 Mich 1, 32; 719 NW2d 94 (2006) 4

DAIIE v. Home Ins. Co.,
428 Mich 43; 405 NW2d 85 (1987) 5

Hartman v. Insurance Company of North America,
106 Mich App 731; 308 NW2d 625 (1981) 7, 8, 9, 10, 12, 16

Madar v. League Gen. Ins. Co.,
152 Mich App 734; 394 NW2d 90 (1986) 5

Maiden v. Rozwood,
461 Mich 109, 118, 120; 597 NW2d 817 (1999) 4

Pennington v. Longabaugh,
271 Mich App 101; 719 NW2d 616 (2006) 22

Stanton v. City of Battle Creek,
466 Mich 611, 617; 647 NW2d 508 (2002) 16

The Healing Place at North Oakland Med. Ctr. v. Allstate Ins. Co.,
277 Mich App 51, 55-56; 744 NW2d 174 (2007) 4

Turner v. Auto Club Ins. Ass'n,
448 Mich 22, 39; 528 NW2d 681 (1995) 5, 18

United States Fidelity & Guaranty Company v. Citizens Insurance Company,
241 Mich App 83; 613 NW2d 740 (2000) 8, 9, 10, 11, 12, 15, 16, 22

Vermilya v. Dunham,
195 Mich App 79, 83; 489 NW2d 496 (1992) 4

West v. Gen. Motors Corp.,
469 Mich 177, 183; 665 NW2d 468 (2003) 4

MICHIGAN COURT RULES

MCR 2.116(C)(10) 4
MCR 7.301(A)(2) vi
MCR 7.302(B)(3) viii
MCR 7.302(B)(5) viii

STATUTES

MCL 500.3105 5
MCL 500.3114 5, 6, 10, 19
MCL 500.3114(1) 6
MCL 500.3115 5
MCL 500.3115(1) 6

ORDERS AND OPINIONS ATTACHED TO THIS BRIEF

Trial Court's Opinion and Order APPENDIX 1
Judgment APPENDIX 2
Opinion from Court of Appeals APPENDIX 3

**EXHIBITS ATTACHED TO PLAINTIFF'S-APPELLANT'S
BRIEF FILED IN THE COURT OF APPEALS**

(All exhibits referenced below, but not attached to this brief, are part of the Court record as attached to Plaintiff's-Appellant's brief filed in the Court of Appeals).

| | |
|---|---|
| Traffic Crash Report by City of Pontiac Police Department | A |
| Auto Insurance Dec Sheet Issued by Plaintiff-Appellant to its Insured | B |
| Deposition Transcript of Begashaw Deneke | C |
| Michigan Department of Energy, Labor & Economic Growth Bureau of Commercial Services, Corporation Division Nonprofit Corporation Information Update | D |
| Deposition Transcript of Konjit Bitew | E |
| Michigan Department of Human Services Bureau of Children and Adult Licensing Renewal Inspection Report | F |
| AFC - Resident Care Agreement | G |
| Assessment Plan for AFC Residents Michigan Department of Human Services Office of Children and Adult Licensing | H |
| Quality AFC Home, Inc. House Rules | I |
| Admission Policy | J |
| Insurance Policy Issued by Defendant-Appellee to Quality AFC Home, Inc. | K |
| Business Auto Coverage Declarations Sheet for Insurance Policy Issued by Defendant-Appellee to Quality AFC Home, Inc | L |
| Initial Claim Notice Filed by Plaintiff-Appellant with the Michigan Catastrophic Claims Association | M |
| Complaint for Declaratory and Other Relief and Jury Demand | N |
| Plaintiff-Appellant's Motion for Partial Summary Disposition | O |
| Plaintiff's-Appellant's Supplemental Brief in Support of Motion for Summary Disposition | P |
| Defendant's-Appellee's Answer to Plaintiff's-Appellant's Motion for Partial Summary Disposition and Cross-Motion for Summary Disposition | Q |
| Plaintiff's-Appellant's Reply to Defendant's-Appellee's Answer to Plaintiff's-Appellant's Motion for Partial Summary Disposition and Response to Cross-Motion for Summary Disposition | R |

Notice of Violation of House Rules U
Webster's New Twentieth Century Dictionary, Second Edition, p. 2060 (1983) V
Initial Psychiatric Assessment Dated March 26, 2008 W
Health Care Appraisal Dated September 10, 2008. X
Information on Medications. Y
Records from Oakland County Probate Court Z
Medical Payment Review AA
State of Michigan website, Resident Rights for AFC Group Homes BB

JUDGMENT OR ORDER BEING APPEALED AND RELIEF SOUGHT

Pursuant to MCR 7.301(A)(2), Plaintiff-Appellant, Michigan Insurance Company ("Plaintiff-Appellant") seeks leave to appeal from the decision and opinion of the Michigan Court of Appeals that reversed the trial court's granting of Plaintiff's-Appellant's motion for partial summary disposition.

Plaintiff-Appellant respectfully requests that this Honorable Court peremptorily reverse the Court of Appeals's reversal of the trial court's order granting Plaintiff's-Appellant's motion for partial summary disposition and remand to the trial court for reinstatement of the trial court's order in favor of Plaintiff-Appellant, or, in the alternative, grant leave to appeal.

STATEMENT OF THE QUESTION INVOLVED

- I. DID THE COURT OF APPEALS ERR BY REVERSING THE TRIAL COURT'S COMPREHENSIVE OPINION AND ORDER GRANTING PLAINTIFF'S-APPELLANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION BECAUSE THERE WAS NO GENUINE ISSUE OF MATERIAL FACT THAT LAWRENCE STUBBE WAS AN INSURED "FAMILY MEMBER" UNDER THE COMMERCIAL AUTO INSURANCE POLICY ISSUED BY DEFENDANT-APPELLEE, NATIONAL LIABILITY & FIRE INSURANCE COMPANY TO QUALITY AFC HOME, INC, AND THEREFORE DEFENDANT-APPELLEE, NATIONAL LIABILITY & FIRE INSURANCE COMPANY IS HIGHER IN PRIORITY TO PAY PIP BENEFITS ON BEHALF OF LAWRENCE STUBBE THAN PLAINTIFF-APPELLANT, MICHIGAN INSURANCE COMPANY FOLLOWING THE MOTOR VEHICLE ACCIDENT OF DECEMBER 27, 2008?

PLAINTIFF-APPELLANT, MICHIGAN INSURANCE COMPANY ANSWERS:

"YES"

DEFENDANT-APPELLEE, NATIONAL LIABILITY & FIRE INSURANCE COMPANY ANSWERS:

"NO"

TRIAL COURT ANSWERED:

"YES"

COURT OF APPEALS ANSWERED:

"NO"

STANDARD OF REVIEW AND GROUNDS FOR RELIEF

MCR 7.302(B)(5) provides that an application for leave to appeal to the Supreme Court may be granted on the grounds that the decision from the Court of Appeals is clearly erroneous and will cause material injustice or conflicts with other decisions from the Court of Appeals, or pursuant to MCR 7.302(B)(3), involves legal principles of major significance to the State's jurisprudence.

The decision of the Court of Appeals is clearly erroneous, will cause material injustice, conflicts with other cases from the Court of Appeals, and involves legal principles of major significance to the State's jurisprudence. Leaving in place the decision of the Court of Appeals would result in manifest injustice and unnecessary costs for both parties.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

The basic facts in this lawsuit are mostly uncontested. This is why both sides filed motions for summary disposition, in hope of resolving this matter before trial.

This case involves the priority to pay Michigan No-Fault PIP benefits to a claimant following a pedestrian/motor vehicle accident that occurred on December 27, 2008.¹ The pedestrian injured in the accident was Lawrence Stubbe ("Stubbe").² The vehicle involved in the accident was insured by Plaintiff-Appellant, Michigan Insurance Company ("Plaintiff-Appellant").³ Plaintiff-Appellant paid PIP benefits incurred by Stubbe after the accident.

On the date of the accident, it is undisputed that Stubbe was a resident of an adult foster care home in Pontiac, Michigan, called Quality AFC Home, Inc..⁴ Quality AFC Home, Inc. is licensed and regulated by the State of Michigan Department of Human Services to provide adult foster care services to its residents.⁵ The residents who live at Quality AFC Home, Inc. are developmentally disabled and/or mentally ill.⁶

As required by the State of Michigan, Stubbe and Quality AFC Home, Inc. entered into a Resident Care Agreement when Stubbe moved into the adult foster care home in August, 2008.⁷ The Resident Care Agreement was based on Quality AFC Home, Inc.'s assessment of "the amount of personal care, supervision, and protection required by the resident."⁸ It was signed by Stubbe and Konjit Bitew, an administrator of Quality AFC Home, Inc..⁹ Pursuant to the Michigan

¹ See *Exhibit A*, Traffic Crash Report by City of Pontiac Police Department

² See *Exhibit A*.

³ See *Exhibit B*, Auto insurance dec sheet issued by Plaintiff-Appellant to its insured.

⁴ See *Exhibit C*, deposition transcript of Begashaw Deneke, p. 8.

⁵ See *Exhibit D*, Michigan Department of Energy, Labor & Economic Growth Bureau of Commercial Services, Corporation Division Nonprofit Corporation Information Update; See *Exhibit E*, deposition transcript of Konjit Bitew, p. 7-8.

⁶ See *Exhibit E*, p. 8; See *Exhibit F*, Michigan Department of Human Services Bureau of Children and Adult Licensing Renewal Inspection Report.

⁷ See *Exhibit E*, p. 10-11; See *Exhibit G*, AFC - Resident Care Agreement.

⁸ See *Exhibit G*.

⁹ See *Exhibit E*, p. 6 and 10-11; See *Exhibit G*.

Department of Human Services Office of Children and Adult Licensing, an Assessment Plan was prepared for Stubbe when he moved into the adult foster care home.¹⁰ The Assessment Plan included a social/behavioral assessment and self care skill assessment of Stubbe completed by Quality AFC Home, Inc..¹¹

As part of the admission process to the adult foster care home, Stubbe was required to sign House Rules.¹² Stubbe was also required to sign the admission policy prepared by Quality AFC Home, Inc..¹³

At the time of the accident, Quality AFC Home, Inc. owned a 2000 Dodge van.¹⁴ The purpose of the van was to transport residents to and from medical appointments, work, and workshop.¹⁵ It is undisputed that the vehicle was insured by Defendant-Appellee, National Liability & Fire Insurance Company ("Defendant-Appellee").¹⁶ It is also undisputed that the policy issued by Defendant-Appellee to Quality AFC Home, Inc. was in effect on the date of the accident.¹⁷ Further, it is clear that when Defendant-Appellee issued the policy to Quality AFC Home, Inc., it was understood that the nature of its insured's business was "Adult Foster Care."¹⁸

Due to the nature and extent of his injuries from the motor vehicle accident, it is expected that Stubbe will require medical care for the rest of the life.¹⁹

¹⁰ See *Exhibit E*, p. 16; See *Exhibit H*, Assessment Plan for AFC Residents Michigan Department of Human Services Office of Children and Adult Licensing.

¹¹ See *Exhibit H*.

¹² See *Exhibit I*, Quality AFC Home, Inc. House Rules; See *Exhibit E*, p. 14.

¹³ See *Exhibit J*, Admission Policy.

¹⁴ See *Exhibit C*, p. 16.

¹⁵ See *Exhibit C*, p. 17-18.

¹⁶ See *Exhibit K*, Insurance policy issued by Defendant-Appellee to Quality AFC Home, Inc..

¹⁷ See *Exhibit C*, p. 17.

¹⁸ See *Exhibit L*, Business auto coverage declarations sheet for insurance policy issued by Defendant-Appellee to Quality AFC Home, Inc..

¹⁹ See *Exhibit M*, Initial claim notice filed by Plaintiff-Appellant with the Michigan Catastrophic Claims Association.

On October 19, 2009, Plaintiff-Appellant filed a complaint for declaratory and other relief and jury demand.²⁰

Because both sides recognized that this case should be decided via summary disposition, on or about June 3, 2010, Plaintiff-Appellant filed a comprehensive motion for partial summary disposition.²¹ On or about August 13, 2010, Plaintiff-Appellant filed a supplemental brief in support of motion for partial summary disposition.²² On or about September 28, 2010, Defendant-Appellee filed an answer to Plaintiff's-Appellant's motion for partial summary disposition and a cross-motion for summary disposition.²³ On or about October 11, 2010, Plaintiff-Appellant filed a reply to Defendant's-Appellee's answer to Plaintiff's-Appellant's motion for partial summary disposition and response to cross-motion for summary disposition.²⁴

On October 20, 2010, the trial court heard oral argument on the motions filed by the parties. On that same date, the trial court issued a thoroughly well reasoned and detailed opinion and order granting Plaintiff's-Appellant's motion for partial summary disposition and denying Defendant's-Appellee's cross-motion for summary disposition.²⁵ On December 20, 2010, a judgment was entered in favor of Plaintiff-Appellant.²⁶ As part of the judgment, it was ordered that Defendant-Appellee was in the highest order of priority to pay PIP benefits to Stubbe.²⁷ It was also ordered that Defendant-Appellee assume responsibility, processing, and payment of all submitted medical bills on behalf of Stubbe after January 1, 2011, and that Defendant-Appellee reimburse Plaintiff-Appellant \$848,678.90 (for benefits paid up to October 29, 2010).²⁸

²⁰ See *Exhibit N*, Complaint for declaratory and other relief and jury demand.

²¹ See *Exhibit O*, Plaintiff-Appellant's motion for partial summary disposition.

²² See *Exhibit P*, Plaintiff's-Appellant's supplemental brief in support of motion for summary disposition.

²³ See *Exhibit Q*, Defendant's-Appellee's answer to Plaintiff's-Appellant's motion for partial summary disposition and cross-motion for summary disposition.

²⁴ See *Exhibit R*, Plaintiff's-Appellant's reply to Defendant's-Appellee's answer to Plaintiff's-Appellant's motion for partial summary disposition and response to cross-motion for summary disposition.

²⁵ **Appendix 1**, Trial court's opinion and order.

²⁶ **Appendix 2**, Judgment.

²⁷ **Appendix 2**.

²⁸ **Appendix 2**.

On January 7, 2010, Defendant-Appellee filed a claim of appeal. On February 14, 2012, the Court of Appeals issued an unpublished decision reversing the trial court's order granting of Plaintiff-Appellant's motion for partial summary disposition and remanding this case back to the trial for further proceedings.²⁹ The Court of Appeals essentially determined that a genuine issue of material fact existed as to whether Stubbe was a ward of Quality AFC, Inc..³⁰

ARGUMENT

Appellate review of the grant or denial of a summary disposition motion is de novo. *Maiden v. Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999). A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for a claim; the motion should be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *The Healing Place at North Oakland Med. Ctr. v. Allstate Ins. Co.*, 277 Mich App 51, 55-56; 744 NW2d 174 (2007). A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue on which reasonable minds might differ. *West v. Gen. Motors Corp.*, 469 Mich 177, 183; 665 NW2d 468 (2003). When deciding a motion for summary disposition under subrule (C)(10), a court must review the pleadings, affidavits, depositions, admissions, and other documentary evidence in a light most favorable to the nonmoving party. *Cowles v. Bank West*, 476 Mich 1, 32; 719 NW2d 94 (2006).

"[I]f, on the basis of the evidence presented, reasonable minds could not differ, then the motion for summary disposition should be granted." *Vermilya v. Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992). Further, "by its very terms, the [summary judgment] standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine*

²⁹ **Appendix 3**, Opinion from the Court of Appeals.

³⁰ **Appendix 3**.

issue of *material fact*." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248; 106 S.Ct. 2505; 91 L.Ed.2d 202 (1986) (emphasis original).

In this case, the trial court correctly granted Plaintiff's-Appellant's motion for partial summary disposition, and that well reasoned and articulated opinion and order should be reinstated.

I. THE TRIAL COURT CORRECTLY GRANTED PLAINTIFF'S-APPELLANT'S MOTION FOR PARTIAL SUMMARY DISPOSITION BECAUSE NO GENUINE ISSUE OF MATERIAL FACT EXISTED THAT STUBBE WAS AS AN INSURED "FAMILY MEMBER" UNDER THE COMMERCIAL AUTO INSURANCE POLICY ISSUED BY DEFENDANT-APPELLEE TO QUALITY AFC, HOME, INC., AND THUS DEFENDANT-APPELLEE IS HIGHER IN PRIORITY THAN PLAINTIFF-APPELLANT TO PAY PIP BENEFITS ON BEHALF OF STUBBE AS A RESULT OF THE MOTOR VEHICLE ACCIDENT THAT OCCURRED ON DECEMBER 27, 2008.

A person suffering accidental bodily injury in a motor vehicle accident is entitled to PIP benefits payable by an insurer without regard to fault. MCL 500.3105. In order for a vehicle to be considered "involved in the accident," the vehicle "must actively, as opposed to passively, contribute to the accident." *Turner v. Auto Club Ins. Ass'n*, 448 Mich 22, 39; 528 NW2d 681 (1995).

In this case, there is no dispute that Stubbe was a pedestrian who was seriously injured after being struck by a motor vehicle.³¹ There is no disagreement that PIP coverage exists.

After determining that coverage exists for the injury, the next issue involves priority to pay PIP benefits on behalf of Stubbe. MCL 500.3114 and MCL 500.3115 address priority for insurance carriers. In short, MCL 500.3114 addresses priority for occupants of motor vehicles, while MCL 500.3115 addresses priority for nonoccupants. The general rule regarding priority issues is that insurance policies cover persons, not motor vehicles. *DAIE v. Home Ins. Co.*, 428 Mich 43; 405 NW2d 85 (1987); *Madar v. League Gen. Ins. Co.*, 152 Mich App 734; 394 NW2d 90 (1986).

The basic priority scheme is laid out in MCL 500.3114, which provides in relevant part:

³¹ See *Exhibit A*.

(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 relative of either domiciled in the same household, if the injury arises from a motor vehicle accident.

MCL 500.3115(1) also provides in relevant part:

- (1) Except as provided in subsection (1) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:
- (a) Insurers of owners or registrants of motor vehicles involved in the accident.
 - (b) Insurers of operators of motor vehicles involved in the accident.

MCL 500.3115(1) cannot be read without referencing MCL 500.3114(1). When no insurance carrier is available in a nonoccupant's household (in other words, when the claimant, the claimant's spouse, and any resident relatives of the claimant, do not own a motor vehicle with insurance coverage), then MCL 500.3115(1) controls.

If no other insurance coverage was available to Stubbe, MCL 500.3115(1) would control this case. Plaintiff-Appellant would be required to pay benefits on behalf of Stubbe because it insured the "owners or registrants" of the motor vehicle involved in the accident.³²

Shortly after the accident occurred, Plaintiff-Appellant began investigating Stubbe's living arrangements. It was discovered that Stubbe was living in an adult foster care home in Pontiac called Quality AFC Home, Inc. on December 27, 2008, when the accident occurred.³³ Quality AFC Home, Inc. provides "adult foster services for males and females."³⁴ Stubbe had been living at Quality AFC Home, Inc. since late August, 2008.³⁵

³² See *Exhibit B*.

³³ See *Exhibit C*, p. 8; See *Exhibit F*.

³⁴ See *Exhibit D*; See *Exhibit E*, p. 7-8.

³⁵ See *Exhibit G*.

A) *Applicable case law supports reinstating the trial court's well reasoned opinion and order.*

The main issue in this case is whether Stubbe qualifies as an insured under the insurance policy issued by Defendant-Appellee to Quality AFC Home, Inc.. There are two published cases that address similar factual scenarios as presented in this case. Both cases dealt with residents of adult foster care homes. In both cases, the resident of the adult foster care home was found to be an insured under the policies issued to the adult foster care home. Application of both cases to the undisputed facts in this case support reinstating the granting of partial summary disposition in favor of Plaintiff-Appellant by the trial court.

In *Hartman v. Insurance Company of North America*, 106 Mich App 731; 308 NW2d 625 (1981), a bicyclist named William Prince (hereafter simply called Prince) was struck by a motor vehicle that was insured by the defendant insurance company. At the time of the accident, Prince lived in a group home. The group home cared for Prince, pursuant to a contract with the State of Michigan. One of the issues in the case was whether Prince was a "ward" as that term was used in the defendant's auto policy.

The Court of Appeals in *Hartman* began its analysis by noting that the term "ward" should "not be restricted to only include a person on behalf of whom a legal guardian has been appointed by a court." Instead, the Court employed "a common and ordinary dictionary definition of 'ward.'" The Court observed that Webster's defined "ward" as "a person * * * under the protection or tutelage of a person." The Court then examined the living arrangements for Prince. It was noted that the State of Michigan contracted with the group home for the "basic care of individuals" placed in the home. The group home provided care for 19 men in two buildings. The administrator of the group home did not consider the men as part of her family. The administrator was also not required to buy clothing for them or provide medical care or maintain insurance for their benefit. The group home occasionally took the residents on outings and had Christmas parties for them.

The group home also made sure that residents were bathed, shaved, and administered medication as necessary.

After reviewing all the facts, the Court determined that Prince was a ward of the group home "according to the common and ordinary meaning of that term." *Hartman*, 106 Mich App at 740. The Court also noted that the insurance agent for the group home knew the group home was a group home when the insurance policy was sold. As a consequence, the defendant (the insurance company) knew the "potential risk exposure." *Hartman*, 106 Mich App at 740. The Court further observed that any ambiguity "must therefore be strictly construed" against the defendant. *Hartman*, 106 Mich App at 740. The Court also determined that Prince was a "resident" of the group home.³⁶

In *United States Fidelity & Guaranty Company v. Citizens Insurance Company*, 241 Mich App 83; 613 NW2d 740 (2000), there was a priority dispute between two no-fault auto insurance carriers regarding payment of benefits to claimant, a resident of an adult foster care home. The plaintiff insured the adult foster care home (Paragon Non-Profit Corporation.) The defendant insured the vehicle that struck the claimant. The plaintiff initially paid PIP benefits to claimant, but then denied coverage. The defendant then paid PIP benefits to claimant. The plaintiff filed suit against the defendant for reimbursement of PIP benefits paid, and the defendant likewise filed a counter-complaint against the plaintiff for reimbursement of PIP benefits paid. The trial judge, Judge Archie Hayman of the Genesee County Circuit Court, ruled that the claimant was a "ward" of the adult foster care home at the time of the accident, and thus qualified as a "family member" under the auto insurance policy issued to the adult foster care home. The plaintiff appealed.

In affirming the trial court's decision, the Court of Appeals in *United States Fidelity & Guaranty Company* noted at the onset that "[i]n filing cross-motions for summary disposition, the

³⁶ It should be noted that the *Hartman* Court rejected Defendant's-Appellee's assertion that its policy did not contemplate covering residents of Quality AFC Home, Inc. by noting that the insurance agent knew the policyholder was in the business of caring for disabled people when the policy was sold. As a consequence, as in *Hartman*, the potential risk was known, even if Defendant-Appellee chose to ignore that risk.

parties agreed that there are no genuine issues of material fact and either plaintiff or defendant is entitled to judgment as a matter of law.” *United States Fidelity & Guaranty Company*, 241 Mich App at 85. The Court noted that the outcome might be different but for the very general terms of the plaintiff’s insurance policy. In particular, the plaintiff’s policy defined an “insured” to include any “family member”:

B. WHO IS AN INSURED

1. You and any “family member.”

In addition, “family member” was broadly defined as follows:

“Family member” means a person related to you by blood, marriage or adoption who is a resident of your household, *including a ward or foster child.*

United States Fidelity & Guaranty Company, 241 Mich App at 86.
[Emphasis added by Court.]

The next issue for the Court of Appeals in *United States Fidelity & Guaranty Company* was whether the claimant was a “ward” of the adult foster care home (the plaintiff’s insured). As in *Hartman*, the term was not defined in the policy. The Court looked to the *Hartman* decision, where a common dictionary definition of “ward” was used. Based upon the dictionary definition, the Court agreed with Judge Hayman that the claimant was a ward of the adult foster care home, and thus an insured family member under the policy. Judge Hayman also found that it made no difference that the adult foster care home was a corporation:

[A] corporation can sue in its own name. It’s considered as a person for purposes of suits, for purposes of owning property, et cetera, and I don’t see any reason why they can’t have wards. In fact, I think that’s exactly what this situation is.

This is an individual who was under the care of this adult foster care facility, which is a corporation. This corporation handles their funds. It decides where they’re going to eat, where they’re going to sleep, how they’re going to live, when they’re going to get to go home-go outside, when they’re not going to get to go outside. They basically control this person’s life. And I don’t know, if that’s not being a ward, I don’t know what is being a ward.

And I don't find that because it's a corporation, that that says they can't have a ward. And I don't know any case law that says that, either; and it's not so obvious to me that there wouldn't be some case law needed to be put on this.

United States Fidelity & Guaranty Company, 241 Mich App at 88-89.³⁷

Just as the Court of Appeals in *United States Fidelity & Guaranty Company* agreed with Judge Hayman's ruling, the Court of Appeals in this case should have agreed with Judge Bowman's ruling. There is no need for a time consuming and expensive trial in this case. After reviewing the facts and the applicable case law, Stubbe clearly qualifies as an insured "Family member" under the policy issued by Defendant-Appellee to Quality AFC Home, Inc.. Stubbe was certainly under the protection or care of Quality AFC Home, Inc. at the time of the accident. Because Defendant's-Appellee's policy affords coverage to Stubbe, Defendant-Appellee is higher in priority than Plaintiff-Appellant to pay benefits on behalf of Stubbe, pursuant to MCL 500.3114. The trial court's wise opinion and order should be reinstated.

It is uncontested that Defendant-Appellee issued a commercial auto policy to Quality AFC Home, Inc..³⁸ On the first page of the dec sheet, it was expressly stated that the nature of business of Quality AFC Home, Inc. was "Adult Foster Care."³⁹ The PIP endorsement in Defendant's-Appellee's policy mirrored the policy language from *United States Fidelity & Guaranty Company*:

A. Coverage

We will pay personal injury protection benefits to or for an "insured" who sustains "bodily injury" caused by an "accident" and resulting from the ownership, maintenance or use of an "auto" as an "auto." These benefits are subject to the provisions of Chapter 31 of the Michigan Insurance Code. Personal Injury Protection benefits consist of the following benefits:

1. Medical Expenses

³⁷ *Hartman* was a 2 to 1 decision. The dissent agreed with the plaintiff that a corporation could not have a family member.

³⁸ See *Exhibit K*.

³⁹ See *Exhibit L*.

Reasonable and necessary medical expenses for an "insured's" care, recovery, or rehabilitation. Charges for a hospital room are limited to those customary for a semi-private room, unless special or intensive care is required.

B. Who is An Insured

1. You or any "family member".⁴⁰

More important, the identical "broad definition of 'family member'" discussed in *United States Fidelity & Guaranty Company* was used by Defendant-Appellee in the policy issued to Quality AFC Home, Inc.:

F. Additional Definitions

As used in this endorsement:

2. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.⁴¹

As in *United States Fidelity & Guaranty Company*, "ward" is not defined in Defendant's-Appellee's policy. However, "ward" is defined as "a person ... under the protection or tutelage of a person." *United States & Guaranty Company*, 241 Mich App at 87. The issue thus becomes: was Stubbe under the protection or care of Quality AFC Home, Inc. while he was a resident of the adult foster care home? A review of all the evidence clearly supports the trial court's determination that Stubbe was under the protection and care of Quality AFC Home, Inc..

It cannot be emphasized enough that Defendant-Appellee was certainly aware of the insurable risk it was undertaking when issuing an insurance policy to Quality AFC Home, Inc.. Defendant-Appellee knew that the nature of business for Quality AFC Home, Inc. was "ADULT FOSTER CARE."⁴² Quality AFC Home, Inc. was licensed by the State of Michigan "to provide foster care to adults."⁴³ Further, Defendant-Appellee issued this policy to Quality AFC Home, Inc.

⁴⁰ See *Exhibit K*.

⁴¹ See *Exhibit K*.

⁴² See *Exhibit L*.

⁴³ See *Exhibit F*.

after both the *Hartman* and *United States Fidelity & Guaranty Company* cases were decided.⁴⁴ Moreover, common sense should have dictated that by insuring an adult foster care home, Defendant-Appellee was presumably well aware that the residents would require some degree of care.

B) *The trial court correctly applied Michigan law to the facts in this case, and understood that no reasonable jury could disregard the overwhelming evidence that demonstrated that Stubbe was a ward of Quality AFC Home, Inc..*

Both Stubbe and Quality AFC Home, Inc. signed the Resident Care Agreement.⁴⁵ As part of that agreement, Quality AFC Home, Inc. agreed "to provide personal care, supervision and protection in addition to room and board for 24 hours a day for this resident."⁴⁶ Quality AFC Home, Inc. also agreed to provide transportation services "to and from medical & dental appointment[s] in Pontiac area."⁴⁷ Quality AFC Home, Inc. agreed to "maintain a trust account" for Stubbe not to exceed \$1,500.00.⁴⁸ Quality AFC Home, Inc. agreed to supervise Stubbe's taking of prescription medication.⁴⁹ Quality AFC Home, Inc. agreed to all of the following:

- a. Opportunity for the resident to develop positive social skills.
- b. Opportunity for the resident to have contact with relatives and friends.
- c. Opportunity for community-based recreational activities.
- d. Opportunity for privacy and leisure time.
- e. Opportunity for religious education and attendance at religious services for the resident's religious choice.⁵⁰

⁴⁴ *Hartman* was published by the Court of Appeals in 1981, while *United States Fidelity & Guaranty Company* was published in 2000.

⁴⁵ See *Exhibit F*.

⁴⁶ See *Exhibit F*.

⁴⁷ See *Exhibit F*.

⁴⁸ See *Exhibit F*.

⁴⁹ See *Exhibit F*.

⁵⁰ See *Exhibit F*.

Quality AFC Home, Inc. further agreed to provide Stubbe "with a 30-day written notice before discharging him" from the home.⁵¹

As part of the admission process when Stubbe became a resident of Quality AFC Home, Inc., Stubbe and Quality AFC Home, Inc. completed an assessment plan, which was required by the State of Michigan.⁵² That assessment plan noted that Stubbe "somewhat manages some of his spending money" and that the staff at Quality AFC Home, Inc. would provide Stubbe's medication to him.⁵³

As part of the admission process when Stubbe became a resident of Quality AFC Home, Inc., Stubbe signed an Admission Policy. The Admission Policy provided the "FACILITY OBJECTIVES" for Quality AFC Home, inc., which included:

1. We strive to include and improve upon the residents' activities of daily living, such as physical care and personal hygiene. This includes an annual physical evaluation by a doctor, and supervision of dressing, bathing, eating and medication.
3. We shall provide the opportunity for residents to participate in social/recreational activities such as bowling, Coffee House, movies, religious activities, in-home recreation, etc.
4. ***We shall strive to provide each of the residents with an atmosphere that is similar to that of a family. The interpersonal relationships between the residents and staff are parallel to those of family members.***⁵⁴

As with typical ward relationships, Stubbe was obligated to live with the "House Rules" imposed by Quality AFC Home, Inc..⁵⁵ The purpose of the House Rules was to "ensure safety, thereby giving us a measure of prevention from probable hazardous situations."⁵⁶ The House

⁵¹ See Exhibit F.

⁵² See Exhibit H.

⁵³ See Exhibit H.

⁵⁴ See Exhibit J [Emphasis supplied.]

⁵⁵ See Exhibit I.

⁵⁶ See Exhibit I.

Rules included in relevant part:

2. Residents are required to sign a "sign-out" sheet giving information pertaining to where they are going, with whom, the date phone number where they can be reached expected time to return, and any other pertinent information.
4. Residents must be dressed and properly groomed at all meals, including breakfast. Each resident is encouraged to obtain an alarm clock and to rise at the proper time to be punctual for breakfast. ***A caregiver will awake those residents who do not arise independently.***
5. Residents are required to bathe, shampoo, shave (if necessary), brush teeth, and change clothing daily. ***Residents are to understand that our staff of caregivers will assist with their grooming.***
15. Unless residents are with relatives, bedtime is no later than 10:00 p.m. Residents are required to be home by 9:30 p.m. and in bed by 10:00 p.m. All entertainment equipment such as T.V. and radio must be turned off by 11:00 p.m. If this [is] not done the home will confiscate the equipment and will be given at the time of discharge.⁵⁷

As evidence that Stubbe was under the care and protection of Quality AFC Home, Inc., the admission requirements included:

2. This facility shall not accept or keep a person whose behavior requires isolation or restraint, nor admit a person whose present care requirements and service needs are incompatible with those other residents in the group home. This group home is not equipped to provide care for non-ambulatory residents.
7. A resident must be willing to conform to the rules and regulations of the home.⁵⁸

As additional evidence that all residents were under the care and protection of Quality AFC Home, Inc., everyone living in the adult foster care home was subject to discharge, including possible emergency discharge, if their behavior became a threat to others.⁵⁹

⁵⁷ See *Exhibit I* (Emphasis supplied).

⁵⁸ See *Exhibit J*.

⁵⁹ See *Exhibit G*; See *Exhibit J*.

Based on the above, the trial court properly decided that Stubbe was under the care and protection of Quality AFC Home, Inc.. While living in the adult foster care home, Quality AFC Home, Inc. provided him with care, meals, transportation, objectives, and rules; *and they disciplined him when he violated the rules.*⁶⁰ In the words of Judge Hayman from the *United States Fidelity & Guaranty Company* decision, "if that's not being a ward, I don't know what is being a ward."

Defendant's-Appellee's argument that *United States Fidelity & Guaranty Company* was "wrongly decided" is clearly a concession that current Michigan law favored the granting of Plaintiff's-Appellant's motion for partial summary disposition. There is no reason to not follow established Michigan law in this case. As in *United States Fidelity & Guaranty Company*, Stubbe was certainly under the care and protection of Quality AFC Home, Inc.. Quality AFC Home, Inc. provided Stubbe with care, protection, meals, transportation, and rules, and they disciplined Stubbe when he violated their rules.⁶¹ Plaintiff's-Appellant's motion for partial summary disposition was properly granted, and the trial court's decision should be restored.

Moreover, if Defendant-Appellee truly believed that a corporation could not have a ward, then why did it have the ward provision in its policy? After all, "[t]he law presumes that the contracting parties intent is embodied in the actual words used in the contract itself." *City of Grosse Pointe Park v. Michigan Muni Liability & Prop Pool*, 473 Mich 188, 218-219; 702 NW2d 106 (2005). Defendant-Appellee knew it was issuing a policy to a corporation when it entered into the contract with Quality AFC Home, Inc..

Defendant's-Appellee's reference to other dictionary definitions of "ward" completely misses

⁶⁰ See *Exhibit G*; See *Exhibit I*; See *Exhibit J*; See *Exhibit U*, Notice of violation of House Rules. [Emphasis supplied.] The disciplining of Stubbe by Quality AFC Home, Inc. is very significant in demonstrating that Stubbe was a ward. In this case, Stubbe was disciplined by Quality AFC Home, Inc. for "bringing alcohol and getting intoxicated in the house." The trial court wisely recognized that such discipline clearly demonstrated the degree of control exerted by Quality AFC Home, Inc. over Stubbe. Further, on appeal, Defendant-Appellee repeatedly overlooked that Stubbe was disciplined despite the evidence presented.

⁶¹ See *Exhibit G*, See *Exhibit I*, See *Exhibit J* and See *Exhibit U*.

the mark. In *United States Fidelity & Guaranty Company*, the Court of Appeals defined "ward" as "a person ... under the protection or tutelage of a person." *United States Fidelity & Guaranty Company*, 241 Mich App at 87. Defendant-Appellee was free to define "ward" in its policy. Indeed, Defendant-Appellee provided the definitions for many words in its policy, including "Family member."⁶² Defendant-Appellee should not be permitted to wait until a coverage issue exists, and then go back and try to define contract terms in the most narrow fashion to avoid honoring its obligations.

Defendant-Appellee may argue that Stubbe did not have a legal guardian at the time of the accident. As the *Hartman* Court clarified, however, the term "ward" should not be restricted to whether a legal guardian has been appointed by a court. *Hartman*, 106 Mich App at 739. Further, [w]hen determining the common, ordinary meaning of a word or phrase, consulting a dictionary is appropriate." *Stanton v. City of Battle Creek*, 466 Mich 611, 617; 647 NW2d 508 (2002). Even after consulting a more recent dictionary than the one utilized in *Hartman*, the outcome still favors Plaintiff-Appellant. The meaning of the term "ward" clearly includes "a person under another's protection or care." *Webster's New Twentieth Century Dictionary*, Second Edition, p. 2060 (1983).⁶³ Because he was under the protection and care of Quality AFC Home, Inc., Stubbe qualifies as an insured "family member" under Defendant's-Appellee's policy. As such, Defendant-Appellee is clearly higher in priority than Plaintiff-Appellant for payment of PIP benefits.

C) *The medical evidence submitted to the trial court supports reinstating the order granting Plaintiff's-Appellant's motion for partial summary disposition.*

Defendant-Appellee argued that Stubbe did not qualify as a ward because he was supposedly higher functioning than some other residents. Such an argument attempts to mask the real issue; which is that Stubbe was under the care and protection and control of the adult foster

⁶² See *Exhibit K*.

⁶³ See *Exhibit V*, *Webster's New Twentieth Century Dictionary*, Second Edition, p. 2060 (1983)

care home while he lived in the home.⁶⁴ Further, it is uncontested that Quality AFC Home, Inc. was not a nursing home. Instead, it was an adult foster care, a/k/a a group home.⁶⁵ As is typical with typical group homes, Quality AFC Home, Inc. made clear that it would not provide “constant nursing care.”⁶⁶

More important, as this Court is well aware, there are many degrees of disability. Some disabled people are very high functioning, and may hold a paying job or require minimal attention. Other disabled people are moderate to low functioning, and necessitate constant attention. The issue in this case is not the quality or level of care provided to Stubbe, but that Stubbe was under the care and protection of Quality AFC Home, Inc. while living the adult foster care home, and thus qualifies as an insured “family member” under Defendant’s-Appellee’s policy. Per the admission policy of AFC Home Inc., one of the main goals of the adult foster care home was to “**strive to provide each of the residents with an atmosphere that is similar to that of a family**” and further that “**interpersonal relationships between the residents and staff are parallel to those of family members.**”⁶⁷

A review of Stubbe’s medical records clearly illustrates that Defendant’s-Appellee’s purported high functioning argument is wholly without merit.⁶⁸ It is important to note that these records were submitted to the trial court in support of Plaintiff’s-Appellant’s motion for partial summary disposition. On March 26, 2008, Stubbe underwent a psychiatric assessment by Dr. Geetha Mohan. This was several months before the pedestrian/motor vehicle accident of December 27, 2008, which triggered Stubbe’s claim for PIP benefits. During the assessment,

⁶⁴ See Exhibit U.

⁶⁵ See Exhibit I.

⁶⁶ See Exhibit I.

⁶⁷ See Exhibit J (emphasis supplied).

⁶⁸ It should be noted that the trial court entered an order on August 27, 2010, prior to the hearing on the motions for summary disposition, which permitted the parties “to use the medical records and protected health information of claimant, Lawrence Stubbe, in this litigation.”

Stubbe was described as a 59-year-old male who had experienced "about eight to nine inpatient psychiatric hospitalizations" over the past five years.⁶⁹ Stubbe reported "hearing his parents', brothers', and uncles' voices for the past five years."⁷⁰ The voices apparently told Stubbe that it was "time you came home."⁷¹ The "auditory hallucinations happened a couple of times per week."⁷² Stubbe's issues with depression "started at the age of 13, characterized by sad mood, lack of motivation, low energy, suicidal ideations and hopelessness, panic attacks, and 13-year history of hearing voices of his deceased mother."⁷³ Dr. Mohan's diagnostic impressions for Stubbe encompassed mood disorder, "differential diagnostic consideration is for bipolar disorder", and personality disorder.⁷⁴

On September 10, 2008, a Health Care Appraisal was conducted on Stubbe by Dr. Faiz Mansour.⁷⁵ Dr. Mansour's diagnosis for Stubbe was "Bipolar."⁷⁶ It was noted that Stubbe's medications included Seroquel, which is commonly prescribed for major depressive disorder and acute depressive episodes in bipolar disorder, and Celexa, which commonly prescribed to treat depression.⁷⁷

In addition, on or about March 9, 2010, as part of discovery, Defendant-Appellee subpoenaed Stubbe's records from the Oakland County Probate Court. The records revealed a Petition for Appointment of Guardian of Incapacitated Individual filed on Stubbe's behalf by a social worker named Ann Turner. The petition stated that Stubbe needed a guardian for the following reasons:

⁶⁹ See *Exhibit W*, Initial Psychiatric Assessment dated March 26, 2008.

⁷⁰ See *Exhibit W*.

⁷¹ See *Exhibit W*.

⁷² See *Exhibit W*.

⁷³ See *Exhibit W*.

⁷⁴ See *Exhibit W*.

⁷⁵ See *Exhibit X*, Health Care Appraisal dated September 10, 2008.

⁷⁶ See *Exhibit X*.

⁷⁷ See *Exhibit X*; See *Exhibit Y*, Information on medications.

Mr. Stubbe is diagnosed with Depression, Anxiety and Bi Polar Disorders. He is also diagnosed with Organic Personality Syndrome. These disorder impairs (sic) Mr. Stubbe's ability to understand and make sound decisions.⁷⁸

The notion that Stubbe was a "normal guy" who just happened to live in a state licensed and regulated adult foster care home is absurd⁷⁹. Moreover, Stubbe's health issues involved a great deal more than alcohol or drugs. As the records firmly establish, Stubbe clearly had longstanding psychiatric issues well before the motor vehicle accident of December 27, 2008. Further, it is common knowledge that individuals with mental illness may appear "normal" in regular society, but this does not mean that such individuals are not under the care and protection of adult foster care homes. Stubbe was clearly living in an adult foster care home for mentally ill and developmentally disabled people for a reason. Stubbe certainly qualifies as an insured under the policy issued by Defendant-Appellee to Quality AFC Home, Inc..

Plaintiff-Appellant was the responsible insurance company that paid for Stubbe's extensive medical treatment and care after the accident. Pursuant to MCL 500.3114 and the case law cited by Plaintiff-Appellant in its motion, this Court should order that Defendant-Appellee is in higher priority than Plaintiff-Appellant to pay benefits for Stubbe.

Defendant's-Appellee's reliance upon the deposition testimony of the owners of Quality AFC Home, Inc. is also greatly misplaced. Defendant-Appellee overlooks the most telling portions of their testimony. Begashaw Deneke testified as follows:

⁷⁸ See *Exhibit Z*, Records from Oakland County Probate Court. Plaintiff-Appellant also points out to the Court that the Petition for guardianship was dismissed on May 14, 2009, because of a failure to appear at a hearing. It appears that the dismissal was prompted by concerns that a guardianship might impact a pending application for Social Security benefits.

⁷⁹ It should also be noted that Defendant-Appellee's position is hypocritical. Before an appeal was filed, the terms of the trial court's ruling were reduced to a judgment. As part of that process, Plaintiff-Appellant produced its complete claims file to Defendant-Appellee. The claims file underwent a medical payment review. As a result of that review, Defendant-Appellee objected to payment of \$36,990.81 for medications after the motor vehicle accident because it was for treatment of Stubbe's "psychotic disorder (bi-polar)" and "psychiatric issues" and those bills were for "pre-accident conditions." See *Exhibit AA*. In short, it appears Defendant-Appellee only acknowledges Stubbe's pre-accident mental health problems when it is to their economic benefit.

BY MR. DOMBROWSKI:

Q. Sir, you agree with me there's a wide spectrum of disability. Some people, as you described, are very disabled, other people are higher functioning, correct?

A. Right; correct.

Q. You're not a doctor, you're not aware if Mr. Stubbe or Stubby (phonetic) had any mental issues as we sit here today?

A. No, that's the psychiatrist, he knows more.

Q. **If Mr. Stubbe didn't require any assistance at all though, he wouldn't have been living at an adult foster-care home; correct?**

A. **Yeah, there is reason that they just place him at our place. Some of them when they live independent, they don't take medication, so that for that reason they put them in our group home. So we provide medications supervision three times, four times.**

Q. **There's a reason like somebody like Mr. Stubbe is living at your group home because he requires some degree of care and attention, correct?**

A. **Yes.**

Q. And correct me if I'm wrong, you're [sic] group home, you don't provide nursing care for people that require a significant amount of attention; correct?

A. No.

Q. Basically, the folks, the disabled individuals living in your home, they don't – it's not like you [sic] operating a nurse [sic] home; correct?

A. No.⁸⁰

Konjit Bitew also testified as follows:

BY MR. DOMBROWSKI:

Q. You operate an adult foster care home, correct?

A. Yes.

Q. You don't provide skilled-nursing care to residents of your home, correct?

A. No.

Q. You're not a nursing home?

A. No, we are not.

Q. **And you'd agree with me that if Mr. Stubbe didn't have special needs or challenges, he wouldn't have come to live at your home, correct?**

A. **Yes.**⁸¹

⁸⁰ See *Exhibit C*, p. 32-33. [Emphasis supplied.]

⁸¹ See *Exhibit E*, p. 35-36. [Emphasis supplied.]

Contrary to Defendant's-Appellee's apparent misconception, people live in adult foster care homes for a reason. If Stubbe was just a homeless alcoholic, he would have been living elsewhere. Also, if Stubbe was simply an alcoholic, Defendant-Appellee presumably would not have objected to payment of certain mental health medications on the basis that it was "pre-accident medications."⁸² Moreover, sadly, some adult foster care homes clearly provide better quality care than others. The quality of care at Quality AFC Home, Inc. is not the issue, but rather, that while Stubbe lived in the adult foster care home, he was under the home's care and control.

Defendant-Appellee also seems to misunderstand the purpose of adult foster care in Michigan. The fact that Stubbe was able to leave Quality AFC Home, Inc. during the day is not unusual. To the contrary, pursuant to Michigan law, residents of AFC Group homes have the right to freedom of movement.⁸³ A resident of a AFC Group Home also has the right to vote, to practice religion of his or her choice, and to send and receive uncensored and unopened mail at his or her own expense.⁸⁴ Indeed, Quality AFC Home, Inc. could *not* restrict a resident's movement even if it wanted to do so. Of course, when leaving the group home, Stubbe was required to sign out on a sign-out sheet, giving detailed information as to where he was going and when he would return.⁸⁵

The documentary evidence submitted to the trial court when the motions were decided strongly supports affirming judgment in favor of Plaintiff-Appellant.

D. The trial court's well reasoned opinion and order should be reinstated.

In this case, the trial court issued a comprehensive and thoughtful opinion and order that applied the correct legal analysis to this case. After hearing oral argument, the trial court did not simply make a hasty decision from the bench. To the contrary, the trial court instead advised that it would issue a decision after the motion hearing.

⁸² See *Exhibit AA*.

⁸³ See *Exhibit BB*, State of Michigan website, Resident Rights for AFC Group Homes.

⁸⁴ See *Exhibit BB*.

⁸⁵ See *Exhibit I*.

In the trial court's lengthy opinion and order, it properly set forth the factual and procedural background.⁸⁶ The trial court concisely set forth the arguments raised by the parties and the applicable legal authority.⁸⁷ In addressing Defendant's-Appellee's "high functioning" argument, the trial court noted that Stubbe was a ward of Quality AFC Home, Inc. "because they provided him with care, meals, transportation, objectives and rules, and disciplined him when he violated those rules."⁸⁸ The trial court also wisely rejected Defendant's-Appellee's assertion to ignore controlling Michigan law that permits Michigan corporations to have family members.⁸⁹ In conclusion, and after reviewing all the evidence, the trial court correctly determined that Stubbe "qualifies as an insured under the commercial motor vehicle policy because he is a ward of the insured corporation."⁹⁰ The trial court also pointed out that Defendant-Appellee "agreed to insure family members, including wards, of Quality AFC Home; therefore, defendant is in a higher priority to pay PIP benefits for the Claimant's care."⁹¹ The trial court's decision was proper and just and should remain undisturbed.

CONCLUSION

Summary disposition is proper if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the nonmoving party is entitled to judgment as a matter of law. *Pennington v. Longabaugh*, 271 Mich App 101; 719 NW2d 616 (2006). Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law, on motion for summary disposition. *Coblentz v. City of Novi*, 475 Mich 558; 719 NW2d 73 (2006).

⁸⁶ Appendix 1.

⁸⁷ Appendix 1.

⁸⁸ Appendix 1; See *Exhibit BB*.

⁸⁹ Appendix 1, citing and relying upon *United States Fidelity & Guaranty Co.*, *supra*.

⁹⁰ Appendix 1.

⁹¹ Appendix 1.

In this case, because no genuine issue of material fact existed, the trial court made the right and just decision when it granted Plaintiff's-Appellant's motion for partial summary disposition. Stubbe was a resident of a State of Michigan regulated and licensed adult foster care home at the time of the accident. As a resident of the adult foster care home, Stubbe was clearly under the protection and care of Quality AFC Home, Inc.. Defendant-Appellee agreed to insure family members of Quality AFC Home, Inc., knowing full well that it was an adult foster care home. Based on the evidence and law, Stubbe clearly qualifies as an insured family member under Defendant's-Appellee's policy. Thus, Defendant-Appellee was properly found to be in higher priority to pay benefits for Stubbe's care. Plaintiff's-Appellant's motion for partial summary disposition was correctly granted, by the trial court, and that decision should be reinstated.

RELIEF REQUESTED

Plaintiff-Appellant respectfully requests that this Honorable Court reverse the decision and opinion of the Court of Appeals and remand this case back to the trial court for reinstatement of the judgment in favor of Plaintiff-Appellant, or, in the alternative, grant leave to appeal.

Respectfully submitted,

kallas & henk pc



KENNETH S. DOMBROWSKI (P55596)
Attorney for Plaintiff-Appellant
43902 Woodward Ave., Suite 200
Bloomfield Hills, MI 48302
(248) 335-5450, Ext. 210

Dated: March 8, 2012

"APPENDIX 1"

**TO PLAINTIFF'S-APPELLANT'S APPLICATION FOR
LEAVE TO APPEAL**

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND**

MICHIGAN INSURANCE COMPANY,
a Michigan Insurance Company,

Plaintiff,

v.

Case No: 09-104725-NF
Hon. Leo Bowman

NATIONAL LIABILITY & FIRE INSURANCE
COMPANY, a foreign corporation, licensed to
do business in the State of Michigan,

Defendant.

KALLAS & HENK, P.C.
KENNETH S. DOMBROWSKI (P55596)
Attorney for Plaintiff
43902 Woodward Avenue, Suite 200
Bloomfield Hills, Michigan 48302
(248) 335-5450

LAW OFFICES OF RONALD M. SANGSTER, PLLC
RONALD M. SANGSTER, JR (P39253)
Attorney for Defendant
901 Wilshire Dr., Suite 495
Troy, Michigan 48084
(248) 269-7040

Proof of Service

I certify that that a copy of the within instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 20 day of October, 2010.

Victoria Bling
v King

OPINION AND ORDER

At a session of said Court held in the Courthouse in Pontiac,
Oakland County, Michigan on October 20, 2010

PRESENT: LEO BOWMAN, Circuit Judge

I. Introduction

This matter is before the Court on plaintiff's motion for partial summary disposition filed on

OCT 22 2010

June 15, 2010.¹ This case concerns the priority to pay Michigan No-fault Personal Protection Insurance benefits (PIP benefits) to a claimant following a pedestrian / motor vehicle accident that occurred on December 27, 2008. Plaintiff filed its complaint on October 19, 2009 alleging the following counts: (1) Count I Request for Declaratory Judgment Regarding Priority to PIP Benefits, (2) Count II Right to Reimbursement for Any Benefits Paid By Plaintiff That Should Be Paid By Defendant, (3) Count III Equitable Subrogation. Plaintiff brings this motion for partial summary disposition pursuant to MCR 2.116(C)(10). Plaintiff requests a judgment that declares defendant in higher priority to pay all past, present, and future PIP benefits on behalf of Lawrence Stubbe (Claimant). Plaintiff also requests reimbursement from defendant related to the following: (1) all benefits paid by plaintiff that defendant should have paid, (2) all costs and expenses associated with adjusting Claimant's claim for benefits, and (3) all costs and fees connected with this litigation. In its reply brief, defendant requested that this Court deny plaintiff's motion for partial summary disposition and grant defendant's cross-motion for summary disposition pursuant to MCR 2.116(I)(2). For the reasons stated more fully below, plaintiff's motion for partial summary disposition is GRANTED and defendant's cross-motion for summary disposition is DENIED.

II. Background

This case involves the priority to pay PIP benefits to a pedestrian injured in a pedestrian / motor vehicle accident that occurred on December 27, 2008. Plaintiff insured the motor vehicle involved in the accident and paid all PIP benefits incurred by the Claimant since the accident. On December 27, 2008, the Claimant was a resident of Quality AFC Home, Inc (Quality AFC Home), which is an adult foster care home in Pontiac. As required by the State of Michigan, the Claimant

¹ Plaintiff's motion for partial summary disposition was originally scheduled for August 18, 2010. On August 11, 2010, defendant filed an unopposed emergency motion to reschedule the hearing date for plaintiff's motion for partial summary disposition. On August 19, 2010, plaintiff filed a notice of hearing for plaintiff's motion for

and Quality AFC Home signed an Assessment Plan and entered into a Resident Care Agreement, which assessed the amount of personal care, supervision, and protection required for the resident. Under the Resident Care Agreement, Quality AFC Home allegedly agreed "to provide personal care, supervision and protection in addition to room and board for 24 hours a day for this resident." The Claimant also signed House Rules as a part of the admission process to the adult foster care home and the purpose of those House Rules was allegedly to "ensure safety, thereby giving us a measure of prevention from probable hazardous situations." At the time of the accident, Quality AFC Home owned a 2000 Dodge van, which was used to transport residents. Defendant insured this motor vehicle.

On October 19, 2009, plaintiff filed a complaint against defendant alleging the following counts: (1) Count I Request for Declaratory Judgment Regarding Priority to PIP Benefits, (2) Count II Right to Reimbursement for Any Benefits Paid By Plaintiff That Should Be Paid By Defendant, (3) Count III Equitable Subrogation. Defendant filed an answer and affirmative defenses on December 7, 2009, which either averred that it was without information or knowledge sufficient to form a belief or denied the allegations as untrue. Defendant's answer specifically denies that it occupies a higher order of priority for payment of any no-fault benefits. Plaintiff filed its motion for partial summary disposition on June 15, 2010 pursuant to MCR 2.116(C)(10). Plaintiff also filed a supplemental brief in support of its motion for partial summary disposition.² Defendant filed a timely response and requested that this Court grant its cross-motion for summary disposition pursuant to MCR 2.116(C)(10) and (I)(2). Plaintiff filed a reply to defendant's answer to plaintiff's motion for partial summary disposition and response to cross-motion for summary disposition.

summary disposition for October 20, 2010.

² This Court received a copy of plaintiff's supplemental brief in support of motion for partial summary disposition. It is dated August 13, 2010 but a copy is not in the court records.

III. Standard of Review

Under MCR 2.116(C)(10), the Court will grant a motion for summary disposition if there is no issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). In determining a motion for summary disposition under MCR 2.116(C)(10), the Court must consider “the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party.” *Richie-Gamester v City of Berkley*, 461 Mich 73, 76 (1999).

Additionally, defendant requests summary disposition pursuant to MCR 2.116(I)(2). Under MCR 2.116(I)(2) the court may render judgment in favor of the opposing party if “appears to the court that the opposing party, rather than the moving party, is entitled to judgment.”

IV. Analysis

Plaintiff alleges that the Claimant qualifies as an insured “family member” under the commercial auto insurance policy issued by defendant to Qualify AFC Home; therefore, plaintiff further alleges that defendant has a higher priority than plaintiff such that it is required to pay Claimant’s PIP benefits. The parties do not dispute that the Claimant, as a pedestrian, was struck and seriously injured by a motor vehicle that was insured under a no-fault insurance policy issued by plaintiff. The parties’ dispute centers around who is responsible for payment of the Claimant’s PIP benefits based on who is the higher priority insurer. Defendant argues that the Claimant does not qualify as an insured under the commercial motor vehicle policy issued by defendant. Defendant’s policy defines insured as “[a] person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child[;]” however, it does not provide a definition for “ward.” Generally, under Michigan’s no-fault automobile insurance scheme, MCL § 500.3114 addresses priority for insurance carriers when the injured party is an occupant of the motor vehicle

and MCL § 500.3115 addresses priority when the injured party is a non-occupant. The basic priority scheme is laid out in MCL § 500.3114(1), which states:

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 domiciled in the same household, if the injury arises from a motorcycle accident. When personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits and is not entitled to recoupment from the other insurer. (Emphasis added).

MCL § 500.3115(1) states as follows:

Except as provided in subsection (1) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

- a) Insurers of owners or registrants of motor vehicles involved in the accident.
- b) Insurers of operators of motor vehicles involved in the accident.

(Emphasis added). Reading MCL 500.3115(1) in conjunction with MCL § 500.3114(1) supports that insurers of the owners or registrants of the motor vehicles involved in the accident are in a lower level of priority if another insurance carrier insures “the person named in the policy, the person’s spouse, and a relative of either domiciled in the same household.” *United States Fidelity & Guaranty Co v Citizens Ins Co*, 241 Mich App 83, 85 (2000); see MCL § 500.3115(1); see also MCL § 500.3114(1).

Defendant argues that the Claimant does not qualify as an insured because he cannot be related to the insured corporation by blood, marriage, or adoption and cannot be considered a foster child. Therefore, defendant recognizes that the only remaining avenue for the insurance policy to cover the Claimant is if he qualifies as a ward. In its reply, defendant asserts that the Claimant is not a ward of the insured corporation because: (1) the Claimant functioned at a rather high level during

his four-month stay at the facility and (2) a corporation cannot have relatives or wards under Michigan case law. Plaintiff asserts that the Claimant is a ward of Quality AFC Home because it provided him with care, meals, transportation, objectives and rules, and disciplined him when he violated those rules.

First, defendant argues that the Claimant functioned at a high level during his four-month stay at Quality AFC Home such that he should not be classified as a ward of the insured corporation. In its reply, defendant analyzed published cases relied on by plaintiff – *Hartman v Ins Co of North Am*, 106 Mich App 731 (1981); *United States Fidelity & Guaranty Co, supra*, where the courts held that the Claimant was a ward of the insured corporation. Based on its analysis, defendant states that this issue depends on the factual context of each case and the nature and extent of control exercised by the group home’s personnel over the individual members of the group home. Then, defendant relies on the depositions of the Quality AFC Home owners – Begashaw Deneke and Konjit Bitew – to support that the Claimant was not a ward of Quality AFC Home because the group’s home did not exercise control over the Claimant. Defendant alleges that the Claimant functioned at a high level, acted independently, did not require assistance of guardians or conservators, and was not under court supervision. Defendant distinguished the Claimant in this case from the injured party in *United States Fidelity & Guaranty Co, supra* because the Claimant handled his own money, decided what he wanted to eat, and decided when he wanted to leave the home. On the other hand, plaintiff argues that the Claimant is a ward because he was obligated to abide by the House Rules and was written up when he violated those rules. Plaintiff also argues that the Claimant is a ward because his medical records prior to the motor vehicle accident support that his medical problems extended beyond merely being an alcoholic or homeless and that he lived at an adult foster care home, which provided care for developmentally disabled and mentally ill individuals because he required care and attention.

(Deposition of Deneke). Viewing the evidence in the light most favorable to the defendant, this Court finds that the Claimant is a ward of Quality AFC Home because they provided him with care, meals, transportation, objectives and rules, and disciplined him when he violated those rules.

Second, defendant argues that even if the Claimant is a ward at Quality AFC Home, the case law relied upon by plaintiff was wrongly decided and contrary to current Michigan jurisprudence for interpreting insurance contracts. Defendant argues that the Court of Appeals “wrongly decided” *United States Fidelity & Guaranty Co, supra* – a case with similar facts to this case – because it did not adhere to *Henderson v State Farm*, 460 Mich 348 (1999) – an earlier opinion, which set forth the guidelines to be applied when interpreting the language in an insurance contract. Defendant relies on another earlier case, *Michigan Township Participating Plan v Pavolich*, 232 Mich App 378 (1998), to support its argument that the policy does not extend to family members of a “corporation.” *Michigan Township Participating Plan, supra*, does not involve an adult foster care facility, does not interpret “ward,” and does not include the same insurance policy language. Plaintiff argues that defendant should not include the “family member” provision if a corporation cannot have a family or a ward. Further, plaintiff asserts that *Webster's New Twentieth Century Dictionary Second Edition* includes “a person under another’s protection or care” as a definition of ward, which is consistent with the common, everyday understanding of “ward.” Viewing the evidence in light the most favorable to defendant, this Court finds that *United States Fidelity & Guaranty Co, supra*, is controlling and that the facts support that the Claimant was a ward of Quality AFC Home at the time of the accident.

Finally, defendant argues that the fact Quality AFC Homes tries to treat its residents as family is nothing more than a red herring because the word “family” is used in all kinds of advertisements. This Court agrees that the focus of the argument is not on the phrase “family” but whether the

Claimant qualifies as an insured under the commercial motor vehicle policy because he is a ward of the insured corporation. Therefore, this argument will not be addressed.

Viewing the evidence in the light most favorable to defendant, the Court finds that there is no genuine issue of material fact. Summary disposition is, therefore, appropriate.

Accordingly, plaintiff's motion for partial summary disposition is GRANTED and defendant's cross-motion for summary disposition under MCR 2.116(I)(2) is DENIED. This Court finds that the Claimant is a ward of Quality AFC Home because he was under its protection and care and that defendant agreed to insure family members, including wards, of Quality AFC Home; therefore, defendant is in a higher priority to pay PIP benefits for the Claimant's care.

It is ordered that defendant must reimburse plaintiff for all benefits, fees, interest, and expenses already paid and must assume all present and future benefits required for the Claimant's care and rehabilitation.

IT IS SO ORDERED.

LEO BOWMAN

Hon. Leo Bowman

Date

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk - Register of Deeds
By *Victoria Blase*
Deputy

"APPENDIX 2"

**TO PLAINTIFF'S-APPELLANT'S APPLICATION FOR
LEAVE TO APPEAL**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MICHIGAN INSURANCE COMPANY,
a Michigan Insurance Company,

Plaintiff,
v.

Case Number 09-104725-CK
Honorable Leo Bowman

NATIONAL LIABILITY & FIRE INSURANCE
COMPANY, a foreign corporation, licensed to
do business in the State of Michigan,

Defendant.

KENNETH S. DOMBROWSKI (P55596)
kallas & henk pc
Attorney for Plaintiff
43902 Woodward Avenue, Suite 200
Bloomfield Hills, MI 48302
kdombrowski@kallashenk.com
(248) 335-5450, Ext. 210, (248) 335-9889, Fax

RONALD M. SANGSTER, JR. (P39253)
**LAW OFFICES OF RONALD M.
SANGSTER, PLLC**
Attorney for Defendant
901 Wilshire Dr., Ste. 495
Troy, MI 48084
(248) 269-7040, (248) 269-7050 Fax

JUDGMENT

At a session of said Court held in the Courthouse, in the
City of Pontiac, County of Oakland, State of Michigan, on
12/28/10, 2010.

PRESENT: HONORABLE LEO BOWMAN
OAKLAND COUNTY CIRCUIT COURT JUDGE

Plaintiff, Michigan Insurance Company having filed a Motion for Partial Summary Disposition that was granted by the Court, and Defendant, National Liability & Fire Insurance Company having filed a Cross-motion for Summary Disposition that was denied by the Court; and the Court being fully advised;

NOW THEREFORE;

IT IS HEREBY ORDERED that Defendant, National Liability & Fire Insurance Company is the automobile insurance carrier in the highest order of priority to pay personal protection insurance

benefits to Lawrence Stubbe as a result of the motor vehicle accident that occurred on December 27, 2008, pursuant to MCL 500.3114(1);

IT IS FURTHER ORDREED that Defendant, National Liability & Fire Insurance Company pay \$848,678.90 to Plaintiff, Michigan Insurance Company;

IT IS FURTHER ORDERED that Defendant, National Liability & Fire Insurance Company shall assume responsibility for payment, processing, and handling of all claims and bills submitted on behalf of Lawrence Stubbe effective January 1, 2011;

IT IS FURTHER ORDERED that Plaintiff, Michigan Insurance Company may send any bills paid on behalf of Lawrence Stubbe after October 29, 2010, to Defendant, National Liability & Fire Insurance Company for payment, provided those bills are reasonable, necessary, and arose out of the motor vehicle accident of December 27, 2008;

IT IS FURTHER ORDERED that a satisfaction of judgment be signed by an authorized representative of Plaintiff, Michigan Insurance Company after receipt of the settlement check; however, no payment of the judgment by Defendant, National Liability & Fire Insurance Company shall be construed as a waiver of its rights on appeal, and if after the exhaustion of appellate remedies Defendant, National Liability & Fire Insurance prevails, Plaintiff, Michigan Insurance Company agrees to repay Defendant, National Liability & Fire Insurance Company amounts paid which are related to the processing of Lawrence Stubbe's claim for PIP benefits;

IT IS FURTHER AGREED that Plaintiff, Michigan Insurance Company waives the requirement that an appeal bond be filed by Defendant, National Liability & Fire Insurance Company, and it is also agreed that execution of this judgment be stayed pending exhaustion of appellate remedies;

IT IS FURTHER ORDERED that this judgment resolves the last pending claim and closes this case.

LEO BOVICAN

OAKLAND COUNTY CIRCUIT COURT JUDGE

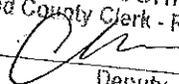
APPROVED AS TO FORM:



KENNETH S. DOMBROWSKI (P55596)
Attorney for Plaintiff



RONALD M. SANGSTER, JR. (P39253)
Attorney for Defendant

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk - Register of Deeds
By  Deputy

"APPENDIX 3"

**TO PLAINTIFF'S-APPELLANT'S APPLICATION FOR
LEAVE TO APPEAL**

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN INSURANCE COMPANY,

Plaintiff-Appellee,

v

NATIONAL LIABILITY & FIRE INSURANCE,

Defendant-Appellant.

UNPUBLISHED

February 14, 2012

No. 301980

Oakland Circuit Court

LC No. 09-104725-NF

Before: SERVITTO, P.J., and TALBOT and K. F. KELLY, JJ.

PER CURIAM.

National Liability & Fire Insurance (“National”) appeals the grant of partial summary disposition in favor of Michigan Insurance Company (“Michigan”) and the denial of summary disposition to National, in this dispute regarding insurer priority for the payment of Michigan No-Fault Personal Protection Insurance Benefits (“PIP”). We reverse and remand.

The underlying insurance claim involved a pedestrian, Lawrence Stubbe, being struck and injured by a motor vehicle insured by Michigan. Michigan paid PIP benefits for Stubbe’s injuries in excess of \$700,000. At the time of the accident, Stubbe did not personally own a vehicle and was residing at Quality AFC Homes, Inc. (“Quality”). Quality is a home licensed by the state of Michigan to provide adult foster care. At the time of Stubbe’s injury, Quality and the vehicle it owned were insured by National.

Michigan sought declaratory relief in circuit court alleging National was in higher priority to pay Stubbe’s PIP benefits. Specifically, Michigan contended that Stubbe was a “ward” of Quality and, therefore, a “family member” within the meaning of National’s automobile policy. National contested summary disposition arguing that, as a corporation, Quality was incapable of having a ward or any type of family member. National further asserted that Stubbe, based on his level of functioning, was not a “ward” of Quality. The trial court granted partial summary disposition in favor of Michigan and denied summary disposition to National based on its determination that Stubbe qualified as a ward of Quality, which, despite its corporate status, was capable of having a ward. Having found National to be higher in priority, the trial court ordered National to reimburse Michigan for all PIP benefits paid.

While National raises several issues on appeal, our initial and primary consideration is whether the trial court properly granted partial summary disposition to Michigan based on its factual determination that Stubbe was a ward of Quality for the purpose of determining the

priority of insurer for payment of PIP benefits. "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law."¹

The "[d]istribution of loss among personal protection insurers" is governed by statute, which provides, in relevant part:

(1) Except as provided in subsection (1) of section 3114, a person suffering accidental bodily injury while not an occupant of a motor vehicle shall claim personal protection insurance benefits from insurers in the following order of priority:

(a) Insurers of owners or registrants of motor vehicles involved in the accident.

(b) Insurers of operators of motor vehicles involved in the accident.²

Those persons "entitled to personal protection or personal injury benefits" is defined by statute, in pertinent part, as "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."³ Thus, the question becomes which insurer has the responsibility or priority for payment of PIP benefits.

Of significance, is the wording of National's insurance policy with Quality. In this policy, an "insured" refers to "[y]ou or any family member." According to the policy "you" refers to Quality as the "Named Insured." The term "family member" is further defined within the policy as "a person related to you by blood, marriage, or adoption who is a resident of your household, including a *ward* or foster child."⁴ In this matter, the parties primarily dispute whether, as determined by the trial court, Stubbe had the status of "ward" for purposes of this insurance policy and the subsequent assignment of priority of insurer for payment as it is clear that Stubbe was not related by to Quality by "blood, marriage, or adoption" and was not a "foster child."

We note that the relevant statutory provision provides for a PIP policy to be applicable to "the person named in the policy, the person's spouse, and a relative of either domiciled in the same household." This language is not determinative in this instance, as nothing precludes an insurer, such as National, from extending PIP benefits to a broader range of individuals.⁵ Using

¹ *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

² MCL 500.3115.

³ MCL 500.3114(1).

⁴ Emphasis added.

⁵ *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 418; 668 NW2d 199 (2003) ("[I]f a clause in an insurance policy is clear and does not contravene public policy, it must be enforced as written.")

Empires
Farmers Ins
in an insurance
written.")

the language of National's policy with Quality, coverage is available based on the policy's definition of a family member as "including a ward." The operative question is whether Stubbe qualifies for this status.

The parties did contest Stubbe's status as a "ward" of Quality. Michigan asserted Stubbe was a ward of Quality because he had various medical conditions and lived in an adult foster care home that provided a certain level of care and supervision. National argued that Stubbe was not a ward of Quality because he required very little care or attention and was highly independent in his daily functioning and did not have a conservator or guardian appointed. Based on the evidence presented, the trial court made the factual determination that Stubbe was a ward of Quality "because they provided him with care, meals, transportation, objectives and rules, and disciplined him when he violated those rules."

We acknowledge, as an initial premise, that the common or accepted definition of the term "ward" is an individual "under the protection or tutelage of a person,"⁶ and that, based on prior rulings by this Court, that a corporation is capable of having a ward.⁷ The problem that arises is the factual determination of whether, in the circumstances of this case, Stubbe as a resident of the group home had the status of a ward. To make such a determination it is "necessary to examine the factual context of the case."⁸ The initial inquiry or focus is on the type and extent of control that is exercised by the foster care home over an individual resident.⁹ In this case, whether Stubbe had the status of a ward with Quality comprised a genuine issue of material fact. Because a trial court is precluded from determining facts or assessing credibility on motions for summary disposition,¹⁰ there existed a genuine issue of material fact making the grant of summary disposition improper. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."¹¹

Based on our determination that the grant of summary disposition was improper, we need not address the additional issues raised on appeal.

⁶ *Hartman v Ins Co of North America*, 106 Mich App 731, 739; 308 NW2d 625 (1981), quoting *Webster's Third New Int'l Dictionary* (1965).

⁷ *United States Fidelity & Guaranty Co v Citizens Ins Co*, 241 Mich App 83, 88-89; 613 NW2d 740 (2000).

⁸ *Hartman*, 106 Mich App at 739.

⁹ *Id.*; *United States Fidelity & Guaranty Co*, 241 Mich App at 88-89.

¹⁰ *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

¹¹ *West*, 469 Mich at 183.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Kirsten Frank Kelly