

STATE OF MICHIGAN
IN THE SUPREME COURT

GRANGE INSURANCE COMPANY OF
MICHIGAN,

Plaintiff/Counter-Defendant-
Appellant,

V

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,

AND

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

Defendant/Counter-Plaintiff-
Appellee.

Supreme Court Docket No.:
145206

Court of Appeals Docket No.:
303031

Muskegon Circuit Court Case
No.: 10-047159-CK

**DEFENDANT/COUNTER-PLAINTIFF-APPELLEE FARM BUREAU GENERAL
INSURANCE COMPANY OF MICHIGAN'S BRIEF ON APPEAL**

ORAL ARGUMENT REQUESTED



Michael D. Ward (P43632)
Ward Law, PC
Attorneys for Defendant-Appellee
120 Ionia Avenue SW, Suite 500
Grand Rapids, MI 49503
(616) 551-0379

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....ii

STATEMENT OF THE BASIS OF JURISDICTION.....v

COUNTER-STATEMENT OF QUESTIONS INVOLVED.....vi

COUNTER-STATEMENT OF FACTS.....1

**A. THE JUDGMENT OF DIVORCE AND THE SUPPORT AND CUSTODY
OF JOSALYN.....1**

B. JOSALYN MAINTAINED HER BELONGINGS AT HER FATHER’S HOME..3

**C. EDWARD LAWRENCE AND LAURA ROSINSKI EACH OBTAINED
AUTOMOBILE INSURANCE COVERAGE PURSUANT TO THE MICHIGAN
NO-FAULT ACT.....4**

D. PROCEDURAL HISTORY.....4

ARGUMENT.....7

STANDARD OF REVIEW.....8

THE DOMICILE OF JOSALYN A. LAWRENCE.....9

DEFINING A RESIDENCE OR A DOMICILE.....11

**THE GRANGE INSURANCE POLICY CONFLICTS WITH THE NO-FAULT
ACT.....21**

RELIEF SOUGHT.....23

INDEX OF AUTHORITIES

CASES

<u><i>Beecher v Common Counsel of Detroit</i></u> 114 Mich. 228; 72 N.W. 206 (1897).....	11, 12
<u><i>Cadwalader v Howell</i></u> 18 N. J. Law 138.....	12
<u><i>Cervantes v Farm Bureau General Insurance Company of Michigan</i></u> 478 Mich. 934; 733 N.W.2d. 392 (2007)	18, 19
<u><i>Cruz v State Farm Mutual Auto Insurance Company</i></u> 466 Mich. 588; 648 N.W.2d. 591 (2002)	6, 22
<u><i>Dailey v Kloenhamer</i></u> 291 Mich.App. 660; 811 N.W.2d. 501 (2011)	9
<u><i>Dairyland Insurance Co. v Auto-Owners Insurance Company</i></u> 123 Mich.App. 675; 333 N.W.2d. 322 (1983)	7
<u><i>Dart v Dart</i></u> 460 Mich. 573; 597 N.W.2d. 82 (1999).....	16
<u><i>Estes v Titus</i></u> 481 Mich. 573; 751 N.W.2d. 493 (2008).....	16
<u><i>Fontana v Maryland Casualty Company/Zurich</i></u> Docket Number 264127, decided December 24, 2006 – unpublished.....	18
<u><i>Fowler v Auto Club Insurance Association</i></u> 254 Mich.App. 362; 656 N.W.2d. 856 (2002)	8
<u><i>Gluc v Klein</i></u> 226 Mich. 175; 197 N.W. 691 (1924)	12, 19, 22
<u><i>Goldstein v Progressive Casualty Insurance Company</i></u> 218 Mich.App. 105; 553 N.W.2d. 353 (1996)	8
<u><i>Grange Insurance Company of Michigan v Lawrence</i></u> 296 Mich.App. 319; 819 N.W.2d. 580 (2012)	5

<u>Griffith v State Farm Mutual Automobile Insurance Company</u> 472 Mich. 521; 697 N.W.2d. 895 (2005)	8
<u>Hartzler v Radeka</u> 265 Mich. 451; 251 N.W. 554 (1933)	8, 22
<u>Henry v Henry</u> 362 Mich. 85; 106 N.W.2d. 570 (1960)	20
<u>Inhabitants of Phillips v Inhabitants of Kingfield</u> 36 Am. Dec. 761.....	12
<u>Kessler v Kessler</u> 295 Mich.App. 54; 811 N.W.2d. 39 (2011)	11
<u>Klapp v United Insurance Group Agency, Inc.</u> 468 Mich. 459; 663 N.W.2d. 447 (2003).....	23
<u>Krohn v Home-Owners Insurance Company</u> 490 Mich. 145; 802 N.W.2d. 281 (2011)	8
<u>Montgomery v Hawkeye Security Insurance Co.</u> 52 Mich.App. 457; 217 N.W.2d. 449, 451 (1974)	13
<u>Ortman v Miller</u> 33 Mich.App. 451; 190 N.W.2d. 242 (1971).....	12
<u>Putkamer v Transamerica Insurance Corporation of America,</u> 454 Mich. 626; 563 N.W.2d. 683 (1997).....	20
<u>School District No. 1, fractional, of Township of Manclona v School District No. 1 of Township of Custer (1926)</u> 236 Mich. 677; 211 N.W. 60.....	12
<u>Shulick v Richards</u> 273 Mich.App. 320; 729 N.W.2d. 533 (2006)	10
<u>State Farm Auto Insurance Company v Burbank</u> 190 Mich.App. 93; 475 N.W.2d. 399 (1991)	23
<u>Walbro Corporation v Amerisure Company</u> 133 F.3d 961 (1998).....	16, 17, 18, 20

<u>Wellman v Wellman</u> 203 Mich.App. 277; 512 N.W.2d. 68 (1994)	9, 10
<u>Williams v North Carolina</u> 325 US 226; 65 SCt 1092; 89 Led 1577 (1945)	20
<u>Williams v State Farm Mutual Automobile Insurance Co.</u> 202 Mich.App. 491; 509 N.W.2d. 821 (1993)	14
<u>Workman v Detroit Automobile Inter-Insurance Exchange</u> 404 Mich. 477; 274 N.W.2d. 373 (1979).....	7, 13, 14, 17

STATUTES

MCL 500.3101.....	4, 11
MCL 500.3114.....	17, 19, 22
MCL 500.3114(1)	vi, 4, 5, 6, 7, 17, 18, 21, 22, 23
MCL 722.26a.....	9
MCL 722.31.....	7, 10, 11
MCL 722.31(1)	10, 17, 19

COURT RULES

MCR 2.116(C)(10)	4, 5
MCR 3.211.....	11
MCR 3.211(C)	10, 11
MCR 3.211(C)(1)	11

OTHER AUTHORITIES

3 Comp Laws 1915, §11400.....	12
-------------------------------	----

STATEMENT OF THE BASIS OF JURISDICTION

The jurisdictional summary of the Appellant is complete and correct.

COUNTER- STATEMENT OF QUESTIONS INVOLVED

- 1. Did The Michigan Court Of Appeals Correctly Affirm The Trial Court's Ruling That The Minor Child Of Divorced Parents Maintained Two Domiciles For The Purpose Of Interpreting And Applying The Michigan No-Fault Act, MCL 500.3114(1)?**

Defendant/Counter-Plaintiff/Appellee Farm Bureau Insurance Company of Michigan Answers: "YES"

Plaintiff/Counter-Defendant/Appellant Grange Insurance Company of Michigan Answers: "NO"

The Michigan Court of Appeals Answered: "YES"

- 2. Did The Michigan Court Of Appeals Correctly Conclude That An Insurance Policy Provision Giving Preclusive Effect To A Court-Ordered Custody Arrangement Is Unenforceable When The Provision Conflicts With The Michigan No-Fault Act?**

Defendant/Counter-Plaintiff/Appellee Farm Bureau Insurance Company of Michigan Answers: "YES"

Plaintiff/Counter-Defendant/Appellant Grange Insurance Company of Michigan Answers: "NO"

The Michigan Court of Appeals Answered: "YES"

COUNTER- STATEMENT OF FACTS

Grange Insurance Company of Michigan ("Grange") initiated this action seeking a declaratory judgment regarding two principal provisions of its insurance policy issued to its named insured, Edward Lawrence. Farm Bureau General Insurance Company of Michigan ("Farm Bureau") is the carrier for its insured, Laura Rosinski. Edward Lawrence and Laura Rosinski were divorced at the time of a tragic motor vehicle accident in which their daughter, Josalyn Lawrence was severely injured and died. (Appellant's Appendix, p. 64a). Josalyn was an occupant of her mother's vehicle which was insured by Farm Bureau at the time of the accident. (Appellant's Appendix, pp. 62a-63a). Grange, in its declaratory judgment action, sought an adjudication of whether or not Josalyn was an "insured" under the terms and conditions of its policy. (Appellant's Appendix, p. 98a). Farm Bureau filed a counter-claim seeking reimbursement of fifty percent of the benefits it paid in first-party benefits relating to medical expenses incurred in trying to save Josalyn's life. (Appellee's Appendix, pp. 1b-4b).

A. The Judgment Of Divorce And The Support And Custody Of Josalyn

The Judgment of Divorce, dated October 31, 2005 in the action entitled "Laura Ann Lawrence v. Edward Blaine Lawrence", file no. 05-028358-DM, was adjudicated in the 14th Circuit Court for the County of Muskegon. (Appellant's Appendix, p. 8a). The Judgment of Divorce, under the heading of "CUSTODY" states:

IT IS FURTHER ORDERED that the Plaintiff and Defendant **shall have joint legal custody of the parties' minor children** to wit:

Katelyn Rose Lawrence, d/o/b 5/28/98

Josalyn Ann Lawrence, d/o/b 7/08/01

with the Plaintiff, LAURA ANN LAWRENCE, having **primary physical custody** of the children until they attain the age of eighteen (18) years or until further Order of this Court. (Appellant's Appendix, p. 10a, emphasis added).

The Judgment of Divorce delineates the obligations of the parents under the finding of joint legal custody of the minor children and further sets forth the parenting time. (Appellant's Appendix, p. 10a through p. 12a). In addition, the Judgment of Divorce mandates the Defendant, Edward Lawrence, to pay child support as well as a portion of the child care costs. (Appellant's Appendix, p. 13a). The Judgment of Divorce further requires that each of the parents are responsible for obtaining and maintaining, either individually or together, medical, hospitalization, optical, and dental insurance for the children. (Appellant's Appendix, pp. 16a, 17a). The Judgment of Divorce further requires that the parties are to share all the children's' medical, hospitalization, optical, and dental expense that exist after all insurance is depleted, with the mother Laure Ann Lawrence, paying 35% of the costs and the father, Edward Lawrence, paying 65% of all remaining expenses. (Appellant's Appendix, p. 16a). The Judgment of Divorce further provides that Edward Lawrence may claim the minor child, Josalyn, as a dependent on all of his federal, state and local income tax returns. (Appellant's Appendix, p. 20a).

The Judgment of Divorce states that Laura Rosinski is to have "primary physical custody of the children until they attain the age of eighteen (18) years...". (Appellant's Appendix, p. 10a). There is no provision in the Judgment of Divorce for Laura Rosinski to have sole physical custody. There is no evidence that either parent sought to modify

the Judgment of Divorce at any time prior to the motor vehicle collision.

B. Josalyn Maintained Her Belongings At Her Father's Home

Josalyn's parents both provided testimony describing how Josalyn and her sister maintained a bedroom and various belongings at the home of each parent. Edward Lawrence testified that of the two bedrooms in his home, Josalyn and her sister shared the larger of the two rooms and shared a full sized bed. (Appellant's Appendix, p. 75a). When Josalyn and her sister stayed with their father they did not bring their own clothes as they had clothes at their father's home which they kept there. (Appellant's Appendix, p. 75a). While they did not have as many clothes at their father's home, Josalyn and her sister kept sufficient clothes at their father's home so they would not have to bring things with them, such as jeans, shirts, pajamas, shoes, jackets, and swimsuits. (Appellant's Appendix, p. 76a). In addition to clothing, Josalyn kept video games, puzzles and other various toys at her father's home. (Appellant's Appendix, p. 76a).

Mr. Lawrence further testified that he would see his girls just about every day during the week. (Appellant's Appendix, p. 70a). In addition to seeing them nearly every day, Mr. Lawrence also had his daughters at his house every other weekend during the school year and sometimes on the weekends when it was not his weekend to have them over. (Appellant's Appendix, p. 70a).

The testimony of Mr. Lawrence was consistent with that provided by Laura Rosinski, Josalyn's mother. Ms. Rosinski explained that her former husband would see the girls on a regular basis during the week and at least every other weekend. (Appellant's Appendix, p. 86a). Ms. Rosinski further explained that sporting equipment

such as bikes, roller blades, and skates would not go back and forth between the houses, but would rather stay at Mr. Lawrence's home. (Appellant's Appendix, p. 88a).

C. Edward Lawrence And Laura Rosinski Each Obtained Automobile Insurance Coverage Pursuant To The Michigan No-Fault Act

Farm Bureau issued an automobile policy of insurance naming Laura Rosinski as its insured. (Appellee Appendix, p. 5b). Pursuant to the terms and conditions of the policy of insurance, and further pursuant to the Michigan No-Fault Act, MCL 500.3101, et. seq., Farm Bureau paid the medical expenses which were incurred due to the heroic efforts undertaken trying to save Josalyn Lawrence following the automobile accident. Farm Bureau paid \$66,085.91 in benefits with regard to the decedent, Josalyn Lawrence. (Appellee's Appendix, pp. 6b-9b).

Grange Insurance issued a personal automobile policy to Edward Lawrence that was in effect on the date of the accident. (Appellant's Appendix, p. 27a). The Counter-Complaint filed by Farm Bureau against Grange on April 29, 2010 seeks reimbursement of fifty percent (50%) of the benefits Farm Bureau paid. (Appellee's Appendix, p. 1b).

D. Procedural History

Farm Bureau filed its Motion for Summary Disposition pursuant to MCR 2.116(C)(10) on December 16, 2010, arguing that no material issues of fact existed and that Grange and Farm Bureau were equal in priority thereby entitling Farm Bureau to reimbursement pursuant to MCL 500.3114(1). (Appellant's Appendix, pp. 3a, 108a-112a). On December 28, 2010, Grange filed its Motion for Summary Disposition pursuant to MCR 2.116(C)(10). (Appellant's Appendix, pp.3a, 96a).

At the oral argument on the cross Motions for Summary Disposition, held on January 18, 2011, the Trial Court granted Farm Bureau's Motion for Summary Disposition finding that the carriers are in equal priority and ordered reimbursement as sought by Farm Bureau in its Counter-Complaint. (Appellant's Appendix, pp. 121a-126a). The Trial Court further granted Grange's Motion for Summary Disposition on the issue of the underinsured motorist coverage. (Appellant's Appendix, pp. 120a-126a).

At the commencement of the oral argument on the cross Motions for Summary Disposition, the Trial Court specifically inquired as to whether there were any issues of material fact. (Appellant's Appendix, p. 96a). Each of the parties agreed that there were no issues of material fact. (Appellant's Appendix, p. 96a). At the commencement of its analysis, the Court again stated that the parties agreed that the facts in the case "are ripe for the Court to make decisions based upon C10." (Appellant's Appendix, p. 121a). The Court, in ruling on the Farm Bureau Motion for Summary Disposition, analyzed the uncontested facts, applied the appropriate case law and concluded that "this is a two-domicile situation". (Appellant's Appendix, p. 124a).

On appeal by Grange, the Michigan Court of Appeals affirmed the Trial Court's decision granting Farm Bureau's Motion for Summary Disposition on the application of MCL 500.3114(1). Grange Insurance Company of Michigan v Lawrence, 296 Mich.App. 319, 324-325; 819 N.W.2d. 580 (2012), (Appellant's Appendix, pp. 134a-137a). The Court of Appeals echoed the Trial Court's finding wherein it stated that the "undisputed evidence clearly shows that Josalyn resided with both parents and, as such, the issue of domicile is properly determined as a question of law by the Trial Court." (Appellant's

Appendix, p. 136a). The Court of Appeals further stated:

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. (Appellant's Appendix, p. 136a).

In addition, the Court of Appeals addressed the claim by Grange Insurance that the October 31, 2005 Judgment of Divorce and its language regarding custody, is conclusive on the issue of a minor's principle residence. (Appellant's Appendix, p. 136a).

In response to this argument, the Court of Appeals stated:

However, MCL 500.3114(1) does not impose a requirement that coverage extends only to a relative whose "principle residence" is with the insured. (Appellant's Appendix, p. 136a).

In relying upon Cruz v State Farm Mutual Auto Insurance Company, 466 Mich. 588, 601; 648 N.W.2d. 591 (2002), the Court of Appeals then concluded:

In this case, because Plaintiff's policy would limit Plaintiff's obligation where the No-Fault Act does not, that provision is invalid. (Appellant's Appendix, p. 137a).

This Court subsequently granted leave on September 19, 2012 in response to Grange's application for leave. (Appellant's Appendix, p. 138a).

Argument

This Court has granted leave for the purpose of addressing the interpretation and application of the phrase “domiciled in the same household” found in MCL 500.3114(1). In analyzing the Michigan No-Fault Act, specifically MCL 500.3114(1), as it applies to minor children of divorced couples, it is helpful to also analyze the Child Custody Act, MCL 722.31 regarding the “legal residence” of children. First, the word “domicile” is not defined within the Michigan No-Fault Act, and the phrase “domiciled in the same household” has “no absolute or fixed meaning, and most be viewed flexibly in the context of the numerous factual settings possible.” Dairyland Insurance Co. v Auto-Owners Insurance Company, 123 Mich.App. 675, 680; 333 N.W.2d. 322 (1983), citing Workman v Detroit Automobile Inter-Insurance Exchange, 404 Mich. 477; 274 N.W.2d. 373 (1979). It is logically and legally inconsistent for Grange to maintain the claim that a minor can only have one domicile when the divorced parents clearly had joint legal custody and shared physical custody, and the evidence establishes that the minor child maintained a residence in each of her parents’ homes. The Judgment of Divorce providing for joint legal custody between the decedent’s parents and shared physical custody, with Ms. Rosinski having “primary” physical custody, is not binding on the Circuit Court when interpreting the Michigan No-Fault Act and its application to a lawsuit regarding insurance coverage.

The second issue to be focused on is the decision by the Court of Appeals that the Grange Insurance policy violates the Michigan No-Fault Act wherein the policy uses the phrase “primary residence”. The No-Fault Act, MCL 500.3114(1), uses the phrase

“domiciled in the same household”. The Court of Appeals concluded that the use of the term “primary residence” is not the same as “domiciled in the same household”. The Court of Appeals held that the Plaintiff’s policy of insurance would limit Grange’s obligation where the No-Fault Act does not limit the obligation, and the contract provision is therefore invalid. Furthermore, the issue of custody, as it is addressed in the Judgment of Divorce provides for a shared custody arrangement, not a sole custody situation. In addition, the parents of Josalyn continued to enjoy joint legal custody under the terms of the Judgment of Divorce.

Standard Of Review

This Court is to review de novo a ruling on a Motion for Summary Disposition. Fowler v Auto Club Insurance Association, 254 Mich.App. 362, 363; 656 N.W.2d. 856 (2002). Issues of statutory interpretation are questions of law that this Court is to review de novo. Krohn v Home-Owners Insurance Company, 490 Mich. 145, 155; 802 N.W.2d. 281 (2011), citing Griffith v State Farm Mutual Automobile Insurance Company, 472 Mich. 521, 525-526; 697 N.W.2d. 895 (2005).

While generally the determination of domicile is a question of fact, when the underlying facts are not in dispute, the issue of domicile is a question of law for the Court to determine. Fowler, *supra* at 364, citing Goldstein v Progressive Casualty Insurance Company, 218 Mich.App. 105, 111-112; 553 N.W.2d. 353 (1996), *lev den*, 455 Mich. 869 (1997). Also see Hartzler v Radeka, 265 Mich. 451, 452; 251 N.W. 554 (1933).

The Domicile Of Josalyn A. Lawrence

The October 31, 2005 Judgment of Divorce sets forth the “custody” of Josalyn Lawrence and her minor sister, Katelyn Lawrence. (Appellant’s Appendix, page 10a).

The Judgment of Divorce states in relevant part:

CUSTODY

IT IS FURTHER ORDRED that the Plaintiff and Defendant shall have joint legal custody of the parties’ minor children, to wit:

Katelyn Rose Lawrence, dob 05/28/98
Josalyn Ann Lawrence, dob 07/06/01

With the Plaintiff, LAURA ANN LAWRENCE, having primary physical custody of the children until they attain the age of eighteen (18) years, or until further Order of this Court. (Judgment of Divorce, Appellant’s Appendix, page 10a).

MCL 722.26a authorizes the Circuit Court to enter an Order awarding “joint custody”. The statute states in relevant part:

As used in this section, “joint custody” means an Order of the Court in which 1 or both of the following is specified:

- (a) That the child shall reside alternatively for specific periods with each of the parents.
- (b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

The statute does not specifically define what is “joint physical custody” or “joint legal custody”, however it has been held that the custody described in subsection (a) is commonly referred to as joint physical custody, and that described in paragraph in subsection (b) is referred to as joint legal custody. *Dailey v Kloenhamer*, 291 Mich.App. 660, 670; 811 N.W.2d. 501 (2011); *Wellman v Wellman*, 203 Mich.App. 277, 279; 512

N.W.2d. 68 (1994). Also see *Shulick v Richards*, 273 Mich.App. 320, 327-328; 729 N.W.2d. 533 (2006).

In the present action, Josalyn's parents, Edward Lawrence and Laura Rosinski, shared joint legal custody of the minor children. The Judgment of Divorce also granted Laura Rosinski "primary physical custody" of Josalyn. (Judgment of Divorce, Appellant's Appendix, page 10a). As summarized above, Josalyn's parents apparently did an excellent job in sharing the responsibilities of raising Josalyn and her sister. The testimony of Edward Lawrence and Laura Rosinski illustrate that the parents of Josalyn worked closely together and provided well for their children.

The legal residence of children and parental custody in divorce cases is governed by the Court pursuant to MCL 722.31(1), which states:

A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.

Recognizing the language contained within section (1) is "for the purposes of this section", it is still significant that the statute states that a child has a "legal residence with each parent."

In addition to MCL 722.31, the Judgment of Divorce must also comply with the Michigan Court Rules. MCR 3.211(C) provides:

A Judgment or Order awarding custody of a minor must provide that

- (1) The domicile or residence of the minor may not be moved from Michigan without the approval of the Judge who awarded custody or the Judge's successor

- ...
- (3) A parent whose custody or parenting time of a child as governed by the Order shall not change the legal residence of the child except in compliance with Section 11 of the Child Custody Act, MCL 722.31

When reading MCL 722.31, together with MCR 3.211, we see that there is a structure in place establishing the “legal residence” of the child whose parental custody is governed by Court Order. The Michigan Court Rule uses the words “domicile” and “residence” interchangeably within MCR 3.211(C)(1) without providing a distinction. Applying the Child Custody Act to the present situation, it is clear that Josalyn had a “legal residence” with each of her parents. It is also clear that the Judgment of Divorce providing for “Custody” was done in compliance with MCR 3.211(C). The principle issue in this litigation is the meshing of the Child Custody Act with the mechanism known as the Michigan No-Fault Act, MCL 500.3101, et. seq.

Defining A Residence Or A Domicile

It is apparent that the Courts in the State of Michigan have had a difficult time expressly distinguishing a “residence” from a “domicile”. As it applies to the Child Custody Act, MCL 722.31 refers to a child’s residence as a “legal residence with each parent”. In *Kessler v Kessler*, 295 Mich.App. 54, 57-58; 811 N.W.2d. 39 (2011), the Michigan Court of Appeals refers to the factors set forth in MCL 722.31 as the “change-of-domicile factors”. *Id* at 58. This ambiguity and use of the word “residence” interchangeably with the word “domicile” dates back well over 100 years in the reported decisions of this State.

In *Beecher v Common Counsel of Detroit*, 114 Mich. 228; 72 N.W. 206 (1897),

this Court attempted to distinguish a domicile from a residence. This Court stated:

Every person must have a domicile somewhere. The domicile is acquired by the combination of residence and the intention to reside in a given place, and can be acquired in no other way. *Id* at 230, citing *Inhabitants of Phillips v Inhabitants of Kingfield*, 36 Am. Dec. 761.

This Court further stated in Beecher:

The residence which goes to constitute domicile may not be long in point of time. If the intention of permanently residing in a place exists, a residence, and pursuance of that intention, however short, will establish a domicile. Beecher, *supra* at 230, citing *Cadwalader v Howell*, 18 N. J. Law, 138.

In *Gluc v Klein*, 226 Mich. 175; 197 N.W. 691 (1924), this Court held that the words “domicile” and “residence” are treated as synonymous terms. In construing the jurisdiction of the Courts in divorce cases, this Court stated:

In Section 11400, 3 Comp. Laws 1915, providing for the jurisdiction of courts in divorce cases, the words, “resided in this state”, are used in one subsection and “domicile in this state” in another, with apparently the same meaning. *Id* at 178.

In *Ortman v Miller*, 33 Mich.App. 451; 190 N.W.2d. 242 (1971), the Michigan Court of Appeals examined the word “residence” as used in various statutes and recognized its use being synonymous with “domicile”. The Michigan Court of Appeals stated:

Thus, in *School District No. 1, fractional, of Township of Manclona v School District No. 1 of Township of Custer* (1926), 236 Mich. 677, 681; 211 N.W. 60, 62, the Michigan Supreme Court, while acknowledging that that “the word “residence,” is used in statutes relating to voting, eligibility to hold office, taxation, probate and administration of estates, etc., is synonymous with domicile,” ruled that, for the purpose of determining entitlement to public school privileges, children reside in a district in which their father has acquired a home in good faith. Ortman, *supra.*, at 455.

This Court has addressed the interchangeable use of the word “residence” with the word “domicile” and has further carried that same conclusion into the realm of application of the Michigan No-Fault Act.

The present case presents a unique question of interpretation of the Michigan No-Fault Act and its interaction with the minor children of divorced parents. The issue is whether the child of divorced parents may be domiciled in the homes of both parents for purposes of Michigan no-fault insurance coverage. If the evidence demonstrates that the child resided in the separate domiciles of each parent, then it is only rational to conclude that it is legally feasible for there to be dual domiciles.

As this Court noted in *Workman v Detroit Automobile Inter-Insurance Exchange*, 404 Mich. 477; 274 N.W.2d. 373 (1979), the Michigan No-Fault Act does not define the term “domicile”. However, this Court did examine the meaning of the phrase “domiciled in the same household”. This Court concluded that the words “domicile” and “residence” are legally synonymous. *Id* at 495. The *Workman*, decision is the only Michigan Supreme Court case that interprets the term “domicile” for the purpose of interpreting the Michigan No-Fault Act. This Court began its analysis by pointing out that for insurance purposes, the term “domiciled in the same household” has “no absolute or fixed meaning” and is to be viewed “flexibly in the context of potentially numerous factual settings.” *Id* at 495-496, citing *Montgomery v Hawkeye Security Insurance Co.*, 52 Mich.App. 457, 461; 217 N.W.2d. 449, 451 (1974).

In *Workman*, this Court analyzed the various factors that are relevant in making the determination of one’s domicile. These factors were articulated as including:

“1) a subjective or declared intent of the person remaining, either permanently or for an indefinite or unlimited length of time in the place the person contends to be 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 the same house, within the same curtilage or upon the same premises, and 4) the existence of another place of lodging by the person alleging “residence” or “domicile” in the household.” Id at 496-497. (citations omitted).

In Williams v State Farm Mutual Automobile Insurance Co., 202 Mich.App. 491, 494-495; 509 N.W.2d. 821 (1993), the Michigan Court of Appeals enumerated additional relevant factors to be examined in determining an individual’s domicile. Additional factors include: 1) the person’s mailing address; 2) whether the person keeps possessions at the insured’s home; 3) whether the person lists the insured’s address on documents such as a driver’s license; 4) whether the person maintains a bedroom at the insured’s home; and 5) whether the person is financially dependent upon the insured. In Williams, the plaintiff sought benefits from his parents’ No-Fault carrier as the result of a motor vehicle accident he was involved in after he had left his home in Nevada while he was moving back to his parent’s home in Michigan. Id at 492-493. The Michigan Court of Appeals affirmed the Trial Court’s Summary Disposition ruling that the plaintiff was domiciled with his parents at the time of the accident. Id at 493-495.

In the present case, a unique set of uncontested facts exist with regard to the “residence” of Josalyn Lawrence. Clearly, the custody arrangement set forth in the Judgment of Divorce is part of the unique set of uncontested facts, but it is not

determinative. It is uncontested that Josalyn Lawrence maintained a residence at her father's house. She kept her belongings there. It is undisputed that Edward Lawrence maintained a bedroom for his daughters to staying and further kept various toys and other belongings within the household, including bicycles, which his daughters used when they were at his residence. (Appellant's Appendix, pp. 75a, 76a). There is no evidence of any intent to remove Josalyn Lawrence from her father's residence or in any way modify the Judgment of Divorce leading up to or at the time of the motor vehicle collision which led to the injuries which eventually claimed Josalyn's life. There is no evidence indicating there was any consideration of modifying the Judgment of Divorce altering the joint legal custody, the visitation scheduling or the parenting time Mr. Lawrence enjoyed with his children. It is also uncontested that the Judgment of Divorce provided for the financial support of the children by Edward Lawrence. (Appellant's Appendix, p. 132a). As noted by the Trial Court, Edward Lawrence and his former spouse, Laura Rosinski, exhibited admirable behavior with regard to their minor children during the course of the divorce and the sharing of the child-rearing responsibilities. (Appellant's Appendix, pp. 123a, 124a). The parameters set forth with the Judgment of Divorce in this action provided the framework within which Josalyn was being raised. However, that framework does not, by itself, direct the analysis. The evidence of how Josalyn actually lived her life up to the time of her death is to be examined. The unique set of circumstances that comprised how Josalyn lived and where Josalyn lived reflects how she maintained a domicile in the homes of each of her parents.

The assertion by Grange that the Judgment of Divorce is preclusive on the issue

of domicile is misplaced. The preclusive effect of the Judgment of Divorce would bar re-litigating the issues addressed in the Judgment of Divorce, however the action brought by Farm Bureau seeking reimbursement of first party benefits paid to a minor decedent is not an issue that could have been litigated in the underlying divorce action. As this Court noted in Estes v Titus, 481 Mich. 573; 751 N.W.2d. 493 (2008), the doctrine of res judicata will bar a subsequent action when “1) the first action was decided on the merits, 2) the matter contested in the second action was or could have been resolved in the first, and 3) both actions involve the same parties or their privies. “ Id at 585, citing Dart v Dart, 460 Mich. 573, 586; 597 N.W.2d. 82 (1999).

The analysis in the present action focuses on an unique set of circumstances surrounding where and how the minor decedent had lived prior to the motor vehicle collision that ended up claiming her life. The Trial Court’s analysis, as well as the analysis of the Court of Appeals, properly focused on the evidence submitted and analyzed the uncontested facts in light of the articulation of the applicable statute and within the framework of the common law. The result is that Josalyn Lawrence was found to be maintaining two domiciles. This is the proper conclusion under the circumstances and the determination of a dual domicile is not precluded by the Judgment of Divorce setting forth the joint legal custody and physical custody parameters which were binding on the parents.

In Walbro Corporation v Amerisure Company, 133 F.3d 961 (1998), the Sixth Circuit Court of Appeals addressed a similar factual circumstance similar to the present case regarding the application of the Michigan No-Fault Act. While not having binding

affect, the analysis engaged in by the Sixth Circuit Court of Appeals provides insight into the application of the Michigan No-Fault Act, specifically MCL 500.3114(1), to the facts involving the present action. In Walbro, the Court recognized that the resolution of whether or not an injured child is covered by the insurance policy of his father, the policy of the step-father, or both of the policies, hinged upon the determination of where the son/step-son was domiciled at the time of the accident. The Court found that the parents had joint legal custody and the son would spend alternating weeks with his parents. The Court concluded that the son was domiciled in both “his mother’s home as well as his father’s home”. Id at 970. While concluding that the son was domiciled in both of his parents’ homes, the Court further concluded that the automobile insurance carriers for each of the parents shared equal priority under the Michigan No-Fault Act, MCL 500.3114. Id at 970.

The same rationale should apply in the present action. Josalyn had a “legal residence” with each parent, as mandated under the Child Custody Act, MCL 722.31(1), for the purposes of that section of the Child Custody Act. It is incongruent for a minor to be a “legal resident” of a parent’s home under one statute and not have the same legal status under the application of the Michigan No-Fault Act, where the evidence supports the conclusion. Furthermore, as this Court recognized in Workman, supra, under the Michigan No-Fault Act the word “residence” and “domicile” are synonymous. Workman, supra, at 495. In the present action, there is no evidence that Josalyn or her parents were in the process of causing her to relinquish either residence/domicile leading up to the time of the accident. In the absence of any contrary evidence, and further pursuant to the

rational and logical interpretation of the Child Custody Act and the Michigan No-Fault Act and the meshing of those two acts under this factual scenario, one must conclude that the minor, Josalyn, maintained a domicile at the home of each parent.

In the present action, the Trial Court relied, in part, on the unpublished decision of Fontana v Maryland Casualty Company/Zurich, Docket Number 264127, decided December 24, 2006 (Appellee's Appendix, p. 10b), where the Michigan Court of Appeals cited the Walbro Corporation, *supra*, Sixth Circuit Court of Appeals decision, in Foot Note 3, wherein it stated:

However, in order for a minor child to be domiciled with both divorced parents, the child must actually reside with both parents at the time of the accident.

In the present case, the evidence supports the dual domicile conclusion. Despite the absence of a reported decision in the State of Michigan (other than the present case) dealing with divorced parents and the issue of dual residency/domicile of minors, it is clear that the Michigan Court of Appeals has relied upon the Walbro rationale and has recognized that a minor may reside with both parents at the time of the accident, thereby establishing the domicile in two households. In the present action, the Trial Court also relied upon the Walbro rationale in reaching its finding that the decedent minor resided with both parents at the time of the accident, and therefore under MCL 500.3114(1), a "domicile" had been established and the Court ordered coverage to be provided under the Grange policy. (Appellant's Appendix, p. 124a).

In Cervantes v Farm Bureau General Insurance Company of Michigan, 478 Mich. 934; 733 N.W.2d. 392 (2007), this Court denied an application for leave to appeal the

October 12, 2006 decision of the Court of Appeals. In his dissent, Justice Markman examined the rationale of leaving intact a published decision of the Court of Appeals holding that a person who was unlawfully in the United States, and who is therefore subject to deportation at any time, may nevertheless be considered “domiciled” in Michigan. Id at 934. In the dissenting analysis, Justice Markman examined the terms “domicile” and “residence”. The dissent notes that this Court “routinely defined “residence” in terms of a person’s *permanent* residence.” Id at 395-396. The dissent further notes the decision in Gluc v Klein, *supra* stating:

Perhaps most significantly, in Gluc v Klein, 226 Mich. 175, 177; 197 N.W. 691 (1924), this Court noted that while “any place of abode or dwelling place,” however temporary it might have been, was said to constitute a residence, and a person’s “domicile” has been traditionally understood as “his *legal* residence or home in *contemplation of law*.” Id at 177-178, 197 N.W. 691 (emphasis supplied). Cervantes, *supra*, at 936.

Justice Markman then noted in his dissent in Cervantes, that “the Workman Test must be understood in the context of the longstanding rule defining a “domicile” as a person’s permanent and legal residence”. Id at 937. In the present case, the “legal residence” pursuant to the Child Custody Act, is with each of the parent’s homes. MCL 722.31(1). While acknowledging the application of this “legal residence” to be within the section of the Child Custody Act, one must still reach the same legal conclusion when interpreting the Michigan No-Fault Act, specifically §3114. Josalyn’s “domicile” was at her permanent and legal residence which was at each of her parents’ homes. This conclusion is not based on where Josalyn spent more time, had more toys or kept most of her clothes. Rather, it is clear that Josalyn and her parents all presumed and relied on the fact that she would return to each of the parents’ homes as they continued to enjoy joint

legal custody and shared physical custody. This is consistent with this Court's holding in Henry v Henry, 362 Mich. 85, 101-102; 106 N.W.2d. 570 (1960), wherein this Court stated:

Domicile [is] that place where a person has voluntarily fixed his abode not for any special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite unlimited length time.", quoting Williams v North Carolina, 325 US 226, 236; 65 SCt 1092; 89 Led 1577 (1945).

Maintaining a residence at her father's home was not Josalyn's "special or temporary" place of living but was rather done with the intent of making it one of her homes, on a permanent basis. The concept that one can only have one "domicile" cannot be forced on a situation such as that involving Josalyn, where a minor is subject to a shared custody decree and custody laws mandating where a "legal residence" is to be maintained. Under these circumstances, minor children should be found to have two domiciles, such as that rationalized by the Walbro Court. To force a single domicile concept upon this situation involving the interpretation of the Michigan No-Fault Act would serve no purpose or intent. Rather, such a conclusion would be contrary to the legislative intent to broadly construe the Michigan No-Fault Act. Putkamer v Transamerica Insurance Corporation of America, 454 Mich. 626, 631; 563 N.W.2d. 683 (1997).

The Michigan Court of Appeals, in the present action, properly concluded that Josalyn resided with each of her parents and, as such, the issue of domicile was properly determined as a question of law. (Appellant's Appendix, p. 136a).

The Grange Insurance Policy Conflicts With The No-Fault Act

Grange has argued that even though Josalyn Lawrence was domiciled in each of her parents' homes, she was not considered a "family member" under the terms and definitions of the policy and therefore not an insured under the policy. The Grange policy, Part B, defines an "insured" as follows:

1. You and any family member injured in an auto accident;
2. Anyone else injured in an auto accident;
 - a. While occupying your covered auto; or
 - b. If the accident involved any other auto;
 - (i) Which is operated by you or a family member; and
 - (ii) To which Part A of this policy applies.
 - c. While not occupying any auto if the accident involves your covered auto. (Appellant's Appendix, p. 53a).

The policy further defines "family member" wherein it states:

Means a person related to you by blood, marriage or adoption and whose principal residence is at the location shown on the declarations page. If a court had adjudicated that one parent is the custodial parent, that adjudication shall be conclusive with respect to the minor child's principle residence. (Appellant's Appendix, p. 45a).

Josalyn Lawrence fits within the Grange Policy definition of "family member" as she had a legal residence at her father's home. However, Grange, through its policy, has attempted to exclude Josalyn Lawrence as an insured claiming that the mother, Laura Rosinski, was the "custodial parent" and therefore the child's "principle residence" was with the mother, not the father. Grange has argued that since the "principal residence" was with Ms. Rosinski, Mr. Lawrence's daughter cannot be insured under the Grange policy. However, such an argument ignores the mandates of the No-Fault Act.

The Michigan No-Fault Act, specifically MCL 500.3114(1), does not use the

words “principle residence”, but rather mandates coverage for “a relative of either domiciled in the same household.” MCL 500.3114(1). The language of the Grange Policy provides for a narrower scope of coverage than that found in Section 3114 in that while a minor may have a legal residence at the home of a Grange Policy holder, the Grange Policy attempts to condition coverage on one having his or her “primary” legal residence at the policy holder’s home. A policy provision contradicting the Michigan No-Fault Act is unenforceable as a matter of law. Cruz, *supra* at 601.

As this Court has held:

Domicile is the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time. Hartzler, *supra* at 452.

This Court further held in *Hartzler* that:

Residence has a more restricted meaning and may be the place where he lives while engaging in work or duty which keeps him away from his domicile. In Michigan the terms are used as synonymous. Id., citing Gluc v Klein, 226 Mich. 175; 197 N.W. 691. (emphasis added).

The language in the Grange policy further restricts the meaning by utilizing the phrase “primary residence.” If this Court were to conclude that even though the words “domicile” and “residence” are synonymous, it is completely contrary to the Michigan No-Fault Act to permit the use of the phrase “primary residence” in place of the word “domicile” in a policy of insurance and claim that it means the same thing. Grange, through its policy of insurance, has attempted to contractually restrict its liability and in doing so violated the mandates of the Michigan No-Fault Act. Furthermore, the qualifier “primary” is ambiguous and would further lead to additional contests regarding how that

term is to be construed. Klapp v United Insurance Group Agency, Inc., 468 Mich. 459, 470; 663 N.W.2d. 447 (2003).

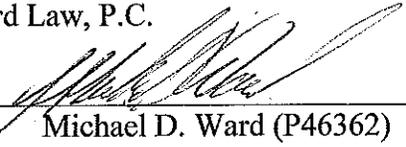
An analysis of the Grange policy leads one to conclude that the definition of a "Family Member" includes Josalyn Lawrence as she maintained two residences, and two domiciles. This definition in the policy, coupled with the language of the Michigan No-Fault Act, MCL 500.3114(1), establish that Josalyn Lawrence comes within the coverage of the Grange Insurance policy and she was therefore entitled to no-fault benefits under that policy. Grange cannot attempt to contract itself out of liability when Josalyn Lawrence maintained a legal residence at her father's house and was domiciled in her father's household. State Farm Auto Insurance Company v Burbank, 190 Mich.App. 93, 100; 475 N.W.2d. 399 (1991).

Relief Sought

It is requested that this Court conclude, as a matter of law, that the minor of divorced parents can maintain dual residency and dual domiciles for the purposes of the Michigan No-Fault Act, specifically MCL 500.3114(1). It is also requested that this Court affirm the Appellate Court decision finding that any language attempting to limit Grange's obligation under the No-Fault Act is invalid.

Dated: 12/18/12

Respectfully Submitted,
Ward Law, P.C.

By: 

Michael D. Ward (P46362)

BUSINESS ADDRESS:

120 Ionia Avenue, S.W., Suite 500
Grand Rapids, MI 49503
Telephone: (616) 551-0379