

STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

JANE M. BECKERING, P.J. AND DONALD S. OWENS AND AMY RONAYNE KRAUSE, J.J.
AFFIRMING MUSKEGON CIRCUIT COURT, TIMOTHY G. HICKS, J.

GRANGE INSURANCE COMPANY OF
MICHIGAN,

SUPREME COURT DOCKET
No. 145206

PLAINTIFF/COUNTER-
DEFENDANT-APPELLANT,

V

COURT OF APPEALS DOCKET
No. 303031

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,

MUSKEGON CIRCUIT COURT
FILE NO. 10-047159-CK

DEFENDANTS,

AND

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

DEFENDANT/COUNTER-PLAINTIFF –
APPELLEE.



PLAINTIFF-APPELLANT GRANGE INSURANCE'S BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED

ANN M. BYRNE (P49979)
BREMER & NELSON LLP
ATTORNEYS FOR PLAINTIFF-APPELLANT
1787 R W BERENDS DR SW
GRAND RAPIDS MI 49519-4993
(616) 538-7446

STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

JANE M. BECKERING, P.J. AND DONALD S. OWENS AND AMY RONAYNE KRAUSE, J.J.
AFFIRMING MUSKEGON CIRCUIT COURT, TIMOTHY G. HICKS, J.

GRANGE INSURANCE COMPANY OF
MICHIGAN,

SUPREME COURT DOCKET
No. 145206

PLAINTIFF/COUNTER-
DEFENDANT-APPELLANT,

V

COURT OF APPEALS DOCKET
No. 303031

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,

MUSKEGON CIRCUIT COURT
FILE No. 10-047159-CK

DEFENDANTS,

AND

FARM BUREAU GENERAL INSURANCE
COMPANY OF MICHIGAN,

DEFENDANT/COUNTER-PLAINTIFF –
APPELLEE.

PLAINTIFF-APPELLANT GRANGE INSURANCE'S BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED

ANN M. BYRNE (P49979)
BREMER & NELSON LLP
ATTORNEYS FOR PLAINTIFF-APPELLANT
1787 R W BERENDS DR SW
GRAND RAPIDS MI 49519-4993
(616) 538-7446

TABLE OF CONTENTS

Index of Authorities	iii
Jurisdictional Statement	xi
Questions Presented	xii
Introduction	1
Statement of Facts	2
Law and Argument	7
Standard of Review	9
Personal Protection Benefits Under Michigan No-Fault	11
1. The Court of Appeals and the Trial Court	
Erred as a Matter of Law in Deciding that	
a Minor Child of Divorced Parents	
Had Two Domiciles for the Purpose of	
Determining Coverage under MCL 500.3114(1)	12
Use of the Word “Domiciled” in MCL 500.3114(1)	13
What is Domicile?	15
The Domicile of Minors	16
Is Another Court Bound by the Family Court’s	
Custody Award When Determining the Domicile of a	
Minor Child of Divorced Parents?	23
The Court of Appeals Failed to Construe	
MCL 500.3114(1) as Written	25
2. Grange’s Policy Provisions	
Did Not Violate the No-Fault Act	31
Conclusion and Relief Requested	35

INDEX OF AUTHORITIES

CASES

<i>2000 Baum Family Trust v Babel</i> , 488 Mich 136; 793 NW2d 633 (2010)	26, 29, 34
<i>Ashe v Swenson</i> , 397 US 436, 443; 90 SCt 1189; 25 L Ed2d 469 (1970)	24
<i>Auto Club Ins Ass'n v State Farm Ins Cos</i> , 221 Mich App 154; 561 NW2d 445 (1997) overruled on other grounds by <i>CAM Const v Lake Edgewood</i> <i>Condominium Ass'n</i> , 465 Mich 549; 640 NW2d 256 (2002)	21
<i>Bierbusse v Farmers Ins Group</i> , 84 Mich App 34; 269 NW2d 297 (1978)	21
<i>Boardman v Boardman</i> , 135 Conn 124; 62 A2d 521 (1948)	18
<i>Brackett v Focus Hope, Inc</i> , 482 Mich 269; 753 NW2d 207 (2008)	27
<i>Braxton v Litchalk</i> , 55 Mich App 708; 223 NW2d 316 (1974)	24, 25
<i>Bronson Methodist Hospital v Forshee</i> , 198 Mich App 617; 499 NW2d 423, lv den 444 Mich 907 (1993), overruled on other grounds in <i>Spectrum Health Hospitals v</i> <i>Farm Bureau Mutual Insurance Co of Michigan</i> , 492 Mich 503; 821 NW2d 117 (2012)	10
<i>Brown v Brown</i> , 478 Mich 545; 739 NW2d 313 (2007)	9
<i>Catalanotto v Palazzolo</i> , 46 Misc 2d 381; 259 NY S2d 473 (1965)	27
<i>Coleman v Gurwin</i> , 443 Mich 59; 503 NW2d 435 (1993)	26

Cunningham v Cunningham,
166 Ohio St 203; 141 NE2d 172 (1957) 18

Dailey v Kloenhamer,
291 Mich App 660, 811 NW2d 501 (2011) 19

Dairyland Ins Co v Auto Owners Ins Co,
123 Mich App 675; 333 NW2d 322 (1983) 12, 20, 29, 30

Douglas v Allstate Ins Co,
492 Mich 241; 821 NW2d 472 (2012) 26

Durfee v Durfee,
293 Mass 472; 200 NE 395 (1936) 18

Eastman v University of Michigan,
30 F3d 670 (CA 6, 1994) 16

Fletcher v Fletcher,
447 Mich 871; 526 NW2d 889 (1994) 10

Fowler v Auto Club Ins Ass'n,
254 Mich App 362; 656 NW2d 856 (2002) 9, 10

Gluc v Klein,
226 Mich 175; 197 NW 691 (1924) 15

Goldstein v Progressive Cas Ins Co,
218 Mich App 105; 553 NW2d 353 (1996)
lv den 455 Mich 869 (1997) 9, 10, 29

Grange Ins Co of Michigan v Lawrence,
296 Mich App 319; 819 NW2d 580;
lv gtd ___ Mich ___; 820 NW2d 504 (2012) 6

Greene v AP Products, Ltd,
475 Mich 502; 717 NW2d 855 (2006) 9

Herring v Mosher,
144 Mich 152; 107 NW 917 (1906) 17, 19

In re Blackshear,
262 Mich App 101; 686 NW2d 280 (2004) 9

<i>In re Certified Question from US Court of Appeals for Sixth Circuit,</i> 468 Mich 109; 659 NW2d 597 (2003)	26
<i>In re High,</i> 2 Doug 515, 1847 WL 2636 (1847)	16-18
<i>In re Scheyer's Estate,</i> 336 Mich 645; 59 NW2d 33 (1953)	16
<i>In re Servaas,</i> 484 Mich 634; 774 NW2d 46 (2009)	15
<i>In re Ticknor's Estate,</i> 13 Mich 44; 1864 WL 2365 (1864)	26
<i>In re Vanderwarker's Estate,</i> 81 Minn 197; 83 NW 538 (1900)	18
<i>In re Volk,</i> 254 Mich 25; 235 NW 854 (1931), overruled on other grounds in <i>Hentz v Hentz</i> , 371 Mich 335; 123 NW2d 757 (1963)	18, 19
<i>Joseph v Auto Club Ins Ass'n,</i> 491 Mich 200; 815 NW2d 412 (2012)	11
<i>Koontz v Ameritech Services, Inc,</i> 466 Mich 304; 645 NW2d 34 (2002)	26
<i>MacDonald v State Farm Mutual Ins Co,</i> 419 Mich 146; 350 NW2d 233 (1984)	27
<i>MacIntyre v MacIntyre,</i> 472 Mich 882; 693 NW2d 822 (2005)	24
<i>Maiden v Rozwood,</i> 461 Mich 109; 597 NW2d 817 (1999)	9
<i>Monat v State Farm Ins Co,</i> 469 Mich 679; 677 NW2d 843 (2004)	24
<i>Morissette v United States,</i> 342 US 246; 72 SCt 240; 96 L Ed 288 (1952)	28

<i>Noble v Noble</i> , 299 Mich 565; 300 NW 885 (1941)	17
<i>Ortman v Miller</i> , 33 Mich App 451; 190 NW2d 242 (1971)	13, 14, 21, 30
<i>People v Barrera</i> , 451 Mich 261; 547 NW2d 280 (1996)	10
<i>People v Dowdy</i> , 489 Mich 373; 802 NW2d 239 (2011)	15
<i>People v Garcia</i> , 448 Mich 442; 531 NW2d 683 (1995)	24
<i>People v Goss</i> , 200 Mich App 9; 503 NW2d 682 (1993), affirmed 446 Mich. 587 (1994)	23
<i>People v Morey</i> , 461 Mich 325; 603 NW2d 250 (1999)	26
<i>Peterson v Fertel</i> , 283 Mich App 232; 770 NW2d 47 (2009)	23
<i>Rasheed v Chrysler Corp</i> , 445 Mich 109; 517 NW2d 19 (1994)	22
<i>Skinner v Square D Co</i> , 445 Mich 153; 516 NW2d 475 (1994)	10
<i>Smith v Auto Owners Ins Co</i> , 123 Mich App 585; 332 NW2d 620 (1983)	21
<i>Sun Valley Foods Co v Ward</i> , 460 Mich 230; 596 NW2d 119 (1999)	25, 26
<i>Turner v Auto Club Ins Ass'n</i> , 448 Mich 22; 528 NW2d 681 (1995)	26
<i>Vanguard Ins Co v Racine</i> , 224 Mich App 229; 568 NW2d 156 (1997)	16, 21, 34, 35

<i>Walbro Corp v Amerisure Cos</i> , 133 F3d 961 (CA 6, 1998)	20-22, 29
<i>Washington v Sinai Hospital of Greater Detroit</i> , 478 Mich 412; 733 NW2d 755 (2007)	23, 24
<i>Williams v State Farm Mut Auto Ins Co</i> , 202 Mich App 491; 509 NW2d 821 (1993)	9, 29
<i>Witt v American Family Mutual Insurance Co</i> , 219 Mich App 602; 557 NW2d 163 (1996), lv den 456 Mich 871 (1997)	10
<i>Workman v Detroit Auto Inter-Ins Exchange</i> , 404 Mich 477; 274 NW2d 373 (1979)	12-14, 20, 21, 25, 29, 30

CONSTITUTIONS

Const 1963, art 6, § 4	9
------------------------------	---

STATUTES

MCL 211.7dd(c)	24
MCL 500.3101 <i>et seq.</i>	21
MCL 500.3101(1)	21
MCL 500.3103(2)	18
MCL 500.3105	27
MCL 500.3107	24, 25
MCL 500.3107(1)(a)	10
MCL 500.3108	9
MCL 500.3114	12, 21, 25

MCL 500.3114(1)	27
MCL 500.3114(2)	26
MCL 500.3114(3)	18
MCL 500.3114(5)	19
MCL 500.3115	12, 20, 29, 30
MCL 500.3115(2)	26
MCL 500.3171 <i>et seq.</i>	18
MCL 552.16	16
MCL 552.17	10
MCL 600.1021	9, 10
MCL 600.212	15
MCL 700.5201	9, 10, 29
MCL 700.5203	6
MCL 710.60	9
MCL 722.1101 <i>et seq.</i>	17, 19
MCL 722.1106	9
MCL 722.1204	26
MCL 722.22	16-18
MCL 722.23(i)	16
MCL 722.25(1)	15
MCL 722.26(1)	26
MCL 722.26a(7)	18

MCL 722.26a(7)(a) 18, 19

MCL 722.26a(7)(b) 11

MCL 722.27(1)(c) 26

MCL 722.27a 27

MCL 722.31(4)(e) 24

MCL 722.4 9

MCL 722.52 24

MCL 8.3a 28

COURT RULES

MCR 2.116(C)(10) 17

MCR 7.215(J)(1) 13, 14, 21, 30

MCR 7.302(H)(3) 10

OTHER AUTHORITIES

14 ULA, Civil Procedural and Remedial Laws,
Uniform Motor Vehicle Accident
Reparations Act 15

21 CJS, Courts § 262 24

28 CJS, Domicile, § 23 23

46A CJS, Insurance, § 2162 26

50 CJS Judgments, § 689, p 146 23

8 Mich Civ Jur, Domicile, § 1 22

8 Mich Civ Jur, Domicile, § 21 10

8 Mich Civ Jur, Domicile, § 3 21

8 Mich Civ Jur, Domicile, § 5 25, 26

8 Mich Civ Jur, Domicile, § 6 26

8 Mich Civ Jur, Domicile, § 7 16, 21, 34, 35

*Anno: Separate domicil of married woman or divorced
woman as affecting citizenship, domicil, residence,
or inhabitancy of children, 53 ALR 1160 20-22, 29*

Black’s Law Dictionary, 5th ed 23, 24

Garner, Dictionary of Modern Legal Usage (1987) 9, 29

Mich Civ Jur, Minors, § 6 10

Webster’s New Collegiate Dictionary (1975) 12-14, 20, 21, 25, 29, 30

JURISDICTIONAL STATEMENT

This Court granted leave to appeal in a September 19, 2012 Order (Appellant's Appendix, p 138a) from an April 24, 2012 Court of Appeals per curiam opinion (Appellant's Appendix, pp 134a-137a) . Therefore, this Court has jurisdiction over this appeal under Const 1963, art 6, § 4, MCL 600.212, and MCR 7.302(H)(3).

QUESTIONS PRESENTED

1. **DID THE COURT OF APPEALS AND THE TRIAL COURT ERR AS A MATTER OF LAW IN DECIDING THAT THE MINOR CHILD OF DIVORCED PARENTS HAD TWO DOMICILES FOR THE PURPOSE OF DETERMINING COVERAGE UNDER MCL 500.3114(1) OF THE MICHIGAN NO-FAULT ACT?**

Plaintiff/Counter-Defendant-Appellant Grange Insurance Company of Michigan answers, "Yes."

Defendants Edward Lawrence, Laura Rosinski, and The Estate of Josalyn A. Lawrence are not expected to answer.

Defendant/Counter-Plaintiff-Appellee Farm Bureau Insurance Company of Michigan answers, "No."

The Court of Appeals answered, "No."

The trial court answered, "No."

2. **DID THE COURT OF APPEALS ERR AS A MATTER OF LAW IN HOLDING THAT GRANGE'S POLICY VIOLATED MCL 500.3114(1) BECAUSE THE POLICY INCLUDED A PROVISION THAT GAVE PRECLUSIVE EFFECT TO A COURT-ORDERED CUSTODY ARRANGEMENT, AND THE COURT OF APPEALS CONCLUDED THAT THE POLICY PROVISION IMPERMISSIBLY NARROWED COVERAGE UNDER MCL 500.3114(1)?**

Plaintiff/Counter-Defendant-Appellant Grange Insurance Company of Michigan answers, "Yes."

Defendants Edward Lawrence, Laura Rosinski, and The Estate of Josalyn A. Lawrence are not expected to answer.

Defendant/Counter-Plaintiff-Appellee Farm Bureau Insurance Company of Michigan answers, "No."

The Court of Appeals answered, "No."

The trial court answered, "No."

INTRODUCTION

This case involves the tragic death of an eight-year-old girl in an auto accident. It is not a contest between the parents about who loved the child more. Instead, it is about whether one insurance company should be required to reimburse a second insurance company for no-fault personal protection benefits paid by the second insurer.

This case poses questions concerning whether a minor child of divorced parents had a single domicile with her mother or dual domiciles with each parent for purposes of coverage under MCL 500.3114(1) of the Michigan no-fault act. The Judgment of Divorce in this case awarded legal custody to both parents, primary physical custody to the mother, and parenting time to the father. If the Judgment of Divorce controls, then it determines the domicile of the minor child and resolves whether there is coverage under MCL 500.3114(1). If the Judgment of Divorce is binding on Lawrence, Rosinski, and the trial court in this case, then the only remaining question is whether an insurance policy may give preclusive effect to a court-ordered custody arrangement for the purpose of determining coverage under MCL 500.3114(1). The answers to those questions will determine whether one insurer is obligated to reimburse the other insurer for the personal protection benefits paid in this case.

STATEMENT OF FACTS

Edward Lawrence and Laura Rosinski¹ were married in June 1997 and divorced on October 31, 2005 (Appellant's Appendix, pp 8a, 82a (line 15, p 6)²). The Judgment of Divorce provided that Lawrence and Rosinski shared legal custody of their two minor daughters, Katelyn Rose and Josalyn Ann (Appellant's Appendix, p 10a). Rosinski had primary physical custody of her daughters until they turned eighteen or until further order of the court (Appellant's Appendix, p 10a). Lawrence had liberal parenting time with his daughters that included every other weekend, Wednesday evenings, alternating holidays, and other mutually agreed upon times (Appellant's Appendix, pp 12a, 78a (lines 17-22, p 54), 86a (lines 17-18, p 24)).

On September 24, 2009, Rosinski was operating her Pontiac Grand Prix eastbound on Hall Road near its intersection with Hilton Park Road in Muskegon County's Egleston Township (Appellant's Appendix, p 63a). Josalyn was a passenger in the Pontiac when it was struck by a Dodge Durango operated by Kerri Lynn Smith, who failed to see and stop at the stop sign on southbound Hilton Park Road at its intersection with Hall Road (Appellant's Appendix, pp 62a-63a). Sadly, Josalyn was severely injured in the accident and died from her injuries the next day (Appellant's Appendix, pp 63a, 64a).³ After her death, Josalyn's parents were appointed Joint

¹ Laura Rosinski was known as Laura Lawrence during the marriage and resumed using her maiden name upon divorce (Appellant's Appendix, p 24a).

² When citing to a page of a deposition transcript that contains four pages of testimony on a single printed page, this brief will reference to a page and line number to assist the reader in locating the relevant part material. For example, page 82a of Appellant's Appendix contains four pages of the transcribed testimony and the relevant testimony will be found on line 15 of page 6.

³ Rosinski was also injured in the accident and was treated for her injuries at the hospital (Appellant's Appendix, pp 63a, 83a (lines 20-25, p 11, lines 1-7, p 12)).

Personal Representatives of her estate (Appellant's Appendix, pp 5a, 71a-72a (lines 13-25, p 28, lines 1-2, p 29)).

Josalyn's parents sought no-fault benefits on her behalf from their respective insurers (Appellant's Appendix, pp 71a-72a (lines 3-15, p 29, lines 1-25, p 30, lines 1-25, p 31, lines 1-3, p 32), 88a-90a (lines 14-25, p 33, lines 1-25, p 34, lines 1-12, p 35)). Lawrence was insured under an automobile insurance policy issued by Grange Insurance Company of Michigan that also included underinsured motorist coverage (Appellant's Appendix, pp 28a, 135a). Rosinski was insured under an automobile policy issued by Farm Bureau General Insurance Company of Michigan (Appellant's Appendix, pp 63a, 89a (lines 5-7, p 35), 135a), which paid no-fault personal protection benefits on behalf of Josalyn (Appellant's Appendix, pp 109a, 135a).

Grange denied Josalyn's parents' claim for underinsured motorist benefits because Josalyn was not a named insured under the Grange policy, did not have her principal residence at the address shown on the Grange Declarations Page, and was not an occupant of a Grange-insured vehicle at the time of the accident (Appellant's Appendix, pp 98a-103a, 135a). Farm Bureau asserted that Grange was in the same order of priority for paying Josalyn's personal protection no-fault benefits under MCL 500.3114(1) and sought recoupment from Grange for its share of those benefits under MCL 500.3115(2) (Appellant's Appendix, pp 108a-112a, 125a). Grange denied Farm Bureau's claim because Josalyn was not a named insured for purposes of no-fault personal protection benefits, was not domiciled with her father at the time of the accident as required by MCL 500.3114(1), and did not have her principal residence with her father at the time of the accident as required by the Grange policy (Appellant's Appendix, p 135a).

Grange filed its complaint for declaratory judgment on March 17, 2010 (Appellant's

Appendix, p 1a). Farm Bureau filed its counter-claim against Grange on April 29, 2010 (Appellant's Appendix, p 1a).

Rosinski has lived at 173 North Broton in Muskegon, which had been the marital home, since June 1997 (Appellant's Appendix, p 82a (line 10 on p 6)). Lawrence moved out of the marital home on August 15, 2005 and moved into his parents' home at 662 Strawberry Lane in Muskegon, where he stayed until about October 2008 (Appellant's Appendix, p 66a (lines 8-11, p 6, lines 19-24, p 7, lines 3-23, p 8)). Then Lawrence moved into an apartment at 516 Glen Oaks in Muskegon where he lived for about a year before moving back into his parents' home on Strawberry Lane (Appellant's Appendix, p 66a (lines 17-23, p 8)).

Lawrence had a separate bedroom in his two-bedroom apartment for his daughters that they used when they were staying with him (Appellant's Appendix, pp 67a (lines 1-2, p 11), 75a (lines 5-21, p 44)). Lawrence and Rosinski each testified that Josalyn and Katelyn generally spent every other weekend with their father, but always slept at their mother's house during the week when school was in session so they could catch the bus for school the next day at their maternal grandparent's house,⁴ and generally lived at their mother's house when school was not in session, unless they were with their father for a long weekend or on vacation (Appellant's Appendix, pp 69a-71a, 85a-86a). Lawrence saw his daughters frequently, meeting them at the bus stop during the winter months when their maternal grandparents were in Florida and taking them to his parents' house until Rosinski picked them up after she got out of work, or at school events, or at their mother's house (Appellant's Appendix, pp 85a-86a).

⁴ The maternal grandparents' house was next to Rosinski's house and about a quarter of a mile down the road (Appellant's Appendix, p 92a, (lines 3-11, p 47)).

Lawrence also testified that Josalyn and Katelyn kept enough clothing at his apartment so that they had what they needed when they stayed with him, that most of their clothes were kept at their mother's home, and that the clothes they kept at his apartment were "[n]ot even close" to what they had at their mother's home (Appellant's Appendix, pp 75a-76a (lines 23-25, p 44, lines 1-25, p 45)). Rosinski similarly testified that Josalyn and Katelyn kept most of their clothes at her home (Appellant's Appendix, p 88a (lines 10-14, p 31)). Josalyn also had video games, puzzles, dolls and other personal possessions at her mother's home and at her father's apartment (Appellant's Appendix, pp 76a-77a (lines 9-25, p 48, lines 1-6, p 49)), but all of her pets, including four dogs, two or three cats, fish, and a guinea pig were kept at Rosinski's home (Appellant's Appendix, pp 76a (lines 8-24, p 46, lines 1-8, p 47), 88a (lines 8-15, p 32)).

When asked where Josalyn's principal residence was, her parents each answered that it was 173 North Broton, which was the address of Rosinski's house (Appellant's Appendix, pp 77a-78a (lines 22-25, p 52, lines 1-8, p 53), 89a-90a (lines 20-25, p 37; lines 1-9, p 38)).

On December 16, 2010, Farm Bureau moved for summary disposition under MCR 2.116(C)(10) [no genuine issue of material fact], contending that Josalyn satisfied the definition of family member in the Grange policy, entitling her to personal protection benefits under that policy, that Grange was in equal priority with Farm Bureau for providing personal protection benefits under MCL 500.3114(1), and that Grange should be ordered to reimburse Farm Bureau under MCL 500.3115(2) for Grange's half of the personal protection benefits that Farm Bureau had paid (Appellant's Appendix, pp 3a, 108a-112a, 121a). On December 28, 2010, Grange also moved for summary disposition under MCR 2.116(C)(10), contending that Josalyn did not qualify for either underinsured motorist coverage or personal protection benefits under the terms of her father's policy

with Grange and that Grange had no obligation to pay anything under its policy (Appellant's Appendix, pp 3a, 98a-103a, 120a).

On January 18, 2011, the trial court heard oral arguments on the summary disposition motions and ruled from the bench, granting Farm Bureau summary disposition on the priority and recoupment issues under MCL 500.3114(1) and MCL 500.3115(2) (Appellant's Appendix, pp 4a, 121a-124a) and granting Grange summary disposition on the underinsured motorist issue (Appellant's Appendix, pp 124a-126a). Addressing the language of MCL 500.3114(1), the trial court noted that the statute used the word "domicile" and that the case law held that a person could have two domiciles (Appellant's Appendix, p 122a). Applying the factors outlined in the case law, the trial court concluded that Josalyn had two domiciles (Appellant's Appendix, pp 122a-124a).

As to the underinsured motorist issue, the trial court noted that this question was not governed by statute (Appellant's Appendix, p 124a), that Josalyn spent more time with her mother (Appellant's Appendix, p 125a), and that it was not bound by the judgment of divorce in deciding this case (Appellant's Appendix, p 125a). The trial court concluded that Josalyn had two domiciles, but that her primary residence was with her mother, which meant that Grange had no duty to pay underinsured motorist benefits under the terms of its insurance contract with Lawrence (Appellant's Appendix, pp 125a-126a). On February 23, 2011, the trial court entered its order (Appellant's Appendix, pp 129a-133a).

On March 15, 2011, Grange filed its claim of appeal in the Court of Appeals (Appellant's Appendix, p 5a). On April 24, 2012, the Court of Appeals affirmed the trial court's decision granting Farm Bureau summary disposition on the priority and recoupment issues in *Grange Ins Co of Michigan v Lawrence*, 296 Mich App 319; 819 NW2d 580 (2012) (Appellant's Appendix, pp

134a-137a).⁵ The Court of Appeals observed that nothing in MCL 500.3114(1) or the case law limited a minor child to a single domicile and concluded that the undisputed evidence showed that Josalyn resided with each of her parents (Appellant's Appendix, p 136a). Acknowledging that the Judgment of Divorce awarded Rosinski primary physical custody, the Court of Appeals concluded that the relevant inquiry under the no-fault act was where Josalyn resided and held that the trial court properly granted Farm Bureau summary disposition (Appellant's Appendix, p 136a). The Court of Appeals held that Grange's policy language conflicted with the no-fault act and improperly limited coverage by requiring that Josalyn's primary residence had to be with her father to get personal protection benefit coverage (Appellant's Appendix, pp 136a-137a).

Grange filed its application for leave to appeal with this Court on June 5, 2012 (Appellant's Appendix, p 7a). This Court granted leave on September 19, 2012 (Appellant's Appendix, pp 7a, 138a).

LAW AND ARGUMENT

This no-fault case raises two main issues. The first issue focuses on the meaning of the phrase "domiciled in the same household" that is found in MCL 500.3114(1). Grange submits that the word "domiciled" is used as a term of art and the phrase must be construed with its legal meaning in mind. Michigan law has long held and continues to hold that a person has a single domicile. There is nothing in the no-fault act that changes the general rule that a person, regardless of age, has a single domicile. Michigan law also recognizes that the word "domicile" and the word "residence" are legally synonymous, unless special circumstances exist. One of those special circumstances is

⁵ Lawrence and Rosinski did not cross-appeal the trial court's grant of summary disposition to Grange on the underinsured motorist claim (Appellant's Appendix, p 5a).

minority. Determining the domicile of a minor child of divorced parents requires applying the law of domicile, which provides that, upon entry of a judgment of divorce that includes a custody award or an order modifying custody, the minor child's domicile changes by operation of law to that of the parent awarded custody. The minor child's parents were parties to the divorce action, so the judgment of divorce and any orders modifying custody are binding on the minor child's parents. Furthermore, Michigan law grants exclusive jurisdiction to the family division of circuit court for divorce actions and actions modifying custody, so no other court has the power to decide those issues or review those decisions unless explicitly authorized to do so by a statute or court rule. As a result, a court, like the circuit court in this case, is bound by the family court's decision concerning the custody of a minor child and the legal implications that result from it. Therefore, the Court of Appeals and the trial court erred as a matter of law in determining that Josalyn had two domiciles and that she was entitled to coverage under MCL 500.3114(1) from her mother's insurer and from her father's insurer.

The second issue questions the correctness as a matter of law of the Court of Appeals's decision that Grange's policy violated the no-fault act because it used the term "primary residence" and because the policy impermissibly narrowed coverage to less than that required under MCL 500.3114(1) when the policy contained a provision that gave preclusive effect to a court-ordered custody arrangement. Grange contends that the term "primary residence" is a synonym for the word "domicile." In addition, Grange submits that MCL 500.3114(1) uses the phrase "domiciled in the same household," which must be construed by applying the legal definition of a domicile, and reasons that the domicile of a minor child of divorced parents is determined under the law of domicile, which holds that the domicile of a minor child of divorced parents is with the parent that

was awarded custody in the judgment of divorce or in an order modifying custody. Grange further reasons that its policy provision complies with the no-fault act generally and with MCL 500.3114(1) in particular because Josalyn's domicile was not with her father, who was Grange's insured, but was with her mother, who had primary physical custody and with whom Josalyn spent most of her time.

STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo on appeal. *Brown v Brown*, 478 Mich 545, 551; 739 NW2d 313 (2007). The trial court may consider the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006).

Statutory interpretation poses questions of law that are reviewed de novo on appeal. *2000 Baum Family Trust v Babel*, 488 Mich 136, 143; 793 NW2d 633 (2010).

Generally, the determination of a person's domicile poses a question of fact, but it may be decided as a matter of law by a trial court when the facts are not in dispute. *Fowler v Auto Club Ins Ass'n*, 254 Mich App 362, 364; 656 NW2d 856 (2002). See also, *Goldstein v Progressive Cas Ins Co*, 218 Mich App 105, 111-112; 553 NW2d 353 (1996), lv den 455 Mich 869 (1997) (noting that determination of domicile generally poses a fact question); *Williams v State Farm Mut Auto Ins Co*, 202 Mich App 491, 494; 509 NW2d 821 (1993) (stating that determination of domicile is a question of law for the trial court to decide when the facts are not in dispute). The application of the law to the facts is reviewed de novo on appeal. *In re Blackshear*, 262 Mich App 101, 107; 686 NW2d 280

(2004) (citing *People v Barrera*, 451 Mich 261, 269 n 7; 547 NW2d 280 (1996)). When a court incorrectly chooses, interprets, or applies the law, it commits legal error that the appellate court is bound to correct. *Fletcher v Fletcher*, 447 Mich 871, 881; 526 NW2d 889 (1994).

At least three Court of Appeals cases held that determination of a person's domicile for purposes of the no-fault act poses a question of fact to be resolved by the trial court and that an appellate court will not reverse that determination unless the evidence clearly preponderates in the other direction. *Witt v American Family Mutual Insurance Co*, 219 Mich App 602, 605; 557 NW2d 163 (1996), lv den 456 Mich 871 (1997) (applying same standard of review in reviewing trial court's denial of summary disposition to insured's insurer); *Goldstein*, 218 Mich App at 112, (applying same standard of review in reviewing trial court's grant of summary disposition to the plaintiff); *Bronson Methodist Hospital v Forshee*, 198 Mich App 617, 630-631; 499 NW2d 423, lv den 444 Mich 907; 512 NW2d 318 (1993), overruled on other grounds in *Spectrum Health Hospitals v Farm Bureau Mutual Insurance Co of Michigan*, 492 Mich 503, 521; 821 NW2d 117 (2012) (applying same standard of review in reviewing trial court's determination of domicile following a bench trial). Grange respectfully submits that the better view is that the determination of domicile, when the facts are not in dispute on summary disposition, poses a question of law and that questions of law are reviewed de novo on appeal. Grange reasons that a trial court cannot make findings of fact when deciding a motion for summary disposition, *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994), and applies the undisputed facts to the law to reach a conclusion. To the extent that the *Witt*, *Goldstein*, and *Bronson Hospital* cases set forth a different standard of review for a trial court's determination of domicile on summary disposition, this Court should clarify that the correct standard of review is set forth in the *Fowler*, 254 Mich App at 364.

PERSONAL PROTECTION BENEFITS UNDER MICHIGAN NO-FAULT

The no-fault act is a comprehensive statutory scheme regulating insurance for motor vehicles. MCL 500.3101 *et seq.* One of its main purposes is to provide an injured person with “assured, adequate, and prompt reparation for certain economic losses.” *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 218; 815 NW2d 412 (2012). To effectuate that purpose, every motor vehicle registered in Michigan is required to maintain insurance that provides at least the mandatory personal protection benefits, property protection benefits, and residual liability insurance. MCL 500.3101(1). For purposes of this case, personal protection benefits include medical and funeral expenses under MCL 500.3107(1)(a). The general rule for determining which insurer pays personal protection benefits is MCL 500.3114(1), which provides:

Except as provided in subsections (2), (3), and (5),⁶ 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).

In the event that more than one insurer is liable for providing personal protection benefits, MCL

⁶ Subsections 2, 3, and 5 do not apply to this case because Josalyn was a passenger in her mother's car. MCL 500.3114(2) provides for the priority of insurers when the accident involves a vehicle that is in the business of transporting passengers. MCL 500.3114(3) provides for the priority of insurers when the vehicle involved in the accident is owned by an employer. MCL 500.3114(5) provides for the priority of insurers when the accident involves a motor vehicle and a motorcycle.

500.3115(2) gives the general rule and provides that the paying insurer is entitled to partial recoupment from the insurer or insurers with the same priority as the paying insurer.

If there is no insurance available for personal protection benefits under MCL 500.3114(1), then the remainder of MCL 500.3114 and MCL 500.3115 set forth the priorities for insurers under other circumstances. If an injured person is unable to identify an applicable insurer under MCL 500.3114 or MCL 500.3115, then the injured person may file a claim with the Assigned Claims Facility, which assigns qualifying claims to an insurer that will pay personal protection benefits, unless a statutory exclusion applies. MCL 500.3171 *et seq.* In summary, a person injured in a qualifying motor vehicle accident in Michigan will get the benefit of personal protection benefits under no-fault, unless a statutory exclusion precludes coverage.

**1. THE COURT OF APPEALS AND THE TRIAL COURT
ERRED AS A MATTER OF LAW IN DECIDING THAT
THE MINOR CHILD OF DIVORCED PARENTS
HAD TWO DOMICILES FOR THE PURPOSE OF
DETERMINING COVERAGE UNDER MCL 500.3114(1)**

The Court of Appeals cited *Workman v Detroit Auto Inter-Ins Exchange*, 404 Mich 477, 495; 274 NW2d 373 (1979), for the general rule that domicile and residence are legally synonymous in Michigan (Appellant's Appendix, p 135a). Next, the Court of Appeals observed that there was nothing in *Workman*, 404 Mich at 495-496, or in *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 682; 333 NW2d 322 (1983), that limited a minor child of divorced parents to one domicile or that defines domicile as a principle residence (Appellant's Appendix, p 136a). Then the Court of Appeals concluded that the undisputed evidence showed that Josalyn had a residence in the homes of each of her parents and held that the trial court had properly granted Farm Bureau summary

disposition (Appellant's Appendix, p 136a). Grange submits that the Court of Appeals erred as a matter of law for two reasons.

First, the Court of Appeals failed to consider whether this case fell within the special circumstances or exceptions to the general rule that domicile and residence are usually legally synonymous in Michigan that this Court discussed in footnote 4 of *Workman*, 404 Mich at 495, n 4. One of the two cases cited in footnote 4 was *Ortman v Miller*, 33 Mich App 451, 458-460; 190 NW2d 242 (1971), which is a case that involved two minors who were injured in an auto accident that occurred before Michigan adopted the no-fault act. To resolve a question concerning whether the injured minors were residents of Michigan, the Court of Appeals in *Ortman* looked to the law of domicile for the answer as will be explained in more detail. This Court in *Workman*, 404 Mich at 495 n 4, considered minority to be a special circumstance where the general rule did not apply.

Second, the Court of Appeals failed to apply MCL 500.3114(1) as written because it unambiguously states that the relative must be "domiciled in the same household." The rules of statutory construction require an unambiguous statute to be enforced as written and that technical or legal terms must be given their technical or legal meanings.

USE OF THE WORD "DOMICILED" IN MCL 500.3114(1)

MCL 500.3114(1) requires that coverage for personal protection benefits extend to a relative "domiciled in the same household." In this case, Josalyn was Lawrence's daughter, but was she domiciled with him when her mother had primary physical custody under the judgment of divorce? To answer that question, the Court of Appeals first looked to *Workman*, 404 Mich at 495, which stated that the words "domicile" and "residence" were usually legally synonymous, and then considered the four factors outlined in *Workman* for determining domicile. The Court of Appeals

in this case failed to appreciate that the injured plaintiff in *Workman*, 404 Mich at 485, was a married woman with a child and presumably was not a minor. As will become apparent in the discussion below, the procedure for determining the domicile for an adult is necessarily very different from the procedure that should be used to determine the domicile of a minor child. In addition, the Court of Appeals overlooked footnote 4 in *Workman*, 404 Mich at 495, n 4, which cited two cases that this Court described as special circumstances. One of those cases was *Ortman*, 33 Mich App 451.

In *Ortman*, 33 Mich App at 452-454, the plaintiffs were minors who had not yet attained the age of twenty-one, which was the age of majority in effect at that time, and who were serving in the Air Force and assigned to an airbase in Michigan when they were injured in an auto accident involving an uninsured motorist. The plaintiffs in *Ortman*, 33 Mich App at 452-453, filed suit against the uninsured motorist and sought to recover from the motor vehicle accident claims fund for their injuries, but the trial court held that neither plaintiff could recover from the fund because the since-repealed statute required Michigan residence as a condition of recovery and neither plaintiff was a Michigan resident.

The Court of Appeals noted in *Ortman*, 33 Mich App at 458, that the words “citizenship,” “domicile,” and residence” are frequently used interchangeably and are often thought to be synonymous, but may have different meanings, depending on context. The panel looked to the law of domicile for minor children and noted that a statute provided for the emancipation of minors by operation of law when the minor was on active duty in the military. *Ortman*, 33 Mich App at 460. The Court of Appeals concluded that the plaintiffs’ minority did not bar them from establishing Michigan residency and reversed the trial court’s decision. *Ortman*, 33 Mich App at 460.

The lesson to be learned from the *Workman* and *Ortman* cases is that domicile and residence

may be synonymous in many, if not most, situations, but determining the domicile of a minor requires further inquiry into the law of domicile as it pertains to minor children.

WHAT IS DOMICILE?

In *In re Servaas*, 484 Mich 634, 679; 774 NW2d 46 (2009), Justice Markman, in his dissenting opinion, quoted from Black’s Law Dictionary, 5th ed, which defined domicile as:

[t]hat place where a man has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent, he has the intention of returning.

Michigan law has long distinguished between the words “domicile” and “residence,”⁷ defining domicile as “[a] place where a person lives or has his [or her] home, while any place of abode or dwelling place, however temporary it might have been, was said to constitute a residence. A person's domicile was his [or her] legal residence or home in contemplation of law.” *Gluc v Klein*, 226 Mich 175, 177-178; 197 NW 691 (1924) (internal quotation marks omitted). More recently, in *People v Dowdy*, 489 Mich 373, 385; 802 NW2d 239 (2011), this Court explained:

Michigan courts have defined “domicile” as that place where a person has voluntarily fixed his abode not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time. Similarly, a 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. . . . [I]t has long been the law of this state that every person must have a domicile somewhere. A person may have only one domicile, which continues until the person acquires a different one. Thus, the

⁷ On page 984, Webster’s New Collegiate Dictionary defines residence as meaning:

1 a: the act or fact of dwelling in a place for some time b: the act or fact of living or regularly staying at or in some place for the discharge of a duty or the enjoyment of a benefit

2 a: the place where one actually lives as distinguished from his domicile or a place of temporary sojourn.

essential characteristic of a “domicile” that separates it from a “residence” is that, under Michigan law, every person has a “domicile.” (Internal quotation marks, brackets, and footnotes omitted.)

While most adults have a single residence, there are a number who have more than one residence. Some have cottages in Michigan where they live during the summer months before returning to their houses in Michigan or in another state. Snowbirds is a term often used to describe those Michiganians who chose to escape the harsh Michigan winters at their southern residences and then return to their Michigan house for the remainder of the year. While a person may have more than one residence, each person has a single domicile. *Eastman v University of Michigan*, 30 F3d 670, 673 (6th Cir, 1994). See also, *In re Scheyer's Estate*, 336 Mich 645, 652; 59 NW2d 33 (1953) (holding that one cannot be permanently located in more than one place and that one cannot be domiciled in more than one place); *Vanguard Ins Co v Racine*, 224 Mich App 229, 233; 568 NW2d 156 (1997) (holding that a person generally only has one domicile or legal residence). Thus, the general rule is that an adult may have only one domicile, and that rule applies for purposes of MCL 500.3114(1) and the no-fault act because the no-fault act does not include a provision that changes the general rule that a person may have only one domicile.

THE DOMICILE OF MINORS

Generally speaking there are three types of domicile:

- domicile of origin or of nativity;
- domicile of choice; and
- domicile by operation of law. 8 Mich Civ Jur, Domicile, § 1.

A person acquires a domicile of origin by operation of law upon his or her birth. *In re High*, 2 Doug 515, 1847 WL 2636 at *6 (1847). A legitimate child of a living father acquires a domicile

of origin from the child's father and that domicile is the same as the child's father. *Herring v Mosher*, 144 Mich 152, 154; 107 NW 917 (1906). A domicile of origin is involuntary and is imputed to a person by a fiction of the law. 8 Mich Civ Jur, Domicile, § 3, citing *In re High*, 2 Doug 515, 1847 WL 2636 at *6.

A person acquires a domicile of choice by replacing a domicile of origin with another domicile after attaining the age of majority or by substituting one domicile for another. 8 Mich Civ Jur, Domicile, § 6. A change of a domicile occurs if the person intends to permanently move from one place to another and upon an actual move from one place to another. 8 Mich Civ Jur, Domicile, § 6. A person acquires a domicile of choice when the person establishes a dwelling place with the present, permanent intention of making that dwelling place his or her permanent home. 8 Mich Civ Jur, Domicile, § 7. The intent to acquire a domicile requires the capacity to choose, freedom of choice, and actual choice. 8 Michigan Civ Jur, Domicile, § 7. A minor or a person under a legal disability lacks the capacity to choose. 8 Michigan Civ Jur, Domicile, § 7.

A person who has no capacity to acquire a domicile of choice has a domicile by operation of law. 8 Mich Civ Jur, Domicile, § 5. A minor child is said not to be *sui juris* or legally capable of handling his or her affairs and is subject to a high degree of control and direction by parents or those *in loco parentis*. *Noble v Noble*, 299 Mich 565, 570; 300 NW 885 (1941); Mich Civ Jur, Minors, § 6.

During the child's minority, the child's domicile continues to be the same as the child's father, and if the father changes his domicile, then the minor child's domicile also changes. 8 Mich Civ Jur, Domicile, § 21. A minor child has no power to acquire another domicile or a domicile of choice until one of the following occurs, according to 8 Mich Civ Jur, Domicile, § 21:

- the child has attained the age of majority under *In re High*, 1847 WL 2636 at * 6, and under MCL 722.52, or
- the child has been emancipated under MCL 722.4, or
- the child's parents are divorced or separated and the child's domicile is changed by operation of law upon entry of the judgment of divorce or a court order modifying custody⁸ in accordance with *In re Volk*, 254 Mich 25, 32; 235 NW 854 (1931), overruled on other grounds in *Hentz v Hentz*, 371 Mich 335, 346; 123 NW2d 757 (1963),⁹ or
- the child's mother is forced to establish a domicile elsewhere because of the father's conduct under MCL 722.31(4)(e), or
- the child is adopted under MCL 710.60, or

⁸ See also, 28 CJS, Domicile, § 23 (explaining that the minor child of divorced parents has the domicile of the parent who has been awarded custody of the child and that a parent has no power to change the domicile of a minor child while subject to a valid decree awarding custody to the other parent).

⁹ For an interesting review of the common law as it pertains to the domicile of a minor child of divorced parents when the judgment of divorce awarded custody to the mother, see *In re Vanderwarker's Estate*, 81 Minn 197, 206-208; 83 NW 538 (1900). See also, *Cunningham v Cunningham*, 166 Ohio St 203; 141 NE2d 172 (1957) (discussing whether Ohio court was bound to give full faith and credit to California court's order modifying custody when wife moved to Ohio with her minor children after the divorce, establishing domicile in Ohio for herself and her minor children), *Boardman v Boardman*, 135 Conn 124; 62 A2d 521 (1948) (discussing effect of a judgment of separation that included a custody award from one state was entitled to full faith and credit in a second state when the wife moved from the first state to the second state before the judgment of separation entered and brought her minor child with her and the effect of the move on the child's domicile), *Durfee v Durfee*, 293 Mass 472; 200 NE 395 (1936) (discussing whether Massachusetts court had jurisdiction to enter a support order when judgment of divorce that included a custody award was entered in Rhode Island and mother moved with her minor children from Rhode Island to Massachusetts, establishing domicile for herself and her minor children in Massachusetts), Anno: *Separate domicil of married woman or divorced woman as affecting citizenship, domicil, residence, or inhabitancy of children*, 53 ALR 1160.

- the child is abandoned under MCL 722.1204, or
- the death of the child's father or the death of both parents under *Herring*, 144 Mich at 155-156, or under MCL 700.5201.

Because this case involves a minor child of divorced parents and because a custody order changes a minor's domicile under *In re Volk*, 254 Mich at 32, it is helpful to review the terms generally used in judgments of divorce or court orders awarding the custody of minor children. Neither MCL 552.16 nor MCL 722.22 include definitions for the terms commonly used to describe custody arrangements, such as legal custody, primary physical custody, joint physical custody, or sole physical custody. MCL 722.26a(7) defines joint custody as

an order of the court in which 1 or both of the following is specified:

- (a) That the child shall reside alternately 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.

In *Dailey v Kloenhamer*, 291 Mich App 660, 670; 811 NW2d 501 (2011), the Court of Appeals explained that joint legal custody generally means that both parents share decision-making authority for the important decisions affecting the welfare of the child, citing MCL 722.26a(7)(b), and that joint physical custody means that the child resides alternately for specific periods with each of the parents, citing MCL 722.26a(7)(a). Parenting time is not defined in MCL 722.22, but is addressed in MCL 722.27a. One may infer from reading MCL 722.27a that parenting time is the term now used for what used to be called visitation and is awarded to the non-custodial parent.

Given that the law of domicile provides that a minor child's domicile changes when a court awards custody, then the next inquiry is whether legal custody, as defined in MCL 722.26a(7)(b),

or physical custody, as defined in MCL 722.26a(7)(a), controls to determine the minor's domicile. Logically, physical custody should control, especially when domicile is all about where a person permanently resides. Thus, if the mother is the parent awarded sole physical custody, the minor child's domicile changes by operation of law from the father's domicile to that of the mother. When, as in this case, one parent is awarded primary physical custody and the other parent is awarded parenting time, the minor child's domicile changes by operation of law from the father's domicile to the mother's domicile if the mother is awarded primary physical custody. If the father is awarded primary physical custody, the minor child's domicile does not change.

What happens when the divorced parents are awarded joint legal and physical custody? Although a joint legal and physical custody award did not occur in this case, one court has addressed the issue. In *Walbro Corp v Amerisure Cos*, 133 F3d 961 (CA 6, 1998), the issue was which insurer was obligated to pay personal protection benefits for the injured minor child of divorced parents, who had joint legal and physical custody of the child.

On July 18, 1993, nine-year-old Dennis Allen Scharich was injured in an auto accident. *Walbro*, 133 F3d at 963. The mother and stepfather were insured under a policy issued by Amerisure while the father was insured under a policy issued by Titan. *Walbro*, 133 F3d at 963. To decide which insurer owed personal protection benefits, the appellate court in *Walbro*, 133 F3d at 966, first looked to MCL 500.3114(1) and concluded that the next step was to determine whether a minor child may have dual domiciles if the child actually resided with each parent in their separate homes.

A review of the *Workman* and *Dairyland* cases provided some insight to the court in *Walbro*, 133 F3d at 967-968, but the court noted that *Workman* and *Dairyland* involved young persons who had reached the age of majority and were not helpful in determining whether a minor child of

divorced parents could have dual domiciles. Similarly, the court in *Walbro*, 133 F3d at 968, noted that *Bierbusse v Farmers Ins Group*, 84 Mich App 34; 269 NW2d 297 (1978), *Smith v Auto Owners Ins Co*, 123 Mich App 585; 332 NW2d 620 (1983), and *Auto Club Ins Ass'n v State Farm Ins Cos*, 221 Mich App 154; 561 NW2d 445 (1997), overruled on other grounds by *CAM Const v Lake Edgewood Condominium Ass'n*, 465 Mich 549, 556; 640 NW2d 256 (2002), were not instructive because in those cases the parents of the injured minor child were in the midst of divorce proceedings and no judgment of divorce had yet entered to resolve the custody of the minor children; whereas, the parents in *Walbro* were already divorced and their judgment of divorce awarded them joint legal and physical custody.

Not finding any Michigan case on point, the court in *Walbro*, 133 F3d at 968-969, concluded that a minor child of divorced parents has dual domiciles when the parents share joint legal and physical custody, even though that conclusion appears to conflict with rule that a person may have only one domicile. The *Walbro* court, 133 F3d at 968, reasoned that this Court in *Workman*, 404 Mich at 495, broke with the traditional understanding of the word “domicile” when this Court said that “domicile” and “residence” were synonymous in Michigan.¹⁰

The court in *Walbro* reached the correct result, but for the wrong reason. The *Walbro* court arguably made the same mistake that the Court of Appeals and the trial court made in this case. All three courts apparently neglected to read footnote 4 in *Workman*, 404 Mich at 495, n 4, and did not

¹⁰ The court in *Walbro*, 133 F3d at 970, also expressed significant concern about the consequences it foresaw if a minor child were injured in an auto accident while in the custody of an uninsured parent and appears to have based its decision, at least in part, on that concern. The court in *Walbro* did not appear to have reviewed the no-fault act in detail and apparently failed to appreciate the extent to which the act provided benefits to those injured in auto accidents. MCL 500.3114; MCL 500.3115; MCL 500.3171 *et seq.*

consider the effect of *Ortman*, 33 Mich App at 451.¹¹ Had these courts done that, they would have recognized that the law of domicile teaches that the domicile of a minor child of divorced parents changes by operation of law when the judgment of divorce or an order modifying custody enters. Applying the law of domicile to the facts of the *Walbro* case results in the conclusion that a minor child may have two domiciles if the judgment of divorce awards the parents joint legal and physical custody because the child's domicile changed by operation of law from being with the father to being with both parents when the judgment of divorce entered.

The result in the *Walbro* case, however, is not controlling in this case for two reasons. First, the award of custody found in the judgment of divorce in this case differs from the award of custody found in the judgment of divorce in the *Walbro* case. Here, Rosinski and Lawrence shared joint legal custody, but Rosinski was granted primary physical custody. By operation of law, Josalyn's domicile became the same as her mother's as of the October 31, 2005 Judgment of Divorce. In *Walbro*, the parents shared joint legal and physical custody under the judgment of divorce, which by operation of law gave their child a domicile with each parent.

Second, the *Walbro* case, a Sixth Circuit Court of Appeals case interpreting a Michigan statute, is not controlling because it is not binding precedent under MCR 7.215(J)(1). A decision of a federal court interpreting a Michigan statute may be persuasive authority, but is not binding. *Rasheed v Chrysler Corp*, 445 Mich 109, 124, n 20; 517 NW2d 19 (1994).

Nevertheless, the *Walbro* Court came to the correct conclusion - - that the minor child had

¹¹ Only one published decision in a case involving an injured minor child of divorced parents makes the connection between an award of custody and domicile. That case is *Vanguard*, 224 Mich App at 233, in which the Court of Appeals noted the rule that a person has one domicile and stated that the minor child's domicile was with his mother, who had physical custody of the minor child, and with whom the minor child spent most of his time.

dual domiciles with his parents - - one that comports with the law of domicile and one that is legally logical and a limited exception to the general rule that a person may have only one domicile. This Court may want to recognize this limited exception if for no other reason than to clarify for the bench and bar that a minor child has a single domicile unless the judgment of divorce or an order modifying custody awards joint legal and physical custody to the parents.

**IS ANOTHER COURT BOUND BY THE FAMILY COURT'S
CUSTODY AWARD WHEN DETERMINING THE DOMICILE OF A
MINOR CHILD OF DIVORCED PARENTS?**

The trial court in this case opined that it was not bound by the custody award in the judgment of divorce (Appellant's Appendix, p 125a). The Court of Appeals opinion in this case does not address whether a court is bound by a judgment or order of another court that resolved an issue presently before the first court (Appellant's Appendix, pp 134a-137a).

A judgment is a court's final determination of the rights and obligations of the parties in a case. *Peterson v Fertel*, 283 Mich App 232, 237; 770 NW2d 47 (2009). Once a judgment of a court with jurisdiction enters, res judicata applies to preclude relitigation of any issue addressed in the judgment. *Washington v Sinai Hospital of Greater Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007).¹² Collateral estoppel is a branch of res judicata, *People v Goss*, 200 Mich App 9, 12, n 2;

¹² In *Washington*, 478 Mich at 418, this Court explained that it takes a broad view of res judicata and identified the elements of res judicata as (1) the prior action was decided on the merits; (2) both actions involve the same parties or their privies; and (3) the matter in the second case was or could have been resolved in the first case.

The first step in analyzing whether res judicata applies to this case involves identifying the parties to this case and their relationships to the claims made in the lawsuit. The insurers, Grange and Farm Bureau, are in privity of contract with their respective insureds, Lawrence and Rosinski, who were legally responsible for Josalyn's medical and funeral bills because of her minority. The insurer with priority under MCL 500.3114(1) would pay those bills on behalf of its insured and to

503 NW2d 682 (1993), affirmed 446 Mich. 587 (1994), and is the principle that holds that an issue of ultimate fact cannot be relitigated by the same parties when that ultimate fact was determined by a valid and full judgment in an earlier case.¹³ *People v Garcia*, 448 Mich 442, 496-497; 531 NW2d 683 (1995) (quoting from *Ashe v Swenson*, 397 US 436, 443; 90 SCt 1189; 25 L Ed2d 469 (1970)).

the extent permitted by MCL 500.3105, MCL 500.3107, and MCL 500.3108 and could seek recoupment from another insurer of equal priority under MCL 500.3115(2) as applicable. Lawrence and Rosinski are also named as defendants in this declaratory judgment action in their capacities a joint personal representatives of Josalyn's estate to address any sums to which her estate may be entitled to receive as part of the underinsured motorist claim. Lawrence and Rosinski did not appeal the trial court's decision that Grange had no duty to pay any underinsured motorist claim, so Josalyn's estate is not involved in this appeal, which means that Lawrence and Rosinski are not involved in their representative capacities in this appeal.

As to Josalyn's parents acting in their individual capacities, the judgment of divorce was required to include and did include a custody determination, MCL 722.26(1), which satisfies the first element identified in *Washington*, 478 Mich at 418. The parties in this case include Josalyn's parents, who were also parties to the divorce case, which satisfies the second element identified in *Washington*, 478 Mich at 418. In awarding custody of the minor children, the domicile of the minor child is also determined by operation of law, which satisfies the third element of res judicata identified in *Washington*, 478 Mich at 418.

¹³ In *Monat v State Farm Ins Co*, 469 Mich 679, 682-683; 677 NW2d 843 (2004), this Court identified the elements of collateral estoppel as (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel. As an initial matter, the identification of the parties' roles and capacities found in note 12 above applies with equal force to this analysis of collateral estoppel.

In this case, the custody of the minor children after the divorce was essential to and required by MCL 722.26(1) to be in the judgment of divorce. Custody of the minor children was either litigated in the divorce action or agreed upon by the parties with the judge accepting their agreement after independently deciding that the agreement was in the child's best interests, *MacIntyre v MacIntyre*, 472 Mich 882; 693 NW2d 822 (2005), which satisfies the first element identified in *Monat*, 469 Mich at 682. Josalyn's parents had a full and fair opportunity to litigate which of them should have custody of their minor children under MCL 722.25(1), which satisfies the second element identified in *Monat*, 469 Mich at 682-683. Lawrence and Rosinski were parties to the divorce action and both are bound by the family court's decision concerning custody of their minor children under *Monat*, 469 Mich at 683-685, so the third element is satisfied.

A judgment of a court with jurisdiction over a case is binding on all other courts regardless of their rank. *Braxton v Litchalk*, 55 Mich App 708, 713-714; 223 NW2d 316 (1974) (quoting from 50 CJS Judgments, § 689, p 146).¹⁴ See also, MCL 722.1106.¹⁵ Modification of a custody order contained in a judgment of divorce is expressly authorized by MCL 552.17 and MCL 722.27(1)(c). Therefore, a judgment of divorce that includes a custody award or an order modifying custody are necessary documents to consult and are binding upon a court making a determination about a minor's domicile in another case. Both the trial court and the Court of Appeals in this case were bound by the custody award contained in the judgment of divorce and committed legal error in ignoring the custody award and the domicile change that followed by operation of law. *Braxton*, 55 Mich App at 713-714.

**THE COURT OF APPEALS FAILED TO CONSTRUE
MCL 500.3114(1) AS WRITTEN**

While it may be understandable that the Court of Appeals did not, as its first order of business, consider the express language of MCL 500.3114 given this Court's pronouncement in *Workman*, 404 Mich at 495 that the words "domicile" and "residence" are legally synonymous in

¹⁴ The citation to 50 CJS, Judgments, § 689, p 146 appears to be incorrect; however, 21 CJS, Courts § 262 does state that the jurisdiction of a court does not extend to review the judgment of a court with coordinate or concurrent jurisdiction unless statute or a court rule expressly allow such review. Given that the family division of circuit court has exclusive jurisdiction to decide divorce cases and custody matters under MCL 600.1021, the circuit court lacked jurisdiction to modify the custody award in the judgment of divorce. In this case, the civil action sought a declaratory judgment, and the circuit court was not asked to modify the custody award. What was at issue was the effect of the custody award as to the minor child's domicile. It logically follows that the circuit court was bound by the judgment of the family division of that same circuit court and had no power to alter it.

¹⁵ MCL 722.1106 is part of the Uniform Child-Custody Jurisdiction and Enforcement Act, MCL 722.1101 *et seq.*, and neatly summarizes Michigan law concerning the effect of a child custody determination made by a court of this state.

Michigan, this Court has repeatedly stated that the primary goal of statutory interpretation is to effectuate the intent of the Legislature as evidenced by the words of the statute itself. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). See also, *Douglas v Allstate Ins Co*, 492 Mich 241, 256; 821 NW2d 472 (2012) (explaining the same); *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002) (explaining the same); *In re Ticknor's Estate*, 13 Mich 44; 1864 WL 2365, *5 (1864) (explaining the same).

This Court summarized the rules of statutory construction in *In re Certified Question from US Court of Appeals for Sixth Circuit*, 468 Mich 109, 113; 659 NW2d 597 (2003), as follows:

A fundamental principle of statutory construction is that “a clear and unambiguous statute leaves no room for judicial construction or interpretation.” *Coleman v Gurwin*, 443 Mich 59, 65; 503 NW2d 435 (1993). The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. *Sun Valley Foods Co v Ward*, 460 Mich 230; 596 NW2d 119 (1999). When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995).

* * *

Where the Legislature has not expressly defined the common terms used in a statute, this Court may turn to dictionary definitions “to aid our goal of construing those terms in accordance with their ordinary and generally accepted meanings.” *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999).

MCL 500.3114(1) uses the phrase “domiciled in the same household.” The word “domicile” is not defined in the no-fault act. See, MCL 500.3101 *et seq.* Webster’s New Collegiate Dictionary, p 339 (1975) defines domicile as meaning:

1. a dwelling place; place of residence; home
2. a person’s fixed, permanent, and principal home for legal purposes.

Bryan Garner's Dictionary of Modern Legal Usage, (1987), compares the word "domicile" with the word "residence" on page 196 as follows:

"Residence comprehends no more than a fixed abode where one actually lives for the time being. It is distinguished from domicile in that domicile is the place where a person intends eventually to return and remain." *Catalanotto v Palazzolo*, 46 Misc 2d 381; 259 NY S2d 473, 475 (1965).

These dictionary definitions indicate that the word "domicile" has acquired a specific meaning within the law. MCL 8.3a requires that technical words and phrases, such as those words that may have acquired a peculiar and appropriate meaning in the law, are to be construed and understood according to the appropriate meaning. See also, *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008) (explaining that when the Legislature uses a term of art, that term must be construed with its appropriate legal meaning). Therefore, the word "domiciled" in MCL 500.3114(1) must be construed and understood in accord with its legal definition.

This conclusion is reinforced when comparing the uniform act to MCL 500.3114(1). Michigan's no-fault act is patterned after the Uniform Motor Vehicle Accident Reparations Act, as this Court noted in *MacDonald v State Farm Mutual Ins Co*, 419 Mich 146, 151; 350 NW2d 233 (1984). Section 1(a)(3) of the uniform act defines a "basic reparation insured" as

- (i) a person identified by name as an insured in a contract of basic reparation insurance comply with this Act; and
- (ii) while residing in the same household with a named insured, the following persons not identified by name as an insured in any other contract of basic reparation insurance complying with this Act: a spouse or other relative of a named insured; and **a minor in the custody of a named insured** or a relative residing in the same household with a named insured. A person resides in the same household if he usually makes his home in the same family unit, even though he temporarily lives elsewhere.

14 ULA, Civil Procedural and Remedial Laws, Uniform Motor Vehicle Accident Reparations Act,

p 43 (emphasis added). A comparison of the Uniform Act with its Michigan counterpart is striking in that the Michigan version uses the word “domiciled” rather than a form of the word “residing” found in the model act. As a result, the Legislature’s choice of the word “domiciled” was an intentional choice designed to invoke the law of domicile as needed when determining which relatives qualified for benefits under MCL 500.3114(1). *Morissette v United States*, 342 US 246, 263; 72 SCt 240; 96 L Ed 288 (1952) (explaining a legislative decision to use a term of art and interpretation of that term of art).

The Commissioners’ Comments are also instructive and provide in pertinent parts:

The definition of “basic reparation insured” is similar to the term “insured” in standard tort liability insurance policies.

* * *

The parts of the definition which refer to a “relative” of a named insured are adapted from current automobile policies. The term includes relatives by marriage as well as blood relatives. No attempt, however, is made to spell out the myriad details of consanguinity, affinity, and adoption which qualify one as a relative. A non-related child residing in the same household as a named insured is a basic reparation insured if a named insured or a relative residing in the same household has “custody” over him. **The term “custody” is used here in a broader sense than it is often used in a domestic relations context, since its operative effect is limited to unrelated children.** It covers, for instance, a foster child only temporarily placed in the care of a foster parent who is a named insured or a relative residing in the same household as the named insured. However, **a relative or a minor in custody who is not named in the policy, but is named in another policy of basic reparation insurance, is not an additional basic reparation insured. This qualification serves to ameliorate the problems of identifying the policy which provides coverage where there is more than one basic reparations policy covering members of the same family unit.**

The last sentence, dealing with family members who temporarily live elsewhere, covers such situations as the college student residing away from home during the school year. 14 ULA, Civil Procedural and Remedial Laws, Uniform Motor Vehicle Accident Reparations Act, pp 45-46 (emphasis added).

The Commissioners' Comments clarify that the minor children of divorced parents were to be covered under the policy issued to the parent with custody of the minors. Such a rule furthers the law's purpose of providing reparations to those injured while avoiding litigation over which policy provides coverage. The Michigan version found in MCL 500.3114(1) makes that same point by using the word "domiciled."

As we have seen, this Court, in *Workman*, 404 Mich at 495, specifically considered MCL 500.3144(1)'s phrase "domiciled in the same household" and held that the terms "domicile" and "residence" are legally synonymous, except in special circumstances. For those individuals with only a single residence, this Court's observation in *Workman* is undoubtedly true, but determining the domicile of a minor child of divorced parents requires reference to the law of domicile, as explained above.¹⁶ The *Workman* case is not wrongly decided, but it would be extremely helpful for this Court to more explicitly address how to determine the domicile of a minor child of divorced parents for purposes of MCL 500.3114(1).

In *Walbro*, 133 F3d at 967, the Sixth Circuit looked at the factors for determining a person's domicile contained in *Workman*, 404 Mich at 495-497, *Dairyland*, 123 Mich App at 680, *Goldstein*, 218 Mich App at 111-112, and *Williams*, 202 Mich App at 493-495, noted that those four decisions addressed the domicile of a person who had attained the age of majority, and opined that the four cases did not shed much light on the domicile of a minor child of divorced parents. The Court in *Walbro* hit the nail on the head as to the unhelpfulness of the factors when addressing the domicile of young minor children, but even the *Walbro* court did not consider looking to the law of domicile

¹⁶ See also, 46A CJS, Insurance, § 2162 (explaining that named insured's relative will be covered by the named insured's policy if the relative resides or is domiciled with the named insured and if the relationship is one of blood, marriage, adoption, or guardianship).

for guidance on determining the domicile of a minor child and how the domicile of a minor child changed by operation of law through either a judgment of divorce that included a custody award or a court order modifying custody. This Court should take this opportunity to clarify that the factors in *Workman*, 404 Mich at 495-497, and *Dairyland*, 123 Mich App at 680, should not be used to determine the domicile of young minors and also acknowledge that the factors may be as helpful in determining the domicile of older minors as they are for determining the domicile of young adults.¹⁷

In conclusion, the Court of Appeals made many errors of law in its decision in this case. First, it relied solely on this Court's announcement in *Workman*, 404 Mich at 495, that domicile and residence are legally synonymous terms in Michigan. Second, the Court of Appeals ignored the special circumstances addressed in *Workman*, 404 Mich at 495, n 4. One of the two cases cited in footnote 4 was *Ortman*, 33 Mich App at 451, which was a case involving the residency of the minor plaintiffs that was resolved by the law of domicile because a statute provided that minors are emancipated by operation of law when they join the military. Third, the Court of Appeals concluded that Josalyn had dual domiciles with each of her parents, despite the long standing rule that a person has a single domicile. Fourth, the Court of Appeals failed to recognize that the domicile of a minor child changes by operation of law when either a judgment of divorce or a court order modifying custody entered. Fifth, the Court of Appeals failed to appreciate that the custody award in the

¹⁷ Using the *Workman* and *Dairyland* factors would allow an older minor to have some voice in the determination of the minor's domicile. The law has allowed minors to participate in decisions in other contexts. For example, MCL 722.23(i) allows a court to consider the reasonable preferences of the child when determining or modifying custody if the court considers the child to be of sufficient age to express a preference. Similarly, MCL 700.5203 allows a minor who is fourteen-years-old or older to object to the appointment of a guardian. If this Court determines that a bright line rule should distinguish between young minors and older minors, then perhaps the fourteen-year-old standard found in MCL 700.5203 is appropriate, if for no other reason than consistency.

judgment of divorce was binding on the parties and on the Court. This Court should correct those errors of law and to instruct the bench and bar concerning the procedure for determining the domicile of a minor child and concerning the determination of domicile for purposes of the no-fault act.

2. GRANGE’S POLICY PROVISIONS DID NOT VIOLATE THE NO-FAULT ACT

Assuming that this Court agrees that a person, including a minor child of divorced parents, has a single domicile, unless the parents of the minor child were awarded joint legal and physical custody, and that a minor child’s domicile changes by operation of law upon the entry of a judgment of divorce or an order modifying custody, then Grange’s policy provisions do not violate the no-fault act.

Grange’s policy defines an “insured” for purposes of personal protection benefits under Michigan no-fault as:

1. **You**¹⁸ or any **family member**¹⁹ injured in an **auto accident**,²⁰

¹⁸ The term “you” is used throughout the Grange policy and is defined as:

"You" and **"Your"** refer to the named insured, which includes all individuals named on the Declarations Page, and that person's spouse if a resident of the same household (Appellant’s Appendix, p 45a).

¹⁹ The term “family member” is used throughout the Grange policy and is defined as:

"Family member" 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 has adjudicated that one parent is the custodial parent, that adjudication shall be conclusive with respect to the minor child's principal residence (Appellant’s Appendix, p 45a).

²⁰ The term “auto accident” is specifically defined in the personal protection benefits section of the Grange policy as:

2. Anyone else injured in an **auto accident**:
 - a. While **occupying**²¹ **your covered auto**,²² or
 - b. If the accident involves any other **auto**:²³
 - (1) Which is operated by **you** or any **family member**; and
 - (2) 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).

Specifically at issue in this case is the Grange definition of "family member:"

"**Family member**" means a person related to you by blood, marriage or adoption and

"**Auto accident**" means a loss involving the ownership, operation, maintenance, or use of an auto as an auto regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle (Appellant's Appendix, p 53a).

²¹ The term "occupying" is used throughout the Grange policy and is defined as:

"**Occupying**" means in, upon, getting in, on, out or off (Appellant's Appendix, p 45a).

²² The term "your covered auto" is specifically defined in the personal protection benefits section of the Grange policy as:

"**Your covered auto**" means an "**auto**":

1. For which **you** are required to maintain security under the Michigan Insurance Code; and
2. To which the **bodily injury** coverage of this policy applies (Appellant's Appendix, p 53a).

²³ The term "auto" is specifically defined in the personal protection benefits section of the Grange policy as:

"**Auto**" means a motor vehicle or trailer operated or designed for use on public roads.

It does not include:

- a. A motorcycle or moped;
- b. A farm tractor or other implement of husbandry which is not subject to the registration requirements of the Michigan Vehicle Code; or
- c. A vehicle operated by muscular power or with fewer than three wheels (Appellant's Appendix, p 53a).

whose *principal residence* is at the location shown on the Declarations Page. *If a court has adjudicated that one parent is the custodial parent, that adjudication shall be conclusive with respect to the minor child's principal residence* (Appellant's Appendix, p 45a, bold italic emphasis added).

The Court of Appeals in this case held that Grange's policy contradicted MCL 500.3114(1) and was invalid because the policy restricted coverage to those relatives whose "principal residence" was with the insured when MCL 500.3114(1) did not impose such a restriction (Appellant's Appendix, pp 136a-137a).²⁴ Presumably, the Court of Appeals reasoned in this case that Josalyn resided with her father as well as with her mother, which was sufficient to afford coverage to her under MCL 500.3114(1) from both insurers. As an initial matter, the no-fault act, MCL 500.3101 *et seq.*, does not require that a person must be covered by more than one policy. Josalyn was covered under her mother's policy as evidenced by the fact that Farm Bureau paid personal protection benefits.

MCL 500.3114(1) provides that a personal protection insurance policy covers the person named in the policy, the person's spouse, and a relative of either domiciled in the same household. As explained above, the Legislature's choice of the word "domiciled" was a term of art that must be applied with its legal meaning in mind. As also explained above, a minor child's domicile of origin is that of the child's father and remains with the father until some intervening event, like the entry of a judgment of divorce or an order modifying a custody award, changes that minor child's domicile by operation of law. Josalyn resided at 173 North Broton before her parents divorced and continued to reside at that address after her parents divorced. Two things changed when her parents divorced. First, the judgment of divorce awarded Rosinski primary physical custody of Josalyn.

²⁴ The trial court did not address whether Grange's policy violated MCL 500.3114(1) (Appellant's Appendix, pp, 122a-124a, 130a-131a).

Second, Josalyn's domicile changed from that of her father to that of her mother. Both of those changes occurred even though Josalyn's address did not change.

Turning to consider the Court of Appeals's objection to Grange's use of the term "primary residence" in lieu of a variation of the statutory term "domiciled," the Court of Appeals in *Vanguard*, 224 Mich App at 233, used the term "primary residence" as a synonym for the term "domicile," but the panel was not specifically concerned with MCL 500.3114(1) because its focus was on a homeowner's policy and whether that policy provided coverage for the accident at issue in that case.

Although not directly on point for purposes of this case, it is interesting to note that the Legislature defined the term "principal residence," in pertinent part, for homestead tax exemption purposes in MCL 211.7dd(c) as:

the 1 place where an owner of the property has his or her true, fixed, and permanent home to which, whenever absent, he or she intends to return and that shall continue as a principal residence until another principal residence is established.

This definition bears remarkable similarity to the definitions of domicile quoted earlier on pages 15-16 of this brief.

Webster's New Collegiate Dictionary, p 913, defines the word "primary" as "of first rank, importance, or value: principal." The word "residence" is defined in Webster's New Collegiate Dictionary, p 984, as "the place where one actually lives as distinguished from his domicile or a place of temporary sojourn."²⁵ Based on these definitions, the term "primary residence" means the principal place where a person resides. It is a synonym for domicile. As applied to a minor child of divorced parents, it means the principal place where the minor child resides. Taken a step further and applying the definition to the facts of this case, Josalyn's principal residence was with her

²⁵ The full definition of the word "residence" may be found in footnote 7 on page 15.

mother at 173 North Broton, which was her mother's and her domicile and which was the place where she spent most of her time, as the trial court acknowledged (Appellant's Appendix, p 125a). See also, *Vanguard*, 224 Mich App at 233 (defining legal residence or domicile as the home of the parent with custody and where the minor spends most of his or her time).

In addition to using the term "primary residence," Grange's policy also provides that if a court has awarded custody of a minor child to a parent, then that decision is conclusive. In this case, the family division of the Muskegon Circuit Court awarded Rosinski primary physical custody of Josalyn and her sister. Lawrence was a party to the divorce action and it is binding on him. Grange's policy is a contract that is binding on Lawrence and that makes the custody decision binding on Grange and on Lawrence. Nothing in that language contradicts MCL 500.3114(1). In fact, Grange's use of the family court's decision to award primary physical custody to Rosinski comports with what actually happened when the judgment of divorce entered - Josalyn's domicile changed from her father's domicile to her mother's domicile. The Court of Appeals erred as a matter of law when it held that Grange's policy contradicted MCL 500.3114(1).

CONCLUSION AND RELIEF REQUESTED

The Court of Appeals erred as a matter of law in holding that Josalyn had domiciles with each of her parents. MCL 500.3114(1) uses the phrase "domiciled in the same household." The word "domicile" is a term of art and must be interpreted with its legal meaning in mind. It has long been the rule in Michigan that a person may have only one domicile, and that rule applies to adults as well as minor children, although a minor child may have dual domiciles if the minor's parents have joint legal and physical custody. While it is true that the words "domicile" and "residence" are legally synonymous in Michigan, except in special circumstances, minority is a special circumstance.

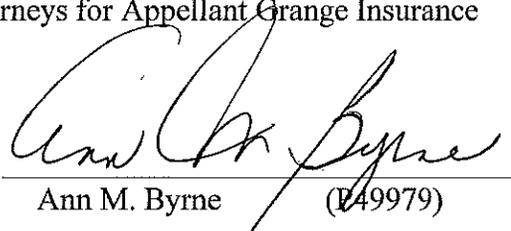
The law of domicile provides that a minor's domicile changes upon entry of a judgment of divorce or an order modifying a custody award from that of the minor's father to that of the parent awarded custody. The judgment of divorce is binding on Lawrence and Rosinski because they were parties to the case in which that judgment entered and are parties to this case. The judgment of divorce also bound the trial court and the Court of Appeals because it is a valid judgment entered by a court with jurisdiction. The conclusion is inescapable that Josalyn's domicile was with her mother, Laura Rosinski. The Court of Appeals holding to the contrary should be reversed.

Grange's insurance policy does not contradict MCL 500.3114(1); instead, the policy complies with MCL 500.3114(1) because policy uses the term "primary residence," which is a synonym for the word "domicile." In addition, Grange's policy relies on the judgment of divorce's custody award, which changed Josalyn's domicile by operation of law to that of her mother and which was binding on Lawrence and Rosinski, as conclusive proof of the minor child's primary residence. This Court should reverse the Court of Appeals's holding because it is contrary to the properly understood law.

Dated: November 13, 2012

BREMER & NELSON LLP
Attorneys for Appellant Grange Insurance

By:



Ann M. Byrne (149979)

Business Address and Telephone:
1787 R W Berends Drive SW
Grand Rapids, MI 49519-4993
(616) 538-7446