

Court Rules No-Fault Act Claimants Cannot be Domiciled in Two Residences Simultaneously

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The Michigan Supreme Court recently clarified two important issues pertaining to *domicile* in the state of Michigan.

The court on July 29 issued its ruling in *Grange Ins Co of Michigan v Lawrence*, 494 Mich 475 (2013), indicating that (1) a Michigan resident can only have one domicile for purposes of priority; and (2) for purposes of determining a child's domicile, when splitting time between divorced parents, the *child custody order* will dictate.

The *Lawrence* decision analyzed two different appeals filed by insurers, Grange and ACIA. Grange brought a declaratory judgment to determine its responsibility under a no-fault policy issued to Edward Lawrence after the insured's daughter died in an automobile accident while her mother, Laura Rosinski, was driving an automobile insured by Farm Bureau. In conjunction with *Lawrence*, ACIA sought appeal on a declaratory action against State Farm under very similar circumstances.

The End of Dual Domicile in Michigan

When determining priority for no-fault benefits between insurers for an accident involving a vehicle occupant the priority analysis begins with MCL 500.3114(1), which first looks to the policy on which the injured passenger is a named insured, then to the policy of the spouse of the injured passenger and finally to any policy for which a resident relative of the injured passenger is a named insured. If none of the options under 3114(1) are available, the priority analysis drops down to MCL 500.3114(4), which next looks to the insurer of the vehicle that the passenger occupied [not "was injured in"] before finally looking to the insurer of the driver who was operating the vehicle with the injured occupant.

In *Lawrence*, Grange insured Edward Lawrence who was divorced from the decedent's mother, Rosinski, who was an insured on a Farm Bureau policy. The two shared joint custody of the decedent with Rosinski maintaining primary physical custody; the child spent time living at each of her parents domicile on a regular basis.

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Farm Bureau successfully argued at the trial court and the Michigan Court of Appeals levels that Grange was an equal priority insurer under 3114(1) because the child was domiciled in both parents' homes, entitling Farm Bureau to recoupment for Grange's pro-rata share of the no-fault benefits paid. The appellate court relied on the broad language stated in *Workman v DAIE*, which stated that "the terms 'domicile' and 'residence' are 'legally synonymous' and nothing in MCL 500.3114(1) . . . limits a minor child of divorced parents to one domicile or defines domicile as a principle residence."

The Supreme Court disagreed with the lower court's willingness to analyze *domicile* and *residence* interchangeably, succinctly noting that:

[T]he common law has necessarily distinguished between the concepts of "domicile" and "residence."

The former, in its ordinary acceptance, was defined to be, 'A place where a person lives or has his home,' while '[a]ny place or abode or dwelling place,' however temporary it might have been, was said to constitute a residence. A person's domicile was his legal residence or home in contemplation of law.

Stated more succinctly, a person may have only one domicile, but more than one residence.

As the Michigan No-Fault Act Sec. 500.3114(1) specifically determines priority by one's *domicile* and not by one's *residence*, the Michigan Supreme Court unequivocally held that the same did not permit an interpretation allowing a claimant to be *domiciled* in two separate residences at the same time.

Supreme Court Rules MCL 500.3114 Priority - Domicile of Children in Joint-Custody Situations Determined by Child Custody Order

The Michigan Supreme Court carried over its determination that MCL 500.3114(1) intended that a claimant's *domicile* determine priority as opposed to a claimant's *residence* and, therefore, any determination of a child's domicile must be analyzed accordingly.

The Supreme Court noted the obvious difficulties that child domicile presented due to the limited legal capabilities of minors and looked to the Michigan Child Custody Act in conjunction with the common law definition of *domicile* in concluding that a *child custody order* is determinative of the child's domicile for purposes of the no-fault act.

In so reasoning, the court looked to the bedrock behind every custody determination under the Child Custody Act; that any such order be in the *best interests of the child*. Giving deference to the considerations weighted behind such custody orders and looking to the common law focus on location when considering domicile, the court held that parent awarded *physical custody* under the terms of a child custody order shall be the location of the child's *domicile* for no-fault purposes.

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In a footnote, the Supreme Court instructed that while Child Custody Orders may award *joint physical custody*, there is usually a parent that is awarded "primary" physical custody, and this parent will be considered to have *physical custody* for domicile determinations under the no-fault act. However, for those rare situations in which *joint physical custody* is awarded and a "primary" parent is not designated, then the court indicated that the child's domicile "alternates" and lies with the parent who had *physical custody* at the time of the incident as designated by the Child Custody Order. Therefore, where a custody order determines *domicile* by operation of law, the intent of the parents or children will not be considered.