

no-fault newslines

A ROAD MAP FOR MOTOR VEHICLE INSURERS AND OWNERS

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Supreme Court Holds A Child Of Divorced Parents Can Have Only One Domicile Under The No-Fault Act

By Mark C. Vanneste

Since minors are not typically named on an auto insurance policy, a minor-claimant is typically entitled to PIP benefits under a policy held by a relative domiciled in the same household; often a parent. The Supreme Court recently overturned two decisions that dealt with determining where a minor was domiciled when the minor's divorced parents lived in two separate households and were insured by different insurers.

In *ACIA v State Farm Mutual Automobile Ins Co et al*, ___ Mich ___ (2013), the Court overturned a previous decision where a minor's actual residence trumped a custody order. More specifically, the Court found that a minor-claimant's domicile was determined by a custody order entered 11 years before the date of loss, even though she was clearly living in a different household.

In *Grange Ins Co of Michigan v Farm Bureau General Ins Co of Michigan*, ___ Mich ___ (2013), the Court overturned a previous decision that found a minor to be domiciled with both of her divorced parents and, therefore, entitled to PIP benefits pro rata from the insurance policies of both parents. Instead, the Court ruled that a person, including minors, may only be domiciled in one household at a time.

In *Grange*, the lower court found that a minor-claimant may be domiciled in two households at the same time when the factors used to determine residency were equally weighted between two different households. These factors typically include the claimant's mailing address, where the claimant keeps possessions, the address on the claimant's driver's license, and the intent of the claimant.

In overturning this decision, the Supreme Court (relying on case law dating back to 1847) found that a person, from birth, has one and only one domicile at a time. A new domicile begins at the same time the old domicile ends. Therefore, a minor-claimant may only be domiciled in one household at a time.

The Court pointed out that the traditional factors used to determine where a person is domiciled are not helpful in determining the domicile of a minor. For example, a minor does not have the legal capacity to choose his or her domicile. Many minors do not receive mail or have a driver's license.

Instead of weighing the typical residency factors, a minor's domicile is the same domicile as that of his or her parent. When the minor's parents are divorced and have separate domiciles, the critical question becomes which parent the child is domiciled with. The Court found

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When a minor-claimant of divorced parents is claiming PIP benefits under the policy of the parent, the minor's domicile is determined by the custody order in the divorce judgment. A minor may not be domiciled in two households at once.

When the parents were granted joint physical custody, the parent who has more physical parenting time is determinative of domicile. If parenting time is completely even between the parents, the minor's domicile flips back and forth between whichever parent has physical custody on the date of loss.

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that domicile is established by the terms of the divorce judgment or custody order. In this regard, the Court stated that a “custody order is conclusive evidence of a minor’s domicile and the parent’s or child’s intentions are irrelevant.”

A custody order typically grants both physical and legal custody to one or both parents. Whichever parent has primary physical custody is determinative of where the child is domiciled. However, often, a custody order will grant *joint* physical custody to *both* parents and divide parenting time between them.

When both parents are granted joint physical custody, but one parent is granted more parenting time than the other, that parent’s domicile is the minor’s domicile. In situations where the custody order grants joint physical custody to both parents and both parents split the parenting time equally, the child’s domicile will be determined by whichever parent the minor is domiciled with on the date of loss.

In *Grange*, the Court found that the minor was not domiciled in two households. Instead, the minor was domiciled in her mother’s household because her mother was granted primary physical custody in the custody order.

In *ACIA*, despite evidence that the minor resided in Michigan with her mother, the Court found that the custody order controlled. The custody order, which was entered 11 years prior to the accident, indicated that the minor-claimant was domiciled in Tennessee with her father. Because the order was never modified, the minor-claimant was domiciled in Tennessee.

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