

STATE OF MICHIGAN  
COURT OF APPEALS

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C-SPINE ORTHOPEDICS, PLLC,

UNPUBLISHED  
September 21, 2023

Plaintiff-Appellee/Cross-Appellant,

v

No. 361867  
Wayne Circuit Court  
LC No. 20-006362-NF

PROGRESSIVE MARATHON INSURANCE  
COMPANY,

Defendant-Appellant/Cross-Appellee.

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Before: GADOLA, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Defendant Progressive Marathon Insurance Company (Progressive) appeals by leave granted<sup>1</sup> the trial court’s order denying its motion for summary disposition, which alleged that plaintiff, C-Spine Orthopedics, PLLC (C-Spine), was not the real party in interest under MCR 2.201(B) to prosecute its claims for recovery of no-fault personal protection insurance (PIP) benefits for treatment provided to C-Spine’s patient and Progressive’s insured, Clifford Wright, and sought summary disposition under MCR 2.116(C)(7) and (10). C-Spine has filed a cross-appeal, arguing that Progressive was precluded from challenging C-Spine’s ability to prosecute its asserted claims because Progressive did not move for dismissal on that basis under the correct subrule and its motion was untimely under MCR 2.116(D)(2). We affirm.

Clifford Wright suffered injuries when the vehicle in which he was a passenger was rear-ended while stopped at a traffic light. Wright treated with C-Spine for his injuries and executed an assignment of his right to collect PIP benefits for that treatment to C-Spine. C-Spine filed this action against Progressive to recover PIP benefits for the healthcare services, products, and accommodations that it had provided to Wright. C-Spine asserted that it was entitled to recover

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<sup>1</sup> *C-Spine Orthopedics, PLLC v Progressive Marathon Ins Co*, unpublished order of the Court of Appeals, entered November 10, 2022 (Docket No. 361867).

the outstanding balance under MCL 500.3157, and that Progressive also breached its contractual duties by failing to pay C-Spine the PIP benefits pursuant to the assignment executed by Wright.

During discovery, C-Spine produced bulk purchase agreements revealing that, before it filed its complaint, it had assigned its rights to Wright's invoices to three separate companies: (1) Apogee Capital Partners, LLC, or Apogee Capital Fund 5, LLC (Apogee); (2) MedFinance Servicing, LLC (MedFinance), and (3) EzMed, LLC (EzMed). Afterward, however, C-Spine entered into counter-assignments with MedFinance and EzMed, and amendments to the purchase agreements with Apogee, assigning rights back to C-Spine. Progressive moved for summary disposition, arguing that C-Spine was not the real party in interest when it filed its complaint, and asked the trial court to dismiss C-Spine's claims. The trial court ruled that dismissal was inappropriate because the counter-assignments and amendments to the purchase agreements conferred real-party-in-interest status to C-Spine. The court also reasoned that it would be a waste of judicial resources to dismiss the complaint merely because C-Spine may not have been the real party in interest at the time the complaint was filed because the statute of limitations was tolled when the original complaint was filed and C-Spine could simply refile its complaint.

## I. C-SPINE'S CROSS-APPEAL

We will first address C-Spine's arguments on cross-appeal, that Progressive should be precluded from challenging C-Spine's ability to prosecute its asserted claims because Progressive did not move for dismissal on that basis under the correct subrule and its motion was untimely under MCR 2.116(D)(2). We disagree.

Preliminarily, we could decline to consider these arguments because C-Spine did not raise them in the trial court. See *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, \_\_\_ Mich \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2023) (Docket No. 359090); slip op at 2-5 (under Michigan's "raise or waive" rule, if a litigant does not raise an issue in the trial court, the issue is waived and this Court has no obligation to consider it, even for plain error). Regardless, even if C-Spine's arguments are considered, we would reject them.

Progressive argued in its motion for summary disposition that C-Spine was not the real party in interest because it had assigned its rights to the underlying invoices to Apogee, MedFinance, and EzMed; therefore, it was entitled to summary disposition under MCR 2.116(C)(7) and (10). C-Spine argues that Progressive waived this defense because such a defense must be raised in a motion filed under MCR 2.116(C)(5) ("[t]he party asserting the claim lacks the legal capacity to sue"), and grounds for summary disposition under MCR 2.116(C)(5) "must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under [MCR 2.116] prior to the party's first responsive pleading." MCR 2.116(D)(2). However, "the real-party-in-interest defense is not the same as the legal-capacity-to-sue defense" and "[a] motion for summary disposition asserting the real-party-in-interest defense more properly fits within MCR 2.116(C)(8) or MCR 2.116(C)(10)." *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 411; 875 NW2d 242 (2015) (quotation marks and citation omitted). Grounds for summary disposition under MCR 2.116(C)(10) "may be raised at any time." MCR 2.116(D)(4). Thus, Progressive was permitted to assert the real-party-in-interest defense in a motion under MCR 2.116(C)(10), and could bring that motion at any time.

## II. PROGRESSIVE'S MOTION FOR SUMMARY DISPOSITION

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). As noted, a motion for summary disposition that asserts a real-party-in-interest defense may be brought under MCR 2.116(C)(10).<sup>2</sup> *Cannon Twp*, 311 Mich App at 411. Summary disposition is appropriate under MCR 2.116(C)(10) if, “[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.”

This case is controlled by this Court's recent decision in *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2022) (Docket Nos. 358170 & 358171), lv pending, which involves almost identical facts and the same parties. In that case, C-Spine had been assigned the rights to seek PIP benefits from Progressive for two of C-Spine's patients who had been injured in a motor vehicle accident. *Id.* at \_\_\_; slip op at 1. As in this case, C-Spine had also entered into assignment agreements with several factoring companies,<sup>3</sup> such as Apogee, MedFinance, and EzMed, for their patients' invoices. *Id.* at \_\_\_; slip op at 2. C-Spine and the factoring companies also entered into counter-assignments and amendments to the assignments after C-Spine filed its complaint. *Id.* Progressive moved for summary disposition, arguing that C-Spine lacked standing, the legal capacity to sue, or the legal right to bring claims for accounts that C-Spine had assigned to the factoring companies. *Id.* at \_\_\_; slip op at 2-3. The trial court granted Progressive's motion for summary disposition, holding that C-Spine lacked standing to pursue the claims when the complaints were filed. *Id.* at \_\_\_; slip op at 3.

This Court held that neither standing nor the real-party-in-interest rule were barriers to C-Spine's lawsuit. *Id.* at \_\_\_; slip op at 3. This Court explained that MCL 500.3112 grants medical providers the right to “assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person.” Therefore, this Court concluded that C-Spine had statutory standing to bring the claims. *Id.* This Court also held that MCR 2.201(B)(1) authorized C-Spine to bring a first-party no-fault claim “despite that the action was brought for the benefit of the factoring companies, or for the joint benefit of C-Spine and the factoring companies.” *Id.* This Court reasoned:

This Court has explained the principle underlying MCR 2.201(B)(1) as follows: “A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another.” *Hofmann v Auto Club Ins Ass 'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995). C-Spine is “vested with the right of action” against Progressive based on the assignments from the [insureds], and is “authorized by statute” to sue in its own name under the plain language of MCL 500.3112. That the “beneficial interest” resided with the

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<sup>2</sup> Although Progressive's motion for summary disposition cited both MCR 2.116(C)(7) and (10), it only challenges on appeal the trial court's denial of its motion under MCR 2.116(C)(10).

<sup>3</sup> This Court explained that factoring companies provide financing to businesses by purchasing outstanding invoices at a discounted rate. *C-Spine*, \_\_\_ Mich App at \_\_\_; slip op at 2. In exchange for the factoring companies' payments, C-Spine assigned them its right to bring first-party lawsuits seeking payment of the outstanding invoices.

factoring companies did not eliminate C-Spine as a real party in interest. [*C-Spine*, \_\_\_ Mich App at \_\_\_; slip op at 4.]

This Court also concluded that C-Spine's counter-assignments and purchase agreement amendments preserved C-Spine's original claims and eliminated any risk that Progressive would pay twice for the same benefit claims. *Id.* at \_\_\_; slip op at 5. This Court stated:

We acknowledge that without the counter-assignments, Progressive might have had a legitimate concern that it could face a second lawsuit brought by the factoring companies. But in this hypothetical situation another court rule would have come into play, permitting the case to go forward with the factoring companies joined as necessary party-plaintiffs. MCR 2.205(A) generally requires that "persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests." This has long been the rule in Michigan. See *DeLong v Marston*, 308 Mich 63, 68-69; 13 NW2d 209 (1944) ("If this suit was brought in the name of a party who is only nominally interested rather than being the real party in interest, it was in the power of the trial court to add or substitute as a party or parties plaintiff the actual parties, rather than to dismiss the bill.").

The necessary joinder rule and real-party-in-interest principles go hand-in-hand to prevent double recoveries and to obviate the risk of subsequent suits. Indeed, the real-party-in-interest requirement exists to "protect[] a defendant from multiple lawsuits for the same cause of action." *Kalamazoo v Richland Twp*, 221 Mich App 531, 534; 562 NW2d 237 (1997).

Statutes requiring every action to be prosecuted in the name of the real party in interest are enacted to protect defendant from being repeatedly harassed by a multiplicity of suits for the same cause of action, but, so long as the defendant's rights are fully protected in the litigation, he cannot complain . . .[S]o long as the final judgment, when and if obtained, is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded in bar to any further suit instituted by any other party, the defendant is not harmed. [*Kearns v Mich Iron & Coke Co*, 340 Mich 577, 581; 66 NW2d 230 (1954) (quotation marks and citations omitted).]

Even if C-Spine and the factoring companies had not signed the counter-assignments, joinder of the factoring companies would have resulted in a single judgment, eliminating any risk to Progress of a second lawsuit. [*C-Spine*, \_\_\_ Mich App at \_\_\_; slip op at 4.]

Applying this same reasoning to this case, C-Spine had standing to bring this lawsuit and was the real party in interest pursuant to MCL 500.3112 and MCR 2.202(B)(1). Moreover, in *C-Spine*, this Court did not distinguish between the effect of the amendments to Apogee's purchase agreements and the counter-assignments by MedFinance and EzMed with regard to C-Spine's

status as the real party in interest to bring its lawsuit. *C-Spine*, \_\_\_ Mich App at \_\_\_; slip op at 3-4. Accordingly, C-Spine's post-complaint agreements with Apogee, MedFinance, and EzMed did not eliminate C-Spine's statutory right to bring its claims, whether C-Spine filed the claims "for the benefit of the factoring companies or the joint benefit of C-Spine and the factoring companies." *C-Spine*, \_\_\_ Mich App at \_\_\_; slip op at 3. Thus, the trial court did not err by denying Progressive's motion for summary disposition.

We do not endorse the trial court's reasoning that dismissal would be inappropriate because it would be a waste of judicial resources to dismiss the complaint to the extent that C-Spine may not have been the real party in interest at the time the complaint was filed, given that the statute of limitations was tolled when the original complaint was filed and C-Spine could simply refile its complaint. As Progressive points out, tolling of the statute of limitations under MCL 600.5856 when the complaint was filed would not have tolled the one-year-back period under MCL 500.3145, which is a damages-limiting provision and not a statute of limitations. See *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 222; 815 NW2d 412 (2012). However, because dismissal of C-Spine's complaint was not required under this Court's decision in *C-Spine*, any error in the trial court's reasoning does not compel a different result. This Court will not reverse a trial court's decision when it reaches the right result, even if it was for the wrong reason. *Bailey v Antrim Co*, 341 Mich App 411, 420; 990 NW2d 372 (2022).

Affirmed.

/s/ Michael F. Gadola  
/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly