STATE OF MICHIGAN

COURT OF APPEALS

C-SPINE ORTHOPEDICS PLLC,

Plaintiff-Appellant,

and

CARMIYA ANDREWS,

Other-Party,

v

PROGRESSIVE MARATHON INSURANCE COMPANY and PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
December 14, 2023

No. 362290
Oakland Circuit
LC No. 2020-185418-NF

Before: O'BRIEN, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

In this third case involving plaintiff, C-Spine Orthopedics, PLLC, and defendants Progressive Marathon Insurance Company and Progressive Michigan Insurance Company,[1] we are once again asked to determine whether C-Spine has standing and is a real party in interest under MCR 2.201(B)(1) that may maintain a first-party no-fault action against Progressive. In the first case, *C-Spine Orthopedics, PLLC v Progressive Ins Co [C-Spine I]*, ___ Mich App ___, ___ NW2d ___ (2022) (Docket No 358170); slip op at 1-4, the Court held that C-Spine had standing and was a real-party-in-interest under MCR 2.201(B)(1) because it had a statutory right to bring a direct cause of action seeking first-party no-fault benefits under MCL 500.3112, because the action was brought for the benefit of the factoring companies, and because the factoring companies had counter-assigned its interests in the underlying PIP claims back to C-Spine. In *C-Spine*

[1] For ease of reference, defendants will collectively be referred to as "Progressive."

Orthopedics, PLLC v Progressive Marathon Ins Co [C-Spine II], unpublished per curiam opinion of the Court of Appeals, issued February 9, 2023 (Docket No. 358773); unpub op at 1-2, the Court held that C-Spine had standing and was a real-party-in-interest because the relevant facts were identical with those in *C-Spine I*. In this case, for the reasons stated in this opinion, we reverse the trial court's order granting Progressive summary disposition and remand for further proceedings.

I. BASIC FACTS

Underlying the current appeal, in February 2020, Carmiya Andrews was injured in a motor vehicle crash and received treatment from C-Spine. Following each appointment with C-Spine, Andrews assigned to C-Spine her right to collect personal protection insurance (PIP) benefits from Progressive, her auto insurer. On December 29, 2020, C-Spine filed this action against Progressive, seeking unpaid PIP benefits totaling $255,217.90 related to the medical treatment that it provided to Andrews for injuries she sustained in the crash.

During discovery, Progressive requested C-Spine to produce all documents that made it the real party in interest to sue Progressive. In response, C-Spine produced over 300 pages of documents, including Andrews's medical records and the various assignments of PIP benefits that Andrews signed following her medical appointments. Progressive also served C-Spine with requests to admit, including the following:

> **Request for Admission No. 3:** Please admit that the Plaintiff sold at least a portion of a receivable, relating to treatment provided to Carmiya Andrews, to another legal person or entity.
>
> **RESPONSE: Deny**
>
> **Request for Admission No. 4:** Please admit that the Plaintiff assigned the rights to at least a portion of a receivable, relating to treatment provided to Carmiya Andrews to another legal person or entity.
>
> **RESPONSE: Deny**

Further, C-Spine was asked to produce any documents regarding any transfer of interest between C-Spine and any potential factoring companies. C-Spine indicated that such documents were "N/A [not available]."

Eventually, however, C-Spine produced contractual agreements between it and various factoring companies, including EzMed Servicing, LLC and MedFinance Servicing, LLC. Among C-Spine's interests in other accounts receivable, the medical factoring agreements transferred C-Spine's interests in the accounts receivable for the payment of Andrews's PIP benefits. The agreement between C-Spine and EzMed was entered into as of December 10, 2020. That agreement provided that C-Spine "desires, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, to *sell, transfer, assign, and convey* [C-Spine's] *legal and equitable rights and interests* in each Medical Lean, Letter of Protection, and/or Accounts Receivable" identified in the schedule of accounts attached to the factoring agreement. (Emphasis).

It further provided that EzMed "wishes to purchase, and [C-Spine] wishes to sell, subject to the terms herein, [C-Spine's] Rights, Title, and Interests in certain Accounts Receivable on which [C-Spine] has not yet received payment from any other source." Notably, the agreement provided that EzMed "shall purchase from [C-Spine], and [C-Spine] shall sell, transfer, assign, and convey to [EzMed], without recourse, [C-Spine's] Rights, Title, and Interests in the Accounts Receivable identified on the Schedule of Accounts . . ., as well as [C-Spine's] Rights, Title, and Interests in each Medical Lien or Letter of Protection connected to any of the Accounts Receivable identified on the Schedule of Accounts . . . ." C-Spine warranted that the factoring agreement "constitutes a valid assignment to [EzMed] off all Rights, Title, and Interests of [C-Spine] in the Accounts Receivable and the proceeds thereof, and following such assignment, [EzMed] shall own all Rights, Title, and Interests to all Accounts Receivable, free and clear of any encumbrance, senior in priority to any other claim on the Accounts Receivable." The accompanying bill of sale provided that C-Spine granted, assigned, transferred, and conveyed to EzMed "all of [C-Spine's] rights, title, interest, *and claims*" in the accounts receivable. (Emphasis added). The factoring agreement between MedFinance and C-Spine was entered into on March 12, 2020. It included identical provisions.

After receiving the factoring agreements, Progressive moved for summary disposition under MCR 2.116(C)(5) and (C)(10). Progressive argued that the factoring agreements revealed that C-Spine had sold its right to pursue payment for Andrews's outstanding bills to multiple third-party factoring companies, and, as a result, C-Spine was not the real party in interest and lacked standing to pursue its claim against Progressive.

In response, C-Spine argued that it had only transferred to the factoring companies the beneficial interest in Andrews's accounts receivable. It claimed that it retained the chose in action, i.e., the ownership of the legal claims asserted in the action, and that, as a result, it was always a real party in interest and a proper plaintiff. In support of its position, it submitted affidavits purportedly from "the parties to the factoring agreements that have explained in sworn testimony that [C-Spine] was obligated to pursue collection of PIP benefits for the factoring companies' benefit."[2] Yet, the documentation did not support C-Spine's proclamations. The first affidavit, although notarized, was completely illegible. The second and third affidavits, which were signed

[2] C-Spine also sententiously claimed that Progressive was engaging in "pure gamesmanship intended to circumvent payment of compensable benefits on a technicality." This argument is curious given that, as noted above, C-Spine was less than forthright in its response to the requests to admit when it flatly denied transferring *any* interest in Andrews's accounts to any other legal entity, and in response to the request to produce when it stated that any documents evidencing a transfer were not available. Indeed, C-Spine's gamesmanship was identified in *C-Spine II*, unpub op at 1-2 (stating that C-Spine's lawyer's "actions smack of gamesmanship" given her misleading statements to the court regarding the parties whom she represented and her misleading statements regarding the dates upon which the counter-assignments were actually created as opposed to the dates that they purported to have been created). In light of such uncontroverted record facts, it is apparent that C-Spine's lawyers have engaged in extensive and troubling gamesmanship in each of these related cases.

and notarized, pertained to the treatment of "Albert Jackson," not Carmiya Andrews. The fourth and fifth affidavits were neither signed, nor notarized. Consequently, C-Spine produced no sworn affidavits from any parties involved in the factoring agreements indicating that C-Spine had only transferred the beneficial interest in Andrews's accounts receivable to the factoring companies. Moreover, inexplicably, C-Spine did not direct the trial court to any language in the subject factoring agreements[3] supporting its position that it had transferred only the beneficial interest to the factoring companies and that it had retained its chose in action obligating it to collect the PIP benefits for the factoring companies' benefit.

Moreover, inexplicably, C-Spine did not direct the trial court to any language in the actual factoring agreements, which had been tardily produced as a result of a protective order,[4] which supported its position that it transferred only the beneficial interest to the factoring companies, that it retained its chose in action, and that it was obligated to collect the PIP benefits for the factoring companies benefits.

At oral argument, Progressive pointed out the complete lack of documentary evidence supporting C-Spine's claim that it had only transferred the beneficial interest to the factoring companies. It also noted that it was only through a discovery "battle" that the factoring agreements had been provided. In response, C-Spine's lawyer complained that it was "a little bit misleading to say that there was any sort of discovery battle." He stated:

> I wanna make it very clear for this Court that my client doesn't actually possess any of these factoring documents. Every time they're requested, I have to go to the factoring company and request them.

C-Spine asserted that the real-party-in-interest statute allowed it to bring the action in its own name without joining the party for whose benefit the action was brought. He then claimed that Progressive would not have to pay twice "because the factoring companies don't sue." He then added that, the factoring companies did not "have the rights left anyway" because "[e]ven if these assignments did actually transfer a right to pursue completely away, the factoring companies no longer have any rights by operation of [MCL 500.]3145." Progressive's lawyer agreed that its interest was in not having to pay twice; however, he again noted that "according to the documents we received, [C-Spine] sold their rights" to the factoring companies."

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[3] The factoring agreements were tardily produced as a result of a protective order that was entered on January 5, 2022. Under the order, C-Spine's lawyers were ordered to provide to Progressive's lawyers the factoring agreements between it and MedFinance and Well States Healthcare within 10 days. The factoring agreements were not provided until March 14, 2022, which significantly exceeded the 10-day deadline set forth in the protective order.

[4] The record reflects that a protective order was entered on January 5, 2022, wherein C-Spine's lawyers were ordered to provide to Progressive's lawyers the factoring agreements between it and MedFinance and Well States Healthcare within 10 days. The factoring agreements were not provided until March 14, 2022, which significantly exceeded the 10-day deadline set forth in the protective order.

The trial court determined that, based upon the pleadings and the oral argument, C-Spine lacked standing because it had sold its rights to third-party factoring companies. As a result, the court granted Progressive's motion for summary disposition. This appeal follows.

II. EXPANSION OF THE RECORD ON APPEAL

We first address Progressive's argument that C-Spine is improperly attempting to expand the record on appeal. In its brief on appeal, C-Spine has produced additional documentation showing that the factoring companies have counter-assigned to C-Spine all rights and interests in Andrews's accounts receivable. C-Spine has not moved this Court for permission to expand the record on appeal. "This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal." *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002).

Under MCR 7.216(A)(4), this Court may, "at any time, in addition to its general powers, in its discretion, and on the terms it deems just . . . permit amendments, corrections, or additions to the transcript or record." We decline to exercise our discretion to permit expansion of the record in this case because doing so would not be just. First, we are aware that, during discovery, C-Spine flatly denied that it had assigned any interest in Andrews's benefits to any third party. Given its later disclosures during discovery, that representation has been proven to be false. Second, when ordered to produce within 10 days the factoring agreements under a protective order, C-Spine significantly exceeded that deadline by providing the documentation months later. Third, the counter-assignments were signed on December 1, 2020 and July 16, 2021. Thus, when C-Spine filed its March 25, 2022 response to Progressive's motion for summary disposition, C-Spine was well aware that it was in possession of all the legal and equitable rights and interests it had transferred to the factoring companies. Rather than so advising the trial court of that seemingly critical change in circumstance, C-Spine opted instead to maintain—without documentary support—its position that it had only transferred the beneficial interest in the accounts to the factoring companies. Fourth, we take judicial notice of the fact that this is not the first case between C-Spine and Progressive that has been marred by discovery irregularities. In *C-Spine I*, ___ Mich App at ___; slip op at 2, the majority charitably classified the lower court record as "messy," noting that C-Spine had only produced samples of factoring agreements rather than actual copies of the contracts purportedly transferring its interests in the relevant accounts receivable to the factoring companies. In *C-Spine II*, unpub op at 2, the majority noted that "[d]iscovery relating to the factoring company contracts was just as confusing in this case as it was in *C-Spine I*." In conclusion, it is apparent that discovery issues relating to the factoring agreements (and the counter-assignments) have existed in three cases between the same parties. Overall, we conclude that the record in this case demonstrates a cunning pattern of gamesmanship related to C-Spine's relationship with factoring companies. For the above reasons, therefore, it would not be just to relieve C-Spine's lawyer from the consequences for its ill-advised concealment of the pertinent documentation supporting its position.

Accordingly, no expansion of the record is permitted in this case, and we will not consider the counter-assignments.

III. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

C-Spine argues that the trial court erred by granting summary disposition. We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

B. SHIFTING BURDEN ON MOTIONS FOR SUMMARY DISPOSITION

A party moving for summary disposition under MCR 2.116(C)(10) must support the motion with enough detail that the opposing party is on notice of the need to respond. *Id.*; see also MCR 2.116(G)(4) (stating that the moving party must "specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact"). The motion must be supported "with affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted." *Barnard Mfg*, 285 Mich App at 369; MCR 2.116(G)(3)(b). In this case, Progressive supported its motion for summary disposition with documentary evidence showing that C-Spine had transferred its entire interest in Andrews's PIP claim to third-party factoring companies.

A properly supported motion for summary disposition shifts the burden to the opposing party to establish that a genuine issue of disputed fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). In doing so, the nonmoving party cannot rely on mere allegations or denials, but must instead, "by affidavits or as otherwise provided in [MCR 2.116], set forth specific facts showing that there is a genuine issue for trial." *Barnard Mfg*, 285 Mich App at 374 (quotation marks and citations omitted). C-Spine, as detailed above, argued that it only transferred the beneficial interest to the factoring companies. It provided no affidavits or documentary evidence in support of that position. Consequently, we conclude that it did not meet its burden to establish that a genuine issue of disputed fact existed as to whether or not it transferred its entire interest to the factoring companies. Because C-Spine did not meet its burden to show that there was a genuine issue of disputed fact, see *id.*, at 626, Progressive should have been entitled to summary disposition. See MCR 2.116(G)(4).[5]

C. BINDING AUTHORITY

We are, however, constrained to follow the decision in *C-Spine I*, which held that, regardless of whether C-Spine, under similar circumstances, transferred its entire interest to a factoring company, it was nevertheless a real party in interest with standing to pursue a first-party no-fault claim against Progressive. *C-Spine I*, ___ Mich App at ___; slip op at 2 (assuming that

[5] We note that the trial court was not under any obligation to independently scour the factoring agreements to ascertain whether some provision, unidentified by C-Spine, actually supported C-Spine's position that it only transferred the beneficial interest to the factoring companies, notwithstanding the repeated provisions indicating that it was transferring *all* of its rights, interests, and claims related to the accounts receivable, including Andrews's account receivable. See *Barnard Mfg*, 285 Mich App at 377.

the factoring agreements in that case (which were not actually produced) "assigned the entirety of C-Spine's interests in the [injured parties'] accounts receivable to one or more factoring companies."). The facts in this case and in *C-Spine I* are similar. In both cases, Progressive insured an individual whom was injured in a motor vehicle crash; that individual received medical treatments from C-Spine and assigned the right to collect PIP benefits to C-Spine; C-Spine, thereafter, sold its rights and interests to third-party factoring companies. See *C-Spine I*, ___ Mich App at ___; slip op at 2-3. There were also differences, but, given the assumptions of the *C-Spine I* majority, the differences are not dispositive. For example, in *C-Spine I*, only a sample of a factoring agreement was provided. *Id*. at ___; slip p at 2. In this case, actual copies of the factoring agreements were provided. And, as shown above, they unambiguously transferred all of C-Spine's legal and equitable rights, interests, and claims related to Andrews's accounts receivable. Additionally, unlike this case, the record in *C-Spine I*, included documentation showing that the factoring companies counter-assigned the pertinent interests back to C-Spine.

In *C-Spine I*, this Court held that standing was not a barrier to C-Spine's claim because MCL 500.3112 grants C-Spine standing 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.' " *C-Spine I*, ___ Mich App at ___; slip op at 3, quoting MCL 500.3112. Likewise, in this case, C-Spine has statutory standing to pursue a direct cause of action against Progressive. Next, the *C-Spine I* majority concluded:

> The real-party-in-interest rule does not preclude C-Spine's suit, either. The court rule anticipates that situations such as this one might arise. MCR 2.201(B)(1) provides:
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> > A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or *a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.* [Emphasis added.]
>
> C-Spine is authorized by statute to bring a first-party no-fault claim, and the plain language of the court rule permits it to do so 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.
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> 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 Cruzes, 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 factoring companies did not eliminate C-Spine as a real party in interest. [*C-Spine I*, ___ Mich App at ___; slip op at 3-4.]

Although *C-Spine I* considered, as part of its analysis, the existence of counter-assignments returning to C-Spine the rights and interests that C-Spine had sold to the factoring companies, the Court's dispositive ruling was that, regardless of the fact that C-Spine assigned away the entirety of its rights, it could maintain a cause of action against Progressive. In this case, the record reflects that C-Spine sold all of its legal and equitable interests, rights, and claims to Andrews's accounts receivable to factoring companies, but despite that total divestment, *C-Spine I* concludes that it is appropriate for C-Spine to remain a real party in interest.

Were we not bound by *C-Spine I*, we would follow the reasoning set forth in the dissent in *C-Spine I* and affirm the trial court's grant of summary disposition. The dissent explained:

> C-Spine argues that assignors and assignees are both real parties in interest after rights have been assigned; therefore, the factoring companies and C-Spine were parties in interest for purposes of the litigation. C-Spine, citing MCR 2.202(B), contends that "even if the trial court had been correct that [C-Spine] effectively transferred its rights to the benefits at issue, the appropriate remedy is merely to join any other entity that supposedly or allegedly has a duplicative interest in the cause of action." C-Spine maintains that Progressive's sole legitimate interest was avoidance of duplicate payment and that joinder would have protected that interest. C-Spine asserts that the reason for the "real party in interest" requirement is to prevent double recovery and multiple lawsuits. C-Spine claims that the only relief available to Progressive was joinder of the factoring companies, not dismissal of the lawsuit.
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> * * *
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> Subject to certain circumstances, "[a]n action must be prosecuted in the name of the real party in interest . . . ." MCR 2.201(B). In *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013), this Court observed as follows:
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> > A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another. This standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy. In addition, the doctrine protects a defendant from multiple lawsuits for the same cause of action. A defendant is not harmed provided the final judgment is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded to bar any further suit instituted by any other party. [Quotation marks and citations omitted.]
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> An assignee of a cause of action becomes the real party in interest in relation to that particular cause of action, considering that the assignment vests in the assignee all the rights earlier held by the assignor. *Kearns v Mich Iron & Coke Co*, 340 Mich 577, 582-584; 66 NW2d 230 (1954); *Cannon Twp* [*v Rockford Pub Schs*], 311 Mich App [403,] 412-413; [875 NW2d 242 (2015)]; *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004). This caselaw does not support C-Spine's contention that an assignor remains a real party in interest after an assignment.

Indeed, assignments divest assignors of any interest in the subject matter of the assignments. See *Ward v DAIIE*, 115 Mich App 30, 37; 320 NW2d 280 (1982); *Moore v Baugh*, 106 Mich App 815, 819; 308 NW2d 698 (1981); 6A CJS, Assignments, § 88. Critical to the proper analysis of these lawsuits, caselaw provides that standing is determined at the time a complaint is filed. *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 595 n 54; 957 NW2d 731 (2020); *Girard v Wagenmaker*, 437 Mich 231, 244; 470 NW2d 372 (1991). And C-Spine and my colleagues in the majority do not argue to the contrary.

In support of its position that assignors and assignees remain real parties in interest after an assignment, C-Spine cites and quotes MCL 600.2041, which provides, in part:

> Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, *a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action was brought* . . . . [Emphasis added.]

The emphasized language is the language that C-Spine emphasizes when making its argument. Similarly, MCR 2.201(B)(1) provides:

> (B) An action must be prosecuted in the name of the real party in interest, subject to the following provisions:
>
> (1) A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.

With respect to contracts made for the benefit of another, this is plainly a reference to contracts with third-party beneficiaries, allowing a contracting party who does not receive a direct benefit to file suit if the other contracting party's promise directed at the third-party beneficiary is not fulfilled. See *Capital Mtg Corp v Mich Basic Prop Ins Ass'n*, 78 Mich App 570, 575; 261 NW2d 5 (1977) ("[A] party in whose name a contract has been made for the benefit of another may sue in his own name without joining the other party"). The purchase agreements or assignments to the factoring companies in these cases did not involve third-party beneficiaries. Rather, the purchase agreements between C-Spine and the factoring companies simply entailed C-Spine's straightforward sale of its interests and rights in accounts receivable to the factoring companies in exchange for immediate payment on those accounts at a discounted rate.

With respect to a party being authorized by statute to sue for the benefit of another, MCL 600.2041; MCR 2.201(B)(1), it is true that under the current version of MCL 500.3112, C-Spine was statutorily authorized to directly file a cause of

action against Progressive. The majority concludes that C-Spine had statutory standing to bring the claims on the basis of MCL 500.3112. I initially note that even though the amendment of MCL 500.3112 adding a direct cause of action for healthcare providers was in effect, 2019 PA 21, C-Spine's 2020 complaints, as noted earlier, relied solely on Sandra's and Jose's assignments in pursuing the actions and in claiming that it was the real party in interest. "[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest rule, they are distinct concepts." *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355; 833 NW2d 384 (2013) (emphasis added). Statutory standing is a jurisdictional principle, while "the real-party-in-interest rule is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *Id*.

* * *

While C-Spine had a statutory legal cause of action under MCL 500.3112, it chose not to pursue that route, relying instead on the assignments from Sandra and Jose to state a legal cause of action. Regardless, in either case, C-Spine still needed to be the real party in interest when the suits were commenced, and the majority appears to accept that premise.

The majority addresses the real-party-in-interest provision in MCR 2.201(B)(1), holding as follows:

> C-Spine is authorized by statute to bring a first-party no-fault claim, and the plain language of the court rule permits it to do so 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.
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> [C-Spine] is "vested with the right of action" against Progressive based on the assignments from the Cruzes, 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 factoring companies did not eliminate C-Spine as a real party in interest.

In my view, this analysis ignores the fact that C-Spine assigned or sold all of its rights and interests in PIP benefits to the factoring companies before the suits were filed, thereby losing its status as a real party in interest under the authorities cited earlier. The factoring companies became the real parties in interest at that point, although there might have been legal impediments to them filing suit against Progressive.

I additionally believe that the majority's position reflects a misunderstanding of MCR 2.201(B)(1). The provision addresses circumstances in which (1) a fiduciary party sues for the benefit of a beneficiary, ward, or similarly-situated person, (2) a contracting party who executed an agreement sues for the benefit of a third-party beneficiary, or (3) a party authorized by statute sues for the benefit of another person. This third situation, which forms an integral part of the

> majority's holding through reliance on MCL 500.3112, plainly concerns statutory provisions that authorize a party to sue for the benefit of another person. Again, in its complaints, C-Spine did not allege a cause of action or standing under MCL 500.3112, but I shall proceed with my analysis assuming application of MCL 500.3112. As noted earlier, MCL 500.3112 states that "[a] health care provider . . . may make a claim and 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." This statute simply authorizes a healthcare provider such as C-Spine to sue for its own benefit or on its own behalf, i.e., to recover overdue PIP benefits for its products, services, or accommodations. At most, the statute can also be viewed as authorizing a healthcare provider to sue for the benefit of an injured person, considering that payment by an insurer to a healthcare provider can potentially preclude the healthcare provider from seeking payment from the injured person who enjoyed the benefit of healthcare services. But MCL 500.3112 in no form or manner authorizes a healthcare provider to sue for the benefit of factoring companies or others. Accordingly, MCR 2.201(B)(1) and MCL 600.2041 did not give C-Spine the status of a real party in interest at the time the suits were filed in light of the sales of all of C-Spine's interests and rights in the accounts receivable.

Although we believe that *C-Spine I* was wrongly decided for the reasons set forth in the *C-Spine I* dissent, we decline to call for a conflict panel under MCR 7.215(J)(2) because *C-Spine I*'s holding is currently on appeal to the Michigan Supreme Court. See *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, 994 NW2d 516 (2023).

Reversed and remanded. We do not retain jurisdiction. C-Spine may tax costs. MCR 7.219(A).

/s/ Colleen A. O'Brien
/s/ Michael J. Kelly