

STATE OF MICHIGAN
COURT OF APPEALS

ANTONIO HAMMOCK,

Plaintiff

and

C-SPINE ORTHOPEDICS, PLLC,

Intervening Plaintiff-Appellant,

v

FARM BUREAU MUTUAL INSURANCE
COMPANY OF MICHIGAN and FARM BUREAU
GENERAL INSURANCE COMPANY OF
MICHIGAN,

Defendants-Appellees.

UNPUBLISHED

February 1, 2024

No. 363495

Macomb Circuit Court

LC No. 2020-002102-NF

Before: CAVANAGH, P.J., and RICK and PATEL, JJ.

PER CURIAM.

Intervening plaintiff C-Spine Orthopedics, PLLC (C-Spine) appeals as of right, challenging an order granting summary disposition in favor of defendant Farm Bureau General Insurance Company of Michigan in this case arising under the no-fault act.¹ We reverse and remand.

Plaintiff, Antonio Hammock, filed a lawsuit for no-fault personal injury protection (PIP) insurance benefits against defendant following an alleged automobile accident. C-Spine intervened in the lawsuit as a purported assignee of Hammock’s rights. C-Spine had treated

¹ We refer to Farm Bureau General Insurance Company of Michigan as “defendant.” Farm Bureau Mutual Insurance Company of Michigan was never formally dismissed from the case, but was not a proper defendant according to defendant’s answer to C-Spine’s complaint, and did not participate in the case in any manner.

Hammock's injuries, leading to an outstanding balance of \$450,677.57. Although C-Spine had entered into numerous bulk purchase and sale agreements for accounts receivable with multiple different factoring companies—of which Hammock's were included—at a later date, C-Spine agreed to counter-assignments of Hammock's claims with the same factoring companies.

Subsequently, defendant filed a motion for summary disposition as to C-Spine's claims, arguing that the case should be dismissed under MCR 2.116(C)(8) and (C)(10) because C-Spine was not a real party in interest, and therefore, had no standing to bring the suit. The trial court agreed with defendant and granted the motion, dismissing the case. C-Spine now appeals as of right.

C-Spine argues that it remained a real party in interest regardless of whether it transferred away its rights to Hammock's claims and regardless of whether and when those rights were transferred back. We agree.

This Court reviews de novo rulings on motions for summary disposition. *Henry Ford Health Sys v Everest Nat'l Ins Co*, 326 Mich App 398, 402; 927 NW2d 717 (2018). "Where a motion for summary disposition is brought under both MCR 2.116(C)(8) and (C)(10), but the parties and the trial court relied on matters outside the pleadings . . . MCR 2.116(C)(10) is the appropriate basis for review." *Silberstein v Pro-Golf of America, Inc*, 278 Mich App 446, 457; 750 NW2d 615 (2008). Such is the case here. Defendant supported its motion for summary disposition with over 200 pages of exhibits which included several contracts and their exhibits, as well as an affidavit. Under MCR 2.116(C)(10), 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." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.* A court may consider the entire record, including "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties" when deciding a motion under MCR 2.116(C)(10). *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004).

C-Spine argues that summary disposition was not appropriate because: standing is not a barrier to its claim; litigation is not precluded by the real-party-in-interest rule; and joinder with the factoring companies would have been a more appropriate action than dismissal. Defendant contends, however, that summary disposition was appropriate because C-Spine is not a real party in interest in the case and, under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest[.]"

Contrary to defendant's argument, and according to recently decided caselaw, the real-party-in-interest rule does not preclude C-Spine's suit. *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, ___ Mich App ___; ___ NW2d ___ (2022) (Docket Nos. 358170 and 358171), oral

argument ordered on the application 994 NW2d 516 (2023).² The facts in *C-Spine* are nearly identical to this case. A couple were injured in a motor vehicle accident and were treated for their injuries by a medical provider, C-Spine, which is the same party in this case. *Id.* at ____; slip op at 1. The injured persons assigned their rights to seek PIP benefits from the insurance company to C-Spine, which brought suit. *Id.* at ____; slip op at 1. However, C-Spine, just like in this case, entered into assignment agreements with third-party factoring companies, and transferred away its rights to the injured parties' claims.³ *Id.* at ____; slip op at 2. At a later date, the factoring companies agreed to counter-assignment contracts with C-Spine, where they reassigned the rights to those claims back to C-Spine. *Id.* at ____; slip op at 2. This case follows this same fact pattern.

In *C-Spine*, this Court held that C-Spine was authorized by state statute to bring a first-party no-fault claim under MCL 500.3112,⁴ and based on the plain language of the court rule, MCR 2.201(B)(1), C-Spine was permitted to bring a cause of action even if it was for the benefit of the factoring companies or the joint benefit of C-Spine and the factoring companies. *Id.* at ____; slip op at 3. MCR 2.201(B)(1) reads:

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.]

This Court has held that a real party in interest is a party vested with the right of action on a claim, but that the beneficial interest may still be with another. *C-Spine*, __ Mich App __ at ____; slip op at 3-4. In *C-Spine*, this Court concluded that C-Spine was vested with a right of action against the insurance company based on the assignment from the injured parties, was authorized by statute to file suit under MCL 500.3112, and any beneficial interest that resided with third-party factoring companies did not negate C-Spine as a real party in interest. *Id.* at ____; slip op at 3-4.

This same analysis applies here. C-Spine is a real party in interest in the suit against defendant because it filed a claim under MCL 500.3101 *et seq.*, i.e., the no-fault act, which includes MCL 500.3112. C-Spine became vested with the right of action against defendant based on the assignment from Hammock and is authorized by MCL 500.3112 to sue in its own name. Even if the factoring companies had a beneficial interest in Hammock's claims, it would not eliminate C-Spine as a real party in interest. However, the beneficial interest was transferred back to C-Spine through the counter-assignments. If the counter-assignments from the factoring companies back

² "The filing of an application for leave to appeal to the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals." MCR 7.215(C)(2).

³ "Factoring companies provide financing to businesses with cash flow issues by purchasing outstanding invoices at a discounted rate." *C-Spine*, __ Mich App __; slip op at 2.

⁴ 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."

to C-Spine did not exist, the proper remedy, as held by this Court, would be joinder and not dismissal because joinder of the factoring companies would have resulted in a single judgment that eliminated any risk to the insurance company of a second lawsuit. *Id.* at ____; slip op at 4. Therefore, the trial court erred by granting defendant's motion for summary disposition because the real-party-in-interest rule did not preclude C-Spine from bringing this action.

Relatedly, the issue of whether a medical provider in C-Spine's position would have standing to bring suit against an insurer was addressed in *C-Spine*. This Court opined that C-Spine had statutory standing to file suit under MCL 500.3112, which grants it 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.' " *C-Spine*, __ Mich App __; slip op at 3, quoting MCL 500.3112. Therefore, because the statute gave C-Spine standing, its suit was not precluded. That finding can be applied in this case as well because C-Spine brought its action under the no-fault act, which includes MCL 500.3112, meaning that it did have standing to bring this cause of action.

In summary, C-Spine had standing and remained a real party in interest despite assignments to third parties. Therefore, the trial court erred in granting defendant's motion for summary disposition.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Michelle M. Rick
/s/ Sima G. Patel