

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN SPINE AND BRAIN SURGEONS,
PLLC,

Plaintiff-Appellant,

v

ESURANCE PROPERTY AND CASUALTY
INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
October 28, 2021

No. 355581
Oakland Circuit Court
LC No. 2020-179099-NF

Before: SHAPIRO, P.J., and BORRELLO and O’BRIEN, JJ.

PER CURIAM.

In this action involving plaintiff Michigan Spine and Brain Surgeons’ pursuit of no-fault benefits pursuant to an assignment by the recipient of medical services, Michigan Spine appeals as of right the Oakland Circuit Court’s order granting defendant Esurance Property and Casualty Insurance Company’s motion for summary disposition under MCR 2.116(C)(7) on the basis of res judicata. For the reasons set forth in this opinion, we reverse.

I. BACKGROUND

The underlying facts are not in dispute. Felicia Jones¹ was involved in a motor vehicle accident on October 18, 2017. On April 9, 2019, Jones initiated an action against Esurance in the Wayne Circuit Court, seeking to recover benefits under the no-fault act, MCL 500.3101 *et seq.*, pursuant to Jones’ insurance policy with Esurance.²

¹ Jones is not a party in this case.

² The Wayne Circuit Court action was separate from the Oakland Circuit Court action from which the instant appeal was taken, although Esurance was the named defendant in both actions and both

On October 31, 2019, one of Michigan Spine’s physicians performed a surgical operation on Jones’ neck that involved the C4 through C7 vertebrae.³ On December 17, 2019, Michigan Spine obtained an assignment from Jones with respect to the charges for medical services provided.

On January 17, 2020, while the action between Jones and Esurance was pending in the Wayne Circuit Court, Michigan Spine initiated the instant action in the Oakland Circuit Court. In its complaint, Michigan Spine alleged that Jones was insured a policy of insurance by Esurance and that Michigan Spine was Jones’ assignee with respect to medical expenses incurred as a result of injuries suffered in the October 18, 2017 motor vehicle accident. Michigan Spine claimed that it provided medical services to Jones in the amount of \$42,472.96, for which Esurance was liable.⁴ Additionally, Michigan Spine alleged that it was entitled to recover the amount of the provided medical services on the theory that it was a third-party beneficiary of the insurance contract between Jones and Esurance. Finally, Michigan Spine alleged that it had obtained a conditional payment of \$207.04 from the Medicare program for medical services arising from the motor vehicle accident and, specifically, that Esurance was liable as the primary non-group health plan for “double damages and full charges” pursuant to 42 USC 1395y, located within the Medicare Secondary Payor Act.

On June 15, 2020, the Wayne Circuit Court granted Esurance’s motion for summary disposition in that action based on Jones’ fraudulent misrepresentations with regard to her attendant care and household services claims. Jones had claimed that she received attendant care for eight hours per day, seven days per week since the October 18, 2017 accident and that she had also received household services every day since the accident. Jones also indicated that her daughter was her care provider. However, Jones admitted in her December 5, 2019 deposition that she had been incarcerated from January 8, 2018 to June 29, 2018. The Wayne Circuit Court reasoned that it would have been impossible for Jones to have received the claimed attendant care and household services during that period. The Wayne Circuit Court also noted that Jones’ daughter testified in her deposition that she did not provide attendant care and household services on a daily basis for the entire period following the accident.⁵ The Wayne Circuit Court dismissed Jones’ claims.

On September 1, 2020, Esurance moved for summary disposition in the instant Oakland Circuit Court action on the ground of res judicata pursuant to MCR 2.116(C)(7) and (10). Esurance argued that because of the fraud committed by Jones and the dismissal of her underlying Wayne

actions stem from the same underlying motor vehicle accident. However, as will become clear, the Wayne Circuit Court action is directly relevant to the issues presented in the instant appeal.

³ Jones had also had a surgical operation performed on her neck at some point in 2017, before the motor vehicle accident, by a different doctor. This surgery is not at issue in the instant appeal.

⁴ Michigan Spine subsequently claimed that the outstanding bill for Jones’ treatment was \$42,215.

⁵ To the extent it appears that the Wayne Circuit Court may have improperly weighed conflicting evidence with respect to the testimony of Jones and her daughter about the amount of services provided by Jones’ daughter, the propriety of the Wayne Circuit Court’s decision in that separate action is not before us in this appeal from the separate Oakland Circuit Court action.

Circuit Court lawsuit for no-fault benefits against Esurance, Michigan Spine's derivative claims were barred under the doctrine of res judicata.

Michigan Spine argued in response that res judicata did not apply to bar its claims. First, Michigan Spine contended that because it had obtained the December 2019 assignment from Jones, Jones "could not pursue and resolve a claim she no longer owned, and one that [Michigan Spine] owned and had already filed suit on." Michigan Spine further asserted that Jones did not include the amount for the medical services provided by Michigan Spine in her damages claim for case evaluation in the Wayne Circuit Court action. Next, Michigan Spine additionally argued that Jones lacked standing to pursue the claim under the Medicare Secondary Payor Act and that only Michigan Spine was authorized and required by statute and regulation to pursue this particular claim. Next, Michigan Spine argued that there was no privity between it and Jones because Jones had assigned the claim at issue to Michigan Spine and could not pursue the claims sought by Michigan Spine for the reasons previously stated. Michigan Spine next argued that fraudulent statements made during litigation did not authorize voiding an insurance policy under its fraud provision and therefore did not operate to bar claims made by the injured insured's medical service provider. Finally, Michigan Spine argued that it was an innocent third party with respect to Jones' fraud.

In its reply brief, Esurance argued that a medical provider relying on an assignment of rights to recover for services provided stands in the shoes of the assignor and that Michigan Spine was thus incorrect to assert that the assignment somehow insulated Michigan Spine from the res judicata effect of the Wayne Circuit Court order dismissing Jones' action. Esurance maintained that Michigan Spine could not recover more than Jones as the insured and that because Jones could not recover under the policy, neither could Michigan Spine. Finally, Esurance argued that there was no private cause of action against an insurer under the Medicare Secondary Payer Act when the insured was denied recovery on the basis that the insurance policy was rescinded because Esurance no longer had any contractual obligation to provide no-fault benefits to Jones, and thus was no longer the primary payer, once the policy was rescinded. Esurance maintained that the Medicare Secondary Payer Act was therefore inapplicable.

The Oakland Circuit Court dispensed with oral argument and granted Esurance's motion for summary disposition under MCR 2.116(C)(7). The trial court reasoned that Michigan Spine's action was barred by res judicata because the action filed by Jones against Esurance in the Wayne Circuit Court had been dismissed based on fraud committed by Jones, Michigan Spine and Jones were privies, Michigan Spine's claims were derivative of the Jones' claim, the Wayne Circuit Court action was decided on the merits, and the issue of liability was decided in the Wayne Circuit Court action. The Oakland Circuit Court further concluded that "Plaintiff is not an innocent third party, and that the Medicare Secondary Payor Act is not applicable to this matter for the reasons stated by the Defendant in the reply brief."

Michigan Spine now appeals as of right.

II. STANDARD OF REVIEW

This Court reviews de novo both the circuit court's ruling on a summary disposition motion and the question whether an action is barred by res judicata. *Adair v Michigan*, 470 Mich 105,

119; 680 NW2d 386 (2004). MCR 2.116(C)(7) provides a basis for summary disposition if “[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of . . . prior judgment” Summary disposition may be granted under MCR 2.116(C)(7) on the basis of res judicata. *King v Munro*, 329 Mich App 594, 598; 944 NW2d 198 (2019). “When it grants a motion under MCR 2.116(C)(7), a trial court should examine all documentary evidence submitted by the parties, accept all well-pleaded allegations as true, and construe all evidence and pleadings in the light most favorable to the nonmoving party.” *Id.* at 599 (quotation marks and citation omitted).

III. ANALYSIS

In *Adair*, 470 Mich at 121, our Supreme Court set forth the fundamental legal principles of the res judicata doctrine as follows:

The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. [Citation omitted.]

In this case, the general question is whether the Wayne Circuit Court’s decision granting summary disposition in favor of Esurance and dismissing Jones’ claims on the basis of her fraudulent misrepresentations operates to bar Michigan Spine’s claims here.

Relative to the three prongs necessary to invoke the doctrine of res judicata, here, there is no dispute in the present case that the Wayne Circuit action was decided on the merits, leaving the second and third res judicata requirements at issue.

With respect to the second requirement, it is undisputed that Michigan Spine was not a party to the Wayne Circuit action initiated by Jones and that the two lawsuits now at issue therefore did not involve the same parties. However, Michigan Spine’s claim against Esurance in this case is based on an assignment it obtained from Jones with respect to the medical services provided to Jones. Esurance was a party to both actions. Thus, the question becomes whether Michigan Spine was in privity with Jones for purposes of the second res judicata requirement.

“To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert. The outer limit of the doctrine traditionally requires both a ‘substantial identity of interests’ and a ‘working functional relationship’ in which the interests of the nonparty are presented and protected by the party in the litigation.” *Adair*, 470 Mich at 122 (citations omitted). A healthcare provider that has provided services to a person injured in a motor vehicle accident may obtain an assignment of the injured person’s right to past or presently due personal protection insurance (PIP) benefits and sue the person’s no-fault insurer based on the assignment in an effort to recover the provider’s reasonable charges. *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 217 & n 40; 895

NW2d 490 (2017).⁶ “An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses.” *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004); see also *Prof Rehab Assoc v State Farm Mut Auto Ins Co*, 228 Mich App 167, 177; 577 NW2d 909 (1998) (“[A]n assignee stands in the shoes of the assignor and acquires the same rights as the assignor possessed.”).

Nonetheless, Michigan Spine argues that after it obtained the assignment from Jones, it was no longer in privity with Jones with respect to those billed charges. Michigan Spine further argues that its claims against Esurance were therefore not barred under the doctrine of res judicata by the Wayne Circuit decision that occurred after Michigan Spine obtained the assignment from Jones. Michigan Spine maintains that Jones no longer had any right to recover for the charges billed by Michigan Spine after Jones assigned that right to Michigan Spine, such that the issue of Esurance’s liability for these charges could not have been resolved in the Wayne Circuit Court action between Jones and Esurance.

Michigan Spine’s argument thus also implicates the third res judicata requirement that “the matter in the second case was, or could have been, resolved in the first.” *Adair*, 470 Mich at 121. In addressing this res judicata requirement, our Supreme Court applies the “transactional test,” which bars “every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.” *Id.* at 123, 124. “The transactional test provides that the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief.” *Id.* at 124 (quotation marks and citation omitted). “Whether a factual grouping constitutes a transaction for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related *in time, space, origin or motivation*, [and] whether they form a convenient trial unit” *Id.* at 125 (quotation marks and citation omitted; ellipsis and alteration in original).

Thus, Michigan Spine essentially argues that the second and third res judicata requirements cannot be satisfied in this case because Michigan Spine obtained its assignment from Jones before

⁶ The Michigan Supreme Court held in *Covenant*, 500 Mich at 217-218, that a healthcare provider “has no statutory cause of action of its own to directly sue a no-fault insurer” to recover for services provided to a person injured in a motor vehicle accident. However, this Court recognized that the Michigan Legislature subsequently “‘overruled’ *Covenant* by amending MCL 500.3112 to give healthcare providers the right to file a direct claim or cause of action against an insurer for reimbursement for services provided to an injured person.” *Spectrum Health Hosps v Mich Assigned Claims Plan*, 330 Mich App 21, 28 n 4; 944 NW2d 412 (2019), citing 2019 PA 21, effective June 11, 2019. MCL 500.3112 now provides in relevant part that a “health care provider listed in section 3157 may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan under sections 3171 to 3175, to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person.”

the issuance of the Wayne Circuit Court ruling on which Esurance relies to assert the application of res judicata.⁷

Esurance argues that Michigan Spine cannot recover in this case because the Wayne Circuit Court decision had the effect of rendering Jones' underlying insurance policy void and the assignment does not give Michigan Spine a greater right to recover no-fault benefits than that possessed by Jones. Esurance contends that this Court's decision in *TBCI, PC v State Farm Mut Auto Ins Co*, 289 Mich App 39; 795 NW2d 229 (2010), controls the resolution of this case.

As in the present case, *TBCI*, 289 Mich App at 40, involved a situation where the injured insured had sued the defendant no-fault insurer in separate litigation. That separate litigation between the insured and insurer went to trial and resulted in a jury finding that the insured's claim for attendant-care benefits was fraudulent, which barred coverage for the insured's claim pursuant to the fraud exclusionary clause in the insurance policy. *Id.* A judgment of no cause of action was entered against the insured following the trial. *Id.* at 41. At the time of the trial, health-care provider TBCI had its own action in a different circuit court pending against the no-fault insurer to recover for therapeutic and rehabilitative services allegedly provided to the injured insured. *Id.* Following the judgment in the insured's action, the no-fault insurer moved for summary disposition against TBCI in the action initiated by TBCI, asserting the TBCI's action was barred on res judicata grounds by the judgment in the insured's action. *Id.* The no-fault insurer argued that TBCI could not succeed on its claim because there was no coverage under the policy once the jury in the insured's action determined that the insured had committed fraud. *Id.* TBCI argued in response that its independent action involved a claim for services that was not adjudicated in the other action. *Id.* The trial court granted the no-fault insurer's motion for summary disposition and dismissed TBCI's action. *Id.* at 42.

TBCI appealed, and this Court held that TBCI's action was barred by res judicata. *Id.* at 43-44. This Court concluded that TBCI's claims unquestionably could have been resolved in the other lawsuit. *Id.* This Court further concluded that TBCI was a privy of the insured, even though TBCI was not a party to the other lawsuit, because TBCI was "essentially standing in the shoes" of the insured by seeking coverage under the insured's policy. *Id.* at 44. In affirming the trial court's dismissal of TBCI's action on res judicata grounds, this Court reasoned that the other action resulted in a determination that "[the insured] and his privies were not entitled to coverage under the policy." *Id.*

This Court has more recently addressed similar factual circumstances in two unpublished decisions. In *Med Team, Inc v Auto-Owners Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued February 25, 2020 (Docket No. 345449), pp 1-2, after a separate lawsuit between the insured and the no-fault insurer was dismissed on summary disposition based on the insured's fraud that barred coverage under the terms of the policy, the no-fault insurer moved for

⁷ Michigan Spine's argument seems to focus more on an asserted lack of privity. However, Michigan Spine asserts that neither the second nor third res judicata requirements may be satisfied and a fair reading of the argument seems to imply that Michigan Spine challenges the satisfaction of both requirements for the same underlying reason, namely that Michigan Spine obtained the assignment from Jones before the Wayne Circuit Court judgment was entered.

summary disposition on res judicata grounds in the lawsuit that the medical provider had initiated pursuant to an assignment from the insured. The no-fault insurer argued that the medical provider's claim for reimbursement depended solely on the insured's underlying claim against the no-fault insurer and that the medical provider thus could not recover because the circuit court in the other action had determined that the insured was not entitled to PIP benefits under the insurance policy. *Id.* at 2. The medical provider opposed the motion by essentially attacking the propriety of the circuit court's order in the insured's separate lawsuit and by arguing that the no-fault insurer and the insured had agreed in that separate action that the medical provider's bills would be excluded from that lawsuit. *Id.* at 3. The trial court denied the no-fault insurer's motion for summary disposition, and the matter was appealed to this Court. *Id.* at 3-4.

This Court reversed. *Id.* at 8. This Court began its analysis by stating the rule that "a medical provider's action for reimbursement for services provided to a person injured in a motor vehicle accident is dependent on the validity of the injured insured's underlying claim for PIP benefits from the no-fault insurer; if the injured insured's claim fails, then so does the medical provider's derivative claim." *Id.* at 5, citing *Dawoud v State Farm Mut Auto Ins Co*, 317 Mich App 517, 521-524; 895 NW2d 188 (2016), and *Detroit Med Ctr v Progressive Mich Ins Co*, 302 Mich App 392, 393-394, 399; 838 NW2d 910 (2013). Relying heavily on *TBCI*, this Court in *Med Team* held that the medical provider's suit was barred by res judicata because, as the insured's assignee, the medical provider was the insured's privy and possessed only the rights held by the insured, who had been determined in the other lawsuit not to be entitled to any PIP benefits under the policy. *Med Team*, unpub op at 6-7. This Court further explained that the medical provider's claims could have been resolved in the other lawsuit because they were dependent on showing that the insured was entitled to PIP benefits. *Id.* at 7.

Almost one month after this Court issued its decision in *Med Team*, this Court issued its unpublished opinion in *Mecosta Co Med Ctr v Metro Group Prop & Cas Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2020 (Docket No. 345868), pp 4-6, in which this Court again addressed similar factual circumstances but specifically analyzed the effect of the relationship between the timing of the assignment and the other judgment that the no-fault insurers sought to give preclusive effect.

In *Mecosta Co*, the plaintiff medical providers (Spectrum Health and Mary Free Bed) initiated a lawsuit against the no-fault insurers (Metropolitan and State Farm) to recover for services provided to Jacob Meyers for injuries he suffered in a motor vehicle accident, based on assignments from Meyers. *Id.* at 2. After the litigation progressed for approximately one year, the no-fault insurers moved for summary disposition on the ground that the medical providers' action was barred by res judicata and collateral estoppel because a different circuit court had determined in a separate lawsuit that Meyers was not eligible for no-fault benefits. *Id.* at 3. The medical providers argued in response that they were not in privity with Meyers and could not be bound by the judgment in the other action because Meyers no longer had any right to pursue the claims that he had assigned to the medical providers once the assignments were made. *Id.* The trial court granted the summary disposition motion and dismissed the medical providers' claims on the ground that they were barred by res judicata and collateral estoppel. *Id.* at 4.

On appeal, this Court held that the trial court erred by granting summary disposition because the elements of res judicata were not satisfied. *Id.* at 5-6. This Court set forth the relevant legal framework for assignments as follows:

An assignment is defined as

A transfer or setting over of property, or of some right or interest therein, from one person to another, and unless in some way qualified, it is properly the transfer of one's whole interest in an estate, or chattel, or other thing. It is the act by which one person transfers to another, or causes to vest in another, his right of property or interest therein. [*Allardyce v Dart*, 291 Mich 642, 644-645; 289 NW 281 (1939) (quotation marks and citation omitted).]

An assignee stands in the shoes or in the place of, or in the same position as, the assignor. *Crossley v Allstate Ins Co*, 139 Mich App 464, 470; 362 NW2d 760 (1984). Therefore, an assignee generally obtains only the rights possessed by the assignor at the time of the assignment. *Shimans v Stevenson*, 248 Mich 104, 108; 226 NW 838 (1929).

An assignee is not bound by a judgment that his predecessor in interest obtained after the assignment at issue, even though the defendants raised the assignment as a defense, because the assignee was not in privity with the assignor. *Aultman, Miller & Co v Sloan*, 115 Mich 151, 154; 73 NW 123 (1897). A contrary rule would allow an assignor to cut off the rights of the assignee without affording him an opportunity to be heard. *Id.* Indeed, it may constitute a deprivation of property without due process of law to extend privity to bind an assignee by a judgment entered against his or her assignor that occurred after the assignor assigned his or her rights in the property. *Postal Tel Cable Co*, 247 US 464, 476; 38 S Ct 566; 62 L Ed 1215 (1928). In this state rather, for purposes of property law, an assignee is in privity with the assignor only up to the time of the assignment. See *Howell v Vito's Trucking & Excavating Co*, 386 Mich 37, 43; 191 NW2d 313 (1971). Accordingly, if the party asserting preclusion has no other basis for establishing privity beyond the fact that the assignee succeeded to the assignor's interest, the party asserting preclusion will not prevail unless the judgment was entered before the transfer at issue. *Id.* [*Mecosta Co*, unpub op at 4-5 (first bracketed citation in original).]

This Court in *Mecosta Co* analyzed the application of res judicata as follows:

To establish the requirements for res judicata, it must be shown that (1) a prior action was decided on the merits, (2) the prior decision resulted in a final judgment, (3) both actions involved the same parties or their privies and (4) the issues presented in the subsequent case were or could have been decided in the prior case. Because the last two elements of res judicata were not satisfied, the trial court improperly granted summary disposition in favor of defendants.

Plaintiffs, as the assignees of Myers' interest, were not bound by the judgment rendered against Myers in the Wayne County action because they were not in privity with Myers and a decision to the contrary would extinguish their rights without providing an opportunity to be heard. *Aultman, Miller & Co*, 115 Mich at 154. Therefore, defendants could not establish that both actions involved the same parties or their privies. Further, because Myers assigned his rights to pursue the claims involving Spectrum Health and Mary Free Bed, those issues could not be decided in the Wayne County action because Myers had divested himself of the pursuit of those claims through the assignments. Therefore, defendants could not establish that the claims by Spectrum Health and Mary Free Bed "could have been decided in the prior case."

On appeal, Metropolitan and State Farm make much of the fact that an assignee stands in the shoes of the assignor, and they suggest that legal maxim requires courts to extend privity beyond the date of the assignor's assignment. See, e.g., *First of America Bank v Thompson*, 217 Mich App 581, 587; 552 NW2d 516 (1996) ("An assignee stands in the shoes of the assignor and acquires the same rights as the assignor possessed."). That maxim, however, is nothing more than a shorthand reference for the well-settled principle that the assignee of property obtains no greater rights than the assignor had, and remains subject to the same defenses that would be applicable to the assignor. See *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004). It does not mean that the assignee remains in privity with the assignor in perpetuity, such that the assignor can intentionally or unintentionally alter the assignee's rights after the assignment. To the contrary, as Spectrum Health and Mary Free Bed correctly note, with certain exceptions, the assignor relinquishes all power to alter the assignee's rights in the property. See *Saginaw Fin Corp v Detroit Lubricator Co*, 256 Mich 441, 443-444; 240 NW 44 (1932) ("The rule that an assignee of a nonnegotiable chose takes subject to defenses means, of course, defenses existing at the time of the assignment. After assignment, the assignor loses all control over the chose, and cannot bind the assignee, by estoppel or otherwise."). To be sure, Metropolitan and State Farm can still assert any defenses that they may have—including a claim of fraud to invalidate the policy and the violation of MCL 500.3113(b)—to defeat the claims by Spectrum Health and Mary Free Bed. What is clear, however, is that the trial court had no authority to deprive Spectrum Health and Mary Free Bed of their day in court on the ground that Spectrum Health and Mary Free Bed were Myers's privies because Myers assigned his rights under the insurance policy to them. Once Myers assigned his right, nothing he did or suffered after he parted with his rights could—on the facts before this Court—affect the rights previously vested in Spectrum Health and Mary Free Bed because they were no longer his privies by the time of his litigation with Metropolitan and State Farm. See *Postal Tel Cable Co*, 247 US at 475; *Howell*, 386 Mich at 43. Accordingly, the trial court erred by concluding that the elements of res judicata were satisfied and that summary disposition was appropriate in favor of defendants.

Moreover, a contrary result cannot be compelled. Res judicata is a judicially created doctrine designed to relieve parties of the costs of multiple

lawsuits and conserve judicial resources. However, in this instance, application of the doctrine would obviate the assignment and effectively render it null and void and deprive Spectrum Health and Mary Free Bed of the right to pursue their claims. [*Mecosta Co*, unpub op at 5-6 (some citations omitted).]

Finally, this Court in *Mecosta Co* concluded that the “trial court erred in applying *TBCI* to the facts of this case” because the injured driver “assigned his rights to pursue his claim for the medical services provided by Spectrum Health and Mary Free Bed, and they were never given the opportunity to litigate those rights, and there was no privity.” *Id.* at 7.

Here, Michigan Spine relies heavily on *Mecosta Co* to support its argument that its claims are not barred by res judicata because it obtained the assignment from Jones before the Wayne Circuit Court entered its order dismissing Jones’ action. Esurance contends that *Mecosta Co* conflicts with *Med Team* and that *TBCI* and *Med Team* support affirming the trial court’s order in this case.

We conclude that these three cases are consistent with each other and that the result in *Mecosta Co* was due to this Court’s focus on the fact that the assignment was obtained before the judgment that the no-fault insurer argued should be given preclusive effect. That issue was not part of this Court’s analysis in *TBCI* or *Med Team*. Thus, as this Court recognized in *Mecosta Co*, and consistent with *TBCI* and *Med Team*, an assignee stands in the shoes of the assignor, possessing the same rights that the assignor had and being subject to the same defenses. However, as the *Mecosta Co* Court further clarified, the rights transferred by the assignor are measured at the time of the assignment and cannot be diminished by the assignor’s subsequent actions or a subsequently issued judgment. *Mecosta Co*, unpub op at 4-6; see also *Aultman, Miller & Co*, 115 Mich at 154; *Saginaw Fin Corp*, 256 Mich at 443-444. In this case, the issue presented and the relevant factual circumstances are identical to those presented in *Mecosta Co*. Accordingly, we adopt the analysis in *Mecosta Co* as our own to resolve the issue on appeal in the present case. Under this analysis, the trial court in this case erred by determining that res judicata applied and granting summary disposition because Michigan Spine obtained its assignment from Jones before the Wayne Circuit Court judgment was entered and Michigan Spine was therefore not bound by this subsequent Wayne Circuit Court judgment. *Mecosta Co*, unpub op at 4, 6. Accordingly, we reverse the judgment of the Oakland Circuit Court.

In a related argument, Michigan Spine argues that its claims under 42 USC 1395y of the Medicare Secondary Payer Act never belonged to Jones as the insured and therefore also could not have been addressed in the Wayne Circuit Court action. In *Michigan Spine & Brain Surgeons, PLLC v State Farm Mut Auto Ins Co*, 758 F3d 787, 789-790 (CA 6, 2014), which is cited by Michigan Spine in its appellate brief in this case, the United States Court of Appeals for the Sixth Circuit provided the following background regarding this type of claim:

“Medicare is a federal health insurance program that provides health insurance benefits to people 65 years of age or older, disabled people, and people with end-stage renal disease.” Medicare served as the primary payer of health care costs for eligible individuals until 1980, when Congress, in an effort to counteract escalating healthcare costs, enacted the Medicare Secondary Payer Act. Under the Medicare Secondary Payer Act, in most situations where an individual is covered

by both Medicare and another payer, Medicare serves as the secondary payer rather than the primary payer. Put differently, when payment is available from a primary plan, the primary plan and not Medicare is responsible for paying the costs of the individual's medical treatment. When "a primary plan . . . has not made or cannot reasonably be expected to make payment with respect to such item or service promptly[.]" Medicare may conditionally pay for the cost of the treatment. 42 USC § 1395y(b)(2)(B)(i)[.] In such cases, recouping the conditional payment, and ensuring that the responsible primary plan pays the provider of medical care, becomes necessary.

Providers of medical care can sue primary plans who fail to pay under the Medicare Secondary Payer Act's private cause of action provision—provided that the primary plan's failure to pay satisfies certain criteria outlined elsewhere in the Act. [Some citations omitted; ellipsis and first alteration in original.]

In that case, the Sixth Circuit Court of Appeals held that Michigan Spine's claim against the no-fault insurer under the Medicare Secondary Payer Act's private-cause-of-action provision in 42 USC 1395y(b)(3)(A) could proceed even though the no-fault insurer had denied coverage for the injured insured on a basis other than Medicare eligibility. *Michigan Spine*, 758 F3d at 788-789, 790, 793.

Here, the trial court determined that the Medicare Secondary Payer Act was not applicable because Esurance was not liable to Jones after having rescinded her policy for fraud pursuant to the judgment in Jones' separate lawsuit, which the trial court in this case gave preclusive effect under the doctrine of res judicata to bar Michigan Spine's claims. Thus, in light of our conclusion that the trial court erred by ruling that Jones' separate action in the Wayne Circuit Court barred Michigan Spine's claims in this case under the doctrine of res judicata, that erroneous ruling cannot serve as the basis for dismissing Michigan Spine's Medicare Secondary Payer Act claim. Accordingly, the trial court erred in its reasoning for granting summary disposition on this claim as well. *Adair*, 470 Mich at 119.

Although Michigan Spine raises other arguments about the application of the Medicare Secondary Payer Act in this case, such as whether Jones had standing to pursue those claims and the types of damages Michigan Spine claims it is entitled to pursue, those issues were not addressed or decided by the trial court in this case and therefore need not be addressed by this Court at this juncture. "Appellate review is limited to issues actually decided by the trial court." *Allen v Keating*, 205 Mich App 560, 564; 517 NW2d 830 (1994).

Next, relying on *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719; 957 NW2d 858 (2020), Michigan Spine argues that statements made by an insured during the course of litigation do not provide grounds to void an insurance policy under the policy's fraud provision, and such statements therefore do not affect a subsequent lawsuit by a medical provider.

The underlying purpose of Michigan Spine's argument is not clear. Michigan Spine's argument could be understood as an impermissible collateral attack on the Wayne Circuit Court's

judgment,⁸ the propriety of which is not currently before this Court since this appeal is from the Oakland Circuit Court's judgment in a separate action. See *Worker's Compensation Agency Dir v MacDonald's Indus Prod, Inc*, 305 Mich App 460, 474; 853 NW2d 467 (2014) ("It is well established in Michigan that, assuming competent jurisdiction, a party cannot use a second proceeding to attack a tribunal's decision in a previous proceeding.").

Alternatively, Michigan Spine's argument could be understood as an attempt to maintain that Jones had an entitlement to benefits from which Michigan Spine may recover based on its assignment, regardless of any fraudulent statements Jones may have made in her separate lawsuit. To the extent Michigan Spine's argument may be so understood, this issue is not properly before this Court at this juncture because it has not been addressed by the trial court in this case apart from the trial court's erroneous ruling that the Wayne Circuit Court's judgment on that issue operated to bar Michigan Spine's claims under the doctrine of res judicata. The trial court and the parties may address this issue in the first instance without the erroneous application of res judicata on remand. "Appellate review is limited to issues actually decided by the trial court." *Allen*, 205 Mich App at 564.

Under either understanding of Michigan Spine's argument, this issue is not properly presented before this Court for appellate review and we decline to address it further.

Finally, Michigan Spine argues that regardless of any fraud committed by Jones, Michigan Spine is not barred from recovery because Michigan Spine is an innocent third party. The trial court in this case rejected Michigan Spine's innocent-third-party argument below without explanation, leaving this Court with no understandable basis on which to meaningfully review the propriety of the ruling. See *Woodington v Shokoohi*, 288 Mich App 352, 357; 792 NW2d 63 (2010) (stating that a trial court's failure to explain its reasoning leaves the appellate court "unable to discern why the [trial] court believed that this decision was appropriate for the parties' circumstances"). Hence, we also decline to reach this issue; the trial court and the parties may address it in the first instance on remand without the erroneous application of the doctrine of res judicata. *Id.*

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff, having prevailed, is entitled to costs. MCR 7.219.

/s/ Stephen L. Borrello
/s/ Douglas B. Shapiro

⁸ Esurance treated the argument this way. Esurance only argues in response that the Wayne Circuit Court's decision was proper.