

STATE OF MICHIGAN
COURT OF APPEALS

PREMIER MEDICAL MOVEMENT, LLC,

Plaintiff-Appellant,

v

AUTO-OWNERS INSURANCE COMPANY and
HOME-OWNERS INSURANCE COMPANY,

Defendants-Appellees,

UNPUBLISHED

January 6, 2022

No. 355543

Oakland Circuit Court

LC No. 2020-179837-NF

Before: BOONSTRA, P.J., and GLEICHER and LETICA, JJ.

GLEICHER, J. (*concurring*).

I concur with the majority because I am bound to do so by the Supreme Court’s holding in *Miller v Chapman Contracting*, 477 Mich 102; 730 NW2d 462 (2007). The rule set forth in *Miller*, which brooks no exceptions, is particularly inapt in this case, where defendants would have suffered no prejudice whatsoever by amending the pleadings to reflect the proper plaintiff.

But for *Miller*, I would hold that MCL 600.2301 controls the outcome. That statute states:

The court in which any action or proceeding is pending, has power to amend any process, pleading or proceeding in such action or proceeding, either in form or substance, for the furtherance of justice, on such terms as are just, at any time before judgment rendered therein. The court at every stage of the action or proceeding shall disregard any error or defect in the proceedings which do not affect the substantial rights of the parties.

Defendants knew from the inception of the case that the proper plaintiff was Operation Wellness Group, LLC. *Miller*’s formalistic approach to the relation-back doctrine does not serve the general philosophy of our court rules, which favors merit-based adjudication. I would urge our Supreme Court to adopt the approach to misnomers encapsulated in FR Civ P 15(c)(1)(C). See *Arthur v Maersk, Inc*, 434 F3d 196, 209 (CA 3, 2006) (“An amendment naming a new party will relate back to the original complaint if the party had adequate notice of the action and should have known that

it would have been named in the complaint but for a mistake—whether the mistake is based on lack of knowledge or mere misnomer.”¹

/s/ Elizabeth L. Gleicher

¹ At the time *Arthur* was decided, the relevant language was found in Fed R Civ P 15(c)(3).