

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UNPUBLISHED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.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order granting summary disposition in favor of defendants. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of a motor vehicle accident alleged to have occurred on March 9, 2018, in which Natalian Ringo was injured. On February 24, 2020, plaintiff, identified as Premier Medical Movement, LLC, filed a complaint alleging breach of contract or statutory duties and seeking declaratory relief. Specifically, plaintiff asserted that it provided products, services, and accommodations to Ringo pursuant to the no-fault act, MCL 500.3101 *et seq.* In turn, Ringo assigned his rights to collect past or present insurance benefits to plaintiff. Plaintiff contended that it billed defendants by providing detailed invoices of the services rendered to Ringo, but defendants failed to pay. Consequently, plaintiff requested a declaration regarding the defendant responsible for the payment of no-fault benefits and the payment of \$34,000 in benefits that were due and owing plus interest and attorney fees. With the complaint, plaintiff submitted an assignment executed by Ringo on August 9, 2019, in favor of Operation Wellness Group LLC (OWG), and identified OWG as the provider of services. This assignment did not mention plaintiff.

On June 1, 2020, plaintiff’s law firm sent correspondence to defendants’ counsel seeking a stipulated order to amend the pleadings to replace plaintiff with OWG, but defense counsel

declined to stipulate. On June 11, 2020, plaintiff filed a motion to amend the complaint and the case caption. It was alleged that, after the complaint was filed, plaintiff learned that OWG was the “proper name of the medical provider which rendered services to the claimant.” Accordingly, plaintiff sought to change the name by substituting OWG in its place. Plaintiff alleged that leave should be freely granted, the case was only in the early stages of discovery, and defendants would not be prejudiced by the amendment. However, defendants opposed the motion to amend, asserting that plaintiff and OWG were distinct entities. Further, plaintiff did not seek to merely correct an inconsequential deficiency or technicality and a simple misnomer was not at issue. Rather, defendants submitted that plaintiff requested the substitution or addition of a party. It also asserted that an amendment to add OWG could not relate back to the date of the original filing of the complaint in light of the one-year back rule, MCL 500.3145(1).

On June 23, 2020, the trial court granted plaintiff’s motion to file an amended complaint under MCR 2.118(A)(2). This order directed that plaintiff “shall” file its first amended complaint¹ within seven days. However, the trial court concluded “that this is a motion to add a party and is not merely a request to correct a misnomer.” Therefore, it determined that “the amendment does not relate back to the date of the original pleading,” citing *Miller v Chapman Contracting*, 477 Mich 102; 730 NW2d 462 (2007).

Plaintiff failed to amend its complaint as directed within seven days.² On September 3, 2020, plaintiff filed its second motion to amend the caption and complaint. Plaintiff acknowledged that its motion would be more appropriately labeled as a request for reconsideration, but such a motion was untimely in light of “clerical issues.”³ Plaintiff alleged that defendants were on notice that OWG, not plaintiff, received the assignment from Ringo, and therefore, a clerical error in identifying the appropriate plaintiff occurred. Because of this mistake, plaintiff alleged that the trial court improperly applied the *Miller* decision to place a limitation on the relation back of the OWG substitution. Defendants opposed the second motion to amend, noting that it was an untimely request for reconsideration. The trial court denied plaintiff’s motion.

Defendants then moved for summary disposition under MCR 2.116(C)(10), contending plaintiff did not have standing to assert claims on Ringo’s behalf because Ringo assigned his claims to OWG, not plaintiff. Further, because OWG and plaintiff were separate and distinct entities, it was alleged that plaintiff could not pursue benefits incurred by Ringo under OWG’s assignment agreement. In response, plaintiff requested that defendants’ dispositive motion be denied and that the trial court allow amendment of the complaint to correct a clerical error by replacing plaintiff with OWG. Plaintiff also asserted that the one-year back rule of

¹ Plaintiff’s proposed first amended complaint filed with the motion identified OWG as the plaintiff in the opening paragraph of the complaint, but did not replace plaintiff with OWG in the complaint’s caption.

² On August 17, 2020, plaintiff’s counsel contacted the court clerk indicating that it never received the trial court’s June 23, 2020 order.

³ Plaintiff never filed an affidavit denying the receipt of this order or delineated its receipt of other correspondence from the trial court. Further, plaintiff did not request that the trial court re-issue the order to timely file a motion for reconsideration.

MCL 500.3145(1) would not bar OWG's claim because defendants were given notice of OWG's claim by plaintiff's original complaint, defendants' admission that Ringo assigned his rights to OWG, and the receipt of OWG's bills. Additionally, plaintiff moved for a third time to file an amended complaint to correct a "clerical" mistake in naming the wrong plaintiff.

The trial court granted summary disposition in favor of defendants, finding no genuine issue of material fact that plaintiff did not have standing to bring the claims asserted in the complaint. Additionally, the trial court concluded that there was no provision in the court rules to move for reconsideration of an order denying reconsideration. Nonetheless, the trial court opined that plaintiff failed to demonstrate a palpable error. This appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Tinsley v Yatooma*, 333 Mich App 257, 261; 964 NW2d 45 (2020). Whether a party has standing is a legal question this Court also reviews de novo. *Barclae v Zarb*, 300 Mich App 455, 467; 834 NW2d 100 (2013). A motion for summary disposition premised on the doctrine of standing as a defense may be proper under MCR 2.116(C)(8) or MCR 2.116(C)(10) depending on the pleadings or other circumstances of the case. *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494 n 2; 948 NW2d 452 (2019).

Summary disposition is appropriate under MCR 2.116(C)(10) where 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." MCR 2.116(C)(10). In reviewing a motion for summary disposition filed under MCR 2.116(C)(10), the court considers the affidavits, pleadings, depositions, admissions, and other admissible documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(4), (G)(5); *Puetz v Spectrum Health Hosps*, 324 Mich App 51, 68; 919 NW2d 439 (2018). When the parties present documentary evidence outside the pleadings, we treat the motion as having been granted pursuant to MCR 2.116(C)(10). *Le Gassick*, 330 Mich App at 494 n 2. We review the trial court's decision on a motion for reconsideration for an abuse of discretion. *St John Macomb Oakland Hosp v State Farm Mut Auto Ins Co*, 318 Mich App 256, 261; 896 NW2d 85 (2016). The trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Id.*

III. AMENDMENT OF THE COMPLAINT

Plaintiff contends that the trial court erred in failing to allow plaintiff to amend its complaint to reflect the proper party seeking relief. We disagree.

As an initial matter, we note that plaintiff does not challenge the basis of the trial court's ruling, but rather, the *consequences* of the ruling. Specifically, the trial court concluded that dismissal of plaintiff's complaint was warranted because plaintiff did not have standing. Indeed, when an appellant fails to challenge the basis of the trial court's ruling, we need not even consider

granting the requested relief.⁴ *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). Nonetheless, we address the merits of the trial court’s decision.

[T]he term ‘standing’ generally refers to the right of a plaintiff initially to invoke the power of a trial court to adjudicate a claimed injury.” *Olsen v Jude & Reed, LLC*, 325 Mich App 170, 180; 924 NW2d 889 (2018), citing *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290; 715 NW2d 846 (2006). The “purpose of the standing doctrine is to assess whether a litigant’s interest in the issue is sufficient to ensure sincere and vigorous advocacy.” *Lansing Sch Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010) (quotation marks and citation omitted). Accordingly, “the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable.” *Id.* (quotation marks and citation omitted).

Further, an action must be prosecuted in the name of the real party in interest. MCR 2.201(B). To satisfy MCR 2.201(B), a party must be vested with a right of action in a given claim, but the beneficial interest may be with another. *Barclae*, 300 Mich App at 483. “Both the doctrine of standing and the included real-party-in-interest rule are prudential limitations on a litigant’s ability to raise the legal rights of another.” *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v City of Pontiac*, 309 Mich App 611, 621-622; 873 NW2d 783 (2015). “But plaintiffs must assert their own legal rights and cannot rest their claims to relief on the rights or interests of third parties.” *Id.* at 622.

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) (citation omitted). “Under general contract law, rights can be assigned unless the assignment is clearly restricted.” *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 197; 920 NW2d 148 (2018) (quotation marks and citation omitted).

In the present case, the trial court properly concluded that defendants were entitled to summary disposition because plaintiff lacked standing to pursue the no-fault benefits of the injured party Ringo. Specifically, Ringo assigned his interest in benefits to OWG, not plaintiff. Nonetheless, the action was commenced by plaintiff. Therefore, the trial court properly granted the dispositive motion filed by defendants.

Plaintiff further submits that the trial court should have corrected a clerical error by allowing plaintiff to amend its complaint to substitute OWG in its place. However, we note that

⁴ Additionally, plaintiff raised one statement of question presented challenging the trial court’s denial of the motion to allow plaintiff to amend its complaint. Plaintiff did not raise in the statement of question presented the contention that the one-year back rule was inapplicable because defendants had notice. Issues must be raised in plaintiff’s statement of questions presented to be properly presented for appellate review. *Henderson v Mich Dep’t of Treasury*, 307 Mich App 1, 30; 858 NW2d 733 (2014).

plaintiff filed a motion to amend its complaint and to amend the caption. The trial court *granted* this motion. Specifically, on June 23, 2020, the trial court issued an order that provided:

The Court dispenses with oral argument pursuant to MCR 2.119(E)(3). The hearing scheduled for June 24, 2020 is cancelled.

Pursuant to MCR 2.118(A)(2), Plaintiff's request to file an amended complaint is granted. Plaintiff shall file Plaintiff's First Amended Complaint attached to the motion as Exhibit B within 7 days.

However, the Court finds that this is a motion to add a party and is not merely a request to correct a misnomer. Thus, the amendment does not relate back to the date of the original pleading [*Miller*, 477 Mich at 107].

Despite the trial court's grant of the motion, albeit with the limitation on the relation back, plaintiff never filed the amended complaint substituting OWG for plaintiff. Thus, regardless of the limitation on the amendment of the complaint, the filing of the amended complaint to substitute OWG for plaintiff would have reflected the real party in interest and afforded OWG standing. Indeed, OWG was the entity that received the assignment for no-fault benefits from Ringo. Because plaintiff did not comply with the trial court's ruling and formally file an amended complaint to substitute OWG in its place, the trial court did not err in granting defendants' motion for summary disposition.

Plaintiff further submits that the trial court erred in concluding that the amendment of the complaint did not reflect a mere misnomer, but added a new party such that amendment did not relate back to the filing of the original complaint. We disagree.

"[A] party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires." MCR 2.118(A)(2). "Leave to amend should be denied only for particularized reasons, such as . . . repeated failure to cure deficiencies by amendment previously allowed, undue prejudice to the opposing party, or where amendment would be futile." *Miller*, 477 Mich at 105. In addition, MCR 2.118(D) states that an "amendment that adds a claim or defense relates back to the date of the original pleading if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth . . . in the original pleading." However, the relation back doctrine "does not apply to the addition of new parties." *Miller*, 477 Mich at 106 (citation omitted).

Generally, "a misnomer of a plaintiff or defendant is amendable unless the amendment is such as to effect an entire change of parties." *Miller*, 477 Mich at 106, quoting *Parke, Davis & Co v Grand Trunk Railway Sys*, 207 Mich 388, 391; 174 NW 145 (1919). The misnomer doctrine "applies only to correct inconsequential deficiencies or technicalities in the naming of the parties." *Miller*, 477 Mich at 107. Inconsequential deficiencies or technicalities in the naming of the parties include instances where "the right corporation has been sued by the wrong name, and service has been made upon the right party, although by a wrong name," *Wells v Detroit News, Inc*, 360 Mich 634, 641; 104 NW2d 767 (1960), or where the plaintiff was erroneously referred to as a corporation, when it was actually a copartnership. *Detroit Indep Sprinkler Co v Plywood Prod Corp*, 311 Mich 226, 231-232; 18 NW2d 387 (1945). Where a plaintiff "seeks to substitute or add

a wholly new and different party to the proceedings, the misnomer doctrine is inapplicable.” *Miller*, 477 Mich at 107.

We reject plaintiff’s contention that the misnomer doctrine applies because the error in the naming of plaintiff was an inconsequential deficiency. In the present case, the complaint identified plaintiff as Premier Medical Movement, LLC. Yet, the assignment submitted with the complaint indicated the insured, Ringo, assigned his claim to no-fault benefits to OWG. Defendants searched corporate records, but were unable to discover any correlation between plaintiff and OWG. Thus, plaintiff’s attempt to distinguish this case from *Miller* is without merit. The trial court did not err in concluding that the relation back doctrine did not apply to the addition of new party OWG even if plaintiff had filed the amended complaint as directed by the trial court.⁵

Affirmed.

/s/ Mark T. Boonstra

/s/ Anica Letica

⁵ In light of the fact that plaintiff did not file the amended complaint to add OWG as plaintiff in accordance with the trial court’s ruling and plaintiff did not have standing to pursue Ringo’s claims through an assignment, we need not address plaintiff’s argument regarding MCL 500.3145(1).