STATE OF MICHIGAN

COURT OF APPEALS

ZIGMOND CHIROPRACTIC, P.C.,

Plaintiff/Counter-Defendant-Appellant,

v

AAA MICHIGAN and AUTO CLUB INSURANCE ASSOCIATION,

Defendants/Counter-Plaintiffs/Third-Party Plaintiffs-Appellees,

and

NEUROSCIENCE, P.C., and QV MEDICAL, P.C.,

Third-Party Defendants.

UNPUBLISHED
July 25, 2013

No. 300643
Macomb Circuit Court
LC No. 08-004807-NF

ZIGMOND CHIROPRACTIC, P.C.,

Plaintiff/Counter-Defendant-Appellee,

v

AAA MICHIGAN,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellant,

and

NEUROSCIENCE, P.C.,

Third-Party Defendant-Appellee.

No. 304756
Wayne Circuit Court
LC No. 09-010906-CZ

ZIGMOND, P.C.,

Plaintiff/Counter-Defendant-Appellant,

v

No. 305662
Wayne Circuit Court
LC No. 10-010699-NF

AUTO CLUB INSURANCE ASSOCIATION, a/k/a AAA MICHIGAN,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee,

and

BORIS ZIGMOND,

Third-Party Defendant/Appellant.

ZIGMOND CHIROPRACTIC, P.C.,

Plaintiff/Counter-Defendant-Appellee,

v

No. 305741
Wayne Circuit Court
LC No. 09-006113-NF

AAA MICHIGAN,

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellant,

and

NEUROSCIENCE, P.C.,

Third-Party Defendant-Appellee.

ZIGMOND CHIROPRACTIC, P.C.,

Plaintiff/Counter-Defendant-Appellant,

v

No. 306048

Wayne Circuit Court
AAA MICHIGAN, LC No. 09-010923-CZ

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee,

and

NEUROSCIENCE, P.C.,

Third-Party Defendant-Appellant.

ZIGMOND CHIROPRACTIC, P.C.,

Plaintiff/Counter-Defendant-Appellant,

v No. 306455
Wayne Circuit Court
AAA MICHIGAN, LC No. 09-010923-CZ

Defendant/Counter-Plaintiff/Third-Party Plaintiff-Appellee,

and

NEUROSCIENCE, P.C.,

Third-Party Defendant-Appellant.

ZIGMOND CHIROPRACTIC, P.C.,

Plaintiff/Counter-Defendant-Appellee,

v No. 306790
Wayne Circuit Court
AAA OF MICHIGAN, LC No. 09-026665-AV

Defendant/Counter-Plaintiff-Appellant.

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

These seven consolidated appeals arise from separate actions initiated by plaintiff, Zigmond Chiropractic, P.C., and a successor entity, Zigmond, P.C., in the Macomb Circuit Court and the Wayne Circuit Court. In the underlying litigations, plaintiffs sought to recover from defendant, Auto Club Insurance Association, d/b/a AAA Michigan ("AAA"), no-fault benefits for chiropractic services it provided to multiple AAA insureds after their involvement in automobile accidents.

In Docket No. 300643, plaintiff appeals by right from a Macomb Circuit Court judgment for AAA. In Docket No. 304756, AAA appeals by delayed leave granted a Wayne Circuit Court order that granted a motion for partial summary disposition of its countercomplaint and third-party complaint. In Docket No. 305741, AAA appeals by delayed leave granted a Wayne Circuit Court order that denied a motion for summary disposition, and a subsequent order that granted partial summary disposition of its countercomplaint and third-party complaint. In Docket Nos. 306048 and 306455, plaintiff and third-party defendant Neuroscience, P.C., both appeal as of right a final consent order entered by the Wayne Circuit Court and a later order setting aside the final consent judgment and entering a final judgment. In Docket No. 306790, AAA appeals by delayed leave granted from a Wayne Circuit Court order that reversed a district court order granting AAA summary disposition and remanding for trial. We affirm in part, reverse in part, and remand for further proceedings.

I. STANDING AND SUBJECT-MATTER JURISDICTION (DOCKET NOS. 300643, 304756, 305741, 306048 & 306790)

We initially address plaintiff's and Neuroscience's similar contentions in four of the appeals that AAA lacked statutory standing to assert affirmative defenses and causes of action premised on purported Public Health Code violations by plaintiff and Neuroscience. Zigmond Chiropractic further avers that because AAA did not possess standing to raise private causes of action under the Public Health Code, neither the Macomb Circuit Court nor the Wayne Circuit Court had subject-matter jurisdiction to entertain AAA's claims.

In Docket Nos. 304756, 305741, and 306048, the parties disputed AAA's standing to argue Public Health Code violations in opposition to plaintiff's claims of entitlement to no-fault benefits, and the circuit courts ruled on these issues. Although plaintiff in Docket No. 300643 did not argue that AAA lacked standing to assert claims premised on the Public Health Code, we will consider this issue of law. *Mitchell v Mitchell*, 296 Mich App 513, 521; 823 NW2d 153 (2012). "[J]urisdictional defects may be raised at any time, even if raised for the first time on appeal." *Sierra Club Mackinac Chapter v Dep't of Environmental Quality*, 277 Mich App 531, 544; 747 NW2d 321 (2008).

Whether a party has standing to pursue litigation presents a legal question that this Court reviews de novo. *Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012). We

similarly review de novo the legal question whether a circuit court possesses subject-matter jurisdiction. *Sierra Club Mackinac Chapter*, 277 Mich App at 544.

Plaintiff and Neuroscience primarily rely on *Miller v Allstate Ins Co*, 481 Mich 601; 751 NW2d 463 (2008), in support of their position that no private cause of action exists under the Public Health Code. The Court in *Miller*, 481 Mich at 604, 606-608, examined whether a no-fault insurance company possessed statutory standing[1] to challenge the lawfulness of the plaintiff's incorporation under the Business Corporation Act (BCA), MCL 450.1101 *et seq*. The insurer maintained that the entity's allegedly improper incorporation rendered physical therapy treatment performed there unlawful and relieved the insurer of its obligation to pay for the services provided there pursuant to MCL 500.3157. The Supreme Court emphasized that MCL 450.1221 contained an irrebuttable presumption concerning proper incorporation and only authorized the attorney general to challenge this irrebuttable presumption. *Miller*, 481 Mich at 610-612. The Court held that the insurer did not possess statutory standing to raise its challenge to the plaintiff's incorporation. *Id*. at 611-612. The Court additionally rejected the insurer's suggestion that "the no-fault act, MCL 500.3157, provide[d] a specific exception to" the general rule in MCL 450.1221. *Id*. at 613-614.

We conclude that the Supreme Court's statutory standing analysis in *Miller* does not apply to AAA's contentions that Dr. Zigmond failed to comply with several provisions of the Public Health Code, primarily because plaintiff has not identified any Public Health Code sections containing irrebuttable presumption language that would preclude AAA from litigating the Public Health Code-related claims it asserts in Docket Nos. 300643, 304756, 305741, and 306048. Furthermore, in several cases this Court has at least implicitly recognized a no-fault insurer's standing to contest pursuant to the no-fault act, MCL 500.3157, the lawfulness of services allegedly provided by health care professionals as beyond the scope of their licensing under the Public Health Code. See *Psychosocial Serv Assoc's, PC v State Farm Mut Auto Ins Co*, 279 Mich App 334, 337-345; 761 NW2d 716 (2008); *Cherry v State Farm Mut Auto Ins Co*, 195 Mich App 316, 318-320; 489 NW2d 788 (1992). This Court has additionally recognized that Michigan courts have original subject-matter jurisdiction over claims involving no-fault benefits. *Psychosocial Serv Ass'n*, 279 Mich App at 336-337; *SPECT Imaging, Inc v Allstate Ins Co*, 246 Mich App 568, 580; 633 NW2d 461 (2001).

Furthermore, in *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 352-353, 359-371; 792 NW2d 686 (2010), our Supreme Court overruled the federal-based standing jurisprudence on which *Miller* had rested. In that case, the Court readopted the following longstanding Michigan standing principles:

---

[1] *Miller*, 481 Mich at 606-608, cited decisions by our Supreme Court that had adopted in Michigan federal standing jurisprudence, including *Rohde v Ann Arbor Pub Schs*, 479 Mich 336, 346; 737 NW2d 158 (2007), overruled by *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 359-371; 792 NW2d 686 (2010), and *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004), overruled by *Lansing Sch Ed Ass'n*, 487 Mich 349.

> [A] litigant has standing whenever there is a legal cause of action. Further, *whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment*. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. *A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large* or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Id*. at 372 (emphasis added).]

We conclude that the manner in which AAA has raised its claims under the Public Health Code satisfies the Michigan standing jurisprudence readopted in *Lansing Sch Ed Ass'n*, 487 Mich at 372. All of the pleadings filed by AAA in these cases invoked MCR 2.605 in support of prayers for declaratory relief. AAA requested declarations that Zigmond Chiropractic and Neuroscience had no legal right to payment of benefits under the no-fault act, that AAA suffered damages, that all of the billed chiropractic services but for spinal adjustments fell outside the statutory scope of chiropractic and came "within the scope of health professions for which [Dr.] Zigmond was not licensed," that Dr. Zigmond's referrals violated the Public Health Code, and that AAA was entitled to restitution.

Pursuant to MCR 2.605(A)(1), "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted."

> Properly understood, . . . the actual controversy requirement is simply a summary of justiciability as the necessary condition for judicial relief. Thus, if a court would not otherwise have subject matter jurisdiction over the issue before it or, if the issue is not justiciable because it does not involve a genuine, live controversy between interested persons asserting adverse claims, the decision of which can definitively affect existing legal relations, a court may not declare the rights and obligations of the parties before it. [*Allstate Ins Co v Hayes*, 442 Mich 56, 66; 499 NW2d 743 (1993).]

"The 'actual controversy' requirement prevents courts from involving themselves in hypothetical issues, but it does not prohibit them from deciding issues before the occurrence of an actual injury." *Groves v Dep't of Corrections*, 295 Mich App 1, 10; 811 NW2d 563 (2011). "An 'actual controversy' exists where a declaratory judgment or decree is necessary to guide a plaintiff's future conduct in order to preserve his legal rights." *Id*. (internal quotation and citation omitted).

We conclude that an actual controversy exists between AAA, Zigmond Chiropractic, and Neuroscience in these four appeals. Under the no-fault act, AAA generally must pay its injured insureds personal protection insurance benefits, MCL 500.3105, "consisting of all reasonable charges incurred for reasonably necessary products . . . [and] services for . . . care, recovery, or rehabilitation." MCL 500.3107(1)(a). A physician "or other person *lawfully rendering treatment* to an injured person for an accidental bodily injury covered by personal protection insurance . . . may charge a reasonable amount for the products . . . [and] services rendered."

MCL 500.3157 (emphasis added). Because all four appeals primarily involve Zigmond Chiropractic's and Neuroscience's requests for payment for services allegedly lawfully rendered, and AAA's competing contentions that Dr. Zigmond unlawfully exceeded the scope of his licensing authority under the Public Health Code, MCL 333.16401, all four appeals constitute "genuine, live controvers[ies] between interested persons asserting adverse claims, the decision of which can definitively affect [the] existing legal relations between them." *Groves*, 295 Mich App at 10.

We additionally conclude that AAA fits within an additional standing category identified in *Lansing Sch Ed Ass'n*, 487 Mich at 372: even when a litigant does not possess a legal cause of action, "[a] litigant may have standing . . . if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." Because AAA faces potential no-fault liability for the health care providers' purportedly unlawful rendering of services to AAA insureds, MCL 500.3157, we conclude that AAA remains at risk of enduring "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." *Id*.

In summary, we conclude that AAA possessed standing to raise its claims relating to alleged violations of the Public Health Code in these four appeals, and the circuit courts possessed subject-matter jurisdiction to consider the claims. We thus reject Zigmond Chiropractic's lack of standing and subject-matter jurisdiction arguments in Docket No. 300643, 306048, and 306790, reverse the Wayne Circuit Court's May 2011 order granting partial summary disposition of Counts I through IV of AAA's countercomplaint in Docket No. 304756, and reverse the Wayne Circuit Court's June 2011 order granting partial summary disposition of Counts I through IV of AAA's countercomplaint and third-party complaint in Docket No. 305741.

II. COLLATERAL ESTOPPEL (DOCKET NOS. 305741, 306048, & 306790)

In these three appeals, AAA maintains that because the same parties fully litigated in the Macomb Circuit Court Zigmond Chiropractic's entitlement to no-fault benefits for certain chiropractic services purportedly provided to AAA insureds (hot and cold pack application, kinetic activities, massage therapy, mechanical traction therapy, myofascial release, neuromuscular reeducation and spinal adjustments), they need not relitigate Zigmond Chiropractic's entitlement to no-fault benefits for the identical services allegedly provided in the three Wayne Circuit Court actions underlying these appeals. These three appeals arise from circuit court summary disposition rulings, which we review de novo. *Alcona Co v Wolverine Environmental Prod, Inc*, 233 Mich App 238, 245; 590 NW2d 586 (1998).

AAA sought summary disposition under MCR 2.116(C)(7) on the basis of collateral estoppel. *Alcona Co*, 233 Mich App at 246. "The affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties, must be considered by the court when the motion is based on [this] subrule." MCR 2.116(G)(5).

Three elements must exist for collateral estoppel to apply: "(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final

judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004) (internal quotation omitted). With respect to the second collateral estoppel element, our Supreme Court in *Monat* elaborated concerning "whether a party has had a 'full and fair' opportunity to litigate an issue." *Id.* at 683-684 n 2. In footnote 2, the Court quoted, in relevant part, as follows from 1 Restatement Judgments, 2d, ch 3, Former Adjudication, §§ 28-29:

> In determining whether a party has had a "full and fair" opportunity to litigate an issue, courts should look to the factors set forth in 1 Restatement Judgments, 2d, ch 3, Former Adjudication, §§ 28-29. Section 28, p 273, provides:
>
> "Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:
>
> * * *
>
> "(5) There is a clear and convincing need for a new determination of the issue (a) *because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action* . . . . [Emphasis added.]

"The estoppel doctrine requires the issues in the two actions to be identical, not merely similar." *Local 98, Detroit, MI, of United Ass'n of Journeymen & Apprentices of Plumbing & Pipefitting Indus of US & Canada v Flamegas Detroit Corp*, 52 Mich App 297, 303; 217 NW2d 131 (1974).

Identity of parties exists in Docket No. 300643 (Macomb Circuit Court No. 2008-004807-NF) [Zigmond Chiropractic, AAA and Neuroscience], Docket No. 305741 (Wayne Circuit Court No. 09-006113-NF) [Zigmond Chiropractic, AAA and Neuroscience], Docket No. 306048 (Wayne Circuit Court No. 09-010923-CZ) [Zigmond Chiropractic, AAA and Neuroscience], and Docket No. 306790 (Wayne Circuit Court No. 09-026665-AV) [Zigmond Chiropractic and AAA]. In the litigation serving as the basis of AAA's collateral estoppel arguments, Docket No. 300643 (Macomb Circuit Court No. 2008-004807-NF), the trial court entered a final judgment for AAA, partially on the basis that all of the services apart from spinal adjustments and rehabilitative exercises that Dr. Zigmond had provided to two AAA insureds fell outside the scope of chiropractic set forth in MCL 333.16401. The parties agree that although the Macomb Circuit Court judgment actually determined the legality under MCL 500.3157 of Dr. Zigmond's alleged treatments, this decision does not qualify as final until "all appeals have been exhausted or . . . the time available for an appeal has passed." *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006).

We conclude that the Macomb Circuit Court action and the three Wayne Circuit Court actions do not share identical issues. In *Local 98, Detroit, MI of United Ass'n of Journeymen & Apprentices of Plumbing & Pipefitting Indus of US & Canada v Flamegas Detroit Corp*, 52 Mich App at 303, this Court explained:

> The estoppel of a judgment extends only to the facts and conditions as they were at the time the judgment was rendered, and to the legal rights and relations of the parties as fixed by the facts so determined; and *when new facts or conditions intervene before a second suit, furnishing a new basis for the claims and defenses of the parties respectively, the issues are no longer the same, and hence the former judgment cannot be pleaded in bar to the subsequent action*. [Internal quotation and citation omitted (emphasis added).]

Because the claims at issue in the Wayne Circuit Court actions all involve facts and legal rights that arose after or distinctly from the facts and legal rights constituting the basis for the claims litigated in the Macomb Circuit Court action, we conclude that the Macomb Circuit Court action and the Wayne Circuit Court actions do not share precise identity of issues.

We further observe that another basis exists for not applying collateral estoppel in the three Wayne Circuit Court actions: "There is a clear and convincing need for a new determination of the issue . . . because of the potential adverse impact of the determination on . . . the interests of persons not themselves parties in the initial action." *Monat*, 469 Mich at 683 n 2. A conclusion that the Macomb Circuit Court case precluded any revisitation of AAA's liability for no-fault benefits for chiropractic services provided by Zigmond Chiropractic in the three Wayne Circuit Court litigations would give rise to the potential that the AAA insureds involved in the Wayne Circuit Court cases could face litigation by Zigmond Chiropractic over the insureds' responsibility to pay for services rendered.[2]

In summary, we affirm the Wayne Circuit Court's denial of AAA's collateral estoppel-based motion for summary disposition in Docket No. 305741 (LC No. 09-006113-NF), reverse the circuit court's grant of AAA's collateral estoppel-based motion for summary disposition in Docket No. 306048 (LC No. 09-010923-CZ), and affirm the Wayne Circuit Court's denial of AAA's collateral estoppel-based motion for summary disposition in Docket No. 306790 (LC No. 09-026665-AV).

III. SUMMARY DISPOSITION UNDER MCR 2.116(C)(6) (DOCKET NO. 305662)

In this appeal Zigmond, P.C., and Dr. Zigmond argue that because AAA filed a countercomplaint and third-party complaint that mirrored a complaint AAA had filed against Zigmond Chiropractic in another Wayne Circuit Court action, the circuit court should have

[2] We are not persuaded by Zigmond Chiropractic's argument that the Court should refrain from applying collateral estoppel in light of a change in the law that occurred after the initiation of the Macomb Circuit Court action. *Monat*, 469 Mich at 683 n 2. Although the Legislature enacted 2009 PA 223 to broaden the statutory definition of "practice of chiropractic" in current MCL 333.16401(1)(e), that act did not become effective until January 5, 2010. All of the services for which Zigmond Chiropractic seeks reimbursement in Docket Nos. 305741, 306048, and 306790 were provided before the effective date of the amendment.

granted Zigmond, P.C.'s and Dr. Zigmond's motion to dismiss the AAA counterclaim and third-party complaint in this case under MCR 2.116(C)(6).

> Summary disposition under MCR 2.116(C)(6) is properly granted when another action has been initiated between the same parties involving the same claim. The court rule is a codification of the former plea of abatement by prior action. The plea of abatement protected parties from being harassed by new suits brought by the same plaintiff involving the same questions as those in pending litigation. To invoke the plea, complete identity of parties is not necessary as long as the two actions are predicated on substantially the same facts. Thus, to abate a subsequent action, the two suits must be based on the same or substantially same cause of action, and as a rule the same relief must be sought. [*Froheip v Flanagan*, 275 Mich App 456, 464; 739 NW2d 645 (2007), rev'd in part on other grounds 480 Mich 962 (2007) (internal quotations and citations omitted).]

The prior action referenced by Zigmond, P.C., and Dr. Zigmond (LC No. 10-008602-CZ) commenced when AAA filed a two-count complaint against Zigmond Chiropractic and Dr. Zigmond. In the first count, entitled "[c]laims to pierce the corporate veil," AAA alleged that since 2006 Dr. Zigmond has used Zigmond Chiropractic "as a mere instrumentality . . . or his alter ego" "to commit fraud or wrong upon" AAA. Count II asserted that "[a]fter [AAA] obtained some judgments and orders for costs against" Zigmond Chiropractic, the company "made numerous transfers with the actual intent to hinder, delay or defraud [AAA] as a judgment creditor" in violation of the Uniform Fraudulent Transfer Act, MCL 566.31 *et seq*. AAA prepared a first amended complaint to add a third count noting that Zigmond Chiropractic had essentially and fraudulently merged with Zigmond, P.C., which thus "impliedly assumed the liabilities of" Zigmond Chiropractic.[3]

In Docket No. 305662 (Wayne Circuit Court No. 10-010699-NF), Zigmond, P.C., filed a complaint to recover "under the no-fault act . . . fees for services rendered to . . . [13] of AAA's insureds who suffered injuries in auto accidents." Zigmond P.C.'s complaint likewise sought no-fault penalty interest and attorney fees, and maintained that AAA had made innocent misrepresentations and engaged in bad faith. AAA then filed a countercomplaint against Zigmond, P.C., and a third-party complaint against Dr. Zigmond that contained the following counts: a request for declaratory relief regarding Zigmond P.C.'s "claims for no-fault benefits and [AAA]'s counter-claims for damages, including attorney fees"; a claim to pierce Zigmond P.C.'s corporate veil; a conspiracy by Dr. Zigmond, Zigmond P.C., and other "healthcare professionals with whom he entered into office space, patient referral, and billing and post office

[3] In LC No. 10-008062-CZ, Zigmond Chiropractic, Zigmond, P.C., and Dr. Zigmond filed a 12-count countercomplaint and third-party complaint against AAA, the National Insurance Crime Bureau (NICB), and individual and unknown agents or investigators who worked for AAA and the NICB; the countercomplaint and third-party complaint focused on AAA's and NICB's allegedly intentional intimidation of counter-plaintiffs' patients and defamation of counter-plaintiffs.

agreements" to unlawfully acquire AAA's money; fraudulent representations by Dr. Zigmond, Zigmond P.C., and "Jane and John Doe" that they had provided health care services to AAA insureds; insurance fraud; Zigmond P.C.'s and Dr. Zigmond's violations of 18 USC 1962(c) and (d); dismissal of the complaint on the basis of Dr. Zigmond's wrongful conduct; violations of Michigan's Uniform Fraudulent Transfer Act; and Zigmond P.C.'s and Dr. Zigmond's provision of services "outside the scope of chiropractic."

Both Wayne Circuit Court No. 10-010699-NF and No. 10-008602-CZ have some parties in common: Dr. Zigmond, the Zigmond entities, and AAA. But we conclude that the two actions do not "involv[e] the same claim." MCR 2.116(C)(6). The complaint at issue in Docket No. 305662 (Wayne Circuit Court No. 10-010699-NF) seeks to recover no-fault benefits for chiropractic services allegedly rendered to 13 AAA insureds, a different subject matter than any of the claims, counterclaims, and third-party claims at issue in Wayne Circuit Court No. 10-008602-CZ, i.e., competing allegations of fraud asserted in multiple counts. *Froheip*, 275 Mich App at 465. AAA's filing of the countercomplaint and third-party complaint in Docket No. 305662 (Wayne Circuit Court No. 10-010699-NF) thus did not render the subject matter of the two actions the same, notwithstanding that AAA may have set forth in both cases counts seeking to pierce the corporate veil of the Zigmond entities and allegations of fraud. Consequently, we affirm the Wayne Circuit Court's denial of summary disposition in Docket No. 305662.

IV. ADEQUACY OF PLEADING MISTAKE OF FACT (DOCKET NO. 305741)

AAA contests the circuit court's grant of summary disposition under MCR 2.116(C)(8) to Zigmond Chiropractic and Neuroscience on the basis that AAA had not pleaded a valid cause of action alleging mistake of fact. *Johnson v Pastoriza*, 491 Mich 417, 435; 818 NW2d 279 (2012). When reviewing a (C)(8) motion, we must accept "as true and construe[] in the light most favorable to the nonmovant" all "well-pleaded factual allegations" in the complaint. *Id*. A court may grant a (C)(8) motion only if the challenged claim qualifies as "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Id*. (internal quotation and citation omitted).

"A mistake of fact is a misunderstanding, misapprehension, error, fault or ignorance of a material fact, a belief that a certain fact exists when in truth and in fact it does not exist." *Sentry Ins v Claims Co Int'l, Inc*, 239 Mich App 443, 447; 608 NW2d 519 (2000) (internal quotation and citation omitted). When someone "pays money to another by mistake, that person [generally] is entitled to recover the amount of the overpayment even if the mistake is due to lack of investigation." *Id*. at 452 (internal quotation and citation omitted). Michigan's "mistake of fact rule . . . is based on the principle of restitution, as well as the goal of avoiding unjust enrichment to the payee." *Id*.

AAA averred as follows in Count VI of the countercomplaint and third-party complaint that it filed in Wayne Circuit Court No. 09-006113-NF:

> 26. AAA paid to Zigmond Chiropractic and Neuroscience . . . *the above amounts* under a misunderstanding, misapprehension, error, fault, or ignorance of material fact, *as set forth hereinabove*.

> 27. AAA has sustained damage *as set forth above*.
>
> 28. Zigmond Chiropractic and Neuroscience would be unjustly enriched if allowed to retain the payment made to them by AAA under a mistake of fact.
>
> 29. AAA is entitled to restitution from Zigmond Chiropractic and Neuroscience each of them, all of them, jointly and severally, for all the monies paid to them. [Emphasis added.]

The services for which AAA paid appear in Count I, entitled "Practice outside the scope of chiropractic": for Zigmond Chiropractic's provision of "hot and cold packs therapy, . . . mechanical traction therapy, therapeutic exercises, massage therapy, myofascial release, neuromuscular reeducation, and kinetic activites" to three AAA insureds. AAA characterized its payment as mistaken because "[a]ll of the services except spinal adjustments were outside the scope of chiropractic, MCL 333.16401, and within the scope of either physical therapy, MCL 333.17801, or medicine, [MCL] 333.17001" *et seq*., while Dr. Zigmond only held a chiropractic license, did not lawfully render the services, and AAA thus had "no obligation to pay for them" under MCL 500.3157. Count II, entitled "Referrals outside the scope of chiropractic," further averred that Dr. Zigmond's referrals for MRI's, EMG's, "[u]ltrasound, acupuncture, and electrical muscle stimulation," likewise "went beyond the scope of chiropractic . . . and into the . . . practice of medicine" to the extent that Zigmond engaged "in a differential diagnosis of the insured's conditions." Count V, fraud, additionally alleged in detail that Zigmond Chiropractic and Neuroscience had falsely billed AAA for services that they had never provided its insureds, and AAA had paid Neuroscience $4,995 in reliance on the false representations. According to Count VI, "Zigmond Chiropractic and Neuroscience engaged in concerted action to accomplish the unlawful purpose of obtaining from AAA money to which they were not legally entitled," and AAA added more detail in the civil conspiracy count.

We conclude that accepting the well-pleaded allegations in the entirety of AAA's countercomplaint and third-party complaint and construing them in the light most favorable to AAA, they adequately set forth a count seeking repayment for no-fault benefits mistakenly paid to Zigmond Chiropractic and Neuroscience on the basis of restitution or unjust enrichment. Accordingly, we reverse the Wayne Circuit Court's grant of summary disposition regarding the mistake of fact count in Docket No. 305741 (LC No. 09-006113-NF).

V. SCOPE OF CHIROPRACTIC (DOCKET NOS. 300643 & 306790)

In Docket No. 300643 (Macomb Circuit Court No. 2008-004807-NF), Zigmond Chiropractic contests the trial court's grant of a partial directed verdict to AAA. The court found that Dr. Zigmond exceeded the scope of his license to practice chiropractic when he provided to AAA insureds EMG and MRI referrals, kinetic activities, massage therapy, myofascial release, neuromuscular reeducation, rehabilitative exercises, testing or examination of nonspinal areas, therapeutic application of hot and cold packs and therapeutic use of mechanical traction. The court deemed only rehabilitative exercises and spinal adjustments as within the scope of chiropractic practice.

A. DOCKET NO. 300643

The trial court employed a flawed analysis in granting AAA a partial directed verdict. The court repeatedly invoked statutory interpretations of the scope of chiropractic practice, MCL 333.16401, contained in *Attorney Gen v Beno*, 422 Mich 293, 332; 373 NW2d 544 (1985), and *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 80-81; 535 NW2d 529 (1995). However, contrary to the trial court's analysis, neither the Supreme Court in *Beno*, 422 Mich at 302-343, nor this Court in *Hofmann*, 211 Mich App at 64-89, held any contested procedure not compensable under the no-fault act, MCL 500.3157, on the basis that the procedure also qualified as otherwise unlawful.

Irrespective of the trial court's incomplete reasoning with respect to the disputed scope of chiropractic practice issues, we still may affirm the ultimate judgment for AAA. The final judgment mandated that Zigmond Chiropractic pay AAA $27,980.57 "for services that were not payable as no-fault benefits, as determined by the Court in its decision granting AAA's motion for directed verdict, in part," and $22,901.17 "for services not rendered, as determined by the jury's verdict."[4] The judgment also ordered that Neuroscience pay AAA $5,601.36 "as determined . . . in [the] . . . decision granting AAA['s] . . . motion for directed verdict, in part." In special verdict question two, the jury determined that neither of the two AAA insureds who received treatments from Dr. Zigmond had "sustain[ed] an accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle." This jury determination, which Zigmond Chiropractic and Neuroscience do not contest on appeal, removes a prerequisite for finding any AAA liability for no-fault benefits. See MCL 500.3105(1) ("[u]nder personal protection insurance an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle"). Because the trial court reached a correct result, we affirm its entry of judgment in favor of AAA and order that Zigmond Chiropractic pay $27,980.57 and Neuroscience pay AAA $5,601.36. *Wilson v King*, 298 Mich App 378, 382; 827 NW2d 203 (2012).

B. DOCKET NO. 306790

AAA attached to its motion for summary disposition under MCR 2.116(C)(10) a wealth of treatment records with respect to two AAA insureds, an 18-page deposition of Dr. Zigmond in the case of one insured, and nine pages of deposition testimony by Dr. Zigmond in the other insured's case. As the 19th District Court recognized in granting AAA declaratory relief: (1) "the record at this point is not sufficient to rule out the possibility that the 'adjustment' process may well involve more than one phase" or "modality of treatment . . . in a single office visit to achieve the desired realignment of the spine" and "a case-by-case analysis is required"; (2) "giving the benefit of the doubt to [Zigmond Chiropractic]," "further evidence would be required in order to form a conclusion" whether kinetic activites, myofascial release, neuromuscular re-education and therapeutic exercises "at least may not be restricted to another licensed profession." However, the district court proceeded to grant AAA relief pursuant to subrule

[4] In answer to jury special verdict question one, the jury found that Zigmond Chiropractic had "intentionally submit[ted] billings for services not rendered."

(C)(10). We conclude that the circuit court properly reversed the district court's grant of summary disposition on the basis that

> [n]umerous issues of fact remain. As the [district] judge recognized, it's not even clear what the chiropractor specifically did in all of the situations here. It's hard to judge his actions if we don't know actions he took. We need to have a hearing or trial.[5]

VI. SANCTIONS (DOCKET NO. 306455)

Lastly, Zigmond Chiropractic and Neuroscience argue that the circuit court should have sanctioned AAA's trial counsel pursuant to MCR 2.114 for intentionally attaching to a "final consent judgment" the signature of Zigmond Chiropractic's counsel from an earlier "final judgment" and purposefully altering the terms of the "final consent judgment." This Court reviews "for clear error the trial court's determination whether to impose sanctions under MCR 2.114." *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008).

A court may impose sanctions on an attorney in conformity with MCR 2.114, the content of which this Court summarized as follows in *Guerrero*, 280 Mich App at 677-678:

> Pursuant to MCR 2.114(D), an attorney is under an affirmative duty to conduct a reasonable inquiry into both the factual and legal basis of a document before it is signed. Under MCR 2.114(D), the signature of a party or an attorney is a certification that the document is "well grounded in fact and . . . warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law" and that "the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The filing of a signed document that is not well grounded

---

[5] In several appeals, the Zigmond entities point to letters from the Department of Community Health as support for the proposition that all of Dr. Zigmond's provided services were within the scope of chiropractic set forth in MCL 333.16401. We note that the letters possess little to no probative value concerning the parties' scope of chiropractic dispute. A January 2009 letter states in pertinent part:

> Some time ago an allegation was filed against you with this office. After a thorough review of the matter, we have determined that a violation of the Public Health Code cannot be established. Accordingly our file has been closed.

A second letter in December 2010 offers no additional detail regarding the issues involved in the department's investigation or any specifics about what materials the department considered; it merely reiterates that the department opened a file concerning Dr. Zigmond in December 2006 and closed the file in January 2009 on the basis of "a determination that no violation of Article 15 of the Michigan Public Health Code . . . could be substantiated with the information presented at the time."

> in fact and law subjects the filer to sanctions pursuant to MCR 2.114(E). MCR 2.114(E) states that the trial court "shall" impose sanctions upon finding that a document has been signed in violation of the rule. Therefore, if a violation of MCR 2.114(D) has occurred, the sanctions provided for by MCR 2.114(E) are mandatory.

At a September 2011 motion hearing, AAA's counsel explained that the parties had reached a settlement with respect to Wayne Circuit Court No. 09-010923-CZ and "were to work out the details of the order," but during this process he mistakenly sent to Zigmond Chiropractic's counsel "the wrong judgment," which AAA "stipulated to set aside. We [cocounsel] were e-mailing and all of a sudden there's this motion. I don't think [Zigmond Chiropractic's counsel's] motion is necessary. We'll agree to the judgment." AAA's counsel reiterated that the attachment of Zigmond Chiropractic's counsel's signature to the wrong final judgment constituted a mistake, and AAA's counsel would "stipulate[] to set aside" the incorrect "final consent judgment."

We conclude that Zigmond Chiropractic has not substantiated that AAA's counsel (1) interposed a document "for any improper purpose," MCR 2.114(D); or (2) performed in bad faith any other actions pertaining to entry of a final judgment in this case. Zigmond Chiropractic also has substantiated no prejudice arising from the purported misconduct of AAA's counsel. Although Zigmond Chiropractic's counsel characterized AAA's counsel's conduct regarding the "final consent judgment" as "a clear effort to get us to waive our appeal rights," this Court currently is entertaining Zigmond Chiropractic's claims of appeal from Wayne Circuit Court No. 09-010923-CZ in Docket Nos. 306048 and 306455. Because the record contains no support for Zigmond Chiropractic's request for sanctions, we affirm the circuit court's implicit denial of sanctions in Docket No. 306455. *Wilson*, 298 Mich App at 382 (observing that this Court should generally affirm a correct result reached by the circuit court).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause