

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON**

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**NORTHWEST CHIROPRACTIC LIFE  
CENTER, P.C.,**

**File No. 16-2279-NF**

Plaintiff,

v.

**AUTO-OWNERS INSURANCE COMPANY,**  
a Michigan Insurance Company,

**Honorable Richard N. LaFlamme**

Defendant,

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**OPINION AND ORDER GRANTING DEFENDANT'S  
MOTION FOR RECONSIDERATION AND DISMISSING COMPLAINT**

Defendant filed a Motion for Reconsideration of the Court's September 1, 2017, order ("the Previous Order") denying summary disposition to Defendant. A motion for reconsideration can be decided without an answer by the opposing party and without oral argument. MCR 2.119(F)(2). Generally, a motion for reconsideration which merely presents the same issues ruled on by the Court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). Further, the Court Rules require:

The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3) (in part).

After reviewing Defendant's motion, the Court vacates the Previous Order and grants Summary Disposition in favor of Defendant. The threshold and controlling issue in this case was whether *Covenant Medical Center, Inc v State Farm Mut Auto Ins Co*, \_\_ Mich \_\_; 895 NW2d 490 (2017), should be applied prospectively only. Although the Court decided differently in the Previous Order, the Court of Appeals published an opinion on August 31, 2017, holding that *Covenant* should be applied retroactively. *W.A. Foote Memorial Hosp v Michigan Assigned Claims Plan*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (2017) (Docket No. 3333360). A published Court of Appeals decision is binding on this Court. MCR 7.215. Applying *Covenant* to the instant case, Plaintiff possesses no statutory cause of action against Defendant for recovery of PIP benefits.

Next, the Court will address the issue of assignment. In Plaintiff's answer to Defendant's motion for summary disposition, Plaintiff sought leave to amend the Complaint based on an assignment Plaintiff received from its patient, Barbara Van Epps. In support, Plaintiff argues that leave to amend the Complaint will present no undue delay, is not sought due to bad faith or dilatory motive, is not due to Plaintiff's previous failure to cure deficiencies in its Complaint, will not prejudice Defendant, and will not be futile. The Court disagrees with Plaintiff's position because, as discussed below, amendment of the Complaint would be futile.

Plaintiff obtained two assignments from its patient, Barbara Van Epps. The first is void under MCL 500.3143 because it preceded the services provided to Ms. Van Epps. MCL 500.3143 provides that "An agreement for assignment of a right to benefits payable in the future is void."

The second assignment was obtained more than a year after the last service that Plaintiff provided to Ms. Van Epps. Ms. Van Epps could not have sued for these benefits because of the

one year back rule. Yet, Plaintiff argues that it should be allowed to sue based on the second assignment even though Ms. Van Epps could not, because of the relation back rule. The Court disagrees.

The case which guides this Court's decision is *Miller v Chapman Contracting*, 447 Mich 102 (2007). In *Miller*, plaintiff's attorney erroneously named the plaintiff, instead of his bankruptcy trustee, as plaintiff. *Id.* at 104. After the period of limitations expired, the defendants moved to dismiss, after which the plaintiff filed a motion to amend the complaint in order to substitute the bankruptcy trustee as plaintiff. *Id.* In an opinion affirming the trial court's dismissal of *Miller*, the Michigan Supreme Court emphasized that although an amendment generally relates back to the date of the original filing if the new claim asserted arises out of the conduct, transaction, or occurrence set forth in the original pleading, the relation-back doctrine does not apply to the addition of new parties. *Id.* at 105-06. In *Miller*, because plaintiff's bankruptcy trustee was the sole party who had the right to pursue the lawsuit, the bankruptcy trustee was the real party in interest. *Id.* at 104. Accordingly, the Michigan Supreme Court held that substituting a real party in interest for one that was not constituted adding a new party, and the plaintiff should not get the benefit of the relation-back doctrine. *Id.* at 106-07.

Applying the foregoing principle to the instant case, granting Plaintiff leave to amend the Complaint would be futile. "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, 656; 680 NW2d 453(2004). Thus, the assignee has a legal right only if the assignor had one, since "a subrogee has the same cause of action as the subrogor." *Auto Club Ins Ass'n v New York Life Ins Co*, 440 Mich 126, 133-34; 485 NW2d 695 (1992). Accordingly, because Ms. Van Epps' claim was time-barred on March 31, 2017, Ms. Van Epps had nothing to assign.

Plaintiff's request to add a new claim as assignee of Ms. Van Epps should be treated the same as substituting Ms. Van Epps in as a plaintiff, since Plaintiff would simply be standing in Ms. Van Epps' shoes. Since Ms. Van Epps would not be given the benefit of the relation back rule, neither should her assignee.

The Court is required to dismiss this case based on the preceding analysis even if the Court here to rule in favor of the Plaintiff on the issue of the anti-assignment clause in Ms. Van Epps' insurance policy. Accordingly, the Court does not need to address the issue of the anti-assignment clause.

For the reasons stated, Defendant's Motion for Reconsideration is **GRANTED**, and **IT IS ORDERED** that Plaintiff's case is **DISMISSED WITH PREJUDICE**.

**THIS IS A FINAL ORDER.**

Dated: October 5, 2017

/s/

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**HON. RICHARD N. LAFLAMME (P32641)**

Circuit Court Judge

The undersigned certifies that a copy of the above document was served upon the Parties/Attorneys stated above by first class mail on the October 5, 2017.

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Judicial Attorney