STATE OF MICHIGAN

COURT OF APPEALS

DAVINA GRADY,

Plaintiff,

and

LIVONIA CARE PHARMACY, LG TRANSPORTATION & MANAGEMENT, INC, and NORTHLAND RADIOLOGY, INC,

Intervening Plaintiffs,

and

MERCYLAND HEALTH SERVICES, PLLC,

Intervening Plaintiff-Appellant,

v

STEVEN PATRICK WAMBACH and JOHN P. O'SULLIVAN DISTRIBUTING,

Defendants,

and

MEEMIC INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
November 18, 2021
9:05 a.m.

No. 354091
Wayne Circuit Court
LC No. 18-014393-NI

Before: SAWYER, P.J., and CAMERON and LETICA, JJ.

CAMERON, J.

In this first-party claim under the no-fault act, a medical provider treated an insured for her injuries and later sought reimbursement from defendant insurance company. MCL 500.3101 *et seq*. Defendant insurer refused to pay personal protection insurance (PIP) benefits, and the provider sued. In the trial court, the insurer justified its refusal to pay PIP benefits because the medical provider was improperly owned by a person who does not hold a license to practice medicine in Michigan as required by MCL 450.4904(2); thus, the medical services were not "lawfully rendered" under the no-fault act. Ultimately, the trial court granted summary disposition in favor of insurer on this ground. Consistent with *Miller v Allstate Ins Co*, 481 Mich 601; 751 NW2d 463 (2008), and *Sterling Heights Pain Mgt v Farm Bureau Gen Ins Co of Mich*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 350979), we hold that defendant insurer lacks statutory standing to challenge the alleged improper formation of a Michigan professional limited liability company (PLLC). We therefore reverse and remand for further proceedings consistent with this opinion.

I. BACKGROUND

Mercyland provided medical treatment to Davina Grady after she was injured in a motor vehicle accident. Mercyland's sole member and manager, Dr. Mohammed Abraham, was not licensed to practice medicine in Michigan when Mercyland provided treatment to Grady. Grady's insurer, Meemic, refused to pay PIP benefits related to Mercyland's services and Grady filed suit. Mercyland obtained an assignment of rights from Grady, and Meemic filed an answer to the intervening complaint and generally denied liability.

Meemic later moved for summary disposition, arguing that Mercyland had not lawfully rendered treatment to Grady as required under MCL 500.3157. Specifically, Meemic argued that Mercyland had violated the Michigan Limited Liability Company Act (MLLCA), MCL 450.4101 *et seq*., which requires that all members and managers of a PLLC be licensed to render the same professional service as the corporate entity, MCL 450.4904(2). Mercyland responded that Meemic did not have standing to challenge whether Mercyland was properly incorporated or organized and that all treatment rendered to Grady was done so by licensed physicians. Mercyland also argued that Meemic had waived any argument concerning Mercyland's corporate status by failing to raise it as an affirmative defense. The trial court granted summary disposition in favor of Meemic, concluding that MCL 450.4904 required Dr. Abraham to be licensed or otherwise legally authorized to practice medicine in Michigan in order for Mercyland's treatment of Grady to be "lawfully rendered."

II. ANALYSIS

Mercyland argues that the trial court erred by granting summary disposition in favor of Meemic because, under *Miller*, Meemic lacks standing to challenge whether it is properly incorporated. We agree.

We review de novo a trial court's decision regarding a motion for summary disposition. *Buhl v City of Oak Park*, ___ Mich ___, ___; ___ NW2d ___ (2021) (Docket No. 160355); slip op at 3.

> When reviewing a motion brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. Summary disposition is appropriate when no genuine issues of material fact exist. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*Id*. at ___; slip op at 3-4 (quotation marks and citations omitted).]

"Whether a party has standing is reviewed de novo as a question of law." *Wilmington Savings Fund Society, FSB v Clare*, 323 Mich App 678, 684; 919 NW2d 420 (2018). Questions of statutory standing require analyzing the statutory language to determine legislative intent, and "[q]uestions of statutory interpretation are reviewed de novo." *Miller*, 481 Mich at 606-607. "The primary rule of statutory construction is to effectuate the intent of the Legislature, and where the statutory language is clear and unambiguous, it is generally applied as written." *Slocum v Farm Bureau Gen Ins Co of Mich*, 328 Mich App 626, 638; 939 NW2d 717 (2019) (quotation marks and citation omitted).

In *Miller*, our Supreme Court recited the following relevant principles regarding standing:

> Our constitution requires that a plaintiff possess standing before a court can exercise jurisdiction over that plaintiff's claim. This constitutional standing doctrine is longstanding and stems from the separation of powers in our constitution. Because the constitution limits the judiciary to the exercise of judicial power, the Legislature encroaches on the separation of powers when it attempts to grant standing to litigants who do not meet constitutional standing requirements.
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> Although the Legislature cannot *expand* beyond constitutional limits the class of persons who possess standing, the Legislature may permissibly *limit* the class of persons who may challenge a statutory violation. That is, a party that has constitutional standing may be precluded from enforcing a statutory provision, if the Legislature so provides. This doctrine has been referred to as a requirement that a party possess statutory standing. Statutory standing simply entails statutory interpretation: the question it asks is whether the Legislature has accorded *this* injured plaintiff the right to sue the defendant to redress his injury. [*Miller*, 481 Mich at 606-607 (quotation marks, citations, footnote, and alteration brackets omitted).]

"The principle of statutory standing is jurisdictional; if a party lacks statutory standing, then the court generally lacks jurisdiction to entertain the proceeding or reach the merits." *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355; 833 NW2d 384 (2013).

Mercyland relies on *Miller* to argue that summary disposition in favor of Meemic was improper. In *Miller*, 481 Mich at 604, the insured underwent physical therapy at PT Works, Inc.,

after he was injured in two different motor vehicle accidents. PT Works billed the insurance company, but the insurance company refused to pay. *Id.* at 605. After PT Works filed suit, the insurance company moved for summary disposition, alleging that it did not have to pay PIP benefits because PT Works was improperly incorporated under the Business Corporations Act (BCA), MCL 450.1101 *et seq*. *Miller*, 481 Mich at 605. According to the insurance company, PT Works was required to incorporate under the Professional Services Corporations Act, MCL 450.221 *et seq*. *Miller*, 481 Mich at 605. The trial court denied the insurance company's motion for summary disposition based on a determination that PT Works could incorporate under the BCA. *Id.*

Ultimately, the matter reached our Supreme Court, which concluded that the relevant question was whether the BCA granted the insurance company statutory standing to challenge PT Works's corporate status. *Miller*, 481 Mich at 610. The *Miller* Court noted that MCL 450.1221 of the BCA provides the following: "The corporate existence shall begin on the effective date of the articles of incorporation . . . . Filing is conclusive evidence that . . . the corporation has been formed under [the BCA], except in an action or special proceeding by the attorney general." *Miller*, 481 Mich at 610. The Court held that, "[b]y naming only the Attorney General . . ., the Legislature has indicated that the Attorney General alone has the authority to challenge corporate status[.]" *Id.* at 611. "In essence, MCL 450.1221 prevents any person—other than the Attorney General—from bringing any challenge to corporate status under the BCA: every such challenge would be doomed to failure, because the mere filing of articles of incorporation constitutes '*conclusive* evidence' of the corporation's legality." *Id.* at 611-612. Thus, the *Miller* Court held that the insurance company lacked the requisite "statutory standing to assert that PT Works was improperly incorporated[.]" *Id.* at 616. The *Miller* Court further held that because the insurance company was barred from bringing an original suit against PT Works, "it would be illogical" to permit the insurance company to challenge PT Works's incorporation as an affirmative defense. *Id.* at 610 n 5.

Mercyland argues that under *Miller*'s holding, Meemic lacks standing to challenge whether Mercyland is in compliance with the MLLCA. Meemic counters that *Miller* is inapplicable because it is not challenging Mercyland's corporate status. Instead, Meemic argues that the MLLCA requires that all members and managers of a PLLC must be licensed and, because Mercyland's sole member is not licensed to practice medicine in Michigan, any treatment rendered by Mercyland was not lawfully rendered under the no-fault act. This identical argument was recently addressed and rejected by this Court in *Sterling Heights Pain Mgt*, ___ Mich App at ___; slip op at 2-4.

In *Sterling Heights Pain Mgt*, the insured was injured in a motor vehicle accident and received services from the provider. *Id.* at ___; slip op at 1. The provider filed suit after the insurer refused to pay PIP benefits. *Id.* at ___; slip op at 1. The insurer moved for summary disposition, arguing that the provider had "violated the MLLCA's requirement that all members and managers of a [PLLC] be licensed to render the same professional service as the corporate entity." *Id.* at ___; slip op at 1-2, citing to MCL 450.4904(2). In response, the provider "argued that [the insurer] did not have standing to challenge whether [the provider] was properly incorporated or organized and that all treatment rendered to [the insured] was done so by licensed physicians." *Id.* at ___; slip op at 2. After the trial court granted summary disposition in favor of the insurer, the provider

appealed and argued that, under *Miller*, the insurance company lacked statutory standing to challenge its formation. *Id*. at ___; slip op at 2-3. This Court agreed because

> [t]he MLLCA contains a provision identical to the one relied on in *Miller*. MCL 450.4202(2) provides in part:
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> > Filing is conclusive evidence that all conditions precedent required to be performed under this act are fulfilled and that the company is formed under this act, except in an action or special proceeding by the attorney general.
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> The filing of the required documents for incorporation was conclusive evidence that plaintiff met the conditions precedent for formation of a [PLLC], including the requirement that all members and managers be licensed persons. Only the Attorney General has standing to contest that presumption. Thus, although the alleged incorporation defect is different than the one alleged in *Miller*, [the] defendant lacks statutory standing for the reasons stated in that opinion. [*Sterling Heights Pain Mgt*, ___ Mich App at ___; slip op at 3-4.]

We conclude that, like in the insurer in *Sterling Heights Pain Mgt*, Meemic does not have standing to assert an affirmative defense that challenges Mercyland's formation under the MLLCA. As noted by our Supreme Court in *Miller*,

> Michigan courts have long held that the state possesses the sole authority to question whether a corporation has been properly incorporated under the relevant law.
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> * * *
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> Indeed, if the legality of every Michigan corporation were subject to continual assault by any person, it would be difficult to see how a stable economic climate could ever exist. Relevant to this case, no insured person could obtain medical treatment without undertaking a laborious inquiry into whether the entity providing treatment has complied with every applicable corporate statute and regulation. Whether an insured person could obtain benefits would largely depend on the ingenuity of lawyers in ferreting out aspects of corporate non-compliance with applicable statutes. However, the Legislature has deemed it fit that residents of Michigan may depend on the corporate status of any corporation formed under the BCA and approved by the state, and we do nothing more here than enforce that policy decision—a decision rooted in relevant statutes and in longstanding judicial practice. [*Miller*, 481 Mich at 615-616.]

Meemic and the dissent assert that the issue is not whether Meemic has standing to assert its affirmative defense. Instead, they assert Mercyland's medical services to Grady were not "lawfully rendered" due to Mercyland's improper corporate formation. By reframing the issue on appeal, Meemic and the dissent would extend this Court's holding in *Healing Place at North Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51; 744 NW2d 174 (2007) to affirm summary disposition. But in *Healing Place*, the insurer unquestionably had standing to defend its refusal to

pay PIP benefits when neither the provider nor the medical institution were properly licensed to perform the services rendered. *Id*. at 59. But this is not the case here where the individuals who provided treatment to Grady were properly licensed. Nor is the issue, as the dissent argues, whether Mercyland itself was properly licensed. Indeed, Meemic did not even argue that Mercyland was required to be licensed to provide certain services[1] or that the individuals who provided Grady with medical care were unlicensed to render the services provided. Simply put, the dissent puts the cart before the horse when it reaches the merits of Meemic's affirmative defense that depends on a successful attack on the corporate formation of Mercyland without first answering the threshold question of whether Meemic has standing to assert it. We therefore conclude that Meemic's arguments must fail under *Miller* and *Sterling Heights Pain Mgt*, which hold that the Attorney General alone has standing to challenge incorporation defects.

In sum, we conclude that the trial court erred by considering the merits of Meemic's affirmative defense and by granting summary disposition in favor of Meemic. See *Miller*, 481 Mich at 608; *Sterling Heights Pain Mgt*, ___ Mich App at ___; slip op at 4. Because Meemic lacks standing to challenge Mercyland's alleged improper formation, it would be improper for us to consider whether the alleged violation of the MLLCA rendered Mercyland's treatment to Grady unlawful. See *Jawad A Shaw, MD, PCC v State Farm Mut Automobile Ins Co*, 324 Mich App 182, 201; 920 NW2d 148 (2018) (this Court generally does not decide moot issues). We also need not consider whether Meemic waived an affirmative defense as to whether the services provided by Mercyland were unlawful[2] and whether the trial court erred by declining to grant summary disposition in favor of Mercyland under MCR 2.116(I)(2).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas C. Cameron
/s/ Anica Letica

[1] Although Meemic argues that, "as the sole member and manager of Mercyland, [Dr. Abraham] is in a real sense the institution," Meemic stops short of arguing that Mercyland is required to be licensed. Moreover, Meemic's attempt to blend the identities of Mercyland and Dr. Abraham is unpersuasive.

[2] Before oral argument on the motion for summary disposition, Meemic filed amended affirmative defenses, including a new defense that the services provided by Mercyland were unlawful. Meemic did so without leave of the trial court. At oral argument, the trial court concluded that, if Meemic had filed a motion for leave to amend the affirmative defenses, the motion would have been granted.