STATE OF MICHIGAN

COURT OF APPEALS

DENNIS JOHN BLASZKIEWICZ, Individually and as Personal Representative of the ESTATE OF ROSLYNN HARRIET SHERMAN,

Plaintiffs-Appellants,

v

ST. MARY'S OF MICHIGAN,

Defendant-Appellee,

and

ADVANCED DIAGNOSTIC IMAGING, PC,

Defendant.

UNPUBLISHED
June 20, 2024

No. 363311
Saginaw Circuit Court
LC No. 19-039837-NH

Before: CAMERON, P.J., and N. P. HOOD and YOUNG, JJ.

PER CURIAM.

Plaintiffs, Dennis Blaszkiewicz,[1] individually and as personal representative of the Estate of Roslynn Sherman, appeal by leave granted[2] the trial court's order granting summary disposition, under MCR 2.116(C)(10) (no genuine issue of material fact), in favor of defendant-appellee, St. Mary's of Michigan (hereinafter "St. Mary's"). We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

[1] Blaszkiewicz was Roslynn Sherman's husband.

[2] *Estate of Roslynn Harriet Sherman v St Mary's of Mich*, unpublished order of the Court of Appeals, entered April 11, 2023 (Docket No. 363311).

I. FACTUAL AND PROCEDURAL BACKGROUND

This medical malpractice case arises out of the alleged negligent treatment of decedent, Roslynn Sherman, after she presented to the emergency department of nonparty St. Mary's of Michigan Standish Hospital, also known as Standish Community Hospital, Inc. (hereinafter "Standish"), complaining of abdominal pain and nausea. Dr. Samvasiva Kottamasu, a board-certified diagnostic radiologist and employee of defendant, Advanced Diagnostic Imaging, PC (hereinafter "ADI"), reviewed and interpreted decedent's CT scan, but did not "suspect any pathology[.]" Decedent was then transferred to St. Mary's. Decedent was admitted, and Dr. Samir Kais, a surgeon and employee of Saginaw Cooperative Hospitals, Inc., doing business as Central Michigan University CMED Partners (hereinafter "CMU Partners"), provided a surgical consult but did not recommend surgery.

According to plaintiffs, Dr. Kottamasu and Dr. Kais failed to appreciate decedent's condition, which ultimately led to her bowel becoming ischemic. As a result, decedent had to undergo a significant resection of her small and large bowels. Decedent and Blaszkiewicz filed suit alleging, in relevant part, that St. Mary's was vicariously liable for Dr. Kottamasu's and Dr. Kais's medical malpractice. During the lower court proceedings, decedent and Blaszkiewicz amended the complaint to address "scrivener's errors." After decedent passed away from complications associated with COVID-19, Blaszkiewicz amended the complaint a second time, substituting himself for decedent as the personal representative of her estate, and adding claims under the Wrongful Death Act, MCL 600.2921 *et seq*.

St. Mary's moved for summary disposition, arguing it was not vicariously liable for the actions of Dr. Kottamasu or Dr. Kais because they were not its agents, employees, or ostensible agents. Further, St. Mary's argued it could not be liable for any actions taken by agents of Standish, because Standish was a separate legal entity. The motion only addressed the first-amended complaint. Plaintiffs opposed the motion, arguing St. Mary's improperly focused on the first-amended complaint and that genuine issues of material fact existed for trial. In the alternative, plaintiffs requested leave to amend the second-amended complaint to add Standish as a defendant. The trial court denied plaintiff's request to amend because it would be futile and granted St. Mary's motion. Plaintiffs now appeal.

II. MOOTNESS—FIRST-AMENDED COMPLAINT

Plaintiffs argue St. Mary's motion for summary disposition should have been dismissed as moot because it improperly focused on the first-amended complaint. We disagree.

A. STANDARD OF REVIEW

"The applicability of a legal doctrine, such as mootness, is a question of law which this Court reviews de novo." *Mich Republican Party v Donahue*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 364048); slip op at 3 (quotation marks and citation omitted).

B. LAW & ANALYSIS

Plaintiffs argue the trial court erred by considering St. Mary's motion because it sought dismissal of the first-amended complaint, even though plaintiffs filed a second-amended

complaint. Because the first-amended complaint was no longer operative, the trial court should have dismissed the motion as moot.

> As a general rule, [a] Court does not decide moot issues. An issue is moot if an event has occurred that renders it impossible for the court to grant relief. An issue is also moot when a judgment, if entered, cannot for any reason have a practical legal effect on the existing controversy. [*Mich Republican Party*, ___ Mich App at ___; slip op at 3 (quotation marks and citation omitted).]

Plaintiffs are correct that, upon the filing of the second-amended complaint, the first-amended complaint became inoperative. Under MCR 2.118(A)(4), an amended pleading supersedes the former, unless otherwise indicated by the pleader. See also *Progress Mich v Attorney General*, 506 Mich 74, 95; 954 NW2d 475 (2020). In this case, there is no indication plaintiffs intended for the first-amended complaint to remain operative. As a result, the second-amended complaint became the operative complaint, superseding its predecessor. See MCR 2.118(A)(4). Thus, St. Mary's motion for summary disposition sought dismissal of an inoperative complaint.

But, plaintiffs are not entitled to relief because any error by the trial court in considering the motion was harmless. The trial court correctly recognized that the allegations in the first- and second-amended complaints were essentially identical, except for: (1) Blaszkiewicz's substitution of decedent as personal representative of her estate, and (2) the inclusion of a claim for damages under the Wrongful Death Act. St. Mary's motion turned on factual issues regarding actual agency and ostensible agency. As the trial court recognized, the question of whether there was a genuine issue of material fact was the same regardless of which version of the complaint was considered. The parties fully briefed the issue of agency and whether summary disposition under MCR 2.116(C)(10) was proper. As such, any error by the trial court did not impact the outcome of the case, and was therefore harmless. See MCR 2.613(A); *Ellison v Dep't of State*, 320 Mich App 169, 179; 906 NW2d 221 (2017).

III. AGENCY

Plaintiffs next argue summary disposition was improper because genuine issues of material fact existed as to agency. We agree, in part.

A. STANDARD OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v. Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019).

> A motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*El-Khalil*, 504 Mich at 160 (quotation marks, citations, and emphasis omitted).]

"The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10)." *Ass'n of Home Help Care Agencies v Dep't of Health & Human Servs*, 334 Mich App 674, 684 n 4; 965 NW2d 707 (2020) (quotation marks and citation omitted). "Like the trial court's inquiry, when an appellate court reviews a motion for summary disposition, it makes all legitimate inferences in favor of the nonmoving party." *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994). "Courts are liberal in finding a factual dispute sufficient to withstand summary disposition." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009). "[T]he interpretation of a contract is a question of law reviewed de novo on appeal[.]" *Lueck v Lueck*, 328 Mich App 399, 404; 937 NW2d 729 (2019) (citation omitted, first alteration in original).

B. LAW & ANALYSIS

1. ACTUAL AGENCY

Plaintiffs first argue summary disposition was improper because genuine issues of material fact existed as to whether Dr. Kais was an actual agent of St. Mary's. In support of this argument, plaintiffs point to the Professional Services Agreement (CMU Agreement) between CMU Partners and St. Mary's as proof that St. Mary's exercised sufficient control over Dr. Kais to establish an agency relationship. We conclude the terms of the CMU Agreement, together with Dr. Kais's employment agreement with CMU Partners, create a genuine issue of material fact for the jury.

"Generally, Michigan law will impose liability upon a defendant only for his or her own acts of negligence, not the tortious conduct of others." *Laster v Henry Ford Health Sys*, 316 Mich App 726, 734; 892 NW2d 442 (2016). "[A]n exception exists under the theory of respondeat superior, wherein an employer may be liable for the negligent acts of its employee if the employee was acting within the scope of his employment." *Id*. "An employer is not vicariously liable for acts committed by its employees outside the scope of employment, because the employee is not acting for the employer or under the employer's control." *Rogers v JB Hunt Transp*, 466 Mich 645, 651; 649 NW2d 23 (2002). Under this logic, someone who hires an independent contractor is not liable for the contractor's negligence because the employer does not control the contractor. *St Clair v XPO Logistics, Inc*, 344 Mich App 418, 438-439; 1 NW3d 821 (2022). But, when an employer retains and exercises control over an independent contractor, the employer may be liable in negligence. *Id*. at 439. Vicarious liability may still exist through agency, even absent an employer-employee relationship. *Laster*, 316 Mich App at 735. "[I]t is the power or ability of the principal to control the agent that justifies the imposition of vicarious liability." *Id*. at 735. "Where there is a disputed question of agency, any [evidence], either direct or inferential, tending to establish agency creates a question of fact for the jury to determine." *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992).

Various provisions of the CMU Agreement, read together, suggest that St. Mary's exercised more than a *de minimis* degree of control over CMU Partners' physicians, including Dr. Kais. Among the requirements, the CMU Agreement mandated that CMU Partners' physicians satisfy various qualification and service requirements. It also required physicians to comply with St. Mary's "policies, procedures[,] and programs[.]" If a physician failed to satisfy these requirements, CMU Partners, upon St. Mary's written request, was required to remove the

physician from service with St. Mary's. Additionally, CMU Partners was not permitted to add additional physicians as service providers for St. Mary's absent St. Mary's prior approval.

These requirements support the notion that St. Mary's had more than a *de minimis* degree of control over CMU Partners' physicians, including Dr. Kais. They ensured the quality of services and suggest that St. Mary's exerted control over "the manner or methodology" of the treatment provided by Dr. Kais. Cf. *Laster*, 316 Mich App at 737. Indeed, St. Mary's could ensure that a physician who was not complying with its "policies, procedures[,] and programs" would no longer be permitted to provide services to St. Mary's. In line with these principles, Dr. Kais agreed during his sworn testimony that he was required to follow St. Mary's "bylaws and standards of practice[.]" While St. Mary's is correct that the CMU Agreement also asserts that "the doctors are independent contractors," and claims it was not "creat[ing] an employer/employee relationship," the labels parties use to define their relationship are not dispositive. See *Id*. at 736. Despite the labels claimed by the CMU Agreement, the actual nature of the control St. Mary's exercised over CMU Partners' physicians, including Dr. Kais, creates a genuine issue of material fact regarding whether Dr. Kais was an actual agent of St. Mary's. As such, this is a question for the fact-finder, see *Meretta*, 195 Mich App at 697, and the trial court erred by concluding otherwise.

Plaintiffs next argue summary disposition was improper because genuine issues of material fact existed as to whether Dr. Kottamasu was an actual agent of St. Mary's. To support this argument, plaintiffs point to the Agreement for Radiology Services (Radiology Agreement). However, even if this agreement supported the notion that St. Mary's had more than a *de minimis* degree of control over ADI's physicians, including Dr. Kottamasu, plaintiffs would not be entitled to relief. At the time of the alleged malpractice, Dr. Kottamasu was performing services for Standish. St. Mary's and Standish are separate corporate entities, and their separate identities must be respected. See *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 222; 880 NW2d 793 (2015) ("when multiple related corporations are involved, the law presumes that these corporations constitute separate legal entities"). On these facts, it cannot be said St. Mary's exerted control over "the manner or methodology" of the treatment provided by Dr. Kottamasu at the time of the alleged malpractice. As such, the trial court did not err by concluding no genuine issue of material fact existed as to whether Dr. Kottamasu was St. Mary's actual agent.

2. OSTENSIBLE AGENCY

Plaintiffs next argue summary disposition was improper because genuine issues of material fact exist as to whether Dr. Kais was an ostensible agent of St. Mary's. To establish a claim of ostensible agency, a plaintiff must prove that: (1) "the person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one;" (2) "such belief must be generated by some act or neglect of the principal sought to be charged;" and (3) "the third person relying on the agent's apparent authority must not be guilty of negligence." *Grewe v Mt Clemens General Hospital*, 404 Mich 240, 253; 273 NW2d 429 (1978) (quotation marks and citations omitted).]

"Generally speaking, a hospital is not vicariously liable for the negligence of a physician who is an independent contractor and merely uses the hospital's facilities to render treatment to his patients." *Grewe*, 404 Mich at 250. An independent contractor is "one who, carrying on an independent business, contracts to do work without being subject to the right of control by the

employer as to the method of work but only as to the result to be accomplished." *Candelaria v BC Gen Contractors, Inc*, 236 Mich App 67, 73; 600 NW2d 348 (1999) (quotation marks and citation omitted). "However, if the individual looked to the hospital to provide him with medical treatment and there has been a representation by the hospital that medical treatment would be afforded by physicians working therein, an agency by estoppel can be found." *Grewe*, 404 Mich at 250-251.

Our Supreme Court reasoned, when determining whether an agency relationship exists:

> [T]he critical question is whether the plaintiff, at the time of his admission to the hospital, was looking to the hospital for treatment of his physical ailments or merely viewed the hospital as the situs where his physician would treat him for his problems. A relevant factor in this determination involves resolution of the question of whether the hospital provided the plaintiff with [the treating doctor] or whether the plaintiff and [the treating doctor] had a patient-physician relationship independent of the hospital setting. [*Id*. at 251.]

As such, the *Grewe* Court adopted the following test:

> The relationship between a given physician and a hospital may well be that of an independent contractor performing services for, but not subject to, the direct control of the hospital. However, that is not of critical importance to the patient who is the ultimate victim of that physician's malpractice . . . .
>
> > An agency is ostensible when the principal intentionally or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him. In this connection it is urged by appellant that before a recovery can be had against a principal for the alleged acts of an ostensible agent, three things must be proved, to wit. . . . [First, t]he person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one; [second] such belief must be generated by some act or neglect of the principal sought to be charged; [third] and the third person relying on the agent's apparent authority must not be guilty of negligence. [*Grewe*, 404 Mich at 252-253 (quotation marks and citations omitted).]

In *Markel v William Beaumont Hosp*, 510 Mich 1071; 982 NW2d 151 (2022), our Supreme Court reaffirmed its holding in *Grewe*. The *Markel* court recognized that "a hospital will not be vicariously liable under an ostensible agency theory every time a person receives medical treatment in a hospital[,]" and that "agency cannot arise merely because one goes to a hospital for medical care." *Id*. at 1072. But, the important consideration in cases like these is whether there was "a preexisting relationship between doctor and patient." *Id*. at 1072 (quotation marks and citation omitted).

The trial court erred by summarily disposing of plaintiffs' ostensible-agency claim concerning Dr. Kais. The trial court focused on the fact that plaintiffs presented no evidence of

any act or neglect by St. Mary's that would give rise to a reasonable belief that Dr. Kais was an agent of St. Mary's. It did not, however, acknowledge that decedent presented to the hospital for treatment and had no prior relationship with Dr. Kais. Our Supreme Court has explained that a plaintiff does not need to show some additional, affirmative act by a hospital to prove ostensible agency; merely staffing the emergency room with physicians with whom a patient had no prior relationship is sufficient. *Id*. at 1071-1072. As such, a "patient's belief that a doctor is the hospital's agent is reasonable unless dispelled in some manner by the hospital or the treating physician." *Id*. at 1072. As plaintiffs note, the record demonstrates that Dr. Kais wore an identification badge and laboratory coat displaying a "St. Mary's of Michigan" logo. While it is unclear where Dr. Kais acquired these items or whether he wore them at the direction of St. Mary's, the evidence is to be viewed in a light most favorable to plaintiffs. See *El-Khalil*, 504 Mich at 160. Blaszkiewicz also testified he believed all the doctors who treated decedent at the St. Mary's facility were employed by St. Mary's.

St. Mary's argues the consent-for-services agreement Blaszkiewicz signed dispels the notion that any of decedent's treating physicians were agents of St. Mary's. At best, however, this agreement creates a question of fact. The consent-for-services agreement required the signor to acknowledge that "some physicians directing my services are not agents or employees of the facility, but are independent physicians who have been granted the privilege of using its facilities for the care and treatment of their patients." This would have been enough to put plaintiffs on notice that *some* physicians present at the hospital were not agents of the hospital. But, it did not specify whether the specific physicians who treated or diagnosed decedent were agents or employees of St. Mary's. This is particularly important considering there is no evidence decedent had a preexisting relationship with any of her treating physicians. Again, the mere operation of a hospital staffed with doctors with whom the patient had no relationship is enough to establish ostensible agency, unless the hospital does something to dispel this belief. *Markel*, 510 Mich at 1071-1072. The vague, nonspecific consent-for-services agreement does not dispel this belief. The trial court erred by concluding no genuine issue of material fact existed as to whether Dr. Kais was its ostensible agent.

Next, plaintiffs argue genuine issues of material fact also existed as to whether Dr. Kottamasu was an ostensible agent of St. Mary's. We disagree. It cannot be said that decedent had a reasonable belief Dr. Kottamasu was an agent of St. Mary's. See *Grewe*, 404 Mich at 253 (outlining the requirements of establishing an ostensible agency). The CT scan Dr. Kottamasu reviewed was performed at Standish's facility, and Standish is a separate corporate entity from St. Mary's. Dr. Kottamasu interpreted the CT scan at ADI's office. Although Blaszkiewicz testified he believed all the doctors who treated decedent at the St. Mary's facility were employed by St. Mary's, he did not testify about encountering medical personnel at Standish. The trial court did not err by concluding no genuine issue of material fact existed as to whether Dr. Kottamasu was St. Mary's ostensible agent.

IV. AMENDMENT

Lastly, plaintiffs argue the trial court abused its discretion by determining amendment of the second-amended complaint to include Standish as a defendant would be futile. We agree, but conclude remand is necessary for further consideration of this issue.

A. STANDARD OF REVIEW

"The interpretation and application of a statute [or court rule] presents a question of law that the appellate court reviews de novo." *Bate v City of St Clair Shores Mich*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket Nos. 364536; 364537), slip op at 3. "A trial court's decision on a motion to amend the pleadings is generally reviewed for an abuse of discretion." *Milne v Robinson*, ___ Mich ___, ___; ___ NW3d ___ (2024) (Docket No. 164190); slip op at 4 (quotation marks and citation omitted). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Tindle v Legend Health, PLLC*, ___ Mich App ___, ___; ___ NW3d ___ (2023) (Docket No. 360861); slip op at 2 (alteration in original; quotation marks and citation omitted). "However, [a] trial court necessarily abuses its discretion when it makes an error of law." *Milne*, ___ Mich at ___; slip op at 4 (alteration in original; quotation marks and citation omitted).

B. LAW & ANALYSIS

Under MCR 2.116(I)(5), if a trial court grants summary disposition under MCR 2.116(C)(10), as in this case, it "shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." Leave to amend should be freely given, and should only be denied for particularized reasons, such as futility. *Wormsbacher v Phillip R Seaver Title Co*, 284 Mich App 1, 8; 772 NW2d 827 (2009). An amendment can relate 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, or attempted to be set forth, in the original pleading." MCR 2.118(D).

The trial court held amendment would be futile because plaintiffs could not establish that Dr. Kottamasu was an actual agent of Standish. We disagree. Review of the relevant terms of the Radiology Agreement between Standish and ADI, alongside Dr. Kottamasu's employment agreement with ADI, demonstrates there is a genuine issue of material fact regarding Dr. Kottamasu's status as an agent for the jury. Similar to the CMU Agreement, the Radiology Agreement required ADI physicians to satisfy certain qualification and service requirements. It also mandated the ADI physicians be members of Standish's staff "in good standing," and to abide by Standish's policies and participate in certain committees. Standish could also request that a physician be prohibited from providing services at its facility if they failed to satisfy various requirements or failed to comply with Standish's "corporate or organizational culture[.]"

These requirements support the notion that Standish had more than a *de minimis* degree of control over ADI's physicians, including Dr. Kottamasu. The above requirements ensured the quality of services and suggest that Standish exerted control over "the manner or methodology" of the treatment Dr. Kottamasu provided. Cf *Laster*, 316 Mich App 726, 737; 892 NW2d 442. Standish had the authority to request that a physician who did not comply with its requirements no longer provide services at its facility. While the Radiology Agreement states that ADI's physicians are independent contractors, labels used by parties to define their relationship are not dispositive. See *id*. at 736. The requirements in the Radiology Agreement create a genuine issue of material fact regarding whether Standish exercised sufficient control over Dr. Kottamasu's actions to render him its agent. This was a question for the fact-finder. See *Meretta*, 195 Mich at 697. Thus, the

trial court abused its discretion by determining amendment would be futile on the question of actual agency.

The trial court also erred by determining amendment would be futile because plaintiffs could not establish Dr. Kottamasu was an ostensible agent of Standish. Again, the trial court focused on the fact that plaintiffs presented no evidence of any act or neglect by Standish which could create a reasonable belief that Dr. Kottamasu was Standish's agent. It did not, however, address the fact that decedent presented to the hospital for treatment and had no prior relationship with Dr. Kottamasu. Again, a plaintiff need not show some additional, affirmative act by the hospital to prove ostensible agency, and a "patient's belief that a doctor is the hospital's agent is reasonable unless dispelled in some manner by the hospital or the treating physician." *Markel*, 510 Mich at 1071-1072. To the extent Standish would rely on the consent-for-services agreement to support the argument that this belief was dispelled, the agreement is not dispositive for the reasons already discussed. The trial court abused its discretion by determining amendment would be futile as to the issue of ostensible agency.

St. Mary's also argues amendment would be futile because the statute of limitations on plaintiff's proposed claims against Standish expired and the relation-back doctrine is inapplicable. By contrast, plaintiffs argue amendment was permissible under the "misnomer" doctrine, MCL 600.2301, and, therefore, the relation-back doctrine applies.

> 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. [MCL 600.2301.]

The misnomer of a party is generally amendable "unless the amendment is such as to effect an entire change of parties." *Miller v Chapman Contracting*, 477 Mich 102, 106; 730 NW2d 462 (2007) (quotation marks and citation omitted). "The misnomer doctrine applies only to correct inconsequential deficiencies or technicalities in the naming of parties, for example, '[w]here the right corporation has been sued by the wrong name, and service has been made upon the right party, although by a wrong name[.]' " *Id*. at 106-107, quoting *Wells v Detroit News, Inc*, 360 Mich 634, 641; 104 NW2d 767 (1960) (first alteration in *Miller*).

Applying the misnomer doctrine, this Court, in *Miszewski v Knauf Constr Inc*, 183 Mich App 312, 316; 454 NW2d 253 (1990), reasoned:

> An amendment of pleadings under MCR 2.118(D) will generally not relate back to the original filing date for purposes of adding a new principal defendant. However, where the amendment of pleadings is done merely to correct a prior error in naming the proper party to the lawsuit, and the defendants have not been denied notice of the action due to this misnomer, the amendments do relate back to the date of the original pleading. [(citation omitted).]

With respect to whether service was made upon the right party, by the wrong name, MCR 2.105(D) governs service of process. Plaintiffs served the original summons and complaint on CSC Lawyers, Inc., by certified mail in July 2019. It is unclear, however, whether CSC Lawyers, Inc., had any relation to Standish in 2019. The parties did not provide any detailed analysis concerning this issue in the trial court even though it was raised. As such, we find it necessary to remand this matter to the trial court for consideration as to whether amendment of the complaint is proper under MCL 600.2301 and the caselaw outlined above.

We note that the trial court never considered plaintiffs' argument that MCL 600.2301 applied to the facts of this case. Rather, it focused on the issue of agency when deciding amendment would be futile. This Court "need not address an issue that was not the basis of the trial court's decision." *Aguirre v Dep't of Corrections*, 307 Mich App 315, 326; 859 NW2d 267 (2014). "[T]hough we might exercise our discretion to review the issue as a question of law for which the necessary facts have been presented, this Court should decline to do so when it would require us to construct and evaluate our own arguments." *Id*. We decline to decide this issue, particularly because the parties have given it cursory treatment, and because its analysis would benefit from a decision by the trial court after hearing complete arguments on the matter. Therefore, remand is appropriate for further consideration and development. If St. Mary's elects to raise its newly raised argument concerning the alleged defects in plaintiffs' notice of intent, this argument would also benefit from a decision by the trial court after full argument on remand.

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

/s/ Thomas C. Cameron
/s/ Noah P. Hood
/s/ Adrienne N. Young