

STATE OF MICHIGAN
COURT OF APPEALS

MARGARETT KRUGER, Personal
Representative of KATHERINE KRUGER,
Deceased,

UNPUBLISHED
April 2, 2002

Plaintiff-Appellant/Cross-
Appellee,

v

No. 226900
Oakland Circuit Court
LC No. 99-017668-NI

WHITE LAKE TOWNSHIP, WHITE LAKE
TOWNSHIP POLICE CHIEF, LT. EDWARD
HARRIS, OFFICER JAMES CHRIST, OFFICER
JAMES F. McCLURE, OFFICER MICHAEL
PANKOFF, OFFICER O'MALLEY, OFFICER
M. SIMSACK, and OFFICER RONALD C.
ROGOWICZ,

Defendants-Appellees/Cross-
Appellants.

Before: O'Connell, P.J., and White and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right and defendants cross-appeal as of right from the trial court's April 5, 2000, order granting summary disposition in favor of defendants. We affirm.

A review of the procedural history giving rise to the present case is relevant to our analysis of the dispositive issue presented on appeal. Plaintiff filed the present action against defendants in Oakland Circuit Court on September 20, 1999. The complaint alleged that on June 21, 1997, plaintiff contacted the White Lake Township Police Department to report that the decedent, her daughter Katherine Kruger, was "in life-threatening danger from herself." According to the complaint, plaintiff informed defendants Christ, Pankoff, and O'Malley that Katherine was an alcoholic, and that she was in need of emergency medical attention. The complaint further alleged that after Katherine was arrested¹ by White Lake Township police officers, she was transported to the White Lake Police Department.

¹ According to the record White Lake Township police arrested Katherine on a bench warrant
(continued...)

Plaintiff alleged that she told White Lake Township police officers that her daughter was suicidal, intoxicated from alcohol, and possibly under the influence of narcotics. The complaint further alleged that defendants failed to transfer Katherine to a medical facility, but instead, rather than placing her in a holding cell or on suicide watch, hand-cuffed her to a “ballet bar” outside the police department’s holding area. According to the complaint, Katherine subsequently escaped, was hit by a vehicle on M-59, and suffered fatal injuries.

In the complaint, plaintiff advanced a 42 USC 1983² claim against defendants in their individual and official capacities. Specifically, plaintiff alleged that defendants acted “knowingly, deliberately, indifferently, intentionally, maliciously and with gross negligence, callousness, and reckless indifference to [Katherine’s] well-being and serious medical needs and in reckless disregard of [Katherine’s] safety” by failing to properly obtain medical treatment for Katherine, and “fail[ing] to properly train, supervise, develop and implement [detention] policies.” Plaintiff also alleged that defendants’ actions deprived Katherine of “clearly established rights, privileges, and immunities in violation of the Fourth, Fifth, Eighth and Fourteenth Amendments of the Constitution of the United States,” and that defendants, acting pursuant to official policies, regulations, or customs:

[f]ail[ed] to train deputies, dispatchers, detention officers, and police officers in the proper use of determining medical emergencies. Such omitted training was a grossly negligent and reckless act.

[f]ail[ed] to hire individuals whose character and personality would not pose a potential danger to the residents of the City of WHITE LAKE TOWNSHIP and KATHERINE KREUGER, deceased.

[f]ail[ed] to determine the immediate need for medical attention, fail[ed] to recognize the danger of an inmate who was clearly intoxicated and suicidal, -- despite being told of this.

[k]nowingly and recklessly hiring and training as deputies, police officers, and detention officers individuals who are not able to determine medical emergencies that render them unfit to perform the necessary duties of their position.

[k]nowingly and recklessly failing to discipline, instruct, supervise, or control officers['] conduct, and thereby encouraging acts and omissions that

(...continued)

entered in Bloomfield Township in an unrelated case.

² As this Court observed in *Dowork v Oxford Charter Twp*, 233 Mich App 62, 74; 592 NW2d 724 (1998), “[s]ection 1983 provides a civil remedy to persons deprived of constitutional rights by individuals acting under color of state law. To sustain a claim under § 1983, a party must prove that the complained-of conduct was committed by a person acting under color of state law, and that the conduct deprived the party of rights, privileges, or immunities secured by the United States Constitution.” [Citations omitted.]

contributed to the death of KATHERINE KREUGER, deceased, and other similarly situated prisoners.

[f]ail[ing] to adequately train officers to recognize a medical emergency.

[f]ail[ing] to render medical attention for a detainee they knew needed serious medical attention.

The complaint alleged that Katherine and plaintiff suffered damages, including but not limited to, reasonable medical, hospital, funeral and burial expenses, conscious pain and suffering, loss of financial support, loss of service, loss of gifts or other valuable gratuities, loss of comfort, society and companionship, compensatory and punitive damages, as well as damages under Michigan's wrongful death act. MCL 600.2922.

On March 15, 2000, defendants filed a motion for summary disposition under MCR 2.116(C)(6), (7), and (10). As relevant to the present appeal, defendants argued that the present action should be dismissed because plaintiff had already initiated another action against defendants in the Oakland Circuit Court involving the same or substantially same cause of action. Defendants argued that a review of both complaints revealed that the facts and issues in both cases were identical, and that plaintiff filed the present action to further harass defendants. On March 30, 2000, plaintiff responded, arguing that MCR 2.116(C)(6) was not applicable because the parties to the actions were not identical, and that plaintiff was not afforded a previous opportunity to allege a violation of 42 USC 1983.

After hearing argument on April 5, 2000, the trial court ruled from the bench as follows:

As I indicated before, the Court has been through these documents, has a very good handle on this case. It's a very sad case. I don't think any family would like to face what this family has.

The issue before the Court is whether this litigation is barred by res judicata, collateral estoppel, and stare decisis and [MCR 2.116](C)(6) because of the Court's previous rulings.

On September 9, 1999, this Court denied Plaintiff's Motion to Amend [the 1997 complaint] to add a violation of the Plaintiff's civil rights against the White Lake Township Police Department and its officers, claiming that they failed to provide medical care to the decedent while she was in their protective custody. This Court found that such an amendment at that late stage of the litigation, which focused on the deprivation of constitutional rights instead of negligence, would work a substantial prejudice on Defendants.

This Court also held that because Plaintiff had the policies of the police department prior to the commencement of the action, the delay in seeking such amendment was inexcusable. Lastly, the Court found that the amendment would be futile, because there was no evidence that the officers acted pursuant to a custom, policy, or procedure of deliberate indifference.

Thus, based on the previous ruling, this Court is satisfied that the claims asserted again in this lawsuit must be dismissed pursuant to [MCR 2.116(C)(6) and (7).] Therefore, Defendant[s'] motion is – for Summary disposition is granted.

In its April 5, 2000, bench ruling, the trial court referred to plaintiff's previous claim arising from Katherine Kruger's tragic death. On September 30, 1997, plaintiff had filed a six-count complaint in the Oakland Circuit Court in Case No. 97-552684-NO³ against White Lake Township, Officer Michael Pankoff, Dispatcher O'Malley, Officer M. Simsack, Officer C. Rogowicz, Michael J. Eadie, M.D., Larry Shapiro, D.O, G. Scott Jennings, M.D., The Detroit Medical Center Hospital Partnership doing business as Huron Valley Hospital, Inc., Oakland County Medical Control Authority, and Paramed, Inc., doing business as American Medical Response of Michigan.

As relevant to the present appeal, the 1997 complaint alleged the same facts as did the complaint in the present appeal. However, in Count I of the 1997 complaint, plaintiff alleged that the White Lake Township Police Department was negligent in failing to properly design and maintain the building where Katherine was held following her arrest, and that it was not immune from liability arising from its negligence pursuant to the public building exception to governmental immunity. See MCL 691.1406. In Count II of the complaint, plaintiff alleged that defendants O'Malley, Pankoff, Simsack, and Rogowicz were not protected from liability for their negligence under governmental immunity because their actions on the evening of June 21, 1997, were the product of gross negligence and wanton and wilful misconduct. See MCL 691.1407. Specifically, plaintiff alleged that defendants O'Malley, Pankoff, Simsack, and Rogowicz were negligent in (1) failing to transport Katherine to a medical facility when they knew she was "extremely chemically-impaired and suicidal," (2) failing to properly confine and monitor Katherine while at the White Lake Police Department to prevent her escape, (3) failing to properly and timely respond to Katherine's escape, and (4) failing to locate Katherine after she evaded custody.

In July 1999, defendants White Lake Township, Pankoff, O'Malley, Simsack, and Rogowicz moved for summary disposition under MCR 2.116(C)(7), (8), and (10), arguing that plaintiffs failed to make out a prima facie claim of negligence, and that plaintiff failed to plead in avoidance of governmental immunity. On September 8, 1999, the trial court conducted a hearing regarding defendants' motion for summary disposition. After hearing argument, the trial court dismissed Counts I and II of the 1997 complaint against White Lake Township and the individual defendants, noting that plaintiff failed to plead in avoidance of governmental immunity.

After the trial court rendered its bench ruling,⁴ plaintiff's counsel argued its pending motion to amend the complaint to include a 42 USC 1983 claim. Specifically, plaintiff argued

³ According to the record, Case No. 97-552684-NO was consolidated with Case No. 98-003387-NO.

⁴ An order granting defendants White Lake Township, Pankoff, O'Malley, Simsack, and Rogowicz' motion for summary disposition was entered September 30, 1999.

that she sought to amend the complaint to allege that defendants violated Katherine's constitutional rights by failing to obtain proper medical treatment for her. After reserving judgment, the trial court entered a two-page written opinion and order denying plaintiff's motion to amend the complaint on September 10, 1999.

On October 20, 1999, plaintiff filed an application for leave to appeal from the trial court's September 30, 1999, order in Case No. 97-552684-NO granting the defendants' motion for summary disposition. On February 18, 2000, this Court granted plaintiff's application for leave to appeal. *Kruger v White Lake Township*, unpublished order of the Court of Appeals, entered February 18, 2000 (Docket No. 222904). On November 9, 1999, defendants White Lake Township, Pankoff, O'Malley, Simsack, and Rogowicz filed a delayed application for leave to appeal from the trial court's September 30, 1999, order in Case No. 97-552684-NO. On February 18, 2000, this Court granted the delayed application for leave to appeal. *Kruger v White Lake Township*, unpublished order of the Court of Appeals, entered February 18, 2000 (Docket No. 223337). On March 1, 2000, this Court ordered that the two cases be consolidated on appeal.

On November 24, 1999, plaintiff filed a delayed application for leave to appeal from the trial court's September 10, 1999, order in Case No. 97-552684-NO denying plaintiff's motion to amend the complaint. On February 18, 2000, this Court denied plaintiff's application for leave to appeal "for plaintiff's failure to persuade the Court of the need for immediate appellate review." *Kruger v White Lake Township*, unpublished order of the Court of Appeals, entered February 18, 2000 (Docket No. 223636).⁵ As noted, plaintiff filed the instant action on September 20, 1999, in Oakland Circuit Court. Plaintiff now appeals as of right and defendants cross-appeal as of right in Docket 226900.

On appeal, plaintiff first contends that the trial court erred in relying on MCR 2.116(C)(6) to grant defendants' motion for summary disposition. We disagree.

We review de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court may properly grant summary disposition pursuant to MCR 2.116(C)(6) where "[a]nother action has been initiated between the same parties involving the same claim." In evaluating whether summary disposition is appropriate under this subrule, the trial court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted by the parties, MCR 2.116(G)(5), and determine whether the two lawsuits involve the same parties and are "based on the same or substantially same cause of action." *Ross v Onyx Oil & Gas Co*, 128 Mich App 660, 666; 341 NW2d 783 (1983).

MCR 2.116(C)(6) is the codification of the common law rule of the plea of abatement by prior action. *Rowry v Univ of Michigan*, 441 Mich 1, 20; 490 NW2d 305 (1992) (Riley, J., concurring); *Fast Air, Inc v Knight*, 235 Mich App 541, 545; 599 NW2d 489 (1999). As our

⁵ On March 31, 2000, plaintiff filed a claim of appeal from the trial court's March 10, 2000, summary disposition order in Case No. 97-552684-NO. This Court dismissed plaintiff's appeal on the basis of lack of jurisdiction on June 28, 2000. *Kruger v White Lake Township*, unpublished order of the Court of Appeals, entered June 28, 2000 (Docket No. 226369).

Supreme Court, speaking through Justice Fellows, observed in *Chapple v Nat'l Hardwood Co*, 234 Mich 296, 298; 207 NW 888 (1926):

The courts quite uniformly agree that parties may not be harassed by new suits brought by the same plaintiff involving the same questions as those in pending litigation. If this were not so repeated suits involving useless expenditures of money and energy could be daily launched by a litigious plaintiff involving one and the same matter. Courts will not lend their aid to proceedings of such a character, and the holdings are quite uniform on this subject.

See also *Bisceglia Motor Sales, Inc v Studebaker-Packard Corp*, 367 Mich 472, 474; 116 NW2d 884 (1962); *Sovran Bank, NA v Parsons*, 159 Mich App 408, 412; 407 NW2d 135 (1987); *Ross, supra* at 666.

The rationale for this rule was succinctly articulated by Justice Green in *Wales v Jones*, 1 Mich 254, 255 (1849):

The general rule seems to be well settled, according to the English authorities, that when two suits are commenced at the same time, for the same cause of action, they mutually abate each other; and that the writs in both being bad, ab initio, no subsequent discontinuance of one will make the other good; and that a former suit for the same cause, pending at the time of purchasing a second writ, may be pleaded in abatement of the second suit, without alleging that the first suit is pending at the time of putting in the plea. *The reason assigned is, that the law abhors a multiplicity of suits, and therefore, whenever it appears on record that the plaintiff has sued out two writs against the same defendant, for the same thing, the second writ shall abate; for if it were allowed that a man should be twice arrested, or twice attached by his goods for the same thing, he might suffer in infinitum.* [Emphasis supplied; Citation omitted.]

Although pleas in abatement are not favored by the courts, where it appears that the plaintiff's filing of the second suit was vexatious, and an abuse of the court's process, the second suit should be abated because a plaintiff may not benefit from such misconduct. *Id.* at 256; see also *Schaub v Carolina Construction Co*, 365 Mich 514, 517-518; 113 NW2d 796 (1962).

In *Fast Air, supra* at 545, this Court ruled that MCR 2.116(C)(6) operates "where another suit between the same parties involving the same claims is . . . pending at the time the motion [for summary disposition] is decided." Although plaintiff does not specifically address in her brief on appeal whether the prior action was pending when the trial court granted summary disposition of the instant case on April 5, 2000, it is clear that the relevant actions in Case No. 97-552684-NO, which were appealed to this Court in Docket Nos. 222904 and 223337, were indeed pending for the purposes of MCR 2.116(C)(6).

When the trial court granted summary disposition of plaintiff's claims against White Lake Township and the individual defendants in Case No. 99-017668-NI on April 5, 2000, this Court had granted plaintiff's application for leave to appeal in Case No. 97-552684-NO in Docket No. 222904, as well as defendants White Lake Township, Pankoff, O'Malley, Simsack, and Rogowicz' delayed application for leave to appeal in Docket No. 223337. In *Darin v Haven*,

175 Mich App 144, 151; 437 NW2d 349 (1989), this Court rejected the plaintiffs' argument that pendency of an action in an appellate court will not constitute pendency of an action for purposes of MCR 2.116(C)(6). Instead, this Court clearly stated that "pendency of an appeal abates a second action between the same parties on the same subject matter in the trial court." *Darin, supra* at 151.

In her brief on appeal in the instant case, plaintiff fleetingly argues that summary disposition under MCR 2.116(C)(6) was improper because the parties to each action are not identical. We recognize that the prior action in Case No. 97-552684-NO did not name the exact same parties as are named in the present case. Notably, although defendants White Lake Township, Pankoff, O'Malley, and Simsack were named in the prior suit, defendants White Lake Township Police Chief, Harris, McClure, and Christ were not. However, our courts have held that "complete identity" of the parties is not necessary for MCR 2.116(C)(6) to apply to abate a subsequent action. *Ross, supra* at 667; *JD Candler Roofing Co, Inc v Dickson*, 149 Mich App 593, 598; 386 NW2d 605 (1986). As our Supreme Court acknowledged over seventy-five years ago in *Chapple, supra* at 298-299, a party may not avoid abatement of a subsequent suit by "adding new defendants or subtracting some of the old ones" where the same subject matter is involved in both cases.

"But a suit will be abated on the ground that another suit is pending in the same jurisdiction where the parties plaintiff are the same in both suits and the parties defendant in the second suit are parties defendant in the former suit, notwithstanding that there are additional parties defendant in the former [and latter] suit, provided, of course *each action is predicated upon substantially the same facts as respects the defendant named in both.*" [Quoting Ruling Case Law, p 15 (emphasis supplied).]

Quoting 1 Corpus Juris p 78, our Supreme Court further observed that "it is not essential that defendants be entirely the same. If the actions are based on *substantially the same facts*, the first will abate the second, at least as to those defendants who are named in both, although there are more defendants in one action than the other." *Chapple, supra* at 299. Consequently, we reject plaintiff's cursory argument, unsupported by citation to authority, that parties need be identical in order for a prior claim to abate a later suit.

In her brief on appeal, plaintiff also argues without reference to supporting authority that summary disposition on the basis of MCR 2.116(C)(6) was improper because she did not allege a 42 USC 1983 claim in the first action, and therefore the two cases "are not based on the same or substantially same cause of action." We disagree.

As noted above, the 1997 complaint alleged that defendant White Lake Township was negligent in its construction and maintenance of the public building where Katherine was held after her arrest. The 1997 complaint further alleged that defendants White Lake Township, O'Malley, Pankoff, Simsack, and Rogowicz acted with gross negligence, and engaged in wanton and wilful misconduct in their dealings with Katherine on June 21, 1997. However, a review of both the 1997 complaint in Case No. 97-552684-NO and the complaint in the present case reveals that both were premised on identical factual allegations. In other words, it is manifestly clear from a review of the pleadings that both cases stem from the tragic incident on June 21, 1997. Specifically, the thrust of both complaints was that Katherine was not properly transferred

to a medical facility once defendants became aware of her incapacitated condition, and that defendants failed to properly detain, monitor, and protect Katherine while she was in their custody.

Although the complaints undoubtedly state different substantive causes of action, we do not believe that such strategic action by plaintiff renders MCR 2.116(C)(6) inapplicable where the two actions seek the same relief⁶ and where resolution of both cases will require examination of the same operative facts. *Ross, supra* at 666; *Candler, supra* at 601. Although not binding precedent, *Benejam v Detroit Tigers, Inc.*, 246 Mich App 645, 657, n 9; 635 NW2d 219 (2001), we believe that Justice Riley’s analysis in her concurring opinion in *Rowry, supra* at 21, n 5 is instructive in the present case.

In *Rowry*, Justice Riley observed that the “broad, transactional approach” of the 1 Restatement Judgments 2d, § 24, p 196, should be adopted in determining whether two separate causes of action involve the same or substantially same claim for purposes of MCR 2.116(C)(6).

“The present trend is to see [a] claim in factual terms and to make it coterminous with the transaction *regardless of the number of substantive theories, or variant forms of relief flowing from these theories, that may be available to the plaintiff*; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights.” [*Rowry, supra* at 21, n 5 (emphasis in original), quoting 1 Restatement Judgments, 2d, § 24, p 196.]

Justice Riley further noted that the Restatement’s position is consistent with Michigan’s broad approach to claim preclusion. *Rowry, supra* at 21, n 5.

In *Rowry, id.* at 19, the plaintiff was fired from his job with the University of Michigan as a bus driver, and subsequently pursued the matter in arbitration and won reinstatement. After the university declined to immediately reinstate him, the plaintiff filed suit in the Court of Claims seeking to enforce the arbitrator’s decision. *Id.* After the Court of Claims dismissed the arbitration award, the plaintiff appealed. *Id.* While the appeal was pending, the plaintiff filed another suit in the Court of Claims alleging breach of contract, discrimination under the Worker’s Disability Compensation Act, and wrongful termination. *Id.* at 19-20. Both claims were based on the same facts arising from the first suit to enforce the arbitration agreement. *Id.* Because the principal dispute in both claims was whether the university wrongfully refused to reinstate the plaintiff following arbitration, Justice Riley concluded that MCR 2.116(C)(6) applied to abate the second suit, in spite of the plaintiff’s attempts to allege different substantive causes of action. *Id.* at 21.

Similarly, in *Candler, supra* at 600-601, the plaintiff argued that the two lawsuits at issue were based on different substantive causes of actions to the extent that MCR 2.116(C)(6) was not applicable. The defendant had filed a complaint in Wayne County and an answer and

⁶ A review of the 1997 complaint reveals that plaintiff did not specifically delineate the relief sought. Instead, plaintiff merely sought a “judgment against Defendants jointly and severally, in an amount in excess of Ten Thousand Dollars . . . plus costs and attorney fees.”

counterclaim in Oakland County alleging breach of contract. *Id.* at 600. In the complaint and answer to the counterclaim filed in Oakland County, the plaintiff also alleged a contractual claim, however in the answer and counterclaim filed in Wayne County, the plaintiff “carefully drafted” its pleadings to avoid the use of the term “breach of contract,” and instead alleged that the defendant’s refusal to adhere to the contract amounted to fraud. *Id.* The *Candler* Court rejected the plaintiff’s attempts to avoid abatement by disguising the nature of the claim.

In spite of [the plaintiff’s] attempt to distinguish the actions by interjecting the fraud claim in Wayne County, it is apparent that the factual and legal issues to be litigated in both the Wayne and Oakland County actions remain the same. The principal question to be decided in each action is whether [the plaintiff] satisfactorily fulfilled the contract Resolution of either action will require examination of the same operative facts. [The plaintiff’s] attempt to bifurcate the parties’ dispute by creating a cause of action in tort for what is obviously a contractual claim serves no just purpose. The issues are sufficiently identical to require application of MCR 2.116(C)(6). [*Id.* at 600-601.]

Moreover, in an early case from our Supreme Court, Justice Stone, writing for the majority, concluded:

It is well said that it is necessary for the party seeking the abatement of the present action, by reason of the pendency of that already commenced, to plead and prove the connection of the former action to the same subject matter; the relations of the parties to be the same as that in the case in which the plea is interposed, and that the relief sought is practically identical with that sought in the second action. *Another test sometimes applied is, [w]ill the same evidence support both actions?* [*Reis v Applebaum*, 170 Mich 506, 516; 136 NW 393 (1912) (citations omitted; emphasis supplied).]

See also *Belden v Laing*, 8 Mich 500, 503 (1860) (subsequent action will not abate where “the plea does not show identity of issues, and it would be impossible in the present action to try the merits of the former action”); Anno: *Abatement, Survival, and Revival*, 1 Am Jur2d § 28, p 88.

We are not persuaded by plaintiff’s cursory claim that the two lawsuits do not involve the same or substantially same cause of action to the extent that MCR 2.116(C)(6) is inapplicable. Although plaintiff cleverly drafted the 1999 complaint to allege a constitutional violation as well as adding additional defendants, an examination of the same operative set of facts is required to determine the principal question in each claim, namely, whether defendants acted improperly by allegedly failing to obtain proper medical treatment for Katherine after she was taken into custody. Therefore, we share the trial court’s view that MCR 2.116(C)(6) was indeed applicable and warranted summary disposition of plaintiff’s claim. *Rowry*, *supra* at 21, n 5; *Candler*, *supra* at 600-601. See also *Chapple*, *supra* at 229 (second action will be abated by first even where different defendants named where each action is predicated on substantially the same facts); *Cosgrove v Lansing Bd of Ed*, 164 Mich App 110, 113; 416 NW2d 316 (1987) (summary disposition under MCR 2.116(C)(6) appropriate where the plaintiffs’ claim involving an unfair labor practice charge was pending before the Michigan Employment Relations Commission when plaintiffs filed a complaint in circuit court seeking essentially the same relief).

Further, under the particular circumstances of this case, we believe that the underlying purpose of MCR 2.116(C)(6), which is to prevent litigious harassment involving the same questions against the same parties, *Fast Air, supra* at 546, is best served by affirmance of the trial court's order. A review of the record discloses that plaintiff filed the present action shortly after the trial court rejected her attempt to amend the complaint to include the 42 USC 1983 claim. Notably, plaintiff sought to amend the complaint two years after the 1997 complaint was filed. The trial court further observed that by virtue of discovery, plaintiff was in possession of the materials on which she relied to support the 42 USC 1983 claim for a substantial period of time before she filed the motion to amend the complaint. Accordingly, we agree with the trial court that summary disposition was appropriate under MCR 2.116(C)(6).

Given our conclusion that the trial court did not err in granting defendants' motion for summary disposition on the basis of MCR 2.116(C)(6), we need not address plaintiff's remaining issues on appeal or defendants' issue advancing an alternate ground for affirmance on cross-appeal.⁷

Affirmed.

/s/ Peter D. O'Connell

I concur in the result only.

/s/ Jessica R. Cooper

⁷ To the extent that plaintiff's argument in her third issue on appeal centers on whether the trial court properly denied the motion to amend the complaint, we note that this appeal is not the proper forum for plaintiff to challenge the trial court's decision in another case.