

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE OBSTETRICS & GYNECOLOGY, P.C.,

Plaintiff-Counterdefendant-Appellee,

v

FRANKLIN H. CASTILLO, M.D. and FRANKLIN
H. CASTILLO, M.D., P.C.,

Defendants-Counterplaintiffs-Third-
Party Plaintiffs-Appellants,

v

PETER L. STEVENSON, M.D.,

Third-Party Defendant.

Before: Saad, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a verdict of no cause of action on defendants' counterclaim for breach of contract and issued an order relieving plaintiff of any obligation to pay the balance due on the parties' contract. The court found that defendant Castillo had breached the parties' covenant not to compete, thereby releasing plaintiff from its obligation to pay the balance. Defendants appeal by leave granted. We reverse and remand.

I

In 1993, plaintiff contracted to purchase defendants' obstetrics and gynecology practice. Pursuant to the sale of practice agreement, a simultaneously-executed covenant not to compete allowed Castillo to practice "solely pursuant to a certain contract dated June 17, 1993 between Sellers and the Annapolis Hospital . . . (the 'Annapolis Contract')." This "Annapolis Contract" stated that, among other services, Castillo "will . . . perform Technical Surgical Assists . . . at Annapolis at the request of

other physicians.” The covenant not to compete, dated June 30, 1993, prohibits Castillo from providing OB/GYN services, with the following exception:

Notwithstanding anything in this Agreement to the contrary, Castillo is permitted to engage in obstetrics and gynecology as an employee of Castillo PC, pursuant to which Castillo shall provide obstetric and gynecological services at Annapolis Hospital and serve as associate director of the family practice residency program for obstetrics and gynecology for Oakwood Health Services Corporation. The services performed under such arrangement shall not permit Sellers to violate the provisions of paragraph 2, above.¹

Following the sale, plaintiff discovered that Castillo was performing “obstetrics technical surgical assists” (TSAs) at the request of other Annapolis Hospital physicians. Plaintiff filed the instant lawsuit, alleging breach of contract, and refused to pay the \$94,000 balance still owing on the sale of practice agreement. Defendants filed a counterclaim seeking payment of the balance.

II

According to defendants, the trial court erroneously found that Castillo violated the covenant not to compete, and therefore erred in rendering a verdict of no cause on their counterclaim. We agree.

If a contract’s language is unclear or susceptible to multiple meanings, interpretation is a question of fact. *Port Huron Ed Ass’n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996); *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). This Court reviews the findings of fact by a trial court sitting without a jury under the clearly erroneous standard. MCR 2.613(C); *Port Huron v Amoco Oil Co, Inc*, 229 Mich App 616, 636; 583 NW2d 215 (1998). A finding is deemed “clearly erroneous” if this Court reviews the entire record and is left with the definite and firm conviction that a mistake has been committed, even if some evidence supports the finding. *Id.*, 637.

Under this standard, the trial court’s finding that Castillo violated the noncompetition agreement by performing TSAs at Annapolis Hospital was clearly erroneous. If the meaning of an agreement is ambiguous or unclear, the trier of fact is to determine the intent of the parties. *UAW-GM Human Resource Center, supra*, 492. The noncompetition agreement provides as an exception that Castillo “shall provide obstetric and gynecological services at Annapolis Hospital.” Furthermore, the sale of practice agreement provides that defendants’ contract with Annapolis is the basis for the exception to the noncompetition agreement: “Sellers shall engage in the practice of obstetrics and gynecology solely pursuant to [the ‘Annapolis Contract’].” The Annapolis contract specifically states that defendants “will . . . perform Technical Surgical Assists.” Despite the ambiguity created by the last sentence in the exception to the non-compete agreement, it is apparent from a reading of the three contracts together that the parties intended that defendants’ performance of duties required by the Annapolis contract would be included within the exception.

The trial court apparently determined that it was the parties' intention that only those services rendered "to" Annapolis, and paid for by Annapolis, were included within the exception. However, courts must give contractual language its ordinary and plain meaning, and should avoid technical and strained constructions. *Walden General Contractors, Inc v Michigan Mutual Ins Co*, 227 Mich App 683, 686; 577 NW2d 139 (1998). The exception to the non-compete agreement does not state that defendants may only provide OB/GYN services "to" or "for" Annapolis Hospital; rather, it states that they may provide such services "at" Annapolis Hospital. Viewing the evidence in its entirety and according the contractual language its plain and ordinary meaning, the trial court's finding that Castillo's performance of TSAs violated the covenant is clearly erroneous.

Reversed and remanded for entry of a judgment consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ William B. Murphy

/s/ Peter D. O'Connell

¹ Paragraph 2 of the covenant provides that defendants shall not:

- (a) own, operate, or have any interest in any medical practice, medical clinic, or clinical laboratory;
- (b) provide professional obstetric and gynecological services;
- (c) otherwise become involved in any activities competitive with the activities of Purchaser or its shareholders, subsidiaries, successors, or affiliates; or
- (d) permit their name to be used in connection with any activities competitive with the activities of Purchaser or its shareholders, successor [sic], subsidiaries or affiliates, within the geographical area encompassed by the Counties of Oakland, Wayne and Washtenaw, Michigan.