STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM G. STAHL, III, Plaintiff/Counterdefendant-Appellee,	UNPUBLISHED March 24, 2009
v	No. 276882 Marquette Circuit Court
U. P. DIGESTIVE DISEASE ASSOCIATES, P.C., Defendant/Counterplaintiff-Appellant.	LC No. 06-043329-CK

Before: Markey, P.J., and Whitbeck and Gleicher, JJ.

PER CURIAM.

In this dispute regarding a covenant not to compete, defendant U. P. Digestive Disease Associates, P.C. (UPDDA), appeals as of right the circuit court's order granting plaintiff William G. Stahl, III, summary disposition, and denying summary disposition to defendant. We agree with the circuit court that the covenant does not bind plaintiff, and affirm.

I. Facts and Proceedings

Plaintiff is a board-certified specialist in internal medicine and gastroenterology. Defendant is a professional corporation that employs gastroenterologists. In 2003, plaintiff accepted an offer to practice gastroenterology as an associate in defendant's practice. Plaintiff signed a contract providing for a two-year term of employment, commencing on plaintiff's first date of service in January 2004.

Shortly before the two-year contract term expired, defendant notified plaintiff that it would not offer him a partnership. Instead, defendant proposed that plaintiff remain in defendant's employ as an associate. Plaintiff rejected this option. On December 29, 2005, defendant's partners informed plaintiff that because he had declined their employment offer, "It is therefore clear that your employment with UPDDA ends on 12/31/05."

On January 6, 2006, defendant's attorneys notified plaintiff that defendant intended to enforce the "non-competition covenant" contained in plaintiff's employment contract, which provided:

> *Covenant Not to Compete*. PHYSICIAN pledges active and industrious performance of duties in the CORPORATION'S best interests. To that end, if PHYSICIAN separates from employment service with the CORPORATION, PHYSICIAN shall not compete with CORPORATION within 150 miles of the City of Marquette for a period of two (2) years after such separation, unless the terms of such competition have been agreed to in writing by the Board of Directors of the CORPORATION, acting by the remaining Stockholders.

Later in January 2006, plaintiff filed suit against defendant seeking a declaration that the covenant was "null and void and unenforceable[.]"[1] In March 2006, plaintiff signed a contract of employment with Marquette General Health System to work as a "hospitalist."[2] Subsequently, defendant filed a countercomplaint for breach of the noncompete covenant, and also sought damages for plaintiff's failure to repay the costs of supplemental malpractice insurance (also called "tail" coverage), which defendant purchased after plaintiff left its employ.

The parties filed cross motions for summary disposition pursuant to MCR 2.116(C)(10) regarding the covenant and insurance reimbursement dispute.[3] The circuit court determined that "the covenant not to compete is triggered by separation from employment," and because the contract simply expired plaintiff did not separate from his employment with defendant. The circuit court reasoned as follows:

> In this case, the Court finds and concludes the relationship between the plaintiff and the defendant did not end with discharge, termination or separation. It ended with expiration of the contract, period. Neither one of these parties had any obligation to do anything in relation to the employment relationship at the end of the term. In this Court's judgment, the covenant not to compete is triggered by a separation from employment during the term of the contract and not expiration of the contract. The contract ended on December 31, 2005, and it ended by its terms and the limitations of the contract. And at the end of that contract period, the plaintiff was no longer an employee of the defendant, and the defendant was no longer plaintiff's employee (sic).

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[1] Plaintiff's complaint also alleged breach of contract arising from defendant's refusal to offer him a partnership. The circuit court granted defendant summary disposition of this claim, and plaintiff elected not to challenge this ruling on appeal.

[2] A Marquette General Hospital document contained in the circuit court record describes a "hospitalist" as a specialist "in caring for patients in the hospital setting. Hospitalists work with the patient's primary care physician to provide a personalized medical plan of care to help make the transition in and out of the hospital as seamless as possible."

[3] Both parties also sought injunctive relief: defendant to preclude plaintiff from working within 150 miles of its location, and plaintiff to preclude defendant from enforcing the covenant not to compete. The circuit court denied both motions.

Based on the same analysis, the circuit court also denied defendant's motion seeking reimbursement for the malpractice tail insurance. Defendant now appeals.

II. Analysis

This Court reviews de novo a circuit court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). When reviewing a motion invoking subrule (C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial. *Walsh, supra* at 621. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West, supra* at 183.

Defendant first asserts that the circuit court erroneously interpreted the noncompete covenant by distinguishing between separation from employment and other methods of terminating an employment relationship. According to defendant, "[t]he plain meaning of separation from employment includes termination, discharge and the expiration or non-renewal of the contract." The "logical interpretation" of this language, defendant argues, is that the contract prohibited plaintiff from "immediately competing with UPDDA when the contract ended."

"[A]n employment contract is just a contract." *Thomas v John Deere Corp*, 205 Mich App 91, 93; 517 NW2d 265 (1994). The primary goal of contractual interpretation is to determine and enforce the parties' intent. *Rasheed v Chrysler Corp*, 445 Mich 109, 127 n 28; 517 NW2d 19 (1994). In so doing, this Court reads the contract as a whole and attempts to ascertain and apply its ordinary and plain meaning. *Michigan Twp Participating Plan v Pavolich*, 232 Mich App 378, 383; 591 NW2d 325 (1998). In *Laevin v St Vincent De Paul Society of Grand Rapids*, 323 Mich 607, 609-610; 36 NW2d 163 (1949), our Supreme Court adopted two cardinal principles of contract interpretation:

> . . . [A] contract is to be construed as a whole; … all its parts are to be harmonized so far as reasonably possible; that every word in it is to be given effect, if possible; and that no part is to be taken as eliminated or stricken by some other part unless such a result is fairly inescapable.
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> Every word in the agreement must be taken to have been used for a purpose, and no word should be rejected as mere surplusage if the court can discover any reasonable purpose thereof which can be gathered from the whole instrument. [Internal quotation omitted.]

With these rules in mind, we turn to the language of the noncompete covenant at issue. The covenant commences with the following language: "PHYSICIAN pledges active and industrious performance of duties in the CORPORATION'S best interests. To that end, if

PHYSICIAN separates from employment service with the CORPORATION, PHYSICIAN shall not compete with CORPORATION . . . ." These terms clearly and unambiguously contemplate that the noncompete covenant would become effective only if plaintiff separated from employment during the term of the contract. We agree with the circuit court's conclusion that plaintiff did not separate from his employment; rather, his employment ended when the contract's term expired on December 31, 2005. This interpretation of the contractual language logically flows from the prefatory words of the covenant, which required plaintiff to perform his duties to benefit the interests of his employer while plaintiff worked for UPDDA. The covenant's next sentence begins, "*To that end*, if PHYSICIAN separates from employment service . . . ." [Emphasis supplied.] This phrase clearly references and modifies the preceding sentence, addressing plaintiff's responsibilities incident to active employment. Interpreted in its contractual context, the term "separates" implies an action on the physician's part to leave or withdraw from employment. Because plaintiff never "separated" from defendant's gastroenterology practice, the noncompete covenant never took effect. Consequently, the circuit court properly granted plaintiff summary disposition on this ground pursuant to MCR 2.116(C)(10).

Defendant next contends that the employment contract's terms required that plaintiff reimburse defendant for the cost of malpractice tail insurance. The applicable contractual language provides that "[i]n the event of PHYSICIAN'S termination of employment with the CORPORATION for any reason, PHYSICIAN shall be responsible for the premium payment of a malpractice 'tail' policy." The employment contract elsewhere contains a separate provision entitled "Termination," which sets forth, "Notwithstanding anything herein contained to the contrary, this contract may be terminated by any party hereto upon thirty (30) days [sic] written notice. CORPORATION may restrict PHYSICIAN'S employment activities during such notice period, whether termination is by action of the CORPORATION or PHYSICIAN."

We again agree with the circuit court that the contract between the parties did not "terminate," but simply expired. During the contract's two-year term, neither party undertook to avoid or nullify their contractual obligations, or to provide 30 days' written notice of an intent to bring the contract to an early end. The malpractice insurance provision became effective only if either party terminated plaintiff's employment, and neither did so. Instead, plaintiff elected not to accept the terms of a proposed new employment agreement and the existing contract simply lapsed. Reading the contract as a whole and endeavoring to harmonize its parts, we conclude that plaintiff lacked any obligation to reimburse defendant for tail coverage. The trial court thus correctly granted plaintiff summary disposition of this claim under MCR 2.116(C)(10), as well.

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher