IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CRISTINA TARANTOLA, M.D.,

Petitioner,

v.

WILLIAM B. HENGHOLD, M.D., P.A.,

Respondent.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D17-2367

Opinion filed December 21, 2017.

Petition for Writ of Certiorari -- Original Jurisdiction.

Todd M. LaDouceur and Chris K. Ritchie of Galloway, Johnson, Tompkins, Burr & Smith, P.L.C., Pensacola, for Petitioner.

Daniel E. Harrell and Robert J. Powell of Clark Partington, Pensacola, for Respondent.

OSTERHAUS, J.

Dr. Cristina Tarantola seeks certiorari review of an order holding her in civil contempt for violating the terms of a preliminary injunction related to an employment, non-compete agreement entered into by the parties. We grant the petition and quash the order below.

I.

In 2012, Dr. Tarantola signed an employment agreement with Dr. Henghold that contained a covenant not to compete. Among other things, the covenant prohibited Dr. Tarantola, after leaving employment, from "[d]irectly or indirectly rendering medical services that include performing Mohs surgery in any capacity for [her] own account or for others" within a forty-mile radius of Dr. Henghold's office and from "[p]articipating in any advertising or marketing activity within the restricted area for the purpose of soliciting patients to obtain medical services that include or may include Mohs surgery."

When Dr. Tarantola's employment ended, Dr. Henghold sought to enforce the non-compete covenant in the trial court. He obtained a preliminary injunction enjoining Dr. Tarantola from practicing dermatological medicine within a forty-mile radius of the Henghold Practice. Dr. Tarantola appealed the injunction and this court reversed, finding the preliminary injunction to be overly broad. *Tarantola v. Henghold*, 214 So. 3d 726, 726 (Fla. 1st DCA 2017). We directed specifically that the injunction should be narrowed because the covenant did not prohibit Dr. Tarantola from practicing general dermatology unrelated to Mohs surgery. *Id.* at 727.

After the opinion issued, Dr. Tarantola put up a billboard advertising her practice and activated a website for her business. Dr. Henghold believed that these actions violated the preliminary injunction's advertising ban and he moved for civil contempt sanctions. The trial court held a hearing and agreed with Dr. Henghold. It

found a violation of the preliminary injunction and held Dr. Tarantola in civil contempt for advertising herself "as a doctor who could provide Mohs surgery related services" within the restricted area. The order threatened a $1,640 per day fine unless Dr. Tarantola complied with the following alternative conditions:

> a. Take down and deactivate the current Tarantola Dermatology website.
>
> b. Remove the current Tarantola Dermatology billboard that is located in either Pensacola or Escambia County, Florida.
>
> c. Place at her reception desk in both her Pensacola and Gulf Breeze offices the following notice in at least 20 point Times New Roman or Arial type: "Dr. Tarantola is currently prohibited from performing Mohs surgery and any preoperative or postoperative medical services associated with Mohs surgery in this office pursuant to the injunction entered in Case No: 15-1805 CA in and for Escambia County, Florida."
>
> d. Do not notify patients in her Pensacola and Gulf Breeze offices that she can perform Mohs surgery related services in Alabama.

Dr. Tarantola complied with the conditions and avoided the fine. But then she filed a petition challenging the trial court's civil contempt order.

II.

A civil contempt order entered in an ongoing proceeding is subject to certiorari review. *Sears v. Sears*, 617 So. 2d 807, 809 n.1 (Fla. 1st DCA 1993). To be entitled to certiorari review, the petitioner must show that the contested order departs from the essential requirements of the law and that it results in material injury for the remainder of the case that cannot be corrected on postjudgment appeal. *Bd. of Trs. of the Internal Improvement Tr. Fund v. Am. Educ. Enters., LLC*, 99 So. 3d

450, 454 (Fla. 2012). The material injury element is jurisdictional and satisfied in this case because the order imposes conditions upon Dr. Tarantola's doctor-patient relationships, restricting her from informing her patients about available cancer-related treatment and provider options. *See Baptist Health v. Murphy*, 226 S.W.3d 800, 813 (Ark. 2006) (finding irreparable harm based upon the disruption of doctor-patient relationships). These aren't injuries that can be made whole by monetary damages or otherwise corrected on appeal. *See Laycock v. TMS Logistics, Inc.*, 209 So. 3d 627, 629 (Fla. 1st DCA 2017) (detailing the material harm showing required to invoke certiorari jurisdiction).[*]

The contempt order departed from the essential requirements of law because it sanctioned Dr. Tarantola in the absence of violations of clear and definite provisions of the preliminary injunction. We recognize, as a threshold matter, that courts have long possessed authority to enforce judgments by the exercise of their contempt powers. *Johnson v. Bednar*, 573 So. 2d 822, 824 (Fla. 1991). But exercising contempt powers based on a party's noncompliance with a court order can only occur where a directive "clearly establish[es] for the record the standards

[*] Dr. Henghold argues that this case is moot because Dr. Tarantola avoided the civil contempt fine. We disagree because the alternate sanctions imposed by the civil contempt order are presently preventing Dr. Tarantola from fully advising her patients, operating a website for her business, etc. *See Apthorp v. Detzner*, 162 So. 3d 236, 240 (Fla. 1st DCA 2015) (evaluating justiciability based upon whether the facts "demonstrate a real threat of immediate injury"); *Grapski v. City of Alachua*, 31 So. 3d 193, 198 (Fla. 1st DCA 2010) ("[T]he doctrine of mootness does not apply to situations where an ongoing procedure violates the law.").

of conduct required by the court." *Carnival Corp. v. Beverly*, 744 So. 2d 489, 496-97 (Fla. 1st DCA 1999). An order that does not sufficiently identify the alleged prohibited conduct cannot support a conclusion that a party has intentionally disobeyed it. "[A] judge cannot base contempt upon noncompliance with something an order does not say." *DeMello v. Buckman*, 914 So. 2d 1090, 1093 (Fla. 4th DCA 2005) (quoting *Keitel v. Keitel*, 716 So. 2d 842, 845 (Fla. 4th DCA 1998)).

The problem here arises because Dr. Tarantola did not violate clear and definite terms of the preliminary injunction's prohibition on advertising. First, the court found that Dr. Tarantola violated the injunction on the basis of a billboard that advertised Tarantola Dermatology Inc. as "The Skin Specialists." The trial court's order equated the words "The Skin Specialists" with advertising specific to Mohs surgery because they "could leave the impression . . . that she can provide Mohs surgery services at her [Florida] offices." However, the record indicates that "The Skin Specialists" reference isn't synonymous with offering or providing Mohs surgery services. Rather these are generic words describing a medical practice that specializes in skin, which Dr. Tarantola is authorized to operate (and advertise) in Florida. *See Tarantola*, 214 So. 3d at 727 (holding that Dr. Tarantola "is not prohibited from practicing general dermatology unrelated to Mohs"); Merriam–Webster Online Dictionary, https://www.merriam-webster.com/dictionary/dermatology (last visited Nov. 30, 2017) (defining dermatology as "a branch of medicine dealing with the skin, its structure, functions, and diseases"). Because the

preliminary injunction did not clearly prohibit Dr. Tarantola from advertising her dermatology practice, the billboard advertisement doesn't support entry of the civil contempt order against her.

The preliminary injunction's advertising prohibition also didn't clearly forbid the information provided on Dr. Tarantola's website. The website described Dr. Tarantola's dermatology practice, including her four offices in two states offering different services. It further identified Dr. Tarantola's Mohs surgery-related training and provided that Mohs-related services were offered at her Fairhope, Alabama office. The website didn't advertise these services as being available in her other three offices, the two Florida offices and the Brewton, Alabama office. And so, here again, because Dr. Tarantola did not advertise offering Mohs-related services in her Florida offices, the injunction's advertising prohibition did not clearly apply.

The final basis on which the trial court's civil contempt order rests relates to Dr. Tarantola's office consultations with patients. The order concluded that Dr. Tarantola violated the injunction by telling her Florida patients who need Mohs surgery services that one of their options is to go to her Fairhope, Alabama office location for those services. Specifically, Dr. Tarantola testified that if a Florida patient sought Mohs surgery, she'd identify local providers for them, and that she had even referred one patient to Dr. Henghold. However, if a Florida patient adamantly insisted on seeing Dr. Tarantola for Mohs surgery, she would "have to tell them she doesn't do that here. You'd have to go to Fairhope, if you wanted to

see her for that." The trial court considered this communications strategy to be impermissible advertising, as well as "an indirect method of practicing Mohs in the restricted area." But we disagree. Giving treatment and provider options to patients seeking that information, including listing her own out-of-state office, doesn't clearly and definitively fall under the injunction's prohibitions on "practicing" or "advertising" Mohs surgery. One does not "practice" Mohs surgery, even indirectly, by simply identifying the doctors who provide this service. *See Tarantola*, 214 So. 3d at 727 (describing the indirect practice of Mohs surgery to include things like "pre-operative and post-operative medical services associated with this type of surgery"). Dr. Tarantola's testimony confirmed that she does not offer Mohs surgery, indirect Mohs services, or Mohs consults in Florida. Also, it's too big of a stretch to consider private office discussions with patients about Mohs providers to be "advertising" in violation of the injunction. *See Blacks Law Dictionary* 55 (7th ed. 1999) (defining "advertising" as "[t]he action of drawing *the public's* attention to something to promote its sale") (emphasis added). The injunction's practice and advertising prohibitions don't clearly and definitively prohibit Dr. Tarantola's provision of Mohs-provider information to her Florida patients. Thus, Dr. Tarantola's office-consultation practices with patients also don't support the civil contempt order entered against her.

III.

Because civil contempt sanctions were imposed against Dr. Tarantola in the absence of conduct that clearly and definitely violated the preliminary injunction, we grant the petition for writ of certiorari and quash the order of civil contempt.

LEWIS and MAKAR, JJ., CONCUR.