STATE OF MICHIGAN

COURT OF APPEALS

VENKATA P.S. PUTTAGUNTA, M.D.,

Plaintiff-Appellant,

v

GENESEE MEDICAL CENTER and SURYA THOTA, M.D.,

Defendants,

and

HURLEY MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED
October 12, 2001

No. 220673
Genesee Circuit Court
LC No. 97-054188-CZ

Before: Saad, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Plaintiff, Venkata P.S. Puttagunta, appeals as of right from a judgment of no cause of action entered following an order granting Hurley Medical Center's motion for directed verdict. Plaintiff also appeals an order granting partial summary disposition to Hurley on his claim of tortious interference with advantageous business relationships.[1] We affirm.

I. Directed Verdict[2]

[1] Defendants, Dr. Thota and Genesee Medical Anesthesia, P.C. (GMA), also filed motions for summary disposition which the trial court granted on the same day, effectively disposing of all plaintiff's claims against them. Plaintiff does not appeal the trial court's orders regarding these defendants.

[2] This Court reviews a trial court's grant or denial of a motion for directed verdict de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). "In reviewing the trial court's ruling, this Court views the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a (continued…)

To understand and properly analyze the question presented, it is necessary to briefly review the rules governing public hospitals, their bylaws and internal operations.

As a public hospital, Hurley is governed by the rules of hospital operation set forth in §11 of MCL 331.161, which provides:

> When such hospital is established, the physicians, nurses, attendants, the persons sick therein and all persons approaching or coming within the limits of same, and all furniture and other articles used or brought there shall be subject to such rules, regulations and policies as said board, with the advice of the medical staff, may prescribe governing the operation of the hospital and the professional work, surgical privileges, conduct and maintenance of proper medical records of and by the physicians and surgeons using said hospital facilities. The board of trustees of the hospital may deny hospital privileges and facilities to any physician or surgeon who violates any of the provisions of this act or any rules, regulations or policies adopted under the provisions of this act.

Accordingly, Hurley has "the right to adopt rules, regulations and policies governing eligibility and qualifications of their medical staff." *Touchton v River Dist. Community Hospital*, 76 Mich App 251, 257-258; 256 NW2d 455 (1977). However, as a public institution, Hurley is also bound by Article 1, § 17 of the Michigan Constitution which provides that "no person shall be … deprived of … life, liberty or property, without due process of law." As our Supreme Court has observed, "Due process of law requires notice and opportunity to be heard." *Milford v People's Community Hospital Authority*, 380 Mich 49, 58; 155 NW2d 835 (1968), quoting *Napuche v Liquor Control Commission*, 336 Mich 398, 403-404; 58 NW2d 118, 120 (citations omitted).

To that end, our Supreme Court has held that a public hospital's bylaws do not meet constitutional due process requirements if they "provide no qualifications which the staff physician must possess, provide no standard of knowledge or skill," but merely "attempt to confer upon the executive committee the arbitrary power to reduce privileges according to their whim or caprice . . . ." *Milford*, *supra*, at 62.

In his complaint, plaintiff alleges states that Hurley violated his due process rights by failing to give him notice or a hearing before effectively terminating his staff privileges. Plaintiff does not claim that Hurley's bylaws provide inadequate due process protection, but that Hurley violated its own bylaws which, if followed, would have adequately protected his fair hearing rights. Specifically, plaintiff cites the following rule under the Fair Hearing Plan section of Hurley's bylaws:

> 3.1.2 When any staff member receives a Notice of Recommendation that, if ultimately ratified by decision of the Board of Hospital Managers, will adversely affect his or her appointment to, or status as, a member of the Professional Staff,

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(…continued)

question of fact existed." *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). "A directed verdict is appropriate only when no factual question exists regarding which reasonable minds may differ." *Id*. at 644.

> or his or her exercise of clinical privileges, he or she shall, upon request made within thirty (30) days of the receipt of the Notice of Recommendation, be entitled to a hearing before a hearing officer or panel appointed by the Board of Hospital Managers.

Under bylaw §3.1(a), a "Notice of Recommendation" shall state that professional review action has been proposed against the staff member, the reasons for action, and that the staff member has the right to request a hearing within thirty days.

Plaintiff points to two events that he claims gave rise to his hearing rights under the bylaws: (1) the November 18, 1996 letter from Daniel George, indicating that Hurley wanted the anesthesiologists on staff to be board eligible by May 31, 1997, and board certified by November 1, 1998, and (2) the January 2, 1997, letter from Daniel George and Stewart Hamilton stating that plaintiff could not practice independently at Hurley. We find that plaintiff's claims lack merit regarding both letters.

A. Board Eligibility and Certification

Plaintiff was a member of the corporation, Anesthesiology Associates of Southeastern Michigan, P.C. (AASM), which had an exclusive contract to deliver anesthesiology services at Hurley. Clearly, Hurley took no action against plaintiff that triggered his hearing rights under the bylaws. The November 18, 1996, letter from Daniel George was addressed to the attorney for AASM and was not sent to plaintiff. The letter plainly indicates, and witnesses (including plaintiff) testified, that the letter was part of the negotiation process between AASM and Hurley for the next exclusive anesthesiology contract with the hospital. Moreover, as Hurley emphasized throughout trial, the negotiations during the fall of 1996 never resulted in a contract between AASM and Hurley and AASM's contract expired on January 31, 1997. Therefore, the letter had no real impact on plaintiff's staff privileges at the time he learned of it or at any time thereafter.

Evidence also showed that plaintiff resigned from AASM because of a decision made by AASM members, not Hurley. Plaintiff's letter of resignation specifically states that he announced his resignation at a corporation meeting on November 23, 1996, because, "at the Nov. 13th, 1996 meeting with [the AASM] attorney present all six [members] voted to sacrifice [plaintiff]" because it would help ensure an exclusive contract with Hurley. The letter demonstrates that plaintiff decided to resign based on a corporate decision made several days before Daniel George sent the letter at issue. Moreover, plaintiff testified at trial that he first heard about negotiation criteria regarding board eligibility in meetings about the hospital's Level II trauma certification on October 24, 1996.

While the AASM decision to "sacrifice" plaintiff by voting to accept the board certification contract term may very well have been pursuant to criteria negotiated by Hurley, it did not constitute an action by Hurley to adversely affect plaintiff's privileges at the hospital. Evidence showed that no "agreement" between AASM and Hurley materialized and, when plaintiff resigned, AASM members had not decided what they intended to do. Accordingly, we agree with the trial court that plaintiff did not resign because of any action by Hurley, but because of his own anticipation of and speculation about some potential action by AASM and/or Hurley regarding non-board eligible anesthesiologists.

Though plaintiff claims in his complaint that this triggered his due process rights under the bylaws, plaintiff admitted at trial that the aforementioned events had no impact on his staff privileges, and therefore these events did not invoke his hearing rights under §3.1. Accordingly, not only did plaintiff voluntarily resign from a private corporation, which does not trigger hearing rights under the bylaws, plaintiff's admission renders §3.1 inapplicable. Furthermore, as the trial court concluded, the negotiation letter of November 18, 1996, did not constitute a "Notice of Recommendation" regarding plaintiff's staff privileges for consideration by the Board of Managers. Indeed, even plaintiff did not believe he was entitled to a hearing under the bylaws based on the negotiations in October and November 1996: he did not request a hearing within thirty days as required by §3.7(b).

Moreover, were we to conclude that Hurley's negotiation for board eligible anesthesiologists constituted an action affecting plaintiff's staff privileges, the action clearly was not arbitrary or capricious and plaintiff was not entitled to a hearing on this issue.

Substantively, Hurley's demand was not arbitrary or capricious because plaintiff was urged to become board eligible and board certified since 1992 when Gerhard Endler, M.D. evaluated the department. Kumbla P. Bhakta, M.D., head of Hurley's anesthesiology department, testified (and plaintiff admits) that he told the anesthesiologists to become board certified every year thereafter. Plaintiff was also aware of Hurley's interest in having more board certified anesthesiologists because the anesthesiologists signed the 1995 contract in which they agreed to have 50% board certification by a date certain and they all agreed to make reasonable efforts to become board certified. For these reasons, plaintiff cannot claim Hurley's decision to negotiate board certification issues in the 1997 contract was arbitrary or capricious. Indeed, plaintiff's claims are disingenuous: plaintiff was unable to continue working for AASM and, therefore, at Hurley because he failed to make any attempt to become board eligible, despite reminders, year after year, that Hurley and his associates expected him to do so. In sum, it was plaintiff's conduct and failure to become board certified that caused this situations, not the fault of conduct of others.

In addition, procedural due process does not entitle plaintiff to a hearing based on any decision by Hurley to impose a board eligibility requirement. Not only were plaintiff's hearing rights not triggered for the reasons discussed above, the Fair Hearing Plan clearly applies to situations in which the board of managers is asked to take action against a doctor for problems such as medical errors, patient neglect or state licensing problems. In such a case, the medical staff sends a notice of recommendation that the board take action to terminate or reduce a doctor's privileges. The hearing rights are triggered if there is an attack on a doctor's actions or reputation along with a punishment involving the reduction of staff privileges, and it allows the doctor an opportunity to hear the claims against him issue, to present evidence, and to defend himself. In contrast, under the facts of this case, there was no action or accusation against plaintiff that would necessitate or justify a hearing, particularly because he resigned from the exclusive anesthesiology group prior to any alleged "action" by Hurley.

B. Exclusive Anesthesiology Contract with AASM

On December 7, 1996, and December 12, 1996, plaintiff's attorney sent letters to Dr. Bhakta and Hurley administrators stating that plaintiff planned to continue practicing at Hurley

as a sole practitioner. In response, Daniel George and Stewart Hamilton sent a letter to plaintiff and his lawyer on January 2, 1997, stating:

> In response to your letter regarding Vankata P.S. Puttagunta, M.D., please be advised of the following: Hurley Medical Center has an exclusive contract with Anesthesiology Associates of Southeastern Michigan for the provision of anesthesia services. As we have been advised by Anesthesiology Associates of Southeastern Michigan that Dr. Puttagunta has resigned from their professional corporation … and Dr. Puttagunta is unable to provide emergency call services, Hurley Medical Center is unable to grant Dr. Puttagunta's request.

Plaintiff requested a hearing regarding this letter on January 20, 1997, which would have satisfied the thirty-day requirement if he had a right to a hearing under the bylaws. However, the trial court ruled that plaintiff was not entitled to a hearing because, again, the January 2 letter did not constitute a Notice of Recommendation made to the Board of Managers. Further, the trial court correctly ruled that plaintiff himself necessitated Hurley's action: after plaintiff knowingly entered an exclusive contract as a member of AASM, he resigned from AASM, yet expected to continue to practice at the hospital. The court properly ruled that Hurley was essentially forced to deny plaintiff's request to become a sole practitioner because it was obligated to honor the exclusivity of AASM's contract. Plaintiff, of course, was well aware of this exclusivity contract because he was a member of AASM for years and benefited from this exclusivity provision. Having terminated his relationship with AASM, plaintiff attempted to repudiate the efficacy of the exclusivity provision. The trial court correctly refused to allow plaintiff to do this.

Further, plaintiff claims that, notwithstanding his resignation from AASM, he had a right to continue to practice at Hurley because the board of managers renewed his staff privileges from January 1, 1997 to December 31, 1998. He claims that Hurley owed him a hearing because, though his privileges were intact, their refusal to let him treat patients as a sole practitioner adversely affected those privileges. Hurley points out, however, that, instead of quitting AASM, plaintiff could have stayed until the contract expired and then negotiated to become a member of the successor professional corporation which negotiated an exclusive anesthesiology contract with Hurley, Genesee Medical Anesthesia, P.C. (GMA). However, because plaintiff resigned, Hurley was bound to enforce the terms of the exclusive contract by precluding plaintiff from practicing, despite the privilege renewal.

At trial and on appeal, plaintiff relies almost exclusively on the case of *Milford*, *supra*. In *Milford*, our Supreme Court ruled that a hospital's bylaws do not meet due process requirements if they set forth no qualifications or standards for knowledge, skill or conduct and merely gave the executive committee the arbitrary power to reduce privileges at any time. *Id*. at 62. While *Milford* states that a public hospital's bylaws must comply with constitutional due process requirements, we agree with the trial court that its facts are easily distinguishable because, here, plaintiff makes no claim that Hurley's bylaws provided insufficient due process protection. Further, unlike in *Milford*, Hurley did not revoke or reduce plaintiff's privileges; plaintiff resigned from AASM prior to any action by Hurley. Moreover, we do not regard Hurley's obligation to comply with the terms of its exclusive contract with AASM as an arbitrary reduction of plaintiff's privileges, particularly because plaintiff himself benefited from that very exclusivity prior to his resignation.

We find the reasoning in cases cited by Hurley more persuasive. *Hyde v Jefferson Parish Hospital District No 2*, 513 F Supp 532 (ED La, 1981), rev'd, 686 F2d 286 (CA 5, 1982), rev'd and remanded, *Jefferson Parish Hospital Dist No 2 v Hyde*, 466 US 2; 104 S Ct 1551; 80 L Ed 2d 2 (1984); *Mays v Hospital Authority of Henry County*, 582 F Supp 425 (ND Ga, 1984).

We agree with the *Hyde* line of cases that a public hospital may enter exclusive contracts with physician groups. The United States Supreme Court ruled that such contracts do not violate the Sherman Anti-Trust Act, 15 USC 1, et seq., and plaintiff makes no claim that exclusive contracts are illegal or that AASM's contract with Hurley was invalid; indeed, plaintiff negotiated AASM's contract as an officer of AASM. Further, plaintiff testified that virtually all the hospitals to which he has applied have exclusive contracts with professional corporations and require that doctors apply to and work within a group. Because Hurley's decision to enforce the terms of its exclusive contract furthers Hurley's legitimate interest in providing quality patient care, Hurley did not violate plaintiff's due process rights to deny his request to continue as a sole practitioner without a hearing.

We are also persuaded by the reasoning in the *Hyde* cases and in *Mays* that, when plaintiff resigned from AASM and no longer had any contract with Hurley that, for due process purposes, he gave up any "property right" that he may have had in exercising his privileges as an active staff member. See *Hyde, supra*, 513 F Supp at 545; *Mays, supra*, 582 F Supp at 430.

Taking the evidence in a light most favorable to plaintiff, as a matter of law, Hurley did not violate plaintiff's constitutional due process rights. Contrary to plaintiff's assertion, the record does not reflect that the trial court erred by substituting its judgment for that of the jury in rendering its decision on this issue or on plaintiff's contract claims.[3] There was no disputed issue for the jury and, indeed, no reasonable juror could conclude that Hurley violated plaintiff's substantive or procedural due process rights.[4] Accordingly, and for the above reasons, we affirm the trial court's grant of Hurley's motion for directed verdict on this issue.[5]

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[3] We decline to address plaintiff's claim that the trial court erred in granting a directed verdict to Hurley on his breach of contract and his breach of contractual obligation of fair dealing claims. Plaintiff asserts no arguments to support his assertion that the trial court erred and sets forth no legal analysis of the merits of his claims. Plaintiff merely states that the trial court substituted its judgment for that of the jury and then refers back to his due process arguments. It is not up to this court to find a basis for plaintiff's claim or to uncover legal authority to substantiate a mere assertion. As our courts have long held:

> It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow. [*Minicuci v Scientific Data Management, Inc*, 243 Mich App 28, 37 n 7; 620 NW2d 657 (2000), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

[4] Plaintiff also presented some evidence during trial regarding § 2.3 of the Hurley bylaws. Plaintiff argued that, when Daniel George sent plaintiff the January 2, 1997, letter denying his
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II. Summary Disposition

The trial court did not err in granting summary disposition to defendant on plaintiff's tortious interference with a business relationship claim.

We review the trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Our Court has explained:

> The basic elements which establish a prima facie tortious interference with a business relationship are the existence of a valid business relation (not necessarily evidenced by an enforceable contract) or expectancy; knowledge of the relationship or expectancy on the part of the interferer; an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and resultant damage to the party whose relationship or expectancy has been disrupted. [*Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994).]

It is also well-settled that the "interference" must be improper in addition to being intentional. "Improper" means "illegal, unethical, or fraudulent." *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 374; 354 NW2d 341 (1984).

Contrary to plaintiff's argument, the trial court did not require plaintiff to show that Hurley's conduct amounted to a criminal act. The trial court judge did not rule that defendants' conduct must be illegal, the court simply stated that the conduct should "probably border more on criminal unethical or fraudulent as opposed to something that is improper." Not only did the judge make this statement after he already ruled on Hurley's motion, it is clear that the comment was merely the judge's attempt to explain that a heightened standard is used to determine whether conduct is "improper." This is consistent with our case law which requires a "per se wrongful act," or " a lawful act with malice and unjustified in law." See *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). Accordingly, there was no manifest error in the trial court's statement and no error in its grant of summary disposition to Hurley.

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request to work as a sole practitioner, it amounted to an automatic suspension under § 2.3. Plaintiff averred that this constituted a violation of Hurley's bylaws, and plaintiff's due process rights, because his suspension was not pursuant to one of the five acts listed as reasons for automatic suspension under § 2.3. The trial court ruled that § 2.3 is inapplicable because it does not refer to a situation in which a physician is precluded from practicing because he resigned from a group with an exclusive contract. Plaintiff does not raise this issue on appeal and we decline to address it.

[5] Plaintiff asserts on appeal that the trial court ruled that he "jumped the gun" and would have had a valid cause of action had he stayed with AASM or if he filed suit at some later time. We decline to address this issue because the trial court's comments regarding the possible merits of claims plaintiff *may* have had at different times constitute dicta.

Affirmed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski