

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GEORGE METHVEN, D.O.,

Plaintiff-Appellant,

v

MCLAREN MEDICAL MANAGEMENT, INC  
and LAPEER REGIONAL HOSPITAL,

Defendants-Appellees.

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UNPUBLISHED

November 20, 2003

No. 242459

Lapeer Circuit Court

LC No. 99-027407-CK

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GEORGE METHVEN, D.O.,

Plaintiff-Appellee,

v

LAPEER REGIONAL HOSPITAL,

Defendant,

and

MCLAREN MEDICAL MANAGEMENT, INC,

Defendant-Appellant.

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No. 242660

Lapeer Circuit Court

LC No. 99-027407-CH

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendants appeal by right a judgment finding defendants liable for breach of plaintiff's employment contract and awarding plaintiff \$178,225. Plaintiff separately appeals the trial court's limitation on damages. The appeals have been consolidated. We affirm.

In Docket No. 242459, plaintiff claims that the trial court erred in limiting his damages based on the after-acquired evidence rule. Plaintiff contends that the rule is an affirmative defense that was waived because defendants never pleaded it as required by MCR 2.111(F)(3).

Without deciding whether the after-acquired evidence rule is an affirmative defense, we agree with the trial court that plaintiff failed to prove his damages with reasonable certainty. This Court reviews the trial court's determination of damages following a bench trial for clear error. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). "The party asserting a breach of contract has the burden of proving its damages with reasonable certainty, and may recover only those damages that are the direct, natural, and proximate result of the breach." *Id.*

Plaintiff did not allege or prove that defendants' decision to suspend his clinical privileges was in any way affected by the decision to terminate his employment. The evidence presented at trial showed that the Medical Ethics and Grievance Committee was composed of independent physicians who made an independent recommendation to suspend plaintiff's hospital privileges. Both plaintiff and his attorney participated in the suspension process. Both defendants testified that plaintiff's conduct was an egregious breach of professionalism justifying termination. Because plaintiff failed to show that he would have retained his clinical privileges or remained employed after May 25, 1999, plaintiff failed to prove damages beyond that date with reasonable certainty.

Defendant McLaren Medical Management, Inc. (MMMI) claims the trial court erred in finding defendant liable for breach of the employment contract. Whether a contract was breached is a question of fact. *State-William Partnership v Gale*, 169 Mich App 170, 176; 425 NW2d 756 (1988). This Court reviews a trial court's findings of fact in a bench trial for clear error. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A finding is clearly erroneous where, although there is evidence to support the finding, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Defendant MMMI argues that the court mistakenly thought plaintiff was entitled to procedural due process under the state and federal constitutions and points out that constitutional due process protections only apply where there is state action. *Harvey v Aetna Life Ins Co*, 72 Mich App 285, 287; 252 NW2d 471 (1976). However, the record clearly reveals that the trial court's focus throughout the trial was not on constitutional due process but rather on MMMI's failure to follow the termination procedures in the employment contract before discharging plaintiff. Indeed, the record supports the trial court's finding that MMMI did not abide by the contract's termination procedures. There was no clear error.

Affirmed.

/s/ Karen M. Fort Hood

/s/ William B. Murphy

/s/ Janet T. Neff