STATE OF MICHIGAN

COURT OF APPEALS

JASON J. ARMSTRONG, D.D.S., P.C., and JASON J. ARMSTRONG, D.D.S.,

Plaintiffs-Appellants,

v

MAUREEN ANN O'HARE, MARIANNE L. BARAN, D.D.S., and MARIANNE L. BARAN, D.D.S., P.C., jointly and severally,

Defendants-Appellees.

UNPUBLISHED
April 22, 2014

No. 308635
Wayne Circuit Court
LC No. 08-118283-CK

Before: SERVITTO, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's orders granting summary disposition in defendants' favor on several of their claims. We affirm.

Plaintiffs, a dentist and his dental practice, filed an action against defendant Maureen O'Hare, a dental hygienist who had worked several years at the Armstrong dental practice. O'Hare had also worked for many years for the dentist from whom plaintiffs purchased the dental practice and had, as a result, developed a strong relationship with a number of the patients. Plaintiffs alleged that prior to O'Hare's resigning from employment with them and beginning work for another dentist, defendant Marianne L. Baran, at Baran's dental practice (defendant Marianne L. Baran, D.D.S., P.C.), O'Hare removed and/or copied the names and address of plaintiffs' patients, then used the same to contact the patients and solicit them away from plaintiffs' business and to her new employer. Plaintiffs alleged that O'Hare's actions breached an employment contract with them, constituted defamation, theft, and misappropriation, and that both O'Hare and Dr. Baran conspired to perform the acts together. Plaintiffs further alleged that O'Hare, Dr. Baran, and Dr. Baran's dental practice were liable to them for tortious interference with contractual relationships, tortious interference with advantageous business expectations, common law conversion, breach of fiduciary duty, and unjust enrichment.

The trial court granted summary disposition in favor of Dr. Baran and her dental practice ("the Baran defendants") on all claims against them, and granted summary disposition in favor of O'Hare on all but three of plaintiffs' claims against her: defamation, common law conversion,

and statutory conversion. Those claims proceeded to a jury trial, at the conclusion of which the trial court granted O'Hare's motion for a directed verdict with respect to the claims of common law and statutory conversion.

On appeal, plaintiffs contend that the trial court's summary disposition and directed verdict rulings were in error. We review de novo a trial court's decision regarding a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). "When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party." *Ernsting v Ave Maria College*, 274 Mich App 506, 509–510; 736 NW2d 574 (2007). All reasonable inferences are to be drawn in favor of the nonmoving party. *Dextrom v Wexford Co*, 287 Mich App 406, 415; 789 NW2d 211 (2010). A moving party is entitled to summary disposition under MCR 2.116(C)(10) when "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Brown v Brown*, 478 Mich 545, 552; 739 NW2d 313 (2007).

This Court also reviews de novo a trial court's decision regarding a party's motion for a directed verdict. *Elezovic v Ford Motor Co*, 472 Mich 408, 418; 697 NW2d 851 (2005). A directed verdict is appropriate only when no factual question exists on which reasonable jurors could differ. *Diamond v Witherspoon*, 265 Mich App 673, 681; 696 NW2d 770 (2005). In reviewing a directed verdict decision, we "view the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Derbabian v S. & C. Snowplowing, Inc*, 249 Mich App 695, 702; 644 NW2d 779 (2002).

Plaintiffs first contend that the trial court erred in granting summary disposition in all defendants' favor with respect to their claim of tortious interference with advantageous business expectations. We disagree.

The elements of tortious interference with a business relationship or expectancy are "the existence of a valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff." *Cedroni Association, Inc v Tomblinson, Harburn Associates, Architects & Planners Inc*, 492 Mich 40, 45-46; 821 NW2d 1 (2012). "The expectancy must be a reasonable likelihood or probability, not mere wishful thinking." *Trepel v Pontiac Osteopathic Hosp*, 135 Mich App 361, 377; 354 NW2d 341 (1984). And, the interference must be improper, meaning that it lacked justification. *Advocacy Org for Patients & Providers v Auto Club Ins*, 257 Mich App 365, 383; 670 NW2d 569 (2003). "The 'improper' interference can be shown either by proving (1) the intentional doing of an act wrongful per se, or (2) the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's contractual rights or business relationship." *Id.* "One is liable for commission of this tort who interferes with business relations of another, both existing and prospective, by inducing a third person not to enter into or continue a business relation with another or by preventing a third person from continuing a business relation with another." *N Plumbing & Heating, Inc v Henderson Bros, Inc*, 83 Mich App 84, 93; 268 NW2d 296, 299 (1978), quoting 45 Am Jur 2d, Interference, § 50, p. 322. "Where the

defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *Dalley v Dykema Gossett*, 287 Mich App 296, 324; 788 NW2d 679 (2010).

Plaintiffs alleged that they had an advantageous business expectation with the patients of their dental practice and "paid almost $2 million for this advantageous business expectation, namely, for the goodwill of the practice." Plaintiffs further asserted that defendants actively conspired and engaged in illegal actions including theft, lies, breach of fiduciary duties, ethical violations, beach of employment contract, and violations of state and federal privacy laws, to try and destroy the goodwill and that the advantageous business expectations with many patients had, in fact, been breached and severed as a result.

Assuming, without deciding, that plaintiffs had a reasonable expectancy of a continued business relationship with the patients who migrated to Dr. Baran's office, they must nonetheless establish that defendants interfered with this expectancy by showing that they intentionally engaged in an act that is wrongful per se or intentionally engaged in a lawful act with malice and unjustified in law for the purpose of invading plaintiffs' business relationship. *Advocacy Org for Patients & Providers*, 257 Mich App at 383.

Plaintiffs have made no allegations or established that Dr. Baran or her dental practice engaged in any act other than to accept and treat Armstrong patients as they came to their offices. Plaintiffs have not alleged that the Baran defendants had any improper contact with Armstrong patients, that they induced the patients to leave Armstrong, or otherwise engaged in any actions that could be construed as wrongful per se or as lawful acts undertaken with malice. To the extent that the Baran defendants had any contact with the Armstrong patients, Baran is a competing dental practice located a short distance from plaintiffs, and there is no allegation or evidence that the Baran defendants engaged in any act that was motivated by anything other than legitimate business reasons. Thus, the Baran defendants did not improperly interfere with plaintiffs' advantageous business expectancy, *Dalley*, 287 Mich App at 324, and the trial court properly granted summary disposition in favor of these defendants on plaintiffs' claim of tortious interference with advantageous business expectations.

Plaintiffs have also made no showing of any fact to suggest an improper motivation by O'Hare in any of her conduct. As will be discussed below, plaintiffs have not shown that O'Hare engaged in any theft or other illegal actions, or conspiracy in order to interfere with plaintiffs' business expectancy. The "wrongful act" really complained of is O'Hare's contact of Armstrong patients and allegedly inducing/convincing them to leave plaintiffs' practice and come to Baran's dental practice. A claim for tortious interference of a business expectancy may fail if the action was motivated by a legitimate business interest. *Wood v Herndon and Herndon Investigations, Inc*, 186 Mich App 495, 500–502; 465 NW2d 5 (1990). No evidence shows that if O'Hare did contact Armstrong patients to convince them to come to her new employer, that such actions were wrongful per se, done with malice, or were motivated by anything other than a legitimate business purpose.

More importantly, there has been no evidence as to the content of any conversation between O'Hare and an Armstrong patient, though plaintiffs had a list of all patients that had transferred to Baran's office. As indicated by the trial court, discovery had been ongoing for

some time and plaintiffs could have sought to provide an affidavit or testimony from any former Armstrong patient who was now a Baran patient swearing to the contents of a conversation between him or her and O'Hare. Plaintiffs have provided no affidavit or testimony of this nature. Defendants, on the other hand, provided the deposition testimony of two former Armstrong (and current Baran) patients who testified they left plaintiffs' practice because they were unhappy with the treatment they received there—not because of anything said or done by O'Hare or Baran. Viewing the evidence in a light most favorable to plaintiffs, the trial court did not err in granting summary disposition in favor of O'Hare with respect to plaintiffs' tortious interference with advantageous business expectations claim.

Plaintiffs next assert that the trial court erred in granting summary disposition in favor of the Baran defendants and granting O'Hare's motion for a directed verdict on their claim of common law conversion. We disagree.

Conversion involves "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). The act of dominion is wrongful when it is inconsistent with the ownership rights of another. *Check Reporting Servs, Inc v Mich Nat'l Bank–Lansing*, 191 Mich App 614, 626; 478 NW2d 893 (1991).

In their complaint, plaintiffs asserted that O'Hare stole confidential patient information and files from plaintiffs' office and converted them to her own use so that she could "purchase" a lucrative position at the Baran defendants' dental office. Assuming that patient records were the personal property of plaintiffs, there was no evidence presented that O'Hare had any agreement with the Baran defendants concerning the patient records, or that O'Hare was acting at the Baran defendant's direction or as their agent if she, in fact, converted the patient files or information. There is also no evidence that her obtaining a position at the Baran office hinged upon her obtaining patient records. An announcement placed in a church newspaper two weeks before O'Hare quit her employment with plaintiffs announcing that she was now working for the Baran defendants establishes nothing more than that O'Hare was working for both parties at the same time. It does not establish that O'Hare converted plaintiffs' patient lists or information for the Baran defendants' use. In short, plaintiffs presented no evidence that the Baran defendants participated in any way of any taking of patient files, if such a taking occurred.

Plaintiffs assert that the Baran defendants nevertheless converted the intangible asset of goodwill relating to plaintiffs' patients to their own use such their conversion claim should have survived summary disposition. Although plaintiffs cite to several published cases in support of their theory that intangible property can be subject to the right of conversion, none of these cases are similar to and thus applicable to the facts at hand.

In *Miracle Boot Puller Co, Ltd v Plastray Corp*, 57 Mich App 443; 225 NW2d 800 (1975), for example, the plaintiff corporation brought suit against the defendant corporation for breach of contract and the conversion of patent rights and a mold concerning a product the plaintiff had invented called a "boot puller." The plaintiff and an individual employed by defendant corporation, but holding himself out to be president of a different company, entered into a contract whereby the false company would lease the patent rights on the mold and have exclusive production and distribution rights on the product in the United States for a specific fee

and royalty payments to the plaintiff. When payments were not forthcoming, the plaintiff located its mold at defendant corporation, which had used the mold to begin production and sales of the product and which indicated that the individual who entered into the contract no longer worked for defendant corporation, but that defendant corporation would assume the contract and make the payments as agreed. Again, no payments were forthcoming. Suit was thus initiated, and the Court of Appeals held that questions of fact existed for the jury concerning plaintiff's conversion claims. The Court specifically held, "[t]he mold being a specifiable, physical chattel can be the subject of conversion; likewise, intangible personal property can also be the subject of conversion. As such, the intangible right to benefit from a patent right can be converted." *Id*. at 450-451.

Plaintiffs also cite to *Astroworks, Inc v Astroexhibit, Inc*, 257 F Supp 2d 609 (2003). In that case, the property alleged to have been converted was a website. The court opined that intellectual property may, in some instances, be converted and thus give rise to a conversion cause of action. *Id*. at 618. It stated, "[a]lthough an idea alone cannot be converted, the 'tangible expression or implementation of that idea' can be", i.e., the copyrighted and trademarked website. *Id*.

What these two cases demonstrate and clearly have in common is that intangible property that may give rise to a conversion cause of action is that property which arises from an independent, unique idea and is expressed or developed into a useful form. *Sarver v Detroit Edison Co*, 225 Mich App 580, 585-586; 571 NW2d 759 (1997) informs us:

> What property may be the subject of an action for conversion was at first determined on the basis of the fiction of losing and finding. Any tangible chattel could be lost and found, and so could be converted . . . .
>
> Intangible rights of all kinds could not be lost or found, and the original rule was that there could be no conversion of such property. But this hoary limitation has been discarded to some extent by all of the courts. The first relaxation of the rule was with respect to the conversion of a document in which intangible rights which were merged, so that the one became the symbol of the other-as in the case of a promissory note, a check, a bond, a bill of lading, or a stock certificate. This was then extended to include intangible rights to which a tangible object, converted by the defendant, was highly important-as in the case of a savings bank book, an insurance policy, a tax receipt, account books, or a receipted account. In all of these cases, the conversion of the tangible thing was held to include conversion of the intangible rights and to carry damages for it. The final step was to find conversion of the rights themselves where there was no accompanying conversion of anything tangible-as, for example, where a corporation refuses to register a transfer of the rights of a shareholder on its books. [citations omitted].
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> The doctrine of conversion has not extended beyond the kind of intangible rights which are customarily merged in, or identified with, some document or other tangible property. Prosser and Keeton acknowledge, however, that "[t]here is

> perhaps no very valid and essential reason why there might not be conversion of . . . an idea, or 'any species of personal property which is the subject of private ownership.'" Thus, plaintiff's idea could be subject to conversion if she could establish an exclusive right of ownership in the idea. [internal citations omitted].
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> Michigan appellate courts have held that certain intangible property can be the subject of a conversion action. See, e.g., *Warren Tool v Stephenson*, 11 Mich App 274, 276; 161 NW2d 133 (1968) (negotiable instrument); *Tuuk v Andersen*, 21 Mich App 1, 13; 175 NW2d 322 (1969) (right to lease a machine); *Miracle Boot Puller Co, Ltd v Plastray Corp*, 57 Mich App [at] 451 [] (patent right). Notably, in each of these cases, the plaintiff's ownership interest in intangible property was represented by or connected with something tangible.

Here, "goodwill" is not unique or expressed in a useful form. Nor is it represented by or connected with something tangible. Instead, the goodwill is the reputation that was built up by the prior owner of the dental practice and was and is subject to the whims and preferences of the patients who are free to stay or go as they please. The intangible assets that have been found to be subject to conversion are not subject to personal whims and preferences but instead have a solid, identifiable, intellectual base and are capable of being exclusively owned and possessed. The patients were not property and neither plaintiffs nor the Baran defendants could have exercised control or ownership over them. The Bran defendants also could not have exercised control or ownership over the goodwill that plaintiffs allegedly had with such patients. The trial court thus properly granted summary disposition with respect to plaintiffs' common law conversion claim against the Baran defendants.

The same rationale applies to plaintiffs' assertion that the trial court erroneously granted a directed verdict in favor of O'Hare on their common law conversion claim. As the claim of common law conversion relates to the conversion of goodwill, a directed verdict was proper in O'Hare's favor. With respect to plaintiffs' claim of conversion of confidential patient information, addresses, telephone numbers, and other documentation, there was no evidence presented at trial that O'Hare wrongfully exerted any distinct act of domain over the same in denial of or inconsistent with any rights plaintiffs may have had to the same. *Foremost Ins Co*, 439 Mich at 391, such that a directed verdict was also proper in favor of O'Hare on the claim of conversion of the claimed documents and information.

Evidence presented at trial indicated that O'Hare was given a book while employed with plaintiffs in which to she was to list some of the patients phone numbers and addresses and their due dates for services. While there was conflicting evidence as to how long she kept the book, there was no evidence indicating that O'Hare was seen taking the book out of plaintiffs' office. There was also no evidence at trial that O'Hare copied or took any patient charts, notes or other information out of plaintiffs' office. Plaintiffs did not assert that the patient records, charts, notes or information was missing from the office.

Moreover, even if O'Hare did have copies of the patient addresses or phone numbers, there is no indication that she *wrongfully* exerted any distinct act of domain over them. Essentially, what plaintiffs are claiming a right to is a patient (or customer) list. It is true that a customer list may be subject to certain protections, and a former employee may be liable for

using a customer list in violation of those protections. For example, an employer and employee could enter into a contract requiring the employee not to use or disclose the customer list in any way and could thus bring a breach of contract claim against the former employee for violating the contract. However, we have no contract here.

In some instances, a customer list could also be considered a trade secret thus giving rise to a misappropriation cause of action. But, "a list of customers compiled by a former employee from personal and public sources available to that employee is not protectable as a trade secret." See, *Raymond James & Associates, Inc v Leonard & Co*, 411 F Supp 2d 689, 695 (ED Mich 2006). There was no testimony presented to refute O'Hare's testimony that she obtained the addresses and other information for purposes of patient contacts from her personal and public sources.

Finally, "[i]n general, there is nothing improper in an employee establishing his own business and communicating with customers for whom he had formerly done work in his previous employment." *Hayes-Albion v Kuberski*, 421 Mich 170, 183; 364 NW2d 609 (1984). That being the case and plaintiffs having provided no evidence that O'Hare took any customer list or information from plaintiffs' office and wrongfully exerted any distinct act of domain over them inconsistent with the rights of plaintiffs, the trial court properly granted a directed verdict in favor of O'Hare on the claim of common law conversion.

Plaintiffs next contend that the trial court erred in granting summary disposition in favor of the Baran defendants and in directing a verdict in favor of O'Hare on plaintiffs' claim of statutory conversion. We again disagree.

A statutory conversion claim is governed by MCL 600.2919a, which provides:

> (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:
>
> (a) Another person's stealing or embezzling property or converting property to the other person's own use.
>
> (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

Because the term "conversion" is not defined in the statute and this word has acquired a peculiar meaning in the law, the common-law defines the term for both common-law and statutory conversion. See, *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 223; 779 NW2d 304 (2009). Accordingly, plaintiffs were required to show that defendants wrongfully exerted domain over their personal property in denial of their rights to sustain both their common-law and statutory conversion claims. See *Foremost Ins Co*, 439 Mich at 391.

This Court has already held that plaintiffs could not maintain their conversion claim for goodwill as a matter of law because it does not fall within the definition of personal property that may be converted. The same definition applying here, plaintiffs cannot maintain a claim for statutory conversion of goodwill against defendants as matter of law.

Similarly, where plaintiffs failed to establish that O'Hare converted any of the patient records or information, the trial court's grant of a directed verdict in O'Hare's favor on the statutory conversion claim was appropriate. The Baran defendants could be liable for statutory conversion only if they received, possessed, concealed, or aided in the concealment of stolen, embezzled, or converted property when they knew that the property was stolen, embezzled, or converted. Plaintiffs presented no evidence that O'Hare provided any information regarding plaintiffs' patients to the Baran defendants. All evidence indicated that after she resigned, O'Hare had contact (primarily by telephone) with patients she had known through her employment with plaintiffs. There was no evidence that the Baran defendants knew about, let alone participated in, the telephone calls. Plaintiffs provided no affidavits or other evidence that would establish any knowledge on the Baran defendants' part about any communications, or, more importantly, that they received, possessed, etc. any of the physical, tangible documents O'Hare was alleged to have stolen and used to engage in such communications. Summary disposition was thus appropriate in the Baran defendants' favor with respect to plaintiffs' statutory conversion claim.

Plaintiffs also assert that the trial court erred in granting summary disposition in all defendants favor on plaintiffs' claim of unjust enrichment. Whether a claim for unjust enrichment can be maintained is a question of law that appellate courts review de novo. *Karaus v Bank of New York Mellon*, 300 Mich App 9, 22; 831 NW2d 897 (2012).

Unjust enrichment is an equitable doctrine. *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006). It is the equitable counterpart of a legal claim for breach of contract. *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 328; 657 NW2d 759 (2002). To prevent unjust enrichment, the law will imply a contract only where the defendant has been inequitably enriched at the expense of the plaintiff. *Morris Pumps*, 273 Mich App at 195. However, courts may imply a contract only where the parties do not have an express contract covering the same subject matter. *Id.* "Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another." *McCreary v Shields*, 333 Mich 290, 294; 52 NW2d 853 (1952) (quotation marks and citation omitted). "To sustain an unjust enrichment claim, a plaintiff must demonstrate (1) the defendant's receipt of a benefit from the plaintiff and (2) an inequity to plaintiff as a result. *Karaus*, 300 Mich App at 23.

Plaintiffs asserted in their complaint that defendants were unjustly enriched by O'Hare misappropriating plaintiffs' patient records, and using the information contained therein to solicit patients to Baran's office. Plaintiffs further asserted that all defendants were aware that plaintiffs paid a substantial amount of money to purchase the goodwill of the patients and that all defendants stole the same and have received the benefit of the patient relationships without paying for it as plaintiffs had. Plaintiffs thus claim that all defendants were unjustly enriched.

As found above, plaintiffs failed to establish that O'Hare misappropriated plaintiffs' patient records or that defendants otherwise stole the same. To the extent that plaintiffs' claim for unjust enrichment relies upon such a finding, it thus fails.

In order to sustain their claim against the Baran defendants, plaintiffs would have to establish that these defendants had and retained benefits that in justice and equity belonged to plaintiffs. The "benefit" referred to is the patients coming to Baran's office and leaving plaintiffs' office. As previously indicated, there has been no evidence presented that Baran was in any way involved in O'Hare communicating with the Armstrong patients. "One is not unjustly enriched . . . by retaining benefits involuntarily acquired which law and equity give him absolutely without any obligation on his part to make restitution." *Tkachik v Mandeville*, 487 Mich 38, 47–48; 790 NW2d 260 (2010), quoting *Buell v Orion State Bank*, 327 Mich 43, 56; 41 NW2d 472 (1950). Where there has been no evidence that Baran engaged in any wrongful activity but simply accepted new patients that came to their offices and the patients apparently came voluntarily to the office, even though the patients may have formerly been patients of plaintiffs, the Baran defendants cannot be said to have received any benefit *from* plaintiff. It also cannot be said that an inequity resulted to plaintiffs as a result of the Baran defendants agreeing to treat the patients. Summary disposition was thus proper in the Baran defendants' favor on the claim of unjust enrichment.

As to O'Hare, the evidence established that she was offered a position as a dental hygienist at Baran's office in May 2008. There is no indication that her position was contingent upon her bringing any patients to the office with her. By all accounts, she was hired at a specified rate of pay on a full time basis. Thus, whether plaintiffs' patients came to the Baran defendants' office or not had no bearing on O'Hare's salary or position. There is no indication that she received any financial or other benefit. And, the patient records that O'Hare allegedly stole were not a "benefit" received or retained by O'Hare; they were simply information used as part of her employment. As unjust enrichment requires that the defendant receive a benefit at the expense of plaintiff, it was incumbent upon plaintiffs to establish that O'Hare received some sort of benefit from allegedly stealing the patient records and using the information to contact plaintiffs' patients. Having already been offered and accepted a job at the Baran offices in May 2008 (though staying at plaintiffs' offices until June 24, 2008) plaintiffs have shown no benefit to O'Hare, let alone one obtained at the expense of plaintiffs. Summary disposition was thus proper in O'Hare's favor on plaintiffs' unjust enrichment claim.

Plaintiffs next claim that the trial court erred in granting summary disposition to all defendants on plaintiffs' conspiracy claim. "A civil conspiracy is a combination of two or more persons, by some concerted action, to accomplish a criminal or unlawful purpose, or to accomplish a lawful purpose by criminal or unlawful means." *Advocacy Org for Patients & Providers*, 257 Mich App at 384. A claim of civil conspiracy must be based on an underlying, separate, actionable tort. *Id.* Proof of a civil conspiracy may be established through circumstantial evidence and may be premised on inference. *Temborius v Slatkin*, 157 Mich App 587, 600; 403 NW2d 821 (1986). Direct proof of an agreement need not be shown, nor is it necessary to show a formal agreement. "It is sufficient if the circumstances, acts and conduct of the parties establish an agreement in fact." *Id.*

Here, there is no separate, actionable tort that would support plaintiffs' conspiracy claim. The single tort claim that proceeded to trial was defamation committed by O'Hare alone. As we have found that all other tort claims were properly dismissed, there was no basis for a conspiracy claim to proceed. For this reason alone the conspiracy claim fails. *Advocacy Org for Patients & Providers*, 257 Mich App at 384.

Additionally, there was no direct or circumstantial evidence that the Baran defendants acted in concert with O'Hare to wrongfully convert or interfere with plaintiffs' patients, confidential patient information and patient goodwill. Plaintiffs assert that circumstantial evidence supported a conspiracy claim to wit (1) that Dr. Baran hired O'Hare to work more days than she had previously been able to fill with her prior hygienist indicating an anticipation that her patient load would increase when O'Hare came to work for her, and (2) Dr. Baran accepted Armstrong patients sent over by O'Hare and without such acceptance there would be no benefit or reason for O'Hare to solicit Armstrong patients. We find no merit to these arguments.

Dr. Baran testified at deposition that prior to June 2008, she had one hygienist who worked three days per week and another who worked one day per week as well as additional half days at times. In April 2008, the 3-day-per-week hygienist was ill, which led to Dr. Baran having O'Hare fill in. According to Dr. Baran, around June 2008, it was evident that the prior hygienist could not return to her prior workload. She thus offered O'Hare a full time (four day per week) position. Dr. Baran testified that while this was one more day per week than her prior hygienist had worked, her office had been in turmoil for the past several months since her hygienist had been off so they had a lot of backup and she anticipated a lot of patients wanting to get in. Plaintiffs have provided no support for an allegation that Dr. Baran hired O'Hare for an additional day in anticipation that she would be soliciting plaintiffs' patients to Baran's office and such an inference cannot be drawn simply because O'Hare was going to be working an additional day per week.

Plaintiffs' second allegation, that an inference of conspiracy can be premised upon O'Hare's acceptance of patients is simply without basis. Any business would likely accept new patients/customers, regardless of where they came from. And, there is no indication that plaintiffs' patients came to Baran's office because of O'Hare or, if they did, that the Baran defendants were aware of the same. Plaintiffs have failed to establish a civil conspiracy and summary disposition in favor of all defendants was therefore appropriate.

Plaintiffs finally argue that the trial court erred in granting summary disposition in O'Hare's favor with respect to their claim that she breached a fiduciary duty owed to them.

"[A] fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one on the judgment and advice of another." *Prentis Family Found*, 266 Mich App at 43 (quotation marks and citation omitted). "When a fiduciary relationship exists, the fiduciary has a duty to act for the benefit of the principal regarding matters within the scope of the relationship." *Id.* Fiduciary relationships [usually] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been

recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer." *Calhoun County v Blue Cross Blue Shield Michigan*, 297 Mich App 1, 20; 824 NW2d 202 (2012), quoting *In re Karmey Estate*, 468 Mich 68, 74 n 2; 658 NW2d 796 (2003). As can be observed by the above definitions, the term "fiduciary relationship" generally pertains to "relationships of inequality," and situations where one person may exercise dominion over another. See, *In re Karmey Estate*, 468 Mich at 74 n 3. This Court has been reluctant to extend the cause of action for breach of fiduciary duty beyond the traditional context. See *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 574-581; 603 NW2d 816 (1999).

Plaintiffs claim that O'Hare had a duty to act for the benefit of her employer (them), with regard to patient information obtained in the course of her employment. Plaintiffs assert that where confidences were reposed in O'Hare with respect to the patients' information and she betrayed that confidence by using such information to contact the patients and convince the patients to move to O'Hare's new employment office, O'Hare breached her fiduciary duty to plaintiffs. Plaintiffs have failed, however, to establish that through this alleged confidence or repose placed in O'Hare, she gained superiority or influence over plaintiffs, that she had control or responsibility over plaintiffs, that O'Hare had a duty to act for or give advice to plaintiffs, or that there is a specific relationship between O'Hare and plaintiffs that has traditionally been recognized as involving fiduciary duties.

O'Hare appears to have had a traditional employer-employee relationship with plaintiffs. Plaintiffs provided a personal service, subject to no contracts for such services, to patients, and kept a list of its patients and their dental records in the course of its business. O'Hare, as an employee, had access to these records. There is no indication that her access was any different from any other employee's access or that she was privy to unique information that would warrant imposing a fiduciary duty upon her deserving of special protection by the law. Plaintiffs have cited no relevant authority suggesting that an employer-employee relationship such as the one at issue should give rise to a fiduciary relationship.

Plaintiffs attempt to liken this matter to *Vicencio v Ramirez*, 211 Mich App 501, 507; 536 NW2d 280 (1995). In that case, the plaintiff doctor entered into an employment contract with the defendant doctor, wherein the plaintiff agreed to treat the defendant's patients. When the defendant allegedly failed to pay monies owed to the plaintiff under the contract, the plaintiff sued. The defendant counter-sued, alleging that the plaintiff made copies of his patients' records and solicited them away from the defendant, thereby breaching a fiduciary duty owed to the defendant. The plaintiff moved for summary disposition, arguing that the defendant failed to state a claim upon which relief could be granted. A panel of this Court found that the plaintiffs' arguments were without merit, first noting that the plaintiff incorrectly cited to and relied upon authority addressing tortious interference with a contract, which the defendant did not allege. This Court also found that the defendant's claim was not so clearly unenforceable as a matter of law that no factual development could possibly justify recovery such that summary disposition under MCR 2.116(C)(8) would have been improper.

In this matter, in contrast to *Vicencio*, there was no employment contract between plaintiffs and O'Hare. And, where both parties in *Vicencio* were doctors, O'Hare is a dental hygienist and plaintiffs are a dentist and dental practice. O'Hare could not directly compete with plaintiffs or personally provide exactly the same services that plaintiffs provided as could the

Vicencio parties. Moreover, O'Hare's motion was brought pursuant to MCR 2.116(C)(10)-not (c)(8) as was the *Vicencio* defendant's. In the *Vicencio* case, then, evidence could still be submitted establishing a relationship between the parties that would give rise to a fiduciary duty. In the instant matter, both parties were afforded the opportunity to support their positions with documentary evidence to support their position and plaintiffs failed to sufficiently support their position. There being no relationship of inequality between O'Hare and plaintiffs wherein O'Hare was in a position to exercise dominion over plaintiffs, she owes no fiduciary duty to them. See, *In re Karmey Estate*, 468 Mich at 74 n 3.[1]

Affirmed.

/s/ Deborah A. Servitto
/s/ David H. Sawyer
/s/ Mark T. Boonstra

[1] Plaintiffs also listed as a separate issue that the trial court erred in denying their motion for reconsideration. However, aside from briefly mentioning in the "facts" portion of their brief that the motion for reconsideration was denied, plaintiffs have not addressed this issue at all. An issue is considered abandoned on appeal if the party raising it fails to present a meaningful argument or offer any authority on that point. *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008).