

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

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RHONDA KELLER, LNP, HEALTHWISE  
MEDICAL CLINIC, PLLC, and NP DREAMS,  
LLC,

UNPUBLISHED  
October 17, 2017

Plaintiffs/Counter-Defendants-  
Appellees/Cross-Appellants,

v

KASANDRA LECHHEL, LNP,

No. 334562  
Alpena Circuit Court  
LC No. 15-006498-CB

Defendant/Counter-Plaintiff-  
Appellant/Cross-Appellee.

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Before: BOONSTRA, P.J., and METER and GADOLA, JJ.

PER CURIAM.

Defendant Kasandra Lechel, LNP (Lechel) appeals by right the trial court's series of orders<sup>1</sup> granting summary disposition in favor of plaintiffs. Plaintiffs cross-appeal by right the trial court's August 12, 2016 order declining to grant additional attorney fees. We reverse in part the trial court's July 7, 2016 order (which incorporated the reasoning of its February 1, 2016 opinion) holding that defendant was not entitled to any compensation for her interests in the two limited liability companies at issue. We affirm in all other respects in both the main and cross appeal.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

Plaintiff Rhonda Keller, LNP (Keller) and Lechel, licensed nurse practitioners, were the sole members of two limited liability companies, plaintiffs HealthWise Medical Clinic, PLLC and NP Dreams, LLC ("the LLCs"). NP Dreams owns the property and building that houses a medical clinic operated by HealthWise and staffed by, among others, Keller, Lechel, and their supervising physician. Keller and Lechel had entered into an operating agreement governing HealthWise (the HealthWise Agreement); it provided that the value of HealthWise was \$100,000, and it contained the following provision regarding disqualification:

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<sup>1</sup> The orders were entered on January 11, 2016, June 1, 2016, July 7, 2016, and August 12, 2016.

5.6 Each Member agrees to adhere to the standards of personal and professional conduct and practice established by the profession and the Company. If a Member becomes legally disqualified to render the professional services rendered by the Company or accepts employment that, pursuant to existing law, places restrictions or limitations on his or her continued rendering of professional services, he or she shall withdraw from the Company pursuant to section 5.2 of this Article within a reasonable period, not to exceed ten days, after the event giving rise to the disqualification, and thereby sever all association, employment and financial interest in the Company. If such Member shall fail to voluntarily withdraw, the Company shall take such action as may be required to compel resignation under the same terms.

Section 5.2 of the HealthWise Agreement provides:

5.2 A Member may voluntarily withdraw from the Company only in accordance with the terms of this Section (“Withdrawing Member”). The Withdrawing Member must give written notice of his or her intent to withdraw to the other Members no less than one hundred eighty (180) days prior to the effective date (the “Effective Withdrawal Date). Upon withdrawal, the remaining Members shall have the option, within the notice period, to elect in writing to:

a. purchase the Withdrawing Member’s share by paying to the Withdrawing Member a sum equal to the Withdrawing Member’s sharing ratio applied to eighty ( 80%) percent of the agreed-upon value of the Company as established herein (the “Purchase Price”). On the closing date, the Company shall have the option of paying the entire Purchase Price in full or by delivering twenty (20%) percent of the Purchase Price at closing along with a promissory note (“Note”) for the balance of the Purchase Price. The Note shall be payable in sixty (60) equal monthly installments of principal and interest with interest accruing at seven (7%) percent per annum. The remaining Members shall indemnify the withdrawing Member against all liabilities guaranteed by the Withdrawing Member; or

b. wind up the Company business, liquidate the Company and distribute the proceeds according to this Agreement. If no election is made within the 180 day notice period, alternative (b) shall be deemed to be elected. The Members agree that either alternative may take longer than the 180 day period to accomplish and each Member pledges due diligence to accomplish the termination of the Company. Each Member agrees to promptly execute such documents as shall be reasonably required to effectuate the purposes of this section.

Keller and Lechel had also entered into an operating agreement governing NP Dreams (the NP Dreams Agreement); it provided, in its Section 5.5, that if “any Member ceases to be a Member of HealthWise Medical Clinic for any reason, that Member shall withdraw as a Member of this Company.” The NP Dreams Agreement contains the same Section 5.2 regarding

voluntary withdrawal as does the HealthWise Agreement. It does not, however, provide (as does the HealthWise Agreement) that a forced withdrawal is compensable under the terms set forth in Section 5.2. The NP Dreams Agreement provides that the value of NP Dreams is \$1,000.

In late 2014, Keller discovered that Lechel had been prescribing controlled substances for a patient of Keller's, even though Keller knew of no medical reason to prescribe such drugs. Keller discussed these concerns with Lechel, who did not deny having improperly written prescriptions or having otherwise abused controlled substances. According to Keller, Lechel indicated that she would notify the Health Professional Recovery Program (HPRP), a program established by the State of Michigan to support substance abuse recovery by health professionals,<sup>2</sup> but failed to do so. Keller subsequently notified the HPRP. During the resulting investigation by the Board of Nursing Disciplinary Committee, Lechel admitted to having written prescriptions for Vicodin and Ativan for her father and to having then diverted and used the drugs. After investigation, Lechel's license was suspended, and Lechel's supervising physician thereafter refused to supervise her.

Notwithstanding the language of Section 5.6 of the HealthWise Agreement and Section 5.5 of the NP Dreams Agreement, Lechel did not voluntarily withdraw from the LLCs. Plaintiffs therefore filed suit, asking that the trial court expel Lechel as a member of, terminate her employment with, and sever her financial interest in, HealthWise. Additionally, plaintiffs sought the dissolution and liquidation of NP Dreams, or, in the alternative, an order allowing Keller to continue that business without payment to Lechel.

Lechel responded with a counterclaim alleging defamation, tortious interference with a business relationship, business defamation, and intentional infliction of emotional distress. Lechel alleged that Keller had falsely accused her of "unethical and unlawful behavior," which interfered with her nurse practitioner license. According to Lechel, "Keller and her agents falsely advised patients that [Lechel] was no longer employed by Healthwise . . . ."

Plaintiffs moved for summary disposition with respect to their claims under MCR 2.116(C)(9) (failure to state a defense) and (C)(10) (no genuine question of material fact). The trial court granted partial summary disposition in favor of plaintiffs, concluding that Lechel became disqualified from rendering professional services and failed to withdraw from HealthWise within 10 days, and was therefore no longer a member. According to the court, "the language of the contract as well as the LLC act<sup>3</sup> result in the propriety of [Lechel's] withdrawing from the corporation. Of course, she did not do so, and so it was appropriate for [plaintiffs] to bring an action" to force her withdrawal. With regard to compensation, the trial court asked for further briefing, and stated, "the proofs of record suggest that invoking such other provision would not be financially beneficial to either party." The trial court also declared that Lechel's counterclaim was dismissed with regard to Keller under MCR 2.116(C)(7), and dismissed with regard to the other plaintiffs under MCR 2.116(C)(8) (failure to state a claim).

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<sup>2</sup> See <http://hprp.org/about-us/> (last visited October 5, 2017).

<sup>3</sup> The Limited Liability Company Act, MCL 450.4101 *et seq.* (the LLC Act).

According to the trial court, plaintiffs were immune from suit “with regard to all aspects that relate to the reporting to the agency.” The trial court, however, allowed Lechel to refile more specific pleadings regarding HealthWise’s and NP Dreams’ statements to the general public.

Lechel responded with an amended counterclaim, in which she alleged that “[o]n or about March 26, 2015, Todd Guladoni called HealthWise Medical Clinic to try and schedule an appointment with Kasandra Lechel. He was told by an employee who identified herself as Beth that ‘Casey’s no longer practicing.’” Lechel further asserted that “[i]n April of 2015, Diane M. Bates placed a call to HealthWise Medical Clinic in an attempt to schedule an appointment with Kasandra Lechel an[sic] was told by an employee who identified herself as Mary that ‘Casey will not be returning. She is no longer a nurse practitioner.’” Lechel additionally alleged that Bates “placed a second call to HealthWise Medical Clinic and ultimately spoke with an employee who identified herself as Amy and stated ‘Casey was no longer licensed by the State of Michigan.’ Upon further questioning, Amy stated that she had no idea when Casey would return and it was a matter that would be decided by the State of Michigan.” Lechel alleged that an employee of HealthWise had accessed Lechel’s father’s “privileged health information” without consent. Lechel also alleged that Keller had demanded her keys to the clinic, company car, and computer, and that she “has been prohibited access to her office, patient care, computer access, business making decisions or any functions of the practice regardless of her licensure status.”

With regard to the HealthWise and NP Dreams Agreements and compensation due to Lechel, the trial court held that “neither the buyout nor the liquidation option provides a logical and just resolution.” The court pointed to uncontroverted proofs that the corporate debts exceeded assets. Further, the trial court explained, because Lechel had breached the contract first, she was not entitled to recover on it. The trial court issued an order stating that Lechel “is not entitled to any compensation for her interests in the two Limited Liability companies.”

Plaintiffs also moved for summary disposition with respect to Lechel’s amended counterclaim under MCR 2.116(C)(7) (immunity granted by law). The trial court granted summary disposition in favor of plaintiffs on Lechel’s claim for business defamation on the ground that the statements made to Guladoni and Bates lacked “defamatory muster” because the statements were “essentially true (Lechel acknowledges that she was not working there).” The court dismissed the claims for defamation and intentional infliction of emotional distress on the grounds that the alleged conduct was not “extreme and outrageous” and the allegations lacked specificity. The trial court also noted that portions of those two claims were directed at Keller, who had already been dismissed from the case because she had “acted with statutory immunity.” The court declined to grant summary disposition with respect to the claim for tortious interference with a business relationship against HealthWise, reasoning that “it is conceivable that a record may be developed that arguably supports a cause of action” on that theory.<sup>4</sup> The trial court ruled regarding attorney fees as follows:

Keller is certainly entitled to the benefit of reimbursement of her proportional share of attorney fees incurred since having to respond to this

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<sup>4</sup> The trial court noted that NP Dreams had been dismissed by stipulation at oral argument.

amended counterclaim . . . , as the assertions therein are devoid of arguable legal merit as to her. The NP Dreams defense coincided entirely with that of Healthwise, and because Healthwise has prevailed in part, the corporate entities are not found to be entitled to attorney fees.

Subsequently, the trial court granted summary disposition in favor of plaintiffs under MCR 2.116(C)(8) and (C)(10) on the remaining count of Lechel's amended counterclaim (tortious interference with a business relationship). Although plaintiffs argued that the claim was frivolous and requested attorney fees under MCR 2.114(C), the trial court declined to order any additional attorney fees. This appeal and cross appeal followed.

## II. MAIN APPEAL

### A. SUMMARY DISPOSITION OF PLAINTIFFS' CLAIMS

Lechel argues that the trial court improperly granted summary disposition in favor of plaintiffs on the claims alleged in their complaint. We disagree. We review de novo a trial court's grant of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(9) tests the legal support for a party's defense. *Williamstown Twp v Hudson*, 311 Mich App 276, 287; 874 NW2d 419 (2015). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Johnson v Pastoriza*, 491 Mich 417, 435; 818 NW2d 279 (2012). However, "[c]onclusory statements, unsupported by factual allegations, are insufficient to state a cause of action." *Churella v Pioneer State Mut Ins Co*, 258 Mich App 260, 272; 671 NW2d 125 (2003). "Summary disposition under MCR 2.116(C)(9) is proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery." *Slater v Ann Arbor Pub Sch Bd of Ed*, 250 Mich App 419, 425-426; 648 NW2d 205 (2002). A legal conclusion is also insufficient; only factual allegations are taken as true. *Lansing Sch Ed Assoc, MEA/NEA v Lansing Sch Dist Bd of Ed (On Remand)*, 293 Mich App 506, 519; 810 NW2d 95 (2011).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden*, 461 Mich at 120.]

"[A]ll reasonable inferences are resolved in the nonmoving party's favor." *Hampton v Waste Mgt of Mich, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

Under the LLC Act, "[i]f a member, manager, employee, or agent of a professional limited liability company becomes legally disqualified to render the professional services rendered by the company . . . he or she shall sever within a reasonable period all employment with and financial interests in the company." MCL 450.4906.

The HealthWise Agreement contained a disqualification provision:

Each Member agrees to adhere to the standards of personal and professional conduct and practice established by the profession and the Company. If a Member becomes legally disqualified to render the professional services by the Company or accepts employment that, pursuant to existing law, places restrictions or limitations on his or her continued rendering of professional services, he or she shall withdraw from the Company pursuant to section 5.2 of this Article within a reasonable period, not to exceed ten days, after the event giving rise to the disqualification, and thereby sever all association, employment and financial interest in the Company. If such Member shall fail to voluntarily withdraw, the Company shall take such action as may be required to compel resignation under the same terms.

And, as noted, the NP Dreams Agreement provided that if “any Member ceases to be a Member of HealthWise Medical Clinic for any reason, that Member shall withdraw as a Member of this Company.”

Here, defendant diverted controlled substances that she had prescribed for her father, resulting in the suspension of her nursing license. As a result, her supervising physician refused to supervise her. Defendant was therefore disqualified from treating patients at HealthWise. Defendant argued that she was not disqualified under the operating agreement, but was instead disabled. The HealthWise Agreement provides that a member who “is unable to perform the duties of a member due to physical or mental condition which is indefinite in duration, . . . for a period of one hundred eighty consecutive days . . .” is disabled. However, defendant became unable to perform her duties not because of a “physical or mental condition,” but rather because her nursing license had been suspended, and because she lacked a supervising physician. Both the HealthWise Agreement and MCL 450.4906 provide that if a member becomes “legally disqualified” to render services, that member must withdraw from the LLC, which defendant did not do. Therefore, even accepting as true defendant’s assertion that her substance abuse was a disability, defendant failed to state a valid defense, and the trial court thus did not err when it granted summary disposition in favor of plaintiffs with respect to the allegations of plaintiffs’ complaint.

## B. COMPENSATION

Defendant also argues that she was owed compensation under § 5.2 of the operating agreements. We agree with respect to the HealthWise Agreement. This issue involves a question of contractual interpretation, which we review de novo. See *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 366-367; 817 NW2d 504 (2012). Our primary goal in interpreting a contract is to honor the intent of the parties by enforcing the plain and unambiguous language of the agreement. See *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 473; 663 NW2d 447 (2003); *DeFrain*, 491 Mich at 367. Clear and unambiguous language will be enforced as written. *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 418; 668 NW2d 199 (2003).

Section 5.6 of the HealthWise Agreement provides that a member shall voluntarily withdraw “pursuant to section 5.2 of this Article” if they become legally disqualified. It further

provides that “[i]f such Member shall fail to voluntarily withdraw, the Company shall take such action as may be required to compel resignation *under the same terms.*” Section 5.2 lists the terms for voluntary withdrawal, including 2 options for compensating the withdrawing member: either (1) payment of 80% of the member’s share of the agreed-upon value of the company, which amounts to \$40,000 to defendant, or (2) dissolution of the company and distribution of the proceeds on a pro-rata basis.

The plain language of the HealthWise Agreement indicates that the parties contemplated this exact situation—a dispute over whether a member was legally disqualified that was ultimately resolved by the courts—and also provided a contractual remedy in the form of a forced withdrawal under the terms of Section 5.2. While the trial court cited *Ehlinger v Bodi Lake Lumber Co*, 324 Mich 77, 89; 36 NW2d 311 (1949), for the proposition that a party to a contract who “commits the first substantial breach of a contract cannot maintain an action against the other contracting party for failure to perform,” cases such as *Ehlinger* are distinguishable from the instant case, where the parties specifically contemplated the resolution of a dispute over legal disqualification. Parties to a contract are allowed to establish the remedy for a breach of that contract, for example through liquidated damages, see, e.g., *St. Clair Medical, P.C. v Borgiel*, 270 Mich App 260, 270-271; 715 NW2d 914 (2006). Here, the parties contractually established that the remedy for a breach of the withdrawal-for-disqualification clause was to permit HealthWise to enforce the required withdrawal through legal action and to elect the form of compensation to be paid to the withdrawing member.

Despite testimony that HealthWise’s liabilities exceeded its assets, we see no reason to apply an equitable remedy when a contractual remedy is available. See *Tkachik v Mandeville*, 487 Mich 38, 45; 790 NW2d 260 (2010). The parties were free to bargain for protection in the event of a court-ordered withdrawal, and they did so. We decline to render that portion of the HealthWise Agreement surplusage or nugatory. See *Klapp*, 468 Mich at 467. We therefore reverse the trial court’s order with respect to the issue of compensation due to Lechel under the HealthWise Agreement, and remand for further proceedings in accordance with the parties’ contractual agreement.

Although the trial court did not differentiate between the two agreements at issue, we note that the NP Dreams Agreement, while it contains the same provision regarding voluntary withdrawal, is silent as to any compensation owed to a member who is required to withdraw because she is no longer a member of HealthWise. We therefore leave undisturbed the trial court’s order insofar as it relates to the NP Dreams Agreement.

### C. SUMMARY DISPOSITION OF LEHEL’S COUNTERCLAIM

Lechel also argues that the trial court erred when it granted summary disposition in favor of plaintiffs on Lechel’s original counterclaim. We disagree. A motion under MCR 2.116(C)(8) “tests the legal sufficiency of the claim on the basis of the pleadings alone,” and the “court must accept as true all factual allegations contained in the complaint.” *Maiden*, 461 Mich at 118. The court must grant the motion “if no factual development could justify the plaintiff’s claim for relief.” *Id.* However, the “mere statement of conclusions, without factual allegations to support them, will not suffice to state a cause of action or survive a motion for summary judgment.” *Zaschak v Traverse Corp*, 123 Mich App 126, 128; 333 NW2d 191, 192 (1983).

“MCR 2.116(C)(7) provides that a motion for summary disposition may be raised on the ground that a claim is barred because of immunity granted by law.” *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010).

When reviewing a motion under MCR 2.116(C)(7), this Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Id.* at 428-429 (citation footnotes omitted).]

Under the Public Health Code, MCL 333.1101 *et seq.*, a “licensee or registrant who has knowledge that another licensee or registrant has committed a violation under section 16221 . . . shall report the conduct and the name of the subject of the report to the department.” MCL 333.16222. A licensee must report, among other acts, “Obtaining, possessing, or attempting to obtain or possess a controlled substance . . . without lawful authority . . . .” MCL 333.16221(c)(iv). Further, “A person . . . acting in good faith who makes a report . . . is immune from civil or criminal liability including, but not limited to, liability in a civil action for damages” by the Whistle Blower’s Protection Act. MCL 333.16244(1). When a person makes a report to the HPRP, it is presumed that the person is acting in good faith. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 683 n 57; 719 NW2d 1 (2006).

Lechel argues that Keller’s report to HPRP was “false and defamatory,” in violation of the federal Health Insurance Portability and Accountability Act (HIPAA),<sup>5</sup> and “based partially on the unlawful procurement of medical records . . . .” But Keller attested by affidavit that she had been friends with Lechel “for a number of years,” and the trial court noted that Keller had offered to assume all corporate debts. Given Keller’s apparently worsened financial position as a result of Lechel’s expulsion from HealthWise, Keller had little motivation to make false statements. Lechel submitted no documentary evidence of Keller’s alleged lack of good faith. Lechel thus failed to rebut the presumption that Keller had acted in good faith, and the trial court was not required to make a specific finding in that regard. Additionally, even accepting as true Lechel’s assertion that Keller had procured medical records in violation of HIPAA, Lechel’s remedy, if any, would be found in an action against Keller for the alleged HIPAA violation; Lechel has provided this Court with no authority stating that a violation of HIPAA is sufficient to rebut the presumption of good faith found in MCL 333.16244(1).

In sum, because Lechel did not establish an issue of material fact with respect to Keller’s immunity from suit, the trial court properly granted summary disposition in favor of plaintiffs with respect to Lechel’s original counterclaim.

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<sup>5</sup> 42 USC 1320d *et seq.*



#### D. ATTORNEY FEES

Finally, Lechel argues that the trial court erred when it awarded proportional attorney fees to Keller for having to respond to the amended counterclaim. We disagree. This Court reviews for an abuse of discretion a trial court's award of attorney fees. See *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). "An abuse of discretion occurs when the court's decision falls outside the range of reasonable and principled outcomes." *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 273; 761 NW2d 761 (2008).

When a party is represented by an attorney, MCR 2.114 requires the attorney of record to sign pleadings and motions. MCR 2.114(A) & (C). In doing so, the attorney certifies that "to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." MCR 2.114 (D)(2).

MCR 2.114(E) provides for sanctions for a violation:

If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees.

Here, Lechel's amended counterclaim alleged that Keller had provided false and misleading information resulting in a recommendation that defendant enter residential treatment, and that such "false and defamatory statements" included an unprivileged publication of statements to third parties. These allegations were essentially the same as those found in the original counterclaim, and Lechel was aware that the trial court had already ruled that Keller was protected by the WhistleBlower Protection Act. Therefore, the trial court did not abuse its discretion when it awarded Keller attorney fees for having to respond to the allegations in the amended counterclaim that were necessarily devoid of legal merit.

#### III. CROSS APPEAL

Plaintiffs argue on cross appeal that this Court should remand this case to the trial court with instructions to award actual attorney fees to plaintiffs other than Keller for having to defend against the amended counterclaim. We decline to do so.

Lechel's amended counterclaim alleged that on multiple occasions employees of HealthWise had informed patients of Lechel that she was no longer a licensed nurse practitioner and was not practicing. These allegations relate not to Keller, but to other HealthWise employees. The trial court had previously refused to grant summary disposition on the claim of tortious interference with a business relationship as it related to HealthWise because, in its view, Lechel had at least stated a claim for purposes of surviving the motion under MCR 2.116(C)(8). Therefore, the amended counterclaim insofar as it related to HealthWise was at least "well grounded in fact and . . . warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." MCR 2.114 (D)(2). Because there was a good faith

argument related to HealthWise, the trial court did not abuse its discretion when it declined to award additional attorney fees.<sup>6</sup>

Reversed with regard to the issue of compensation due to Lechel under the HealthWise Agreement. Affirmed in all other respects. Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra  
/s/ Patrick M. Meter  
/s/ Michael F. Gadola

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<sup>6</sup> As noted, the parties stipulated at a May 2016 motion hearing to dismiss the amended counterclaim with respect to NP Dreams.