

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP3150

Cir. Ct. No. 2009CV702

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

NINO A. VIDIC, M.D.,

PLAINTIFF-APPELLANT,

V.

**SACRED HEART HOSPITAL OF THE HOSPITAL SISTERS OF THE THIRD
ORDER OF ST. FRANCIS,**

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Eau Claire County: BENJAMIN D. PROCTOR, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Nino Vidic, M.D. appeals a summary judgment dismissing his claims against Sacred Heart Hospital and awarding Sacred Heart \$257,182.58 on its counterclaim. The circuit court concluded Vidic breached his contract with Sacred Heart by failing to report to the hospital income he earned

from moonlighting at an unaffiliated clinic. Vidic contends the contract was ambiguous and did not clearly require him to report the income. We reject Vidic's argument and affirm.

BACKGROUND

¶2 Vidic, a psychiatrist, entered into a physician recruitment agreement with Sacred Heart on April 20, 2007. Under the agreement, Vidic agreed to relocate to Eau Claire and practice at Sacred Heart beginning on July 1, 2007. As an incentive for Vidic to relocate, Sacred Heart agreed to pay him a "Monthly Income Subsidy" for the first two years of his practice, totaling up to \$250,000 per year. Specifically, Sacred Heart agreed to pay Vidic "the amount by which Allowable Expenses (as defined herein) exceeds [sic] the aggregate monthly collections of Professional Fees (as defined in Section 2.1(c)) by Physician (**'Gross Income'**)" The agreement defined "Professional Fees" as "fees, compensation or remuneration generated by Physician in connection with the practice of medicine, including, without limitation, fees for the provision of professional medical services, managed care administrative services and hospital administrative services."

¶3 The agreement also included specific instructions for calculating Vidic's monthly income subsidy, stating:

- (i) Physician shall determine Gross Income on a cash basis for the applicable month;
- (ii) Physician shall determine "**Allowable Expenses**" which is the lesser of actual expenses attributable to Physician's practice ("**Actual Expenses**") or the budgeted expenses specified in Exhibit A ("**Budgeted Expenses**") for the applicable month; and
- (iii) the Monthly Income Subsidy is the amount, if any, that Allowable Expenses exceed the Gross Income.

The agreement required Vidic to submit monthly reports to Sacred Heart containing this information. Sacred Heart had no obligation to pay Vidic the monthly income subsidy for a given month until Vidic had provided “a complete and undisputed” report for that month. Furthermore, the monthly subsidy payments were structured as a loan from Sacred Heart to Vidic. At the end of the contract term, Vidic was required to repay any subsidy payments Sacred Heart made to him, unless he met certain conditions, in which case the hospital would forgive his debt.

¶4 Vidic worked as a psychiatrist in Sacred Heart’s inpatient units from late June 2007 until March 2009. During the same time period, he also operated a private psychiatric practice known as the Life Skills Support Center of Eau Claire. Additionally, in December 2007, Vidic began moonlighting at the Chippewa County Guidance Clinic. Vidic’s annual salary at the Guidance Clinic was \$168,000.

¶5 During 2007 and 2008, Vidic did not report his Guidance Clinic income to Sacred Heart in his monthly reports. As a result, when calculating Vidic’s monthly income subsidy from December 2007 until December 2008, Sacred Heart did not take Vidic’s Guidance Clinic income into account. Had Sacred Heart taken the Guidance Clinic income into account, Vidic’s “Gross Income” would have been higher, meaning that the difference between his “Gross Income” and “Allowable Expenses” would have been smaller, and, consequently, the amount of his monthly income subsidy would have been less each month.

¶6 Vidic first reported his Guidance Clinic income to Sacred Heart in March 2009. After Sacred Heart found out about the Guidance Clinic income, it refused to make any further monthly subsidy payments to Vidic. Instead, Sacred

Heart claimed that Vidic actually owed it money because, due to Vidic's failure to report the Guidance Clinic income, Sacred Heart had overpaid his monthly subsidy during 2007 and 2008.

¶7 In July 2009, Sacred Heart declined to renew Vidic's medical staff appointment, alleging several breaches of the physician recruitment agreement, including that he had failed to become board certified and had failed to complete continuing medical education requirements set forth in the hospital's credentialing policy. In August 2009, Vidic sued Sacred Heart for breach of contract and misrepresentation. Sacred Heart counterclaimed, alleging Vidic had breached the physician recruitment agreement.

¶8 Sacred Heart then moved for summary judgment, seeking dismissal of Vidic's claims and an award of damages on its counterclaim. Sacred Heart argued that, under the physician recruitment agreement, Vidic's "Professional Fees" unambiguously included his Guidance Clinic income, and Vidic was therefore required to report that income to Sacred Heart. Sacred Heart contended Vidic had breached the agreement by failing to report the Guidance Clinic income and that, as a result of Vidic's breach, it had overpaid his monthly income subsidy. The circuit court agreed, dismissing Vidic's claims and granting judgment for Sacred Heart in the amount of \$257,182.58.¹

¹ This amount includes the amount by which Sacred Heart overpaid Vidic's monthly income subsidy, as well as other amounts Sacred Heart alleged Vidic owed under the physician recruitment agreement and a separate signing bonus agreement. In the circuit court, Vidic initially challenged the amount of the judgment against him, arguing that it should be limited to the amount by which Sacred Heart overpaid his monthly income subsidy. However, Vidic ultimately conceded he was "not in a position to dispute the amounts alleged as due by Sacred Heart[.]" Vidic does not challenge the amount of the judgment on appeal.

DISCUSSION

¶9 We independently review a grant of summary judgment, using the same methodology as the circuit court. *Smaxwell v. Bayard*, 2004 WI 101, ¶12, 274 Wis. 2d 278, 682 N.W.2d 923. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).²

¶10 Contract interpretation presents a question of law that we review independently. *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). The primary goal of contract interpretation is to give effect to the parties' intentions. *Town Bank v. City Real Estate Dev., LLC*, 2010 WI 134, ¶33, 330 Wis. 2d 340, 793 N.W.2d 476. "[T]he best indication of the parties' intent is the language of the contract itself[.]" *Id.* Accordingly, we construe contract language according to its plain or ordinary meaning, and "[i]f the contract is unambiguous, our attempt to determine the parties' intent ends with the four corners of the contract, without consideration of extrinsic evidence." *Id.* (quoting *Huml v. Vlazny*, 2006 WI 87, ¶52, 293 Wis. 2d 169, 716 N.W.2d 807). A contract is ambiguous if it is susceptible to more than one reasonable interpretation. *Id.*

¶11 Here, the circuit court concluded that, under the plain language of the physician recruitment agreement, Vidic was required to report his income from the Guidance Clinic and that income should have been taken into account when his monthly income subsidy was calculated. We agree.

² All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶12 Section 2.1(a) of the physician recruitment agreement states that Sacred Heart will pay Vidic a monthly income subsidy in the amount “by which Allowable Expenses ... exceed[] the aggregate monthly collections of Professional Fees ... by Physician (**Gross Income**)” Section 2.1(c) defines professional fees as “fees, compensation or remuneration generated by Physician in connection with the practice of medicine, including, *without limitation*, fees for the provision of professional medical services, managed care administrative services, and hospital administrative services.” (Emphasis added.) The language of the agreement is clear and unambiguous: Vidic was entitled to a monthly income subsidy to the extent that his “allowable expenses” exceeded the “fees, compensation or remuneration” he generated “in connection with the practice of medicine.” The agreement states that these fees include, “without limitation,” fees for the provision of professional medical services. The income Vidic earned while moonlighting at the Guidance Clinic clearly qualifies as compensation earned “in connection with the practice of medicine” and “for the provision of professional medical services.” As such, that income should have been included in the monthly subsidy calculation, and Vidic breached the physician recruitment agreement by failing to report the income to Sacred Heart.

¶13 Vidic concedes that “if [Sections 2.1(a) and (c)] were the only provisions ‘in play’ [he] would be hard pressed to argue” that the parties did not intend his Guidance Clinic income to be included in the subsidy calculation. However, he argues that a footnote in Exhibit B, a document attached to the physician recruitment agreement, renders Sections 2.1(a) and (c) ambiguous. Exhibit B, entitled “Monthly report,” is a form Sacred Heart provided to Vidic to report his monthly income and expenses for calculation of the subsidy. The form includes a space for Vidic to list amounts collected “for Professional Services of

Physician.” Footnote 7 following that heading explains that “compensation for services provided to St. Joseph’s Hospital Chippewa Falls, WI, above and beyond the obligations included in this agreement will not be included in gross income.” Based on this footnote, Vidic argues that “it is clear that the parties did *not* intend that all revenues generated by Dr. Vidic were to be included in the subsidy calculation.” He contends that, because the fees he earned at St. Joseph’s were excluded, he “assumed” his Guidance Clinic income would also be excluded.

¶14 Vidic’s reading of footnote 7 is not reasonable. While footnote 7 clearly states that the fees Vidic earned for services provided at St. Joseph’s would be excluded from the subsidy calculation, it says nothing about whether fees earned for services provided at other medical facilities would also be excluded. Had the parties intended fees earned at other facilities, like the Guidance Clinic, to be excluded from the subsidy calculation, logically they would have included specific exceptions for those facilities, as they did for St. Joseph’s. Thus, in light of the specific exception for St. Joseph’s, the parties’ failure to include exceptions for fees earned at other facilities actually suggests that the parties intended those fees to be included in the subsidy calculation.

¶15 Vidic also draws our attention to a separate agreement he entered into with Sacred Heart in February 2008. Under that contract, Vidic agreed to serve as Sacred Heart’s medical director of child/adolescent behavioral health services. As medical director, Vidic received additional compensation of \$200 per hour, up to \$36,000 per year. Vidic argues that, if the definition of “professional fees” in the physician recruitment agreement included his Guidance Clinic income, it would also have included his medical director income. He contends that he “would never have agreed to provide Medical Director Services if this is

what was intended[.]” However, Sacred Heart maintains that the parties did intend Vidic’s medical director income to be included in the subsidy calculation.

¶16 Vidic has not explained how the medical director agreement makes the physician recruitment agreement ambiguous with respect to the treatment of his Guidance Clinic income. That Vidic misunderstood how his medical director income would be treated does not render the physician recruitment agreement ambiguous with respect to his Guidance Clinic income. Under the agreement’s unambiguous language, Vidic’s Guidance Clinic income qualified as “professional fees” and therefore should have been included in the monthly income subsidy calculation. Accordingly, the circuit court properly granted summary judgment in favor of Sacred Heart.³

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

³ Vidic also argues that, if we conclude the Guidance Clinic income should have been excluded from the subsidy calculation, we should determine whether Sacred Heart substantially breached the physician recruitment agreement by refusing to pay Vidic’s monthly income subsidy after March 2009. Because we conclude the Guidance Clinic income should have been included in the subsidy calculation, we need not address Vidic’s argument that Sacred Heart breached the agreement by failing to pay the subsidy. See *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) (“An appellate court should decide cases on the narrowest possible grounds.”). Similarly, we need not address Sacred Heart’s argument that it was justified in refusing to pay the subsidy because Vidic breached the agreement in other respects, including failing to complete continuing medical education requirements and failing to become board certified.

