IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GOLRIZ N. AMIRI,		**No. 25329-5-III**
Appellant,	)	
v.	)	
CENTRAL WASHINGTON FAMILY MEDICINE doing business by or through CENTRAL WASHINGTON FAMILY MEDICINE CLINIC, a medical facility; and YAKIMA HMA, INC. d/b/a YAKIMA REGIONAL MEDICAL AND HEART CENTER, a Washington corporation; and YAKIMA VALLEY MEMORIAL HOSPITAL, a Washington corporation,	)	**Division Three**
Respondents.	)	**UNPUBLISHED OPINION**

Sweeney, C.J.—The plaintiff physician was terminated from a residency program run by the defendants. She claims third party beneficiary status to the contract between two hospitals and a clinic that established the residency program. In particular, she claims beneficiary status to certain accreditation requirements that she believes were

incorporated into the residency agreement by reference. The residency program is accredited by the Accreditation Council for Graduate Medical Education (Accreditation Council).

We conclude that she was a third party beneficiary of the contract establishing the residency program, but that she received the benefit of that contract—the residency program maintained its accreditation. She was not entitled to additional procedures before Central Washington Family Medicine (Clinic) terminated her employment. The Clinic terminated her in accordance with her employment contract. We affirm the summary dismissal of her complaint.

FACTS

The Accreditation Council sets standards for certification of medical residency programs. The Clinic runs an accredited residency program. The Accreditation Council certified and recertified the Clinic's program.

Yakima Valley Memorial Hospital and Providence Yakima Medical Center (Hospitals) sponsor the residency program by written agreement with the Clinic. Both the Hospitals and the Clinic agree to maintain accreditation of the program in compliance with the Accreditation Council's requirements.

The Clinic accepted Dr. Golriz Amiri as a resident physician in the family medicine program through a written contract for the period June 30 to December 31,

2003. The Clinic and Dr. Amiri each reserved the right to terminate the employment contract with 30 days' written notice. The Clinic also agreed "[t]o maintain an approved Family Practice Residency program in keeping with the standards established by the Accreditation Council for Graduate Medical Education and the Residency Review Committee for Family Practice." Clerk's Papers (CP) at 134.

The Clinic evaluated Dr. Amiri on July 9, 2003. It evaluated her again on September 3, 2003. The medical staff expressed a number of concerns. Dr. Amiri was disorganized. She needed improvement in listening skills. Only one faculty member rated her knowledge as adequate. These deficiencies did not improve.

By letter dated December 19, 2003, the program director again described Dr. Amiri's deficiencies (substandard "overall fund of knowledge," substandard pharmacology knowledge, lack of ability to do procedures, lack of recognition of need for improvement, lack of attention to details, and so forth). The Clinic extended her first year residency contract rather than advancing her to second year residency status. The Clinic also required Dr. Amiri to continue precepting[1] all patients. The Clinic releases 90 to 95 percent of all first year residents from the precepting requirement after six months. The program director wrote again on January 5, 2004, and confirmed an agreement with

[1] All interaction is supervised by a mentor, requiring continual one-on-one teaching.

Dr. Amiri that her first year residency would be extended through June 30.

The Clinic rotated Dr. Amiri to pediatrics at the Children's Hospital in Seattle during the first week of March. CP at 268. Three faculty physicians evaluated her work. All found her performance unsatisfactory in at least two areas. They all described her proficiency level as "among the bottom few residents" in patient care and overall competency. CP at 161-70.

The Clinic gave Dr. Amiri 30 days' notice of her termination by letter dated April 16, 2004.

Dr. Amiri later applied to be licensed as a physician in California and Washington in November 2004. In her applications, she claimed that she had successfully completed her residency. The Clinic responded to an inquiry from the Medical Board of California and reported that Dr. Amiri had not successfully completed her residency.

The Accreditation Council provides grievance procedures for "[a]nyone having evidence of non-compliance with these standards by a[n accredited] program or institution." CP at 189. Dr. Amiri complained to the Accreditation Council. She claimed that the Clinic did not have a fair and reasonable written institutional policy or procedure for residents' complaints. The Clinic's required policy and procedure for complaints is contained in the Residents' Handbook. This handbook had been included in the application to the Accreditation Council for accreditation and reaccreditation in

1995 and 2001 and was accepted on both occasions. CP at 65. The Accreditation Council evaluated the Clinic's policies and procedures again at Dr. Amiri's request and found the Clinic to be in compliance. The Accreditation Council then dismissed her complaint.

Dr. Amiri then sued the Clinic and the sponsoring Hospitals on September 20, 2005, for damages as a result of wrongful termination, breach of the Clinic's contract with the Accreditation Council (as a third party beneficiary), and for unpaid compensation and exemplary damages. The court summarily dismissed her complaint on the defendants' motion.

DISCUSSION

We review an order granting summary judgment de novo. *Spokane Research & Def. Fund v. W. Cent. Cmty. Dev. Ass'n*, 133 Wn. App. 602, 605, 137 P.3d 120 (2006); *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). Summary judgment is appropriate "'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Colby v. Yakima County,* 133 Wn. App. 386, 389, 136 P.3d 131 (2006) (internal quotation marks omitted) (quoting *City of Seattle v. Mighty Movers, Inc.*, 152 Wn.2d 343, 348, 96 P.3d 979 (2004)). When the facts are undisputed, our inquiry is whether summary

judgment was properly granted as a matter of law. *Colby*, 133 Wn. App. at 389; *Mighty Movers*, 152 Wn.2d at 348. Here, the facts are undisputed.

The intent of the parties controls the interpretation of all contract terms. *Farmers Ins. Co. of Wash. v. Miller,* 87 Wn.2d 70, 73, 549 P.2d 9 (1976). We normally ascertain the intent of the parties in a written contract from the language of the contract. *In re Estates of Wahl,* 99 Wn.2d 828, 831, 664 P.2d 1250 (1983). Contracts are construed as a whole, including consideration of the subject matter and objective of the contract, all circumstances surrounding the making of the contract, and the conduct of the parties subsequent to the contract. *Stender v. Twin City Foods*, *Inc.,* 82 Wn.2d 250, 254, 510 P.2d 221 (1973).

Dr. Amiri claims to be a third party beneficiary of the agreement between the Hospitals and the Clinic to create a residency program. That agreement calls for compliance with the Accreditation Council's standards and those standards require a grievance procedure. She argues from this that she was entitled to a particular termination process and a grievance procedure beyond what was contained in her employment contract.

First, Dr. Amiri must show that the promisor (here the Hospitals and the Clinic) assumed a direct obligation to her as the intended beneficiary at the time they entered into the contract. *Postlewait Constr., Inc. v. Great Am. Ins. Cos.*, 106 Wn.2d 96, 99, 720 P.2d

805 (1986). That is, both contracting parties must intend that a third party beneficiary contract be created. *Id.* The test of intent is objective. The inquiry is whether performance under the contract would necessarily and directly benefit Dr. Amiri. *Id.* We determine that intent by "construing the terms of the contract as a whole, in light of the circumstances under which it is made." *Id.* at 99-100.

The Hospitals and the Clinic agreed to create a residency program. CP at 282-99. They agreed to keep the program accredited:

> Accreditation CWFM [Central Washington Family Medicine] will maintain accreditation of the Program as a family practice residency in compliance with ACGME [Accreditation Council for Graduate Medical Education] Requirements from time to time. Hospitals will comply with ACGME Requirements applicable to Hospitals in effect from time to time.

CP at 98.

> It is the intention of the parties that CWFM, with the sponsorship of Hospitals, operate the Program to comply with the Accreditation Council for Graduate Medical Education Institutional and Program Requirements ("ACGME Requirements") relating to training of residents in family practice and to do so consistent with and as a complement to its primary mission of providing health services to under-served populations in the Yakima, Washington community.

CP at 97-98.

Residents, including Dr. Amiri, are certainly intended beneficiaries of that agreement. They receive the benefit of accreditation. Aspiring physicians cannot be board certified without participation in an accredited residency program. They also

receive the benefit of qualified instructors, professional liability insurance for residents, adequate facilities and equipment, and so forth, all of which are spelled out in the residency agreement. CP at 282-99. All of these things were provided to Dr. Amiri by her employment contract with the Clinic. CP at 134-36.

The residency agreement between the Hospitals and the Clinic is clear. This agreement does not spell out or require procedures for management of the residents. It does not discuss a hiring, firing, or evaluation process. It does not discuss duties or privileges of residents. The Hospitals and the Clinic intended to create a residency program, and the agreement focuses on the viability of that program. The contract addresses funding, staffing, and accreditation. The interest of the parties in discussing Accreditation Council requirements in the contract is limited to what is required for accreditation of their program.

We disagree with Dr. Amiri's assertion that the Hospitals or the Clinic intended to incorporate by reference the Accreditation Council requirements as terms of the contract. CP at 282-99. This is particularly clear when we consider that (1) only "substantial" compliance with the Accreditation Council requirements is required, and (2) termination of the contract can only be effected by loss of accreditation, not by failure to adhere to the Accreditation Council requirements. CP at 282-99.

Finally, there is no Accreditation Council requirement to adopt the language and

procedures as argued by Dr. Amiri. At best, the Accreditation Council requires only "substantial compliance," which is also the only language used in the agreement between the Hospitals and the Clinic. Dr. Amiri complained to the Accreditation Council that its standards were not being followed. The Accreditation Council investigated and concluded that she was wrong. We will not second-guess the medical organization responsible for accrediting the residency programs of clinics and hospitals.

On this record, we must conclude that the Clinic and the Hospitals run a residency program in accordance with the requirements of the Accreditation Council with full approval of that supervising Accreditation Council. Dr. Amiri performed poorly and was terminated exactly in accordance with the terms of her contract.

The Accreditation Council has already reviewed Dr. Amiri's complaint and dismissed it as being without merit. Her complaint has run its course.

We affirm the summary dismissal of her complaint.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, C.J.

WE CONCUR:

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Brown, J.

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Kulik, J.