

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002115-MR

DR. LUIS DIAZ

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
ACTION NO. 00-CI-00521

BIG SANDY HEALTH CARE, INC.

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE AND McANULTY, JUDGES.

McANULTY, JUDGE. Dr. Luis Diaz (hereinafter appellant) appeals the judgment of the Floyd Circuit Court following a trial in which the jury found that Big Sandy Health Care, Inc. (appellee) did not breach a contract of employment with appellant. The jury further found for appellee on its counterclaim for repayment of loans it made to appellant to further his medical education. Appellant argues that the trial court should have directed a verdict in his favor on the breach of contract claim.

Appellant also alleges that the evidence did not support the verdict in favor of appellees on the counterclaim. We affirm.

Upon review of the evidence supporting a judgment entered upon a jury verdict, the appellate court's role is limited to determining whether the trial court erred in failing to grant the motion for directed verdict. Lewis v. Bledsoe Surface Mining Co., Ky., 798 S.W.2d 459, 461 (1990). All evidence which favors the prevailing party must be taken as true and the reviewing court is not permitted to determine credibility or the weight which should be given to the evidence. Id. The prevailing party is entitled to all reasonable inferences which may be drawn from the evidence. Upon completion of this evidentiary review, the appellate court must determine whether the verdict rendered is "'palpably or flagrantly' against the evidence so as 'to indicate that it was reached as a result of passion or prejudice.'" National Collegiate Athletic Ass'n v. Hornung, Ky., 754 S.W.2d 855, 860 (1988). If so, the reviewing court may reverse the judgment on the grounds that the trial court erred in failing to sustain the motion for directed verdict. Otherwise, it must affirm the judgment. Lewis, 798 S.W.2d at 462.

Appellant claimed that appellee's actions frustrated the purposes of his employment contract and constituted a breach. As to this claim, we do not conclude that the verdict

was against the evidence. Taking the evidence which favored appellee as true, the evidence overall showed that appellant's inability to do work in low to moderate-risk obstetrics and gynecology was a result of his lack of certification in obstetrics and gynecology rather than any actions of appellee.

At the time appellant resigned, he was unable to obtain hospital privileges at Highlands Regional Medical Center to do obstetrical or gynecological procedures. The issue of granting appellant privileges in obstetrics and gynecology was pending when appellant resigned from Big Sandy Health Care. Physicians apply for privileges on their own. The evidence showed that the hospital's Medical Staff Bylaws required a physician to be certified in the specialty applied for. For years, Highlands had not granted a family practice physician privileges in obstetrics and gynecology, so the CEO and Chief of Staff decided that the hospital needed more information from appellant before granting him such privileges. Appellant admitted that because various obstetrics and gynecology procedures are performed in a hospital, the decision of the hospital limited what he could do in his practice.

The evidence showed that the personnel of Big Sandy Health Care did not have any control over the credentialing process at Highlands. No one in the credentialing process was employed by, was a director of, or had any direct connection

with appellee. The hospital's Medical Staff Coordinator, who processed the applications for privileges, verified that appellee's personnel never interfered with appellant's request for privileges. The director of Big Sandy Health Care testified that it was in their interest that appellant obtain privileges in obstetrics and gynecology in addition to the family practice work he was permitted to do. He testified that he encouraged the hospital, by meeting with its CEO, to grant appellant the privileges he had applied for.

The director stated that the hiring of additional doctors who were certified in obstetrics and gynecology did not act to frustrate appellant's goal of performing some obstetrics and gynecology work along with his family practice. He stated this was because an obstetrician or gynecologist would need to serve as a back-up for appellant on more difficult procedures or deliveries, and to perform surgeries since appellant was not qualified to do them.

The director conceded that they had not purchased equipment for appellant to use in his office for obstetrics and gynecology procedures. He stated that this equipment was not purchased until the physicians certified in obstetrics and gynecology were hired and received privileges at Highlands. However, he stated that even if appellant had such equipment,

any abnormalities he detected would have to be referred to a physician who was certified in obstetrics and gynecology.

From the foregoing evidence, we do not find the jury's verdict was palpably against the evidence, since there was evidence to show that appellees did not hinder appellant's contract of employment as a primary care physician. There was evidence that appellee wanted appellant to have the capacity to perform more procedures and to obtain full privileges at the hospital. Appellee's evidence showed that appellee's hiring of physicians certified in obstetrics and gynecology practice did not hinder appellant's practice because he could have worked in conjunction with them. We agree that the evidence supported the verdict that appellee did not breach the employment contract.

Next, appellant alleges that the trial court should have granted a directed verdict on the counterclaim for repayment of his loans. This ground for reversal, however, is based on appellant's argument that appellee breached his contract and thereby frustrated his ability to have the loans excused by practicing at appellee's clinics. Having concluded that the verdict as to the breach of contract claim was not palpably against the evidence, we agree that the verdict finding appellant was obligated to repay the loans was supported by the evidence. Appellant admitted that he worked less than six months for appellee, while the contract stated that he had to

work at least a year before receiving any forgiveness of the loans, and three years in order to have them forgiven in their entirety.

For the foregoing reasons, we affirm the judgment of the Floyd Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Scott Preston
Paintsville, Kentucky

BRIEF FOR APPELLEE:

John David Preston
Perry, Preston & Miller
Paintsville, Kentucky