

STATE OF MICHIGAN
COURT OF APPEALS

BOARD OF GOVERNORS OF WAYNE STATE
UNIVERSITY,

Plaintiff-Appellant,

v

VHS OF MICHIGAN, INC., doing business as
DETROIT MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED
September 23, 2021

No. 355136
Wayne Circuit Court
LC No. 20-007189-CB

Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

Plaintiff, Board of Governors of Wayne State University (Wayne State), appeals as of right the trial court's order granting summary disposition in favor of defendant, VHS of Michigan, Inc., doing business as Detroit Medical Center (Detroit Medical Center), in this contract dispute. We affirm.

I. BACKGROUND FACTS

In October of 2014 Wayne State entered into a Clinical Clerkship/Clinical Elective Affiliation Agreement (Clerkship Agreement) with Detroit Medical Center which enabled students from Wayne State School of Medicine to participate in clinical clerkships at hospitals within the Detroit Medical Center, including Children's Hospital of Michigan (Children's Hospital). The Clerkship Agreement stated, in relevant part:

1. **CLINICAL CLERKSHIPS AND ELECTIVES.** WSU shall provide medical students and Hospital [i.e., DMC] shall ensure space for clinical clerkship and elective experiences at Hospital facilities in the amounts and specialties listed on Exhibit A, attached hereto and incorporated herein by reference. . . .
2. **HOSPITAL SUPPORT.** Hospital shall coordinate required clinical clerkships/rotations and electives for WSU medical students at Hospital facilities and provide related administrative support. Additionally, Hospital agrees to:

(a) Adhere to, and deliver, the WSU curricula for each required clinical clerkship;

(b) Designate faculty physicians who will be responsible for the planning and implementation of clinical clerkships and electives as well as clinical supervision of WSU medical students;

(c) Abide by WSU policies including, for example, professional behavior . . .

* * *

(e) Assure that WSU medical students have access to appropriate resources . . .

(f) Require all physicians teaching WSU medical students to apply for WSU [School of Medicine] faculty appointments, which may be by affiliate or voluntary designations;

(g) Require that all physicians teaching WSU medical students participate in faculty development activities to promote skill in teaching and evaluating students;

(h) Provide formative evaluations of WSU medical students . . .

(i) Abide by WSU policies pertaining to medical students. . . .

* * *

(m) Advise WSU of any changes in Hospital personnel, operation, or policies that may affect the clinical clerkships or elective experiences;

(n) WSU Year 3 and Year 4 medical students will be given priority with respect to clinical assignments in required clerkship and elective clinical experiences[.]

* * *

5. **HOSPITAL'S MEDICAL STAFF.**

(a) Hospital shall retain and exercise full and exclusive authority to appoint, reappoint, revoke, modify, suspend, and terminate membership on Hospital's Staff, as well as clinical privileges all pursuant to Hospital Bylaws, Rules, Regulations, policies and procedures, and applicable laws. Faculty members who are also Hospital Staff members shall agree to abide by Hospital's Bylaws, Rules, Regulations, policies and applicable laws.

(b) WSU shall retain and exercise full and exclusive authority to appoint, revoke, amend and suspend faculty of the WSU [School of Medicine]. All such authority shall be exercised in accordance with established WSU procedures.

As set forth in this Clerkship Agreement, Wayne State relied upon the practicing physicians at each Detroit Medical Center hospital to administer, coordinate, and supervise Wayne State's medical students in the clinical clerkship program.

At issue here is the clinical clerkship program at Children's Hospital. Historically, Children's Hospital contracted with a nonprofit physician practice plan called University Pediatricians to provide clinical services and medical administrative services at Children's Hospital. University Pediatricians was affiliated with Wayne State and, through a series of contracts, it provided and coordinated educational services, support, and assistance to Wayne State. Physicians employed by University Pediatricians served as faculty members of Wayne State School of Medicine's Department of Pediatrics and supervised third-year and fourth-year students who performed clerkships and elective experiences at Children's Hospital.

In 2018, however, disputes arose between Wayne State and University Pediatricians which resulted in a termination of their relationship. In 2019, University Pediatricians signed an affiliation agreement with Central Michigan University under which University Pediatricians would provide educational services and support to Central Michigan's medical students at Children's Hospital. Also, in 2019, an entity called Wayne Pediatrics became the physician practice plan affiliated with Wayne State School of Medicine's Department of Pediatrics. As a result of the change, many physicians employed by University Pediatricians resigned their Wayne State School of Medicine faculty positions, others continued as faculty members and joined Wayne Pediatrics, and others continued as faculty members while also continuing as members of University Pediatricians.

In October 2019, Wayne State announced that all 110 pediatricians who were employed by the University Pediatricians practice plan and who served as its School of Medicine faculty members working at Children's Hospital were required to either join Wayne Pediatrics or lose their faculty positions. Although Wayne State rescinded that termination notice in November 2019, it issued a similar termination notice to physicians of University Pediatricians in March 2020. A majority of the physicians opted to continue as physicians employed by University Pediatricians. Approximately 100 of those physicians resigned from serving as paid faculty and applied for voluntary appointments with Wayne State School of Medicine; the status of those requests is unknown.

Children's Hospital thereafter entered into a services agreement with University Pediatricians effective July 2020, purportedly granting University Pediatricians the exclusive right to provide physician coverage at Children's Hospital on both an inpatient and outpatient basis. According to Wayne State, this exclusive contract between Children's Hospital and University Pediatricians has resulted in Wayne State School of Medicine faculty being unable to treat patients at Children's Hospital because its faculty members are required to be employed by the Wayne Pediatrics practice plan, and not the University Pediatricians practice plan.

Consequently, Wayne State filed this lawsuit alleging that Detroit Medical Center breached the Clerkship Agreement by granting University Pediatricians an exclusive contract to treat pediatric patients at Children's Hospital contrary to provisions of the Clerkship Agreement requiring that Wayne State School of Medicine faculty teach and supervise its medical students in their clinical clerkships, as well as exercise hospital privileges. Wayne State further alleged that

Detroit Medical Center breached the Clerkship Agreement by failing to abide by its own bylaws with respect to the termination of clinical privileges of Wayne State faculty-member physicians, and by failing to “honor [Wayne State’s] final authority and responsibility to educate its medical students[.]” Wayne State also sought a preliminary injunction enjoining Detroit Medical Center from restricting Wayne State School of Medicine faculty with privileges at Children’s Hospital from practicing, teaching, and researching at that hospital. The motion for injunctive relief was denied by the trial court and this Court denied leave to appeal that decision.¹

Thereafter, Detroit Medical Center filed a motion for summary disposition under MCR 2.116(C)(5) and (C)(8), arguing that Wayne State’s complaint should be dismissed for failure to state a claim for breach of contract and because it lacked standing to assert alleged rights of third-party physicians not a party to this lawsuit—like Dr. Eric McGrath. More specifically, barring physicians employed by Wayne Pediatrics from providing clinical services at Children’s Hospital, even if true, would not be a breach of the Clerkship Agreement. The Clerkship Agreement simply did not give Wayne State the right to force Children’s Hospital to allow certain physicians who are faculty members of its School of Medicine to train medical students and exercise clinical privileges at Children’s Hospital. To the contrary, the Clerkship Agreement expressly states—in plain terms—that Detroit Medical Center will designate the physicians teaching medical students in the clerkship program. That is, Section 2(b) states that Detroit Medical Center will “[d]esignate faculty physicians who will be responsible for the planning and implementation of clinical clerkships and electives as well as clinical supervision of WSU medical students[.]” Further, in Section 2(f), the Clerkship Agreement acknowledges that physicians need not be Wayne State School of Medicine faculty members to teach the medical students; rather, Detroit Medical Center must merely require that such physicians *apply* for a faculty appointment, “which may be by affiliate or voluntary designations[.]” Detroit Medical Center argued that several other provisions in the Clerkship Agreement supported its claim that Wayne State had no right to demand that certain physicians teach its medical students.

Moreover, Detroit Medical Center argued, Wayne State’s claim that its faculty members were effectively terminated—in violation of Detroit Medical Center’s medical staff bylaws which were referenced in the Clerkship Agreement—when it entered into the contract with University Pediatricians was also without merit. First, Wayne State had no standing to assert any non-party physician’s alleged rights under the medical staff bylaws and to sue for “breach of contract” with respect to any such rights. Second, Wayne State’s “attempt to create an implied contract right by invoking the reservation of rights in Section 5(a) merely confirms that [Wayne State] has no claim.” This provision clearly states that only the Detroit Medical Center itself makes staffing decisions and it in no way gives Wayne State the “contractual right to challenge the internal decisions and operations of a hospital system.” Third, Wayne State never identified “any specific provision in the Bylaws that requires DMC to allow any particular physician with privileges to conduct clinical services at any particular DMC hospital or facility.” Thus, Wayne State failed to even identify a provision of the bylaws that either Detroit Medical Center or Children’s Hospital allegedly violated with respect to any particular physician. In summary, Detroit Medical Center

¹ See *Board of Governors of Wayne State Univ v VHS of Mich*, unpublished order of the Court of Appeals dated September 8, 2020 (Docket No. 354413).

argued, this breach of contract claim must be dismissed with prejudice because Wayne State did not identify any right or duty created by the Clerkship Agreement that was violated.

Wayne State responded to Detroit Medical Center's motion for summary disposition, arguing that the plain language of the Clerkship Agreement required Detroit Medical Center to adhere to its medical staff bylaws and no provision of the bylaws allowed for the termination, modification, or restriction of the clinical privileges of Wayne State faculty-member physicians because of the agreement between Detroit Medical Center and University Pediatricians. Section 5(a) of the Clerkship Agreement specifically states that Detroit Medical Center's decisions with regard to clinical privileges must be made in accordance with its bylaws. Further, Article IV and Article V.1.A of the bylaws require that decisions about clinical privileges must be "objective and evidence-based concerning the individual physician's qualifications." Thus, barring Wayne State faculty-member physicians, like Dr. McGrath, from exercising clinical privileges because they are not members of University Pediatricians is not a decision that is "objective and evidence-based" and violates the bylaws. And, under the bylaws, including Article III, Section 8.G., Dr. McGrath was entitled to notice and a fair hearing before his clinical privileges could be adversely affected by a decision of Detroit Medical Center—which he was denied. Moreover, Detroit Medical Center breached the Clerkship Agreement by failing to notify Wayne State of changes to its policies that affected Wayne State's clerkships via the agreement it made with University Pediatricians and by not working together with Wayne State to ensure that the clerkships met the requirements of the Liaison Committee on Medical Education (LCME) which require direct observation and supervision by faculty members. Therefore, Wayne State argued, Detroit Medical Center's motion for summary disposition should be denied and Wayne State should be granted summary disposition under MCR 2.116(I)(2).

Detroit Medical Center filed a reply brief, arguing that the Clerkship Agreement did not require Detroit Medical Center to permit any and all physicians Wayne State unilaterally appoints as "faculty" to treat patients at Children's Hospital. In particular, Section 5(a) of the Clerkship Agreement did not state a promise on the part of Detroit Medical Center to do or refrain from doing anything; to the contrary, it retained the full and exclusive right to make staffing and credentialing decisions. The fact that such authority is detailed in Detroit Medical Center's bylaws, procedures, and policies was a mere truism. Wayne State simply had no contractual right to challenge that authority. And Wayne State's reliance on affidavits, documents, and facts not in evidence was inappropriate to rebut this challenge to the sufficiency of the complaint. Further, to the extent that Wayne State claimed that Detroit Medical Center's "bylaws" and "policies" were incorporated into the Clerkship Agreement such argument must fail for lack of specificity because it is unclear which "bylaws" and "policies" but, in any case, those could be amended at any time without Wayne State's input or approval. Further, Wayne State's argument that Detroit Medical Center breached the Clerkship Agreement by failing to notify it of any changes was without merit because there was no material change to Wayne State's clerkships. In fact, Wayne State admitted that, for the most part, the very same physicians who had taught its medical students for many years would still be teaching those students, albeit as affiliates of University Pediatricians. And although Detroit Medical Center agreed to "work together" with Wayne State to ensure the LCME requirements were met, in no way does this "promise" translate into an agreement for Detroit Medical Center "to permit unnamed physicians, identified by [Wayne State] in its discretion, to practice medicine at [Children's Hospital]." But, moreover, Wayne State's complaint was devoid of even basic factual allegations to support a claim that Detroit Medical Center failed to "work

together” to ensure adequate supervision of Wayne State’s medical students. Accordingly, Detroit Medical Center argued that its motion for summary disposition should be granted and Wayne State’s complaint dismissed with prejudice.

On September 25, 2020, the trial court entered an order granting Detroit Medical Center’s motion for summary disposition. The trial court rejected Wayne State’s argument that the Clerkship Agreement allowed Wayne State to choose the physicians who would teach its students, which was tantamount to Wayne State “dictating terms of who will practice at the hospital” merely because its students were being trained at the hospital. While Wayne State may have had the right to have its students learn at Children’s Hospital, Wayne State did not have the right to “restructure the hospital or its staff.” It was clear from the Clerkship Agreement that Detroit Medical Center retained the right and sole authority to determine who it allowed to practice at its hospital. And the medical staff bylaws relied upon by Wayne State did not state that the right to practice medicine in Detroit Medical Center was granted in perpetuity; only the hospital could grant that right and the Clerkship Agreement was “not a vehicle to be granted access to the hospital.” Accordingly, the trial court granted Detroit Medical Center’s motion for summary disposition. This appeal followed.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court’s decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and should be granted when the nonmoving party has failed to state a claim upon which relief can be granted. *Id.* at 119. All well-pleaded allegations must be accepted as true and construed in a light most favorable to the nonmoving party. *Johnson v Pastoriza*, 491 Mich 417, 434-435; 818 NW2d 279 (2012).

“[Q]uestions involving the proper interpretation of a contract or the legal effect of a contractual clause are also reviewed de novo.” *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). The goal of contract interpretation is to honor the intent of the parties. *Mahnick v Bell Co*, 256 Mich App 154, 158-159; 662 NW2d 830 (2003). Words in a contract are given “their plain and ordinary meanings.” *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664; 770 NW2d 902 (2009). “If the contractual language is unambiguous, courts must interpret and enforce the contract as written because an unambiguous contract reflects the parties’ intent as a matter of law.” *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 292; 778 NW2d 275 (2009). “If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous.” *Wells Fargo Bank, NA v Cherryland Mall Ltd Partnership (On Remand)*, 300 Mich App 361, 386; 835 NW2d 593 (2013) (quotation marks and citations omitted).

III. ANALYSIS

Wayne State argues that the trial court erred in granting Detroit Medical Center’s motion for summary disposition because Wayne State alleged a breach of contract claim upon which relief could be granted. We disagree.

Wayne State’s complaint for breach of contract is premised on the alleged failure of Detroit Medical Center to have Wayne State faculty-member physicians supervise and teach Wayne State medical students in their clinical clerkships at a Detroit Medical Center hospital—Children’s Hospital. For example, paragraph 13 of Wayne State’s complaint states that Wayne State contracted with Detroit Medical Center under a Clerkship Agreement “to have [Wayne State] faculty members, exercising their clinical privileges, train the medical students in their rotations at Children’s Hospital.” Likewise, paragraph 15 states that, through the Clerkship Agreement, Detroit Medical Center agreed “that [Wayne State] faculty members would supervise, assess, evaluate and educate [its] medical students in their clinical rotations.” Similarly, paragraph 35 states that Detroit Medical Center’s contract with University Pediatricians violated the Clerkship Agreement by “failing to allow [Wayne State] faculty members to supervise, assess, evaluate and educate [Wayne State] medical students in their clinical rotations” And paragraph 46 states, in part, that Detroit Medical Center breached the Clerkship Agreement by entering into an exclusive arrangement with University Pediatricians and “refusing to allow [Wayne State] faculty members to teach [Wayne State] medical students in their clerkship and sub-internship rotations at the Hospital” Therefore, the issue is: Did Wayne State have the contractual right—through the Clerkship Agreement—to have Wayne State faculty-member physicians supervise and teach Wayne State medical students in their clinical clerkships at Children’s Hospital? The trial court concluded that no such contractual right existed and we agree.

Wayne State argues that the Clerkship Agreement specifically states in Section 5(a) that Detroit Medical Center must make clinical staffing decisions consistent with its medical staff bylaws. And prohibiting Wayne State faculty-member physicians from exercising clinical privileges on the ground that they are not members of University Pediatricians contravenes those bylaws, violating the Clerkship Agreement. Specifically, Section 5(a) provides:

Hospital shall retain and exercise full and exclusive authority to appoint, reappoint, revoke, modify, suspend, and terminate membership on Hospital’s Staff, as well as clinical privileges all pursuant to Hospital Bylaws, Rules, Regulations, policies and procedures, and applicable laws.

Wayne State argues that the bylaws “are clear that each decision regarding requests for clinical privileges must be ‘objective and evidence-based’ concerning the individual physician’s qualifications for the same, which qualifications are set forth in Section V.I.A.”

As Wayne State suggests, Article IV of the medical staff bylaws states: “The Medical Staff shall make an objective and evidence-based decision with regards to each request for clinical privileges.” And Article V, Section 1, Paragraph A of the bylaws does pertain to the appointment of medical practitioners to the “Active Category” of medical staff and states that those members must “meet the minimum qualifications set forth in Article III, Section 2.” And Article III, titled “Medical Staff Membership,” states:

SECTION 2. Qualifications for Membership

A. Only a physician, dentist or podiatrist holding an unlimited license to practice in the State of Michigan, who can produce evidence of their background, experience, training, judgment, individual character and demonstrated competence, physical and mental capabilities, adherence to the ethics of the Member's profession and the

ability to work with others with sufficient adequacy to assure the Medical Staff and the Governing Body that any patient treated will be given a high quality of medical or dental care, shall be qualified to apply for Membership on the Medical Staff. No physician, dentist or podiatrist shall be entitled to Membership on the Medical Staff or to the exercise of particular Clinical Privileges merely by virtue of licensure to practice in this or in any other state, or of Board Certification, or of membership in any professional organization, or of privileges at another hospital or health system, or prior membership or privileges at a DMC hospital.

Wayne State appears to argue that once a physician was granted clinical privileges, Detroit Medical Center could not modify or terminate those clinical privileges unless its decision was supported by a specific reason set forth in the medical staff bylaws. And because the medical staff bylaws did not state that employment by University Pediatricians was a condition for the granting of clinical privileges, Detroit Medical Center could not modify or terminate the clinical privileges of Wayne State faculty-member physicians.

But Wayne State's arguments pertain to a totally different issue than whether Wayne State had a contractual right—under the Clerkship Agreement—to have its own faculty-member physicians supervise and teach its medical students in their clerkships at Children's Hospital. The contract between Wayne State and Detroit Medical Center related to the provision of clinical clerkships for Wayne State medical students; the Clerkship Agreement was not an employment contract for Wayne State faculty-member physicians. Wayne State is confusing this matter by arguing that the clinical privileges of its faculty-member physicians were wrongfully modified or terminated in violation of the medical staff bylaws. If Wayne State faculty-member physicians believed that to be true, each individual physician could have acted in accordance with the rights afforded under the medical staff bylaws, including by requesting a hearing, retaining an attorney, and offering evidence to support such a claim. See, e.g., the Medical Staff Fair Hearing process set forth at Article III, Section 8, Paragraph G. There is no evidence that Dr. McGrath or any other Wayne State faculty-member physician has done so but, in any case, such evidence does not pertain to the salient issue in this breach of contract action between Wayne State and Detroit Medical Center. In other words, the purported violation of the bylaws with respect to Dr. McGrath's clinical privileges or the clinical privileges of other Wayne State faculty-member physicians does not give rise to a cause of action for breach of this Clerkship Agreement.² Again, the salient issue in this case is whether Wayne State had a contractual right—under the Clerkship Agreement—to have its own faculty-member physicians supervise and teach Wayne State medical students in their clerkships at Children's Hospital. The Clerkship Agreement simply does not grant Wayne State that right.

Wayne State's reliance on Section 5(a) of the Clerkship Agreement is misplaced. As the trial court held, Detroit Medical Center plainly retained the right to "exercise full and exclusive authority" with respect to decisions pertaining to hospital staffing and clinical privileges. Just as,

² Wayne State's reliance on *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 164-166; 934 NW2d 665 (2019), is misguided because that case was brought by a physician whose staff privileges were not renewed allegedly in violation of an employment contract.

in Section 5(b), Wayne State retained the right to “exercise full and exclusive authority” with respect to decisions pertaining to its medical school faculty. In other words, Detroit Medical Center had no right under the Clerkship Agreement to demand that Wayne State faculty-member physicians affiliate with University Pediatricians just as Wayne State had no right under the Clerkship Agreement to demand that Detroit Medical Center affiliate with Wayne Pediatrics and not with University Pediatricians. Neither Detroit Medical Center nor Wayne State forfeited their rights to exercise sole authority over their staffing and operational decisions by entering into the Clerkship Agreement. Thus, we also reject Wayne State’s claim of “other breaches” of the Clerkship Agreement based on Detroit Medical Center’s purported failures to notify or, in essence, ask for Wayne State’s permission before Detroit Medical Center entered into a services agreement with University Pediatricians or allowed clerkships for medical students from Central Michigan University. Likewise, no provision of the Clerkship Agreement provided that Wayne State had to seek approval from Detroit Medical Center before Wayne State severed its relationship with University Pediatricians—despite the impact on the clerkship program—and became affiliated with Wayne Pediatrics.

As set forth above, the Clerkship Agreement provided for the practicing physicians at each Detroit Medical Center hospital to administer, coordinate, and supervise Wayne State’s medical students in the clinical clerkship program. Those physicians were required, for example, to adhere to and deliver the proper curricula, abide by Wayne State’s policies, apply for Wayne State School of Medicine faculty appointments (even if only for unpaid appointments), and participate in faculty development activities. Wayne State was to support the clerkship program by, for example, properly educating its medical students, notifying the hospital of the incoming students, notifying its students of applicable hospital rules and regulations, ensuring the students passed a criminal background check, were properly immunized and had health insurance, and by carrying liability insurance covering each medical student. As the trial court concluded, there is no provision in the Clerkship Agreement that requires Detroit Medical Center to either employ or utilize Wayne State School of Medicine faculty-member physicians to supervise and teach Wayne State medical students in the clinical clerkship program. Therefore, the trial court properly concluded that Detroit Medical Center was entitled to summary disposition of Wayne State’s breach of contract complaint. In light of this decision, we reject Wayne State’s argument that the trial court abused its discretion by denying its motion for injunctive relief.

Affirmed. Detroit Medical Center is entitled to costs as the prevailing party. See MCR 7.219(A).

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ James Robert Redford