MISSOURI COURT OF APPEALS
WESTERN DISTRICT

RAYMOND BROVONT, M.D.

APPELLANT-RESPONDENT,

v.

KS-I MEDICAL SERVICES, P.A. AND MO-I MEDICAL SERVICES, LLC

RESPONDENT-APPELLANTS.

DOCKET NUMBER WD82544 Consolidated with WD82552

DATE: October 13, 2020

Appeal From:

Jackson County Circuit Court
The Honorable Marco Roldan, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge and Thomas N. Chapman, Judge

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Attorneys:

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

RAYMOND BROVONT, M.D., APPELLANT-RESPONDENT,
v.
KS-I MEDICAL SERVICES, P.A. AND MO-I MEDICAL SERVICES, LLC, RESPONDENT-APPELLANTS.

WD82544 (Consolidated with WD82552) Jackson County

Before Division Three Judges: Gary D. Witt, Presiding Judge, Lisa White Hardwick, Judge, and Thomas N. Chapman, Judge

KS-I Medical Services, P.A. ("KS-I"), a Kansas Corporation, and MO-I Medical Services, LLC ("MO-I"), a Missouri limited liability company, appeal from the October 5, 2018 judgment entered by the Circuit Court of Jackson County, Missouri ("trial court"), after a jury verdict in favor of Raymond Brovont, M.D. ("Dr. Brovont") on his claim for damages and wrongful discharge in violation of public policy. Dr. Brovont cross-appeals, and the appeals were consolidated.

KS-I and MO-I claim that the trial court erred in: (1) submitting Dr. Brovont's wrongful discharge claims to the jury because he did not establish that the emergency room staffing policies at a KS-I staffed hospital violated any public policy; (2) denying KS-I's motion for JNOV because the trial court lacked personal jurisdiction over KS-I; (3) submitting a wrongful discharge claim against MO-I to the jury because Dr. Brovont did not establish that he ever complained of any protected practice at an MO-I staffed hospital; (4) instructing the jury to assess joint and several liability against KS-I and MO-I on a single line on the verdict form; (5) submitting the issue of punitive damages to the jury; and (6) not reducing the total punitive damages award.

On his cross-appeal, Dr. Brovont claims that the trial court erred in: (1) applying Kansas law to reduce the jury's award of non-economic damages against MO-I because Missouri law applies; (2) applying Kansas law to reduce the jury's award of non-economic damages because the Kansas statute has since been declared unconstitutional; and (3) applying Kansas law to reduce the jury's award of punitive damages against MO-I because Missouri law applies.

AFFIRMED IN PART, REVERSED IN PART, AND MODIFIED THE JUDGMENT PURSUANT TO RULE 84.14.

Division Three holds:

KS-I and MO-I were both subsidiaries of EmCare Holdings, Inc., which is a publicly traded company and the largest physician management company in the United States, supplying

over 16,000 emergency room physicians to over 4,600 hospitals. Because regulations prohibit publicly traded companies or for-profit corporations from owning physician practice groups, EmCare's business model is to create a separate subsidiary legal entity for each state and in some circumstances for each location at which it supplies physicians to provide emergency medical services. While MO-I and KS-1 were technically "owned" by a physician in Dallas, Texas, EmCare, through its managers controlled the operations of each subsidiary and all profits or losses flowed directly to EmCare. Dr. Brovont had previously worked full time in several Missouri hospital emergency rooms for MO-I. He was requested by Dr. McHugh (a dual agent of both MO-I and KS-I but who was employed directly by EmCare) in 2012 to take the position as emergency department medical director at a hospital in Kansas under contract with KS-I. He served as medical director from that time until his termination in 2017. During this period, he continued to work some additional shifts for MO-I at the hospitals in Missouri.

The KS-I hospital that Dr. Brovont worked at had a "Code Blue" policy which required the emergency room physician to respond to a code blue (patient who had stopped breathing or whose heart had stopped functioning) throughout the hospital. While he was serving as the emergency department medical director, the hospital expanded, adding 105 additional in-patient beds, doubling the number of emergency room beds, and adding a new separate pediatric emergency room. For as many as 16 hours of each day, there was only one physician in the emergency room, requiring that doctor to leave the emergency room when a code blue occurred in the pediatric emergency room or elsewhere in the in-patient beds in the hospital. This required the physician to possibly be needed in three places at once if the doctor was responding to a code blue in an in-patient room when one or more trauma patients arrived in the regular emergency room and/or the pediatric emergency room.

On behalf of all of the physicians working in the emergency department, Dr. Brovont began raising concerns that the Code Blue policy, particularly following the significant expansion of the hospital, was placing patients at risk, causing significant anxiety to the emergency department physicians, and jeopardizing the hospital's Level II Trauma Center designation. After multiple complaints and significant passage of time with no resolution of the issue, Dr. Brovont sent a letter to Dr. McHugh on behalf of all twenty-two emergency department physicians, expressing the patient safety concerns caused by the Code Blue policy. Shortly after that letter was received, Dr. McHugh terminated Dr. Brovont's employment with KS-I but indicated he would still be eligible to work for hospitals under his MO-I contract. After Dr. Brovont expressed concerns to members of the personnel department at EmCare that he was terminated by KS-I in retaliation for his complaints about the Code Blue policy, Dr. McHugh terminated Dr. Brovont from all hospitals that were staffed by MO-I. Following Dr. Brovont's termination from both KS-I and MO-I, the remaining physicians at the KS-I hospital were afraid to make any further complaints about the Code Blue policy.

In this case, the Missouri trial court had personal jurisdiction over defendant KS-I because KS-I, through its agent, who was also a dual agent of MO-I, caused MO-I to terminate Dr. Brovont's employment relationship and all future employment relationships with MO-I in retaliation for Dr. Brovont's complaints that a KS-I staffed hospital's emergency room staffing policies violated a clearly established public policy. The termination at MO-I also served additional purposes for KS-I, to stop other doctors from raising the same patient safety

complaints. The wrongful act of causing Dr. Brovont's termination in Missouri satisfied both Missouri's long arm statute and constituted sufficient minimum contacts with the state of Missouri to satisfy constitutional due process requirements.

KS-I and MO-I concede that Kansas law cannot be used to reduce the jury's award of non-economic damages in Dr. Brovont's favor because the law has since been declared unconstitutional by the Kansas Supreme Court in *Hillburn v. Enerpipe, Ltd.*, 442 P.3d 509 (Kan. 2019). The trial court erred in using Kansas law to reduce the jury's award of punitive damages in favor of Dr. Brovont and against MO-I because Missouri has the most significant relationship to the award of punitive damages in that: the acts giving rise to the injury occurred in Missouri; the injury was suffered in Missouri; MO-I is a Missouri corporation; and Dr. Brovont's business relationship with MO-I was based in Missouri.

There was sufficient evidence to present Dr. Brovont's claims of wrongful discharge against both MO-I and KS-I to the jury because Dr. Brovont established that he was terminated by both MO-I and KS-I due to his complaints that the emergency room staffing policies at the KS-I staffed hospital violated clearly established public policy. Specifically, evidence was presented that the staffing procedures violated federal regulations for the staffing of Level II trauma centers; violated guidelines by the American College of Surgeons for the staffing of Level II trauma centers; and violated requirements of the federal EMTALA. In addition, because Dr. Brovont's supervisor was a dual agent of both KS-I and MO-I and was acting on behalf of both entities when he caused Dr. Brovont's termination at MO-I, the fact that Dr. Brovont's complaints about the staffing procedures were all regarding a KS-I staffed hospital still satisfies the requirement that MO-I's termination was in violation of public policy.

Because KS-I and MO-I acted in concert through their dual agent, Dr. McHugh, to terminate Dr. Brovont and cause him the indivisible injuries of lost wages and emotional distress, and because an applicable MAI existed, the trial court did not err in using a single MAI verdict form to submit the issue of compensatory damages to the jury.

Dr. Brovont's award of punitive damages was not erroneous because the emergency room staffing policies about which he complained were in the interests of patient safety, the objectionable policies were motivated by financial concerns rather than patient safety, and Dr. Brovont's termination had a chilling effect on other emergency room physicians and staff, which prevented them from further voicing concerns over the policies. This is clear and convincing proof that KS-I and MO-I acted with the intent necessary to support an award of punitive damages. Finally, the trial court did not err in refusing to lower the award of punitive damages under Kansas law, because, as MO-I and KS-I asked the court to do, it heard the evidence and arguments on punitive damages, analyzed the conduct of KS-I and MO-I separately, and determined the amount to be awarded to each.

Opinion by: Gary D. Witt, Judge October 13, 2020

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