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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

JEFFERY W. GROSSKOPF, individually)	Appeal from the Circuit Court
and derivatively on behalf of FVO)	of Kane County.
ADMINISTRATIVE SERVICES, S.C.,)	
FOX VALLEY ORTHOPAEDIC)	
ASSOCIATES, S.C., and the KANEVILLE)	
ROAD JOINT VENTURE, INC., all d/b/a)	
FOX VALLEY ORTHOPAEDIC INSTITUTE.)	
)	
Plaintiff-Appellant,)	
)	
v.)	No. 11—MR—121
)	
FVO ADMINISTRATIVE SERVICES,)	
S.C., FOX VALLEY ORTHOPAEDIC)	
ASSOCIATES, S.C., and the KANEVILLE)	
ROAD JOINT VENTURE, INC.,)	The Honorable
)	Thomas E. Mueller
Defendants-Appellees.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: In lawsuit by plaintiff alleging that his employer wrongfully discharged him, the trial court did not err in granting the motion of defendants to stay proceedings and compel arbitration. The arbitration clause in the employment agreement allowed arbitration of a termination or suspension, and plaintiff's claims, though diverse, had the common allegation that defendants were wrong in discharging plaintiff.

¶ 1 Plaintiff, Jeffrey Grosskopf, appeals from the judgment of the circuit court granting the motion of defendants, FVO Administrative Services, S.C. (FAS), Fox Valley Orthopaedic Associates, S.C. (FVOA), and Kaneville Road Joint Ventures, Inc. (KRJV), to stay trial proceedings and compel arbitration. For the following reasons, we affirm.

¶ 2 **BACKGROUND**

¶ 3 The following facts are undisputed. Plaintiff is a surgeon licensed in Illinois. In 1986, he became employed by FAS, a medical group. Plaintiff also became a shareholder in FAS along with eleven other physicians. Those same twelve physicians also became shareholders in FVOA and KRJV. (The real estate used by FAS in its medical practice is owned by KRJV. FAS “leases” the services of its employees to FVOA.) Copies of the shareholder agreements with FAS, FVOA, and KRJV are in the record.

¶ 4 Since 1986, plaintiff has signed a series of employment agreements with FAS. The Agreement in force when the events at issue occurred became effective on January 1, 2010 (the Agreement). A copy of the Agreement is in the record. Sections 7 and 8 of the Agreement specify procedures by which FAS may suspend or terminate an employee. These sections also provide for arbitration of claims. In these provisions, plaintiff is referred to as “Employee,” FAS as “Corporation,” and FVOA as “Group.”

¶ 5 Section 7, entitled “Termination,” provides in relevant part:

“(A) By the Corporation on 30 Day Notice. Upon the occurrence of an Event of Default, as defined under Section 8(A) hereof, the Corporation may terminate this Agreement for cause by giving thirty (30) days’ prior written notice to Employee. The Corporation may not terminate Employee’s employment in the absence of an occurrence of an Event of

Default. *** The Corporation shall be obligated to pay Employee all accrued compensation as provided below in this Section until the date set for termination in the notice unless the Corporation has suspended Employee during the notice period as provided below in this Section, in which case Employee's right to current compensation shall cease as of the date of the suspension.

* * *

(E) Suspension. The Board of Directors of the Corporation shall have the power immediately to terminate Employee or suspend Employee's right to treat patients of the Group at any time it determines that Employee's continued treatment of its patients would constitute a danger to such patients, would fall below the standard of care the Corporation or Group sets for its surgeons, would expose the Corporation or Group to undue liability for the acts of Employee, or would tend to bring the Corporation or Group into disrepute. Employee may also be terminated or suspended if he or she is barred from participating in the Medicare or Medicaid programs or prevented from treating the patients of the Group assigned to Employee by virtue of the loss or suspension of hospital privileges. The Corporation may suspend Employee without pay and, in such event, Employee shall not be entitled to collect salary, bonus or any other payments under Section 5 [setting compensation] for any period of suspension unless the suspension is imposed in connection with the onset of a disability as provided in Section 10 or an arbitrator selected by the American Arbitration Association determines that the suspension was unwarranted in an arbitration conducted as provided in Section 8(C) hereof. Employee shall have the right to demand arbitration of a termination or suspension anytime within thirty (30) days of receipt

of notice of termination or suspension. Employee's compensation as calculated under Section 5 hereof shall be prorated to exclude any period of suspension.

(F) Accrued Compensation. Upon termination of this Agreement, the Corporation shall be obligated to pay Employee all compensation due up until the effective date of termination less any period of suspension. ***.”

¶ 6 Section 8 is entitled “Termination for Cause.” Section 8(A) defines “Events of Default” for purposes of section 7(A). Section 8 then goes on to state:

(B) Determination of Existence of Cause. Whether cause exists to terminate Employee's employment under either Section 7 or Section 8 hereof shall be determined by the vote of three-quarters (3/4) of the members of the Corporation's Board of Directors, excluding for all purposes the Employee. The Corporation shall notify Employee of its decision in writing reasonably providing notice of the events of default which have caused it to terminate this Agreement. Such decision shall be final unless Employee shall, within thirty (30) days after the decision of the Directors is mailed or otherwise delivered to him or her in writing, demand in writing the arbitration of the question of cause.

(C) Arbitration. In the event Employee requests arbitration, the question of whether an Event of Default existed shall be settled by an arbitrator to be selected by the American Arbitration Association. Such arbitration shall be conducted in accordance with the rules then obtaining of said Association and judgment upon the award rendered may be entered in any Court having jurisdiction thereof.

¶ 7 The Agreement also contains a restrictive covenant including time, facility, and area restrictions.

¶ 8 On March 9, 2011, plaintiff filed a complaint against defendants. He alleged that, during a March 3, 2011, meeting with fellow FAS shareholders Craig Torosian, David Morawski, and Rodney Rieger, plaintiff was “order[ed] *** not to return to his office or [to] the offices of defendants FAS, FVOA, or KRJV.” Subsequently, defendants

¶ 9 “locked [plaintiff] out of his office and *** prevented him from entering any of the offices from which he has performed his duties as a licensed physician, *** cancelled [his] scheduled surgeries *** without consulting [him], denied patients access to [him] *** for follow-up treatment, and *** unlawfully interfered with and contacted [his] patients, advising them that [he] [would] not be treating them and, in direct contravention of the [Agreement], denied [him] access to his personal books and records as well as those of the corporations of which he is a shareholder.”

Plaintiff further alleged that, though these actions amounted to a “constructive discharge,” defendants had not, as required by sections 7(A) and 8(B) of the Agreement, provided him with written notice of the event(s) of default on which the termination was based.

¶ 10 Plaintiff also alleged that, at the March 3, 2011, meeting, Torosian, Morawski, and Rieger informed plaintiff that defendants intended to enforce the terms of the restrictive covenant. Torosian and the others also threatened “to adversely impact and impair [plaintiff’s] medical licenses with the Department of Professional Regulation, if he did not agree to their March 3 demands on or before March 10, 2011[,] at 7:00 a.m.” (Plaintiff did not allege what these “demands” were.)

¶ 11 Plaintiff brought four causes of action. Count one sought a declaratory judgment that the restrictive covenant in the Agreement was void and unenforceable. Count two sought dissolution of defendants’ corporate status due to their “conduct in freezing [defendant] out of his office [and]

out of his medical practice[,] *** and [in] demanding that he acquiesce in demands that violate the terms [and] conditions of [his] shareholder agreements with defendants, as well as public policy, and which threaten to impair [his] medical licenses and other property interests in defendants.” Count three sought an accounting on the ground that the “demands” defendants made of plaintiff did not involve a settling of accounts addressing plaintiff’s compensation, bonuses, pension plan, and assets of defendants, such as real estate and accounts receivable, in which plaintiff has an interest. Count four alleged a breach of covenants of good faith and fair dealing. In this count, plaintiff incorporated all of his prior allegations of misconduct by defendants.

¶ 12 Not attached to plaintiff’s complaint, but contained elsewhere in the record, is a March 10, 2011, letter from FAS to plaintiff. It reads in relevant part:

“This correspondence serves to inform you, and serves as official notice pursuant to Section 7(E) of the Employment Agreement, that you are suspended effective March 11, 2011.

Pursuant to Section 7(E) of the Employment Agreement, you are suspended without pay and as such, not entitled to collect salary, bonus or any other payments under Section 5 for any period of the suspension.”

Attached to the letter is a document dated February 28, 2011, and entitled “Directors Consent to Action in Lieu of Meeting” (Consent to Action). The Consent to Action is signed by the eleven other shareholders of FAS and declares that FAS is presenting to plaintiff a “severance package,” the terms of which are set forth in an attached “Exhibit A.” (This “Exhibit A” does not appear in the record.)

¶ 13 Plaintiff filed together with his complaint a motion for a temporary restraining order enjoining defendants from (1) “denying [p]laintiff access to his office, his patients, his surgery schedule, his files[,] and other personal and professional documentation and information”; and (2) enforcing the restrictive covenant. Plaintiff’s complaint, referring to the motion for a temporary restraining order, included in its prayer for relief a request that the court enter an injunction “returning [plaintiff] to his position as it existed prior to March 3, 2011.”

¶ 14 On March 14, defendants moved, pursuant to sections 1 and 2 of the Illinois Uniform Arbitration Act (IUAA) (710 ILCS 5/1, 2 (2008)), to stay proceedings and compel arbitration. Defendants cited the arbitration provisions in sections 7(E) and 8(C) of the Agreement. In their response to the motion, plaintiff argued, in part, that the Agreement does not “permit [defendants] to request arbitration of any claim.”

¶ 15 Plaintiff’s motion for a temporary restraining order was heard on March 15. Though defendants’ arbitration motion was heard at a later date, plaintiff raised the issue of whether the availability of arbitration meant that he had an adequate remedy at law. Plaintiff argued that his purported suspension by defendants was functionally a termination, and that the arbitration provisions were not triggered because FAS never provided in writing the cause for which plaintiff was terminated.

¶ 16 The trial court held that plaintiff met the requisites for a temporary restraining order:

“[T]he first finding the Court would make is that the use of the term suspension as contained in the March 10 letter from [FVOA] to [plaintiff] is a misnomer, perhaps cleverly substituted for the word termination.

Clearly, the [Consent to Action] *** is in contemplation of a resignation, and gave [plaintiff] one week to either accept or suffer the consequences.

And I'm sure, knowing that we're dealing with a group of medical doctors, that the March [10] letter which used the word suspension was not a mistake, but was the result of good legal advice in hopes of circumventing the contract provisions contained [in section 8 of the Agreement], which is what I think they intended to do but didn't want to bother with the steps.

This is a unique situation on the issue of irreparable harm and no adequate remedy at law; unique in the Court's mind because we are dealing with an employee, if you will, but more significantly, a medical doctor. And a medical doctor who has taken an oath and has certain ethical obligations to his patients.

*** [T]here is nothing in my—that's been presented or that the court can contemplate that could adequately address at law the ethical issues, the reputation issues that are at stake in this situation where a doctor on the day of surgery is basically stripped [*sic*] his power and told that he isn't going to have any followup [*sic*] care with any of his patients, including the ones that he's just performed surgery on.

So, and I think there's enough question on the issues in terms of how the board handled the matter and what the various contracts require and allow that there is a likelihood of success on the merits on some of the questions.

* * *

[A]ll this court is concerned with on a temporary basis is restoring [plaintiff] to his daily routine and giving him the authority to conduct his medical business in the manner in

which he enjoyed it prior to February 27th. All other issues would be reserved for the Court's determination following a more substantive and substantial hearing on the preliminary injunctive relief.”

One of the issues the court reserved was whether to stay proceedings and compel arbitration. The court commented that it was “ignor[ing]” the arbitration motion for the time because defendants’ motion for a temporary restraining order was an “emergency” motion. The court set the arbitration motion for hearing at a later date.

¶ 17 On March 16, 2011, defendants filed their notice of appeal from the injunctive order of the trial court. On March 24, defendants filed a supplement to their arbitration motion. In their supplement, defendants disputed the trial court’s “reasoning that Plaintiff may have been constructively discharged.” Defendants claimed that FAS had only suspended plaintiff, and noted that section 7(E) allows FAS to seek arbitration of the propriety of the suspension. Defendants argued in the alternative that, if FAS’s action did constitute a termination rather than a suspension, they still had a right to arbitration.

¶ 18 On March 28, this court entered an order vacating the temporary restraining order. The order stated in part:

“In light of the arbitration clauses in sections 7(E) and 8(C) of the [Agreement], and the March 14, 2011, motion by [defendants] to stay proceedings and compel arbitration, which is still pending below, [plaintiff] has failed to demonstrate that he lacks an adequate remedy at law. *** The trial court is directed to consider the pending motion to stay proceedings and compel arbitration.”

¶ 19 On remand, the trial court held a hearing on defendants' arbitration motion. The court granted the motion, reasoning that it was simply following an implicit directive in our order:

“For the record, the Court has had an opportunity to review the transcript of the proceedings from March 15th that led to the issuance of the temporary restraining order, and the Court recalls from its own notes and the fact that this was a mere two weeks ago what was brought up in evidence at that hearing. The Court heard testimony from the Plaintiff, and the Court heard extensive argument from counsel.

The Appellate Court had before it—irregardless of what was briefed because that's outside my purview and I don't know what was briefed—but I know what was in the record, and what the Appellate Court had before it were allegations made by the Plaintiff that it was a constructive discharge, not a suspension, and that there was a failure to follow due process, that the contract was violated by the remaining doctors, and that they failed to give notice prescribed by the contract to [plaintiff].”

The Appellate Court had before it the facts surrounding the actions taken on February 28th, including the resolution signed by 11 of the 12 Defendants on February 28th, as well as the March [10] correspondence, and, of course, the Appellate Court had the contract, the employment contract because they go so far as to cite specific provisions.

Notwithstanding having all of that information before them, they vacated the temporary restraining order because, in their opinion, [plaintiff] had not resolved the issue of arbitration. The motion to compel arbitration was pending.

This Court granted the temporary restraining order based upon this Court’s belief that that was not—that the arbitration was not relevant, wasn’t at issue because of the termination of the Plaintiff by the Defendant[s] without following the terms of the contract.

There is very little that has been argued today that was not argued before this Court on March 15th, and I have to believe that [the appellate court] considered the record, everything that was contained within the record, to take the drastic action of vacating a temporary restraining order allowing [plaintiff] to return to work.

So, again, contrary to this Court’s own beliefs as to how it should proceed, I think I’m bound, having considered everything that was brought up today and how little of it was not before the Appellate Court when the Appellate Court made its decision, based upon their decision to grant the motion to stay the proceedings and compel arbitration.”

¶ 20 On April 20, 2011, plaintiff filed his timely notice of interlocutory appeal under Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010).

¶ 21 ANALYSIS

¶ 22 The sole issue in this appeal is whether the trial court erred in staying the proceedings and compelling arbitration. Plaintiff argues that it is clear that the claims he brought in his complaint do not fall within the scope of the arbitration clauses in the Agreement. We disagree, and hold rather that plaintiff’s claims clearly *are* arbitrable.

¶ 23 A threshold point to consider is whether the arbitration clauses in the Agreement are governed by the IUAA or, instead, the Federal Arbitration Act (FAA) (9 U.S.C. § 2 (2000)). Plaintiff takes no position on the issue, but claims that the ordering of arbitration was erroneous

under either statute. Defendants state, “Although both Acts are potentially applicable, defendants’ motion to compel was brought under the [IUAA] and should be so construed.” Since neither party has attempted to make a case for federal preemption here, we apply the IUAA.

¶ 24 Section 1 of the IUAA states:

“Validity of arbitration agreement. A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist for the revocation of any contract ***.” 710 ILCS 5/1 (West 2008).

Plaintiff does not contest the validity of any aspect of the arbitration clauses, but focuses solely on their scope. We move, then, to section 2 of the IUAA, which provides:

“Proceedings to compel or stay arbitration. (a) On application of a party showing an agreement described in Section 1, and the opposing party’s refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.” 710 ILCS 5/2 (West 2008).

The procedure prescribed in section 2(a) applies not only where the opposing party denies the existence of any arbitration agreement, but also where, as here, the opposing party admits there is an arbitration agreement but denies that it covers the particular claim(s) the party brought. In a proceeding under section 2(a), “the [trial] court is confronted with the issue of whether there is an agreement to arbitrate the subject matter of a particular dispute.” *Donaldson, Lufkin & Jenrette*

Futures, Inc. v. Barr, 124 Ill. 2d 435, 444 (1988). “[A]n agreement to arbitrate is a matter of contract.” *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001). “The parties to an agreement are bound to arbitrate only those issues they have agreed to arbitrate, as shown by the clear language of the agreement and their intentions expressed in that language.” *Id.* “An arbitration agreement will not be extended by construction or implication.” *Id.*

¶ 25 “Inseparable” from the issue of whether there is an agreement to arbitrate “is the question of who decides arbitrability—the court or the arbitrator.” *Donaldson*, 124 Ill. 2d at 444. “ ‘[T]he arbitrability issue emerges as essentially one of giving effect to the parties’ expressed intentions about the use of arbitration.’ ” *Id.* at 445 (quoting Henderson, *Contractual Problems in the Enforcement of Agreements to Arbitrate*, 58 Va L. Rev. 947, 972 (1972)). As the supreme court in *Donaldson* explained:

“ ‘Generally, the nature and extent of an arbitrator’s power will depend upon what the parties agree to submit to arbitration.’ [Citation.] Where the language of the arbitration agreement is clear, and it is apparent that the dispute sought to be arbitrated falls within the scope of the arbitration clause, the court should decide the arbitrability issue and compel arbitration. [Citations.] Similarly, if it is apparent that the issue sought to be arbitrated is not within the ambit of the arbitration clause, the court should decide the arbitrability issue in favor of the opposing party, because there is no agreement to arbitrate. [Citations].” *Id.* at 445.

Where, however, it is “ ‘reasonably debatable’ ” whether the parties intended to arbitrate a given dispute, the arbitrability question is to be decided initially by the arbitrator. *Id.* at 447 (quoting *Layne-Minnesota Co. v. Regents of The University of Minnesota*, 266 Minn. 284, 4 291, 123 N.W.2d

371, 376 (Minn. 1963)). Thus, “[c]ourts are to resolve any doubts concerning an arbitration agreement in favor of arbitration.” *Hubbert v. Dell Corp.*, 359 Ill. App. 3d 976, 983 (2005).

¶ 26 As for our standard of review, a motion to stay proceedings and compel arbitration is in the nature of a prayer for injunctive relief, and hence a ruling on the motion is considered a ruling “granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction,” from which an interlocutory appeal may be taken (Ill. S. Ct. R. 307(a)(1) (eff. Feb. 26, 2010)). *Yandell v. Church Mutual Insurance Co.*, 274 Ill. App. 3d 828, 830 (1995). Where, as here, the propriety of the ruling does not turn on disputed facts, the ruling is reviewed *de novo*. *Cohen v. Blockbuster Entertainment, Inc.*, 351 Ill. App. 3d 772, 776-77 (2004).

¶ 27 Here, the trial court granted defendants’ motion because it believed our March 28, 2011, order implicitly directed it to grant that relief. Our order did not so imply. Certainly, we implied our disagreement with the trial court’s conclusion that the arbitration motion had no bearing on the propriety of emergency injunctive relief. Nothing in the order, however, directed or suggested a particular resolution of the arbitration motion. Nonetheless, though the trial court’s reasons for granting defendants’ motion were erroneous, we may sustain the court’s ruling on any grounds that are called for by the record. *Cohen* 351 Ill. App. 3d at 777. Defendants propose just such an alternative ground for the trial court’s decision: the claims brought in plaintiff’s complaint fall within the ambit of the arbitration clause. We agree.

¶ 28 Plaintiff makes two principal points against the trial court’s decision to stay proceedings and compel arbitration. Before we address them, we stress what he has *not* argued in this appeal. Below, in opposing defendants’ arbitration motion, plaintiff observed that, when the Agreement speaks of a right to arbitration, it mentions only the *employee’s* right to arbitration. Plaintiff

concluded that the arbitration clause is unilateral and gives him alone the right to arbitration. Plaintiff, however, does not reassert that position on appeal. Rather, the arguments he advances to this court tacitly assume that the Agreement grants FAS and plaintiff an equal right to arbitration. Had plaintiff claimed that he alone has the right to seek arbitration, we would have disagreed, for (as we explain below) the particular arbitration clause applicable here is not unilateral.

¶ 29 Plaintiff's first argument is that FAS's right to arbitration under the Agreement was not "triggered" because FAS failed to comply with the procedures either for terminating or suspending plaintiff. As plaintiff interprets the Agreement, FAS could not suspend or terminate him unless it provided him advance written notice of the grounds for the action. Likewise, FAS could not seek arbitration of a termination or suspension unless it followed the proper procedures for termination or suspension. Plaintiff concludes that, because FAS has not provided him written notice of its purported grounds for either suspension or termination, defendants may not seek arbitration.

¶ 30 To resolve plaintiff's claim we must explore the interplay of the various contract provisions we quoted above. The Agreement grants FAS two remedies: "suspension" and "termination." "Termination" may itself take two different forms. The first is termination "for cause" based on the existence of an "event of default." The right of termination for cause is first announced in section 7(A) and is developed further in sections 8(A) and (B). Section 7(A) declares that, "[u]pon the occurrence of an Event of Default ***, [FAS] may terminate this Agreement for cause by giving thirty (30) days' prior written notice to [plaintiff]." Section 8(A) defines "Events of Default." Section 8(B) contains further procedural requirements for termination for cause. First, "[w]hether cause exists to terminate [plaintiff's] employment under either Section 7 or Section 8 hereof shall be determined by the vote of three-quarters (3/4) of the members of [FAS's] Board of Directors,

excluding for all purposes [plaintiff].” Second, “[FAS] shall notify [plaintiff] of its decision in writing reasonably providing notice of the events of default which have caused it to terminate this Agreement.”

¶ 31 The Agreement provides for two other remedies: summary termination and summary suspension. Both remedies are set forth in section 7(E), though it is entitled only “Suspension.” Section 7(E) begins, “The Board of Directors of [FAS] shall have the power immediately to terminate [plaintiff] *or* suspend [his] right to treat patients of the Group ***.” (Emphasis added.) The section then lists various grounds for the exercise of the summary remedy. The section further distinguishes between a “termination” and a “suspension” when it states: “Employee shall have the right to demand arbitration of a termination *or* suspension anytime within thirty (30) days of receipt of notice of termination *or* suspension.” (Emphasis added.) Neither section 7(E) nor any other part of the Agreement appears to require that FAS provide plaintiff advance notice of a summary suspension or termination, as opposed to a termination for cause based on “events of default.” Nor, again unlike the case of a termination for cause, does the Agreement appear to require FAS to provide any written statement of the grounds for a summary suspension or termination. Hence, the character of the action FAS took determines the type of notice it had to give.

¶ 32 The record does not suggest that FAS has taken more drastic action against plaintiff than suspending him. Plaintiff repeatedly characterizes FAS’s action as a “constructive discharge” and repeatedly asserts that FAS “froze” him out of his practice. Plaintiff does not develop these assertions into an argument. That is, he does not argue that FAS has done more than it was authorized to do in imposing a suspension and that, therefore, its action must have been a

termination. Nor does plaintiff attack the Agreement itself and argue that the distinction between a “suspension” and a “termination for cause” is illusory.

¶ 33 We recognize that, in entering a temporary restraining order for plaintiff, the trial court expressed skepticism toward FAS’s statement in its March 10, 2011, letter that it was “suspend[ing]” plaintiff. The trial court commented that (1) the “term suspension in the March 10 letter *** is a misnomer, perhaps cleverly substituted for the word termination”; (2) the February 28, 2011, Consent to Action “is in contemplation of a resignation”; and (3) FAS “intended to [terminate plaintiff] but didn’t want to bother with the steps.” If these remarks were intended as a factual finding that plaintiff was terminated, the court overstepped the narrow bounds of the injunction hearing. The parties strenuously disagreed over how to characterize FAS’s action against plaintiff. “It is not *** the purpose of a temporary injunction to decide controverted facts or the merits of the case.” *Lonergan v. Crucible Steel Co. of America*, 37 Ill. 2d 599, 611 (1967).

¶ 34 Defendants have included in the appendix to their brief a subsequent letter, dated April 11, 2011, to plaintiff from FAS identifying events of default and terminating plaintiff’s employment effective May 12, 2011. Defendants claim this letter “moots” plaintiff’s complaint about improper notice because, even if FAS did terminate, not merely suspend, plaintiff, it still followed the proper procedures for termination. Plaintiff urges us not to consider this letter because it does not appear in the record on appeal. Defendants ask us to take judicial notice of the letter. They cite as authority *Nagle v. Nadelhoffer, Nagle, Kuhn, Mitchell, Moss and Saloga, P.C.*, 244 Ill. App. 3d 920, 924 (1993), where the plaintiffs filed an action seeking a declaratory judgment on claims that the defendants had threatened to bring in litigation against the plaintiffs. The defendants filed a motion to compel arbitration, which the trial court denied. *Id.* After the trial court’s decision, the defendants

filed in the trial court both an answer to the plaintiffs' complaint and a waiver and release of some of the claims they had threatened to bring against the plaintiffs. *Id.* The defendants asked the appellate court to consider the impact of the release on the arbitrability of the dispute. *Id.* at 926. The plaintiffs replied that the court could not consider the release because it was not before the trial court when it ruled on the arbitration motion. *Id.* The court agreed with the defendants that a reviewing court "cannot review issues once circumstances have rendered the controversy underlying those issues moot, even when those circumstances occurred after the order appealed from." *Id.* The court then took "judicial notice" of the waiver and release. *Id.* at 927.

¶ 35 Defendants do not explain how we may take judicial notice of a document, which, unlike the waiver and release in *Nagle*, was never filed in the trial court. See *Jones v. Police Board*, 297 Ill. App. 3d 922, 930 (1998) (matters contained in the appendix to a brief but not in the record are not properly before the reviewing court). Accordingly, we decline to reconsider the April 11 letter, and we assume for purposes of our analysis that FAS has not yet supplied plaintiff with a notice of termination. We therefore proceed on the assumption that plaintiff has been suspended, not terminated.

¶ 36 Plaintiff argues that FAS was required to "identify in writing 30 days prior to the March discharge, a recognized basis for th[e] discharge/suspension." We disagree that FAS had to identify in writing the basis for a suspension. The only provision in the Agreement that contains a requirement that FAS submit written grounds for its action is section 8(B), which states that FAS "shall notify Employee of its decision *in writing reasonably providing notice of the events of default* which have caused it to *terminate* the Agreement." (Emphases added.) Besides referring to a decision to "terminate" (not suspend), this section references "events of default," which section 7(A)

identifies as the grounds for a termination for cause. A suspension, by contrast, has its own grounds set forth in section 7(E). Plaintiff attempts no textual analysis of the Agreement to support his position. Because the text of section 7(E) suggests a summary procedure independent of a termination for cause, and plaintiff makes no attempt to persuade us otherwise, we conclude that FAS may take the action prescribed in section 7(E) without providing plaintiff advance written notice of the ground for its action. Likewise, the right of arbitration provided for in section 7(E) is not contingent upon FAS providing advance written notice of the basis for its action.

¶ 37 Though plaintiff does not raise the issue, we acknowledge that the arbitration provision in section 7(E) is worded differently than the arbitration provisions in sections 8(B) and (C). The latter two expressly mention plaintiff's right of arbitration, but not FAS's. Section 8(B) states that a termination decision shall be final unless "[*plaintiff*] shall *** demand in writing the arbitration of the question of cause." (Emphasis added.) Section 8(C) states, "In the event [*plaintiff*] requests arbitration, the question of whether an Event of Default existed shall be settled by an arbitrator to be selected by the American Arbitration Association." (Emphasis added.) Section 7(E), by contrast, states:

“[FAS] may suspend [*plaintiff*] without pay and, in such event, [*plaintiff*] shall not be entitled to collect salary, bonus or any other payments *** for any period of suspension unless *** an arbitrator selected by the American Arbitration Association determines that the suspension was unwarranted in an arbitration conducted as provided in Section 8(C) hereof.”

Section 7(E) cannot be construed as limiting to one party the right to arbitrate a suspension. The section does refer back to section 8(C), but only for direction on how the arbitration is to be

“conducted”—a separate issue from who initiates the arbitration. For the foregoing reasons, we disagree with plaintiff that defendants have failed to meet a procedural prerequisite to exercising their right to arbitrate a suspension.

¶ 38 Plaintiff’s second, and final, contention is that the arbitration clauses in the Agreement do not encompass his claims. We observe that, though the trial court had authority under section 2(d) of the IUAA (710 ILCS 5/2(d) (West 2008)) to sever arbitrable from nonarbitrable issues and enter a partial stay, the court imposed a blanket stay. Presumably, the court believed that our order vacating the temporary restraining order impliedly directed it to stay all proceedings. As noted, however, our order did not insinuate that the trial court reach any particular outcome regarding the arbitration motion, but only that it address the motion.

¶ 39 Section 7(E) of the Agreement permits FAS to seek arbitration of the propriety of a suspension. Plaintiff lends little argument to his assertion that none of the claims he brought are arbitrable. He simply reiterates the allegations in his complaint and summarily concludes that arbitration is not available to FAS. We disagree. Plaintiff has brought diverse claims, but on the whole, if not in all of the individual counts, his action is dependent on whether FAS’s conduct in suspending him was proper. Counts two and three, which seek, respectively, dissolution of defendants’ corporate status and an accounting of compensation owed to plaintiff, and count four, which alleges breach of contract and violation of the covenant of good faith and fair dealing, are all predicated in part on FAS’s action in suspending plaintiff from the medical practice, or, as plaintiff characterized it, “constructively discharging” him. Potentially, some of the other conduct alleged in these counts (*e.g.*, defendants’ threatening to take action that might impair plaintiff’s medical license) could support a continued lawsuit by plaintiff whatever the outcome of the arbitration of the

suspension. However, “[i]t is not necessary for the parties to an arbitration agreement to be able to solve all disputes between them at arbitration. Rather, the court must give effect to the arbitration agreement and require those issues to be arbitrated which are covered by the agreement.” *Heiden v. Galva Foundry Co.*, 223 Ill. App. 3d 163, 168 (1991). See also *Kostakos v. KSN Joint Venture No. 1*, 142 Ill. App. 3d 533, 538 (1986) (“where the issues and relationships are sufficiently interrelated and the result of arbitration may be to eliminate the need for court proceedings, then the goals of judicial economy and of resolving disputes outside of the judicial forum are met”). We note also that the relief requested by plaintiff includes reinstatement. Plaintiff’s reinstatement could potentially moot one or more of the counts, particularly counts two and three.

¶ 40 To support his argument that the counts in his complaint are not within the scope of the arbitration clause in the Agreement, plaintiff cites two cases: *Johnson v. Noble*, 240 Ill. App. 3d 731 (1992), and *Board of Managers of Chestnut Hills Condominium Ass’n v. Pasquinelli, Inc.*, 354 Ill. App. 3d 749 (2004). Neither case is analogous to the facts at hand.

¶ 41 In *Johnson*, the parties entered into an oral agreement and a subsequent written agreement. *Johnson*, 240 Ill. App. 3d at 733. The oral agreement required the defendants to share a finder’s fee with the plaintiff. *Id.* The second, written agreement authorized the plaintiff to act as the defendants’ agent in securities and investments transactions. *Id.* Of the two agreements, only the second contained an arbitration clause. *Id.* The plaintiff sued for breach of the first agreement based on the defendants’ failure to share the finder’s fee with him. *Id.* at 734. The defendants moved to compel arbitration, and the trial court denied the motion. *Id.* The appellate court affirmed, noting that the arbitration agreement was not contained in the agreement upon which the plaintiff sued. *Id.* at 734-35.

¶ 42 *Johnson* is obviously distinguishable, as there is no dispute here that the arbitration clause relied upon by defendants was contained in the contract on which plaintiff has sued. Plaintiff notes, however, that the arbitration clause is contained only in his employment agreement with FAS and not in any of his shareholders' agreements with FAS, FVOA, and KRJV. Plaintiff does not explain the relevance of this fact, and the relevance is not immediately apparent to us. Since only the Agreement defined the employment relationship between FAS and plaintiff, it is sufficient that the arbitration clause appears there.

¶ 43 In *Pasquinelli*, a condominium association sued a developer alleging various claims for breach of warranty and breach of contract. 354 Ill. App. 3d at 752. The developer moved to stay proceedings and compel arbitration. The developer cited an arbitration clause in a document entitled “‘Limited Warranty,’” which defined certain “‘warranted common elements’” of the development. *Id.* at 751. The warranty stated:

¶ 44 “‘Warranted common elements are those portions of the defined electrical, heating, ventilation, cooling, plumbing and structural systems which serve two (2) or more residential units, and are contained wholly within a residential structure. *** Examples of common elements which are covered by this Limited Warranty are hallways, meeting rooms and other spaces wholly within the residential structure designated for the use of two (2) or more units. Examples of common elements which are not covered under this Limited Warranty are club houses, recreational buildings and facilities, exterior structures, exterior walkways, decks, balconies, arches or any other non-residential structure which is part of the condominium.’” *Id.* at 752.

The association's complaint alleged, in the appellate court's paraphrase, "certain defects in design, material or workmanship or both, relating to siding, roofing[,],grading[,],exterior drainage, balconies, masonry, exterior wood rot, peeling paint, concrete sidewalks, stoops and driveways, and a built-in TV antenna system." *Id.* at 752. The appellate court upheld the trial court's denial of the arbitration motion. The court determined that the defects alleged were not covered by the limited warranty because they did not pertain to any of the " 'warranted common elements.' " *Id.* at 757. Accordingly, the claims were not subject to arbitration under the clause in the limited warranty. Rather, the claims arose under a separate purchase agreement, which did not contain an arbitration clause. *Id.* at 756.

¶ 45 Plaintiff does not attempt to analogize the facts of *Pasquinelli* to those at hand, and we see patent dissimilarities. The " 'warranted common elements' " were limited to " 'systems *** contained wholly within a residential structure,' " while the association alleged external defects alone. Thus, there was not even potential coverage under the warranty for any of the alleged defects. Here, by contrast, defendants' allegedly improper exclusion of plaintiff from the medical practice, which they characterized as a "suspension" authorized by the Agreement, forms a substantial part of the factual basis for nearly all of the counts. Although arbitration may not necessarily resolve this action entirely, it may resolve much of it, and this meets the threshold for granting defendants' motion.

¶ 46 In conclusion, we hold that, because it is clear that plaintiff's claims are arbitrable, there is no need for the arbitrator to decide arbitrability. The Agreement expressly provides for arbitration of the propriety of a suspension, and that issue pervades plaintiff's claims in this lawsuit. Accordingly, the trial court did not err in staying proceedings and compelling arbitration.

¶ 47

CONCLUSION

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County staying the proceedings below and compelling arbitration.

¶ 49 Affirmed.