2018 IL App (2d) 170401-U
No. 2-17-0401
Order filed April 2, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

NAPERVILLE WOMEN'S HEALTHCARE, P.C., MEGHAN FLANNERY, M.D., and LIANA LUCARIC, M.D.,	)	Appeal from the Circuit Court of Du Page County.
Plaintiffs and Counterdefendants-Appellants,	)	
v.	)	No. 16-MR-0860
MICHELLE C. CARNEY-SISWICK,	)	
Defendant and Counterplaintiff-Appellee.	)	Honorable Paul Fullerton, Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in awarding physician summary judgment against healthcare employer that had sought to enforce non-competition provision of her employment contract; and the court's award to physician for her counterclaim for business accounting was not against the manifest weight of the evidence.

¶ 2 Plaintiff, Naperville Women's Healthcare, P.C. (Naperville P.C.), was a corporation consisting of three equal shareholders: plaintiffs, Meghan Flannery, M.D., and Liana Lucaric, M.D., and defendant, Michelle C. Carney-Siswick, M.D. (collectively, the doctors). Defendant

and Naperville P.C. operated under an employment agreement with a covenant not to compete if defendant left the practice (Naperville P.C. agreement).

¶ 3 On January 1, 2016, the doctors transitioned to practicing as members of Providea Health Partners, LLC (Providea), which is not a party to these proceedings. The doctors and Providea entered into joinder agreements that established the practice as a "strategic business unit" (SBU) of Providea. The doctors did not enter into a new non-compete agreement with Providea or among themselves. Naperville P.C. continued to process patient accounts for services previously rendered but ceased to engage in the practice of medicine. Naperville P.C. did not enter into any agreement with Providea.

¶ 4 On August 10, 2016, defendant left Providea to work elsewhere, and Providea did not object. Plaintiffs sued to block her employment by enforcing the restrictive covenant in the Naperville P.C. agreement. The trial court entered summary judgment for defendant, ruling that the covenant was unenforceable because Naperville P.C. no longer had a legitimate business interest to protect.

¶ 5 Plaintiffs appeal the summary judgment, arguing that the covenant is enforceable because (1) it is reasonable, (2) the joinder agreements with Providea did not affect the Naperville P.C. agreement, (3) Providea is a successor entity that has a legitimate business interest in enforcing the covenant, (4) plaintiffs may enforce the covenant because they continue to own and hold the practice's good will and legitimate business interest, (5) defendant is bound by the covenant because she purports to maintain her roles as a director, an officer, and an owner of Naperville P.C., and (6) plaintiff should have been allowed to substitute Providea as the proper party to enforce the covenant.

¶ 6 Plaintiffs also alleged breach of the Naperville P.C. agreement after defendant made a withdrawal from the business's account the day before she left the practice. Defendant filed a counterclaim for an accounting to enforce an oral agreement among the doctors regarding asset distribution and the equal division of income earned while members of Providea. Following a bench trial, the court awarded defendant $150,424, which plaintiffs also claim was error. Plaintiffs argue that the court was inconsistent in enforcing the damages provision of the Naperville P.C. agreement, while declaring the covenant to be invalid. The parties also filed cross-claims for breach of fiduciary duty involving the withdrawal, which were denied. We affirm.

¶ 7 I. BACKGROUND

¶ 8 Naperville P.C. was a corporation through which the doctors provided obstetrical and gynecological services. Defendant's employment with Naperville P.C. began in 2009, and she joined Flannery and Lucaric as an equal shareholder in March 2012. Through December 2015, Naperville P.C. operated at 720 S. Brom Court, Suite 104 in Naperville and employed other personnel who were supervised by the doctors.

¶ 9 From March 2012 through December 2015, defendant and Naperville P.C. were the sole parties to the Naperville P.C. agreement, which contained a restrictive covenant preventing defendant from competing with Naperville P.C. and soliciting its patients in a 5-mile radius for 24 months after termination of employment. Naperville P.C. had similar agreements with Flannery and Lucaric. Under these written agreements, the doctors shared profits equally, and in the event one left the practice, the remaining doctors would have 60 months to "buy-out" her one-third share of the company's assets.

¶ 10 A. Restrictive Covenant and Summary Judgment

¶ 11 Providea, according to its LLC operating agreement, is a company "organized solely to practice medicine and to provide other medical services as approved by the Board from time to time." Dr. Kenneth Finkelstein, who at all relevant times has been the sole manager and president, explained in an affidavit how Providea functions. Providea's health care providers are organized into SBUs, which are administrative, not legal, entities. Providea assigns its members to particular SBUs to render services to patients and to coordinate scheduling and marketing.

¶ 12 On August 28, 2015, Providea and the doctors entered into joinder agreements through which the doctors became members of Providea and agreed to the terms of Providea's operating agreement. Finkelstein stated that Naperville P.C. was not made a member of Providea and was not a party to any joinder agreement.

¶ 13 Providea assigned the doctors to a new SBU called "Naperville Women's Healthcare" (Naperville SBU). Finkelstein characterized "Naperville Women's Healthcare" as a trade name used by Providea for marketing purposes. He and the doctors agreed to the name because it was similar to the one Naperville P.C. had used and would make the transition for patients more seamless.

¶ 14 On December 31, 2015, Naperville P.C. ceased providing care to its patients but continued to function for the limited purpose of collecting payments for prior services rendered. On January 1, 2016, the doctors remained in the same office but began working exclusively on behalf of Providea. Their new employer compensated the doctors for their professional services, paid all office expenses, billed patients, collected payments, provided malpractice coverage, and credentialed the doctors as Providea providers to facilitate payment by Medicare and private-payer insurers. Providea hired Naperville P.C.'s staff and assigned them to work at the Naperville SBU. The staff executed tax forms for Providea, received Providea employee

handbooks, and became eligible to participate in Providea's 401(k) program. Providea owned and maintained all medical records pertaining to patients being treated by Naperville SBU, including those who had been treated by Naperville P.C. because, in the words of Finkelstein, "Providea [was] now providing their care." Providea controlled the patient portal through which patients could access their records.

¶ 15 The Providea operating agreement afforded members of an SBU the opportunity to enter into agreements among themselves to address management of the SBU. Such an SBU agreement could have included a restrictive covenant similar to the one in the Naperville P.C. agreement. In 2015, Flannery suggested creating a SBU agreement with a restrictive covenant, but the draft agreement was never agreed to or signed. Neither defendant nor Lucaric saw the draft agreement before defendant announced in May 2016 that she intended to leave and work for Du Page Medical Group (DMG).

¶ 16 On June 24, 2016, plaintiffs filed a complaint for declaratory judgment against defendant to enforce the restrictive covenant in the Naperville P.C. agreement. Defendant filed an answer and an affirmative defense that plaintiffs effectively waived their right to enforce the restrictive covenant when they began working for Providea. The parties filed cross-motions for summary judgment on plaintiffs' restrictive covenant claim.

¶ 17 On January 13, 2017, the trial court granted defendant summary judgment, concluding that Naperville P.C. was the only entity that could enforce the restrictive covenant; and although Flannery and Lucaric were shareholders, they were not signatories to defendant's employment agreement. The court concluded that, once the doctors signed the joinder agreements with Providea and agreed to the terms of Providea's operating agreement, Naperville P.C. lost any legitimate business interest in need of protection. The court also commented that, even if

defendant had signed the draft SBU agreement, Naperville P.C. would not have the right to enforce any restrictive covenant when defendant left Providea to work for DMG. Upon finding that Providea was not a successor to the Naperville P.C. agreement, the court denied plaintiffs leave to name Providea as an additional plaintiff. In any event, Finkelstein stated in his affidavit that "[i]n May 2016, I was advised by [defendant] that she would be terminating her position with Providea in August 2016. Providea does not claim it has the right to block her from accepting a job with [DMG]."

¶ 18 B. Trial

¶ 19 1. Fiduciary Duty

¶ 20 On September 27, 2016, plaintiffs amended their complaint to allege breach of the Naperville P.C. agreement and breach of fiduciary duty. The new claims involved the doctors' Bank of America account that they had opened in 2016 to process payments while working for Providea. Each doctor was a signatory on the account, but Naperville P.C. was not. On August 9, 2016, the day before terminating her employment with Providea, defendant withdrew $74,931, which she claimed was her one-third share of the net income earned by the doctors while practicing for Providea from January through June 2016. Providea was aware of the withdrawal and did not object.

¶ 21 2. Accounting

¶ 22 On August 31, 2016, defendant requested an accounting from Flannery and Lucaric regarding net income earned for the services rendered from July 1, 2016, through her termination date of August 10, 2016. Defendant claimed that Flannery and Lucaric had refused to pay her share of the net income or her share of the value of the assets. On September 9, 2016, defendant filed counterclaims for the accounting and for breach of fiduciary duty.

¶ 23 3. January through June 2016

¶ 24 On January 17, 2017, the trial court conducted a bench trial on (1) plaintiffs' claims for breach of contract and breach of fiduciary duty related to defendant's bank withdrawal and (2) defendant's counterclaims for an accounting and breach of fiduciary duty.

¶ 25 Plaintiffs' only witness was defendant, who admitted withdrawing $74,981 from the bank account on August 9, 2016. She explained that the amount represented no more than the exact amount owed her under the income distribution analysis (IDA) that was prepared by the doctors' accountant, Steve Blohm, for the first six months of 2016. Plaintiffs did not offer into evidence the Naperville P.C. agreement, so the court entered a directed finding for defendant on the breach of contract claim.

¶ 26 In her case-in-chief, defendant presented the testimony of Lucaric, who confirmed that the Providea joinder agreements did not contain restrictive covenants. Lucaric also admitted that the doctors did not sign the draft Naperville SBU agreement and that Naperville P.C. was not a party to any contracts associated with the doctors' employment with Providea. The revenue for services rendered in 2016 went into the Bank of America account that Providea had required them to open.

¶ 27 The doctors had separate financial statements prepared for services rendered in 2015 while operating as Naperville P.C. and in 2016 while operating as Naperville SBU. The doctors agreed to equally split the net income and net revenues that they earned in 2016. The doctors met with Blohm, who prepared the IDA for the first six months of 2016, and no one objected to his calculations.

¶ 28 Defendant testified that section 4.2 of the Providea operating agreement authorized them to determine how they would pay themselves while working for Providea. Consistent with

Lucaric's testimony, defendant testified that the doctors orally agreed in 2015 to split their Providea income as they had while operating as Naperville P.C. They agreed to pool their net income, divide it into thirds, and subtract their personal expenses. Defendant explained that their arrangement while working for Providea was similar to but separate from the written employment agreements between each doctor and Naperville P.C. Defendant testified that each doctor had check-writing authority on the bank account, and she reiterated that her withdrawal was made according to the IDA that had been reviewed and agreed upon by the doctors.

¶ 29 On January 17, 2017, the trial court entered a judgment for defendant on her accounting counterclaim, noting that the parties agreed on the amount that had been owed defendant for the first six months of 2016. The court also ordered plaintiffs to direct Blohm to prepare an accounting for the doctors' income from July 1, 2016, through August 10, 2016, and assess the value of their assets, neither of which was shown in the IDA. Plaintiffs did not object to the court's directive, including whether defendant was entitled to a buy-out of her one-third share of the value of the assets.

¶ 30 4. July and August 2016

¶ 31 Flannery and Lucaric's first accounting, dated February 3, 2017, showed that defendant was owed $119,695, representing her one-third share of the net profits from July 1, 2016, to August 10, 2016, plus her one-third share of the value of the doctors' assets. Defendant noted four errors involving salary, rent, accounts receivable, and medical supplies.

¶ 32 Blohm submitted an amended accounting, dated February 16, 2017, which corrected the salary error and showed that defendant was owed $135,849. The asset valuation he used was based on a straight-line depreciation formula, which is calculated by dividing the depreciable amount of the fixed asset by the useful life of the asset.

¶ 33 Flannery and Lucaric submitted a second accounting, dated February 28, 2017, which showed that defendant was owed only $72,984, based on a reduction in estimated services rendered and a negative value assigned to her share of the assets. The reduction in asset valuation was based on Blohm's estimate of their market value.

¶ 34 5. Hearing

¶ 35 Before the hearing, defendant served Blohm with a subpoena for deposition and documents and a subpoena to testify at trial. Flannery and Lucaric did not make Blohm available for a prehearing deposition, and defendant filed a motion *in limine* to exclude the February 28, 2017, accounting and bar Blohm from testifying. Defendant disputed Blohm's qualifications to testify as an expert regarding the market value of the assets. Blohm did not appear at the hearing, claiming that he had a business-related scheduling conflict.

¶ 36 On May 3, 2017, the trial court entered a $134,684 judgment for defendant. The trial court found that, when the doctors began their employment with Providea on January 1, 2016, none of their employment agreements with Naperville P.C. were in effect. When defendant stopped practicing as part of the Naperville SBU, the doctors did not have a "formal signed agreement" but were operating the business in the same way. The doctors' engaged in a course of conduct consistent with an oral agreement among themselves to be paid equally, after deducting their personal expenses. Because the employment agreements between each doctor and Naperville P.C. were no longer in effect, the 60-month buy-out provision in defendant's agreement was not binding.

¶ 37 As to the amended first accounting and the second accounting, the court corrected the errors regarding rent and accounts receivable and made an estimate of the services rendered from July 1, 2016, to August 10, 2016. The court adopted the straight-line depreciation formula to

determine the value of the assets. The court disregarded Blohm's market value estimate because there was no expert testimony to support it.

¶ 38 The trial court denied plaintiffs' claim for breach of fiduciary duty because the evidence showed that defendant withdrew from the bank account the exact amount to which she was entitled under the doctors' oral agreement, which was corroborated by the IDA. The court commented that defendant "was wrong in taking that payment before this entire matter was resolved. However, it's not a breach of fiduciary duty because, at the end of the day, there is [*sic*] no damages."

¶ 39 The parties filed posttrial motions, alleging mathematical errors. The court denied plaintiffs' motion and granted defendant's motion in part. Defendant was awarded a final judgment of $150,424. Plaintiffs timely appeal.

¶ 40 II. ANALYSIS

¶ 41 A. Restrictive Covenant

¶ 42 Plaintiffs appeal the ruling on their declaratory judgment claim in which they sought to enforce the restrictive covenant in the employment agreement between Naperville P.C. and defendant. The two sides filed opposing motions for summary judgment, and plaintiffs appeal the summary judgment entered for defendant. Plaintiffs contend that the undisputed facts indicate that they, not defendant, are entitled to summary judgment on the claim.

¶ 43 Summary judgment is appropriate only when "the pleadings, depositions, 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 a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2016). The purpose of summary judgment is not to try a question of fact but, rather, to determine whether a genuine issue of material fact exists. *Adams v. Northern Illinois*

Gas Co., 211 Ill. 2d 32, 42-43 (2004). "A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adams*, 211 Ill. 2d at 43.

¶ 44 In reviewing the grant of summary judgment for defendant, we must construe the pleadings, depositions, admissions, and affidavits strictly against defendant and liberally in favor of plaintiffs. See *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). "When parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. However, the mere fact that cross-motions for summary judgment have been filed does not establish that there is no issue of material fact, nor does it obligate a court to render summary judgment. *Pielet*, 2012 IL 112064, ¶ 28.

¶ 45 Summary judgment is to be encouraged to expedite the disposition of a lawsuit; however, it is a drastic means of disposing of litigation and should be allowed only when the right of the moving party is clear and free from doubt. *Springborn v. Village of Sugar Grove*, 2013 IL App (2d) 120861, ¶ 24. We review *de novo* a trial court's grant of summary judgment. *Springborn*, 2013 IL App (2d) 120861, ¶ 24. Likewise, we review *de novo* the enforceability of a restrictive covenant, based on the unique facts and circumstances in each particular case, with no single, determinative factor. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 12.

¶ 46 Section 2-701 of the Code of Civil Procedure (Code) provides that a circuit court may, "in cases of actual controversy, make binding declarations of rights, having the force of final judgments." 735 ILCS 5/2-701 (West 2016). The declaratory judgment statute is liberally construed and should not be restricted by unduly technical interpretations, but its application must still follow the general rule that a court may not pass judgment on mere abstract

propositions of law, render advisory opinions, or give legal advice as to future events. *Babbitt Municipalities, Inc. v. Health Care Service Corp.*, 2016 IL App (1st) 152662, ¶ 43. Declaratory relief is proper only if there is an actual legal controversy between the parties in that " 'there is a concrete dispute admitting of an immediate and definite determination of the parties' rights, the resolution of which will aid in the termination of the controversy or some part thereof.' " *Babbitt Municipalities*, 2016 IL App (1st) 152662, ¶ 43 (quoting *Underground Contractors Ass'n v. City of Chicago*, 66 Ill. 2d 371, 375 (1977)).

¶ 47 Illinois courts abhor restraints on trade, and postemployment restrictive covenants are carefully scrutinized by Illinois courts because they operate as partial restrictions on trade. *McInnis v. OAG Motorcycle Ventures, Inc.*, 2015 IL App (1st) 142644, ¶ 26. A restrictive covenant must be reasonable: (1) it must be no greater than is required for the protection of a legitimate business interest of the employer, (2) it does not impose undue hardship on the employee, and (3) it is not injurious to the public. *Reliable Fire*, 2011 IL 111871, ¶ 17; *McInnis*, 2015 IL App (1st) 142644, ¶ 26. However, before even considering whether a restrictive covenant is reasonable, a court must determine (1) whether the restrictive covenant is ancillary to a valid contract and (2) whether the restrictive covenant is supported by adequate consideration. *McInnis*, 2015 IL App (1st) 142644, ¶ 26.

¶ 48 Plaintiffs emphasize that defendant did not challenge the contract term as unreasonably restrictive of activities, geographical range, or duration. But these factors of reasonableness were not the basis for the trial court's ruling. The court held that the legal effect of the joinder agreements between the doctors and Providea negated the business interest of Naperville P.C. We agree.

¶ 49 Plaintiffs argue that they had a legitimate business interest in their medical practice in that it was operating in the same manner before and after defendant voluntarily left to pursue employment elsewhere. After the doctors joined Providea as the Naperville SBU, Naperville P.C. remained in operation for the limited purpose of collecting payments for services already rendered. We agree with the trial court that Naperville P.C. had no interest in restricting defendant's employment once it ceased providing medical care.

¶ 50 Plaintiffs cite section 23 of the Naperville P.C. agreement in arguing that the restrictive covenant survived the doctors' transition from doing business as Naperville P.C. to working for Providea. Section 23 provides that the restrictive covenant, among other terms, "shall survive such termination" of the agreement between Naperville P.C and defendant. Assuming *arguendo* that the restrictive covenant of the Naperville P.C. agreement survived the termination of defendant's employment by *Providea*, Naperville P.C. had no legitimate business interest to protect at that time.

¶ 51 Flannery and Lucaric claim a legitimate business interest in enforcing the restrictive covenant, but they were never parties to defendant's employment agreement with Naperville P.C., and therefore had no contractual right to enforce the restrictive covenant. Under the Providea operating agreement, the Naperville SBU could have adopted a restrictive covenant, and Flannery actually had a draft agreement prepared, but the parties never signed it. Flannery and Lucaric point to no evidence that they entered into a new restrictive covenant with defendant as part of the doctors' employment with Providea.

¶ 52 Plaintiffs also contend that the trial court should have permitted them to add Providea and Naperville SBU as party plaintiffs to enforce the restrictive covenant. Plaintiffs rely upon section 18 of the Naperville P.C. agreement, which provides that "[t]his agreement shall be

binding upon and inure to the benefit of [Naperville P.C.] and [defendant] and their respective heirs, legal representatives successors, executors and administrators." Plaintiffs describe Providea as a "successor entity" that had the right to enforce the employment agreement between Naperville P.C. and defendant, and they repeatedly refer to the doctors' employment by Providea as simply a "corporate restructuring." However, Finkelstein explained that SBUs are administrative, not legal, entities. Plaintiffs present no evidence that the restrictive covenant was a condition of defendant's employment by Providea in the Naperville SBU. Plaintiffs also do not claim that the joinder agreements between the doctors and Providea mentioned any postemployment restrictions. Plaintiffs point to no agreement in which Naperville P.C. purportedly assigned to Providea its right to enforce any provision of defendant's employment agreement. Even if Providea had the right to enforce the prior restrictive covenant, Finkelstein stated unambiguously in his affidavit that Providea did not intend to restrict defendant's employment.

¶ 53 B. Fiduciary Duty

¶ 54 On appeal, plaintiffs restate their claim that defendant breached her fiduciary duty to plaintiffs when she withdrew $74,931 from the doctors' bank account on the day before she terminated her employment with Providea. At Providea's direction, the doctors had opened the bank account to process payments for the Naperville SBU, and each doctor was a signatory on the account, with the right to make withdrawals and write checks against it. Because the account was related solely to the doctors' employment by Providea, Naperville P.C. was not a signatory on the account.

¶ 55 In a bench trial, as here, the trial judge is the trier of fact. *Vician v. Vician*, 2016 IL App (2d) 160022, ¶ 27. The trial court is in a superior position to observe witnesses, judge their

credibility, and determine the weight their testimony should receive. Therefore, we will reverse a judgment following a bench trial only if it is against the manifest weight of the evidence. A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when the judgment is arbitrary, unreasonable, or not based on the evidence. *Vician*, 2016 IL App (2d) 160022, ¶ 27. If the record contains evidence to support the trial court's judgment, that judgment should be affirmed. *In re Estate of Wilson*, 238 Ill. 2d 519, 570 (2010).

¶ 56 To state a claim for breach of fiduciary duty, plaintiffs must allege the existence of a fiduciary duty, a breach of that duty, and damages proximately caused by the breach. See *Caulfield v. Packer Group, Inc*., 2016 IL App (1st) 151558, ¶ 61. Plaintiffs argue that the trial court disregarded their fiduciary duty claim without adequately stating why relief should not be granted, but their contention is refuted by the record. In denying plaintiffs' claim, the trial court expressed concern that defendant had made the withdrawal during the pending legal proceedings, stating that she should not have acted without an agreement with Flannery and Lucaric or prior court approval. However, the court found that plaintiffs had suffered no damages because the withdrawal represented the amount to which defendant was entitled for her one-third share of the net income earned by the doctors while practicing for Providea from January 1, 2016, through June 2016.

¶ 57 The trial court credited defendant's testimony that the withdrawal was made according to the IDA prepared by Blohm and the doctors' oral agreement that governed their employment with Providea. We agree with defendant that the court's finding and resulting denial of the fiduciary duty claim is not against the manifest weight of the evidence. See *Vician*, 2016 IL App (2d) 160022, ¶ 27.

¶ 58 C. Accounting

¶ 59 Defendant counterclaimed for an accounting to determine her share of the doctors' assets and her share of the net income earned from July 1, 2016, to her termination date of August 10, 2016. The trial court initially awarded defendant $135,684, but later increased the award to $150,424, after Blohm submitted revised financial information. Plaintiffs contend that defendant is not entitled to the amount awarded to her on the counterclaim for an accounting.

¶ 60 Plaintiffs argue that the ruling is inconsistent with the court's decision that Naperville P.C. no longer had a legitimate business interest in enforcing the restrictive covenant. Plaintiffs assert repeatedly that, if the restrictive covenant is invalid, the doctors' profit sharing and asset distribution cannot be governed by the Naperville P.C. employment agreements.

¶ 61 Plaintiffs' position is based on the faulty premise that the trial court based its decision on the terms of the written Naperville P.C. agreement. The evidence adduced at trial shows that defendant's award was based on the doctors' oral agreement and course of conduct in operating the Naperville SBU while employed by Providea, not the employment agreements between the doctors and Naperville P.C.

¶ 62 Defendant conceded at trial that the oral agreement, which was authorized by the Providea operating agreement, shared similarities with the employment agreements between the doctors and Naperville P.C. While the doctors' oral compensation formula used while working for Providea was also contained in the Naperville P.C. employment agreements, they were distinct contracts governing different employers and periods of employment. As the trial court found, the written employment agreements for Naperville P.C. became "irrelevant" after the doctors began their employment with Providea according to the joinder agreements and Providea's operating agreement.

¶ 63 Contrary to plaintiffs' assertion, the record shows that the judgment in favor of defendant was based on the evidence presented of an oral agreement among the doctors to split profits after they began working for Providea. Defendant's counterclaim was directed at Flannery and Lucaric for events occurring during their employment by Providea, not Naperville P.C. As defendant correctly points out, Naperville P.C. had no interest in the income earned after the doctors started working for Providea.

¶ 64 Plaintiffs also argue that they should be allowed pay the accounting award over 60 months, pursuant to the Naperville P.C. employment agreements. However, the trial court heard no evidence of such a provision in the oral agreement that governed the doctors' compensation while employed by Providea. There was no evidence that a remaining doctor could withhold a departing member's share for any time period, let alone 60 months.

¶ 65 The court's conclusion that the oral agreement entitled defendant to one-third shares of the doctors' profits and assets is not inconsistent with the determination that the restrictive covenant and 60-month buy-out grace period under the Naperville P.C. agreement were no longer in effect. The doctors' course of conduct indicated that they intended to incorporate certain terms of the Naperville P.C. agreement into their oral agreement for the governance of the Naperville SBU, while omitting others. First, the IDA, which was prepared by plaintiffs' accountant, corroborated defendant's testimony that the doctors orally agreed to divide their Providea income the same way they had while operating as Naperville P.C. Second, plaintiffs did not object to the trial court's order to prepare an accounting of the value of their assets for the purpose of awarding a one-third share to defendant. Conversely, there was no evidence that they agreed to a restrictive covenant or a buy-out grace period. In fact, the evidence showed that Flannery drafted a written SBU agreement with a restrictive covenant, but the doctors never

signed it. There was no testimony that the doctors orally agreed to a restrictive covenant, and we decline to read one into their agreement. See *McInnis*, 2015 IL App (1st) 142644, ¶ 26 (Illinois courts abhor restraints on trade, and postemployment restrictive covenants are carefully scrutinized).

¶ 66 Finally, plaintiffs argue that, even if defendant is entitled to damages on her accounting counterclaim, the trial court's award was "arbitrary and unjustified." The trial court's ruling was based primarily on Blohm's amended first accounting, dated February 16, 2017, which showed that defendant was owed $135,849. The value of the assets was based on their "book value," a straight-line depreciation formula, which defendant did not dispute. Flannery and Lucaric submitted Blohm's second accounting, dated February 28, 2017, which showed that defendant was owed only $72,984, based on a reduction in estimated services rendered and a negative value assigned to the value of assets. The negative asset valuation was based on Blohm's estimate of their actual market value in an arms-length sale.

¶ 67 The trial court awarded defendant $150,424, based in part on Blohm's straight-line depreciation formula, not the market value formula. Defendant objected to the market value estimate, and Blohm failed to appear at the hearing. Plaintiffs offered no expert testimony to support their claim that the doctors' medical equipment and other assets actually had a negative value, for which defendant would owe reimbursement. The trial court did not abuse its discretion in disregarding the disputed market value calculation. See *Snelson v. Kamm*, 204 Ill. 2d 1, 33 (2003) (the admission of evidence falls within the sound discretion of the trial court); *Payne v. Hall*, 2013 IL App (1st) 113519, ¶ 12 ("A court abuses its discretion only if it acts arbitrarily, without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law; or if no reasonable person would take the position adopted

by the court"). Under these circumstances, the court's ultimate ruling on the counterclaim was not against the manifest weight of the evidence. See *Vician*, 2016 IL App (2d) 160022, ¶ 27.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, the judgment of the circuit court of Du Page County is affirmed.

¶ 70 Affirmed.