SIXTH DIVISION
March 18, 2016

No. 1-15-0192

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CLARENCE WILLIAM BROWN, M.D., and VASSILOS DIMITROPOULOS, M.D.,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	
v.	)	No. 09 L 15110
RUSH UNIVERSITY MEDICAL CENTER, an Illinois Not-for-Profit Corporation, and MICHAEL D. THARP, M.D., an Individual; and RUSH HEALTH, an Illinois Not-for-Profit corporation,	)	Honorable Margaret Ann Brennan, Judge Presiding.
Defendants-Appellees.	)	

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 *Held*: A combined jury and bench trial was held on numerous claims brought by plaintiffs against defendants. On plaintiffs' appeal from bench trial rulings in favor of defendants on plaintiffs' consumer fraud and *quantum meruit* counts, we affirmed, holding that the court's findings were not against the manifest weight of the evidence. On plaintiffs' appeal of the trial court's denial of their motion *in limine* to bar the use at the jury trial of certain financial evidence, we affirmed, holding that the issue was forfeited and that there was no civil plain error. On plaintiffs' appeal of the trial court's denial of their motion to file a third-amended complaint, we affirmed, finding no abuse of discretion.

¶ 2 Plaintiffs, Clarence William Brown, M.D., and Vassilios Dimitropoulos, M.D., brought a multi-count action against defendants: (1) Rush University Medical Center (Rush), their former

employer; (2) Michael D. Tharp, M.D., the chairman of Rush's dermatology department; and (3) Rush Health (RHA), a physician's association, alleging, among other things, breach of contract and *quantum meruit* counts against Rush, and intentional interference with prospective economic advantage and Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) counts against Rush and Dr. Tharp.[1] The cause proceeded to a combined jury and bench trial. The jury returned verdicts in favor of Rush on plaintiffs' breach of contract counts, and in favor of Rush and Dr. Tharp on plaintiffs' intentional interference with prospective economic advantage count. Following the jury trial, the trial court then held the bench trial on plaintiffs' consumer fraud and *quantum meruit* counts, heard one additional witness, considered evidence from the jury trial, and ruled in favor of Rush and Dr. Tharp. Plaintiffs appeal: the bench trial rulings by the trial court; the trial court's denial of their motion *in limine* to bar the use at the jury trial of certain tax returns and other financial evidence; and the denial of their motion to file a third-amended complaint. We affirm.

¶ 3 In pertinent part, plaintiffs' second-amended complaint alleged that Rush breached plaintiffs' employment contracts from inception to June 30, 2009, by improperly deducting certain charges from their supplemental compensation. Plaintiffs also sought recovery under *quantum meruit* for the reasonable value of their services from July 1, 2009, through September 4, 2009, when they worked at Rush without signed contracts while attempting to negotiate new contracts. Plaintiffs further alleged that Rush and Dr. Tharp violated the Consumer Fraud Act and intentionally interfered with their prospective economic advantage after they left Rush's employ by sending out appointment reminder postcards to patients which improperly bore

[1] Plaintiffs have dismissed their appeal as to RHA and, therefore, we need not discuss the claims against it.

plaintiffs' names as if they still worked for Rush, and by refusing to provide plaintiffs' new contact information to inquiring patients.

¶ 4 The following evidence was introduced at the jury trial on plaintiffs' breach of contract and intentional interference with prospective economic advantage counts.

¶ 5 I. BACKGROUND

¶ 6 Plaintiffs are board-certified dermatologists with a special expertise in "Mohs" micrographic surgery for the treatment of skin cancer. Dr. Brown began his employment as director of Mohs and dermatologic surgery in Rush's dermatology department about August 14, 2001; Dr. Dimitropoulos began working in Rush's dermatology department about June 13, 2006. While so employed, plaintiffs were the only Mohs' surgeons at Rush, seeing patients at Rush's Chicago campus and at satellite clinics in Skokie and Westmont.

¶ 7 The terms of plaintiffs' employment were set forth in an initial offer letter, and in a separate agreement, the "Faculty Effort Allocation and Compensation Agreement" (FEACA), which they received each year of their respective employment terms.

¶ 8 The offer letters set forth plaintiffs' starting annual salaries, and stated their responsibility for producing sufficient revenues to cover their own salaries and benefits plus that of their Mohs' technician, the cost of all medical supplies and drugs used exclusively for their practice, a percentage of all expenditures for operating the entire Rush dermatology clinical areas, and a 10% "tax" on gross revenues.

¶ 9 The offer letters also provided for payment of a year-end bonus (supplemental compensation) to plaintiffs, later changed to quarterly payments, based on total revenue collected from their billings minus the aforesaid expenses deducted from the revenue. Pursuant to the offer letters, plaintiffs were each entitled to 60% of this resulting figure.

¶ 10 Each offer letter provided that plaintiff would have to sign an annual contract, the FEACA. Each FEACA expired on June 30.

¶ 11 During their employment, plaintiffs were among the top five salaried employees at Rush, earning supplemental compensation well in excess of their base salaries. For example, in fiscal year 2009, Dr. Brown's billings were $6,706,740, his base salary was $750,000, and his total compensation was $1,830,004. Dr. Dimitropoulos' billings were $5,548,889, his base salary was $300,000, and his total compensation was $1,194,959.

¶ 12 On June 30, 2009, plaintiffs' 2008-2009 FEACAs had expired. There was a delay in their receiving proposed FEACAs for 2009-2010 because Dr. Tharp tried unsuccessfully to persuade Rush to improve their compensation.

¶ 13 On July 2, 2009, plaintiffs signed a contract with Lakeland Hospital in St. Joseph, Michigan, to operate a practice there for three years, starting September 1, 2009. Plaintiffs did not inform Dr. Tharp of this contract until mid-July.

¶ 14 Dr. Tharp refused to consent to plaintiffs' opening of the clinic in St. Joseph as Rush does not permit full-time employed physicians to own practices with no connection to Rush. Nonetheless, plaintiffs kept working to open the St. Joseph office; on July 27, 2009, plaintiffs and Lakeland Hospital agreed to a startup loan of $650,000.

¶ 15 On July 29, 2009, plaintiffs were given proposed FEACAs for 2009-2010. They did not sign. Instead, plaintiffs unsuccessfully asked Rush's Dean, and then its CEO, to let them keep their jobs at Rush while having their own office in St. Joseph. Meanwhile, Richard Davis, an official in Rush's Office of the Dean who administered Rush contracts with physicians, learned plaintiffs had not signed their 2009-2010 FEACAs. Federal law requires Rush to have written agreements with their physicians. To force plaintiffs to decide whether they would sign or leave,

Mr. Davis withheld paying plaintiffs the supplemental compensation due them for the last quarter of the prior fiscal year. Plaintiffs still did not sign.

¶ 16 Rush set a deadline of August 14, 2009, for plaintiffs to sign, and plaintiffs made a counterproposal requiring Rush to consent to the St. Joseph office. On August 26, 2009, Dr. Tharp ended the standoff, writing that plaintiffs' employment would end no later than November 24, 2009, and asking that they "work professionally and cooperatively during this transitional period to provide optimal patient care." He also added: "[W]e will not be continuing your bonus [supplemental compensation] arrangement for the current fiscal year."

¶ 17 On August 29, 2009, Dr. Brown responded by letter to Dr. Tharp's termination letter, stating that plaintiffs were willing to continue seeing patients provided there was a good faith effort to negotiate a severance and settlement of amounts due them. Dr. Brown set forth a settlement proposal with multiple components, ultimately demanding $750,000 each for himself and Dr. Dimitropoulos. Dr. Brown further stated that absent an agreement, plaintiffs' last day of employment would be September 4, 2009. Neither Dr. Tharp nor anyone from Rush responded to Dr. Brown's offer, and plaintiffs left Rush's employ on September 4, 2009.

¶ 18 During the standoff over the St. Joseph office from July 1, 2009, through September 4, 2009, when plaintiffs worked at Rush with no signed contracts, Rush chose to continue their base salary payments at the rate of $750,000 a year for Dr. Brown and $300,000 a year for Dr. Dimitropoulos. After plaintiffs left Rush, it paid them their supplemental compensation for the final quarter of 2008-2009, on which it had held up payment to make them decide whether they would sign their 2009-2010 contracts. Rush refused to pay plaintiffs supplemental compensation for their work performed during July 1, 2009, to September 4, 2009, since they had no signed contracts during that period and hence no contractual right to payment of any particular amount.

¶ 19 After plaintiffs left Rush on September 4, 2009, they did not open their Skokie office until mid-December and their Darien office until January 2010. Dr. Tharp testified that, in the weeks after plaintiffs left: "[w]e didn't know where they were practicing at, but we knew that they had a practice that they were trying to form in Michigan." Rush called hundreds of plaintiffs' patients to reschedule them with other dermatologists, and if patients asked where plaintiffs were, the staff replied that Rush had no information they were practicing in Illinois. Sylvia Aguilar, an appointment scheduler in Rush's downtown clinic, testified that Dr. Dimitropoulos told her maybe a month after plaintiffs left Rush that they were working on opening up new offices, but that the offices were not yet open. Ms. Aguilar spoke to her supervisor, Toni Mireles, who told her to tell patients seeking plaintiffs that "we didn't have any information."

¶ 20 Six weeks after plaintiffs left Rush, Dr. Dimitropoulos gave business cards for purported new Skokie and Darien offices to a Rush clerical employee and demanded they be passed out to patients. Dr. Tharp testified he viewed this demand as inappropriate, because it was made to a clerical employee rather than to him and because the Skokie and Darien offices were not then open. The business cards were not passed out.

¶ 21 On November 5, 2009, plaintiffs emailed Dr. Tharp and others at Rush announcing the "opening of our new practice," and giving addresses, phone numbers, and office hours of the purported Skokie and Darien offices. Dr. Tharp found this email "dishonest." Asked why, he testified: "Because they weren't open. *** I'm not going to send somebody who's got a dermatologic problem over to an office that doesn't exist and isn't open." He, therefore, told Ms. Mireles that Rush was not required to forward the email contact information. Ms. Mireles

continued to direct the staff to tell any callers that they had no forwarding information and to try to schedule patients with the physicians they had at Rush.

¶ 22 In late March 2010, a Rush attorney asked her why plaintiffs' contact information was being withheld from patients. When she told him about Dr. Tharp's directive, the attorney told her to put together a corrective plan so the entire department would know that they were to give out plaintiffs' contact information, the same information Dr. Dimitropoulos had given her in November 2009.

¶ 23 Dr. Tharp then sent a memorandum on March 25, 2010, to Rush's dermatology faculty, residents, managers, and support staff stating that the dermatology clinic managers now had plaintiffs' contact information and that staff should "refer the caller to the clinic manager who will provide the information requested or will handle the transfer of medical records."

¶ 24 During this general time-period, postcards were sent by Rush to patients reminding them to make appointments; because of a clerical mistake, somewhere between 5 and 50 of those postcards improperly bore plaintiffs' names as still working at Rush.

¶ 25 II. EXPERT TESTIMONY

¶ 26 Plaintiffs called two experts at trial to provide evidence regarding the proper amount of damages to be awarded for defendants' alleged breach of contract and intentional interference with prospective economic advantage.

¶ 27 Michael Pakter, a certified public accountant, testified concerning the amount of supplemental compensation owed plaintiffs through June 30, 2009, the amount of supplemental compensation owed for the period of July 1, 2009, through September 4, 2009, and the profits lost by plaintiffs' new clinics in Skokie and Darien (collectively referred to as University Dermatology) in their first three years of operation due to defendants' alleged interference. Mr.

Pakter determined that plaintiffs were collectively owed $1,086,701 as supplemental compensation through June 30, 2009, and $590,614 for the period of July 1, 2009, through September 4, 2009. Mr. Pakter computed University Dermatology's net revenue loss to be $928,722 in 2010 and $201,643 in 2011.

¶ 28 Jeff Litvak, also a certified public accountant, testified plaintiffs' total damages for the alleged breach of contract and the alleged improper withholding of supplemental compensation was $1,571,000. With respect to the damages for defendants' alleged interference with plaintiffs' prospective economic advantage, Mr. Litvak testified that the jury would have to determine how many patients were lost as a result of defendants' conduct and then multiply that amount by $267 (which represented the per-patient loss of profit).

¶ 29 III. EVIDENCE REBUTTING PLAINTIFFS' DAMAGES CLAIM

¶ 30 The 2010 and 2011 University Dermatology tax returns claimed losses resulting from cash expenses totaling about $1.7 million for "marketing and business development," and "research, clinical trials" as well as other costs not relevant here. Defendants offered evidence that the services for which much of this $1.7 million was allegedly spent never occurred and that the payments were disguised profit distributions to plaintiffs. Particularly, reported expenses of about $822,500 for "marketing," were paid to Sprout Development (Sprout), a limited liability corporation wholly owned by Dr. Brown. University Dermatology had no written contracts with Sprout, Sprout sent it no invoices, and there were no records of anything Sprout did for University Dermatology. Dr. Brown could not explain how University Dermatology determined how much to pay Sprout for marketing services.

¶ 31 Defense counsel elicited testimony from Dr. Brown that he had previously been audited and questioned whether, as a result of that audit, he had learned the importance of having

adequate documentation to show that the payments to Sprout were for marketing and business development services as opposed to disguised profit distributions to him. Dr. Brown responded that he did not know the importance of having documentation to support his claim that payments were made to Sprout for marketing and business development services.

¶ 32 Similarly, reported expenses of $812,500 for "research & development" and "website development" were paid to two corporations, Big Dimo and Vespidae, wholly owned by Dr. Dimitropoulos. When Dr. Dimitropoulos testified he had given defendants documentation showing research and clinical trials by Big Dimo, and later claimed to have produced documentation showing website development by Vespidae, the trial court each time called a recess, ascertained that no such documentation had been produced, and instructed the jury to that effect.

¶ 33 As further evidence that University Dermatology's expense payments for supposed marketing, research, and website services were really disguised equal distributions of profit to plaintiffs as the two equal shareholders in University Dermatology, defendants showed that University Dermatology usually made these payments by equal checks written twice a month to Sprout and to either Big Dimo or Vespidae.

¶ 34 IV. DIRECTED VERDICT

¶ 35 The trial court entered a directed verdict for defendants on plaintiffs' claim that defendants intentionally interfered with their prospective economic advantage by sending the reminder postcards with plaintiffs' names on them as if they still worked for Rush. The court submitted the remainder of plaintiffs' tortious interference claim, and its breach of contract claims, to the jury.

¶ 36 V. JURY VERDICT

¶ 37 Following all the evidence, the jury returned verdicts in favor of Rush on plaintiffs' contract claims, and in favor of Rush and Dr. Tharp on their intentional interference with a prospective economic advantage claim.

¶ 38 VI. BENCH TRIAL

¶ 39 The cause then proceeded to a bench trial on plaintiffs' *quantum meruit* claim and Consumer Fraud Act claim. The parties agreed that the trial court could consider any evidence presented at the jury trial, in addition to the evidence presented at the bench trial, when rendering its decision.

¶ 40 The only witness at the bench trial was Frederick Wenzel, a professor of business management and healthcare and fellow at the American College of Medical Practice Executives. Mr. Wenzel testified to what plaintiffs should have been paid for their work during July 1, 2009, to September 4, 2009, when they were working for Rush without signed contracts. Mr. Wenzel concluded that Dr. Brown's compensation should have been $234,530, and Dr. Dimitropoulos' compensation should have been $183,016, which was significantly more than plaintiffs were paid by Rush for the two-month period in question.

¶ 41 After hearing closing arguments, the trial court ruled in favor of defendants on plaintiffs' *quantum meruit* and Consumer Fraud Act claims. No post-trial motion was filed. Plaintiffs appeal.

¶ 42 VII. ANALYSIS

¶ 43 First, plaintiffs argue the trial court erred in entering judgment for defendants on their *quantum meruit* claim.

¶ 44 We review a challenge to the trial court's rulings after a bench trial using the manifest-weight-of-the-evidence standard of review. *Kalata v. Anheuser-Bush Companies, Inc.*, 144 Ill.

2d 425, 433 (1991). A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when the findings are unreasonable, arbitrary, or not based on the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Limited USA*, 384 Ill. App. 3d 849, 859 (2008). In other words, the " 'trial court's judgment following a bench trial will be upheld if there is any evidence supporting it.' " *Southwest Bank of St. Louis v. Poulokefalos*, 401 Ill. App. 3d 884, 890 (2010) (quoting *Nokomis Quarry Co. v. Dietl*, 333 Ill. App. 3d 480, 484 (2002)).

¶ 45 "To recover under a *quantum meruit* theory, the plaintiff must prove that: (1) he performed a service to benefit the defendant, (2) he did not perform this service gratuitously, (3) [the] defendant accepted this service, and (4) no contract existed to prescribe payment for this service. [Citations.] *Quantum meruit*, which literally means 'as much as he deserves,' describes a cause of action seeking recovery for the reasonable value of services non-gratuitously rendered, but where no contract exists to dictate payment. [Citation.] However, the mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor. [Citations.] Instead, the burden is on the provider, who must show that valuable services were furnished by him, that they were received by the defendant, and that the circumstances are such that it would be unjust for the defendant to retain these without paying for them. [Citation.] Accordingly, the measure of recovery is the reasonable value of work [citation], and, in order to recover under this doctrine, the provider must prove that the services performed were of some measurable benefit to the defendant [citation]." (Internal quotation marks omitted.) *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (2010).

¶ 46 Recovery under *quantum meruit* requires a reasonable expectation by plaintiffs that defendants would pay for the services rendered. *Cruz v. Stapleton*, 251 Ill. App. 3d 833, 837 (1993); *Paradise v. Augustana Hospital & Health Care Center*, 222 Ill. App. 3d 672, 677 (1991).

¶ 47 In their *quantum meruit* claim, plaintiffs sought payment of their supplemental compensation for the period of July 1, 2009, through September 4, 2009, when they worked for Rush without signed contracts while attempting to negotiate their new contracts that would allow them to operate their clinic in St. Joseph, Michigan. In ruling for defendants on plaintiffs' *quantum meruit* claim, the trial court found that plaintiffs did not have a reasonable expectation that they would be paid their supplemental compensation during the July 1, 2009-September 4, 2009, period when they were working for Rush without signed contracts.

¶ 48 The trial court's finding was not against the manifest weight of the evidence. From July 1, 2009, to September 4, 2009, Rush paid plaintiffs their base salaries, but no supplemental compensation, while they were working without signed contracts for 2009-2010. Dr. Brown testified that no one from Rush ever told him they would be paid their supplemental compensation while the contracts were unsigned. In fact, when responding to an inquiry from plaintiffs in August 2009 regarding when they would be paid their supplemental compensation for the last quarter of the *prior* fiscal year which had been earned pursuant to the 2008-2009 contract, Mr. Davis informed plaintiffs via email on August 11, 2009, that the 2008-2009 contract had expired and it was Rush's "standard practice" not to pay supplemental compensation until a new, signed contract (the FEACA) is on file. Mr. Davis stated in a second email to plaintiffs on August 11, 2009, that the prior quarter's supplemental compensation would be processed when they signed the FEACAs for the 2009-2010 year. Plaintiffs were, thus, put on notice as of August 11, 2009, that signed FEACAs were a necessary prerequisite for the payment

of their supplemental compensation, even for supplemental compensation that had been earned under a prior contract but not yet paid; despite this notice, plaintiffs continued to work for Rush without signed contracts until September 4, 2009, when they left Rush's employ. Given that plaintiffs were made aware, during their dispute with Rush over the 2009-2010 FEACAs, that their failure to sign those contracts would prevent them from receiving their supplemental compensation, it was not against the manifest weight of the evidence for the trial court to find that plaintiffs cannot reasonably expect to be paid supplemental compensation for the two-month period in question during which they worked for Rush without signed 2009-2010 FEACAs.

¶ 49 Next, plaintiffs argue the trial court erred in entering judgment for defendants on their Consumer Fraud Act claim.

¶ 50 The Consumer Fraud Act states in relevant part:

> "Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact,*** in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby." 815 ILCS 505/2 (West 2012).

¶ 51 To state a claim under the Consumer Fraud Act, plaintiffs must plead specific facts showing: (1) a deceptive act or practice by defendants; (2) defendants' intent that others rely on the deception; (3) the deception occurred in the course of trade or commerce; and (4) the consumer fraud proximately caused plaintiffs' injuries. *Phillips v. DePaul University*, 2014 IL App (1st) 122817, ¶ 30.

¶ 52 Plaintiffs' claim brought pursuant to the Consumer Fraud Act and heard by the trial court was limited to allegedly deceptive conduct committed by Dr. Tharp, namely, his directing the staff at Rush to withhold (conceal) plaintiffs' contact information from inquiring patients until March 2010 in violation of American Medical Association (AMA) Ethics Opinion 7.03. AMA Ethics Opinion 7.03 provides:

> "The patients of a physician who leaves a group practice should be notified that the physician is leaving the group. Patients of the physician should also be informed of the physician's new address and offered the opportunity to have their medical records forwarded to the departing physician at his or her new practice location. It is unethical to withhold such information upon request of a patient." AMA Code of Medical Ethics Op. 7.03.

¶ 53 In entering judgment in favor of defendants on plaintiffs' Consumer Fraud Act claim, the trial court stated only that plaintiffs "failed to meet" their burden of proof. The trial court's finding was not against the manifest weight of the evidence, where the court could have found from the trial testimony that Dr. Tharp's failure to provide patients with plaintiffs' contact information until March 2010 was not a deceptive act or practice actionable under the Consumer Fraud Act.

¶ 54 We examine the evidence.

¶ 55 Dr. Tharp testified that in the initial weeks after plaintiffs left Rush, defendants were unaware of where they were practicing at, and only knew plaintiffs were trying to establish a practice in Michigan. Six weeks after plaintiffs left Rush, Dr. Dimitropoulos gave business cards for purported new offices in Skokie and Darien to a Rush clerical employee and demanded they be passed out to patients. However, Dr. Tharp testified he viewed this demand as inappropriate,

because it was made to a clerical employee rather than by formal notification to him as chairman of Rush's dermatology department and because he knew plaintiffs' new offices were not yet open. Plaintiffs' business cards were not passed out.

¶ 56 On November 5, 2009, plaintiffs emailed Dr. Tharp and others at Rush announcing the opening of their new practice and giving contact information for the purported Skokie and Darien offices. However, Dr. Tharp testified he found the email "dishonest" because the Skokie and Darien offices still were not open and he felt uncomfortable directing patients to an office not yet in existence. Accordingly, Dr. Tharp directed his staff not to forward the contact information.

¶ 57 When plaintiffs finally did open their Skokie office in mid-December 2009 and their Darien office in January 2010, they sent Dr. Tharp no notice. In March 2010, a Rush attorney directed that plaintiffs' contact information should be given out as their offices were now open, and so Dr. Tharp sent out a memorandum that month directing the staff to pass on the contact information to patients.

¶ 58 On these facts, the trial court could find there was no deceptive act or practice on the part of Dr. Tharp in failing to provide contact information for plaintiffs until March 2010, where: he was unaware for several weeks after plaintiffs left Rush in September 2009 of plaintiffs' new practice; the initial contact information provided to his staff in October and November 2009 was inaccurate in that plaintiffs listed their Skokie and Darien offices as open when they were in fact closed; Dr. Tharp was not notified by plaintiffs when they actually opened their Skokie and Darien offices in December 2009 and January 2010, respectively; and in March 2010 when the Rush attorney discovered that plaintiffs' offices were open and directed that patients be so apprised, Dr. Tharp directed his staff to provide patients with plaintiffs' contact information.

¶ 59 As there was evidence supporting the trial court's finding in favor of defendants on plaintiffs' Consumer Fraud Act claim, namely that plaintiffs failed to prove the necessary element of deceptive conduct on the part of Dr. Tharp, we affirm the trial court.

¶ 60 Next, plaintiffs argue that the trial court erred in denying their motion *in limine* to bar defendants from introducing into evidence during the jury trial certain financial information and corporate tax returns calling into question plaintiffs' claims that University Dermatology showed no profit in its first two years. Plaintiffs also contend defendants' closing arguments referencing this evidence and criticizing plaintiffs' veracity for claiming University Dermatology earned no profits in its first two years was erroneous. Plaintiffs forfeited review by failing to file a post-trial motion raising these issues. *Arient v. Shaik*, 2015 IL App (1st) 133969, ¶¶ 22-36.

¶ 61 Plaintiffs argue for plain-error review. "The plain error doctrine may be applied in civil cases only where the act complained of was a prejudicial error so egregious that it deprived the complaining party of a fair trial and substantially impaired the integrity of the judicial process itself." *Id*. ¶ 37. Application of the plain error doctrine to civil cases "should be exceedingly rare." *Id*.

¶ 62 There was no such exceedingly rare plain error here. Regarding their damages from defendants' alleged intentional interference with their prospective economic advantage, plaintiffs testified that their new practice, University Dermatology, lost monies and had no profit its first two years of existence due to defendants' tortious conduct. The financial information and tax returns at issue here were properly admitted and argued to the jury to rebut plaintiffs' damages claims by showing that certain expenses paid by University Dermatology to corporations wholly owned by plaintiffs were, in fact, disguised profit distributions to plaintiffs.

¶ 63 Next, plaintiffs cursorily argue that defendants should have called an expert at trial to lay a proper foundation for the admissibility of all the financial evidence calling into question plaintiffs' claims that University Dermatology showed no profit in its first two years of existence. Plaintiffs cite *In re Marriage of Levinson*, 2013 IL App (1st) 121696, which held that experts were required there to "untangle the complex nature of [the husband's] holdings [consisting of] approximately 20 parcels of real estate, some in limited liability companies, each with different operating agreements, each with different owners and different rental cash flows." *Id*. ¶ 41.

¶ 64 The financial evidence here showed that University Dermatology received no marketing, website development, or research, clinical trials in return for the monies it paid to plaintiffs' corporations ostensibly for those services and hence, defendants argued that those payments were profit distributions to plaintiffs. Unlike *Levinson*, this financial evidence was not so complex or so far beyond the ken of the average juror to understand as to require expert testimony. See *Augenstein v. Pulley*, 191 Ill. App. 3d 664, 681 (1989) (expert testimony is generally not admissible unless it will aid the fact finder in the resolution of the dispute). The financial evidence was easily understandable and, therefore, admissible without the need of any expert called by the defense.

¶ 65 Finally, plaintiffs argue that the trial court erred by denying their motion to file a third-amended complaint, after discovery had closed and four months before trial began, adding new claims that an undisclosed, so-called "Dean's Tax" had been improperly deducted from their compensation while at Rush.

¶ 66 The decision whether to allow an amendment is a matter of the trial court's discretion which will not be reversed absent an abuse thereof. *Seitz-Partridge v. Loyola University of Chicago*, 409 Ill. App. 3d 76, 86 (2011). In determining whether the trial court abused its

discretion, we consider: (1) whether the proposed amended complaint would cure defective pleadings; (2) whether the amendment would surprise or prejudice the opposing parties; (3) whether the amendment was timely filed; and (4) whether the moving party had prior opportunities to amend. *Id*.

¶ 67 The record shows that the FEACAs expressly authorized the Dean's Tax, and that the Dean's Tax was expressly identified in "Departmental Budget Comparison" (DBC) reports that were received by plaintiffs on a "fairly regular" basis according to Dr. Brown's testimony. Patricia Cole-Acosta, Rush's practice administrator for the department of dermatology, testified she provided the DBCs to plaintiffs monthly, that plaintiffs asked her questions about the DBCs "from time to time," and that she always answered those questions to the best of her ability.

¶ 68 This evidence indicates that plaintiffs should have been aware of the Dean's Tax during their employment, long before their lawsuit and, thus, that the amended pleading filed after discovery closed, containing new allegations regarding the Dean's Tax, was not timely. Accordingly, the trial court did not abuse its discretion in denying plaintiffs' motion for leave to file a third-amended complaint.

¶ 69 For the foregoing reasons, we affirm the circuit court. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 70 Affirmed.