

Nos. 1-13-2555 & 1-13-2556 Cons.

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

JYOTI MOHANTY, M.D. and ROGHU)	Appeal from the Circuit Court
RAMADURAI, M.D.,)	
)	of Cook County.
Plaintiffs and)	
Counterdefendants-Appellants,)	
)	Nos. 03 CH 7986 &
v.)	03 CH 7987 Cons.
)	
ST. JOHN HEART CLINIC, S.C.,)	
)	Honorable Alan S. Goldberg,
Defendant and)	Judge Presiding.
Counterplaintiff-Appellee,)	
and)	
)	
JOHN P. MONTEVERDE, M.D.,)	
)	
Defendant-Appellee.)	

JUSTICE HALL delivered the judgment of the court.

Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly entered judgments in favor of the defendants and against the plaintiffs on the plaintiffs' complaints for declaratory judgment and on the defendants' counterclaim. The denial of the plaintiffs' motion for judgment notwithstanding the verdict or for a new trial was proper. The trial court did not abuse its discretion in its evidentiary rulings and in instructing the jury. The trial court did not abuse its discretion in denying the plaintiffs' multiple motions for leave to file an amended complaint and denying their motion for reconsideration of those rulings. The award of attorney fees to the defendant St. John Heart Clinic was proper as it was the prevailing party. The amount of the attorney fees award was reasonable and not an abuse of discretion.

¶ 2 The plaintiffs, Jyoti Mohanty, M.D. and Raghu Ramadurai, M.D., filed separate complaints seeking declaratory judgments against St. John Heart Clinic, S.C. (St. John), and John P. Monteverde, M.D.¹ St. John filed counterclaims against the plaintiffs for breach of a restrictive covenant contained in their employment agreements. Following trial, the jury found in favor of St. John on the plaintiffs' declaratory judgment complaints and found in favor of St. John on its counterclaims. Following the denial of the plaintiffs' posttrial motions, the trial court held an evidentiary hearing and awarded attorney fees to St. John under the fee-shifting provision of the employment agreements.

¶ 3 On appeal, the plaintiffs contend that: (1) the jury's verdict in favor of St. John's counterclaims for breach of contract and against the plaintiffs on their declaratory judgment complaints must be reversed; (2) multiple errors by the trial court denied the plaintiffs a fair trial; (3) the trial court erred when it denied the plaintiffs leave to amend their complaints; and (4) the award of attorneys fees must be reversed. On review, we determine that the jury's verdicts were not erroneous as a matter of law and were supported by the evidence; the trial court's rulings and instructions to the jury were proper; the trial court did not abuse its discretion when it denied the plaintiffs' motions to amend their complaints; and the award of

¹In its judgment order, the trial court dismissed Dr. Monteverde as a defendant. Only St. John will be considered the defendant for purposes of this order.

attorney fees to St. John was proper and reasonable under the terms of the restrictive covenant.

¶ 4

BACKGROUND

¶ 5

I. Prior Litigation²

¶ 6

A. Facts

¶ 7

Dr. Monteverde, board-certified in internal medicine and cardiology, was the sole shareholder and owner of St. John which he established in 1978. The plaintiffs were employed by St. John. Their employment contracts contained restrictive covenants. Both contracts provided that the doctors "shall not practice medicine within a [specified] radius of any Clinic office or at any of the four hospitals where the Clinic operated." Dr. Mohanty was restricted from practicing medicine within a radius of five miles for five years, and Dr. Ramadurai was restricted from practicing medicine within a radius of two miles for three years. On March 12, 2003, the plaintiffs notified Dr. Monteverde of their intention to terminate their employment.

¶ 8

B. Preliminary Injunction

¶ 9

1. Circuit Court Proceedings

¶ 10

In May 2003, prior to leaving St. John, the plaintiffs filed separate complaints for declaratory judgment against the defendants. Both complaints alleged that the restrictive covenants were void against public policy and unenforceable due to Dr. Monteverde's multiple breaches of their employment contracts. St. John answered, denying the claims, and filed counterclaims for declaratory judgment and seeking preliminary and permanent

²The factual and procedural history of this litigation is taken from the supreme court's opinion in *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52 (2006) and the appellate court's opinion in *Mohanty v. St. John Heart Clinic, S.C.*, 358 Ill. App. 3d 902 (2005).

injunctions, and for other relief. The trial court granted St. John's emergency motion for a temporary restraining order.

¶ 11 Following an evidentiary hearing, the trial court found that the plaintiffs had not established by a preponderance of the evidence that there was a material breach by St. John of the plaintiffs' employment contracts. The court denied the defendants' request for a preliminary injunction finding that the activity restriction in the employment contracts was greater than necessary to protect St. John's interests.

¶ 12 **2. Appellate Court Proceedings**

¶ 13 St. John appealed the denial of the preliminary injunction to this court. *Mohanty v. St. John Heart Clinic, S.C.*, 358 Ill. App. 3d 902 (2005). This court reversed, finding that the restriction on the practice of medicine contained in the employment agreement would not cause the plaintiffs undue hardship and was not greater than was necessary to protect St. John's interest. We determined that a full hearing on the merits was required for a determination as to whether St. John materially breached the employment contracts to void the restrictive covenants. The case was remanded to the circuit court with directions that a preliminary injunction be granted to St. John pending further hearings.

¶ 14 **3. Supreme Court Proceedings**

¶ 15 On appeal by the plaintiffs, the supreme court affirmed the granting of the preliminary injunction to St. John. The court identified the enforceability of the restrictive covenants as the "overriding issue" in the appeal. In order to determine the enforceability, the court first had to consider whether a prior breach of the plaintiffs' employment contracts rendered the contracts unenforceable. After reviewing the evidence presented at the hearing, the supreme court determined that the trial court's ruling that the plaintiffs failed to establish a material

breach of their employment contracts by St. John was not against the manifest weight of the evidence. The court concluded that the plaintiffs' breach-of-contract claim could not serve as a basis for denying St. John a preliminary injunction. *Mohanty*, 225 Ill. 2d at 75.

¶ 16 The supreme court rejected the plaintiffs' arguments that the restrictive covenants were unenforceable because they were overbroad. The court concluded that the temporal and activity restrictions contained in the covenants were not unreasonable and not greater than was necessary to protect St. John's interest. *Mohanty*, 225 Ill. 2d at 77-79.

¶ 17 II. Proceedings on Remand

¶ 18 A. Pretrial Rulings

¶ 19 The plaintiffs' complaints and St. John's answer and counterclaims were filed in 2003. Between 2004 and the trial in 2013, the plaintiffs filed several motions to amend their complaints to add breach-of-contract and fraud claims, and a claim under the Wage Payment and Collection Act (Wage Act) (820 ILCS 115/1 *et seq.* (West 2002)). All of the motions to amend the complaint were denied by the trial court. Prior to trial and at the trial court's suggestion, St. John withdrew several of the claims raised in its counterclaims.³ The court also denied the plaintiffs' oral motion to have the jury decide the issue of the award of attorney fees provided for in the employment contracts. The case went to trial on the plaintiffs' claim that restrictive covenants were void and unenforceable based on material breaches of the compensation provisions of their employment contracts by St. John, and St. John's counterclaims that the plaintiffs violated the restrictive covenants in their employment contracts.

¶ 20 B. Jury Trial

³St. John's unjust enrichment claim was withdrawn at the close of the evidence.

¶ 21 The plaintiffs' complaints for declaratory judgment against St. John and St. John's counterclaims against the plaintiffs for breach of the restrictive covenant were tried together. Several of the witnesses' testimony pertained to both the complaints and the counterclaims. The entire testimony of those witnesses is summarized. Where appropriate, we have indicated the issue to which the testimony pertains.

¶ 22 1. Evelyn Yap

¶ 23 Evelyn Yap was St. John's office manager. From 1979 to 2000, she prepared the bills St. John submitted to third-party payors, such as Blue Cross/Blue Shield, Medicare and Public Aid. The bills identified the service and the doctor who performed it. When the payments were received, she deposited them in the account of the doctor who performed the service. Mrs. Yap was also responsible for calculating the plaintiffs' fiscal year-end compensation. Any payments not deposited to the plaintiffs' accounts would not be considered in calculating their compensation.

¶ 24 Between May 1993 and November 1995, Dr. Ramadurai's diagnostic laboratory work was billed in Dr. Monteverde's name. Mrs. Yap explained that both Dr. Monteverde and Dr. Ramadurai instructed her to bill that way because insurance companies would not pay for Dr. Ramadurai's work since he was not yet board-certified. It was not until 1994 that Mrs. Yap began reimbursing Dr. Ramadurai the payments for his work that were deposited to Dr. Monteverde's account. Mrs. Yap maintained that Dr. Ramadurai suggested the reimbursements be based on the Medicare fee schedule which was lower than the private insurance carriers' rates.

¶ 25 Mrs. Yap explained that prior to 1995, St. John billed "globally," meaning that all charges were included on the bill sent to the third-party payor and submitted solely in the name of the

doctor who performed the service. In December 1995, St. John ceased the global billing procedure for tests. Until 1997, the bills for tests listed Dr. Monteverde as the service provider for the "technical component" (TC) and Dr. Ramadurai as the service provider for the "professional component" (PC). In 2000 or 2001, only the myoview stress test (also known as the stress thallium test) was billed listing a TC provider and a PC provider.

¶ 26 In 2000, St. John hired an outside billing service. Mrs. Yap sent the charge slips with the information as to the doctor and the service performed to the billing service. Mrs. Yap continued to receive the payments and deposited them into the doctors' individual accounts. She then sent the explanation of benefits to the billing service, which then prepared and sent the bills to the patients for the balance due. When St. John began performing the myoview stress test, the third-party payors would send checks payable to Dr. Monteverde for the TC of the test. These fees were not shared with the plaintiffs.

¶ 27 2. Raghu Ramadurai, M.D.

¶ 28 a. Breach of the Compensation Portion of His Employment Contract

¶ 29 According to Dr. Ramadurai, board-certification was not required for participation in a managed-care program, such as the one accepted at St. John. Dr. Ramadurai did not recall ever receiving a letter from an insurer refusing to reimburse for services he performed because he was not board-certified. The doctor did not recall having a conversation with Dr. Monteverde and Mrs. Yap that St. John could not be reimbursed for his services because he was not board-certified. Mrs. Yap never told him that St. John was going to bill his services under Dr. Monteverde's name.

¶ 30 Dr. Ramadurai understood that under his employment contract, he was to be reimbursed 50% (later raised to 55%) of all the money he brought into St. John by treating patients and

performing tests. While tests performed in the office were supposed to be billed globally, Dr. Ramadurai did not know if in fact they were. Late in 2001, Dr. Ramadurai questioned Dr. Monteverde about the reimbursement of the TC of the myoview stress tests going solely to Dr. Monteverde. Dr. Monteverde assured him it would be corrected in Dr. Ramadurai's year-end bonus. Dr. Ramadurai understood Dr. Monteverde's statement to mean that the TC would be reimbursed as per his contract, *i.e.*, he would receive 55% of the TC. However, no reimbursements for the TC of the tests he ordered were made to his account at St. John.

¶ 31 b. Breach of the Restrictive Covenant

¶ 32 Dr. Ramadurai acknowledged that beginning March 2004, he practiced medicine within the two-mile restriction set forth in the restrictive covenant contained in his employment agreement. He shared space with Wicker Park Heart Specialists, located two floors above St. John. Dr. Ramadurai further acknowledged that he practiced medicine at the four hospitals named in the restrictive covenant from March 2004 until July 13, 2006, at which time the restrictive covenant ended.

¶ 33 Dr. Ramadurai explained that the Wicker Park Heart Specialists had a machine for performing the myoview stress test but did not have a nuclear cardiologist licensed to read the scans. Some of the scans, including ones from Dr. Ramadurai's patients, were sent to Dr. Mohanty in Florida to be read by him.

¶ 34 3. Jyoti Mohanty, M.D.

¶ 35 a. Breach of the Compensation Portion of His Employment Contract

¶ 36 Dr. Mohanty began his employment at St. John in July 2000. His employment contract provided that he was to be paid 50% of his gross receipts. Dr. Monteverde purchased a

nuclear camera which could be used to perform the myoview stress test. Dr. Mohanty was the only doctor at St. John licensed to read those scans.

¶ 37 Initially, myoview stress tests were billed globally, as were all the other tests performed at St. John, with no differentiation for the TC or PC. Dr. Mohanty did not know when a new charge slip was introduced which billed the TC/PC components separately. The myoview stress test was the only test performed at St. John that had nuclear components. While other tests had TC and PC, they were not billed separately. Before seeking reimbursement from the third-party payors, the doctor would have to certify that he made the decision that the test was medically necessary. Dr. Mohanty never authorized Dr. Monteverde to make a certification on Dr. Mohanty's behalf. Dr. Mohanty did not learn what the TC/PC billing codes meant until after he left St. John.

¶ 38 In either 2001 or 2002, Dr. Mohanty questioned the new billing form. Dr. Monteverde told him he would receive a credit to his gross receipts. However, Dr. Mohanty's gross receipts for his first year of employment at St. John did not show any reimbursement for the TC amounts paid to Dr. Monteverde for tests on Dr. Mohanty's patients, thereby decreasing the size of Dr. Mohanty's year-end bonus. Dr. Mohanty did not learn that his account was not being properly credited until after he left St. John.

¶ 39 b. Breach of the Restrictive Covenant

¶ 40 Dr. Mohanty read the scans from the myoview stress test for Dr. Monteverde and Dr. Ramadurai as well as for his own patients. After he moved to Florida in November 2003, he began reading myoview stress test scans that were sent to him from Wicker Park Heart Specialists. They were located in the same building as St. John, but the patients had no connection with St. John. Dr. Mohanty acknowledged that Dr. Ramadurai became affiliated

with the Wicker Park Heart Specialists, but he did not know when that occurred. Wicker Park Heart Specialists paid Dr. Mohanty \$49,015 in 2005; \$42,401 in 2006; and \$26,452 in 2007, the last year he did any work for Wicker Park. Dr. Mohanty also served as one of two radiation safety officers for Wicker Park Heart Specialists.

¶ 41 Dr. Mohanty acknowledged that the restrictive covenant barred him from directly or indirectly owning, managing, being employed by, participating in or being connected in any manner to any office established for the practice of medicine. The doctor maintained that since he was located in Florida and was only reading the test scans, he was not violating the restrictive covenant.

¶ 42 4. Marvin Einhorn

¶ 43 Mr. Einhorn was a certified public accountant who owned Medisystems Corporation. Medisystems did the billing for St. John from 2000 until 2003. He prepared a summary of the payments to St. John for the myoview stress test for the years 2001- 2003.

¶ 44 St. John instructed Medisystems to bill the TC of the myoview stress tests in Dr. Monteverde's name. Based on the number of myoview stress tests, the explanation of benefits forms and using Medicare's payment schedules, Mr. Einhorn's calculations showed that \$101,242.98 was paid to Dr. Monteverde on Dr. Mohanty's patients and \$157,771.57 was paid to Dr. Monteverde on Dr. Ramadurai's patients.

¶ 45 Mr. Einhorn acknowledged that he included in his calculations 20 patients even though he could not locate any documentation to confirm whether St. John was reimbursed for their myoview stress tests or whether they took the myoview stress test. He further acknowledged that he had estimated \$44,845 in TC charges for 48 of Dr. Ramadurai's patients, but he had no payment records for those patients.

¶ 46

5. Alberto Jimenez

¶ 47

From 2001 to 2005, Mr. Jimenez worked at St. John as a nuclear cardiologist technologist. He was responsible for executing the myoview stress test, which included preparing the patient, imaging the patient, attaching an IV and injecting them with the radioisotope during the test, reimaging the patient and then processing the images. The doctor is present for the treadmill portion of the test, which lasts six to eight minutes. Only Mr. Jimenez and Dr. Mohanty were licensed to perform the myoview stress test. Following the stress portion of the test, the doctor remains with the patient in case there is a cardiac event. The doctor then gives his opinion of the test results. A second scan is performed after which the patient did not generally meet with the doctor.

¶ 48

Mr. Jimenez identified Dr. Monteverde as his supervisor. If there were problems with the equipment, he would report then to Dr. Monteverde. The doctor who ordered the myoview stress test was responsible for the patient during the course of the test and would be called to deal with a problem if one arose. If a patient experienced trouble walking after the test, Mr. Jimenez and/or one of the staff members would assist the patient.

¶ 49

6. John Monteverde, M.D.

¶ 50

a. Breach of Compensation Portion of Employment Contract

¶ 51

Between 1995 and 1997, tests performed by Dr. Ramadurai were billed under Dr. Monteverdi's name. In December 1995, Dr. Monteverdi instructed Mrs. Yap to bill the technical (TC) and professional components (PC) separately and to credit him with the TC, the largest percentage of the bill. Dr. Monteverdi thought he had informed Dr. Ramadurai of the billing procedure, but he was not certain he did.

¶ 52 Dr. Monteverde drafted the employment contracts for both Dr. Ramadurai and Dr. Mohanty. When Dr. Mohanty signed his contract in 1999, there were no discussions as to billing the TC separately from the PC. There were no discussions of partnership in St. John until the summer of 2002. New contracts were drafted giving the option to purchase stock in St. John and were given to the plaintiffs in December 2002. In February 2003, Dr. Monteverde met with the plaintiffs. Both plaintiffs wanted additional changes to the proposed employment contracts. None of the changes involved being reimbursed for the myoview stress tests. Dr. Monteverde would not agree to increase the plaintiffs' ownership in St. John. The plaintiffs tendered their resignations in March 2003. In April 2003, Dr. Monteverde offered Dr. Ramadurai an additional \$300,000 instead of the increase in ownership, but Dr. Ramadurai declined the offer. There was never any discussion concerning reimbursement for the TC of the myoview stress tests.

¶ 53 b. Breach of Restrictive Covenant

¶ 54 Dr. Monteverde experienced difficulty in reestablishing his referral business after the plaintiffs left. Dr. Ramadurai established a medical practice two floors above St. John and practiced medicine at two of the hospitals referred to in the restrictive covenant. Even though Dr. Mohanty moved to Florida in August 2003, Dr. Monteverde could not be sure he was not dealing with Dr. Monteverde's former patients. Dr. Monteverde explained that Dr. Mohanty was reading scans from nuclear tests which could have been at the request of Dr. Ramadurai. Dr. Monteverde hired doctors on a temporary basis to replace the plaintiffs.

¶ 55 7. Mark Morgan

¶ 56 In 2008, Mr. Morgan was employed as a senior paralegal by the law firm representing St. John. Mr. Morgan headed a team that reviewed the records and prepared an exhibit showing

the amounts paid by insurance companies to Dr. Ramadurai during the February 21, 2004, through July 13, 2006. After removing the hospitals that were not within the two mile radius set forth in the restrictive covenant in Dr. Ramadurai's employment contract, Mr. Morgan determined that Dr. Ramadurai had been paid \$1,634,009.81. The documentation indicated that the billings were for cardiac procedures.

¶ 57

C. Jury Instructions

¶ 58

The trial court denied Dr. Ramadurai's request to give the jury Illinois Pattern Jury Instructions, Civil, No. 5.01(2011) (hereinafter IPI Civil (2011) No. 5.01) providing that the failure to produce a witness or evidence permits the jury to infer that the missing evidence would have been adverse to the party who failed to produce the evidence. The court also refused the plaintiffs' request to give the jury Illinois Pattern Jury Instructions, Civil, No. 700.02 (hereinafter IPI Civil (2011) No.700.02), instructing the jury that in its breach of the restrictive covenant claims, St. John had the burden of proving that it performed its obligations under the employment contracts. Instead, the trial court instructed the jury that St. John had the burden of proving the plaintiffs' failure to perform their obligations under the contracts and the resulting damage to St. John. The plaintiffs objected to instructing the jury that if it found that the plaintiffs' breached the restrictive covenants, it could consider whether St. John sustained damages and could calculate how much money St. John lost because of the plaintiffs' breach. Finally, the trial court refused the plaintiffs' tendered non-IPI instruction that any ambiguity in the employment contracts must be construed against Dr. Monteverde as the drafter, finding it unnecessary.

¶ 59

D. Jury Verdicts

¶ 60 Following deliberations, the jury returned its verdicts in favor of St. John and against the plaintiffs on their declaratory judgment complaints. The jury found in favor of St. John and against the plaintiffs on its counterclaims for breach of their employment contracts, awarding St. John \$25,000 against Dr. Ramadurai and \$6,000 against Dr. Mohanty. The trial court entered judgment on the verdicts and awards and dismissed Dr. Monteverde as a defendant.

¶ 61 E. Posttrial Motions

¶ 62 The plaintiffs filed a joint posttrial motion for judgment notwithstanding the verdict or, in the alternative, for a new trial and for leave to file an amended complaint to conform the pleadings to the proof. The trial court denied the joint posttrial motion and for leave to file an amended complaint.

¶ 63 III. Attorney Fees

¶ 64 Pursuant to the fee-shifting provision in the plaintiffs' employment contracts, St. John filed a petition for attorney fees and costs in August 2012. In October 2012, the trial court granted St. John's motion to file an amended fee petition. On November 28, 2012, St. John filed its amended fee petition requesting \$1.2 million in attorney fees and \$105,000 in costs. On May 20, 2013, St. John filed a supplemental fee petition seeking an additional \$128,038.68 in fees expended on postjudgment matters through April 30, 2013.

¶ 65 The trial court held an evidentiary hearing on the attorney fees petitions. St. John presented the testimony of the two attorneys who were the lead attorneys for St. John. The attorneys testified as to the work performed in enforcing the employment contracts. They further testified as expert witnesses as to reasonableness and the necessity of the attorney fees. Dr. Monteverde testified as to the quality of the representation and the reasonableness

of the fees charged. St. John also presented testimony as to the billing procedures by its attorneys.

¶ 66 Jeanah Park, one of St. John's attorneys at trial, was called as an adverse witness by the plaintiffs. Attorney Park denied that the law firm knew that Mr. Morgan was a convicted felon and had been disbarred. Attorney Park further denied that St. John failed to turn over any documentation to the plaintiffs that it had received and used at trial.

¶ 67 In awarding attorney fees, the trial court rejected the plaintiffs' argument that the law firm knew of Mr. Morgan's disbarment and should be denied attorney fees as contrary to public policy. The court determined that the law firm disclosed the information to the court as soon as it learned it. After reducing the amount of fees requested by \$100,000 and allowing St. John to file a second supplemental fee petition, the trial court entered a final attorney fee award in the amount of \$1,361,040.93.

¶ 68 Both plaintiffs filed notices of appeal. The plaintiffs' separate appeals have been consolidated for our review.

¶ 69 ANALYSIS

¶ 70 I. Challenges to the Verdict

¶ 71 The plaintiffs contend that they are entitled to judgment notwithstanding the verdict (judgment *n.o.v.*) on St. John's counterclaims for breach of the restrictive covenants because St. John failed to present evidence from which the jury could calculate damages. They further contend that the jury's verdict against them on their declaratory judgment complaints and on St. John's counterclaims must be reversed as a matter of law. Finally, the plaintiffs contend that the jury's verdict was against the manifest weight of the evidence entitling them to a new trial.

¶ 72 A. Judgment *N.O.V.*

¶ 73 1. Standard of Review

¶ 74 A trial court decision denying a motion for judgment *n.o.v.* is reviewed *de novo*. *York v. Rush-Presbyterian-St. Luke's*, 222 Ill. 2d 147, 178 (2006).

¶ 75 2. Discussion

¶ 76 The plaintiffs argue that St. John failed to introduce any evidence from which the jury could calculate damages resulting from the breach. See *Kohlmeier v. Shelter Insurance Co.* 170 Ill. App. 3d 643, 654 (1988) (damages cannot be awarded on the basis of speculation or conjecture).

¶ 77 It is well settled that a judgment *n.o.v.* is entered only in those cases in which all of the evidence, when viewed in the light most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand. *State Farm Mutual Insurance Co. v. Ellison*, 354 Ill. App. 3d 387, 389 (2004).

¶ 78 A judgment *n.o.v.* pertains only to liability issues not damages. See *Hughes v. Bandy*, 404 Ill. 74 (1949) (a judgment *n.o.v.* is not the appropriate procedure to correct an error in the calculation of damages); see *Ellison*, 354 Ill. App. 3d at 389 (judgment *n.o.v.* properly denied where the issue was the amount of damages); *Allstate Insurance Co. v. Mahr*, 328 Ill. App. 3d 915 (2002) (the granting of a judgment *n.o.v.* to increase the amount of a damage award was error).

¶ 79 In any event, damages are only speculative when uncertainty exists as to the fact of the damages rather than the amount. *Amp-Rite Electric Co., Inc. v. Wheaton Sanitary District*, 220 Ill. App. 3d 130, 166-67 (1991). St. John presented evidence that Dr. Ramadurai practiced medicine in violation of the restrictive covenant and during that time period had

received payments of \$1,634,009.81 in treating his cardiac patients. St. John presented evidence that Dr. Mohanty violated the restrictive covenant and that he had received \$49,015 in 2005; \$42,401 in 2006; and \$26,452 in 2007, the last year he did any work for Wicker Park Heart Specialists. In addition, Dr. Monteverde testified that he had difficulty rebuilding his referral business, which had been his primary source of patients. Thus, there was evidence of damages from which the jury could calculate a damages amount. Based on the evidence, the jury awarded a total of \$31,000 in damages to St. John for the breach of the restrictive covenant. The determination as to the amount of damages is the function of the jury, and it is not our function to substitute our opinion for that of the jury. See *Buckholtz v. MacNeal Hospital*, 337 Ill. App. 3d 163, 171 (2003).

¶ 80 Next, the plaintiffs maintain that, as a matter of law, the judgments against them on their declaratory judgment complaints cannot stand. They argue that the evidence of St. John's billing practice overwhelmingly established that they were deprived of a substantial portion of the compensation they were entitled to under their employment contracts with St. John. Therefore, they proved that St. John materially breached their employment contracts.

¶ 81 The central issue at trial for the plaintiffs' complaints and St. John's counterclaims was whether the compensation paid by St. John to the plaintiffs complied with the terms of their employment contracts. Each party presented evidence supporting their respective positions. Ultimately, it was for the jury to determine the credibility of the witnesses and the weight of evidence in determining that St. John's billing practices did not constitute a material breach of the contract. See *Dunning v. Dynegy Midwest Generation, Inc.*, 2015 IL App (5th) 140168, ¶ 16 (a judgment *n.o.v.* may not be entered if there is any evidence where the

assessment of the witnesses' credibility or the determination regarding conflicting evidence is decisive to the outcome of the trial).

¶ 82 The plaintiffs point to several discussions with the trial court in which they claim St. John's attorneys conceded that St. John violated their employment contracts and underpaid them. The plaintiffs rely on the trial court's remark that there could not be any more material a breach than when an employee is "completely" cheated out of his compensation by his employer. However, the plaintiffs do not claim that they were "completely" cheated out of their compensation. Moreover, St. John's attorneys did not "concede" that St. John breached, materially or otherwise, the plaintiffs' employment contracts. In the discussions with the court, St. John's attorneys explained that the dispute was not over what amounts the plaintiffs were paid but whether the amounts constituted a material breach of the contract.

¶ 83 The evidence of damages resulting from the plaintiffs' breach of the restrictive covenant was not so lacking that the verdict for St. John cannot stand. The evidence in this case did not overwhelmingly establish that St. John materially breached the plaintiffs' employment contracts that the plaintiffs were entitled to judgment on their declaratory judgment complaints. Therefore, the plaintiffs' joint motion for judgment *n.o.v.* was properly denied.

¶ 84 B. Manifest Weight

¶ 85 In the alternative, the plaintiffs argue that they are entitled to a new trial because the verdicts were against the manifest weight of the evidence.

¶ 86 A court will order a new trial if the verdict is contrary to the manifest weight of the evidence, *i.e.*, where the opposite conclusion is clearly evident or the jury's findings are unreasonable, arbitrary and not based on any of the evidence. *Ellison*, 354 Ill. App. 3d at

389. Where evidence exists to support the jury's verdict, it is an abuse of discretion to grant a motion for a new trial. *Ellison*, 354 Ill. App. 3d at 389.

¶ 87 The plaintiffs' argument for a new trial is limited to maintaining that if they are not entitled to a judgment *n.o.v.*, the less stringent standard of manifest weight of the evidence, entitles them to a new trial. The plaintiffs' citation to one case for a general proposition of law and the lack of argument as to when a verdict is against the manifest weight of the evidence, violates Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013). The argument is forfeited.

¶ 88 II. New Trial

¶ 89 The plaintiffs contend that they are entitled to a new trial due to erroneous rulings by the trial court relating to the admission of evidence and instructions to the jury. They assert these rulings denied them a fair trial.

¶ 90 A. Evidentiary Rulings

¶ 91 The plaintiffs maintain that the trial court erred when it: (1) allowed Mr. Morgan to testify and admitted the exhibit he prepared evidencing St. John's damages; (2) allowed hearsay testimony by Mrs. Yap as to why she billed certain tests in Dr. Monteverde's name instead of Dr. Ramadurai's; (3) allowed the admission of documents not disclosed to the plaintiffs despite their requests; (4) determined that the court rather than the jury should decide the issue of attorney fees; and (5) limited the scope of Dr. Ramadurai's cross-examination of Dr. Monteverde.

¶ 92 1. Standard of Review

¶ 93 The reviewing court will not reverse a trial court's evidentiary ruling absent an abuse of discretion. *Wilkerson v. Pittsburgh Corning Corp.*, 276 Ill. App. 3d 1023, 1034 (1995).

¶ 94

2. Discussion

¶ 95

A reviewing court will let stand a jury verdict where the alleged evidentiary errors are insubstantial, not prejudicial to the movant or insufficient to justify a new trial. *Lagoni v. Holiday Inn Midway*, 262 Ill. App. 3d 1020, 1028 (1994). Unless the party has been prejudiced or the result of the trial materially affected, an error in the admission or exclusion of evidence does not require reversal. *Cetera v. Fillippo*, 404 Ill. App. 3d 20, 36 (2010).

¶ 96

The plaintiffs point out that Mr. Morgan was a convicted felon and had been disbarred in 1991. From these facts, they surmise that neither his testimony nor the damages exhibit he prepared were credible evidence. Mr. Morgan was not testifying as an expert witness. The plaintiffs were able to cross-examine Mr. Morgan as to the preparation of and the accuracy of the exhibit he prepared. While the plaintiffs were not furnished with the final exhibit until right before trial, the lateness was due to St. John's efforts to remove patients' records that did not show a violation of the restrictive covenant.

¶ 97

In any event, we find no prejudice to the plaintiffs based on the admission of Mr. Morgan's testimony and the admission of the exhibit he prepared. The jury's damages awards totaling \$31,000 for the plaintiffs' violations of the restrictive covenants were much less than the damage amounts sought by St. John. Neither Mr. Morgan's testimony nor the exhibit negatively affected the outcome of the trial.

¶ 98

Next, the plaintiffs maintain that they were prejudiced when the trial court allowed Mrs. Yap to testify to a conversation she had with a Medicare representative. The plaintiffs argue that the testimony was hearsay, and it was the only testimony contradicting the plaintiffs' evidence that Dr. Monteverde collected payments properly due to Dr. Ramadurai.

¶ 99 Initially, the trial court agreed with the plaintiffs and sustained the plaintiffs' objection to the hearsay testimony, ordering the jury to disregard it. Subsequently, when on re-cross examination, the plaintiffs' attorney asked Mrs. Yap whether it was her testimony that Dr. Ramadurai told her to file false billings, she responded that the billings were not fraudulent. The plaintiffs' attorney then asked why Dr. Ramadurai would want to her to file false certifications thus allowing Dr. Monteverde to be paid for the work that Dr. Ramadurai should have been paid for, Mrs. Yap responded that it was not fraudulent because Medicare allowed doctors who were within the same practice to bill under each other's name.

¶ 100 We agree with St. John that the plaintiffs' questioning of Mrs. Yap invited the error of which they now complain. " Illinois courts have applied the invited error doctrine in numerous cases to bar a party from claiming error in the admission of improper evidence where the admission was procured or invited by that party." *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 92 (quoting *In re Kenneth D.*, 364 Ill. App. 3d 797, 803 (2006)). Here, over the plaintiffs' objection, the trial court allowed Mrs. Yap to explain why the billing was not fraudulent, stating "You asked a why question. You implied there was fraud. [Mrs. Yap] gave an answer. That's the answer. The jury will have to figure out who is telling the truth. That's the answer."

¶ 101 Next, the plaintiffs maintain that the trial court erred when it admitted St. John's exhibits containing the documents that Mrs. Yap relied on in calculating Dr. Ramadurai's year-end bonus. The plaintiffs point out that the admission of those exhibits was conditioned on St. John producing the explanation of benefits (EOB) forms. St. John does not dispute the plaintiffs' claim that the EOB's were never turned over to them. Instead, St. John responds that the plaintiffs were not prejudiced by the admission of the exhibits because the plaintiffs

had received all of the documentation upon which Mrs. Yap relied when calculating Dr. Ramadurai's year-end bonus.

¶ 102 After securing the trial court's order for St. John to produce the EOB's, the plaintiffs did nothing to enforce the order until they requested a missing evidence instruction at the close of the trial. From the discussions between the trial court and the parties' attorneys, it was unclear what further information the EOB's would have revealed that was not contained in the documents already furnished to the plaintiffs. Moreover, Dr. Ramadurai disputed whether he had agreed to bill his work at the lower Medicare rate and did not recall reviewing or agreeing with Mrs. Yap's calculations of his year-end bonus. It was a matter for the jury to determine which witness to believe.

¶ 103 Next, the plaintiffs argue that St. John violated discovery rules by failing to serve them with copies of documents it subpoenaed from Norwegian American Hospital, one of the hospitals listed in the restrictive covenant. At the hearing on attorney fees, attorney Park identified Mr. Morgan's entries in support of St. John's attorney fee petition. According to the entries, the subpoenaed documents had been reviewed by Mr. Morgan in determining the plaintiffs' procedures and charges in order to cross-link them to their office invoices. Attorney Park acknowledged that there was no record that St. John had produced the subpoenaed documents.

¶ 104 The plaintiffs failed to establish any prejudice based on the failure to produce the subpoenaed documents. As Dr. Ramadurai concedes, the only benefit to him would have been the ability to investigate the information used by Mr. Morgan and the basis of his calculations prior to trial. The plaintiffs only speculate such an investigation would have

established any error in the calculations or in that the information Mr. Morgan used in preparing his entries.

¶ 105 Next, the plaintiffs maintain that the trial court erred when it restricted their cross-examination of Dr. Monteverde with regard to the conditions of the restrictive covenant, and restricted Dr. Ramadurai from explaining his belief that he did not violate the restrictive covenant. The scope and extent of cross-examination is within the discretion of the trial court. *Adams v. Sarah Bush Lincoln Health Center*, 369 Ill. App. 3d 988, 998 (2007).

¶ 106 The supreme court's decision in the prior litigation of this case resolved any issue as to the reasonableness of the duration and radius provisions in the restrictive covenant. See *Mohanty*, 225 Ill. 2d at 79. The trial court did not abuse its discretion by sustaining St. John's objections to the plaintiffs' cross-examination of Dr. Monteverde.

¶ 107 Dr. Ramadurai complains that he was prevented from explaining to the jury that, in light of the circuit court's order denying injunctive relief to St. John, he did not believe he was practicing medicine in violation of the covenant. However, both parties agreed not to refer to the decisions of the appellate and supreme court in this case and that Dr. Ramadurai would limit his explanation to his belief that St. John materially breached his employment contract. We agree with St. John that Dr. Ramadurai may not complain of a restriction to which he consented.

¶ 108 Finally, the plaintiffs maintain that the trial court erred when it ruled that the court rather than the jury would decide the issue of the attorney fees.

¶ 109 In the present case, the attorney fees were not an element of the cause of action for breach of the employment contracts. Rather, under the terms of the employment contracts, they were to be awarded to the party prevailing on the issue of liability. In such cases, a claim to

attorney fees was "unquantified" and "open-ended" and as such did not fit monetary and compensatory claims that were otherwise subject to the constitutional right under the 7th amendment to a jury trial. *F.H. Prince & Co., Inc. v. Towers Financial Corp.*, 275 Ill. App. 3d 792, 808 (1995). The sole case relied on by the plaintiffs, *DeKalb Bank v. Purdy*, 205 Ill. App. 3d 62 (1990), is distinguishable. In that case, the court did not directly consider whether an "open-ended" attorney fees claim must be heard by a jury.

¶ 110 B. Jury Instructions

¶ 111 1. Standard of Review

¶ 112 "The decision to give or deny a jury instruction is within the trial court's discretion, and a new trial should be granted only if a party's right to a fair trial has been seriously prejudiced." *Demos v. Ferris-Shell Oil Co.* 317 Ill. App. 3d 41, 56 (2000). In determining if an abuse of discretion occurred, the reviewing court considers whether, taken as a whole, the jury instructions fully, fairly and comprehensively informed the jury of the relevant legal principles. *Demos*, 317 Ill. App. 3d at 56.

¶ 113 2. Discussion

¶ 114 a. IPI Civil (2011) No. 700.02

¶ 115 The plaintiffs maintain that the trial court erred when it refused to give IPI Civil (2011) No. 700.02 to the jury. The instruction would have informed the jury that, in support of its counterclaims, St. John had the burden of proving that it had performed all of its obligations under their employment contracts. Instead of IPI Civil (2011) No. 700.02, the trial court gave the jury Illinois Pattern Jury Instruction No. B700.07, which provided that the plaintiffs' failure to perform under the contract is excused if St. John committed a material breach of

the contract. IPI Civil (2011) No. B700.07. The plaintiffs maintain that IPI Civil (2011) No. B700.07 is an incorrect statement of the law and inconsistent with the IPI.

¶ 116 The Notes on Use to IPI Civil (2011) No. B700.07 provide in pertinent part, "[t]his instruction should be given when a party claims that a prior material breach of contract excused his performance. It is given with IPI 700.02, since the contract at issue may be previously materially breached." In this case, the plaintiffs' affirmative defenses to St. John's counterclaims were identical to their affirmative claims for declaratory judgments. If the jury rejected the plaintiffs' affirmative claims that St. John committed a material breach of their employment contracts, then they could not prove their affirmative defenses to St. John's counterclaims. In using IPI Civil (2011) No. B700.07 in place of IPI Civil (2011) No. 700.02, the trial court sought to clarify the issues for the jury. Considering the particular circumstances in this case, IPI Civil (2011) No. B700.07 was neither an incorrect statement of the law nor inconsistent with other pattern instructions.

¶ 117 b. Damages Instruction

¶ 118 The plaintiffs argue that the jury should not have been given an instruction on damages because the defendants failed to introduce any evidence that they sustained damages as a result of the plaintiffs' material breach of their employment contracts. As we have previously determined that the defendants did present some evidence of damages, we find no abuse of discretion by the trial court by instructing the jury on damages.

¶ 119 c. IPI Civil (2011) No. 5.01 Adverse Inference

¶ 120 The plaintiffs argue that they were entitled to have the jury instructed that because of St. John's failure to turn over the EBO's to the plaintiffs the presumption arose that the withheld evidence was adverse to St. John. The plaintiffs further argue that without the EBO's they

could not prove the amount of compensation Dr. Ramadurai did not receive, which was crucial to whether St. John materially breached his employment contract.

¶ 121 IPI Civil (2011) No. 5.01 provides that a party's failure to offer evidence within its power to produce that evidence permits the jury to infer that such evidence would be adverse to that party if the jury believes the following elements: (1) the evidence was under the control of the party and could have been produced by the exercise of reasonable diligence; (2) the evidence was not equally available to the adverse party; (3) a reasonably prudent person under the same circumstances would have offered the evidence if he believed it to be favorable to him; and (4) no reasonable excuse for the failure has been shown. IPI Civil (2011) No. 5.01. The instruction is not warranted if the unproduced witness (or in this case evidence) would be merely cumulative of the facts already established. *Thompson v. Abbott Laboratories*, 193 Ill. App. 3d 188, 202 (1990). Even if IPI Civil (2011) No. 5.01 should have been given in a case, such an error, alone, does not in all cases constitute reversible error. *Thompson*, 193 Ill. App. 3d at 204.

¶ 122 The plaintiffs took no action to enforce the trial court's order that St. John produce the EBO's. Then at the jury instructions conference, they requested that IPI Civil (2011) No. 5.01 given to the jury. The trial court rejected the plaintiffs' attempt to make an issue out of the failure to produce the EBO's just to get the adverse inference instruction. Moreover, the EBO's were cumulative to the evidence St. John did produce as to how Dr. Ramadurai's compensation was determined. The plaintiffs cross-examined Mrs. Yap about the method of calculating Dr. Ramadurai's compensation, and the trial court allowed them to argue that her method was not credible.

¶ 123 We cannot find a clear abuse of discretion on the part of the trial court in refusing to give the jury IPI Civil (2011) No. 5.01.

¶ 124 d. Non-IPI Instruction

¶ 125 The plaintiffs maintain that the trial court erred when it refused to instruct the jury that any ambiguity in the employment contracts must be construed against Dr. Monteverde as the drafter. The trial court rejected the instruction because it was not an IPI instruction, and it was unnecessary. The trial court instructed the jury that "[it] has been determined that the foregoing compensation clause [contained in the employment contracts] is ambiguous. The parties have presented conflicting evidence regarding the intended meaning of the compensation clause. Therefore, the parties' intent is a fact to be determined by the jury."⁴

¶ 126 The IPI instructions must be used unless the IPI does not contain an instruction on the subject or the IPI instruction is not an accurate statement of the law. Illinois Supreme Court Rule 239(a) (eff. Jan. 1, 2011). The plaintiffs do not argue that the instruction given by the trial court was an inaccurate statement of the law or should not otherwise have been given to the jury. Moreover, the jury was aware from the testimony that Dr. Monteverde drafted the contracts and could reasonably infer that he would have drafted the terms to favor St. John and himself. See *Davis v. City of Chicago*, 2014 IL App (1st) 122427, ¶ 115 (the jury was properly instructed on the relevant law based on the underlying complaint and the evidence at trial).

¶ 127 A new trial because of improper jury instructions is not warranted unless the party's fair trial rights have been seriously prejudiced. *Davis*, 2014 IL App (1st) 122427, ¶ 110. The

⁴ The record indicates that the instruction was taken from Illinois Pattern Jury Instruction Civil (2012) No. 700.01.

jury heard the evidence and was properly instructed on the applicable law. The plaintiffs were not so prejudiced that a new trial is required.

¶ 128 C. Cumulative Error

¶ 129 None of the errors in the trial court's evidentiary rulings or in the giving or denying jury instructions constituted an abuse of discretion. Therefore, we reject the plaintiffs' argument that they are entitled to a new trial based on the cumulative effect of the errors committed by the trial court. We conclude that the plaintiffs were not denied a fair trial.

¶ 130 III. Denial of Leave to Amend

¶ 131 The plaintiffs contend that trial court erred when it denied their requests to amend their complaints to add a claim under the Wage Act both before and after trial and denied their request for reconsideration of the trial court's ruling.

¶ 132 A. Standards of Review

¶ 133 The decision to grant or deny a motion for an amendment of a complaint is a matter for the trial court's discretion and will not be reversed on review unless there is an abuse of that discretion. *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 331 (2008). The denial of a motion to reconsider is reviewed *de novo* where the motion is based on the circuit court's application of existing law. *Compton*, 382 Ill. App. 3d at 330. Where the denial of the motion is based on new matters, such as additional facts, new arguments or legal theories that were not presented during the course of proceedings leading up to the order being challenged, the abuse of discretion standard applies. *Compton*, 382 Ill. App. 3d at 330.

¶ 134 The plaintiffs request that we apply the abuse of discretion standard of review and have framed their arguments on that basis. Therefore, we will apply the abuse of discretion standard.

¶ 135

B. Discussion

¶ 136

In considering whether the trial court abused its discretion in ruling on a motion to file an amended complaint, the reviewing court relies on the following factors set forth in *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263 (1992): (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment was timely; and (4) whether previous opportunities to amend the pleadings could be identified. *Loyola Academy*, 146 Ill. 2d at 273.

¶ 137

In this case, the trial court properly applied the *Loyola* factors in denying the plaintiffs leave to amend their complaints for declaratory judgment. The plaintiffs do not dispute that they withdrew their 2003 motion to amend the complaints. Their next motion to amend was filed in 2009, two years after the supreme court's decision was issued in *Mohanty*. In denying the motion for leave to amend, the trial court ruled that causes of action for fraud and the Wage Act claim arose out of the same facts and occurrences alleged in their 2003 complaints and that the plaintiffs had offered no reason for the six-year delay in seeking leave to amend. In addition, the court found that the fraud and Wage Act claims were untimely under the applicable statutes of limitation. In denying the plaintiffs' motion for reconsideration of the denial of leave to amend, the trial court acknowledged that it may have erred in holding the causes of action were barred by the statutes of limitation. However, the court concluded that the denial of leave to amend was done in accordance with the analysis in *Loyola*, and denied the motion for reconsideration. The trial court denied another motion for leave to amend on July 21, 2011. The order does not set forth the trial court's basis for the denial of the motion. Just prior to the commencement of trial, the plaintiffs filed another motion for leave to amend

to add the fraud and the Wage Act claims. While finding no prejudice to the defendants, the trial court denied leave to amend the complaints.

¶ 138 The lack of prejudice is only one of the *Loyola* factors. A plaintiff must meet all four *Loyola* factors in order to be allowed to amend the complaint. *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 7 (2004). The trial court consistently found that the plaintiffs' amendments were not timely as they arose out of their initial complaints filed in 2003 and that there were previous opportunities to seek amendment prior to 2009.

¶ 139 The plaintiffs argue that the trial court erred when it denied them leave to amend their pleadings according to the proof adduced at trial. The plaintiffs maintain that the trial court considered only *Loyola's* timeliness factor in denying leave to amend after trial. In denying the plaintiffs' postjudgment motion for leave to amend, the trial court based its denial on the plaintiffs' failure to satisfy all four of the *Loyola* factors. However, the plaintiffs' and the trial court's reliance on *Loyola* is misplaced. The *Loyola* factors do not apply to amendments proposed after judgment to conform the pleadings to the proof at trial. *Compton*, 382 Ill. App. 3d at 332.

¶ 140 Section 2-616(c) of the Code of Civil Procedure (Code) (735 ILCS 5/2-616(c) (West 2010)) permits pleadings to be amended to conform to the proof either before or after trial. Such an amendment may be allowed only where it is supported by the evidence. *Prignano v. Prignano*, 405 Ill. App. 3d 801, 822 (2010). In considering whether to permit such amendment, the trial court should consider the amendment will further the ends of justice, whether the amendment alters the nature of the proof required to defend against the claim, and whether there would be any surprise or prejudice to the opposing party. *Prignano*, 405

Ill. App. 3d at 822. The trial court's decision will be reversed only for an abuse of that discretion. *Prignano*, 405 Ill. App. 3d at 822.

¶ 141 The plaintiffs sought to amend the pleadings to add their Wage Act claims, the same claims the trial court had denied them leave to file prior to the trial in this case. They argue that the evidence at trial established that St. John circumvented the compensation they were entitled to under their employment contracts by understating their gross receipts. We disagree. The evidence at trial did not establish that St. John failed to pay the plaintiffs in accordance with their employment contracts; rather that the plaintiffs disagreed with the method St. John used to calculate their compensation. There was no evidence establishing that the plaintiffs were not compensated in accordance with their employment contracts.

¶ 142 We conclude that the trial court did not abuse its discretion when it denied the plaintiffs leave to amend before trial and in denying the plaintiffs' motion for reconsideration of that ruling. We further conclude that the denial of the plaintiffs' postjudgment request to amend the pleadings to conform to the proof was not an abuse of discretion. See *Canada Life Assurance Co. v. Salwan*, 353 Ill. App. 3d 74, 79 (2004) (we may sustain the decision of the trial court on any grounds in the record).

¶ 143 IV. Attorney Fees Award

¶ 144 A. Standards of Review

¶ 145 What is considered to be a reasonable fee under a fee-shifting provision of a contract is a matter for the trial court's discretion. *Heller Financial, Inc. v. John-Byrne Co.*, 264 Ill. App. 3d 681, 690 (1994). The determination that a party was a "prevailing party," is also reviewed for an abuse of discretion. *Peleton, Inc. v. McGivern's, Inc.*, 375 Ill. App. 3d 222, 226 (2007).

¶ 146 B. Discussion

¶ 147 Both plaintiffs maintain that they are prevailing parties because the defendants dismissed a number of their claims before and at trial. "A party can be considered a "prevailing party" for the purposes of awarding fees when he is successful on any significant issue in the action and achieves some benefit in bringing suit [citation], receives a judgment in his favor [citation] or by obtaining an affirmative recovery." *Duemer v. Edward T. Joyce & Associates, P.C.*, 2013 IL App (1st) 120687, ¶ 73 (quoting *Grossinger Motor Corp., Inc. v. American National Bank & Trust Co.*, 240 Ill. App. 3d 737, 753 (1993)).

¶ 148 The defendants' dismissal of their claims was voluntary. No judgment was entered in favor of the plaintiffs on the dismissed counts, and judgments were entered against them and in favor of St. John on both the plaintiffs' declaratory judgment complaints and St. John's counterclaims. Therefore the trial court did not abuse its discretion by determining that the St. John was the prevailing party and entitled to attorney fees under the fee-shifting provision in the employment contracts.

¶ 149 We reject the plaintiffs' argument that the award of attorney fees was unreasonable. The trial court held a hearing over several days, heard the testimony of four witnesses as to the fees charged to St. John for enforcing the employment contracts. The witnesses testified as to the skill and competence of the attorneys who worked on the case, the complexity of the 10-year litigation involved in this case and the reasonableness of the fees charged by St. John's attorneys. See *Harris Trust & Savings Bank v. American National Bank & Trust*, 230 Ill. App. 3d 591(1992).

¶ 150 In this case, the trial court held an evidentiary hearing, considered the credibility of the witnesses in assessing the veracity of St. John's claim in assessing the amount of the attorney fees award. While the plaintiffs argue that no fees should be awarded based on Mr. Morgan's

criminal past, the charges for Mr. Morgan's services were removed from the fee petitions.

There is also no evidence that any of the fees were sought for work done solely for Dr.

Monteverde rather than on behalf of St. John and where Dr. Monteverde was acting on behalf of St. John as its owner and sole shareholder.

¶ 151 Finally, the plaintiffs contend that the award of fees was not proper because the fee petitions did not delineate between the plaintiffs. See *Kleczek v. Jorgensen*, 328 Ill. App. 3d 1012, 1024 (2002) (where a party is entitled to fees on one claim but not the other, the trial court abused its discretion in awarding fees for both claims since they were factually distinguishable). In rejecting that argument in this case, the trial court stated as follows:

"I don't believe that St. John's did anything wrong in consolidating Drs. Ramaduran [*sic*] and Mohanty's separate counterclaims. *** I see this case as one overriding type of litigation which was the same as far as affecting both of the doctors and that consolidating them and asking for fees against both of them jointly is a reasonable approach to a case of this nature."

¶ 152 While there were some factual differences, the claims both for and against the plaintiffs were practically indistinguishable, and we can find no prejudice to the plaintiffs in the consolidation of the fee requested for the work in enforcing both of the plaintiffs' employment agreements.

¶ 153 After careful review of the evidence presented at the hearing on the fee petitions, we conclude that the award of attorney fees was reasonable, and there is no basis to find an abuse of discretion by the trial court in awarding the fees in this case.

¶ 154 CONCLUSION

¶ 155 For all of the foregoing reasons, the judgment of the trial court is affirmed.

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¶ 156 Affirmed.