

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BRUCE J. STUPICA and DEBRA STUPICA,

Plaintiffs-Appellees/  
Cross-Appellants,

v

MERCY MEMORIAL MEDICAL CENTER,

Defendant-Appellant/  
Cross-Appellee,

and

BYUNG CHAN RHEE,

Defendant,

and

TWIN CITIES ANESTHESIOLOGY,

Defendant-Appellee/  
Cross-Appellee.

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BRUCE J. STUPICA and DEBRA STUPICA,

Plaintiffs-Appellees,

v

MERCY MEMORIAL MEDICAL CENTER,

UNPUBLISHED  
May 30, 1997

No. 188196  
Berrien Circuit Court  
LC No. 94-000208-CK

No. 188580  
Berrien Circuit Court  
LC No. 94-000208-CK-G

Defendant-Appellant,

and

BYUNG CHAN RHEE,

Defendant,

and

TWIN CITIES ANESTHESIOLOGY,

Defendant-Appellee.

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Before: Bandstra, P.J., and Markey and J.M. Batzer\*, JJ.

PER CURIAM.

Defendant Mercy Memorial Medical Center appeals as of right from the trial court's order denying its motion for judgment notwithstanding the verdict (JNOV) or a new trial on plaintiffs' claim of fraudulent misrepresentation. Mercy Memorial also appeals from the trial court's award of expert witness fees to plaintiffs. Plaintiffs cross-appeal from the trial court's pretrial order granting partial summary disposition to defendant Twin Cities Anesthesiology on their breach of contract claim regarding implementation of the termination provisions of the contract and also cross-appeal the trial court's grant of remittitur to Twin Cities. We affirm.

Mercy Memorial first argues that plaintiffs failed to establish a prima facie case of fraud by clear and convincing evidence and therefore the trial court should have granted its motion for JNOV on the fraudulent misrepresentation claim. We disagree. Meredith Schmidt made statements to plaintiff Bruce Stupica that Mercy Memorial was committed to Twin Cities and supported the OB epidural service. Schmidt also did not object to statements made to Stupica that Mercy Memorial acted as "the bank" for Twin Cities. These statements were in direct response to Stupica's expressed hesitancy to accept a position with Twin Cities because of his financial concerns regarding reimbursement for OB epidural services. See *Clement-Rowe v Michigan Health Care Corp*, 212 Mich App 503; 538 NW2d 20 (1995). As the trial court recognized, testimony by Robert Harrison, chief operating officer of Mercy Memorial, was key in assessing the knowledge and intent of Mercy Memorial in regard to continuing its financial backing of Twin Cities and financial support of an expanded CRNA staff and the OB epidural program. We agree with the trial court that Harrison's testimony was equivocal at best. Based on that testimony and on the July 23, 1992, memorandum drafted by Harrison to Joe Wasserman, president of Mercy Memorial, the jury could reasonably have found fraudulent misrepresentation in that Harrison knew that material facts represented to plaintiff Bruce Stupica were no longer true.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

The fact that Harrison had no personal dealing with plaintiff Bruce Stupica prior to his acceptance of employment and made no personal representations to him is not determinative. Knowledge and statements by Harrison, as chief operating officer of Mercy Memorial, are imputed to and admissible against Mercy Memorial. 3 Am Jur 2d, Agency, § 281, p 785; *Fassihi v St Mary Hosp of Livonia*, 121 Mich App 11, 14; 328 NW2d 132 (1982). Mercy Memorial does not contest that statements made by Meredith Schmidt are imputed to Mercy Memorial.

We disagree with Mercy Memorial's assertion that there was no actionable basis for fraud because any statements made to plaintiff Bruce Stupica went to future expectations, not a past or existing fact. The jury could have inferred that at the time that plaintiff signed his employment contract on July 27, 1992, there was no present intent to continue the economic relationship between Twin Cities and Mercy Memorial that had existed in the past and that had been represented to him. See *Danto v Charles C Robbins, Inc*, 250 Mich 419, 425; 230 NW 188 (1930); *Gorman v Soble*, 120 Mich App 831, 840; 328 NW2d 119 (1982). We reiterate this Court's statements in *Clement-Rowe, supra* at 508-509, that "[t]he economic well-being and financial stability of a potential employer is an important factor in accepting a job offer" and an employer who succeeds in asserting such stability to attract qualified employees knowing the assertions are untrue or who omits to disclose instability when known and if asked cannot avoid liability for fraud. The trial court properly denied Mercy Memorial's motion for JNOV on plaintiffs' claim for fraudulent misrepresentation.

We disagree with Mercy Memorial's further claim that the verdict was against the great weight of the evidence. A question regarding the weight of the evidence usually involves matters of credibility or circumstantial evidence and, in such a case, the question of credibility should ordinarily be left for the finder of fact. See *People v Herbert*, 444 Mich 466, 475-477; 511 NW2d 654 (1993); *Rossien v Berry*, 305 Mich 693, 701; 9 NW2d 895 (1943). There was conflicting testimony in this case and equivocal testimony by Harrison. The trial court had the opportunity to hear the witnesses and to assess their credibility, and we give substantial deference to its decision that the verdict was not against the great weight of the evidence. *Arrington v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992). Mercy Memorial has not established that the trial court abused its discretion in denying its motion for a new trial.

Mercy Memorial next argues that the trial court abused its discretion in awarding expert witness fees to plaintiffs for Richard Zabel. We conclude that the trial court was well within its discretion in awarding expert witness fees to Zabel for his trial preparation and testimony regarding his opinion as to the financial damages suffered by plaintiffs. MCL 600.2164(1); MSA 27A.2164(1); *Miller Bros v DNR*, 203 Mich App 674, 691; 513 NW2d 217 (1994); *Herrera v Levine*, 176 Mich App 350, 357-358; 439 NW2d 378 (1989).

Plaintiffs argue on cross-appeal that the trial court erred in granting partial summary disposition to defendant Twin Cities with regard to Twin Cities' implementation of the termination provision of plaintiff Bruce Stupica's employment contract. We first note that plaintiffs have not provided this Court with the transcript of the hearing on this motion, and we are therefore unable to examine the basis for the trial court's ruling on this matter. However, having reviewed the remaining record de novo, *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994), we conclude that the trial

court did not err in granting partial summary disposition to defendant Twin Cities. The terms of the employment contract clearly provide that either party may terminate the contract for any reason upon three months' written notice to the other party. Defendant Dr. Rhee and plaintiff Bruce Stupica both signed the April 12, 1993, letter written by plaintiff acknowledging that termination notice was given by Dr. Rhee on April 8, 1993, with the date of termination to be July 8, 1993. The express provision for contract termination was fulfilled, and summary disposition was properly granted.

Plaintiffs are barred from claiming that the trial court abused its discretion in granting remittitur to defendant Twin Cities because plaintiffs specifically consented to it below and because Twin Cities, *as the moving party below*, has not appealed. MCL 600.6098(3); MSA 27A.6098(3); MCR 2.611(E)(2). In any event, it having been determined by the trial court that the contract between plaintiff and Twin Cities terminated on July 8, 1993, there was no legal basis after that date to support an award of overtime pay. Therefore, the trial court did not abuse its discretion in granting remittitur because the award of overtime pay in excess of \$2,150 was not supported by the evidence properly considered. MCR 2.611(E)(1); *Palenkas v Beaumont Hosp*, 432 Mich 527, 533; 443 NW2d 354 (1989).

Plaintiffs' final claim is that the jury's verdict that Mercy Memorial had not tortiously interfered with the employment contract is against the great weight of the evidence. Plaintiffs have waived this issue by not moving for a new trial below. *Brown v Swartz Creek VFW*, 214 Mich App 15, 27; 542 NW2d 588 (1995). In addition, this Court has denied amendment of plaintiffs' claim of cross-appeal to allow an appeal from the judgment on their claim of tortious interference with contract. Therefore, we lack jurisdiction to review this issue. *McDonald v Stroh Brewery Co*, 191 Mich App 601, 609; 478 NW2d 669 (1991).

We affirm.

/s/ Richard A. Bandstra

/s/ Jane E. Markey

/s/ James M. Batzer