

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ABDALLAH AL-ZUBI, D.D.S., et al., : Case No.: A1205318
: :
: *Plaintiffs,* :
: **Judge Terry Nestor**
: :
: *v.* :
: **ENTRY GRANTING MOTION TO**
: **RECONSIDER, VACATING**
: **DECEMBER 10, 2018 ENTRY, AND**
: **DENYING THE PLAINTIFF'S**
: **MOTION TO ENFORCE THE**
: **SETTLEMENT AGREEMENT**
: :
: :
: :

I. Procedural Posture

At the end of 2012, Plaintiff Dr. Al-Zubi and Defendant Dr. Hahn, along with his corporation Cosmetic and Implant Dental Center of Cincinnati, Inc., entered into a written Separation and Release Agreement (“SA”).¹ In the agreement, Dr. Hahn agreed to pay the Plaintiffs for the charges incurred as a result of treatment rendered by the Plaintiffs on the prepaid dental patients. Plaintiffs filed a Motion to Enforce the SA on June 23, 2014 to find Dr. Hahn in breach of the contract for the prepaid monies owed to the Plaintiffs and reimbursement for attorney fees. On December 10, 2018, this Court’s predecessor ruled that Defendants breached Paragraph 6 of the SA and that the amount owed to Plaintiffs by Defendants totaled \$92,471.05. Further, as a consequence of the ruling, the Defendants claimed attorney fees.²

¹ *Plaintiffs’ Motion to Enforce the Separation and Release Agreement* at Exhibit A, 6-23-14.

² Docket, 12-30-2018.

This matter has come before the Court upon the Defendant's Motion for Judgment Notwithstanding Judge Martin's Ruling of December 10, 2018, which this Court deems to be a Motion to Reconsider Judge Martin's non-final order enforcing the SA. The Court, having considered the pleadings, the depositions, the record, and otherwise being sufficiently advised, hereby **GRANTS** the Defendant's Motion, **VACATES** the December 10, 2018 Entry, and **DENIES** the Plaintiff's Motion to Enforce the Settlement Agreement.

II. Analysis

The parties disagree as to the plain meaning of the language within Paragraph 6 of the Settlement Agreement:

6. There exist patients who previously prepaid monies to the Defendants for services that have not yet been performed. These patients are referred to as "prepaid patients." In the event a prepaid patient seeks Dr. Hahn's services for purposes of having Dr. Hahn complete the treatment for which the patient paid, then Dr. Hahn may treat this patient. If the prepaid patient asks for his/her money returned for the uncompleted treatment, then Dr. Hahn will immediately return that money to the patient. Finally, if a prepaid patient wishes to be treated by Plaintiffs in order to complete the treatment and the Defendants agree to pay the Plaintiffs for the charges incurred as a result of the treatment rendered by the Plaintiffs on the prepaid patient not to exceed the balance or unused portion of the prepayment the patient paid to Dr. Hahn. Payment shall be made within 30 days after the bill for the charges incurred by the Plaintiffs is forwarded to the Defendants.

The First District Court of Appeals has held that a contract is only subject to interpretation if its terms cannot be determined by reading it or if its terms are susceptible to more than one meaning. *Ruehl v. Air/Pro, Inc.*, 2005-Ohio-1184; *Kelly Dewatering & Constr. Co. v. R.E. Holland Excavating, Inc.*, 2003-Ohio-5670. This Court does not find Paragraph 6 ambiguous. The plain language refers to Dr. Hahn

owing Plaintiffs for any future prepaid patients who wish to be treated by Plaintiffs and have actually been treated after the settlement.

Accordingly, the only issue that remains is one of fact: did any of Dr. Hahn's former patients actually treat with the Plaintiff after the settlement agreement? Dr. Hahn admits to owing Plaintiffs money for two of his former patients.³ In determining the correct amount, the Court has reviewed Dr. Al-Zubi's deposition and Defendant's Supplemental Memorandum with attachments filed separately under seal to protect patients under HIPAA. There are only two patients that were prepaid patients and were subsequently treated by Dr. Al-Zubi. Those are patients #35 and #60. Dr. Hahn properly owes \$87.50 for the prepaid treatment of patient #35 and \$1,461.50 for the prepaid treatment of patient #60. The total owed, therefore, is \$1,549.

III. Conclusion


Upon consideration of the facts, the depositions, and the argument of counsel, the Court hereby grants the Defendant's Motion to Reconsider. Pursuant to Paragraph 6 of the SA, Defendant only owes Plaintiff for the prepaid patients that were actually treated by Dr. Al-Zubi *after* the settlement. Therefore, Dr. Hahn owes Dr. Al-Zubi \$1,549, not \$92,471.05. The previous ruling of December 10, 2018 is **VACATED**. The Plaintiffs' Motion to Enforce the Settlement Agreement is **DENIED**. The Plaintiffs' related Motion to Strike is **DENIED** and the settlement

³ Defendant's Supplemental Memorandum at ¶1, 5-6-20.

agreement remains in full force and effect. Further, based on the record before this Court, attorney fees are not awarded.

It is the Judgment of this Court that Dr. Hahn shall pay Dr. Al-Zubi \$1,549.00 to satisfy the plain meaning of the SA. It is the further Order of this Court that the parties submit the required stipulated dismissal entry pursuant to paragraph 17 of the SA.

So Ordered,



JUDGE TERRY NESTOR
Hamilton County Court of Common Pleas