

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JERRY A. DANCIK, M.D.,

Plaintiff,

v

Case No. 13-136046-CK

Hon. Wendy Potts

MICHIGAN KIDNEY CONSULTANTS,  
P.C.,

Defendant.

OPINION AND ORDER RE: DEFENDANT'S SECOND MOTION TO HOLD PLAINTIFF IN  
CONTEMPT

At a session of Court  
Held in Pontiac, Michigan

On  
MAY 01 2015

The contentious case is before the Court on Defendant Michigan Kidney Consultants, P.C. (MKC)'s second motion to hold Plaintiff Jerry A. Dancik, M.D. in contempt for violating the December 16, 2013 consent decree. Dr. Dancik agreed under the terms of a consent decree and a confidential settlement agreement that through May 12, 2015, he would not provide treatment or assessment to certain MKC dialysis patients identified in an exhibit to the settlement agreement. On November 10, 2014, the Court concluded that Dr. Dancik violated the consent decree by treating several MKC patients, held him in contempt of Court, and fined him \$5,000. The Court also found that both MKC and Dr. Dancik breached their settlement agreement and awarded Dr. Dancik a judgment of \$126,000, offset by the \$82,500 in losses MKC suffered based on the patients Dr. Dancik treated in violation of the settlement agreement.

This second contempt motion was prompted by a letter MKC received on November 26, 2014 from a patient, S.F., who is on the list of patients that Dr. Dancik is not allowed to treat,

asking MKC to allow Dr. Dancik to treat her. MKC believes the letter was written by Dr. Dancik's counsel, and wrote Dr. Dancik's counsel stating that MKC would not waive its rights under the consent decree as to S.F. MKC claims it later learned that Dr. Dancik had been treating S.F. since September 2014.

Dr. Dancik does not deny MKC's claim that he had some involvement with S.F.'s care. Instead, he claims that he merely provided a "consultation" at the request of S.F.'s attending physician, and a consultation is not violation of the consent decree. However, the consent decree barred Dr. Dancik from "providing any treatment or assessment" to S.F. Dr. Dancik fails to explain how a consultation does not qualify as treatment. Because Dr. Dancik provided treatment or assessment to S.F. in violation of the consent decree and is in contempt for doing so, the Court fines him the maximum \$7,500 under MCL 600.1715(1).

The Court further concludes that there is no material dispute that Dr. Dancik also breached the settlement agreement by treating S.F. and MKC is entitled to damages for that breach. MKC asserts that it performed \$11,400 in services for S.F. in 2013, and the Court should award MKC three years of damages for a total of \$34,200. However, MKC fails to present any evidence that, as a result of Dr. Dancik's treatment of S.F. since September 2014, MKC has lost three years of medical treatment. Instead, the Court awards MKC \$11,400 for one year of medical treatment. The Court further agrees that MKC is entitled to attorney fees under MCL 600.1721, which allows the Court to order the contemnor to indemnify anyone who suffers an actual loss or injury because of the misconduct. However, MKC provides no evidence of the amount of attorney fees it incurred due to Dr. Dancik's contempt. Therefore, the Court awards MKC \$1,000 in attorney fees.

MKC also attempts to raise new issues by claiming that Dr. Dancik failed to return a computer that belongs to MKC. However, MKC points to no part of the settlement agreement or

consent decree that requires Dr. Dancik to return a computer. Because MKC fails to show that the Court has authority to force Dr. Dancik to turn over any property to MKC, the request is denied.

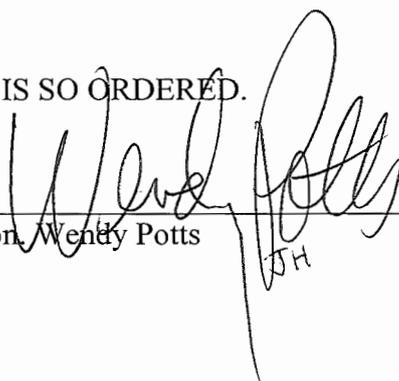
MKC also claims that Dr. Dancik is attempting to avoid the effect of the consent decree and settlement agreement by arranging for his son, Travis Dancik, M.D., to treat patients that Dr. Jerry Dancik would not be allowed to treat. However, Dr. Travis Dancik is not a party to this action, and MKC fails to show that the Court has authority to preclude Dr. Travis Dancik from treating any patients. The Court further denies MKC's request to reopen discovery regarding Dr. Travis Dancik's treatment of its patients.

In its final request, MKC asks the Court to extend the consent decree and settlement agreement terms to bar Dr. Dancik from treating patients through December 12, 2015. However, MKC relies on authority for extending a noncompetition agreement. See *Thermatool Corp v Borzym*, 227 Mich App 366, 375; 575 NW2d 334 (1998). Because MKC cites no authority that would allow this Court to extend the consent decree or settlement agreement terms, the request is denied.

In sum, the Court fines Dr. Jerry Dancik \$7,500 for contempt and orders him to pay it to the Clerk of the Court within 7 days. The Court further awards MKC \$11,400 in damages and \$1,000 in attorney fees against Dr. Jerry Dancik.

Dated: **MAY 01 2015**

IT IS SO ORDERED.

  
Hon. Wendy Potts