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:
DR. JERRY DANCIK'S MOTION FOR RECONSIDERATION
AND
DEFENDANT'S MOTION FOR RECONSIDERATION RE: DEFENDANT'S SECOND CONTEMPT MOTION

At a session of Court
Held in Pontiac, Michigan
On
SEP 24 2015

Plaintiff Jerry Dancik, M.D. moves the Court to reconsider the damages it awarded Defendant Michigan Kidney Consultants, P.C. (MKC) for violating the December 2013 consent decree. MKC asks the Court to reconsider its decision awarding only $1,000 in attorney fees. The Court has discretion to grant or deny reconsideration. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Reconsideration is warranted if a party identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3).

Dr. Dancik does not contest the Court's conclusion that he violated the consent decree or the Court's decision to fine him $7,500 for his contempt. However, Dr. Dancik claims the Court

erred in concluding that MKC is entitled to $11,400 in damages for the violation because MKC did not submit admissible evidence of its actual harm and overstated its alleged injury. Although MKC has the burden of proving the amount of its loss due to Dr. Dancik's contempt, *In re Contempt of Rochlin*, 186 Mich App 639, 651; 465 NW2d 388 (1990), it met that burden by presenting evidence supporting its claim that its average annual revenue for treating the patient at issue was $11,400 per year. The fact that Dr. Dancik contests MKC's loss claim and presents evidence disputing that claim does not mean that the Court's decision is based on palpable error. See *Herald Co v Tax Tribunal*, 258 Mich App 78, 83; 669 NW2d 862 (2003). The Court denies Dr. Dancik's motion for reconsideration.

Regarding MKC's request to reconsider the Court's decision granting it only $1,000 in attorney fees, the Court concludes that reconsideration is warranted. MKC presents evidence that it incurred $6,220 in attorney fees and costs due to Dr. Dancik's violation of the consent decree. Therefore, the Court awards MCK $6,220 in attorney fees and costs.

IT IS SO ORDERED.

Dated: SEP 24 2015

Hon. Wendy Potts