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IN THE COURT OF APPEALS OF INDIANA

Franciscan Alliance Inc., d/b/a Franciscan Physician Network,
Appellant/Cross-Appellee-Defendant,

v.

Louis S. Metzman, M.D.,
Appellee/Cross-Appellant-Plaintiff

July 14, 2022

Court of Appeals Case No. 21A-PL-2171

Appeal from the Montgomery Circuit Court

The Honorable Harry A. Siamas, Judge

Trial Court Cause No. 54C01-1802-PL-213

Vaidik, Judge.

Case Summary

[1] Dr. Louis S. Metzman sued his employer, Franciscan Physician Network ("Franciscan"), alleging Franciscan breached their employment agreement and

violated the Indiana Wage Payment Statute by failing to pay him three types of compensation—base compensation, medical-director compensation, and performance-based compensation. The trial court determined Franciscan breached the agreement and violated the statute by not paying the base and medical-director compensations but found Dr. Metzman was not entitled to performance-based compensation under the contract or liquidated damages under the statute. Dr. Metzman then requested attorney's fees, pursuant in part to a provision in the employment agreement granting attorney's fees to the "prevailing party." The court awarded Dr. Metzman full attorney's fees.

[2] Both parties now appeal, with Franciscan arguing the court erred in finding it breached the contract by not paying the base compensation and Dr. Metzman arguing the court erred in finding he was not entitled to performance-based compensation or liquidated damages. Franciscan also appeals the attorney's fee award, arguing the trial court erred in awarding full fees to Dr. Metzman as the "prevailing party" where Franciscan also "prevailed" by successfully defending against some claims. Franciscan contends the court should have determined a "prevailing party" for each claim and awarded fees to that party accordingly.

[3] We agree with the trial court that the contract here calls for Dr. Metzman to receive his entire base compensation, and that Dr. Metzman is not entitled to performance-based compensation or liquidated damages. And we agree with the court's rejection of Franciscan's claim-by-claim approach to the distribution of attorney's fees. The term "prevailing party" here refers to a single party—the one in whose favor judgment is rendered, even if not to the extent of the

original claim. And while it may not always be appropriate to award full fees to the prevailing party, doing so here was not an error. We affirm.[1]

Facts and Procedural History

[4] Dr. Metzman worked for Franciscan as an orthopedic surgeon starting in 2009. In 2017, Dr. Metzman and Franciscan entered into a new two-year employment contract. Previously, Dr. Metzman had been paid based on his "Worked Relative Value Unit" (wRVU), a value assigned to each procedure and commonly used in the health-care industry to measure physician productivity. But under the new contract, Dr. Metzman was to receive $705,786 annually, paid biweekly, for his work as a full-time employee.

[5] Along with this salary—called "base compensation"—the agreement included several other types of compensation: $75.63 for each wRVU Dr. Metzman performed over the target of 10,369 wRVUs; compensation for time he was "on call" for Franciscan; $175 per hour for work he did as a medical director; and up to $7,500 in additional performance-based compensation upon meeting certain goals. The agreement also stated Dr. Metzman was "entitled to forty-two (42) days per year of paid time off days ('PTO Days'), and eight (8) additional days of unpaid leave per year." Appellant's App. Vol. III p. 167.

[1] We held oral argument in this matter on June 1, 2022. We thank counsel for their helpful advocacy.

[6] In 2017, Dr. Metzman took off 50 days. Contending that 8 of those days were "unpaid" under the agreement, Franciscan prorated Dr. Metzman's base compensation to determine his daily pay, then deducted 8 days' pay, amounting to $21,716.48, from his 2017 base compensation. That same year, Franciscan denied compensation for 23 hours Dr. Metzman submitted for his work as a medical director.

[7] In February 2018, Franciscan gave Dr. Metzman 180 days' notice that it was terminating his employment, effective that August. Dr. Metzman then filed suit against Franciscan, arguing it had breached the contract and violated the Indiana Wage Payment Statute by failing to pay his full 2017 base compensation. Dr. Metzman kept working until August, and between January and August he took off 31 days. Contending that Dr. Metzman had not yet accrued 31 days of paid time off for that year, Franciscan treated 4.5 of these days as "unpaid" and deducted $12,215.52 from his 2018 base compensation.[2] Franciscan also denied 78.5 medical-director hours submitted by Dr. Metzman in 2018 and denied him performance-based compensation for 2018. Later that year, Dr. Metzman amended his complaint, adding that Franciscan had breached the contract and violated the Indiana Wage Payment Statute by failing to pay the medical-director and performance-based compensation. Dr. Metzman also asked for liquidated damages under the statute.

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[2] The employment agreement does not state Dr. Metzman must "accrue" the paid-time-off days. Franciscan does not set forth this justification on appeal.

[8] Both parties moved for summary judgment, and a hearing was held in August 2019. After the hearing, the trial court granted summary judgment for Dr. Metzman on the base-compensation issue, finding the employment agreement did not allow for a reduction in the base compensation and Franciscan therefore breached the contract and violated the statute. The court found for Franciscan on the performance-based-compensation issue, stating Dr. Metzman had not met the performance goal and thus was not entitled to compensation. The court found the remaining issues—the medical-director compensation and damages—involved questions of fact and were therefore not appropriate for summary judgment.

[9] In March 2020, Dr. Metzman again amended his complaint, adding that Franciscan breached the contract and violated the statute by deducting 4.5 days' pay from his 2018 base compensation. A bench trial was held on the remaining issues: the 2018 base compensation, the medical-director compensation, damages for unpaid wages, and liquidated damages under the statute.

[10] The trial court found Franciscan breached the contract and violated the statute by "nonpayment of Dr. Metzman's base compensation due through the last day of his employment in 2018." Appellant's App. Vol. II p. 33. As damages for the unpaid wages in both 2017 and 2018, the trial court awarded Dr. Metzman $33,932.

[11] As for the medical-director compensation, Franciscan pointed to testimony from Terry Klein, Franciscan's chief operating officer who approved or rejected

Dr. Metzman's submitted hours. According to Klein, in late 2017, he was advised by Franciscan's risk-management team that he needed to be more vigilant in reviewing hours to avoid any violation of federal law. Based on this information, Klein rejected 78 of Dr. Metzman's submitted hours because he did not believe the work reported could be compensated under the contract. Klein rejected the remaining 23.5 hours because the paperwork was not properly submitted. The trial court found Franciscan breached the contract and violated the statute by not paying the 78 hours, but it agreed the required paperwork was not properly submitted for the other 23.5. Based on Dr. Metzman's pay of $175 per hour, the court awarded him $13,650 in damages.

[12] Finally, the trial court denied Dr. Metzman's request for liquidated damages under the Indiana Wage Payment Statute, finding Franciscan acted in good faith in not paying Dr. Metzman's full base compensation because it "based its decision . . . on its interpretation of the [employment] agreement and after consultation with its corporate attorney" and acted in good faith in not paying the medical-director compensation because "it based its denial . . . on Terry Klein's understanding of Franciscan's duties to comply with [federal] laws as well as his interpretation of the [employment agreement]." *Id.* at 34.

[13] Because both the statute and employment agreement contain fee-shifting provisions, the parties requested attorney's fees, and a hearing was held in September. Dr. Metzman requested full attorney's fees and costs. Franciscan requested $229,756.27, representing the fees it incurred arguing the claims it believed it "prevailed" on—the performance-based-compensation claim, some

of the medical-director-compensation claim, and the claim for liquidated damages. Franciscan also requested the trial court "deny Metzman's petition for all fees and costs which were not incurred on the claims on which Metzman prevailed . . . ." Appellant's App. Vol. VI p. 18. The trial court denied Franciscan attorney's fees and awarded Dr. Metzman full attorney's fees totaling $390,710.05, finding he was "the prevailing party in this suit having prevailed on the main issue, even though not to the extent of his original claim." Appellant's App. Vol. II p. 38.

[14] Franciscan now appeals on the issues of the base compensation and attorney's fees. Dr. Metzman cross-appeals on the issues of the performance-based compensation and liquidated damages.[3]

Discussion and Decision

I. Employment Agreement

[15] Both parties appeal the trial court's order on summary judgment relating to the employment agreement. Franciscan argues the court erred in determining it breached the employment agreement by reducing Dr. Metzman's base compensation, while Dr. Metzman argues the court erred in determining

[3] Neither party challenges the trial court's rulings as to the medical-director compensation.

Franciscan did not breach the contract when it failed to pay him performance-based compensation.

[16] We review a summary-judgment motion under the same standard applied by the trial court. *Alexander v. Linkmeyer Dev. II, LLC*, 119 N.E.3d 603, 611 (Ind. Ct. App. 2019). Summary judgment is appropriate only when "the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). The interpretation of a contract is a pure question of law, which is reviewed de novo. *Alexander*, 119 N.E.3d at 612. When summary judgment is granted based on the construction of a written contract, the trial court has either determined that the contract is not ambiguous or uncertain, or that any contract ambiguity can be resolved without the aid of a factual determination. *Id.*

[17] "The goal of contract interpretation is to determine the intent of the parties when they made the agreement." *Tender Loving Care Mgmt., Inc. v. Sherls*, 14 N.E.3d 67, 72 (Ind. Ct. App. 2014). This Court must examine the plain language of the contract, read it in context, and, whenever possible, construe it to render every word, phrase, and term meaningful, unambiguous, and harmonious with the whole. *Id.*

[18] If the contract language is unambiguous, the court may not look to extrinsic evidence to expand, vary, or explain the instrument but must determine the parties' intent from the four corners of the instrument. *Id.* If the language is

deemed ambiguous, the contract terms must be construed to determine and give effect to the intent of the parties when they entered into the contract. *Id.* "A word or phrase is ambiguous if reasonable people could differ as to its meaning." *Broadbent v. Fifth Third Bank*, 59 N.E.3d 305, 311 (Ind. Ct. App. 2016), *trans. denied*. A term is not ambiguous just because the parties disagree about its meaning. *Id.* "Courts may properly consider all relevant evidence to resolve an ambiguity." *Tender Loving Care Mgmt.,* 14 N.E.3d at 72. "'Extrinsic evidence is evidence relating to a contract but not appearing on the face of the contract because it comes from other sources, such as statements between the parties or the circumstances surrounding the agreement.'" *Id.* (quoting *CWE Concrete Const., Inc. v. First Nat'l Bank*, 814 N.E.2d 720, 724 (Ind. Ct. App. 2004), *trans. denied*). An ambiguous contract should be construed against the party who furnished and drafted the agreement. *Id.*

A. Base Compensation

[19] Franciscan argues the trial court erred in denying it summary judgment and granting Dr. Metzman summary judgment on the issue of base compensation. Franciscan contends "the unambiguous language of the Employment Agreement allows Franciscan to reduce bi-weekly installments of Metzman's Base Compensation for Metzman's use of unpaid leave." Appellant's Br. p. 21. The agreement provides in part,

> Compensation. For all services rendered during the term of this Agreement, [Dr. Metzman] shall be entitled to compensation payable in biweekly installments, in accordance with

> [Franciscan's] regular payroll practices and determined in accordance with the following methodology.
>
> (a) Compensation Methodology. [Dr. Metzman's] total compensation will be determined in accordance with the Physician Compensation copy is [sic] attached hereto as Exhibit 1.4(a) and made a part of this Agreement.
>
> (b) Benefits. In addition, [Dr. Metzman] is entitled to those employee benefits set forth on Exhibit 1.4(b) attached hereto and made a part hereof and/or such other benefits that are mutually agreed upon by the parties consistent with [Franciscan's] policies relating to such benefits for employed physicians. Notwithstanding anything to the contrary, **[Dr. Metzman] shall be entitled to forty-two (42) days per year of paid time off days ("PTO Days"), and eight (8) additional days of unpaid leave per year.**

Appellant's App. Vol. III pp. 166-67 (emphasis added). Exhibit 1.4(b) states in part, "[Dr. Metzman's] base compensation shall be Seven Hundred Five Thousand Seven Hundred Eighty-Six Dollars and 00/100 ($705,786.00) annually ("Base Compensation")." *Id.* at 180.

[20] Franciscan contends the employment agreement states Dr. Metzman receives eight days of unpaid leave and that based on the plain meaning of "unpaid" he is not entitled to compensation for using those days. But Dr. Metzman argues his compensation is called "base compensation," the plain meaning of which prevents any reduction.

[21] While we agree with Franciscan that the plain meaning of "unpaid leave" suggests Dr. Metzman should not be paid, we also agree with Dr. Metzman that the term "base compensation" suggests it cannot be reduced. That the agreement includes these conflicting provisions without specifying each's effect on the other creates an ambiguity. Generally, when the language of a contract is ambiguous, its meaning must be determined by examining extrinsic evidence and its construction is a matter for the factfinder. *Trustcorp Mortg. Co. v. Metro Mortg. Co.*, 867 N.E.2d 203, 212 (Ind. Ct. App. 2007), *reh'g denied*. "If, however, the ambiguity arises because of the language used in the contract and not because of extrinsic facts, its construction is purely a question of law to be determined by the trial court." *Id.* This is the case here.

[22] When looking at the agreement as a whole, we agree with Dr. Metzman that it does not allow Franciscan to reduce his base compensation because of the use of "unpaid leave." The agreement states Dr. Metzman is to receive an annual "base" salary. It also states that "in addition" to this compensation, Dr. Metzman is to receive "benefits," including "eight days of unpaid leave." This language shows an intent for Dr. Metzman to receive both his base compensation and the eight days of leave, not one or the other.

[23] Also, we look not only at what the agreement says, but also what it does not say. And what this agreement does not say speaks volumes. Namely, there is no definition of "unpaid leave." There is no mention of reduction or proration of the base compensation, nor does the agreement contain language breaking the compensation or Dr. Metzman's employment into hours or days. The

agreement is silent about the effect of taking "unpaid leave." As the drafter of the agreement, Franciscan surely could have included such provisions, especially given the complexity of the contract here, where Dr. Metzman could receive up to five types of compensation. Such ambiguities in a contract are construed against the drafter. *See Celadon Trucking Servs., Inc. v. Wilmoth*, 70 N.E.3d 833, 844 (Ind. Ct. App. 2017), *trans. denied*.

[24] When analyzing the contract as a whole, we agree with the trial court that Franciscan cannot reduce Dr. Metzman's base compensation for his use of contractually permitted unpaid leave. Franciscan therefore breached the contract and the trial court properly granted summary judgment to Dr. Metzman on this issue.

B. Performance-Based Compensation

[25] In his cross-appeal, Dr. Metzman argues the trial court erred in granting summary judgment to Franciscan on the issue of his performance-based compensation. The agreement provides Dr. Metzman "may earn additional performance based compensation" of up to $7,500 "upon the successful completion of mutually agreeable goals." Appellant's App. Vol. III p. 180. The goal agreed upon for 2018 was for Dr. Metzman to "Maintain Patient Satisfaction Mean Score for Likelihood of Recommending Care Provider of 92.6 in the 2nd and 3rd Quarter of 2018." Appellant's App. Vol. IV p. 127. Both parties point to the 3rd Quarter 2018 Press Ganey Patient Satisfaction report as the applicable statement of Dr. Metzman's scores. The report states

Dr. Metzman's "mean score" in the second quarter of 2018 is 92.4 and his "mean score" in the third quarter is 100.

[26] Dr. Metzman argues the plain meaning of "mean" is "average," so the agreement calls for the average of his second and third quarter scores **together** to be at or above 92.6. And because the average of his two scores—92.4 and 100—is above a 92.6, he argues he has met the goal and is entitled to the performance-based compensation.

[27] Franciscan argues, and the trial court found, that the agreement requires Dr. Metzman to receive a score of 92.6 or above in **both** the second and third quarters of 2018. Franciscan contends that each score is called a "mean score," so the term "mean score" in the agreement refers to an individual score, not the average of multiple scores. This is supported by the Press Ganey Patient Satisfaction report, which shows that each quarter's score is called a "mean score." The agreement also calls for Dr. Metzman to "maintain" a 92.6 "in the 2nd and 3rd Quarter of 2018." The use of the words "maintain" and "and" implies we should be looking at multiple scores, not a single average score as Dr. Metzman suggests.

[28] Thus, we agree with the trial court that the agreement calls for Dr. Metzman to receive a 92.6 in both the second and third quarters. Indisputably, he did not do so. The trial court did not err in granting summary judgment for Franciscan on the issue of Dr. Metzman's 2018 performance-based compensation.

II. Wage Payment Statute

A. Wage

[29] Franciscan also argues the trial court erred when it found that the reduction of Dr. Metzman's base compensation violated the Indiana Wage Payment Statute. The Wage Payment Statute, which governs both the amount and frequency with which an employer must pay its employees, provides in relevant part, "Every person, firm, corporation, limited liability company, or association, their trustees, lessees, or receivers appointed by any court, doing business in Indiana, shall pay each employee at least semimonthly or biweekly, if requested, the amount due the employee." Ind. Code § 22-2-5-1. If an employer fails to do so, it "shall be liable to the employee for the amount of unpaid wages, and the amount may be recovered in any court having jurisdiction of a suit to recover the amount due to the employee." I.C. § 22-2-5-2.

[30] Franciscan argues that, even if this Court determines it breached the contract, it still should not be held liable under the statute because the money owed to Dr. Metzman is not a "wage" under the statute. We disagree.

[31] While the Wage Payment Statute does not define "wage," the closely associated Wage Claims Statute defines "wage" as "all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or in any other method of calculating such amount." I.C. § 22-2-9-1; *see also Highhouse v. Midwest*

Orthopedic Inst., P.C., 807 N.E.2d 737, 739 (Ind. 2004) (applying the Wage Claims Statute's definition of "wage" to the Wage Payment Statute).

[32] The name given to the method of compensation is not controlling. *Gress v. Fabcon, Inc.*, 826 N.E.2d 1, 3 (Ind. Ct. App. 2005). Rather, we will consider the substance of the compensation to determine whether it is a wage, and therefore subject to the Wage Payment Statute. *Id.* We have recognized that wages are "something akin to the wages paid on a regular periodic basis for regular work done by the employee." *Id.* (citation omitted). In other words, if compensation is not linked to the amount of work done by the employee or if the compensation is based on the financial success of the employer, it is not a "wage." *Id.*

[33] Franciscan argues that, should we hold the contract entitles Dr. Metzman to his full base compensation despite his use of unpaid leave, then the base compensation is not linked to any work done by Dr. Metzman and thus is not a wage. That is not the case. Dr. Metzman's base compensation is an annual salary, and annual salaries are wages under the statute. *See St. Vincent Hosp. & Health Care Ctr., Inc. v. Steele*, 766 N.E.2d 699, 702 (Ind. 2002). Furthermore, this Court has found that deferred compensation, including vacation pay, is a wage under the statute. *Taylor v. Cmty. Hosps. of Ind., Inc.*, 860 N.E.2d 1200, 1204 (Ind. Ct. App. 2007), *trans. denied*. The eight days of leave here are no different. Dr. Metzman's base compensation is still linked to the work he did annually as a physician, despite his use of contractually permitted leave, just as it would be if he used a vacation day.

[34] The trial court did not err in determining that Dr. Metzman's base compensation is a wage for purposes of the Wage Payment Statute.

B. Liquidated Damages

[35] Dr. Metzman also challenges the trial court's determination that Franciscan acted in good faith in withholding his wages and that therefore he was not entitled to liquidated damages under the Wage Payment Statute. The statute provides that, if a violation of the statute has occurred, and the trial court determines the employer failed to pay the employee in good faith, "the court shall order, as liquidated damages for the failure to pay wages, that the employee be paid an amount equal to two (2) times the amount of wages due the employee." I.C. § 22-2-5-2.

[36] Here, the trial court determined that Franciscan had breached the contract and violated the Wage Payment Statute by withholding Dr. Metzman's full base compensation in 2017 and 2018 and by failing to pay Dr. Metzman all his compensation as medical director but declined to award Dr. Metzman liquidated damages under the statute. Dr. Metzman argues this was an error and points to evidence in the record he believes shows Franciscan did not act in good faith, including that it terminated him. But the trial court found sufficient evidence Franciscan acted in good faith, including that it consulted an attorney and acted on Klein's understanding of the contract and his concerns over violating federal law. *See DeGood Dimensional Concepts, Inc. v. Wilder*, 135 N.E.3d 625, 637 (Ind. Ct. App. 2019) (holding employer did not act in bad faith in withholding wages where there was a "bona fide dispute"). Dr. Metzman asks

us to reweigh this evidence, which we do not do. *DePuy Orthopaedics, Inc. v. Brown*, 29 N.E.3d 729, 732 (Ind. 2015).

[37] The trial court did not err in determining Dr. Metzman is not entitled to liquidated damages under the Wage Payment Statute.

III. Attorney's Fees

[38] Franciscan next argues the trial court erred in awarding Dr. Metzman full attorney's fees. Parties to litigation generally pay their own attorney's fees but may agree by contract to do otherwise. *Reuille v. E.E. Brandenberger Const., Inc.*, 888 N.E.2d 770, 771 (Ind. 2008). Where, as here, parties have executed a contractual provision agreeing to pay attorney's fees, such agreement is enforceable according to its terms unless the contract conflicts with law or public policy. *Id.* "[O]n appeal from an award of attorney's fees, we apply the clearly erroneous standard to factual determinations, review legal conclusions de novo, and determine whether the decision to award fees and the amount of the award constituted an abuse of the trial court's discretion." *H & G Ortho, Inc. v. Neodontics Int'l, Inc.*, 823 N.E.2d 734, 737 (Ind. Ct. App. 2005). An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.*

[39] The employment agreement contains a fee-shifting provision that provides "in the event of an alleged breach of this Agreement and suit is initiated thereon, the prevailing party is entitled to recover form [sic] the other party its reasonable attorneys' and paralegal fees, costs, and expenses." Appellant's App.

Vol. III p. 173. The term "prevailing party" is not defined. Our Supreme Court, in analyzing a similar contractual provision in which "prevailing party" was not defined, turned to the dictionary and defined "prevailing party" as follows:

> The party to a suit who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily to the extent of his original contention. The one in whose favor the decision or verdict is rendered and judgment entered.

Reuille, 888 N.E.2d at 771 (quoting Black's Law Dictionary 1188 (6th ed. 1990)). The Court stated, "This definition appears to contemplate a trial on the merits and entry of a favorable judgment in order to obtain prevailing party status." *Id.* at 771-72.

[40] Franciscan acknowledges Dr. Metzman received a favorable judgment and therefore "prevailed," but argues it too "prevailed" by successfully defending against some of Dr. Metzman's claims. In other words, Franciscan posits we should "determine prevailing party status on a claim-by-claim basis" and proportion attorney's fees accordingly. Appellant's Br. p. 33.

[41] We disagree with Franciscan that the agreement allows for more than one "prevailing party." Franciscan contends the fee-shifting provision provides for the recovery of fees "in the event of **an** alleged breach," meaning that each breach is separate and distinct, and therefore each party could "prevail" on different claims. But the full provision states that "in the event of an alleged breach of this Agreement and suit is initiated thereon, the prevailing party is

entitled to recover . . . .” Thus, when read in full the provision refers to the “prevailing party” of the “suit,” not of “an alleged breach.” Further, the definition of “prevailing party” above suggests only one successful party. Nor does Franciscan point us to any cases in which we have found more than one prevailing party. In fact, this Court has found just one party to be the “prevailing party” even when, as here, that party did not succeed on every claim. *See Stepp v. Duffy*, 686 N.E.2d 148, 153 (Ind. Ct. App. 1997) (finding plaintiffs the prevailing party when the court held in their favor on four of five issues), *reh’g denied*, *trans. denied*.

[42] Here, Dr. Metzman alleged Franciscan breached the contract and violated the Indiana Wage Payment Statute by not paying his base compensation, medical-director compensation, or performance-based compensation. The trial court found in Dr. Metzman’s favor on both the base-compensation and medical-director-compensation issues. Thus, we agree with the trial court that Dr. Metzman is the prevailing party here.

[43] But Franciscan is correct that the purpose of fee-shifting provisions is to make the prevailing party to a contract whole and that awarding full fees to a party who did not prevail on all claims could “create a remarkable asymmetric benefit to a plaintiff.” Appellant-Cross Appellee Reply Br. p. 40. Such concerns can be addressed by the apportionment of fees. As this Court has noted, “An excessive attorney fee award can be avoided when fees are apportioned according to the significance of the issues upon which a party prevails, balanced against those on which the party does not prevail.” *Stepp*, 686 N.E.2d at 153*; see also Olcott Int’l &*

Co. v. Micro Data Base Sys., Inc., 793 N.E.2d 1063, 1079 (Ind. Ct. App. 2003) (noting decisions on appeal will "result in a significant reduction in the damages awarded" and remanding for trial court to "reconsider the question of what would constitute a reasonable attorney fees award in this case"), *trans. denied*. The question is therefore not whether Franciscan should be considered a prevailing party under the agreement for successfully defending against some claims, but whether the trial court abused its discretion in not reducing the amount awarded to Dr. Metzman given this fact.

[44] We believe it did not. What constitutes a reasonable attorney's fee is a matter largely within the trial court's discretion. *Olcott*, 793 N.E.2d at 1079. In determining what is "reasonable," the court may consider such factors as the hourly rate and the difficulty of the issues. *Id.* "One of these considerations is the results obtained, especially when the plaintiff has made multiple claims but has succeeded on only some of them." *Silverman v. Villegas*, 894 N.E.2d 249, 262 (Ind. Ct. App. 2008), *trans. denied*.

[45] Franciscan points to *Cox v. Town of Rome City*, 764 N.E.2d 242, 251 (Ind. Ct. App. 2002), and *Novak v. Apollo Printing & Thermography, Inc.*, 562 N.E.2d 1305, 1308 (Ind. Ct. App. 1990), in which the plaintiffs prevailed on their statutory claims and, under a fee-shifting provision in the statute, requested attorney's fees. This Court stated attorney's fees could be given to the prevailing parties but limited the amount to the fees attributable to the party's statutory claim. Franciscan argues this supports its contention that "attorney's fees are limited to only those fees attributable to a party's actual recovery." Appellant's Br. p.

31. But both *Cox* and *Novak* involved two types of claims: claims that were subject to a fee-shifting provision and claims that were not. Thus, the trial courts awarded fees attributed to the claims that allowed fee recovery. That is not the case here, where each claim is subject to a fee-shifting provision.

[46] We find this case closer to *H & G Ortho*, 823 N.E.2d at 738. There, the plaintiffs prevailed on nine of eleven issues, all arising out of the same contract. The trial court awarded them 99% of the fees they incurred under a fee-shifting provision in the contract. The defendants appealed, challenging the fee amount, and we affirmed. In doing so, we noted that "where a lawsuit consists of related claims, a plaintiff who has won substantial relief 'should not have his attorney's fees reduced merely because the court did not adopt every contention raised.'" *Id.* (quoting *Olcott*, 793 N.E.2d at 1080); *see also Silverman*, 894 N.E.2d at 262 (allowing plaintiffs to recover full fees under a statutory fee-shifting provision where plaintiffs prevailed in their state statutory claim but not on related federal claim).

[47] The same can be said here. Dr. Metzman's claims all arose from the employment agreement and Franciscan's alleged withholding of compensation. And Dr. Metzman prevailed on his claim for base compensation and medical-director compensation, although not to the extent he initially claimed.[4] Like the

[4] Franciscan contends the case included another issue on which it prevailed—liquidated damages under the statute. While this is true, the liquidated-damages claim is strictly a statutory issue, unlike the other claims, which were brought under both the contract and statute. And under the statute's fee-shifting provision, only the plaintiff can be awarded fees. *See* I.C. § 22-2-5-2 (providing that if employer violates statute, "[t]he court

plaintiffs in *H & G Ortho*, Dr. Metzman did not prevail on every issue, namely, his claim for performance-based compensation. But this issue was significantly lower-stakes—it involved virtually no dispute of fact, its damages were minor compared to the other claims, and it was disposed of on summary judgment. The trial court's other considerations—including that the case as a whole required extensive time and labor, involved complex legal and factual issues, and that this litigation was "highly adversarial" and included multiple rounds of summary judgment, an unsuccessful mediation, and discovery disputes—also support a large fee award.

[48] While it would have been within the trial court's discretion to reduce Dr. Metzman's fee award given Franciscan's successful defense, it did not abuse its discretion in not doing so.

[49] Affirmed.

Najam, J., and Weissmann, J., concur.

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shall order as costs in the case a reasonable fee for the **plaintiff's** attorney and court costs." (emphasis added)). So Franciscan "prevailed" on this claim but cannot receive fees attributable to it. Nor do we believe it appropriate here to reduce fees from the prevailing party for asserting a failed liquidated-damages claim along with a successful unpaid-wages claim.