[Cite as *Malempati v. Indep. Inpatient Physicians, Inc.*, 2013-Ohio-3543.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Padmavathi Malempati, M.D.,	:	
Plaintiff-Appellee,	:	
		No. 12AP-565
v.	:	(C.P.C. No. 12CVH-12-18905)
Independent Inpatient Physicians, Inc.,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 15, 2013

McFadden Winner Savage & Segerman, LLP, and *Mary Jane McFadden*, for appellee.

Dinsmore & Shohl, LLP, and *Eric J. Plinke and Gregory P. Mathews*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Plaintiff-appellee, Padmavathi Malempati, M.D. ("appellee"), initiated this action by filing a complaint naming as defendant her former employer, defendant-appellant, Independent Inpatient Physicians, Inc. ("IIP"). The trial court awarded appellee $20,306.40 in damages based on the equitable theory of promissory estoppel. The trial court found that IIP was not entitled to damages based on its counterclaim asserting unjust enrichment. We affirm.

{¶ 2} The case was tried before a magistrate, who received testimony establishing that IIP is an Ohio professional corporation owned solely by Mark Dellinger, M.D. ("Dellinger"). Both Dellinger and appellee are hospitalists[1] who worked in the hospitals of Mount Carmel Health System in central Ohio as employees of IIP. Most of IIP's revenue

[1] The parties' original 2002 employment contract defined "hospitalist" as "a physician who manages the care of in-hospital patients for other physicians." (Sept. 1, 2002 Contract, 4.)

came from payments made to it by medical insurance companies. A time lag of two to three months or more generally existed between the time the doctors rendered their professional medical services and the time IIP received payment for those services.

{¶ 3} IIP employed appellee during two separate time periods between September 2002 and November 13, 2008. Appellee's most recent period of employment lasted from September 2007 through November 13, 2008. During this period, Dellinger and appellee were IIP's only physician employees, and appellee received as compensation each month two payments of $4,791.67, which the parties considered salary payments. In addition to her salary, IIP paid appellee what the parties termed "bonus" or "production" payments. These payments were calculated by determining the total amount of IIP's receipts attributable to appellee's performed medical services, minus appellee's individual expenses (including base salary draws, continuing education expenses, and malpractice insurance), and further subtracting 50 percent of IIP's corporate overhead expenses.[2] Because of the time lag between appellee's performance of medical services and receipt of payment for those services from insurance companies, the final calculation of appellee's monthly compensation often occurred two or three months after she rendered her services. Usually, however, IIP collected receipts for services within one year from the time the medical services were provided. According to appellee, she and Dellinger did not discuss at this meeting whether appellee would agree not to compete against Dellinger as a hospitalist at Mount Carmel.

{¶ 4} On September 24, 2008, after meeting with Dellinger at a local restaurant, appellee decided to resign from IIP. The next day she submitted a letter of resignation that stated an effective date of November 30, 2008. On October 2, 2008, appellee, accompanied by her husband (who handled appellee's and the family's finances), met with Dellinger and discussed payment of appellee's final compensation. Appellee testified that Dellinger told her that IIP "would pay me my account receivables for [a] one-year period in two installments, first check in six months and the second check in one year after my departure, as long as I agreed to buy my tail [malpractice insurance] coverage[3] stating that IIP would be covered under that policy." (Tr. 67.) Appellee further testified that she asked

[2] The corporate expenses included charges made by a billing company, a payroll company, an accountant, legal expenses, and amounts withheld for tax purposes.

[3] In this case, "tail coverage" refers to an extended reporting endorsement to a professional liability claims-made insurance policy providing liability coverage against any claim filed against a physician after the policy period ended but which arose out of professional services rendered during the policy period.

Dellinger what expenses would be deducted from her receivables and that Dellinger told her that IIP would deduct a figure representing only her share of IIP's billing costs, i.e., expenses representing payments to the billing company IIP employed. Appellee testified that Dellinger told her that IIP would deduct from her net receivables billing expenses attributable only to her receipts, i.e., she would receive her net "account receivables minus five percent of [her] account receivables, not 50 per cent of the corporate billing expenses" as had been their previous custom. (Tr. 68.) In short, appellee testified that Dellinger represented at the October 2 meeting that she would be paid for amounts representing payment to IIP for her services even if those amounts were received by IIP after she left IIP; i.e., she would receive two bonuses after she left, so long as she purchased tail coverage that would benefit IIP.

{¶ 5} Appellee further testified that she continued working for the company after the October 2 meeting in reliance on that representation. She expressly testified that, if she had known that she would not receive bonuses based on IIP's collections received in the year after she left, and if Dellinger had not confirmed that she would receive those sums, she would not have worked during the six weeks that followed the October 2 meeting.

{¶ 6} Moreover, appellee testified that, between October 2 and her last day of employment on November 13, 2008,[4] she in fact worked more hours than she normally would have. This occurred because Dellinger notified her on a daily basis that he was ill with vertigo, and appellee agreed to cover for him. As a result, after the October 2 meeting, appellee covered double her usual amount of patients—both her patients and Dellinger's patients—during daily ten- to twelve-hour shifts. Appellee, the mother of an infant, testified that she accepted those long hours because Dellinger had assured her at the October 2 meeting that she would be compensated accordingly. In addition, appellee knew that she would need the additional compensation in order to purchase the tail insurance coverage that Dellinger had identified as a condition for the payment to appellee of any bonus amounts calculated on the basis of collections received by IIP in the year after appellee left IIP's employ but attributable to her work before she left its employ.

[4] Appellee testified that her final day of employment by IIP, November 13, was earlier than the November 30 date stated in her letter of resignation because her mother no longer was available to serve as the family's childcare provider.

{¶ 7} Late in December 2008, over one month after appellee's last day of work, appellee received a proposed written separation agreement from Dellinger. The parties had not previously discussed the execution of a written agreement. Appellee testified that she was "stunned" to find references in the proposed agreement to new and additional conditions for payment of her bonus compensation. She did not find Dellinger's proposed settlement agreement acceptable.

{¶ 8} Over the next few months, she and Dellinger engaged in additional e-mail and other communications. On April 21, 2009, appellee sent Dellinger her own proposed settlement agreement. On June 16, 2009, Dellinger sent a letter to appellee rejecting her proposed settlement agreement. He acknowledged that he remained willing to give appellee one year's worth of accounts receivable if she purchased tail insurance coverage that included IIP. But, in addition, he indicated that he wanted appellee to agree not to practice in the Mount Carmel hospital system; i.e., he wanted appellee to agree not to compete in the same hospital in which he intended to continue practicing. In response, appellee notified Mount Carmel in the spring of 2009 that she did not desire to renew her Mount Carmel hospital privileges.

{¶ 9} Between June 21 and July 17, 2009, appellee and Dellinger engaged in further e-mail communications. Appellee informed Dellinger that she had taken a new position with a medical group that did not practice at Mount Carmel and that she still hoped to receive the bonuses she believed she was owed by IIP. She indicated that she needed those funds to help cover the premium for the tail coverage. On June 23, 2009, Dellinger responded via e-mail that he wanted proof of appellee's employment contract with her new employer as well as a copy of the insurance tail coverage policy, and expressly stated that, "[i]f you can provide proof of your contract with other employer * * * and provide me a copy of your insurance tail policy I can work to release the funds! It is important that the tail policy note that IIP is listed as sharing limits. With my concerns met, we can avoid the written agreement." (Plaintiff's Exhibit 14.)

{¶ 10} On July 8, 2009, appellee notified Dellinger that she had, indeed, obtained tail coverage for both herself and IIP and informed him that she had not renewed her Mount Carmel privileges. Appellee refused, however, to provide Dellinger with a copy of the new employment contract because the contract contained a confidentiality clause.

{¶ 11} Appellee further testified that she had obtained tail coverage for IIP at a cost to her of $33,712. Appellee stated that, in order to include IIP within the tail coverage, she was limited to buying the coverage from IIP's existing carrier. Accordingly, appellee did not obtain estimates of premium costs for tail coverage from other companies. Appellee testified that she would not have expended over $33,000 to purchase the tail coverage from IIP's existing liability carrier if she had not believed, based on Dellinger's June 23, 2009 e-mail, that IIP would then pay her bonuses based on its receipts attributable to her work while an IIP employee. She testified that she purchased the tail coverage from the existing carrier because she and Dellinger had a verbal agreement that she would "buy the tail coverage to receive [her] one-year account receivables." (Tr. 142.)

{¶ 12} Dellinger did not find satisfactory appellee's representation that she had formally informed Mount Carmel that she was not renewing her Mount Carmel privileges, nor was he convinced that appellee had obtained tail coverage that benefited IIP. Accordingly, he advised appellee that he would no longer be negotiating the terms of a written separation agreement. Appellee construed Dellinger's e-mail as reflecting his decision that IIP would not be paying appellee the bonus compensation she was expecting.

{¶ 13} Appellee's husband, Kiran Malempati ("Malempati"), testified concerning the October 2, 2008 meeting. He stated that Dellinger told appellee at the meeting that she would receive 100 percent of her collections, minus billing expenses, in two installments, the first being six months after the separation and the second installment twelve months after the separation. Malempati further recalled Dellinger telling appellee that she would be responsible for purchasing tail coverage. In addition, according to Malempati, Dellinger did not suggest or mention the possible execution of a written separation agreement. Rather, Malempati believed that both physicians mutually understood that, if appellee continued to work at IIP for several additional weeks, she would be paid the receipts generated by that work, even if IIP collected those receipts after she left. Malempati further testified that appellee received a check dated July 24, 2009, that represented a bonus based on the amounts IIP had received through November 30, 2008, that were attributable to appellee's work but that IIP had not sent any additional payments representing amounts attributable to appellee's work but received by IIP during the remaining eleven and one-half months of the twelve-month period beginning on October 2, 2008.

{¶ 14} IIP called Dellinger as its sole witness. Dellinger acknowledged that, at the September 2008 restaurant meeting, the parties had discussed the possibility of appellee leaving the practice. He stated that he told appellee at this meeting that he wanted a non-compete agreement in exchange for IIP's payment to her of bonuses based on collections received by IIP after her employment ended. Dellinger further testified that IIP had a claims-made malpractice insurance policy that covered a one-year period and that he wanted IIP named as an insured on any tail coverage appellee might obtain. Tail coverage of this nature, he stated, would protect IIP against any legal costs the corporation might incur if appellee were sued for malpractice and IIP were named as a co-defendant. Dellinger acknowledged that legal costs of that nature would probably total "a few thousand dollars." (Tr. 184.)

{¶ 15} Dellinger also testified concerning the second meeting that occurred on October 2, 2008. He acknowledged that the parties did not discuss a non-compete agreement at that meeting. But Dellinger expressly denied promising appellee that IIP would pay her bonus amounts based on her accounts receivable either at the October 2 meeting or at any other time after appellee informed him that she was quitting. He further testified that his primary concern had not been whether IIP was listed as an insured on a tail coverage policy—his primary concern was whether the company would be indemnified for any expenses it might incur as a result of a lawsuit being brought against it based on appellee's conduct as a physician. Tail coverage was just one way in which IIP could be assured of that indemnification. Dellinger was adamant, however, that he and appellee never came to an agreement as to the amounts appellee would receive, if any, as bonus payments based on collections by IIP that were attributable to medical services performed by appellee during IIP's employment but received by IIP after her employment.

{¶ 16} Dellinger further testified that IIP was not specifically listed on the tail coverage endorsement that appellee purchased and that he was not confident that IIP would benefit from it. Dellinger acknowledged that the insurance agent who acted as intermediary between IIP and the insurance company had advised him on July 7, 2009, that the tail coverage endorsement purchased by appellee would benefit IIP. Nor did Dellinger challenge that the agent sent him a June 2, 2009 e-mail stating that, "[i]if a suit comes in for Dr. Malempati, the corporation will have coverage - sharing the $1,000,000 limit with Dr. Malempati on her tail coverage." (Plaintiff's Exhibit 26.) He testified,

however, that he was not reassured by the representations of the insurance agent. He again stated that the tail coverage was only a minor issue and that his main concern was the potential risk to his business were appellee to compete against him as a hospitalist in the Mount Carmel hospital system. He did not believe that appellee had any right to bonus payments and testified that "the only way [he] would pay her receivables is if [he] would receive something in return" (Tr. 236), more specifically, a non-compete agreement. The fact that appellee had provided documentation that she had resigned her privileges at Mount Carmel and obtained a job elsewhere did not satisfy him. He believed that appellee could easily regain her Mount Carmel privileges.

{¶ 17} On rebuttal, appellee testified that she and Dellinger did not discuss Dellinger's desire for a non-competition agreement at the September 2008 restaurant meeting, nor during a telephone conversation the next day when she notified him that she wanted to resign, nor at any other time before leaving IIP.

{¶ 18} Following the trial, the magistrate issued a decision that included findings of fact and conclusions of law. The magistrate found as fact that appellee and Dellinger were, in 2008, being compensated through bi-monthly salary payments supplemented by additional bonus payments representing distribution of profits. The magistrate further found that appellee expected that, following the September 24, 2008 meeting and subsequent discussions, if she quit her employment with IIP, she would be paid two separate bonus payments based on IIP's collections attributable to her services but received by IIP during the year following her separation from IIP. He concluded that appellee had provided probative evidence supporting her right to recover under a theory of promissory estoppel and that she was entitled to unpaid compensation in the amount of $20,306.40. He further found that IIP had overpaid appellee her salary for the entire month of November 2008, even though appellee's last day of work was November 13, 2008, and therefore ordered that IIP be credited with $4,791.67 representing that overpayment. The magistrate concluded that the balance due appellee from IIP was $15,514.73.

{¶ 19} Both parties filed objections to the magistrate's decision. The trial court noted that the magistrate was in the best position to assess the credibility of the witnesses. The trial court overruled Dellinger's objections to the magistrate's finding that an award of damages based on promissory estoppel was appropriate. The court agreed that appellee

had established proof of all of the required elements of a promissory estoppel claim and had properly calculated the amount owed appellee. It found that: (1) Dellinger's "promise to pay [appellee] her receivables after termination in exchange for her purchase of tail coverage that also covered IIP was sufficiently clear and unambiguous"; (2) appellee had "relied upon Dr. Dellinger's promise by continuing to work from October 2, 2008 through November 13, 2008" and in "ch[oosing] to purchase the tail policy providing shared limits to IIP through the only possible insurer, their current insurer," and that appellee further relied upon the promise by refraining from seeking better quotes for coverage limited only to her or purchasing other insurance products that would have met her individual goals; and (3) appellee had been damaged in that she "continu[ed] to work from October 2, 2008, through November 13, 2008," fully expecting to be paid the receivables she generated during this time. (June 5, 2012 Entry, 5-6.) The court found that the difference between what she received and what she expected to receive was at least $15,514.73. The court further noted that, although not required by the terms of Dellinger's October 2, 2008 promise, appellee advised Mount Carmel that she would not be renewing her privileges.

{¶ 20} In addition, the trial court sustained appellee's objections to the amount of damages calculated by the magistrate. The trial court determined that the magistrate had failed to recognize that the $4,791.67 overpayment asserted by IIP had previously been credited to IIP. It therefore modified the magistrate's award of damages by that amount and entered judgment for appellee in the amount of $20,306.40 on her promissory estoppel claim.

{¶ 21} IIP timely appealed and presents four assignments of error, as follows:

> [1.] The trial court erred in finding in Plaintiff's favor on her promissory-estoppel claim because Independent Inpatient Physicians, Inc. did not make a clear and unambiguous promise to Plaintiff.
>
> [2.] The trial court erred in finding in Plaintiff's favor on her promissory-estoppel claim because Plaintiff did not reasonably or foreseeably rely on a promise made by Independent Inpatient Physicians, Inc.
>
> [3.] The trial court erred in finding that Plaintiff had a right to recover under her promissory-estoppel claim because plaintiff did not prove that she was injured as a result of her purported reliance.

> [4.] The trial court erred in entering judgment in Plaintiff's favor on Independent Inpatient Physicians, Inc. unjust-enrichment claim.

{¶ 22} We first acknowledge the standard of review by which we examine the trial court's judgment. "We generally review a trial court's adoption, denial or modification of a magistrate's decision for an abuse of discretion." (Citations omitted.) *Brunetto v. Curtis*, 10th Dist. No. 10AP-799, 2011-Ohio-1610, ¶ 10. Accordingly, " '[w]hen reviewing a trial court's disposition of objections to a magistrate's report, we will not reverse the trial court's decision if it is supported by some competent, credible evidence.' " *McNeilan v. The Ohio Univ. Med. Ctr.*, 10th Dist. No. 10AP-472, 2011-Ohio-678, ¶ 20, quoting *O'Connor v. O'Connor*, 10th Dist. No. 07AP-248, 2008-Ohio-2276, ¶ 16. "Where an appeal from the trial court's action on a magistrate's decision, however, presents only a question of law, such as a question of contract interpretation, we review that question de novo." (Citation omitted.) *Brunetto*, ¶ 10 .

{¶ 23} In reviewing a trial court's adoption of a magistrate's decision relative to the question of whether the elements of a tort claim have been proven, we have examined the record to determine whether competent, credible evidence supported the trial court's determination. *McNeilan*. We apply that same standard to our review of the question of whether the trial court properly found that appellee had established the elements of promissory estoppel. In doing so, we note that, although promissory estoppel has been characterized as a quasi-contractual or equitable doctrine, see *Dailey v. Craigmyle & Son Farms, L.L.C.*, 177 Ohio App.3d 439, 2008-Ohio-4034, ¶ 14 (4th Dist.), the "doctrine of promissory estoppel is commonly explained as promoting the same purposes as the tort of misrepresentation: punishing or deterring those who mislead others to their detriment and compensating those who are misled." Katz, *When Should an Offer Stick; The Economics of Promissory Estoppel in Preliminary Negotiations*, 105 Yale L.J. 1249 (Mar. 1996).

{¶ 24} Although describing the doctrine of promissory estoppel as "nebulous," the Supreme Court of Ohio has adopted Section 90 of the Restatement of the Law, Contracts 2d (1973), which summarizes the doctrine as follows:

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

McCroskey v. State, 8 Ohio St.3d 29 (1983), citing *Talley v. Teamsters Loc. No. 377*, 48 Ohio St.2d 142 (1976).

{¶ 25} The magistrate, the trial court, and the parties have all accepted this court's characterization of the elements of a promissory estoppel claim as set forth in *Holt Co. v. Ohio Mach. Co.*, 10th Dist. No. 06-AP-911, 2007-Ohio-5557:

> A claim of promissory estoppel involves four elements: (1) there must be a clear and unambiguous promise, (2) the party to whom the promise was made must rely on it, (3) the reliance is reasonable and foreseeable, and (4) the party relying on the promise must have been injured by the reliance.

Id. at ¶ 30.

{¶ 26} Appellant's first three assignments of error track these elements, as does our resolution of them.

Clear and Unambiguous Promise

{¶ 27} In its first assignment of error, IIP contends that Dellinger did not make a promise sufficient to satisfy the first element of a promissory estoppel claim, that being the existence of a clear and unambiguous promise. We note that the question of whether "a clear and unambiguous promise" has been made is a question of fact. *Dailey* at ¶ 14. *See also Miller v. Lindsay–Green, Inc.*, 10th Dist. No. 04AP-848, 2005-Ohio-6366, ¶ 49 (affirming an award of damages based on a jury verdict that the plaintiff had proven the elements of promissory estoppel and finding that the "evidence support[ed] the jury's verdict * * * on [a] promissory estoppel claim"). Moreover, in general, "[t]he existence or nonexistence of promissory estoppel essentially turns on the credibility of the witnesses," and the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *Patrick v. Painesville Commercial Properties, Inc.*, 123 Ohio App.3d 575, 586 (11th Dist.1997).

{¶ 28} In support of its argument that the record lacks sufficient evidence of a clear and unambiguous promise, IIP points to Dellinger's testimony that he did not promise on October 2, 2008, to pay appellee accounts receivable and that the conversation on that date was part of a broader conversation regarding appellee's separation. In response, appellee asserts that her testimony was clear that Dellinger told her on October 2, 2008 that IIP would pay her bonuses based on net receivables attributable to her work but collected by IIP during the one-year period after her departure; that the payment would be

in two installments, and that payment of the bonuses was contingent only upon appellee purchasing tail coverage.

{¶ 29} We agree with appellee that her testimony constituted competent, credible evidence sufficient to satisfy the first element of appellee's promissory estoppel claim, that being the existence of a clear and unambiguous promise. IIP suggests several other excerpts of testimony that arguably weigh against that conclusion; e.g., appellee's husband testified tail coverage was not discussed on October 2, while appellee testified that it was. However, those arguments, while properly presented to the fact finder, do not require that we find appellee's testimony as lacking credibility. The magistrate considered the evidence, the credibility of the witnesses, and the totality of the circumstances involving the parties and concluded that appellee had established the right to recover under a promissory estoppel theory. Moreover, the trial court "fully agree[d] with the magistrate's credibility determinations" and observed that "the magistrate clearly believed the testimony from [appellee]." (June 5, 2012 Entry, 3, 5.)

{¶ 30} Similarly, IIP points out that appellee participated in 2009 negotiations concerning a possible written settlement agreement and argues that this fact precludes a finding that Dellinger on October 2, 2008, made a clear and unambiguous promise to pay appellee bonuses for amounts received by IIP after appellee separated from IIP. The argument is unpersuasive. The trial court, as the ultimate finder of fact, may well have determined that appellee felt it necessary to entertain the possibility of executing a written agreement as the most expedient and practical way of prompting IIP to deliver on its previous promise. The fact that appellee attempted to satisfy new conditions for payment imposed by Dellinger after October 2, 2008, does not compel the conclusion that he had not previously promised to pay her bonuses upon satisfaction of the single condition stated on October 2, i.e., that appellee obtain tail coverage that benefited IIP.

{¶ 31} We find that competent and credible evidence supported the trial court's conclusion that Dellinger, on behalf of IIP, made a clear and unambiguous promise on October 2, 2008, to pay appellee bonus payments contingent upon appellee obtaining tail coverage that benefited IIP. We therefore overrule IIP's first assignment of error.

Reasonable Reliance on IIP's Promise

{¶ 32} In its second assignment of error, IIP contends that appellee did not reasonably and foreseeably rely on IIP's promise. It suggests that appellee's testimony does

not support the conclusion that she worked from October 2 to November 13, 2008, in reliance upon Dellinger's promise that she would be paid bonuses based on that work. Similarly, IIP argues that appellee, upon leaving IIP, would have purchased tail insurance to protect herself regardless of Dellinger's promise.

{¶ 33} We reject these arguments because they conflict with the express testimony of appellee and because the trial court found her testimony to be credible. Appellee testified that she would not have continued to work had she known she would not receive a portion of the receipts collected after she left because she first wanted to know what she would be paid for working those weeks. She stated that, "if I had known that I wouldn't get paid for working once I [left] for the collections I generated during those six- or seven-weeks period, no, I would not have worked." (Tr. 70.) Moreover, she testified that she in fact worked significantly more hours during this period than she otherwise would have, at Dellinger's request due to his illness, and because she wanted to earn the money that this additional work would generate beyond her base salary. In 2008, appellee was not contractually obligated to continue her employment with IIP through any specific date and, therefore, as an at-will employee, appellee had the right to terminate her employment at any time, with or without prior notice. *Lake Land Emp. Group of Akron, LLC v. Columber*, 101 Ohio St.3d 242, 2004-Ohio-786. Her earlier submission of a letter indicating that she intended to work through November 30, 2008, did not legally preclude her from leaving her employment before that date.

{¶ 34} Similarly, appellee testified that the reason she purchased tail coverage that would benefit IIP as well as herself was because "according to our verbal agreement, I was the one who has to buy the tail coverage to receive my one-year account receivables." (Tr. 142.) She further testified that she therefore refrained from making inquiries as to the availability of other possibly less expensive, tail coverage policies. In fact, she testified that her insurance agent advised her that cheaper coverage might have been available if appellee purchased coverage only for herself and not also IIP. She additionally testified that she refrained from inquiring as to other types of coverage that might have achieved the same protection as tail coverage, including negotiating coverage at the expense of possible future employers. She stated that her forbearance from making these types of inquiries was based upon her reliance on Dellinger's promise to pay her bonuses only on the condition that she acquire tail coverage that benefited IIP.

{¶ 35} Again, we find that IIP's argument is, at root, a challenge to appellee's credibility. We will not second-guess the trial court's determination that appellee's testimony was, in fact, credible. Moreover, it strains credulity to suggest that appellee worked the long and extended hours she in fact worked from October 2 through November 13, 2008, for a reason other than her reliance upon IIP's promise that she would be paid bonuses in addition to her basic salary. On the contrary, it was entirely reasonable and foreseeable that appellee would agree to work the extended hours necessitated by Dellinger's illness in reliance upon IIP's promise that she would be compensated accordingly (assuming she also purchased tail coverage that benefited IIP).

{¶ 36} We find that competent and credible evidence supported the trial court's conclusion that appellee reasonably and foreseeably relied on Dellinger's October 2, 2008 promise, made on behalf of IIP, to pay appellee bonus payments contingent upon appellee obtaining tail coverage that benefited IIP. We therefore overrule IIP's second assignment of error.

Proof of Injury

{¶ 37} In its third assignment of error, IIP contends that appellee was not injured as a result of IIP's failure to live up to the October 2 promise made by Dellinger on IIP's behalf. The argument lacks merit. Dellinger promised that appellee would be paid bonuses if she satisfied the tail coverage condition. Appellee testified that she did satisfy the tail coverage condition, and IIP provided insufficient proof to rebut that testimony. Rather, IIP only offered proof that Dellinger was not confident in their insurance agent's representation that appellee had purchased an endorsement that benefited IIP. Moreover, there is no dispute that IIP never paid appellee bonuses based on IIP's receipts collected subsequent to November 30, 2008, but attributable to appellee's work. That nonpayment of expected bonuses was clearly injurious to appellee.

{¶ 38} We find that competent and credible evidence supported the trial court's conclusion that appellee was injured as the result of IIP's failure to perform its promise to pay appellee bonus payments if appellee demonstrated that she had obtained tail coverage that benefited IIP. We therefore overrule IIP's third assignment of error.

Determination of Damages

{¶ 39} In its fourth assignment of error, IIP asserts that the trial court erred in failing to award it $6,979.32 in damages under an unjust-enrichment theory of recovery.

IIP contends that the $6,979.32 amount represents the sum of its payment to appellee of her regular salary of $4,791.67 for the last two weeks of November 2008 (during which she did not work), as well as an additional $2,187.65, which IIP identifies as resulting from a corrected calculation of appellee's October through November 2008 bonus.

{¶ 40} "A plaintiff must establish the following three elements to prove unjust enrichment: (1) a benefit conferred by the plaintiff upon the defendant; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment." *Maghie & Savage, Inc. v. P.J. Dick Inc.*, 10th Dist. No. 08AP-487, 2009-Ohio-2164, ¶ 33.

{¶ 41} IIP asserts that appellee was unjustly enriched because IIP paid her a second regular November salary payment of $4,791.67, and appellee did not work during the second half of November 2008. But, although IIP initially paid appellee salary for the second half of November, 2008, it later deducted that salary overpayment in calculating appellee's October through November 2008 bonus (the bulk of which it paid in December 2008). IIP thus effectively recouped the November 2008 salary overpayment in its calculation of appellee's October through November 2008 bonus.

{¶ 42} IIP further argues that appellee did not prove the elements of promissory estoppel and, therefore, was not entitled to any bonus payments attributable to appellee's medical services for which IIP received compensation subsequent to November 13, 2008. IIP had previously paid appellee a bonus representing IIP's collections through November 30, rather than through November 13, 2008, and suggests that it thereby overpaid appellee's final bonus for October and November 2008. It seeks recovery, under an unjust-enrichment theory, of what it considers an overpayment of the bonus it had previously paid. It suggests that the amount of this overpayment was $2,187.65.

{¶ 43} But we have found that appellee did establish her entitlement to damages under a promissory estoppel theory, and she therefore had a right to receive a bonus based on all collections received by IIP for a one-year period after she left IIP. Accordingly, she was not unjustly enriched by IIP's payment of a bonus based on collections received during all of November 2008. That is, appellee was entitled to collect a bonus based on IIP's collections during the period in November during which she worked, and also during the latter part of November, during which she did not work, because that was consistent with the promise IIP had made.

{¶ 44} In awarding damages after proof of the elements of promissory estoppel, a court may award either reliance or expectancy damages, as appropriate, in accord with the demands of justice. *Miller v. Lindsay–Green, Inc.*, at ¶ 92, citing *Mers v. Dispatch Printing Co.*, 39 Ohio App.3d 99, 105 (10th Dist.1995). In the case at bar, the trial court awarded expectancy damages representing the amount that appellee would have received had IIP fulfilled the October 2, 2008 promise Dellinger made on its behalf; i.e., the amount appellee expected to receive. Under the circumstances, we find that IIP did not establish the elements of unjust enrichment of $2,187.65 as to the October through November bonus it had previously paid, nor as to any overpayment of salary. We find no error in the total amount of the judgment awarded appellee.

{¶ 45} Accordingly, we find that IIP's fourth assignment of error lacks merit and we overrule it.

Conclusion

{¶ 46} For the foregoing reasons, all four of IIP's assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.

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