IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

GARY WOOD, M.D., A MARRIED MAN,
Plaintiff/Counterdefendant/Appellee/Cross-Appellant,

v.

NORTHWEST HOSPITAL, LLC, DBA NORTHWEST MEDICAL CENTER,
A DELAWARE LIMITED LIABILITY COMPANY,
Defendant/Counterclaimant/Appellant/Cross-Appellee.

No. 2 CA-CV 2019-0189
Filed August 28, 2020

Appeal from the Superior Court in Pima County
No. C20182833
The Honorable Leslie Miller, Judge

AFFIRMED IN PART; VACATED AND REMANDED IN PART

COUNSEL

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OPINION

Judge Eckerstrom authored the opinion of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

E C K E R S T R O M, Judge:

¶1 This appeal arises out of a wage-related dispute between Dr. Gary Wood and Northwest Hospital LLC dba Northwest Medical Center (NWMC). For the reasons that follow, we affirm the trial court's judgment as to Wood's wage claim and vacate its judgment as to his claim for treble damages, remanding to allow the trial court to exercise its discretion in considering the request.

Procedural Background

¶2 The details of the factual background are provided below as relevant to the parties' claims on appeal. In short, after Dr. Wood outperformed his contractual productivity target and was paid corresponding wages in excess of a contractual compensation cap, NWMC sought to recover the overpayment by withholding $108,673.40 in earned wages during the subsequent fiscal year. Wood initiated the present lawsuit, alleging breach of contract and seeking treble unpaid wages. NWMC filed a counterclaim alleging that Wood had breached his contract by accepting and failing to repay the overpayment, seeking to recover that amount in full, including by retaining the unpaid wages as an offset.

¶3 The parties cross-moved for summary judgment. After a hearing, the trial court granted Dr. Wood's motion (and denied NWMC's corresponding motion) regarding payment of the withheld wages, but granted summary judgment in NWMC's favor regarding Wood's claim for treble damages. NWMC moved for reconsideration, which the court summarily denied. Final judgment was entered in September 2019.[1] NWMC appealed, which prompted Wood to cross-appeal the denial of his

[1] In particular, the trial court ordered that Dr. Wood recover $108,673.40 (the withheld wages) plus pre-judgment interest, as well attorney fees and costs totaling $54,702.10, plus post-judgment interest at a rate of 6.25 percent.

request for treble damages. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Standard of Review

¶4 In reviewing a trial court's rulings on cross-motions for summary judgment, we review questions of law *de novo*, construing the facts and reasonable inferences in the light most favorable to the party against whom summary judgment was granted. *Nelson v. Phx. Resort Corp.*, 181 Ariz. 188, 191 (App. 1994). We therefore view the facts related to the wage claim in the light most favorable to NWMC, whereas we view the facts related to the treble damages claim in the light most favorable to Dr. Wood. We will affirm the grant of summary judgment if there are no genuine issues of material fact and the prevailing party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(a); *Green Cross Med., Inc. v. Gally*, 242 Ariz. 293, ¶ 5 (App. 2017).

Wage Claim & Application of Voluntary Payment Doctrine

Factual Background

¶5 NWMC employed Dr. Wood as a staff interventional radiologist pursuant to a written "Physician Employment Agreement" that specified he was employed "on a full-time, exclusive basis." The parties amended the agreement on a number of occasions. During the 2015-2016 and 2016-2017 contract years, the Fifth Amendment to the agreement was in effect.

¶6 As with the previous iterations of the agreement, the Fifth Amendment established that Dr. Wood's compensation would be "incentive compensation" based on worked relative value units (wRVUs).[2] His base draw ($424,800 annually) was premised on the assumption that his personal productivity would fall within a stated range (6,800-8,125 wRVUs annually). The agreement specified that if Wood failed to meet his productivity target in a particular quarter, NWMC would be able to recoup

[2] As Dr. Wood explains, the wRVU metric—which is used in calculating patient charges to Medicare—"serves to quantify and compare the productivity of physicians by focusing on the amount of time, skill, training, and intensity necessary for a physician to perform specific procedures." *See* 42 C.F.R. § 414.22.

a corresponding portion of the base draw already paid to him.[3] Conversely, if Wood outperformed the target productivity range in a particular quarter, the agreement established that "a [s]ettlement payment will be due" him.

¶7 The agreement required the parties to conduct a quarterly reconciliation process to ascertain whether Dr. Wood's productivity in the prior quarter had met or exceeded the stated productivity range and to calculate deficits or productivity settlement payments accordingly. Both were to be calculated based on a "wRVU Conversion Factor" of $44 per wRVU, a rate the parties agreed reflected the fair market value for Wood's performance of medical procedures.

¶8 The Fifth Amendment also established an Annual Compensation Cap Amount of $587,000. This cap expressly included Dr. Wood's base salary and all incentive compensation based on wRVUs, among other things. The Fifth Amendment also stipulated that payment above the cap would not be made unless a written amendment was executed by the parties to modify the cap. No such amendment was ever executed. There is no dispute that these provisions of the Fifth Amendment would have permitted NWMC to refuse to pay any productivity settlements in excess of the $587,000 cap, even if Wood had performed the work required to earn such payments.

¶9 However, despite the annual compensation cap, NWMC paid Dr. Wood in excess of the cap during both of the contract years governed by the Fifth Amendment.[4] In particular, in the 2015-2016 contract year,

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[3] In particular, the agreement established that Dr. Wood's subsequent base draws would be reduced to account for prior wRVU deficits. It also established that, if a deficit existed at the expiration or early termination of the agreement, Wood "shall repay" NWMC the amount of the deficit.

[4] The record does not establish why or how NWMC made productivity settlement payments in excess of the cap during both the 2015-2016 and 2016-2017 contract years. NWMC claims the overpayments were a mistake. Dr. Wood contends "[t]he much more plausible inference is that NWMC intentionally decided to not enforce the total annual compensation cap during the prior years" because his high productivity increased billing revenue for NWMC and the attempt to recoup the prior overpayments only occurred at the end of the employment relationship, when NWMC would no longer benefit from Wood's outperformance of his productivity targets. Whether the overpayments were inadvertent or intentional does not affect our analysis.

NWMC paid $55,318.08 above the cap.[5] Then, in the 2016-2017 contract year, NWMC paid Wood $124,442.56 above the cap. All of the productivity settlement payments that resulted in these two consecutive cap exceedances were the product of the contractually mandated reconciliation process. They involved a calculation by NWMC's accounting department (wRVUs in excess of target range x $44 wRVU Conversion Factor), review by NWMC's practice administrator, a reconciliation meeting between the practice administrator and Wood, and independent review and approval by NWMC's CFO and CEO.

¶10 In September 2017, the parties executed a Sixth Amendment to Dr. Wood's employment agreement, which extended the contract through March 2018.[6] It retained the Fifth Amendment's "incentive compensation" based on wRVUs for September-December 2017, but eliminated it effective January 1, 2018.

¶11 During the fourth quarter of 2017, the last quarter subject to the incentive compensation arrangement, Dr. Wood earned a productivity settlement payment of $108,673.40.[7] That payment was due in January 2018, but it was never made. According to NWMC, this was because, in late December 2017 or early January 2018—as Wood's retirement approached—NWMC had "uncovered" or "realized" that he had been paid above the compensation cap in the prior two contract years.

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[5] NWMC initially sought to recover this overpayment from Dr. Wood, but later abandoned the time-barred claim. Thus, the overpayment from the 2015-2016 contract year is not at issue in this appeal except as an aspect of the factual background.

[6] According to Dr. Wood, NWMC initially offered to extend his employment for only three months, but Wood advised he would retire at the expiration of the Fifth Amendment (September 12, 2017) unless the terms were for six months.

[7] This figure was reached at a meeting held on January 5, 2018, during which Dr. Wood and authorized NWMC representatives reviewed relevant data and agreed on the productivity settlement payment earned in the prior quarter. As Wood notes, NWMC does not contest that he earned this payment; NWMC "has never asserted the calculation was flawed" or that "tendering payment would raise issues under either the parties' contemporaneous contract terms or external law."

¶12 NWMC did not provide any explanation for not making the payment until Dr. Wood retained a lawyer and made a demand. In response to the demand letter, NWMC did not deny that Wood had earned the $108,673.40 in question as a productivity settlement payment. Rather, it stated that it was withholding that payment to offset payments that had been made above his compensation cap in both the 2015-2016 and 2016-2017 contract years.

¶13 As noted above, in subsequent litigation, the parties cross-moved for summary judgment. The trial court ruled in Dr. Wood's favor on his wage claim, concluding that the voluntary payment doctrine barred NWMC from seeking to recover past overpayments by withholding the final productivity settlement payment.

Discussion

¶14 NWMC's appeal centers on the trial court's application of the voluntary payment doctrine to the hospital's overpayment of Dr. Wood. Arizona courts have long applied this common-law doctrine, under which, "[e]xcept where otherwise provided by statute, a party cannot by direct action or by way of set-off or counterclaim recover money voluntarily paid with a full knowledge of all the facts, and without any fraud, duress, or extortion, although no obligation to make such payment existed." *Moody v. Lloyd's of London*, 61 Ariz. 534, 540 (1944) (quoting *Merrill v. Gordon*, 15 Ariz. 521, 532 (1914)).

¶15 There is no dispute that NWMC had all the information necessary to track Dr. Wood's productivity settlement payments and their relation to his contractual compensation cap. Thus, NWMC paid Wood over the cap—for two consecutive years—"with a full knowledge of all the facts." Even if the repeated productivity payments in excess of the cap were—as NWMC alleges—the result of mistake, the trial court correctly concluded that NWMC "had every opportunity to know" that payment was being made in excess of the cap and could have asserted the payment cap to avoid making such payments, had it exercised ordinary diligence. There is certainly no allegation of any fraud, duress, or extortion on the part of Wood. Therefore, if the general rule applies in this case, it would preclude NWMC from taking back the productivity settlement payments

made to Wood above the compensation cap during the 2015-2016[8] or 2016-2017 contract years.

¶16 Importantly, nothing in the Fifth Amendment mentioned recovery of any payments in excess of the cap. Rather, while the agreement expressly stipulated that NWMC would recoup portions of Dr. Wood's base draw if he failed to meet stated productivity targets (either by reducing future pay or, if the employment arrangement had ceased, through contractually mandated repayments from Wood), no such mechanism was included in the agreement to allow NWMC to reclaim payments made in excess of the cap. The only relevant provision states that NWMC was permitted to reduce wage payments "by [amounts] due and owing" to the "extent allowed by law." But, under the voluntary payment doctrine, recovery of cap-exceeding productivity settlement payments voluntarily paid by NWMC in full knowledge of the relevant facts, would not be "allowed by law."

¶17 NWMC counters that the voluntary payment doctrine does not apply here because physician employment agreements are "highly regulated by federal law." In particular, NWMC argues the trial court erred as a matter of law in applying the doctrine in this case because doing so "prevents the implementation of Congressional policy and runs counter to the purpose of the Stark Act."[9]

¶18 As an initial matter, the fact that an area is "highly regulated" does not defeat the application of the voluntary payment doctrine. As the trial court noted at the summary judgment hearing, NWMC has failed to provide "any kind of case" to suggest "that a federal regulation, be it Stark or any other federal regulation that might be a basis for a contract agreement" renders the voluntary payment doctrine inapplicable; there is "no case" indicating that the doctrine does not apply when a federal regulation was "an underlying factor as the basis for a cap." NWMC has not contested this conclusion on appeal.

¶19 With regard to the Stark Act in particular, NWMC contends the compensation cap was added to Dr. Wood's employment agreement "to

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[8]Regardless, NWMC would be time barred from recovering these overpayments from over a year before, as we discuss below.

[9]The term "Stark Act" refers to Section 1877 of the Social Security Act, 42 U.S.C. § 1395nn. The federal regulations promulgated thereunder appear at 42 C.F.R. §§ 411.350-411.389.

comply with federal law" and that it was set "pursuant to . . . the Stark Act." According to Wood, no NWMC officer, agent, or employee provided testimony that "NWMC ever perceived that the Stark law required inclusion of a total annual compensation cap in Dr. Wood's employment contract." But even assuming NWMC added the cap to the agreement out of a desire to avoid even "potential compliance issues with the Stark statute," it does not follow that a rigid compensation cap was actually required under federal law, much less that any compensation in excess of a contractual compensation cap would necessarily violate such law.

¶20 In the context of bona fide employment relationships,[10] federal law expressly permits "payment of remuneration in the form of a productivity bonus based on services performed personally by the physician." 42 U.S.C. § 1395nn(e)(2); 42 C.F.R. § 411.357(c). To comply, such payment must be for "identifiable services" at a rate that is consistent with the fair market value of those services[11] and may not take into account, either directly or indirectly, the volume or value of referrals made by the physician in question. 42 U.S.C. § 1395nn(e)(2); 42 C.F.R. § 411.357(c). All of the productivity settlement payments made to Dr. Wood during the 2016-2017 contract year (and in general) were payments for professional services personally performed by him. They were paid at the agreed rate of $44 per wRVU, with no reference to any "referral." Indeed, Wood's employment agreement expressly stipulated: "[A]ll of the compensation payable under this Agreement shall constitute compensation for rendering professional medical services, and . . . no portion of the compensation payable hereunder constitutes remuneration in return for the referral of patients or the ordering of tests or supplies."

¶21 NWMC argues that, even if Dr. Wood was a bona fide employee of NWMC, his compensation was required to be established in writing at the outset of his employment.[12] But Wood's compensation *was*

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[10]The Stark Act defines "employee," with reference to the Internal Revenue Service's definition at 26 U.S.C. § 3121(d)(2), as any individual who "would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship." 42 U.S.C. § 1395nn(h)(2).

[11]"Fair market value" is defined at length at 42 C.F.R. § 411.351.

[12]NWMC bases this argument on the views of an expert with "years of experience in physician compensation and healthcare practice management," who was expected to testify that "healthcare entities

established in writing prior to each contract year of his employment, with a base salary and other items established, and with the possibility for some flux to account for productivity deficits or exceedances. To the extent Wood's personal productivity exceeded the targeted range on which his salary was based, the contract specified—in writing, and in advance—precisely how much he was to be compensated per additional wRVU. This is plainly permitted for bona fide physician employees under 42 U.S.C. § 1395nn(e)(2) and 42 C.F.R. § 411.357(c).

¶22 There is no dispute that the Stark Act requires physician compensation to reflect fair market value. NWMC emphasizes that the parties and their advisors must have agreed that the amount of the cap was "consistent with the fair market value" for Dr. Wood's services as contemplated in the employment agreement when the Fifth Amendment was executed in June 2015. But it does not follow, as NWMC argues, that any payment in excess of that cap would have necessarily been in excess of the fair market value for his work and therefore "in contradiction to federal law." If—as appears to have been the case—Wood was significantly more productive in certain quarters than contemplated by his contract, and each extra wRVU was compensated pursuant to an agreed-upon rate that the parties do not dispute reflected the fair market value for such services, then compensation in excess of the established compensation cap could still be fully consistent with fair market value.

¶23 In fact, the Fifth Amendment itself established that—if Dr. Wood's compensation reached or was "on a trajectory to reach" the cap amount in a given contract year—then NWMC, "in its sole discretion and expense," was empowered to "elect to have an independent third party determine whether the compensation arrangement is consistent with fair market value without the Annual Compensation Cap." This expressly "optional" provision reflects the understanding that payment in excess of

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customarily establish a physician's compensation, in writing, at the outset of the employment relationship, regardless of whether the physician is to be considered a direct employee or an independent contractor." But the question here is not a factual one about customary practices. Instead, we must determine the meaning of a federal statute. There is no indication that NWMC's expert intended to testify that all physician employment agreements must include a fixed total annual compensation cap, or that Dr. Wood's agreement required such a cap, only that healthcare entities customarily establish physician compensation in writing to avoid potential compliance issues with the Stark Act.

the cap was not a *per se* violation of the Stark Act. It also indicates an understanding that tracking Wood's compensation and its relationship to the compensation cap was a matter for NWMC to address, if it so desired.

¶24 In short, the record before us does not establish any violation of the Stark Act. And, in fact, NWMC has never alleged an actual violation of that law.[13] We therefore fail to see how the trial court's application of the voluntary payment doctrine in this case in any way makes compliance with the Stark Act or its implementing regulations "impossible" or somehow obstructs Congressional intent.[14]

¶25 As it did before the trial court, NWMC continues to emphasize that "no court in the country has ever applied [the voluntary payment] doctrine to physician employment agreements highly regulated by federal law." But this could just as easily mean that the present case stems from an uncommon set of facts: a hospital rendering payments to a physician employee for services indisputably rendered but in excess of a payment cap for two consecutive years, whether mistakenly or intentionally, and then seeking to recoup that overpayment by withholding a subsequent payment that was indisputably earned.

¶26 NWMC contends the trial court had no "legal authority" to apply the voluntary payment doctrine in the context of this case. To the contrary, NWMC has provided us with no reason to conclude that the trial

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[13]NWMC has alleged, and indicated it intended to call an expert who was expected to testify, only that Dr. Wood's remuneration above the compensation cap created issues of *potential* non-compliance with the Stark Act. In addition, although NWMC consistently cites A.R.S. § 23-352(3) as a basis for withholding Wood's final productivity settlement payment, the hospital has tellingly not relied upon the first paragraph of that statute, which allows an employer to withhold wages when "[t]he employer is required or empowered to do so by state or federal law." In other words, NWMC has not argued that the Stark Act required withholding of Wood's wages as a result of previous exceedances of the cap.

[14]We are not faced here with a case in which payments made to a physician manifestly contradict the Stark Act, either because they reflect compensation for referrals or otherwise fail to reflect the fair market value of medical services rendered. Thus, we need not determine whether the voluntary payment doctrine would apply in such a case to preclude recoupment of such legally dubious payments.

court had any legal authority to *not* apply the well-established doctrine to preclude NWMC's recovery of the money previously paid to Dr. Wood.[15]

¶27 NWMC argues in the alternative that, even if the voluntary payment doctrine applies, granting summary judgment in Wood's favor on his wage claim required the trial court to improperly resolve "genuine issues of material fact regarding whether Dr. Wood proved the claim of right element of a voluntary payment claim." The premise of this argument—that the voluntary payment doctrine only applies when the payment in question was made in response to a claim of right—is plainly incorrect.

¶28 In asserting that the voluntary payment doctrine bars NWMC's recovery here, Dr. Wood has relied principally on our supreme court's opinion in *Moody v. Lloyd's of London*, 61 Ariz. 534 (1944). Given that *Moody* involved a payment made by an insurer in response to an insurance claim, the presence of a claim of right is unsurprising. *Id.* at 535-37. But the court there expressly adhered to the "general rule as to voluntary payments" as previously adopted by the court in *Merrill v. Gordon*, 15 Ariz. 521 (1914). *Moody*, 61 Ariz. at 540. That foundational case for the application of the voluntary payment doctrine by Arizona courts is unambiguous in its lack of a claim of right.

¶29 In *Merrill*, the payments in question had been voluntarily paid by one party to another in an attempt to secure a disputed lease, even after the recipient, who had not requested, much less demanded, the payments, "absolutely refuse[d] to accept [the payor's] checks as payments for any rents, or as payments on any lease" and attempted to return them. 15 Ariz. at 523-25. Thus, longstanding Arizona law has applied the voluntary payment doctrine even when the payee manifestly made no claim of right.

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[15]NWMC argues for the first time in its reply brief that, because Dr. Wood had agreed in his contract to comply with federal law, "he was contractually estopped from relying on the Voluntary Payment Doctrine to skirt the federal laws (i.e., Stark) requiring that he be compensated within the fair market value for his services." Having failed to raise this estoppel argument in its opening brief, NWMC has waived it. *Dawson v. Withycombe*, 216 Ariz. 84, ¶ (App. 2007) ("We will not consider arguments made for the first time in a reply brief."). Regardless, any argument that Wood has somehow "skirt[ed] his obligations" under federal law by receiving compensation in excess of fair market value is unsupported, for the reasons articulated above.

Id. at 527; *see also Copper Belle Mining Co. v. Gleeson*, 14 Ariz. 548, 552-53 (1913) (party who made payment "with full knowledge of all the facts, without any instrumentality upon the part of [defendant] influencing its action, but in opposition to his wishes," did so at own risk).[16]

¶30 For all these reasons, the trial court correctly determined that Dr. Wood was entitled to judgment as a matter of law on his wage claim.[17] This result is consistent with principles of equity. As Wood notes, it would be inequitable to allow NWMC to raise the issue of the cap "for the first time after [he] routinely outperformed his targeted productivity and was about to retire," which denied him "the opportunity to tailor his conduct" by reducing his workload, negotiating for removal or increase of the cap, or quitting.

¶31 NWMC argues it has "voluntarily" refunded $14,989.96 received for services Dr. Wood provided to Medicare patients to one Medicare payor because Wood "was paid above the approved annual contract year compensation cap." This choice to voluntarily refund less than $15,000 hardly justifies the clawing back of over $124,000 which was paid to Wood pursuant to clear contract terms for work that he indisputably performed, to the hospital's benefit.

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[16] Because the fundamental premise of NWMC's alternative argument is flawed, we need not address whether the payments in question were made to Dr. Wood under a claim of right. We note, however, that Wood submitted uncontroverted information about the work he had performed and sat with an administrator to discuss the related calculation, before the hospital would calculate payment accordingly, based on the payment structure established in the contract. As NWMC conceded at the summary judgment hearing, Wood performed the work in question and would normally have been "entitled to those payments at the rate at which they were calculated" without any further demand for payment, had the cap not already been reached.

[17] The trial court's corresponding ruling that NWMC was not entitled to summary judgment on its claim for breach of contract was likewise correct. Nothing in the employment agreement required Dr. Wood to track or refuse payments in excess of the compensation cap. And because NWMC was not entitled to recoup payments in excess of the cap, either under the terms of the contract or under the voluntary payment doctrine, Wood was not in breach of his contract by failing to accede to such recoupment.

Dr. Wood's Claim for Treble Damages

Factual Background

¶32 NWMC provided no explanation to Dr. Wood for why the productivity settlement payment due in January 2018 was not made. After waiting three months for an explanation, in April 2018, Wood directed his attorney to send a demand letter. That letter indicated that, if payment was not made, Wood intended to sue for treble damages under A.R.S. § 23-355(A).

¶33 NWMC responded, claiming that Dr. Wood was in breach of his contract by accepting payment of quarterly production settlements during the 2015-2016 and 2016-2017 contract years that had caused his total compensation in each of those years to exceed the cap. The letter demanded that Wood repay those overpayments (totaling $179,760.64), minus the $108,673.40 NWMC had withheld in January 2018.

¶34 Dr. Wood responded that "a reasonable dispute over [his] entitlement to payment does not exist." He advised that the voluntary payment doctrine precluded NWMC from attempting to recoup compensation voluntarily paid during the previous two contract years. Wood also explained that NWMC's claim that he had somehow breached his contract was "frivolous," citing the "Optional Annual Compensation Review" portion of the Fifth Amendment, which authorized NWMC to determine, in its discretion, whether paying him above the cap in a given year could still be consistent with fair market value. Nevertheless, Wood offered to waive his claims for treble damages and attorney fees if NWMC agreed to finally pay the $108,673.40 quarterly production settlement payment.

¶35 After Dr. Wood initiated his lawsuit in early June 2018, NWMC responded to his letter, claiming that the voluntary payment doctrine did not limit the hospital's ability to recoup the $124,442.56 overpayment from the 2016-2017 contract year[18] because Wood had never asserted a claim of right to be compensated in excess of the cap. No other rationale was provided for the alleged non-applicability of the doctrine.

[18]NWMC dropped its demand to recoup the overpayment from the 2015-2016 contract year without explanation, presumably in recognition that such a claim was time barred under the one-year statute of limitations applicable to claims for breach of a written employment contract. A.R.S. § 12-541(3).

NWMC demanded that Wood repay the overpayment, less the amount already withheld, and abandon his lawsuit, or face a counterclaim. After Wood refused, the parties cross-moved on the issue of treble damages, and the trial court ruled in NWMC's favor.

Discussion

¶36 Section 23-355(A) establishes that, when an employer "fails to pay wages due" to an employee, that employee "may recover . . . an amount that is treble the amount of the unpaid wages." However, a separate statutory provision establishes that employers are permitted to withhold or divert employee wages when there is "a reasonable good faith dispute as to the amount of wages due, including . . . any claim of debt, reimbursement, recoupment or set-off asserted by the employer against the employee." A.R.S. § 23-352(3). Thus, treble damages under § 23-355 are not available when an employer withholds wages because of a reasonable, good-faith dispute. *Schade v. Diethrich*, 158 Ariz. 1, 13 (1988).

¶37 Here, the trial court granted summary judgment in NWMC's favor on the treble damages claim based on the conclusion that there was "a legitimate basis" for NWMC to believe it was entitled to recoup the payments over the cap—a reasonable, good-faith dispute—eliminating the possibility for treble damages.[19] Dr. Wood contends this conclusion was an abuse of discretion because it is unsupported by the factual record and contradicts well-established Arizona law regarding the voluntary payment doctrine. We agree.

¶38 A trial court's decision on a request for treble damages is reviewed for an abuse of discretion. *E.g.*, *Apache East, Inc. v. Wiegand*, 119 Ariz. 308, 313 (App. 1978). The conclusion that a good-faith dispute existed must be supported by the record. *See Schade*, 158 Ariz. at 13-14 (evidence must support trial court's conclusion regarding absence of good-faith dispute); *see also United Imp. & Exp., Inc. v. Superior Court*, 134 Ariz. 43, 46 (1982), *abrogated on other grounds by Gonzalez v. Nguyen*, 243 Ariz. 531, ¶¶ 13-14 (2018) ("A discretionary finding of fact based on no evidence is arbitrary and an abuse of discretion."). An abuse of discretion also exists "when the trial court commits an error of law in the process of exercising its discretion." *Fuentes v. Fuentes*, 209 Ariz. 51, ¶ 23 (App. 2004).

[19]The written ruling does not provide any rationale, but the trial court explained its reasoning during the summary judgment hearing.

¶39 The trial court articulated two reasons for finding that NWMC had a "legitimate basis" for believing it was entitled to recoup the overpayments: (a) payments had been made to Dr. Wood "beyond that which was contractually negotiated between the parties"; and (b) Wood, who participated in the negotiation of his contract and signed it, "would be expected to know what that is and responsible for that even if he didn't think about it or didn't pay attention to it."[20] These two rationales do not support the conclusion that there was a "reasonable good faith dispute" as to the wages in question.

¶40 As Dr. Wood notes, the existence of payments in excess of the compensation cap "merely initiates, but certainly does not answer, the question of whether the payor is entitled to recovery." And neither Wood's employment agreement nor the law supports the conclusion that he had any responsibility for tracking his productivity settlement payments against the cap or reminding NWMC of the cap, much less an obligation to forego work, refrain from reporting work performed, or refuse related payments that would take his total annual compensation above the cap. To the contrary, as the trial court itself explained, there are "a dozen" cases directly on point, involving "people who had contracts that limited the amount of payment and people who erroneously or without careful analysis and tracking of those contracts overpaid and then wanted the money back because of the limitations of the contract, and the courts have consistently found that was a voluntary payment." *E.g.*, *Law Offices of Paul A. Chin, P.C. v. Seth A. Harris, PLLC*, 74 N.Y.S. 3d 198, 199 (App. Div. 2018) (recovery of payments to attorney in excess of agreed cap, via checks signed by office manager without director's approval, barred by voluntary payment doctrine); *see also Anthony v. Am. Gen. Fin. Servs., Inc.*, 583 F.3d 1302, 1306 (11th Cir. 2009) ("[P]ayments made out of ignorance of the law are subject to the voluntary payment doctrine, even when such payments exceed a statutorily imposed maximum.").

¶41 Before initiating this lawsuit, Dr. Wood advised NWMC that no "reasonable dispute" existed because the voluntary payment doctrine prohibited the hospital's attempt to "unwind history and reclaim the

[20] The court also indicated "one would think that someone in Dr. Wood's position might be a little more aware of what his contract was, what his responsibilities were." The court also voiced the position that Wood "shouldn't have submitted it or he should have chosen not to do the work" and "is certainly at fault here for not having kept better track of what he was permitted to do . . . and be paid under the contract."

payments that it voluntarily made" to him with "full knowledge of all the facts." Rather than accepting Wood's offer to settle the case by paying him wages he had unquestionably earned, NWMC chose to proceed with litigation on the assumption that the doctrine did not apply because it "requires a voluntary payment made in response to a demand." As explained above, this argument that the voluntary payment doctrine requires a "claim of right" is plainly incorrect under still-controlling Arizona case law. *See, e.g.*, *Merrill*, 15 Ariz. at 523-32. Thus, according to the record before us, when NWMC decided to force Wood to continue litigating this case, it did so on the basis of an implausible legal argument at odds with well-established legal authority that would have been discerned through even a cursory review of Arizona case law. There is no evidence that there was a *reasonable* good-faith dispute at that time.

¶42 As Dr. Wood argued at the summary judgment hearing, NWMC's "position rests on case law that plainly doesn't support their position, and instead of trying to resolve the case, they continue to make it more complicated." In particular, many months into the litigation, NWMC first raised its argument that the Stark Act and its implementing regulations somehow prevented the application of the voluntary payment doctrine in this case. As discussed above, there is no merit to this argument. Federal law expressly permits a physician employee to be paid productivity bonuses for "identifiable services" personally performed and paid at a rate reflecting fair market value. 42 U.S.C. § 1395nn(e)(2); 42 C.F.R. § 411.357(c). And nothing in the Stark Act or its implementing regulations required a rigid compensation cap or established that payment in excess of a cap would necessarily be in violation of the law. We therefore reject NWMC's contention that the hospital had a reasonable, good-faith basis to think that the voluntary payment doctrine would not apply in this case.

¶43 "[T]here are some wage disputes when the issue may involve a valid close question of law or fact which should properly be decided by the courts." *Apache East*, 119 Ariz. at 312. This was not such a case. Reasonable diligence would have shown that the voluntary payment doctrine applied. Indeed, as the trial court concluded, "the law is pretty clear," based on "an awful lot of cases that are very factually similar to this case," that the doctrine applies to preclude NWMC from recovering the overpayment. In "anything that looks like this case . . . the courts have found that the person receiving the money that exceeded the contract amount was not required to repay it." As the court stated: "Every case says that it's applicable. Every written ruling would hold it to be applicable . . . ."

¶44 In providing the possibility for treble damages in § 23-355(A), "the legislature intended to punish the employer who forces the employee to resort to the courts in an unreasonable or bad faith wage dispute." *Apache East*, 119 Ariz. at 312-13; *see also Crum v. Maricopa Cty.*, 190 Ariz. 512, 516 (App. 1997) (treble damages intended to punish employers who withhold wages "without reasonable justification"). That is what occurred here. And even if, as the hospital contends, the overpayments were the result of mistake—a failure by all the people involved in his compensation to notice that Dr. Wood had been paid $55,318.08 over the cap in the 2015-2016 contract year and $124,442.56 over the cap in the 2016-2017 contract year—our courts have found no *reasonable* good-faith dispute when "[t]he dispute was in part created by the negligent manner in which the [employer] handled the bookkeeping and wage records." *Apache East*, 119 Ariz. at 313; *see also Patton v. Mohave Cty.*, 154 Ariz. 168, 172 (App. 1987) (no good-faith dispute where "error was in large part caused by the [employer's] erroneous bookkeeping").

¶45 If "the reasons the superior court cited do not support its refusal to treble the damages," that decision cannot stand. *D'Amico v. Structural I Co.*, 229 Ariz. 262, ¶ 18 (App. 2012). Here, the trial court's conclusion that there was no "basis" for an award of treble damages because NWMC had a "legitimate basis" to continue litigating the wage dispute was an abuse of discretion.

¶46 But this does not end our inquiry. It is well established that treble damages under § 23-355 are discretionary. *Crum*, 190 Ariz. at 514-15. Indeed, "even when an employer has *no* good-faith basis to dispute wages owed to an employee, the superior court has discretion to deny the employee's request for treble damages." *D'Amico*, 229 Ariz. 262, ¶ 16 (emphasis added). We therefore reject Dr. Wood's argument that, because NWMC "never had a 'good faith' basis for believing it was entitled to claw back wages," he is therefore "*entitled* to an award of treble damages" (emphasis added). Rather, the lack of a reasonable, good-faith dispute makes an award of treble damages possible, if the trial court determines—in its discretion—that such an award is warranted.

¶47 Due to its incorrect conclusion that a "legitimate" wage dispute existed, the trial court failed to exercise the discretion afforded to it by the statute when concluding there was no "basis" for treble damages. We therefore vacate the court's judgments regarding the treble damages claim and remand to allow the court to exercise its discretion in considering Dr. Wood's request. *See D'Amico*, 229 Ariz. 262, ¶ 18.

Attorney Fees & Costs

¶48 Both parties have requested attorney fees and costs on appeal pursuant to paragraph nineteen of Dr. Wood's employment agreement, which stipulates that the prevailing party in an action to enforce the Agreement "shall be entitled to recover the costs of such action . . . including, without limitation, reasonable attorney's fees and applicable court costs." As Wood is the prevailing party in this appeal, we grant his request as to both fees and costs and deny NWMC's corresponding request. *See* A.R.S. §§ 12-341.01(A) (attorney fees), 12-341 (costs).

Disposition

¶49 For the foregoing reasons, we affirm the judgment of the trial court granting summary judgment in Dr. Wood's favor on his wage claim. We vacate the judgment insofar as it declines his request for treble damages and remand for further proceedings consistent with this opinion.