**Illinois Official Reports**

**Appellate Court**

# *Conrads v. Rush-Copley Medical Center, Inc.*, 2023 IL App (2d) 220455

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| Appellate Court Caption | ANDREA CONRADS and AXEL CONRADS, Plaintiffs-Appellants, v. RUSH-COPLEY MEDICAL CENTER, INC; VALLEY IMAGING CONSULTANTS, LLC; RADIOLOGY IMAGING CONSULTANTS, S.C.; JOSEPH JUDGE; DREYER CLINIC, INC., d/b/a Advocate Medical Group-Dreyer; LISA GROSKOPF; SONIA SHARMA; and BRIAN O'SHAUGHNESSY, Defendants (Valley Imaging Consultants, LLC, Defendant-Appellee). |
| District & No. | Second District<br>No. 2-22-0455 |
| Filed | September 29, 2023 |
| Decision Under Review | Appeal from the Circuit Court of Kane County, No. 17-L-500; the Hon. Robert K. Villa, Judge, presiding. |
| Judgment | Reversed and remanded. |
| Counsel on Appeal | Michael Alkaraki and Peter D. Hoste, of Leahy Hoste Alkaraki, of Chicago, for appellants.<br><br>Kimberly A. Jansen and Peter A. Walsh, of Hinshaw & Culbertson LLP, of Chicago, for appellee. |

Panel JUSTICE BIRKETT delivered the judgment of the court, with opinion.
Justices Schostok and Kennedy concurred in the judgment and opinion.

## OPINION

¶ 1 In this medical negligence case, plaintiffs, Andrea Conrads and Axel Conrads, appeal from the order of the circuit court of Kane County, granting summary judgment in favor of defendant Valley Imaging Consultants, LLC (Valley Imaging), on the ground that, as a matter of law, defendant Dr. Joseph Judge was neither an employee nor an actual agent of Valley Imaging. Plaintiffs argue that summary judgment was improper because genuine issues of material fact exist as to whether Dr. Judge was either Valley Imaging's employee or actual agent. We reverse and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 On September 19, 2015, Andrea went to the emergency room at Rush-Copley Medical Center (Rush-Copley), complaining of numbness and weakness in her right lower extremities. She was admitted to the hospital as an inpatient. The next day, on the orders of one of her attending physicians, Andrea underwent a magnetic resonance imaging (MRI) of her lumbar and thoracic spine. Dr. Judge, a radiologist, interpreted the MRI and prepared a report that did not suggest any abnormalities regarding Andrea's aorta. On September 21, 2015, Andrea was discharged from the hospital and returned home. On September 27, 2015, Andrea went to the emergency room at Edward Hospital, where she was diagnosed with a large dissection of her ascending aorta and underwent emergency surgery.[1]

¶ 4 On September 26, 2017, plaintiffs filed a medical negligence complaint against various defendants, including Dr. Judge and Valley Imaging, alleging that Andrea suffered severe and permanent neurological injuries as the result of Dr. Judge's failure to note changes in her aorta indicative of an aortic dissection when interpreting MRI studies of Andrea's lumbar and thoracic spine. Axel, Andrea's husband, raised a claim for loss of consortium. The complaint was amended on September 13, 2018. Relevant here, count I of the amended complaint alleged that Dr. Judge was "an actual *** agent, servant and/or employee" of Valley Imaging and that he was acting within the scope of his employment or agency at the time of the alleged negligence. Plaintiffs did not allege any direct negligence by Valley Imaging, but instead they argued that Valley Imaging was vicariously liable for Dr. Judge's alleged medical negligence.

¶ 5 On July 15, 2021, Valley Imaging filed a motion for summary judgment, arguing that the undisputed facts demonstrated that Dr. Judge was an independent contractor, and not an employee or an actual agent of Valley Imaging, when he reviewed Andrea's MRI study. Plaintiffs responded to the motion on September 12, 2021, arguing that the operative facts demonstrated, at a minimum, the existence of a genuine issue of material fact regarding

[1]During her discovery deposition, Andrea testified that she went to the emergency room that day at the urging of a family friend, who was a radiologist and who examined Andrea's MRI images as a favor to her.

whether Dr. Judge was an employee or actual agent of Valley Imaging. In opposing summary judgment, plaintiffs relied on three evidentiary exhibits: (1) the "Radiology Services Agreement," a contract between Rush-Copley and Valley Imaging, (2) the "Independent Contractor Agreement" (Engagement Agreement), a contract between Valley Imaging and Dr. Judge, and (3) the discovery deposition of Dr. Judge. We detail them, in turn.

¶ 6 A. Radiology Services Agreement

¶ 7 Pursuant to the Radiology Services Agreement, Valley Imaging was the exclusive provider of radiology services at Rush-Copley. Specifically, Valley Imaging was obligated "to arrange for and provide Services to [Rush-Copley] and its facilities, including patient diagnoses, medical evaluations, presentation of clinical conferences and other medical activities as are customary in the ordinary course [of] day-to-day operations of the Department [of Radiology]." The duty to provide radiology services at Rush-Copley ran 24-hours per day, seven days per week, with "in-house on-site" coverage at Rush-Copley every day from 8 a.m. until 5 p.m., and on-call availability for emergencies occurring outside those hours, with a maximum on-site response time of 30 minutes. The Radiology Services Agreement also obligated Valley Imaging to maintain malpractice insurance coverage in certain specified amounts to cover itself, as well as individually cover "each of its Physicians." All physicians providing radiology services "shall report to" Dr. Syed Akbar, the medical director and president of Valley Imaging. Valley Imaging was entitled to "initially determine which Physicians" provide radiology services at the hospital. In the event Rush-Copley no longer wished for one of Valley Imaging's physicians to work there, it could request that Valley Imaging terminate, for reasonable cause, the physician. If such a request was made, Valley Imaging was required to comply with the termination request within 30 days.

¶ 8 The Radiology Services Agreement also contained numerous obligations of Rush-Copley. Pertinent here, Rush-Copley provided all nonphysician personnel to operate the department of radiology, as well as provides "reasonable space, equipment and supplies for the [Radiology] Department, including appropriate space for the administrative duties of the Medical Director, and [Rush-Copley] shall ensure that such space, equipment and supplies are maintained in good working order."

¶ 9 B. Independent Contractor Agreement

¶ 10 To help fulfill its staffing obligations under the Radiology Services Agreement, Valley Imaging engaged physicians, including Dr. Judge, to cover shifts when Valley Imaging employees were unavailable. Pursuant to the Engagement Agreement, Dr. Judge agreed to "be available to provide Services on a non-exclusive basis to [Valley Imaging] and its patients as needed and requested by [Valley Imaging] and as mutually scheduled from time to time." The Engagement Agreement specified that, subject to his availability, Dr. Judge "shall provide Services at [Rush-Copley] and at the inpatient and outpatient facilities of [Rush-Copley] as [Valley Imaging] shall direct."

¶ 11 The Engagement Agreement identified Dr. Judge as "an independent contractor and not an employee of [Valley Imaging]," and it prohibited him from representing or holding himself out as an employee of Valley Imaging. Under the Engagement Agreement, Valley Imaging was entitled to bill patients and their insurers for all radiology services provided by Dr. Judge and the payments Valley Imaging collects were its "exclusive property."

¶ 12 Dr. Judge was paid an hourly rate for the shifts he worked, and Valley Imaging did not withhold any taxes or other deductions from his checks. The Engagement Agreement outlined the process and deadlines for submitting time sheets, which required that Dr. Judge "keep and submit [them] *** (in form and substance prescribed by [Valley Imaging] on a regular periodic basis)." Specifically, "time sheets shall be submitted on the Monday following any week in which [Dr. Judge] shall have provided Services (unless the Monday is a recognized National Holiday, in which case they shall be due on Tuesday)." Valley Imaging could withhold or delay payment if Dr. Judge failed to "submit completed time sheets in a timely fashion." Dr. Judge also had no "entitlement in or to any of the pension, retirement or other benefit programs or plans (including, without limitation, paid time off or other benefit of employment) *** available or provided" to employees of Valley Imaging.

¶ 13 The Engagement Agreement outlined certain malpractice insurance obligations of Valley Imaging. Specifically, it provided that Valley Imaging was to obtain malpractice insurance for Dr. Judge related to his services, pursuant to the Engagement Agreement. Regarding the applicable standard of care, the Engagement Agreement required that all "Services shall be provided in a competent fashion in accordance with the policies and procedures of [Valley Imaging] and [Rush-Copley] and in accordance with the standards of care prevailing in the community."

¶ 14 Moreover, the Engagement Agreement required Dr. Judge to comply with all credentialing requirements of Rush-Copley, and it emphasized that, pursuant to the Radiology Services Agreement, Valley Imaging was the exclusive provider of imaging services at Rush-Copley. As a result of the Radiology Services Agreement, Dr. Judge was impacted in two significant ways, as delineated in the Engagement Agreement. First, it provided that Dr. Judge's "medical staff membership and clinical privileges [(with Rush-Copley)] [would] terminate automatically in the event [his] employment, engagement or affiliation with [Valley Imaging] terminates *** for any reason." Second, the Engagement Agreement mandated that Dr. Judge waive any rights to a hearing, review, or due process to which he might otherwise have been entitled "in connection with the termination of his/her medical staff membership and clinical privileges" as provided by Rush-Copley's bylaws or state or federal law. To that end, Dr. Judge was obligated to grant Valley Imaging a "special power of attorney" to submit, on his behalf, a resignation letter to Rush-Copley in the event of his termination.

¶ 15 The Engagement Agreement also included a "No Solicitation; Non-Compete" clause, a restrictive covenant effective for the term of the contract and the two years following its termination, that prohibited Dr. Judge from (1) soliciting or providing radiology services at Rush-Copley or at any other hospital to which Valley Imaging provided services or within a three-mile radius of such facilities and (2) soliciting the patients or referral sources of Valley Imaging.

¶ 16 The Engagement Agreement further detailed various provisions concerning its term, termination, and renewal. It provided an effective date of September 1, 2014, for a one-year term, "unless earlier terminated by either party hereto." Either party could terminate the Engagement Agreement "at any time upon 30 days' prior written notice," and Valley Imaging was additionally entitled to terminate the Engagement Agreement on written notice in the event Dr. Judge committed a material breach or failed to meet certain continuing qualifications, such as failing to provide radiology services "in such a manner, as determined by [Valley Imaging]," that is professional and safe. The Engagement Agreement also self-renewed "for additional

terms of one (1) year each on the same terms and conditions as set forth herein unless either party provides notice of its intent not to renew at least thirty (30) days prior to the end of the then current contract year."

¶ 17 C. Discovery Deposition of Dr. Judge

¶ 18 Dr. Judge was deposed on July 9, 2019. As relevant here, he testified that his "primary job" was working as a radiologist for Radiology Partners, which is a national company that operates locally as Radiology Imaging Consultants.[2] He was hired by Radiology Partners in November 2011, and he had worked remotely since 2013 because he had the equipment necessary to interpret MRI images at his home. As an employee of Radiology Partners, he provided radiology services to St. James Hospital and several other sites in Iowa and southern Illinois. He worked for Radiology Partners from 3 p.m. to 12 a.m. every other seven days, meaning he worked seven consecutive days followed by seven consecutive days off. Dr. Judge testified that, during his "off weeks," he worked as many or as few extra shifts as he chose.

¶ 19 Dr. Judge further testified that, during his "off weeks," he provided radiology services as an independent contractor for Valley Imaging. That work was performed at Rush-Copley in the radiology reading room. Dr. Judge testified that he had worked at Rush-Copley through Valley Imaging since 2013, which was when he applied to work for Valley Imaging after a radiologist friend informed him that they were short-staffed. Dr. Judge testified that he and Valley Imaging "mutually agree[d] on the shifts [he was] going to work, and then it [got] put into the schedule." He testified that Valley Imaging could not require him to accept a particular shift, and only one radiologist worked in the reading room at a time. He testified that he was paid an hourly wage and that Valley Imaging annually issued him a 1099 tax form, rather than a W-2.

¶ 20 Dr. Judge explained that Dr. Syed Akbar, whom he identified as Valley Imaging's chairman, would send him an e-mail one or two months in advance to inform him of any upcoming staffing shortages created by, for example, a Valley Imaging employee being on vacation. Dr. Judge would then reply to Dr. Akbar with his availability. If, for some reason, Dr. Judge was unable to cover a shift that he had previously agreed to work, "it would usually be up to [Dr. Judge] to make an arrangement to cover it." In the past, when Dr. Judge had to miss work at Rush-Copley due to a family emergency, he "just called and said [he] can't make it *** [and] they got one of the partners to come in." If he did not wish to work a scheduled shift for a nonemergency personal reason, he would "call [a] colleague and say, hey, are you willing to work on this day and in return I'll work for you on that day or whatever."

¶ 21 Weekday shifts at Rush-Copley "would be like just 7:00 to 5:00 or 8:00 to 5:00," and a corresponding "[on]-call shift from 5:00 p.m. to 9:00 p.m." On weekends, the shifts would be either "a full 12 hours, like 7 a.m. to 7 p.m., or *** a half day, six hours, 7:00 to 1:00 or 1:00 to 7:00." During weekend shifts, Dr. Judge was "responsible for reading *** all the STAT exams which would be emergency room or outpatients' STAT." In other words, "[i]f it's a weekend, [Dr. Judge] is responsible for any emergency case, which is a STAT, which would typically be the ER, and then some outpatients that are also ordered by their doctors STAT." Regarding weekend shifts, Dr. Judge was "encourage[d] to read non-STAT routine exams if

[2]Dr. Judge's interpretation of Andrea's MRI scans at Rush-Copley was not performed pursuant to his employment with Radiology Partners, which is not a party to this matter.

[he had] time," but he was not required to. On weekday shifts, Dr. Judge was "supposed to read everything," and he was "supposed to have the list *** cleaned up by the end of the day," meaning "everything is read." The amount of work at Rush-Copley varied greatly, depending on the quantity of patients who required MRI services.

¶ 22 Once Dr. Judge was scheduled for a particular shift, he was required to be in the radiology reading room at Rush-Copley at the start of the shift, and he could not leave until his shift was over. Other than for meals or breaks, he was expected to be in the radiology reading room throughout the shift. Dr. Judge was "supposed to be in the reading room as much as possible." He explained that, if he left the reading room for any purpose, he informed the secretary "so that if somebody [was] looking for [him] then they know that [he would] be right back."

¶ 23 Historically, Dr. Judge worked at Rush-Copley three or four days per month, but the schedule was variable. In the two months prior to his deposition, Dr. Judge worked just two six-hour shifts at Rush-Copley because Radiology Partners was offering him more work and he preferred to work from home rather than make the one-hour drive from his home to Rush-Copley.

¶ 24 Dr. Judge testified that Valley Imaging did not disseminate any written policy or procedure that he was required to follow in interpreting MRI images. Rather, the written policies and procedures he was required to follow were those of Rush-Copley. He continued that, regardless of whether Rush-Copley required him to follow any policies or procedures, there was no rule, regulation, policy, or procedure that was medically or factually specific enough such that it would control the way he analyzes MRI images. When he interpreted medical images at Rush-Copley, he exercised his independent medical judgment—just as when he worked for his full-time employer, Radiology Partners.

¶ 25 D. Summary Judgment Entered in Favor of Valley Imaging

¶ 26 Having reviewed the pleadings, motion briefing, and exhibits, and after hearing oral argument, the circuit court, on June 7, 2022, entered a written order granting summary judgment in favor of Valley Imaging. The court first considered whether there was an employer-employee relationship and examined five specific factors, namely: the right to control the manner in which the work is performed, the method of payment for such work, the right to discharge, the skill required in the work, and the furnishing of tools, materials, or equipment. See *Bauer v. Industrial Comm'n*, 51 Ill. 2d 169, 171 (1972) (providing that "[n]o single facet of the relationship between the parties is determinative, but many factors," such as the above, "must be considered" (internal quotation marks omitted)). The court examined each factor individually and concluded that "these factors favor defendant Valley Imaging."

¶ 27 Regarding the first factor, the circuit court emphasized that Dr. Judge maintained full-time employment with Radiology Partners and that, during his "off weeks," he works "as many or as few extra shifts as he chooses *** at Rush-Copley." It noted that Valley Imaging could not require Dr. Judge to work a particular shift but, rather, they "mutually agreed which shifts he would work." The court also found significant that Rush-Copley[3] does not instruct Dr. Judge how to perform his job duties or how to exercise his independent medical judgment. It

[3]It is unclear whether the circuit court incorrectly mentioned Rush-Copley in this segment of its written order but intended to reference Valley Imaging or whether the court actually applied this factor to Rush-Copley, which was not a party to the motion for summary judgment.

continued that, "[i]n short, neither Rush-Copley nor Valley Imaging instructs Dr. Judge how to perform his job." For the second factor, the circuit court stated that "[t]he method in which Dr. Judge is paid is consistent with that of an independent contractor," based on the fact that he "was paid hourly through a 1099" and Valley Imaging made no tax or social security deductions. Further, Valley Imaging provided no employment benefits to Dr. Judge, such as a pension, a retirement plan, healthcare, or vacation time. Concerning the right to discharge, the court asserted that the various termination provisions in the Engagement Agreement constituted "an administrative contract provision and [did] not establish [that] Valley Imaging had the right to control Dr. Judge's work." The court also found that there was "no dispute that the work of a radiologist is highly skilled work" and that Valley Imaging did not provide the radiological equipment that Dr. Judge used to perform his work during his shifts at Rush-Copley.

¶ 28 The circuit court then turned to the question of whether an actual agency relationship existed. It observed that the "key issue is whether the principal has the right to control the physician's exercise of medical judgment" and concluded that the same absence of control that precluded a finding of an employer-employee relationship likewise precluded a finding of actual agency. The order did not include a finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 29 Plaintiffs moved to reconsider, arguing that the circuit court misapplied the law regarding summary judgment, disregarded factors relevant to a principal-agent relationship, and ignored or omitted a variety of evidence presented by plaintiffs that was favorable to them. During the hearing on the motion to reconsider, the court acknowledged "at least one significant error" in its decision. It explained that "it's really just the language" in the order that needed revision—namely, where the court "use[d] the phrase about how [the] factors favor defendant Valley Imaging." On November 22, 2022, the court entered a modified summary judgment order, which had the practical effect of denying plaintiffs' motion to reconsider. Rather than stating that the relevant factors "favor[ed]" Valley Imaging, the court included language indicating that, even in the light most favorable to plaintiffs, there was no genuine issue of material fact that could demonstrate either an employer-employee relationship or an actual agency relationship between Valley Imaging and Dr. Judge. On November 29, 2022, the court issued a written order, pursuant to Rule 304(a), making an express finding that no just reason existed for delaying either enforcement or appeal of the order granting summary judgment.

¶ 30 Plaintiffs timely filed a notice of appeal.

¶ 31 II. ANALYSIS

¶ 32 On appeal, plaintiffs contend that the circuit court erroneously entered summary judgment because a question of fact existed as to whether Dr. Judge was an employee or agent of Valley Imaging.

¶ 33 Summary judgment is appropriate where, when viewed in the light most favorable to the nonmoving party, "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2020); *Hall v. Henn*, 208 Ill. 2d 325, 328 (2003). In evaluating whether a genuine issue of material fact exists, the court must construe the pleadings and evidentiary material strictly against the movant and liberally in favor of the opponent. *In re Marriage of Brubaker*, 2022 IL App (2d) 200160, ¶ 22.

A triable issue of fact exists, and therefore precludes summary judgment, where the material facts are disputed or where, although the material facts are undisputed, reasonable minds could differ in drawing inferences from those uncontested facts. *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 31 (1999); see *Pielet v. Pielet*, 2012 IL 112064, ¶ 53 (stating "[i]f the undisputed material facts could lead reasonable observers to divergent inferences, or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact"). " '[W]here doubt exists, the wiser judicial policy is to permit resolution of the dispute by a trial.' " *Jackson v. Graham*, 323 Ill. App. 3d 766, 779 (2001) (quoting *Meck v. Paramedic Services of Illinois*, 296 Ill. App. 3d 720, 725 (1998)).

¶ 34 " 'Summary judgment is a drastic means of resolving litigation and should be allowed only when the right of the moving party is clear and free from doubt.' " *Buchaklian v. Lake County Family Young Men's Christian Ass'n*, 314 Ill. App. 3d 195, 199 (2000) (quoting *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 50 (1999)). The plaintiff need not prove her case at the summary judgment stage, but she must present facts showing that she is entitled to judgment. *Hammer v. Barth*, 2016 IL App (1st) 143066, ¶ 14. The purpose of summary judgment is not to try a question of fact but, rather, to determine whether a genuine issue of triable fact exists. *Id.*

¶ 35 We review *de novo* a trial court's decision to enter summary judgment. *Robinson v. Village of Sauk Village*; 2022 IL 127236, ¶ 16; *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). Under this standard of review, we give no deference to the trial court's decision but, rather, "we consider anew the pleadings, affidavits, depositions, admissions, and exhibits on file to determine whether the trial court's decision was correct." *Jackson*, 323 Ill. App. 3d at 779.

¶ 36 The sole question presented in this appeal is whether there is a genuine issue of material fact concerning the relationship between Dr. Judge and Valley Imaging. Plaintiffs assert that there was ample evidence to reasonably conclude that Dr. Judge was either the employee or the agent of Valley Imaging. Conversely, Valley Imaging is steadfast that Dr. Judge was merely an independent contractor and, therefore, it is not liable for Dr. Judge's alleged acts or omissions.

¶ 37 Whichever position is correct is of paramount importance because if an agency relationship existed, then Valley Imaging may be held liable for Dr. Judge's alleged negligence, under the doctrine of *respondeat superior*. If no agency relationship existed because Dr. Judge was an independent contractor, then the circuit court's ruling granting summary judgment was proper because no liability could attach to Valley Imaging.

¶ 38 A. The Employer-Employee Relationship

¶ 39 The issue of whether there is an employer-employee relationship is ordinarily a question of fact. *Reed v. White*, 397 Ill. App. 3d 975, 978-79 (2010). Only when there is no conflict in the evidence and just one conclusion can be reasonably drawn does the question of an employer-employee relationship become a question of law. *Id.* at 979; *Menard v. Illinois Workers' Compensation Comm'n*, 405 Ill. App. 3d 235, 238 (2010). The same holds true in evaluating whether an agency relationship exists. See *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 202 (2008) ("The question of whether an agency relationship exists is normally a question of fact. A court may decide the issue as a matter of law, however, if only one conclusion may be drawn from the undisputed facts."); see also *People v. Lattimore*, 2011 IL

App (1st) 093238, ¶ 87 ("The question of whether one is an agent, an employee, or an independent contractor is generally a question of fact. [Citation.] If the relationship is so clear as to be indisputable, the question may be decided as a matter of law.").

¶ 40 The determination of the existence of an employer-employee relationship is not governed by a rigid rule of law, but rather, it hinges on the unique facts of each particular case. *West Cab Co. v. Industrial Comm'n*, 376 Ill. App. 3d 396, 404 (2007); *Manahan v. Daily News-Tribune*, 50 Ill. App. 3d 9, 13 (1977) ("[t]here is no absolute rule by which one can determine who is an independent contractor and who is an employee"). Instead, courts have articulated several factors that should be considered when making this determination. The most important factor in determining whether a worker is an employee or an independent contractor is whether the party alleged to be the employer has the right to control the manner of the work. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 175 (2007); *Ware v. Industrial Comm'n*, 318 Ill. App. 3d 1117, 1122 (2000). Another factor of "great significance" is the nature of the work performed by the individual in relation to the general business of the purported employer. *Ware*, 318 Ill. App. 3d at 1122. Other factors courts may consider include the skill involved in the work contemplated; the method of payment; the right to discharge; who provides the tools, materials, or equipment; and who deducts or pays for insurance, social security, and taxes on behalf of the worker. See *Wheaton v. Suwana*, 355 Ill. App. 3d 506, 511 (2005); *Warren v. Williams*, 313 Ill. App. 3d 450, 456 (2000). No single factor is determinative. *Roberson*, 225 Ill. 2d at 175. We turn to the merits and examine the factors individually.

¶ 41 1. The Right to Control the Manner in Which the Work Is Performed

¶ 42 In the context of a hospital-physician dynamic, whether the hospital possesses the authority to control the physician's exercise of medical judgment in providing patient care is the primary concern. *Hammer*, 2016 IL App (1st) 143066, ¶ 16. On appeal, plaintiffs make no argument that Valley Imaging possessed the right or ability to control Dr. Judge's exercise of medical judgment during his shifts at Rush-Copley. Our inquiry on this factor does not end there, however, because the "right to control" in this context encompasses more than the right to instruct a physician regarding how to practice medicine. "Making independent medical decisions does not mean that the individual is precluded from being an employee simply because the employer did not specifically control every medical decision made by the employee." *Wheaton*, 355 Ill. App. 3d at 512. In other words, "the hospital can remain in control of an employee physician even if it does not control every medical detail of that physician's practice. The nature of the profession could not support a contrary theory." *Id.* at 514.

¶ 43 In this case, there is sufficient evidence to reasonably infer that Valley Imaging maintained the right to control Dr. Judge throughout his provision of radiology services at Rush-Copley. As noted, Valley Imaging, which is a private physician group, was the exclusive provider of radiology services at Rush-Copley pursuant to the Radiology Services Agreement, which obligated Valley Imaging to provide such services 24-hours per day, seven days per week. Other than certain nonphysician personnel necessary to operate the radiology department, Valley Imaging effectively *was* the radiology department at Rush-Copley. Complete autonomy for the engagement of qualified radiologists at Rush-Copley was vested in Valley Imaging. Dr. Judge testified that he applied to work for Valley Imaging in 2013, following a conversation he had with a friend who worked there and who told him that "they needed more people."

Valley Imaging thereafter selected Dr. Judge, with whom it contracted to provide radiology services "as needed and requested *** and as mutually scheduled from time to time" via the Engagement Agreement. Dr. Judge's privileges at Rush-Copley stemmed entirely from his affiliation with Valley Imaging because the Radiology Services Agreement excluded radiologists who were unaffiliated with Valley Imaging from working at Rush-Copley. Dr. Judge was allowed to practice radiology at Rush-Copley only "as permitted by [Valley Imaging]." In the event that Dr. Judge's "employment, engagement, or affiliation" with Valley Imaging "terminate," his medical staff membership and clinical privileges to practice radiology at Rush-Copley "terminate automatically." To effectuate that purpose, under the Engagement Agreement, Dr. Judge granted Valley Imaging a "special power of attorney" to sign his name to a medical staff privileges resignation letter to be submitted to Rush-Copley in the event of his termination. Moreover, Dr. Judge relinquished any rights to a hearing, review, or due process to which he might otherwise have been entitled through medical staff bylaws, hospital bylaws, and state and federal law. In its brief, Valley Imaging repeatedly emphasizes that the contractual provisions that made Dr. Judge's privileges at Rush-Copley contingent on his relationship with Valley Imaging "were simply a function of [the Radiology Services Agreement], not a means of controlling Dr. Judge's practice of radiology." This response sidesteps the issue. Other than a conclusory statement denying control, Valley Imaging offers no meaningful argument addressing these circumstances. The fact that Dr. Judge was not permitted to practice radiology at Rush-Copley except as permitted by Valley Imaging, at a minimum, suggests that Valley Imaging retained the right to control the manner in which Dr. Judge performed his work at Rush-Copley.

¶ 44 The right to control is implied by other circumstances, as well. The Radiology Services Agreement required that all physicians providing radiology services at Rush-Copley "shall report to the Medical Director," namely, Dr. Akbar, the president of Valley Imaging and the chairman of Radiology. Valley Imaging was required to create a schedule of continuous physician staffing to ensure that its obligations under the Radiology Services Agreement were satisfied. To that end, and as Dr. Judge testified, Dr. Akbar did "the scheduling." Dr. Judge elaborated that Dr. Akbar would send an e-mail one to two months in advance to inform Dr. Judge of any staffing shortages caused by, for example, a Valley Imaging employee being on vacation. Dr. Judge testified that he would then "reply with [his] availability," but that Valley Imaging could not "force [him] to do a shift that [he was] not available for." Rather, they "mutually agree[d] on the shifts [Dr. Judge was] going to work, and then it [got] put into the schedule." Since 2013, Dr. Judge worked at Rush-Copley three or four shifts per month, although he was working fewer shifts at the time of his deposition because Radiology Partners was offering him more hours and he preferred to work from home.

¶ 45 In its brief, Valley Imaging emphasizes that it did not impose any set work hours or quotas on Dr. Judge and that he was free to "pick and choose" when he wished to work, which points to an independent contractor relationship. See *Esquinca v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 150706WC, ¶ 50 (upholding finding that delivery driver was an independent contractor because, among other reasons, driver could choose when to work and was not required to accept every load that was offered to him). This argument misses the mark. Although Dr. Judge could turn down shifts if he was unavailable, once he accepted a shift and was added to the schedule, he was required to report to the radiology reading room at the beginning of his shift and remain there until the conclusion of that shift. He was permitted to

leave the radiology reading room only for breaks or to go to the cafeteria, and, if he did step out, he notified the secretary so that, "if somebody is looking for [him] then they know that [he will] be right back." When Dr. Judge works an "on-call" shift, he is required, by operation of the Radiology Services Agreement, to remain within the vicinity of Rush-Copley in the event his services are needed in an emergency. In other words, in that aspect, his scheduling requirements were unlike those of an independent contractor because he was not permitted to come and go as he pleased. Dr. Judge also testified that, if he was unable to work a shift for which he was scheduled, it would be up to him to find a substitute among the other radiologists affiliated with Valley Imaging, or "one of the partners [would] come in," depending on when the scheduling conflict materializes.

¶ 46 The record also supports a reasonable inference that Valley Imaging exerted control over Dr. Judge with respect to the specific tasks he was expected to complete during each shift. While on duty at Rush-Copley, he was not permitted to pick and choose which studies to read. He testified that, during shifts that occur on weekdays, he was "supposed to read everything" and he was "supposed to have the list *** cleaned up by the end of the day." On weekend shifts, Dr. Judge was required to complete the STAT exams, "which would typically be the ER, and then some outpatients that are also ordered by their doctors STAT." If, in the purest sense, Dr. Judge was an independent contractor, he would likely have had the freedom to select which imaging studies he wished to read and decline the studies he did not wish to read.

¶ 47 The Engagement Agreement also mandated that "[a]ll Services shall be provided in a competent fashion in accordance with the policies and procedures of [Valley Imaging] and [Rush-Copley] and in accordance with standards of care prevailing in the community." Thus, Dr. Judge was required to provide professional medical services, not just in accordance with Rush-Copley's policies and the applicable standard of care, but also "in accordance with the policies and procedures of" Valley Imaging. This provision is significant because "[t]he presence of contractual provisions subjecting the person to control over the manner of doing the work is a traditional *indicia* that a person's status as an independent contractor should be negated." *Petrovich*, 188 Ill. 2d at 46-47. This provision suggests an employer-employee relationship because it speaks to the method or manner in which the services were to be provided, rather than dictating an expectation concerning the result of Dr. Judge's work. See *Coontz v. Industrial Comm'n*, 19 Ill. 2d 574, 577-78 (1960) ("an employee is at all times subject to the control and supervision of his employer, whereas an independent contractor represents the will of the owner only as to the result and not as to the means by which [the work] was accomplished").

¶ 48 Valley Imaging suggests that the Engagement Agreement's requirement that services be provided in accordance with its own policies and procedures is a nullity because it did not actually disseminate any policies or procedures to Dr. Judge. Instead, it emphasizes Dr. Judge's testimony that the written policies and procedures that he was expected to follow were those of Rush-Copley. The absence of a written policy or procedure drafted by Valley Imaging does not undercut plaintiffs' argument that Valley Imaging had a measure of control over how Dr. Judge performed his professional services because the "*right to control* the alleged agent is the proper query, even where that right is not exercised." (Emphasis in original.) *Petrovich*, 188 Ill. 2d at 48. Whether control was actually exercised is not dispositive. *Id.*; see *Wheaton*, 355 Ill. App. 3d at 511-12 ("courts really look at whether the 'employer' maintained the right to control the 'employee,' as opposed to actually utilizing that power"). Valley Imaging reserved

the right to control the specific means and methods Dr. Judge utilized in providing radiology services while on duty at Rush-Copley, and nothing in the Engagement Agreement suggested that he would be exempt should Valley Imaging implement such policies and procedures.

¶ 49 Plaintiffs point to another provision in the Engagement Agreement, which provided that Dr. Judge was, subject to his availability, obligated to "provide Services at [Rush-Copley] and at the inpatient and outpatient facilities of [Rush-Copley] as [Valley Imaging] *shall direct*." (Emphasis added.) They argue that Valley Imaging maintained a right to control the manner of Dr. Judge's work, based on the "shall direct" language, and they note that the word "control" is defined as "the power or authority to manage, *direct*, or oversee." (Emphasis added.) See Black's Law Dictionary 330 (7th ed. 1999). Valley Imaging responds that plaintiffs interpret the phrase "shall direct" far too generously in favor of their position because this phrase, when interpreted within the broader context of the entire Engagement Agreement, does not signify the right to control. See *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 77 (noting that terms to a contract must be read in context and the parties' intent may not be ascertained by viewing a single clause in isolation). It also points to the circuit court's comments on this matter. During the hearing on the motion for summary judgment, the following colloquy occurred:

> "THE COURT: It seems to me it says—I read it as physician—subject to physician's availability[,] shall provide services at [Rush-Copley] and at the inpatient and outpatient facilities as [Valley Imaging] shall direct.
>
> In other words, this is where you are going today. Not how you perform the work. But that is where you are going to do [*sic*]. You are going to the outpatient facility; you are going to this facility. Not as directed by the policies and practices of Valley Imaging or pursuant to this. I didn't read it that way.
>
> MR. HOSTE [(PLAINTIFFS' COUNSEL)]: Well, I would disagree with you, respectfully.
>
> THE COURT: And I think that's a *fair disagreement*. And that will get us to the point, I think.
>
> MR. HOSTE: It may." (Emphasis added.)

¶ 50 On appeal, neither party substantively grapples with the precise language used in this segment of the Engagement Agreement. Rather, they each quote the passage and conclude, without meaningful analysis, that it supports their view regarding the right of Valley Imaging to control Dr. Judge's work at Rush-Copley. Ambiguity is not created in the language employed in the contract simply because the parties disagree. *People ex rel. Burris v. Memorial Consultants, Inc.*, 224 Ill. App. 3d 653, 656 (1992).

¶ 51 Here, the provision in the Engagement Agreement, stating that Dr. Judge "shall provide Services at [Rush-Copley] and at the inpatient and outpatient facilities of [Rush-Copley] as [Valley Imaging] shall direct," is subject to two reasonable interpretations. Specifically, "shall direct" could reasonably be construed to pertain to the specific facilities to which Valley Imaging could dispatch Dr. Judge during shift coverage. Alternatively, the phrase could reasonably be interpreted to mean that Valley Imaging was entitled to direct Dr. Judge's provision of radiology services. The circuit court, based on its comments at the hearing, apparently acknowledged that this provision is prone to two reasonable interpretations, and yet it chose the interpretation that disfavored plaintiffs. This was error because, faced with a

motion for summary judgment, the court was obligated to construe the evidence in the light most favorable to the nonmoving party and strictly against the movant. *American States Insurance Co. v. CFM Construction Co.*, 398 Ill. App. 3d 994, 998 (2010); see *Burris*, 224 Ill. App. 3d at 656 ("[c]onstruing the language employed in a contract is a matter of law appropriate for summary judgment [citations], unless the contract is ambiguous"). These circumstances counsel against finding that there was a lack of control over Dr. Judge's work, especially in the absence of any provision in the Engagement Agreement expressly disavowing the right to direct, supervise, or control Dr. Judge in the exercise of his professional services.

¶ 52 2. The Nature of the Work Performed

¶ 53 The nature of the work performed by the person alleged to be an employee in relation to the general business of the defendant is another factor that courts utilize in evaluating whether the individual is an independent contractor or an employee. Although no single factor is determinative, this factor is accorded "great significance." *Sperl v. C.H. Robinson Worldwide, Inc.*, 408 Ill. App. 3d 1051, 1058 (2011). The circuit court did not analyze this factor in either its original order granting summary judgment or its modified summary judgment order following reconsideration.

¶ 54 Here, Valley Imaging's core business was providing qualified radiologists to operate the radiology department at Rush-Copley on a continuous basis, "twenty-four (24) hours per day, seven (7) days per week." Dr. Judge was a radiologist. He did not perform merely some service that is ancillary or tangential to Valley Imaging's core function. To the contrary, during any particular shift Dr. Judge worked, Valley Imaging relied entirely on him to, as described in its brief, "ensure its ability to provide the agreed upon coverage under the Radiology Services Agreement." While on duty, Dr. Judge was the sole physician responsible for reading all of the STAT exams that came in during his shift, as well as all non-STAT exams that came in during any of his shifts that fell on a weekday. Only one radiologist worked in the reading room per shift, as Dr. Judge testified. Valley Imaging made no effort in its appellate brief to distinguish Dr. Judge's on-duty professional responsibilities from the responsibilities of Valley Imaging's regular, full-time employees. Dr. Judge testified that, if he was unable to work a scheduled shift, he either called a colleague and requested that they swap shifts or, if a personal emergency arose, he informed Valley Imaging and "one of the partners *** come[s] in." The record before us therefore suggests that Valley Imaging's full-time employees and Dr. Judge were, in terms of shift coverage at Rush-Copley's radiology department, entirely fungible.

¶ 55 3. The Skill Involved in the Work

¶ 56 There is no dispute that the work of a radiologist is highly skilled. Nevertheless, the strength of this factor in favor of an independent contractor relationship is tempered by our analysis of the previous factor, given that Valley Imaging's full-time physician employees are expected to possess the very same highly specialized skill set. See Restatement (Second) of Agency § 220 cmt. i (1958) (observing that "[e]ven where skill is required, if the occupation is one which ordinarily is considered as a function of the regular members of the household staff or an incident of the business establishment of the employer, there is an inference that the actor is a servant").

¶ 57 4. The Question of Hiring and the Right to Discharge

¶ 58 Our supreme court has commented that "the question of hiring" and "the right to discharge" are pertinent considerations for the court to consider in determining whether a person is an agent or an independent contractor. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 44; *Petrovich*, 188 Ill. 2d at 46. Here, the initial determination of which qualified physicians would staff the Rush-Copley radiology department was entrusted to Valley Imaging under the Radiology Services Agreement. Dr. Judge testified that he "applied" to work for Valley Imaging in 2013 and was subsequently selected by Valley Imaging to provide radiology services.

¶ 59 In addition to selecting the physicians to staff the radiology department, Valley Imaging likewise retained, to a somewhat limited degree, the right to discharge Dr. Judge. Under the Engagement Agreement, either Dr. Judge or Valley Imaging could terminate the agreement "at any time upon 30 days' prior written notice." Valley Imaging also could terminate the Engagement Agreement at any time on written notice if Dr. Judge materially breached the Engagement Agreement (which we again note requires that services "be provided in a competent fashion in accordance with the policies and procedures" of Valley Imaging) or if Valley Imaging determined, in its sole discretion, that Dr. Judge failed to provide radiology services in a "professional, safe manner," among other reasons. Valley Imaging's ability to discharge radiologists was more robust than that of Rush-Copley. Under the Radiology Services Agreement, Rush-Copley may "request the termination" of a radiologist for reasonable cause, which was defined as a failure to meet the qualifications of the position, the failure to practice at a skill level meeting the standard of care, or a pattern of disruptive conduct that adversely affects the efficient operation of the radiology department. If Rush-Copley requested a termination, Valley Imaging was obligated to comply with the request "as soon as feasible but not later than thirty (30) days" following the request. Unlike Valley Imaging, Rush-Copley was not authorized to terminate radiologists in the absence of reasonable cause.

¶ 60 Notwithstanding the above, this factor points to an independent contractor arrangement. As emphasized by Valley Imaging, the proper inquiry is not whether there was the right to discharge Dr. Judge, but whether Valley Imaging retained the right to discharge him at will for any reason and at any time. See *Earley v. Industrial Comm'n*, 197 Ill. App. 3d 309, 316 (1990) (stating that a factor to consider in determining whether an individual is an independent contractor or an employee is whether there was the right to discharge the individual for any reason at any time). "The unqualified right to discharge an employee must be distinguished from the ability to terminate a contract for *bona fide* reasons of dissatisfaction." *Ware*, 318 Ill. App. 3d at 1125. Here, absent material breach of the Engagement Agreement or Dr. Judge's failure to meet the continuing qualifications of the position, Valley Imaging could terminate him only upon 30 days' written notice. In other words, as long as Dr. Judge was providing radiology services in a manner consistent with the Engagement Agreement and in a professional, safe manner, Valley Imaging lacked the authority to terminate him at will, without prior notification.

¶ 61 5. The Method of Payment

¶ 62 Turning to the method of payment factor, three considerations arguably support plaintiffs' view that Dr. Judge was an employee. First, Valley Imaging paid Dr. Judge an hourly rate, as specified in an exhibit attached to the Engagement Agreement, for his professional services

rendered at Rush-Copley. Whether the party alleged to be an employer "pays the person hourly" is a factor indicative of an employer-employee relationship. *Roberson*, 225 Ill. 2d at 175; see *Anderson v. Panozzo*, 71 Ill. App. 3d 19, 21 (1979) (affirming summary judgment where injured plaintiff was an employee of defendant such that his sole remedy was under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2020)) where, among other factors, he "was not paid by the job, but by the hour"). Here, Dr. Judge's payment for his work at Rush-Copley was determined by multiplying his hourly rate by the number of hours worked during the applicable pay period. The number of imaging studies Dr. Judge read during any given shift was irrelevant to his pay. Moreover, the Engagement Agreement detailed the process by which he was required to keep track of his hours. Specifically, he was required to submit time sheets, in form and substance prescribed by Valley Imaging, "on the Monday following any week in which [Dr. Judge] shall have provided Services" but, if that day is a holiday, then the time sheet "shall be due on Tuesday." Under the Engagement Agreement, the failure to timely submit a time sheet could result in payment being withheld or delayed.

¶ 63 Valley Imaging disputes the legal significance of the hourly pay because, in the context of this case, " 'the job' is coverage of fixed-length shifts and the hourly rate established by the [Engagement Agreement] is simply the method for calculating the per job amount due." In other words, Valley Imaging argues that Dr. Judge *was* paid by the job. We are unpersuaded. The Engagement Agreement obligated Dr. Judge to provide radiology services "as mutually scheduled from time to time" during the applicable one-year term and then, following completion of the term, the contract automatically renewed for "additional terms of one (1) year each." Dr. Judge historically worked three or four shifts per month for Valley Imaging, and he did not sign a new Engagement Agreement for each shift. Because the Engagement Agreement contemplated that Dr. Judge would provide radiology services at Rush-Copley on an ongoing basis, we are unpersuaded by Valley Imaging's assertion that each shift in the radiology department constituted a discrete project or job. See Restatement (Second) of Agency § 220 cmt. j, (1958) (stating that the length of employment is an important factor because, if the term of employment is short, the worker is less apt to relinquish control over the details of the task); see also *Schultz v. Capital International Security, Inc.*, 466 F.3d 298, 309 (4th Cir. 2006) (observing that "[t]he more permanent the relationship, the more likely the worker is to be an employee").

¶ 64 The second consideration is the fact that, under the Engagement Agreement, Dr. Judge relinquished his ability to invoice patients for the radiology services he performs for them at Rush-Copley and, in effect, assigned that right to Valley Imaging. Specifically, "[a]ll compensation and reimbursement for [Dr. Judge's] Services shall be billed and collected by [Valley Imaging] or its designee and shall be the exclusive property of [Valley Imaging]." The fact that Valley Imaging issued all radiology invoices in its own name and then collected payment from customers and insurers alike is circumstantial evidence of an agency relationship. See *Pyskaty v. Oyama*, 266 Ill. App. 3d 801, 828-29 (1994) (the fact that invoices were billed to medical services company for services provided to patients by emergency room physician, who was employed and scheduled by said medical services company, was circumstantial evidence of an agency relationship between the company and the physician).

¶ 65 Third, Valley Imaging was obligated under the Engagement Agreement to obtain medical malpractice insurance for Dr. Judge in connection with his services at Rush-Copley. The Engagement Agreement also specified that the malpractice insurance coverage was to be

effective only for the services provided by Dr. Judge under the Engagement Agreement, and not for any services rendered by him outside the scope of the Engagement Agreement. The provision of insurance coverage is an indicator that Dr. Judge was an employee rather than an independent contractor. See *Pantaleo v. Our Lady of the Resurrection Medical Center*, 297 Ill. App. 3d 266, 279-80 (1998) (holding that testimony regarding liability insurance was appropriate to show that an agency relationship existed between hospital and physician); see also *Boettcher v. Fournie Farms, Inc.*, 243 Ill. App. 3d 940, 945 (1993) ("[w]hile not admissible to show fault, the existence of insurance may be shown in connection with issues such as agency, ownership, control, bias, or prejudice of a witness"). Employers often provide insurance coverage, including malpractice coverage, as part of the benefits package offered to employees. Valley Imaging apparently recognized the insurance as a type of benefit because the Engagement Agreement expressly referenced Dr. Judge's receipt of malpractice insurance as an exception to the general provisions barring him from entitlement to any benefits, such as a pension, paid time off, retirement plans, and the like. Independent contractors typically will arrange for their own insurance coverage, including professional liability insurance. The fact that Valley Imaging has contractually assumed responsibility for the procurement of medical malpractice insurance coverage on Dr. Judge's behalf suggests an employment relationship.

¶ 66 To be sure, several circumstances in this case support Valley Imaging's view. Similar to the "method of payment" factor, courts may also consider whether income and social security taxes are withheld from the individual's payment. *Roberson*, 225 Ill. 2d at 175; *Wheaton*, 355 Ill. App. 3d at 513. Here, the Engagement Agreement specified that Valley Imaging would "not withhold any amounts for payment of taxes of [*sic*] other withholdings or deductions from the compensation," and Dr. Judge confirmed during his testimony that Valley Imaging did not "withhold any type of state or local tax" or social security. Also, Dr. Judge was issued a 1099 tax form each year, rather than a W-2 form, and he received no benefits (other than malpractice insurance coverage, as discussed above) that are often enjoyed by employees, including "pension, retirement or other benefit programs or plans (including, without limitation, paid time off or other benefit of employment)," whether "now or hereafter available or provided to [Valley Imaging's] members or employees."

¶ 67 Based on the above, this factor could reasonably support the position of Valley Imaging or plaintiffs, in that there are elements related to Dr. Judge's compensation and benefits that suggest that he was an independent contractor, while other elements are indicative of an employment arrangement.

¶ 68 6. The Furnishing of Tools, Materials, and Equipment

¶ 69 Another factor relevant to the determination of the status of an individual as an employee or an independent contractor is the furnishing of tools, materials, and equipment. *Kay v. Centegra Health System*, 2015 IL App (2d) 131187, ¶ 11. It is undisputed that Rush-Copley furnished the "space, equipment and supplies" for the radiology department, as required in the Radiology Services Agreement. Valley Imaging emphasizes in its brief that it did not furnish any tools, materials, or equipment to Dr. Judge for use during his shifts at Rush-Copley, and it argues that, therefore, this factor supports only the conclusion that Dr. Judge was an independent contractor. However, application of this factor is not as straightforward as Valley Imaging claims. Equally important is the fact that Dr. Judge, likewise, did not supply his own tools, materials, or equipment, which runs counter to what one would expect if he were an

independent contractor. See Restatement (Second) of Agency § 220 cmt. k (1958) (stating "[t]he fact that a worker supplies his own tools is some evidence that he is not a servant").

¶ 70 Under the Radiology Services Agreement, Valley Imaging had the "exclusive right" to provide radiology services at Rush-Copley and was obligated to provide those services 24 hours per day, seven days per week. The contract also vested Valley Imaging with the authority to "determine which Physicians shall provide Services" in the radiology department. As the natural result of these provisions, only those radiologists, such as Dr. Judge, who were engaged to work for Valley Imaging could access the radiology equipment at Rush-Copley. In the event that Dr. Judge's "employment, engagement or affiliation" with Valley Imaging terminated for any reason, then his "medical staff membership and clinical privileges [at Rush-Copley] terminate automatically." In a practical sense, then, Valley Imaging served as a gatekeeper for the tools, materials, and equipment that Dr. Judge needed to perform professional radiology services at Rush-Copley, which suggests an employment relationship.

¶ 71 B. Our Resolution

¶ 72 In sum, an examination of the uncontested facts of this case demonstrates that elements of both an employer-employee relationship and an independent contractor status exist. Because the above circumstances, in their totality, are susceptible to diverging interpretations that could reasonably support either conclusion, there are genuine issues of material fact as to the status of Dr. Judge on the date of his alleged medical negligence. Accordingly, the entry of summary judgment in favor of Valley Imaging was in error, and we reverse and remand the cause for further proceedings. Because of our resolution, we need not substantively evaluate the related issue of whether there is a genuine issue of material fact as to whether an actual agency relationship existed between Valley Imaging and Dr. Judge.

¶ 73 III. CONCLUSION

¶ 74 For the reasons stated, we reverse the order of the circuit court of Kane County granting summary judgment in favor of Valley Imaging, and we remand for further proceedings.

¶ 75 Reversed and remanded.