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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-889

Julie Jaunich,
Appellant,

vs.

Wind Energy America, Inc., et al.,
Respondents.

Filed January 3, 2012
Affirmed
Halbrooks, Judge

Hennepin County District Court
File No. 27-CV-10-27041

Karl L. Cambronne, Jeffrey D. Bores, Bryan L. Bleichner, Chestnut Cambronne PA, Minneapolis, Minnesota (for appellant)

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Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges the district court's denial of her motion for injunctive relief to force respondents to hold a shareholder meeting. Because we conclude that the district court acted within its broad discretion, we affirm.

FACTS

Respondents are Wind Energy America, Inc. (WEA) and the five members of its board of directors, each of whom is individually named as a party only in his official capacity. WEA is a small energy company that engages solely in wind-power technology. WEA was founded in Minnesota in 1980 and manufactured digital signage and developed non-prescription healthcare products under different company names. In late 2006, WEA decided to focus exclusively on wind energy and spun off the other parts of its business. Since early 2007, WEA has acquired substantial wind-farm assets, including interests in operating wind farms, wind farms under construction, and wind farms in various stages of design and development. WEA's board of directors consists of five members; eight people own significant amounts of WEA stock.

WEA suffered million-dollar losses from a series of bad business deals with appellant Julie Jaunich's husband, Greg Jaunich. In exchange for property and wind-energy equipment, WEA paid Greg Jaunich, in part, with WEA common stock. Through a series of fraudulent transactions, Greg Jaunich made misleading and false statements to WEA that severely impacted its financial condition. Greg Jaunich subsequently pleaded guilty to felony mail fraud and was sentenced to serve 21 months in federal prison.

Greg Jaunich transferred the WEA stock that he acquired to appellant. As a result, appellant owns 7,260,167 shares of common stock, which amounts to 11.9% of the voting power. Because appellant controls more than 3% of the company's stock, she has a statutory right to demand an annual shareholder meeting. But since WEA's current management took over in the fall of 2009, it has not called a meeting of shareholders.

Exercising her statutory right, appellant sent a letter to the WEA board of directors on October 12, 2010, to demand a meeting. Appellant also demanded that a slate of potential new directors be included in the meeting agenda.

WEA did not call a meeting as a result of its business losses; at the time, WEA had $43,785 in its bank account. Respondents estimated that the cost of printing the proxy statements, postage, legal fees to prepare the proxy statements, and room rental would total $40,000.

Appellant brought suit, seeking injunctive relief under Minn. Stat. § 302A.467 (2010) to force WEA to call an annual shareholder meeting. Appellant also cites to WEA's bylaws in support of her demand and correctly asserts that the bylaws provide for an annual meeting of shareholders. But she did not assert a claim under a theory of contract law or any other theory for violation of the bylaws. The district court denied appellant's request for injunctive relief and dismissed the complaint with prejudice, emphasizing its discretion under the statute to grant or deny equitable relief as it deems just and reasonable. This appeal follows.

D E C I S I O N

Appellant contends that the district court abused its discretion under Minn. Stat. § 302A.467 by failing to enforce Minn. Stat. § 302A.431, subd. 2 (2010), and WEA's bylaws.

Appellant argues that she made a valid demand for a shareholder meeting pursuant to Minn. Stat. § 302A.431 (2010) and that equity requires that a meeting be held. Whether appellant made a valid demand for a shareholder meeting presents a question of

statutory interpretation, which this court reviews de novo. *See PeopleNet Commc'ns Corp. v. Baillon Ventures, LLC*, 781 N.W.2d 584, 587 (Minn. App. 2010) (citing *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 231 (Minn. 2010)) (interpreting Minn. Stat. § 302A.473).

Minn. Stat. § 302A.431, subd. 2, provides:

> If a regular meeting of shareholders has not been held during the immediately preceding 15 months, a shareholder . . . holding three percent or more of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the chief executive officer or the chief financial officer of the corporation. . . . If the board fails to cause a regular meeting to be called and held as required[,] . . . the shareholder . . . making the demand may call the regular meeting by giving notice as required by section 302A.435, all at the expense of the corporation.

WEA had not held a shareholder meeting in the 15 months that preceded appellant's demand. Appellant controls 11.9% of the voting power, with more than 7 million shares of WEA common stock. And appellant sent a letter through her attorney to the board of directors, of which CEO Melvin Wentz is a member. Based on the clear language of the statute, it is undisputed that appellant satisfied the requirements of the statute and made a valid demand for a shareholder meeting.

When WEA did not call a meeting, appellant was left with two possible remedies. First, as a shareholder holding three or more percent of the voting power, appellant has a legal right to call a meeting. She can call a regular meeting, at the expense of the corporation, by giving the required notice. *Id.* She has not done so. Alternatively, Minn. Stat. § 302A.467 provides:

> If a corporation or an officer or director of the corporation violates a provision of this chapter, a court in this state may, in an action brought by a shareholder of the corporation, grant any equitable relief it deems just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholder.

This court reviews a district court's exercise of equitable relief for abuse of discretion. *Bolander v. Bolander*, 703 N.W.2d 529, 548 (Minn. App. 2005); *see also Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 277 (Minn. 2010) (applying an abuse-of-discretion standard to decisions of equity). The supreme court has noted that "a court of equity has the power to adapt its decree to the exigencies of each particular case so as to accomplish justice, . . . possess[ing] the flexibility and expansiveness to invent new remedies or modify old ones to meet the requirements of every case." *Beliveau v. Beliveau*, 217 Minn. 235, 246, 14 N.W.2d 360, 366 (1944). Further, the use of the word "may" in Minn. Stat. § 302A.467 gives the district court "broad latitude in fashioning remedies to meet the particular needs of each case." *Bolander*, 703 N.W.2d at 548; *see also* Minn. Stat. § 645.44, subd. 15 (2010) (defining the use of the word "may" in Minnesota statutes as permissive).

The district court ruled that it would not be just or equitable to require WEA to hold a shareholder meeting. The district court stated:

> [G]iven Mr. Jaunich's role in WEA's predicament, requiring WEA to incur the costs of holding a meeting would not be just and reasonable because [appellant's] shares of WEA and the concomitant right to demand a shareholder meeting are at least partly derived from Mr. Jaunich's misdealings. [Appellant] has declined to address those misdealings on the grounds that they are not relevant. However, in providing for

> equitable relief that is "just and reasonable in the circumstances," Minn. Stat. § 302A.467 allows inquiry into all circumstances bearing on the equities, including the means by which [appellant] acquired her shares and the concomitant right to demand a shareholder meeting. If [appellant's] right to demand a shareholder meeting has been ill-gotten, equity does not favor enforcement of that right.

Appellant asserts that this court's recent decision in *Superior Shores Lakehome Ass'n v. Jensen-Re Partners*, 792 N.W.2d 865 (Minn. App. 2011), prohibits the district court from providing equitable relief that is inconsistent with a statute. Specifically, appellant contends that the district court erred by fashioning an equitable remedy that is inconsistent with Minn. Stat. § 302A.431 (2010), which requires that a meeting of shareholders be called. We observed in *Superior Shores* that a district court "cannot invoke equitable theories to circumvent the plain language of the [statute]," 792 N.W.2d at 869, by "disregard[ing] statutory law or grant[ing] relief prohibited thereby," *Kingery v. Kingery*, 185 Minn. 467, 470, 241 N.W. 583, 584 (1932) (noting that "[e]quity follows the law"). But the district court is not limited to examining a specific section of a statute in isolation—as appellant encourages—but can analyze the statutory chapter as a whole. *See Superior Shores Lakehome Ass'n*, 792 N.W.2d at 869-70 (analyzing several sections of the Uniform Condominium Act (UCA)).

The statutory language in *Superior Shores* differs from the statute here in significant ways. The statute at issue in *Superior Shores* was the UCA, whereas the statute at issue here is the Minnesota Business Corporations Act (MBCA), Minn. Stat. §§ 302A.001-.92 (2010). Unlike the UCA, the MBCA expressly contemplates equitable remedies. The UCA only refers to equitable remedies generally, allowing them to

supplement the UCA so long as they are not inconsistent with any of its provisions. Minn. Stat. § 515A.1-108 (2010). By contrast, the MBCA expressly allows equitable remedies if the district court deems them "just and reasonable." Minn. Stat. § 302A.467. Under the MBCA, a district court can consider all of the circumstances of a case to determine what is "just and reasonable."

Appellant also contends that the district court failed to follow the statute because it declined to apply the business-judgment rule. The business-judgment rule is a defense against director liability. Minn. Stat. § 302A.251, subd. 1; *In re UnitedHealth Grp., Inc. Shareholder Derivative Litig.*, 754 N.W.2d 544, 553 (Minn. 2008). The statute provides, "A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinary prudent person in a like position would exercise under similar circumstances." Minn. Stat. § 302A.251, subd. 1; *see also Janssen v. Best & Flanagan*, 662 N.W.2d 876, 882 (Minn. 2003). The business-judgment rule furthers the policy of protecting directors' reasonable risks and preventing district courts from substituting their own decisions for those of well-meaning board members because district courts are ill-equipped to judge the wisdom of business ventures. *Janssen*, 662 N.W.2d at 882. Whether the business-judgment rule applies is a question of law, which this court reviews de novo. *See Blohm v. Kelly*, 765 N.W.2d 147, 153 (Minn. App. 2009).

Appellant contends that the district court substituted its business judgment for that of the board members when it reasoned, "For the sake of all the shareholders, WEA's limited resources would be better expended righting the ship than incurring additional

monetary obligations which do not improve its immediate financial situation." Appellant characterizes the district court's actions as a "determination of how a corporation should best spend its money." Appellant's argument is without merit. First, appellant never alleged the threshold issue of whether the WEA board of directors acted in bad faith or in an unreasonable manner, as required by the statute. Second, the business-judgment rule prevents a district court from substituting its own judgment for the company's. Here, the district court agreed with WEA's decisions. Finally, the district court's brief reference to WEA's business concerns is sufficiently general and vague that it could not be characterized as a replacement of the board's decision or a mandate for how the board should proceed. Because the business-judgment rule does not apply and because the district court has broad discretion under Minn. Stat. § 302A.467, we conclude that the district court did not err.

Appellant also contends that the district court failed to follow the statute because it improperly applied the doctrine of unclean hands. The doctrine of unclean hands "is premised on withholding judicial assistance from a party guilty of unconscionable conduct." *Fred O. Watson Co. v. U.S. Life Ins. Co. in City of New York*, 258 N.W.2d 776, 778 (Minn. 1977). But as a court of equity, the district court has the discretion and flexibility "to invent new remedies or modify old ones to meet the requirements of every case." *Beliveau*, 217 Minn. at 246, 14 N.W.2d at 366. Even though appellant was not charged with any criminal liability as a result of her husband's misdeeds, she received the stock that her husband gained through his fraudulent dealings with respondents. By considering the manner in which appellant obtained her stock, the district court

determined what was just and reasonable under Minn. Stat. § 302A.467 and acted within its discretion by denying appellant's motion for an injunction.

Affirmed.