IN THE COURT OF APPEALS OF IOWA

No. 7-271 / 06-1049
Filed May 23, 2007

DAN'S OVERHEAD DOORS & MORE, INC.,
Plaintiff-Appellant,

vs.

SCOTT WENNERMARK,
Defendant-Appellee

DAN'S OVERHEAD DOORS & MORE, INC.,
Plaintiff-Appellant,

vs.

MATTHEW W. MINEART,
Defendant-Appellee

DAN'S OVERHEAD DOORS & MORE, INC.,
Plaintiff-Appellant,

vs.

CRAIG A. HANNA,
Defendant-Appellee

Appeal from the Iowa District Court for Linn County, Nancy S. Tabor, Judge.

Plaintiff appeals from denial of injunctive relief to enforce restrictive covenants contained in employment agreements. **AFFIRMED.**

Kevin J. Visser and Mackenzie A. Barton of Moyer & Bergman, P.L.C., Cedar Rapids, for appellant.

Mark L. Zaiger and Diane Kutzko of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellees.

Heard by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

HUITINK, P.J.

This appeal concerns the enforceability of a covenant not to compete contained in an employment agreement. At trial the district court denied the employer, Dan's Overhead Doors & More, Inc. (DODM), the injunction it sought against three former employees—Scott Wennermark, Matthew Mineart, and Craig Hanna. We affirm.

I. Facts and Prior Proceedings

DODM sells and services overhead doors in North Liberty, Cedar Rapids, Des Moines, and Davenport, Iowa. The three defendants were all formerly employed by DODM as hourly service technicians. All defendants came to DODM with no prior experience in the field. Through training and their own hard work, they progressed from entry-level service technicians to "lead technicians" in charge of one or two-man crews. Hanna worked at DODM for nearly ten years, Mineart for three and a half years, and Winnermark for four years. When hired, each of the three defendants signed an employment agreement with DODM. The agreements provided:

> Employee agrees that for a period of two (2) years after the termination of his/her employment with Company in any manner, whether with or without cause, Employee will not within 50 miles of the Company's principal place of business in North Liberty, Iowa, or any branch thereof, directly or indirectly engage in the business of sales or service of overhead doors or other products sold or serviced by Company, or in any business competitive with Employer for a period of two (2) years from termination of employment. Directly or indirectly engaging in business or repairing, maintaining or installing overhead doors, or in any competitive business shall include, but not be limited to, engaging in business as owner, partner, or agent, or as Employee of any person, firm, corporation, or other entity engaged in such business or in being interested directly or indirectly in any such business conducted by any such firm, person, corporation, or other entity.

Due to frustrations with the dispatcher, a reduction in medical benefits, and changes in company policy, the individual defendants left DODM between the summer of 2004 and the spring of 2005 and began employment as service technicians for a local competitor. DODM filed the present suit to enjoin defendants from providing commercial overhead door service through the local competitor. After a one-day bench trial, the district court denied DODM's request for injunctive relief and dismissed the petition.

DODM appeals, claiming the court erred in failing to enjoin the defendants' breach of the employment restriction.

II. Standard of Review

Our review for cases in equity is de novo. Iowa R. App. P. 6.4. While weight is given to the trial court's fact-findings, we are not bound by them. *Israel v. Farmers Mut. Ins. Ass'n of Iowa*, 339 N.W.2d 143, 146 (Iowa 1983). In reviewing de novo, we will affirm if there is a proper basis for the order entered by the trial court, even though the reasons for affirming are different from those upon which the trial court relied. *Id.*

III. Merits

"Injunctive relief is an extraordinary remedy that should be granted with caution and only when required to avoid irreparable damage." *Skow v. Goforth*, 618 N.W.2d 275, 277-78 (Iowa 2000). It is required only when the party requesting it has no adequate remedy at law. *Presto-X-Company v. Ewing*, 442 N.W.2d 85, 89 (Iowa 1989). The party seeking the injunction must establish "(1) an invasion or threatened invasion of a right, (2) substantial injury or damages will result unless the injunction is granted, and (3) no adequate legal

remedy is available." *Skow*, 618 N.W.2d at 278. When considering whether to issue an injunction, the court must carefully weigh the hardship that the enjoined party would suffer upon awarding injunctive relief. *Sear v. Clayton County Zoning Bd. of Adjustment*, 590 N.W.2d 512, 515 (Iowa 1999).

In deciding whether to enforce a restrictive covenant in an employment agreement, Iowa courts apply a three-pronged test:

> (1) Is the restriction reasonably necessary for the protection of the employer's business; (2) is it unreasonably restrictive of the employee's rights; and (3) is it prejudicial to the public interest?

See Lamp v. American Prosthetics, Inc., 379 N.W.2d 909, 910 (Iowa 1986). The employer bears the initial burden "to show the reasonable necessity for the enforcement of the covenant at all in order to protect its business." *Ehlers v. Iowa Warehouse Co.*, 188 N.W.2d 368, 373 (Iowa 1971) (internal quotations omitted). To satisfy this burden, there must be

> some showing that defendant[s], when [they] left plaintiff's employment, pirated or had the chance to pirate part of plaintiff's business; took or had the opportunity of taking some part of the good will of plaintiff's business, or it can reasonably be expected some of the patrons or customers [they] served while in plaintiff's employment will follow [them] to the new employment.

Id. (internal quotations omitted). An employer could also meet this burden if it were to show that the employee received from his employer "special training or peculiar knowledge that would allow him to unjustly enrich himself at the expense of his former employer." *Iowa Glass Depot, Inc., v. Jindrich,* 338 N.W.2d 376, 382 (Iowa 1983).

DODM argues enforcement of the covenant is reasonably necessary to protect its business because it invested significant time and assets into training

and developing the defendants.[1] DODM describes its investment as not only the payment of wages and benefits, but also training costs, exposure to and instruction in leading door industry education, welding and safety instruction, on-the-job training, bearing inefficiencies while employees learn their craft, and bearing the "warranty expense" of paying for imperfect installation and repair.

DODM cites three cases in support of its argument that a restrictive covenant is reasonably necessary to protect a business's investment in employee training: *Orkin Exterminating Co. (Arwell Division) v. Burnett*, 259 Iowa 1218, 146 N.W.2d 320 (1966), *Cogley Clinic v. Martini*, 253 Iowa 541, 112 N.W.2d 678 (1962), and *Dain Bosworth Inc. v. Brandhorst*, 356 N.W.2d 590 (Iowa Ct. App. 1984). We find these cases readily distinguishable from the present case because all involve situations where the court sought to protect the former employer's "business" by protecting the existing customer base. Each case involved a direct loss of customers due to the defection of the employee/partner. *See Orkin Exterminating Co., Inc.*, 259 Iowa at 1228, 146 N.W.2d at 327 (exterminator soliciting clients from former employer); *Cogley Clinic*, 253 Iowa at 549, 112 N.W.2d at 682 (history of substantial financial loss when physicians leave the clinic and become competitors); *Dain Bosworth Inc.*, 356 N.W.2d at 592 ($20,000 expense to train as a broker and, after leaving employer, broker actively solicited customers from previous employer). Despite

[1] As stated by DODM in its brief, "[DODM] did not elect to introduce evidence showing a "pirating" of business or the following of customers to a new employer because that is not the nature of the service position."

one unfounded allegation to the contrary,[2] the present case does not involve a direct loss of customers.

We find the decisions in *Mutual Loan Co. v. Pierce*, 245 Iowa 1051, 65 N.W.2d 405 (1954), and *Nelson v. Agro Globe Engineering, Inc.*, 578 N.W.2d 659 (Iowa 1998), more applicable to the facts at hand.

In *Mutual Loan*, a non-compete clause in an employment agreement provided that employees could not enter a competing small loan business in the same town for one year after leaving employment with Mutual Loan. *Mutual Loan*, 245 Iowa at 1053, 65 N.W.2d at 406. Mutual Loan filed suit for injunctive relief when the defendant left Mutual Loan and obtained employment at a local loan company. The supreme court affirmed the district court's decision denying the injunction, noting the district court's conclusion that the former employee did work "of an ordinary kind." *Id.* at 1054, 65 N.W.2d at 407.[3] The court concluded the one-year covenant not to compete in the same town was unenforceable because Mutual Loan could not preclude the former employee "from exercising general skill and knowledge in the personal loan business, acquired by [the] employee while in [Mutual Loan's] business, even if this skill and knowledge will be used in competition to plaintiff's business." *Id.* at 1056, 65 N.W.2d at 408.

In *Nelson*, the court analyzed a non-compete clause in an employment agreement. 578 N.W.2d at 660. The former employer requested an injunction to prevent the former employee from working for its competitors. *Id.* at 662. The

[2] We, like the district court, find no basis in the allegations that Hanna helped his new employer procure one customer from DODM.

[3] The former employee's duties consisted of calling "delinquent customers to try to get them to pay up" and closing loans. 245 Iowa at 1057, 65 N.W.2d at 408.

court stated an "injunction will be granted only if the services of the [former] employee are *unique and extraordinary* and he or she cannot be readily replaced." *Id.* at 663 (emphasis added). The court was unable to make this determination, so it remanded the case to the district court to determine whether the former employee's skills were unique. *Id.*

In the present case, the defendants were service technicians, not salesmen. They were assigned their work duties on a day-to-day basis by the company dispatcher. The dispatcher sent them to different locations to either install or repair door systems. They did not have access to key financial information or detailed business plans.

While the defendants were talented service technicians, we do not find their skills unique, extraordinary, or not capable of being readily replaced. *See Nelson*, 578 N.W.2d at 663 (stating "an injunction will be granted only if the services of the employee are unique and extraordinary and he or she cannot be readily replaced."). These were workers performing work "of an ordinary kind" and we find no evidence to conclude they were irreplaceable. While it may take two years of on-the-job training to convert an entry-level laborer into a "highly skilled" technician, there was no evidence that there were a shortage of qualified individuals to replace the defendants. On the contrary, the owner of DODM testified that, in the past, DODM had hired experienced service technicians away from its competitors.

This is not a case where former employees attempted to solicit customers, took trade secrets, or even had access to valuable financial information. Nor is this a case where the employees possessed unique or extraordinary skills which

made them irreplaceable. The defendants were common laborers who began as entry-level service technicians and through training, practice, and dedication to their trade progressed to be highly-skilled service technicians. While it was undoubtedly painful for DODM to lose their services to a local competitor, we find this, standing alone, is not sufficient justification to find enforcement of the covenant reasonably necessary to protect DODM's business.

Having considered all issues presented on appeal, we find the district court acted appropriately in denying DODM's request for injunctive relief.

AFFIRMED.