STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1113

The Valspar Corporation,
Appellant,

vs.

Douglas T. Mueller, et al.,
Respondents.

Filed April 3, 2017
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27-CV-16-2142

William Z. Pentelovitch, Keiko L. Sugisaka, Peter C. Hennigan, Maslon, L.L.P., Minneapolis, Minnesota (for appellant)

Cynthia R. Levin Moulton, pro hac vice, Moulton, Wilson & Arney, L.L.P., Houston, Texas; and

Thomas E. Marshall, Engelmeier & Umanah, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Ross, Presiding Judge; Stauber, Judge; and Rodenberg, Judge.

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

STAUBER, Judge

In this action to enforce a non-compete agreement, appellant challenges the district court's denial of its motion for a temporary injunction. We affirm.

FACTS

Respondent Douglas T. Mueller worked for appellant The Valspar Corporation from 1996 until July 2015. When Mueller was first hired in 1996, he was not required to sign a non-compete agreement, although he was subject to confidentiality requirements. According to Mueller's original employment agreement, employees were eligible to participate in "profit sharing, stock ownership and stock purchase programs." Between 1998 and 2009, Mueller received 14 stock-option awards, ranging from $6,965 to $111,336, with an average value of $45,917. These awards were wholly discretionary and were generally made to recognize contributions to the company's success.

In 2010, Valspar decided to replace its stock-option program with the Restricted Stock Unit (RSU) program. Under the earlier stock-option plan, a participant could purchase a specified number of shares during a period of time and at a designated price; these options had little or no value if the option purchase price was greater than the current price of the stock. Under the RSU program, a participant had the right to receive "the full value of a share of Valspar's common stock at a future date," assuming that the participant fulfilled the vesting requirements. To be vested, a participant had to be an employee of Valspar until the vesting date, which was three years after the grant of an RSU, and the employee was required to sign a non-compete agreement before the vesting date. RSUs were also discretionary and were granted by senior management as a reward for performance.

In December 2010, Valspar asked Mueller to execute a non-compete agreement, which he initially refused to do. He nevertheless was awarded 1,021 RSUs. In April

2011, after senior management told him that his career options with the company would be "limited" if he did not agree, Mueller signed the two-year non-compete agreement. The requirement that all technical employees sign a non-compete agreement was part of a change in corporate philosophy. But Mueller felt that he was promised additional duties, increased compensation, and more responsibility for signing the agreement. In fact, Mueller was not given increased responsibility or compensation.

In 2013, Mueller was asked to work in Italy after Valspar acquired an Italian company. When Mueller returned from Italy in April 2014, he discovered that his job responsibilities had been assigned to others and that he no longer had people reporting to him. Mueller was told that he was no longer managing other employees but would now be considered as an "individual contributor." He was not permitted to apply for a vice-president position, for which he felt qualified, but instead was assigned to report to the person who was hired for this position. He considered the new position he was assigned to as a demotion. His colleagues began omitting him from meetings.

After a year of "broken promises, reassignments, removal of direct reports, and no job description for months," Mueller sought therapy for anxiety, and his therapist recommended that he leave Valspar. Ultimately, Mueller's attorney "advised Valspar [that Mueller] had been 'constructively discharged' and [he] would not be returning to Valspar."

In February 2016, Mueller was hired by respondent Hempel Coatings North America, Inc., as its technical director for North America. For this position, Mueller had to sign an agreement with Hempel that he would not "bring, use or disclose, any

proprietary or confidential information or material belonging to" Valspar. Valspar considers Hempel to be a direct competitor.

Valspar filed a complaint against Mueller, Hempel, and respondent Jones-Blair Company, LLC, an affiliate of Hempel, alleging breach of the non-compete agreement by Mueller, tortious interference with contract against Hempel and Blair-Jones, and breach of the Minnesota Trade Secrets Act, Minn. Stat. §§ 325C.01-.08 (2016), and asked for a declaratory judgment and an injunction.

On February 18, 2016, Valspar requested a temporary restraining order and a temporary injunction. The district court denied both requests. Valspar appeals from the district court's order denying its motion for a temporary injunction.

D E C I S I O N

We review the district court's decision on a request for a temporary injunction for an abuse of discretion. *In re Commitment of Hand*, 878 N.W.2d 503, 509 (Minn. App. 2016), *review denied* (Minn. June 21, 2016). The district court's decision is viewed in the light most favorable to the prevailing party. *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002). A district court must make factual findings to support its temporary-injunction decision. *Farm Bureau Mut. Ins. Co. v. Schwan*, 687 N.W.2d 388, 391 (Minn. App. 2004); Minn. R. Civ. P. 52.01. We review the district court's findings of fact for clear error. *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). "The party seeking an injunction must demonstrate that there is no

adequate legal remedy and that the injunction is necessary to prevent irreparable harm." *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001).

The district court weighs five factors in deciding whether to issue a temporary injunction: (1) the parties' relationship before the dispute; (2) the relative harm that would be suffered by either party depending on whether or not an injunction is issued; (3) the likelihood that one party or the other would prevail on the merits; (4) public-policy issues; and (5) the administrative burdens involved in supervising and enforcing the injunction. *Softchoice, Inc. v. Schmidt*, 763 N.W.2d 660, 666 (Minn. App. 2009) (citing *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)). The chance of success on the merits weighs most heavily in making the decision. *Id.*

The district court focused on the likelihood that Valspar would prevail on the merits of its lawsuit, determining that the other four factors were neutral between the parties. The district court's decision weighed Valspar's likelihood of success on two issues: the enforceability of the non-compete agreement because of Mueller's claim that there was insufficient consideration to support it and the question of whether Mueller voluntarily or involuntarily terminated his employment.

I.

Non-compete agreements are carefully scrutinized because they are a partial restraint on trade. *Nat'l Recruiters, Inc. v. Cashman*, 323 N.W.2d 736, 740 (Minn. 1982). When a non-compete agreement is not part of an initial employment contract, it must be supported by independent consideration. *Id.* "The mere continuation of employment can

constitute adequate compensation to uphold non-compete agreements, but the non-compete [agreement] must be bargained for and provide the employee with real advantages." *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 534 (Minn. App. 2009).

Valspar maintains that its RSU program provided adequate consideration for the new non-compete agreement because it is "a superior form of bonus" that was not subject to loss of value like a stock option. The district court contrasted the two bonus programs: stock options could go "under water," but an employee had 10 years in which to exercise the options, allowing the stock price to recover. RSUs, on the other hand, while fixed in value, "can be realized only if the employee does not resign (or is not fired for cause), whereas a stock option continues to have value to an employee even if the employee resigns or is discharged – so long as the employee exercises the stock option within 30 days after termination." Both types of awards were discretionary; no employee was guaranteed an award of stock options under the earlier program or RSUs under the newer one.

The district court concluded that "the RSU program offers little allure at a substantial price – an agreement not to render services to conflicting organizations anywhere in the world that Valspar does business" and that the RSU program did not provide "the negotiated, independent consideration required under Minnesota law." Finally, while a "real advantage" could include "an increase in compensation, duties, or benefits," Mueller believed he had lost professional opportunities and did not receive a guaranteed increase in compensation or benefits.

The district court concluded that "Valspar has not sustained its burden to demonstrate that Mueller's eligibility to participate in the RSU program was adequate independent consideration supporting the non-competition agreement." There is sufficient record evidence to support the district court's findings, and we may not disregard its findings, even if this court does not agree with the district court. *See Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

Because Valspar did not persuade the district court that it was more likely than not to prevail on the merits of its claim, the district court did not abuse its discretion by denying Valspar's request for a temporary injunction.

II.

The district court also determined that Valspar had not sustained its burden of proving that Mueller voluntarily resigned. The issue arises because the non-compete agreement is binding only if Mueller voluntarily resigned or was terminated for cause.

Valspar frames this as an issue of whether Mueller was constructively discharged. An employee is constructively discharged when he resigns in order to escape intolerable working conditions caused by illegal discrimination. *Pribil v. Archdiocese of St. Paul & Minneapolis*, 533 N.W.2d 410, 412 (Minn. App. 1995). "The intolerable working conditions must have been created by the employer with the intention of forcing the employee to quit." *Id.* (quotation omitted).

Here, the district court declined "to equate Mueller's claimed 'involuntary resignation' with the phrase 'constructive discharge.' If there was adequate consideration for the Agreement, the issue of whether Mueller's resignation was voluntary or

involuntary is a contract issue, and is not an offshoot of constructive-discharge law typically requiring 'illegal discrimination.'" Thus, the district court concluded that "voluntariness" is a contract term that must be considered by the factfinder. "[T]he existence and terms of a contract are questions for the fact finder." *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). The district court stated that "this issue will depend upon credibility determinations which cannot be made on the cold record, including competing affidavits." The district court's findings are supported by the record, and the findings support its conclusion as to this issue; therefore, the district court did not abuse its discretion.

Affirmed.