STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0579

Medtronic, Inc., et al.,
Respondents,

vs.

Mark T. Sherland, Jr., et al.,
Appellants.

Filed December 24, 2018
Affirmed
Cleary, Chief Judge

Anoka County District Court
File No. 02-CV-18-981

William Z. Pentelovitch, Wayne S. Moskowitz, Peter C. Hennigan, Maslon LLP, Minneapolis, Minnesota (for respondents)

Kevin P. Hickey, Mark R. Bradford, Kate L. Homolka, Bassford Remele, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Cleary, Chief Judge; Bjorkman, Judge; and Rodenberg, Judge.

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

CLEARY, Chief Judge

Appellants Dr. Mark T. Sherland Jr. and Bolton Medical Inc. challenge a temporary restraining order enjoining Sherland from breaching his employment agreement with

respondents Medtronic Inc. and Medtronic USA Inc. (collectively, Medtronic), arguing that: (1) the district court erred by failing to consider a nondisclosure covenant in interpreting the agreement; (2) the district court erred by failing to narrowly construe the agreement against Medtronic; and (3) the district court abused its discretion in determining that Medtronic faced irreparable harm. We affirm.

FACTS

This case arises out of an alleged breach of an employment agreement between Sherland and his former employer, Medtronic. Before beginning his employment with Medtronic in December 2008, Sherland was required to sign the standard Medtronic Employee Agreement. The agreement included a non-disclosure covenant (Section 3.6) and a noncompetition covenant (Section 4.1). These provisions provide, respectively:

> **3.6 Nondisclosure.** Employee agrees not to use or disclose any CONFIDENTIAL INFORMATION to or for the benefit of anyone other than MEDTRONIC, either during or after employment, for as long as the information retains the characteristics described in Section 1.3. Employee further agrees and understands that this provision prohibits Employee from rendering services to a CONFLICTING ORGANIZATION for two (2) years following termination of employment with MEDTRONIC to the extent that Employee would use, disclose or rely upon CONFIDENTIAL INFORMATION or be induced or required to use, disclose or rely upon CONFIDENTIAL INFORMATION during the course of rendering such services.
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> **4.1 Restrictions on Competition**. Employee agrees that while employed by MEDTRONIC, and for two (2) years after the last day Employee is employed by MEDTRONIC, Employee will not be employed by or otherwise perform services for a CONFLICTING ORGANIZATION in

connection with or relating to a COMPETITIVE PRODUCT or COMPETITIVE RESEARCH AND SUPPORT. If, however, during the last twelve (12) months of employment with MEDTRONIC, Employee had no management duties or responsibilities and was engaged exclusively in sales activities, including selling, soliciting the sale, or supporting the sale of MEDTRONIC PRODUCTS through direct contact with MEDTRONIC CUSTOMERS, this restriction will be for a duration of only one (1) year after the last day Employee is employed by MEDTRONIC, and will prohibit Employee only from soliciting, selling to, contacting, or attempting to divert business from, whether directly or by managing, directing or supervising others, any MEDTRONIC CUSTOMER on behalf of a CONFLICTING ORGANIZATION in connection with or relating to a COMPETITIVE PRODUCT or COMPETITIVE RESEARCH AND SUPPORT.

The agreement also contained the following definitions:

> **1.1 COMPETITIVE PRODUCT** means goods, products, product lines or services, and each and every component thereof, developed, designed, produced, manufactured, marketed, promoted, sold, supported, serviced, or that are in development or the subject of research by anyone other than MEDTRONIC that are the same or similar, perform any of the same or similar functions, may be substituted for, or are intended or used for any of the same purposes as a MEDTRONIC PRODUCT.
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> **1.3 CONFIDENTIAL INFORMATION** means any information relating to MEDTRONIC's business, including a formula, pattern, compilation, program, device, method, technique, system, plan, or process, that the Employee learns or develops during the course of Employee's employment by MEDTRONIC that derives independent economic value from not being generally known, or readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use. CONFIDENTIAL INFORMATION includes but is not limited to trade secrets and INVENTIONS and, without limitation, may relate to . . . vendor and customer data; employee and personnel data; . . . sales volumes; pricing

> strategies; sales and marketing plans and strategies; contracts and bids; and any business management techniques that are being planned or developed, utilized or executed by MEDTRONIC.
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> **1.4 CONFLICTING ORGANIZATION** means any person (including the Employee) or entity, and any parent, subsidiary, partner or affiliate (regardless of their legal form) of any person or entity, that engages in, or is about to become engaged in, the development, design, production, manufacture, promotion, marketing, sale, support or service of a COMPETITIVE PRODUCT or in COMPETITIVE RESEARCH AND SUPPORT.
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> . . . .
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> **1.8 MEDTRONIC PRODUCT(S)** means any goods, products, or product lines (a) that the services the Employee (or persons under Employee's management, direction or supervision) performed for MEDTRONIC related to, directly or indirectly, during the last one (1) year in which the Employee was employed by MEDTRONIC, including without limitation services in the areas of research, design, development, production, manufacture, marketing, promotion, sales, or business, technical, regulatory or systems research, analysis, planning or support relating to such goods, products, or product lines, or (b) with respect to which Employee at any time received or otherwise obtained or learned CONFIDENTIAL INFORMATION.

The district court found that Sherland's most recent job title at Medtronic was Senior Sales Training Manager. Of the four business groups at Medtronic, Sherland worked within the Aortic and Peripheral Vascular Disease Management group, which is part of the broader Cardiac and Vascular Group. The district court found that, in his capacity at Medtronic, Sherland possessed and worked with confidential information because "he was responsible for developing and managing training programs for the Aortic sales force with Medtronic." The district court also found that this confidential information contained

training and marketing plans and strategies, "including strategies for competing with competitors such as Bolton."

On January 31, 2018, Sherland resigned from Medtronic. He subsequently accepted a position with Bolton as a Sales Training Manager. Bolton develops, manufactures, and sells aortic stent grafts and is a direct competitor of Medtronic in the area of aortic stent grafts. Medtronic and Bolton both develop and sell aortic stent grafts used to treat abdominal aortic aneurysms and thoracic aortic aneurysms, and their product lines include competing devices for each aortic stent graft category.

Following Sherland's last day at Medtronic in early February 2018, Medtronic communicated with Sherland to remind him of the post-employment restrictions contained in his employment agreement. Almost two weeks later, Bolton's counsel informed Medtronic that Sherland would not be complying with the agreement. Bolton asserted that the agreement was unenforceable because it would prevent Sherland from working as a trainer for any Medtronic competitor without protecting any legitimate Medtronic business interest.

Medtronic filed suit on February 21, 2018, alleging claims: (1) against Sherland for violation of the noncompetition covenant contained in his employment agreement with Medtronic; and (2) against Bolton for tortious interference with Sherland's employment agreement with Medtronic.[1] The following day, Medtronic moved for a temporary restraining order (TRO) under Minn. R. Civ. P. 65, and asked the district court to enjoin

[1] The tortious interference claim against Bolton is not subject to this appeal.

Sherland from performing services in connection with aortic products and to prohibit Bolton from employing Sherland to perform such services during the pendency of the proceeding.

On April 4, 2018, the district court filed its order, concluding that Medtronic was entitled to a TRO. The district court determined that four of the factors set forth in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965),—relationship of the parties, balance of harms, likelihood of success on the merits, and public policy—weighed in favor of granting Medtronic's motion. The district court found that Medtronic would likely suffer irreparable harm if Sherland were allowed to train the competitive sales force at Bolton. Because securing confidential information is a legitimate interest that is subject to protection under a noncompetition covenant, the district court determined that there is a likelihood that Medtronic would succeed on the merits of its claim. The district court temporarily enjoined Sherland from breaching his employee agreement with Medtronic and from "performing services in connection with endovascular products for treating aortic disease, including aortic stent graft systems." This appeal followed.

D E C I S I O N

A temporary injunction is an "extraordinary equitable remedy" that serves to maintain "the status quo pending a trial on the merits." *Ecolab, Inc. v. Gartland*, 537 N.W.2d 291, 294 (Minn. App. 1995) (quotation omitted). An "[i]njunction will not be granted to enforce the provisions of a contract unless the court is satisfied that the enforcement will be just and equitable and will not work hardship or oppression." *Menter Co. v. Brock*, 180 N.W. 553, 555 (Minn. 1920).

To be granted an injunction, a party must show that any remedy at law would be inadequate and that an injunction "is necessary to prevent great and irreparable injury." *Cherne Indus., Inc. v. Grounds & Assocs., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979) (citations omitted). In considering whether to grant or deny a temporary injunction, a court must consider the five *Dahlberg* factors. 137 N.W.2d at 321-22. These factors are (1) the relationship between the parties, (2) the balancing of harms to both parties, (3) the likelihood of success on the merits, (4) public policy considerations, and (5) any administrative burdens. *Id.*

"A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion." *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). A district court abuses its discretion when its decision goes against the record or is based on an erroneous view of the law. *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cty. Bd. of Cty. Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011).

I. The district court did not err in its construction of the employee agreement.

Sherland asserts that the district court abused its discretion by entering a temporary injunction based upon a misinterpretation of the contract. *See Ecolab, Inc.*, 537 N.W.2d at 296-97 (reversing the grant of temporary injunction premised on a misinterpretation of the noncompetition agreement). Analyzing whether the district court erred in construing the noncompetition covenant requires interpreting the employment agreement. The interpretation of an employment agreement, like any contract, is a question of law, which

we review de novo. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011).

A. Nondisclosure Covenant

Sherland argues that the district court erred by ignoring the nondisclosure covenant in its interpretation of the noncompetition covenant. Sherland asserts that, because Medtronic's only basis for the TRO is the threat of disclosure of confidential information, the district court should have applied the nondisclosure provision. According to Sherland, Medtronic was required to show that Sherland actually disclosed confidential information, as required by the nondisclosure covenant, before any restrictions on future employment could be imposed.

The primary goal of contract interpretation is to "enforce the intent of the parties." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). "Because the intent of the parties is typically determined from the plain language of a written contract . . . we generally enforce the agreement of the parties as expressed in the language of the contract." *St. Jude Medical, Inc., v. Carter*, 913 N.W.2d 678, 683 (Minn. 2018) (citations and quotations omitted). "Where the terms of the contract are ambiguous, the [district] court is to ascertain the parties' intent by looking at the document as a whole and at the surrounding circumstances." *Cherne*, 278 N.W.2d at 88. A contract is ambiguous if it is susceptible to two or more reasonable interpretations. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). However, absent ambiguity, "there is no room for construction or interpretation" and "resort to the maxims of contract construction is not

available to create ambiguity." *Colangelo v. Norwest Mortg., Inc.*, 598 N.W.2d 14, 18 (Minn. App. 1999), *review denied* (Minn. Oct. 21, 1999) (citations and quotations omitted).

Here, the noncompetition covenant prohibits Sherland from working for a competitor in connection with a competitive product for two years following the end of his employment with Medtronic. This provision is triggered upon Sherland's subsequent employment with a competitor in connection with a competitive product. The nondisclosure covenant prevents Sherland from using or disclosing confidential information for the benefit of anyone other than Medtronic, either during or after employment, for as long as the information remains confidential. The nondisclosure covenant further prohibits Sherland from rendering services to a conflicting organization for two years to the extent that he would use, disclose, or rely upon Medtronic's confidential information. This provision is triggered upon Sherland's use or disclosure of confidential information or subsequent employment where he would be required to use confidential information.

Noncompetition and nondisclosure covenants create separate obligations and are not mutually exclusive. In *Eutectic Welding Alloys Corp. v. West*, the Minnesota Supreme Court analyzed an employment agreement when an employer sought enforcement of a nondisclosure covenant and a noncompetition covenant. 160 N.W.2d 566, 567-68 (Minn. 1968). The court first determined that the nondisclosure covenant had not been breached because the employee had not received significant trade secrets during his employment. *Id.* at 570. However, in analyzing the noncompetition provision, the court stated, "it is clear that it was breached; that is, [the employee], almost immediately after the termination

of his employment . . . took employment with a competitor." *Id.* *Eutectic* illustrates that an employee may breach a noncompetition covenant, while remaining compliant with a nondisclosure covenant.[2]

Sherland cites *Cherne*, 278 N.W.2d at 81, in support of his argument that courts are required to "consider[] the issue of disclosure of confidential/trade secret information under the provision in the contract that addresse[s] nondisclosure of confidential information, not the noncompetition provision." In that case, the employer brought suit to enjoin its former employees both from using confidential information (nondisclosure) and unfairly competing in the market (noncompetition). *Id.* at 87. On appeal, the employees argued, among other things, that the district court's grant of an injunction was inappropriate because the information taken by the employees was no longer confidential and the two-year restriction in the noncompetition covenant had expired. *Id.* at 91. After determining that the injunction was justified on the basis of the nondisclosure provision, the court further stated, "we need not decide whether this injunction could be issued as a remedy for the breach of the covenant not to compete." *Id.* at 93. *Cherne* does not support Sherland's proposition that courts are required to apply the factual circumstances involving the potential disclosure of confidential information solely to nondisclosure covenants. Instead, the court only determined that the injunction could be issued as a remedy for the breach of a nondisclosure covenant as challenged, but did not decide whether the injunction could be issued as a remedy for the breach of the noncompetition covenant. *Id.*

[2] Despite the employee's breach, the court concluded that the noncompetition covenant was unenforceable because the restrictions were overbroad. *Id.*

Sherland argues that Medtronic has not shown breach of the nondisclosure covenant. However, unlike *Eutectic* and *Cherne*, Medtronic has not alleged breach of the nondisclosure covenant—Medtronic alleged breach of the noncompetition covenant. "A plaintiff has the right to control his own lawsuit and to bring his claims against whomever he chooses." *Graff v. Robert M. Swendra Agency, Inc.*, 800 N.W.2d 112, 118 (Minn. 2011). Similarly, Medtronic, as master of its complaint, was permitted to bring an action under the noncompetition covenant without bringing a simultaneous action under the nondisclosure covenant.

It is true that the district court did not mention the nondisclosure covenant in its order and did not explicitly state that it declined to interpret the noncompetition covenant in light of the nondisclosure covenant. "But this omission alone does not necessarily indicate that the district court failed to consider the provision." *Carter,* 913 N.W.2d at 686. The nondisclosure covenant was directly before the district court, as acknowledged by Sherland, and "[e]qually clear, the district court did not accept these arguments when directly requested to do so." *Id.* Accordingly, "the only logical conclusion is that the district court considered and rejected these arguments" when it determined that the nondisclosure covenant was inapplicable to Medtronic's claim of breach of the noncompetition covenant. *Id.* (citing as analogous authority *Buro v. Morse*, 237 N.W. 186, 187 (Minn. 1931) (explaining that the district court's refusal to make requested findings was "equivalent to finding negativing the facts requesting to be found")). The district court did not err in determining that the noncompetition covenant is the governing provision of the agreement as alleged by Medtronic.

B. Narrow Construction

Sherland argues that the agreement is ambiguous because there is a legitimate question as to whether the nondisclosure covenant or the noncompetition covenant controls in a situation involving confidential information. Because of this ambiguity, Sherland asserts that the district court erred by failing to construe the agreement narrowly against Medtronic.

Minnesota courts interpret a noncompetition agreement as narrowly as possible while protecting the former employer's legitimate business interests. *Walker Emp't Serv., Inc. v. Parkhurst*, 219 N.W.2d 437, 441 (Minn. 1974). Legitimate business interests that may be protected include the company's goodwill, trade secrets, and confidential information. *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 456 (Minn. App. 2001) (citation omitted); *see also Bennett v. Storz Broadcasting Co.*, 134 N.W.2d 892, 898 (Minn. 1965) ("[T]his court has uniformly upheld covenants in a contract of employment designed . . . to protect the legitimate interest of the business . . . where the employee is given access to the employer's . . . trade secrets.").

The Eighth Circuit, applying Minnesota law, preliminarily enjoined a former employee from working for a competitor pursuant to a noncompetition covenant in a case involving confidential information. *Modern Controls, Inc. v. Andreadakis*, 578 F.2d 1264, 1268 (8th Cir. 1978). Reversing the district court, the court explained that "confidential business information which does not rise to the level of a trade secret can be protected by a properly drawn covenant not to compete." *Id.* at 1268 (citing *Walker Employment Service, Inc. v. Parkhurst*, 219 N.W.2d 437 (Minn. 1974); *Bennett v. Storz Broadcasting*

Co., 134 N.W.2d 892 (Minn. 1965); *cf. Equipment Advertiser, Inc. v. Harris*, 136 N.W.2d 302, 306 (Minn. 1965)). As to the employer's burden of proof in an action for breach of a noncompetition covenant, the court stated,

> To require an employer to prove the existence of trade secrets prior to enforcement of a covenant not to compete may defeat the only purpose for which the covenant exists. An employer need only show that an employee had access to confidential information and a court will then determine the overall reasonableness of the covenant in light of the interest sought to be protected.

Id. (citing *Eutectic Welding Alloys Corp.*, 160 N.W.2d at 570-71). The court also addressed the district court's determination that the noncompetition covenant was unenforceable because the confidentiality provision encompassing the noncompetition covenant was unreasonably broad. *Id.* at 1269. In addressing this reasoning, the court stated, "we fail to see how [the confidentiality provision] affects the enforceability of the covenant not to compete." *Id.*

The existence of a nondisclosure covenant does not preclude a noncompetition covenant from also protecting an employer's legitimate interest in its confidential information. Medtronic brought suit to enforce the noncompetition covenant, alleging a risk of disclosure of its confidential information. The district court found that Sherland acquired confidential information throughout his career at Medtronic and that he "had access to and significant knowledge about sales and marketing strategies used by Medtronic to train their sales force and such information would be useful to Medtronic's competitors." Because a noncompetition covenant may protect confidential information, the agreement is not ambiguous as to which provision controls. *See Advanced Bionics*

Corp., 630 N.W.2d at 456. The record supports the district court's determination that Medtronic will likely succeed on the merits of its claim under the noncompetition covenant.

Sherland further argues that absent ambiguity, the expansive language of the noncompetition covenant does not apply to his role as an internal trainer. In support of this argument, Sherland cites the absence of the terms "training" and "education" from the list of services outlined in the definitions of terms contained in the noncompetition provision. Medtronic counters that the noncompetition covenant applies to Sherland because he is "employed by or otherwise perform[s] services for" a conflicting organization in connection with a competitive product.

Medtronic's argument has merit. The relevant portion of the noncompetition covenant provides: "Employee agrees that while employed by MEDTRONIC, and for two (2) years after the last day Employee is employed by MEDTRONIC, Employee will not be employed or otherwise perform services for a CONFLICTING ORGANIZATION in connection with or relating to a COMPETITIVE PRODUCT or COMPETITIVE RESEARCH AND SUPPORT." From the plain language of this provision, the noncompetition covenant applies to Sherland as the signatory employee. The language also states that Sherland, as the signatory employee, "will not be employed or otherwise perform services for" a conflicting organization for two years. Bolton is a conflicting organization because it directly competes with Medtronic in the area of aortic products. By the noncompetition covenant's plain language, Sherland is prohibited from employment with Bolton in connection with a competitive product.

The agreement further defines "COMPETITIVE PRODUCT" as "goods, products, product lines or services and each and every component thereof, developed, designed, produced, manufactured, marketed, promoted, sold, supported, serviced, or that are in development or the subject of research by anyone other than MEDTRONIC." While Sherland notes that "training" and "education" are missing from the terms outlined in this definition, Sherland's role as a Senior Training Manager at Bolton still falls under the term "support[]." In his affidavit, Sherland stated that he will be "training other Bolton employees on Bolton products." Sherland's supervisor at Bolton asserted that he will not be involved in sales or product design and development. However, if Sherland were to train Bolton employees on Bolton products, then he would be supporting competitive products. The language of the noncompetition agreement applies to Sherland as an internal trainer. The district court did not err in its construction of the agreement.

II. The district court did not abuse its discretion in drawing an inference that Medtronic faced irreparable harm.

Sherland argues that the district court abused its discretion by misapplying the law when it concluded that Medtronic faced irreparable harm from the risk of disclosure of its confidential information. Sherland contends that the mere possibility that harm will occur is insufficient to warrant a finding of irreparable harm. Instead, Sherland asserts that actual irreparable harm must be shown. We disagree.

Irreparable injury may be "actual or threatened." *Peterson v. Johnson Nut Co.*, 283 N.W. 561, 565 (Minn. 1939). The party seeking an injunction must show that "irreparable injury has resulted, or will in all probability result." *Menter Co. v. Brock*, 180 N.W. 553,

554 (Minn. 1920). The threatened injury must be real and substantial. *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 110 N.W.2d 348, 351 (Minn. 1961). "The burden is not insignificant: the party must show that the irreparable injury is *likely*, not just possible." *Carter*, 913 N.W.2d at 684 (emphasis in original).

Breach of a noncompetition covenant by itself does not indicate irreparable injury to the employer. *Id.* at 685. "Injury is not shown by the mere fact that the employee has left the service and has entered the employ of a rival concern." *Menter Co.*, 180 N.W.2d at 554. Because of the risk of constraining employees from making a living, courts require "some *proof* of irreparable damage . . . to be adduced in such a case before equitable relief by way of injunction will issue." *Carter*, 913 N.W.2d at 685 (quoting *Menter Co.*, 180 N.W. at 554).

"[T]here are circumstances in which it may be appropriate for a district court to infer irreparable harm." *Id.* The Minnesota Supreme Court has recognized that these circumstances "include situations where customer good will is at stake, when an employee takes business secrets with an intent to benefit from the secrets, or when a risk exists that the secrets will be disclosed in the subsequent employment and result in irreparable harm." *Id.* (citing *Menter Co.*, 180 N.W. at 554). The court's use of the word "or" indicates that any one of the recognized situations may justify an inference of irreparable harm.

Here, the district court found that respondents would likely suffer irreparable harm if Sherland were allowed to train the sales force at Bolton. As Sherland notes, the district court repeatedly referenced the threat of harm that would befall Medtronic, rather than any actual harm that has already occurred. In the absence of a finding of actual harm,

Medtronic relies on an inference of irreparable harm to support its request for an injunction. Medtronic "must show more than the breach of the restrictive covenant, and [it] cannot satisfy its burden of proof to support an inference of harm solely by relying on [Sherland's] departure to work for a competitor." *Id.*

In *Carter*, the Minnesota Supreme Court analyzed the threat of irreparable harm in the absence of findings of actual harm. In determining that the employer was not entitled to an inference of harm, the court explained that the circumstances of the case failed to fall within the types of situations where the court has previously recognized inferences of irreparable injury. *Id.* Given the district court's conclusion that the "speculative fear of possible disclosure is unsupported by the evidence," the court determined that the district court did not abuse its discretion in its decision not to draw an inference of irreparable harm. *Id.*

Unlike *Carter*, this case falls squarely within the types of situations where the supreme court has previously justified an inference of irreparable harm. The district court found that Medtronic would suffer irreparable harm because Sherland "had access to and significant knowledge about sales and marketing strategies used by Medtronic to train their sales force," which would allow him "to use his knowledge of Medtronic's aortic marketing and sales training plans and strategies to compete unfairly with Medtronic." In this case, a "risk exists that secrets will be disclosed in the subsequent employment and result in irreparable harm." *Id.* (citing *Menter Co.*, 180 N.W. at 554).

The district court's findings are supported by the record. In support of Medtronic's motion, Sherland's Medtronic supervisor filed an affidavit in which she stated that

Sherland was "regularly provided, possessed and worked with Medtronic's confidential training and marketing plans and strategies, including its strategies for competing directly with Bolton and other key competitors." Sherland admitted in his affidavit that he "had access to some confidential information at Medtronic." Further, a forensic analysis of Sherland's Medtronic-issued laptop, in his possession while at Medtronic, revealed a folder of "Competitive Playbooks" with subfolders and files pertaining to Medtronic's competitors, including Bolton. Sherland maintained that many Medtronic employees had access to this kind of information and that "[t]his kind of information deals with competitive differences in the products that almost anyone who works in the field is aware of." But Sherland's Medtronic supervisor also stated that those documents are used by Medtronic to train their sales force on how to competitively position their aortic products in the market.

Sherland also participated in monthly and annual Medtronic Global Aortic Marketing meetings. Medtronic provided Sherland with confidential documents in relation to these marketing meetings. Notably, Sherland was part of the team working on the market launch of Medtronic's next generation thoracic device, and Sherland was responsible for developing the global training materials for the device. For this purpose, he was provided confidential information about its specifications prior to its FDA approval, Medtronic's plans for marketing the device, and Medtronic's strategies for training its sales force to sell the device against its competition.

In addition to Sherland's breach of the noncompetition covenant, Medtronic has shown that a risk exists that Sherland will disclose confidential information in his

employment with Bolton, and irreparable harm will in all probability result. The district court did not abuse its discretion in drawing an inference of irreparable harm.

Affirmed.