STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0406
A13-0534

James Piche,
Respondent,

vs.

Bruce A. Braaten, et al.,
Appellants.

Filed February 3, 2014
Affirmed in part and reversed in part
Kirk, Judge

Becker County District Court
File No. 03-CV-10-2787

Lonny D. Thomas, Mark A. Severson, Thomas Law, P.A., Crosslake, Minnesota (for respondent)

Steven A. Johnson, Jade M. Rosenfeldt, Vogel Law Firm, Fargo, North Dakota (for appellants)

Considered and decided by Stoneburner, Presiding Judge; Hooten, Judge; and Kirk, Judge.

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

KIRK, Judge

Appellants, corporate entities and their majority shareholders, appeal the district court's judgment (1) ordering them to buy out the shares of respondent minority shareholder; (2) declining to adopt the stock price in the stock-purchase agreement to determine the value of the shares; (3) concluding that the noncompete provision of respondent's employment agreement was ambiguous; and (4) concluding that appellants failed to prove damages arising out of respondent's alleged breach of the noncompete provision of his employment agreement. Both parties dispute the district court's order declining to award costs, disbursements, and attorney fees. We affirm in part and reverse in part.

FACTS

This appeal arises from a dispute between respondent, minority shareholder James Piche, and appellants, majority shareholders Bruce Braaten, Michael Brodsho, and Robert Poolman. The parties were shareholders in a closely held corporation in Detroit Lakes. Respondent was a minority shareholder in all eight companies within the corporation. The companies included professional employment organizations (PEOs) that provide employment services to businesses, a retail electronics store, and real estate in Arizona and Minnesota.

In 1996, respondent was hired as an at-will employee with Pro Systems Corporation, one of the companies in the corporation. Pro Systems is comprised of a retail electronics sales and service company and a PEO that provides payroll services to businesses. Respondent signed an employment agreement with Pro Systems that contained a noncompete provision prohibiting him from "directly or indirectly, solicit[ing] the trade or patronage [of] any of the customers/clients or prospective customers/clients o[f] [e]mployer with respect to any of the services, products, trade secrets or other matters of [e]mployer" for two years in Minnesota if his employment at Pro Systems was ever terminated. The noncompete provision also stated that respondent would be responsible for liquidated damages if he contacted any of Pro Systems' customers or clients within two years after the termination of his employment.

In 2006, respondent became a shareholder in the corporation when he signed a stock-purchasing agreement. The agreement does not contain any specific language regarding how shares should be transferred in the event of a court-ordered buyout, but there is a clause defining a "triggering event" as "the occurrence of an event which results in either an option or an obligation, as the case may be, to purchase the [s]hares." The agreement stated that upon a "triggering event," appellants would pay respondent $8,333 per month until the full purchase price of $1,550,000 had been paid in full. While the agreement required that the shareholders annually revise the purchase price by a two-thirds vote, the parties never reestablished the price after the initial execution of the stock-purchase agreement. Over time, respondent accrued a 22% share of all stock in the corporation.

Respondent was terminated from his position at Pro Systems in July 2010 after an internal investigation by the majority shareholders revealed that he had committed hostile and offensive misconduct in the workplace. Respondent mistreated Pro Systems' employees, and, in particular, he belittled and degraded the female employees. He yelled and cursed at shareholders, and repeatedly told other employees that he wished the shareholders would die. Respondent also talked to Pro Systems' employees about leaving their jobs to work for him at his start-up payroll leasing company. One witness testified that respondent said, “Those stupid motherf----rs won’t know what hit them.” The board summarily voted to remove respondent as an officer of Pro Systems, but he remained a shareholder and member of the board of directors. In February 2011, respondent began working at Paymasters, a PEO that directly competed with Pro Systems.

Respondent sued appellants, alleging wrongful termination, breach of fiduciary duty, and unfair and prejudicial behavior under Minn. Stat. § 302A.751 (2012). Respondent also moved the district court to intervene and order appellants to give him an accounting of the revenues, expenditures, and debts of the corporation because appellants had frozen him out during the pendency of the litigation. Appellants countersued, alleging that respondent breached the noncompete provision of his employment agreement and his fiduciary duties to them as shareholders.

The district court enjoined appellants from increasing their wages or salaries while litigation was pending and ordered that any distributions or profits must be in exact proportion to ownership interest. The district court also ordered appellants to provide respondent notice of all shareholder meetings and a written accounting of the corporation’s financial records.

A six-day court trial was held. In its thorough and well-reasoned decision, the district court found that appellants had good cause to terminate respondent’s employment based on his hostile and offensive workplace misconduct, but appellants’ acts after respondent was fired were unfairly prejudicial. The district court ordered appellants to buyout respondent’s shares under Minn. Stat. § 302A.751, subd. 2. The district court declined to adopt the terms of the stock-purchase agreement and ordered appellants to pay respondent a lump-sum payment of $1,621,000. The district court also found that the terms of the noncompete provision of respondent's employment contract were ambiguous, and appellants were not entitled to any damages under the agreement because there was no evidence that respondent breached its terms. Finally, the district court declined to award attorney fees under Minn. Stat. § 302A.751, subd. 4. Appellants moved for amended findings or a new trial, and the district court denied appellants' motion in its entirety. This appeal follows.

D E C I S I O N

Because the district court has the discretion to grant a new trial, we will not disturb the decision absent a clear abuse of that discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01.

I. The district court did not err when it determined the noncompete provision of respondent's employment contract to be ambiguous.

Noncompete agreements are generally "looked upon with disfavor, cautiously considered, and carefully scrutinized." *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 361 (Minn. 1998) (quotation omitted). "Whether or not a contract is ambiguous is a question of law." *Davis by Davis v. Outboard Marine Corp.*, 415 N.W.2d 719, 723 (Minn. App. 1987), *review denied* (Minn. Jan. 28, 1988). A contract is ambiguous if it is reasonably susceptible to more than one meaning. *Collins Truck Lines, Inc. v. Metro. Waste Control Comm'n*, 274 N.W.2d 123, 126 (Minn. 1979). If a contract is ambiguous, its interpretation is a question of fact. *City of Virginia v. Northland Office Props. Ltd. P'ship*, 465 N.W.2d 424, 427 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991). Ambiguous contract terms must be construed against the drafter. *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 148 (Minn. 2002).

Appellants contend that the evidence presented at trial demonstrates that the terms of the noncompete provision of respondent's employment agreement with Pro Systems is not ambiguous, and the terms barred him from working for a competitor of any of the PEOs in appellants' companies. In support of their argument, they point to respondent's admission at trial to a general understanding among the parties that his employment responsibilities extended beyond Pro Systems to all facets of the related organization.

The evidence supports the district court's determination that the terms of the noncompete provision are ambiguous because they prohibited respondent from soliciting Pro Systems' customers or clients, but limited damages to instances when he contacted Pro Systems' customers or clients. The noncompete clause did not precisely define exactly what type of conduct merited damages if respondent worked for a competitor. The district court properly construed the ambiguities against the drafter, which was Pro Systems. *See id.*

Because interpretation of an ambiguous contract is a question of fact, the district court did not err when it found that the noncompete clause only applied to Pro Systems' customers. As the district court noted, even if the parties contemplated that the two-year noncompete clause of respondent's employment contract extended beyond Pro Systems to include the other PEOs in appellants' companies, the Statute of Frauds requires such an agreement to be in writing. *See* Minn. Stat. § 513.01 (2012). There was no evidence presented at trial that respondent signed an employment agreement with any corporate entity other than Pro Systems.

Appellants argue in the alternative that even if the noncompete agreement was limited to Pro Systems, respondent violated its terms when he contacted potential customers or customers of Pro Systems through his employment at Paymasters. We conclude after a review of the trial record that there is no evidence to support this allegation. At trial, respondent testified that he never directly contacted Pro Systems clients. The clients came to him of their own accord because they personally knew him from past professional relationships.

Because we affirm the district court's finding that respondent did not breach the terms of the noncompete agreement, we need not reach the merits of appellants' claim of damages.

II. The district court did not err when it ordered a buyout under Minn. Stat. § 302A.751, subd. 2.

We review the district court's grant of equitable relief for abuse of discretion. *Nadeau v. Ramsey Cnty.*, 277 N.W.2d 520, 524 (Minn. 1979).

A. Respondent did not breach his fiduciary duty to appellants as a minority shareholder.

Appellants argue that the district court erred when it found that respondent did not breach his common-law fiduciary duty to appellants as a shareholder in a closely held corporation. They point out that as a minority shareholder in a closely held corporation, respondent owed them a common-law fiduciary duty "to act in an honest, fair, and reasonable manner in the operation of the corporation." Minn. Stat. § 302A.751, subd. 3a; *see Gunderson v. Alliance of Computer Prof'ls, Inc.*, 628 N.W.2d 173, 185 (Minn. App. 2001), *review granted* (Minn. July 24, 2001) *and appeal dismissed* (Minn. Aug. 17, 2001). Appellants contend that respondent repeatedly breached his fiduciary duty to appellants through his workplace conduct, theft of company money, and employment at Paymasters.

Whether a fiduciary duty has been breached generally is a question of fact. *Miller Waste Mills, Inc. v. Mackay*, 520 N.W.2d 490, 496 (Minn. App. 1994), *review denied* (Minn. Oct. 14, 1994). We conclude that the district court did not clearly err when it found that respondent did not breach his common-law fiduciary duty to appellants as a shareholder. This conclusion is supported by appellant Braaten's testimony at trial that appellants were very concerned about the possibility that respondent's misconduct as an employee would expose the corporation to a workplace harassment lawsuit. But Braaten did not mention any concern about respondent's behavior as a shareholder. Appellants' assertion that respondent stole or embezzled money is not persuasive because the parties routinely took loans from the corporation, and the other shareholders would receive offsetting credits. The district court properly found that respondent used company money to pay a bill disputed by Pro Systems customers and to purchase tax software where he failed to give the shareholders offsetting credits. Finally, respondent's later employment with Paymasters began several months after appellants had completely frustrated his ability as a shareholder to contribute to or control corporate decision-making. At that point in time, appellants had successfully frozen out respondent as a minority shareholder. The district court did not err when it found that respondent had not breached his fiduciary duty to appellants through his employment at Paymasters.

B. Appellants' conduct was unfairly prejudicial to respondent.

Appellants argue that the district court erred when it exercised its equitable powers and ordered a buyout. Appellants contend that they had no reasonable alternative other than to partially exclude respondent from management because his workplace misconduct and employment at Paymasters exposed the corporation to considerable risk. In support of their argument, appellants cite foreign caselaw in which courts denied equitable relief to minority shareholders who were terminated from employment or excluded from management because of misconduct. *See* N.Y. Bus. Corp. Law § 1104-a; *In re Dissolution of Kemp & Beatley, Inc.*, 473 N.E.2d 1173, 1181 (N.Y. 1984); *Mardikos v. Arger*, 457 N.Y.S.2d 371, 374-75 (N.Y. Sup. Ct. 1982). Although we decline to follow these foreign authorities in construing the Minnesota Business Corporation Act, we note that a district court may consider the misconduct of the minority shareholder when determining whether to grant equitable relief under section 302A.751. *See Gunderson*, 628 N.W.2d at 192 (holding that "an expectation of continuing employment is not reasonable and oppression liability does not arise when the shareholder-employee's own misconduct or incompetence causes the termination of employment"); *see also Bolander v. Bolander*, 703 N.W.2d 529, 553 (Minn. App. 2005) (holding that employee-shareholder was not entitled to equitable relief under section 302A.751 because he "undercut" his claim when he admitted to withdrawals of money from the corporation that were not in its best interest).

When a minority shareholder brings an action under Minn. Stat. § 302A.751, a district court may order a buyout if it is shown that "the directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation, or as officers or employees of a closely held corporation." Minn. Stat. § 302A.751, subd. 1(b)(3); *see also* Minn. Stat. § 322B.833, subd. 1(2)(ii) (2012). Prejudicial conduct includes "conduct that frustrates the reasonable expectations of shareholders in their capacity as shareholders or directors of a corporation." *Berreman v. W. Publ'g Co.*, 615 N.W.2d 362, 374 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000). "The phrase 'unfairly prejudicial' is to be interpreted liberally." *Bolander*, 703 N.W.2d at 552. In a closely held corporation, a shareholder may expect to have a place in management. *Berreman*, 615 N.W.2d at 374-75. "[W]hether a shareholder's reasonable expectations have been frustrated is essentially a fact issue." *Gunderson*, 628 N.W.2d at 186.

Here, the evidence supports the district court's finding that appellants acted in a manner unfairly prejudicial, under section 302A.751, subdivision 1(b)(3), when they excluded respondent from any meaningful participation in the management of the company after he was fired from Pro Systems. Because respondent was a shareholder in the companies, he had two separate interests, one as an owner and the other as an employee. *See Pedro v. Pedro*, 489 N.W.2d 798, 803 (Minn. App. 1992), *review denied*

(Minn. Oct. 20, 1992). After respondent was fired from Pro Systems, he still had a reasonable expectation to manage the company as a shareholder. Respondent testified that immediately after he was terminated in July 2010, he was routinely excluded from shareholders' meetings. When respondent inquired about the date and location of the 2011 shareholders meeting, appellants told him they were not going to hold a meeting, but they went ahead without him and held the meeting. Respondent also had no ability to participate in management decisions of the corporation, and did not control the timing of when the shareholders would receive distributions.

Appellants point out that they provided respondent with financial records about the operation of the companies and did not withhold distributions from him. And respondent never requested a shareholders' meeting. But evidence at trial shows appellants only gave respondent access to the companies' financial records after they were compelled to do so under a district court order. Moreover, appellant Braaten testified that he diverted some of respondent's distributions to the Internal Revenue Service without respondent's knowledge in February 2011. Given the fact that appellants surreptitiously held shareholders' meetings without informing respondent, the district court properly concluded that it was unlikely respondent's request for a shareholders' meeting would have been honored. Under these facts, we conclude that the district court did not abuse its discretion by granting respondent relief under Minn. Stat. § 302A.751 for violation of his minority-shareholder rights.

The district court found that appellants had ample cause to fire respondent for his hostile and offensive workplace misconduct. In light of this holding, we understand appellants' policy concern that similarly situated minority shareholders could successfully force a buyout, which is contrary to the legislative intent of section 302A.751. But given the acrimonious history among the parties, we conclude that the record supports the district court's finding that there is no possibility for rehabilitation of the parties' relationship, and the district court properly invoked its equitable powers and ordered a buyout. The buyout severs the parties' relationship and prevents endless litigation that would inevitably arise should the status quo continue.

III. The district court erred when it abandoned the terms of the stock-purchase agreement.

"If the court determines that ordering a buy-out is fair and equitable to all parties under the circumstances, it also has broad discretion both in the process and the ultimate determination of the 'fair value' of the shares to be sold . . . ." *Advanced Commc'n Design Inc. v. Follett*, 615 N.W.2d 285, 290 (Minn. 2000) (citing Minn. Stat. § 302A.473, subd. 7 (1998)). Under a court-ordered buyout, the district court may order the sale of respondent's stock in the corporation at the price set forth in any existing agreement "unless the court determines that the price or terms are unreasonable under all the circumstances of the case." Minn. Stat. § 302A.751, subd. 2. Consistent with the legislature's deference to written agreements, the district court may rely on written or oral agreements in determining whether shareholder expectations are reasonable. *Gunderson*, 628 N.W.2d at 185. Written agreements, including buy-sell agreements among shareholders, are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements. Minn. Stat. § 302A.751, subd. 3a. Reasonable expectations are defined as "the understandings objectively reasonable close-corporation shareholders would have reached if, at the venture's inception, they had bargained over how their investments should be protected." *Gunderson*, 628 N.W.2d at 185. But Minnesota courts recognize that while "written agreements are not dispositive of shareholder expectations in all circumstances," they "should, nonetheless, be honored to the extent they specifically state the terms of the parties' bargain." *Id.* at 186.

Appellants argue that the district court erred when it failed to apply the terms and valuation of respondent's shares as stated in the stock-purchase agreement, as required by Minn. Stat. § 302A.751, subd. 2. We conclude that the district court did not err when it found the valuation of respondent's shares at $1,550,000 was unreasonable under all circumstances of the case. At trial, there was testimony that the parties failed to annually reestablish the value of respondent's shares. Both parties presented expert testimony regarding the fair value of respondent's shares as of December 31, 2010. The financial experts utilized the market approach in valuing respondent's ownership interest, but were unable to compare PEOs from the same industry or with similar revenue streams. Respondent's financial expert valued his ownership interest at $2,176,000, while appellants' financial expert valued respondent's ownership interest to be $1,296,000. Based on this evidence, we conclude that the district court did not err when it found neither expert's valuation was conclusive, and calculated the fair value of respondent's ownership interest in the companies to be $1,621,000.

While we do not find any error with the district court's valuation of respondent's shares, we conclude that it erred when it deviated from the shareholder agreement and ordered appellants to pay respondent a lump-sum payment of $1,621,000. The district court concluded that the stock-purchase agreement unambiguously did not apply to court-ordered buyouts. We disagree. Although the agreement specifically contemplates the death, divorce, or bankruptcy of a shareholder, the terms do not limit a "triggering event" to only these types of actions. A "triggering event" can apply to a court-ordered buyout where majority shareholders are obligated to purchase the shares of a minority shareholder.

We also hold that the stock-purchase agreement reflects the reasonable expectations of the shareholders to *not* receive lump-sum payouts of their ownership interests. *See* Minn. Stat. § 302A.751, subd. 3a; *Gunderson*, 628 N.W.2d at 186. At trial, appellant Braaten testified that the agreement included language that when a "triggering event" precipitated the sale of stock, the shareholder would receive $8,333 per month over an extended period of time. The shareholders agreed to a lower monthly payment because it ensured the financial solvency of the corporation. Although the district court found that appellants' companies had a net value in excess of $7,000,000 and could likely obtain financing, it ignored testimony that the language of the stock-purchase agreement clearly reflected the parties' concerns that the corporation may not be able to financially withstand paying a shareholder the full amount of his ownership interest. A buyout must be fair and equitable to all parties under all of the circumstances of the case. Minn. Stat. § 302A.751, subd. 2. We conclude that the district court failed to balance the equities in a way that is fair to all parties when it improperly discounted the reasonable expectations of the shareholders as expressed in the agreement.

We hold that the most reasonable course of action is for appellants to pay respondent the full purchase price of his shares of $1,621,000 using the 15-year formula contemplated in the stock-purchase agreement and adjusted by the valuation increase found by the district court. This leads to a monthly payment of $9,005.55. Under this payment plan, respondent will receive a net increase of about $672 per month to cover the valuation increase.

IV. The district court did not err when it declined to award costs, disbursements, and attorney fees.

The prevailing party in a civil matter is entitled to recover costs and reasonable disbursements. *See* Minn. Stat. §§ 549.02, subd. 1 (costs); 549.04, subd. 1 (disbursements) (2012). The district court has discretion to determine which party prevailed for purposes of an award of costs, and also to determine the fair proportion of costs and disbursements to be taxed against each defendant. *O'Brien v. Dombeck*, 823 N.W.2d 895, 901 (Minn. App. 2012).

Both parties dispute the district court's findings on costs and disbursements. The district court found that appellants successfully defended against respondent's wrongful termination claim, and respondent prevailed on his claim for equitable relief under Minn. Stat. § 302A.751. We hold that the district court did not abuse its discretion when it denied the parties costs and disbursements because each side prevailed on a significant issue in the case.

This court will not reverse the district court's decision on attorney fees absent an abuse of discretion. *Carlson v. SALA Architects, Inc.*, 732 N.W.2d 324, 331 (Minn. App.

2007), *review denied* (Minn. Aug. 21, 2007). Respondent argues that he is entitled to attorney fees because appellants acted arbitrarily, vexatiously, and not in good faith. *See* Minn. Stat. § 302A.751, subd. 4 (allowing the district court to award attorney fees if it finds a party acted arbitrarily, vexatiously, or not in good faith). We agree with the district court that there is no evidence to support respondent's claim and that appellants made this claim in good faith.

Affirmed in part and reversed in part.