STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0414

St. Jude Medical S.C., Inc.,
Respondent,

vs.

Biosense Webster, Inc.,
a California corporation, et al.,
Appellants,

Kristine Jackson,
Defendant.

Filed October 7, 2013
Affirmed
Kalitowski, Judge

Ramsey County District Court
File No. 62-CV-11-718

Edward F. Fox, Kevin P. Hickey, Mark R. Bradford, Nicole A. Delaney, Bassford Remele, P.A., Minneapolis, Minnesota (for respondent)

Joseph W. Anthony, Mary L. Knoblauch, Steven C. Kerbaugh, Anthony Ostlund Baer & Louwagie P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Kalitowski, Presiding Judge; Chutich, Judge; and Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KALITOWSKI, Judge

Appellants Biosense Webster, Inc. (Biosense) and Johnson & Johnson (J & J) challenge two district court orders. Appellants argue that the district court erred in (1) determining that respondent St. Jude Medical S.C., Inc.'s (SJM) term-of-years employment agreement with former employee Kristine Jackson is enforceable by money damages; (2) granting SJM summary judgment on its claim against appellants for tortious interference with contract; and (3) determining that Minnesota law, rather than Texas law, applies under a choice-of-law provision. We affirm.

D E C I S I O N

Summary judgment is appropriate when there are no genuine issues of material fact and either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. "We review a district court's summary judgment decision de novo. In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). We view the evidence in the light most favorable to the party against whom judgment was granted. *State Farm Fire & Cas. v. Aquila, Inc.*, 718 N.W.2d 879, 883 (Minn. 2006).

I.

Appellants argue that, because SJM's employment contract with Jackson is a restrictive covenant, the district court erred by determining that SJM's employment

agreement is enforceable by damages. In Minnesota, employees and employers may enter into employment contracts for a specified term. *Pine River State Bank v. Mettille*, 333 N.W.2d 622, 628 (Minn. 1983). These employment contracts—often called "fixed-term" or "term-of-years" agreements—are wholly enforceable. *Thomsen v. Indep. Sch. Dist. No. 91*, 309 Minn. 391, 392, 244 N.W.2d 282, 284 (1976).

Restrictive covenants, on the other hand, restrict an employee's freedom of employment following the employee's termination. *Becker v. Blair*, 361 N.W.2d 434, 436 (Minn. App. 1985). They are disfavored because they are partial restraints on trade, *Midwest Sports Mktg., Inc. v. Hillerich & Bradsby of Canada*, 552 N.W.2d 254, 265 (Minn. App. 1996), *review denied* (Minn. Sept. 20, 1996), and must be broader than necessary to protect the employer's legitimate interests. *Bennett v. Storz Broad. Co.*, 270 Minn. 525, 534, 134 N.W.2d 892, 899 (1965). "But restrictive covenants are enforced to the extent reasonably necessary to protect legitimate business interests." *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 456 (Minn. App. 2001).

Here, Jackson signed an employment agreement in February 2009 that provided for an initial term of three years, unless and until her employment was terminated for cause. The agreement also imposed a one-year noncompete restriction on Jackson following the termination of her employment. But the noncompete provision is not at issue in this appeal. The district court, after determining that the employment agreement is enforceable only by damages, concluded that it does not restrict Jackson's freedom of employment. Following *Becker*, we agree.

In *Becker*, an employee signed a term-of-years employment agreement providing that the employee could not terminate his employment for three years. 361 N.W.2d at 435. If the employee did terminate his employment, he agreed to pay the employer $1,500 for company expenses. *Id.* We held that the agreement was not a restrictive covenant because the provision requiring the employee to pay $1,500 if he voluntarily terminated the contract did not restrict his future employment. *Id.* at 436. "This is not a restrictive covenant," we stated, "but rather an employment contract for a fixed term, which is enforceable." *Id.*

Similarly here, Jackson's employment agreement provided for an initial term of three years through February 2012, unless and until Jackson was terminated for cause. And similarly here, the agreement with SJM is enforceable by damages only. The district court correctly concluded that the agreement could not be enforced by injunction, stating that "it is fundamentally unfair for any employer to prohibit an employee from working at all and refuse to pay the employee during that enforced absence from the workforce." But we conclude—as the district court did—that damages differ from injunctive relief. When a term-of-years agreement is enforced only by damages, it does not restrict an employee's freedom of employment following the employee's termination. *Id.* Similar to the employee's situation in *Becker*, the district court's holding that the employment agreement could be enforced only by damages did not restrict Jackson's future employment, which she in fact pursued and obtained with Biosense, a competitor of SJM. Thus, we conclude that the district court did not err by determining that the employment

agreement is not a restrictive covenant, but rather an employment contract for a fixed term, which is enforceable by damages.

Appellants contend that the damages here, unlike the liquidated damages in *Becker*, operate as a restrictive covenant because they are unlimited. We disagree. As the district court aptly stated, "SJM cannot simply peg a damages figure and obtain a judgment in that amount; it must prove that it is legally entitled to the amount of damages it seeks." Moreover, liquidated damages roughly approximate what the employer would have received after a trial in the absence of a liquidated-damages clause. Consequently, we conclude that *Becker* applies and the district court did not err by finding that the employment agreement is enforceable by money damages.

II.

Appellants argue that, even if the employment agreement is enforceable by damages, the district court erred by finding that appellants unjustifiably procured Jackson's breach. We disagree.

A tortious-interference-with-contract claim has five elements: "(1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages." *Kallok v. Medtronic, Inc.*, 573 N.W.2d 356, 362 (Minn. 1998) (quotation omitted). Here, the parties stipulated to the existence of a contract and to their knowledge of the contract; the issue of damages went to the jury. Thus, the district court was to grant summary judgment in favor of SJM unless appellants established as a defense (1) that they did not procure Jackson's breach or (2) justification. We address each in turn.

Procurement of Jackson's breach

To prove that a defendant intentionally procured a breach of the contract, the plaintiff must show that the wrongful interference was the proximate cause of the breach. *Jensen v. Lundorff*, 258 Minn. 275, 280, 103 N.W.2d 887, 891 (1960). In *Kallok*, the supreme court held that defendant Angeion Corporation intentionally procured the breach of a Medtronic employee's employment agreement when the record showed that Angeion officials met with the employee "on numerous occasions and procured the breach of his noncompete agreements by offering him the vice president position that he eventually accepted." 573 N.W.2d at 362.

Here, in a well-reasoned order, the district court determined that "despite its stipulated knowledge of a contractual relationship between Ms. Jackson and SJM, the cancellation of which has never been conceded by SJM, Biosense vigorously pursued Ms. Jackson, and induced her to breach her employment agreement by resigning in July 2010." We agree.

Internal Biosense e-mails demonstrate that Biosense was in contact with Jackson as early as March 2010, which is four months before she resigned from SJM. Biosense stayed in touch with Jackson throughout April 2010 and offered her employment while she was still employed at SJM.

Moreover, Biosense remained in contact with Jackson throughout the remainder of 2010 and created and posted a position on its website specifically so that it could offer it to Jackson. Biosense ultimately hired Jackson in December.

Appellants contend that a jury could infer that Jackson was going to resign from SJM regardless of the prospect of obtaining future employment with Biosense. But the record here, comprised largely of appellants' own internal e-mail communications, could not lead a reasonable trier of fact to find that Biosense did not procure Jackson's breach of the employment agreement. *See DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) (stating that no genuine issue for trial exists where the record as a whole could not lead a reasonable trier of fact to find for the nonmoving party). Accordingly, there is no genuine issue of material fact for trial.

In sum, we conclude that the facts here are analogous to *Kallok*. Biosense pursued and eventually offered Jackson employment in December 2010, when her employment agreement with SJM prevented her from working at Biosense. Thus, we conclude that the district court did not err in determining that, based on the undisputed facts, Biosense procured Jackson's breach of the employment agreement as a matter of law.

Justification

"Whether interference is justified is ordinarily a factual determination of what is reasonable conduct under the circumstances." *Kallok*, 573 N.W.2d at 362. "Tortious interference is not justified when a plaintiff demonstrates that the defendant had knowledge of facts which, if followed by reasonable inquiry, would have led to a complete disclosure of the contractual relations and rights of the parties." *Id.* (quotation omitted); *see also Twitchell v. Glenwood-Inglewood Co.*, 131 Minn. 375, 381, 155 N.W. 621, 623 (1915) (holding that the law will impute bad faith when the wrongdoer has knowledge that the contract existed). "Interference is unjustifiable when it is done for the

indirect purpose of injuring the plaintiff or benefiting the defendant." *Furlev Sales & Assocs., Inc. v. N. Am. Auto. Warehouse, Inc.*, 325 N.W.2d 20, 27 (Minn. 1982); *Potthoff v. Jefferson Lines, Inc.*, 363 N.W.2d 771, 776 (Minn. App. 1985).

We agree with the district court that, based on the undisputed facts, no reasonable juror could find that appellants' interference was justified. From a business standpoint, Biosense would not hire an employee from a direct competitor such as SJM unless it either injured SJM or benefited Biosense. As the district court stated, "In the highly competitive environment in which SJM and Biosense were conducting business, hiring Ms. Jackson away clearly had the effect of harming SJM and benefiting Biosense." Thus, appellant's interference with Jackson's employment agreement was unjustified as a matter of law.

The district court's determination is further supported by the supreme court's holding in *Kallok*. In *Kallok*, the supreme court determined that Angeion was not justified in hiring an employee away from Medtronic where "Angeion did not utilize a reasonable inquiry in ascertaining whether [the employee's] noncompete agreements with Medtronic prevented him from being employed by Angeion." 573 N.W.2d at 362. Here, Biosense's pursuit of Jackson was arguably more egregious. Although Biosense inquired and knew that Jackson had an employment agreement with SJM that prevented her from working at Biosense, it hired her anyway. Thus, we may assume that Biosense's conduct was not justified. *See id.* at 362 (citing *Twitchell*, 131 Minn. at 381, 155 N.W. at 622 (holding that the law will impute bad faith when the wrongdoer has knowledge that the contract existed)).

III.

Appellants argue that the district court erred by concluding that Minnesota law, rather than Texas law, applies to SJM's tortious-interference-with-contract claim under a choice-of-law provision. The Minnesota choice-of-law provision included in the employment agreement states the following: "This Agreement will be governed by the laws of the state of Minnesota without giving effect to the principles of conflict of laws of any jurisdiction." Choice-of-law questions are questions of law, which we review de novo. *Schumacher v. Schumacher*, 676 N.W.2d 685, 690 (Minn. App. 2004). Although the choice-of-law provision does not bind Biosense because it was not a party to the contract, it is relevant to the choice-of-law analysis.

Conflict between the laws of the forums

We first must determine whether an actual conflict exists between the laws of the two forums. *Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 604 N.W.2d 91, 93-94 (Minn. 2000). At the choice-of-law hearing in this case, neither party disputed that there was a conflict between Minnesota and Texas law. As the district court observed, the "parties agree that there is a conflict here on the attorney[] fee[] issue." And generally, Texas law does not permit the recovery of attorney fees for tortious-interference claims, whereas Minnesota does. *Compare Smith v. Hennington*, 249 S.W.3d 600, 606 (Tex. App. 2008) ("[N]o statutory or contractual basis exists for the recovery of attorney's fees under the plaintiffs' tortious interference claims."), *with Kallok*, 573 N.W.2d at 363-64 (allowing plaintiff employer to recover attorney fees and other expenses it incurred in enforcing its noncompete agreements with an employee). On appeal, SJM argues that

there is no conflict between Minnesota and Texas law. But generally, we will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Thus, we conclude that the district court did not err by determining that a conflict exists.

Constitutionality of applying either state's law

The next inquiry is whether the application of either state's law would be constitutional. We consider whether each state has sufficient contacts with the underlying litigation such that application of its law would be "neither arbitrary nor fundamentally unfair." *Jepson v. Gen. Cas. Co. of Wis.*, 513 N.W.2d 467, 469 (Minn. 1994).

Here, Texas has sufficient contacts because Jackson worked for SJM in Texas and the parties entered into the employment contract in Texas. Minnesota likewise has sufficient contacts because SJM is a Minnesota corporation and SJM is seeking redress in its home state under a Minnesota choice-of-law provision. Thus, applying either state's law would not be arbitrary or fundamentally unfair.

Substance or procedure

We must next determine "whether the question [of attorney fees] is substantive or procedural." *Danielson v. Nat'l Supply Co.*, 670 N.W.2d 1, 5 (Minn. App. 2003), *review denied* (Minn. Dec. 16, 2003). If the matter is substantive law, we apply a multi-step choice-of-law analysis to determine which state's law applies. *Id.* If the matter is procedural law, we follow the law of the forum state. *Id.*

Here, appellants and SJM cite conflicting caselaw providing support that the attorney-fee issue is procedural and substantive. But we need not resolve this conflict because we conclude that Minnesota law applies regardless of whether the attorney-fee issue is procedural or substantive. If attorney fees are procedural, Minnesota law applies. And if attorney fees are substantive, Minnesota law applies because the five-factor choice-of-law analysis favors Minnesota law.

Five-factor choice-of-law analysis

We apply a five-factor choice-of-law analysis to determine which state's substantive law applies. *Jepson*, 513 N.W.2d at 470. We analyze the following factors: (1) predictability of result; (2) maintenance of interstate order; (3) simplification of the judicial task; (4) advancement of the forum's governmental interests; and (5) application of the better rule of law. *Id.*

1. Predictability of result

"This factor addresses whether the choice of law was predictable *before* the time of the transaction or event giving rise to the cause of action." *Danielson*, 670 N.W.2d at 7 (emphasis in original). Predictability of result is important in analyzing contractual disputes. *Jepson*, 513 N.W.2d at 470; *Schumacher*, 676 N.W.2d at 690 ("The business-related nature of the activity makes this case somewhat more like a contract case, in which predictability of result is recognized to be significant.").

Here, SJM and Jackson selected Minnesota law to govern their agreement before any alleged tortious interference by appellants. The Minnesota choice-of-law provision, which was known by appellants at the time of their alleged interference, favors

application of Minnesota law. Consequently, this factor weighs heavily in favor of applying Minnesota law.

2. Maintenance of interstate order

This factor is meant to prevent forum shopping, which frustrates the maintenance of interstate order. *Schumacher*, 676 N.W.2d at 690-91. It also addresses "whether applying Minnesota law would manifest disrespect for [Texas] or impede the interstate movement of people and goods." *Id.* at 690. This consideration "requires deference to a sister state's legal rules when that sister state has a substantial concern with the problem, even when the forum state also has an identifiable interest." *Nodak Mut. Ins. Co. v. Am. Family Mut. Ins. Co.*, 590 N.W.2d 670, 673 (Minn. App. 1999).

Applying Minnesota law here would not promote forum shopping, particularly where SJM and Jackson selected Minnesota law to govern their agreement. Moreover, applying Minnesota law does not manifest disrespect for Texas because SJM is a Minnesota corporation. It is therefore understandable that SJM would want to invoke Minnesota law to govern its contracts. On the other hand, the facts underlying the cause of action occurred in Texas. Jackson is a Texas resident, and SJM employed Jackson in Texas. Given these considerations, we agree with the district court that "[t]his factor does not weigh significantly in favor of either state's law."

3. Simplification of the judicial task

This factor is insignificant when "the law of either state could be applied without difficulty." *Jepson*, 513 N.W.2d at 472. Here, either Minnesota or Texas law could be applied without difficulty, so we conclude that this factor is insignificant.

4. Advancement of the forum's governmental interests

Here, we consider which law would "most effectively advance a significant interest of the forum state." *Schumacher*, 676 N.W.2d at 691 (quotation omitted). "This factor is designed to ensure that Minnesota courts do not have to apply rules of law that are inconsistent with Minnesota's concept of fairness and equity." *Id.* (quotation omitted). But we consider the public policy of both forums. *Id.*

As the forum state, Minnesota primarily has an interest in protecting and compensating tort victims. "Minnesota places great value in compensating tort victims. We have even refused to apply our law when the law of another state would better serve to compensate a tort victim." *Jepson,* 513 N.W.2d at 472. But Texas has a broad, fundamental interest in promoting the mobility of Texas residents. *See, e.g., DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 681 (Tex. 1990) (declining to apply Florida law and stating that the law governing enforcement of noncompetition agreements is fundamental policy in Texas).

Here, we agree with the district court that this factor favors application of Minnesota law. Minnesota law, which awards attorney fees, ensures that tort victims are fully compensated when they are forced into litigation to redress injuries caused by wrongful acts of interference. And although we must consider Texas's interests, we should not apply "rules which, however acceptable they may be in other states, are inconsistent with [Minnesota's] concept of fairness and equity." *Hime v. State Farm Fire & Cas. Co.*, 284 N.W.2d 829, 833 (Minn. 1979). Texas law, which generally does not

award attorney fees, contravenes the policy of Minnesota to fully compensate tort victims.

5. Better rule of law

We apply this factor only when the other four factors are not dispositive. *Reed v. Univ. of N. Dakota*, 543 N.W.2d 106, 109 (Minn. App. 1996); *see also Jepson*, 513 N.W.2d at 473 (stating that this consideration did not influence the outcome of the choice-of-law analysis). We conclude that we need not analyze which is the better rule of law because the first four factors are dispositive.

In sum, we conclude that the five-factor choice-of-law analysis favors the application of Minnesota law. Thus, the district court did not err in finding that Minnesota law should apply.

Affirmed.