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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1181**

Analog Technologies Corp.,
Respondent,

vs.

Edward Knutson,
Co-Appellant,

Dimation, Inc.,
Appellant.

**Filed April 5, 2011
Affirmed in part and remanded
Ross, Judge**

Dakota County District Court
File No. 19-C1-07-007480

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

ROSS, Judge

This appeal concerns a dispute between two electrical engineering companies over elements of a component manufacturing process that one company's former production manager allegedly stole when he quit to form the other company. A jury found that the former manager and his new company had stolen trade secrets. On appeal from judgment on Analog Technologies Corporation's trade-secret and related claims against Dimation, Inc. and its owner, Edward Knutson, Dimation contends that the district court erred in three ways: (1) it denied Dimation's motion for judgment as a matter of law or a new trial or, in the alternative, amended findings of fact; (2) it awarded exemplary damages without following the formal requirements of Minnesota Rule of Civil Procedure 52.01; and (3) it ordered injunctive relief without the statutorily required specificity. Edward Knutson contends that the district court erroneously denied his post-trial motion, arguing that the evidence did not support the verdict that he breached his confidentiality agreement. Because we conclude that the district court properly denied appellants' post-trial motions and awarded exemplary and injunctive relief, we affirm. But because the injunction lacks the specificity required by Minnesota Rule of Civil Procedure 65.04, we remand for the district court to modify the injunction.

FACTS

Appellant Edward Knutson is the central figure in this litigation. Analog, a Minnesota corporation that provides engineering and electronic manufacturing services, including systems engineering, product development, and assembly services, hired

Knutson in August 1999 as a production manager. Knutson signed a confidentiality agreement stating that he would keep confidential the information about Analog's proprietary product development. In 2001 Knutson became a production systems manager, a position that made him more familiar with Analog's business and production processes. Knutson resigned from Analog in March 2004. In July 2005, he incorporated Dimation, also an electrical engineering company. Knutson and Dimation then performed work for clients that had previously been Analog's.

Analog sued. It alleged, among other things, breach of contract and misappropriation of confidential information and trade secrets. Analog presented trial evidence that Knutson and Dimation had misappropriated trade secrets related to two of its electrical engineering production processes: the low-volume "flip-chip" manufacturing process and the "ball grid array" (BGA) manufacturing process. The jury returned a special verdict entirely in Analog's favor, awarding damages against Knutson and Dimation.

Analog moved the district court for an award of exemplary damages under the Uniform Trade Secrets Act, Minnesota Statutes section 325C.01-08 (2008), for an award of attorney fees, and for an injunction prohibiting Knutson and Dimation from engaging in any business activity involving the disclosure or use of Analog's confidential or trade secret information. The district court awarded Analog exemplary damages and attorney fees. It also permanently enjoined Knutson and Dimation from using or disclosing, for any purpose, any information or knowledge about Analog's flip-chip and BGA processes; from performing any flip-chip or BGA process for anyone for three years; and from

providing consulting, services, or any other assistance to any person or entity concerning the flip-chip or BGA processes; and it permanently enjoined Dimation employees or agents from performing any action prohibited as to Knutson under the injunction.

Appellants moved for judgment as a matter of law (JMOL) or for a new trial and for amended findings of fact. In favor of JMOL, appellants argued that the special verdict form was deficient, that the evidence presented at trial was insufficient to support the jury's misappropriation finding, and that the permanent injunction was based on inapplicable case law and essentially prevented them from competing. In favor of amended findings, appellants argued that the injunction was vague concerning the acts to be restrained and not justified by sufficient findings under rules 65.04 and 52.01 of the Minnesota Rules of Civil Procedure, that the injunction disregarded the terms of the parties' confidentiality agreement, and that the award of exemplary damages lacked a sufficient factual basis.

The district court denied appellants' motions for JMOL or a new trial and for amended findings, and it awarded Analog approximately \$300,000 in attorney fees and costs. This appeal follows.

D E C I S I O N

A district court may grant judgment as a matter of law once a party has litigated an issue but failed to provide a legally sufficient evidentiary basis for a reasonable jury to find in that party's favor. Minn. R. Civ. P. 50.01. This court reviews de novo a district court's denial of a rule 50 motion. *Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 919 (Minn. 2009). We will affirm the district court's denial of a motion for a new trial unless

we see an abuse of discretion. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). We will not set aside answers to special-verdict questions unless the evidence, viewed in a light most favorable to the verdict, is so clearly against the verdict that no room exists for differences among reasonable people. *Hanks v. Hubbard Broad., Inc.*, 493 N.W.2d 302, 309 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993).

I

Knutson and Dimation argue that they are entitled to a new trial because the jury's special verdict form asked whether a trade secret was misappropriated without first asking whether Analog had established that a trade secret even existed. It asked, "Did Defendant Knutson or Defendant Dimation or both misappropriate trade secret information belonging to Plaintiff?" Appellants contend that this question presumed the existence of a trade secret, relieving Analog of its burden to prove the secret's existence and inducing the jury to find misappropriation.

But appellants waived this objection. Failing to object to a special verdict form before it reaches the jury waives the right to object on appeal. *Kath v. Burlington Northern R. Co.*, 441 N.W.2d 569, 572 (Minn. App. 1989), *review denied* (Minn. Jul. 27, 1989). Appellants did not object at trial to the special verdict form or to the corresponding jury instructions. On the contrary, they specifically agreed to both during discussions in chambers and on the record in open court. They have no basis now to challenge either. *See Am. States Ins. Co. v. Ankrum*, 651 N.W.2d 513, 522–23 (Minn.

App. 2002) (stating that a party who acquiesced in the submission of a question to a jury cannot argue on appeal that the district court erred by submitting the question).

We understand that we may review the jury instructions or the special verdict questions even without prior objection to determine whether there is an error of fundamental law or controlling principle. *See Fallin v. Maplewood-North St. Paul Sch. Dist. No. 622*, 362 N.W.2d 318, 320 (Minn. 1985). This case does not warrant that approach. Isolated errors are fundamental or controlling if they undermine the correctness of the overall jury charge, leading to an injustice. *Lindstrom v. Yellow Taxi Co. of Minneapolis*, 298 Minn. 224, 229, 214 N.W.2d 672, 676 (1974). The jury received detailed instructions setting out the elements of the definition of a trade secret and the elements of misappropriation, and we presume that it followed the court's instructions. *See State v. Matthews*, 779 N.W.2d 543, 550 (Minn. 2010). In the context of the other instructions and the trial as a whole, we infer that the jury adequately understood the meaning of a trade secret and incorporated that meaning when answering the contested question.

Appellants argue that the form of the question precluded a negative response. We are not persuaded. A juror could reasonably answer "no" to the entire question if she felt either that Analog had failed to prove the existence of a trade secret or that either Knutson or Dimation (or both) had not misappropriated that secret. The district court had ample basis to reason, as it did in its order denying appellants' motion on this issue, that it is implausible to conclude that any juror would have heard nine days of testimony devoted almost entirely to whether Analog had established a trade secret without

understanding that the central question in this case, which implicitly must be answered as part of the challenged special-verdict question, was the existence of a trade secret.

II

Appellants contend that they were entitled to JMOL or a new trial because Analog's evidence concerning the existence of a specific trade secret was insufficient to support the verdict of misappropriation. We observe that appellants do not challenge the jury's finding that there was an appropriation of information or that Analog was damaged by it. They maintain only that the evidence was insufficient to support the verdict that the information appropriated constituted trade secrets.

Appellants' argument here consists of conclusory attacks on the sufficiency of Analog's evidence and repeated assertions that Analog's evidence on the trade-secret issue is not credible for various reasons. That the jury had some evidentiary basis to have weighed the competing evidence differently than it did or found in appellants' favor is not reason enough for us to reverse the district court's decision to deny the appellants' motions. The jury received instructions concerning the elements necessary to adequately identify a trade secret and heard testimony from Analog's owner and its expert witness describing the flip-chip and BGA processes and explaining why Analog believed that these processes were its trade secrets. Analog introduced testimony explaining how these processes were distinct from other, extant processes used in the industry. And it cross-examined Knutson concerning his familiarity with these processes and highlighted the similarity between the Analog processes and the allegedly misappropriated Dimation processes. Appellants' evidence that the processes were not trade secrets consisted

largely of Knutson's testimony, which the jury was free to weigh and credit as it saw fit. We are in a poor position to second-guess the jury's treatment of the competing evidence.

Appellants also contend that Analog failed to establish that its alleged trade secrets were not "mere variations" of existing processes or publicly available information. Appellants are again arguing that they are entitled to a new trial or JMOL on the grounds that the jury could have reached a different conclusion by weighing the evidence differently than it did. This argument disregards our standard of review, which requires us to discern only whether any competent evidence reasonably supports the jury's verdict. We hold that it does.

III

Knutson argues that the finding that he breached a contract with Analog by violating the confidentiality agreement must be reversed because it is "inextricably intertwined" with the verdict finding that he misappropriated trade secrets. Because the trade-secret claim fails, he contends, the contract claim must also fail. But it is unnecessary "that information be a trade secret to be protected." *Saliterman v. Finney*, 361 N.W.2d 175, 178 (Minn. App. 1985). The supreme court has stated, "A trial court may issue an injunction against a party who has, in violation of an explicit agreement or a common law duty, wrongfully used confidential information *or* trade secrets obtained from his employer." *Cherne Indus., Inc. v. Grounds & Assoc., Inc.*, 278 N.W.2d 81, 92 (Minn. 1979) (emphasis added). Analog alleged that Knutson wrongfully used confidential information in violation of the confidentiality agreement. The jury found

that Knutson's actions constituted a breach of contract and that finding has reasonable support in the record. Knutson's challenge fails.

IV

Appellants argue next that the post-trial order awarding exemplary damages, injunctive relief, and attorney fees must be vacated and remanded for failing to include specific findings of fact and make separate conclusions of law, as required by Minnesota Rule of Civil Procedure 52.01. *See White Bear Rod & Gun Club v. City of Hugo*, 388 N.W.2d 739, 742, 744 (Minn. 1986) (reversing and remanding decision where absence of findings to support decision left appellate court with nothing to review). They limit their challenge to the order's alleged formal deficiencies. We hold that the district court's order satisfied the statutory requirements.

Rule 52.01 provides, "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." The purpose of this rule is to allow for appellate review by describing clear grounds for the trial court's decision. *Transit Team, Inc. v. Metro. Council*, 679 N.W.2d 390, 398 (Minn. App. 2004). The rule mandates no specific format and expressly allows a written opinion or memorandum of decision to stand as findings of fact and conclusions of law. *See* Minn. R. Civ. P. 52.01 1985 advisory comm. note ("It is not necessary that the findings of fact be identified in separately numbered paragraphs or that the conclusions of law be similarly stated.").

Appellants' argument concerning the formal deficiency of the order is not convincing. The memorandum accompanying the November 3, 2009 order refers to "the record, law, and proceedings" in concluding that Dimation and Knutson behaved in a willful and malicious manner when they "knowingly used confidential information to create another, virtually indistinguishable, system." When read together, the special verdict answers, the jury instructions, and the memorandum provide an adequate basis for us to comprehend and review the district court's conclusion. The district court's order therefore has no formal deficiency that requires reversal.

V

Appellants challenge the denial of their motion for amended findings in the order for injunctive relief, contending that the order violates Minnesota Rule of Civil Procedure 65.04 both because it fails to state the reasons for the injunction and because it is vague and overbroad, rendering compliance impossible. The rule provides that "[e]very order granting an injunction and every restraining order shall set forth the reasons for its issuance." We will uphold a district court's decision to issue an injunction absent a clear abuse of discretion. *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). And similarly, we rely on the district court's findings regarding entitlement to injunctive relief unless those findings are clearly erroneous. *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). Factually supported findings are not clearly erroneous. *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

Injunctive relief is available to remedy trade-secret misappropriation “to prevent the misappropriator from selling or manufacturing the product embodying the secret.” *Wyeth v. Natural Biologics, Inc.*, 395 F.3d 897, 902 (8th Cir. 2005) (applying Minnesota law); *see also* Minn. Stat. § 325C.02 (“Actual or threatened misappropriation may be enjoined.”). An injunction may be necessary to prevent irreparable harm such as the victim’s loss of market share, customer relationships, and control over the trade secret. *See Wyeth*, 395 F.3d at 903. Consistent with these concerns, the district court here found “irreparable harm warranting an injunction based on evidence admitted at trial, which shows that Analog lost market share, customer relationships, and control over the trade secrets following both defendants’ wrongful misappropriation.” This finding is based on trial evidence and is not clearly erroneous, so the district court acted within its discretion by ordering injunctive relief.

But we notice a lack of clarity in the scope and specificity of the injunction.

Rule 65.04 provides that an injunction “shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Dimation complains that the district court’s order for injunctive relief violates rule 65.04 and cannot be enforced because it is not sufficiently specific to allow Dimation and Knutson to understand what actions they must take to comply. *See Josephson v. Fremont Indus., Inc.*, 282 Minn. 51, 55, 163 N.W.2d 297, 301 (1968) (stating that injunction was so ambiguous and imprecise that it permitted a jury to conclude that the enjoined party was in doubt as to its obligations); *see also Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S. Ct. 713, 715 (1974) (observing that injunctions must

precisely define prohibited conduct in order “to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood”). We may remand an injunction to be modified if we determine that its language compromises its enforceability. *State Dep’t. of Conservation v. Sheriff*, 296 Minn. 177, 180, 207 N.W.2d 358, 360 (1973).

The November 2009 order for injunctive relief contains five paragraphs, the first four containing the substantive limitations. Paragraph (a) permanently enjoins Knutson and Dimation from using or disclosing, for “any purpose, . . . any information or knowledge they have obtained at any time about Analog’s flipchip process, BGA (ball grid array) process, or any other confidential information or trade secret information belonging to Analog.” Paragraph (b) enjoins Knutson and Dimation from performing any flip-chip process for anyone for three years. Paragraph (c) enjoins Knutson and Dimation from performing any BGA process for anyone for three years. Paragraph (d) enjoins Knutson and Dimation from “consulting with, or providing services, information, or any assistance of any kind, whether directly or indirectly, to any other person or entity concerning flip-chip or BGA processing, installation, manufacture, repair, rework, or reballing.” Paragraph (e) enjoins Dimation employees or agents from performing any action prohibited as to Knutson under the injunction. In the memorandum accompanying the order, the district court specified, “[Pursuant to] the statute, the injunction will be co-extensive with the existence of the trade secret, and may be terminated when the secret no longer exists.” The statute referred to is Minnesota Statutes section 325C.02(a), which

states, “Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.”

Appellants challenge paragraphs (a) through (d). They first contend that paragraph (a) does not adequately describe the flip-chip or BGA process and vaguely refers to “any other confidential information or trade secret information belonging to Analog” without defining the processes and the information subject to the injunction, without describing the scope of the actual trade secrets within each process, and without including findings that clearly illuminate the unclear terms. Appellants therefore assert that they cannot reasonably comply with the injunction. Although the district court’s decision to issue the injunction is sound for the reasons discussed, appellants accurately charge that the imprecise language of the order may frustrate its enforceability. Without describing which aspects of the flip-chip and BGA processes derive from Dimation’s misappropriated trade secrets, the order does not adequately guide the parties as to the specific conduct restrained. And although the record supports Analog’s argument that the flip-chip and BGA processes were the subjects of lengthy exposition at trial, neither process is defined or described in the injunction or in the accompanying memorandum. The permanence of the injunction also appears to be at odds with the language in the memorandum indicating that the injunction will expire with the trade secret.

Appellants raise similar objections to paragraphs (b), (c), and (d), maintaining that the language in (b) and (c) prohibiting “any flip chip process” and “any BGA process,” respectively, and the language in (d) prohibiting any “assistance of any kind . . . concerning flip-chip or BGA processing” could be read to mean that appellants cannot perform either disputed process for anyone, even if the work does not infringe on respondent’s trade-secret processes. We are persuaded that the injunctive-relief order must be modified to specify the nature, scope, and duration of the prohibited conduct so as to reasonably permit both compliance and enforceability. While considering an order that generally restrained the use of “trade secrets and confidential technical information of plaintiff,” the Eighth Circuit Court of Appeals highlighted the same concern we have here:

The mischief of such an order is that a court may find that an employer possesses a trade secret in a wide field, such as electronic computers and process control systems, and even though the secret may relate to a minute detail within this wide field, the court could enjoin former employees from working in this field for anyone but the present employer.

E. W. Bliss Co. v. Struthers-Dunn, Inc., 408 F.2d 1108, 1113, 1115 (8th Cir. 1969). The order as written seems unlikely to allow the parties to clearly identify conduct that would violate Analog’s right to the exclusive use of its trade secrets. So it fails to set the appropriate balance between giving Analog the suitable level of protection and appellants the suitable level of notice. Its ambiguities may inadvertently tempt more conflict. We therefore remand the case for the district court to modify paragraphs (a), (b), (c), and (d). The district court may in its discretion open the record if helpful to gather the factual

details needed to assure that the injunction unambiguously and narrowly describes the restrained processes and activities, and the duration of the restraint.

Affirmed in part and remanded.