

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Americare Healthcare Services, LLC, :
Plaintiff-Appellee, :
v. :
Ngozi Akabuaku et al., : No. 12AP-917
(C.P.C. No. 09CVH-11-17125)
Defendants-Appellees, : (REGULAR CALENDAR)
(Asha M. Hussein, :
Defendant-Appellant). :

D E C I S I O N

Rendered on July 11, 2013

Johrendt & Holford, and Andrew Mills Holford, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Defendant-appellant, Asha M. Hussein, appeals from a judgment of the Franklin County Court of Common Pleas granting the motion for reconsideration filed by plaintiff-appellee, Americare Healthcare Services, LLC, and thereby granting appellee's motion for injunctive relief. For the reasons that follow, the judgment of the trial court is affirmed.

I. FACTUAL AND PROCEDURAL HISTORY

{¶ 2} Appellee is in the business of providing home healthcare services and medical staffing to individuals, nursing homes, hospitals, medical providers, and other medical professionals. On November 16, 2009, appellee filed a complaint seeking

injunctive relief and money damages against appellant, Ngozi Akabuaku, Wilson Anosiekwu, and Ngozi Akabuaku, dba The Angels Home Health Care Service ("Angels"). Appellee also filed a motion seeking a temporary restraining order and a preliminary and permanent injunction.

{¶ 3} As is relevant here, the complaint alleged Akabuaku, who was employed with appellee from 2005 to December 4, 2008, and appellant, who was employed with appellee from January 14, 2004 until January 11, 2009, were in violation of non-compete and non-disclosure agreements ("non-compete agreements") executed as a condition of their employment with appellee. The complaint alleged appellant signed non-compete agreements in multiple years, and the pertinent portions of the non-compete agreements are as follows:

2. Covenants of Nondisclosure. Employee agrees that he/she will not use at any time whether during or subsequent to this Agreement any Confidential Information for his/her own purposes, other than in connection with his/her regular activities for or on behalf of the Company. Employee further agrees to refrain from intentionally, directly or indirectly using, disclosing, disseminating, or publishing to or with any person, firm, company, organization or entity any Confidential Information. Employee acknowledges and agrees that the sale, unauthorized use, disclosure or dissemination of the Company's Confidential Information obtained by the Agent during his/her relationship with the Company constitutes unfair competition and in violation of this Agreement.

* * *

4. Covenant Not To Compete. Employee agrees that for a period of two (2) year[s] following the date of the termination of this Agreement, he/she will not solicit or have any contact with any of the Company's Clients, current Patients or Potential Client, whether or not such contact is initiated by a Client, Patient or Potential Client, to provide home health care services and/or ancillary or allied health services. Employee further agrees that he/she will not, in any manner, assist any other person, entity or organization in soliciting or contacting, directly or indirectly, for his/her own benefit or that of any other person, entity or organization, any Client, Patient, or Potential Client of the Company. Employee acknowledges

that any attempt to solicit, contact, call on or take away any of the Company's Clients or Potential Clients either for herself or for any person, entity or organization, is considered unfair competition and therefore in violation of this Agreement.

{¶ 4} After an evidentiary hearing, the trial court granted the motion for injunctive relief against Akabuaku. The trial court determined (1) the non-compete agreements were valid and enforceable, (2) Akabuaku violated the non-compete agreements, and (3) Akabuaku was tortiously interfering with appellee's other non-compete agreements. The trial court also found (1) the restraints of the non-compete agreements were reasonable and did not exceed what is reasonably required for appellee's protection, (2) the non-compete agreements did not impose an undue hardship on Akabuaku, and (3) the non-compete agreements' two-year period is typical. With respect to appellant, the trial court concluded appellant did not sign the January 2007 non-compete agreement, and, thus, as to her, the agreement was not enforceable.

{¶ 5} Akabuaku filed an appeal of the trial court's judgment and this court affirmed in *Americare Healthcare Servs., Inc. v. Akabuaku*, 10th Dist. No. 10AP-777, 2010-Ohio-5631. Thereafter, because the decision, with respect to appellant, was not a final order, appellee filed a motion for reconsideration regarding the trial court's decision denying injunctive relief as to appellant. In the motion for reconsideration, appellee argued the trial court failed to consider evidence that, regardless of whether or not she signed the 2007 non-compete agreement, appellant admitted signing the 2005 non-compete agreement prohibiting the same conduct.

{¶ 6} The trial court agreed that it failed to consider evidence regarding the 2005 non-compete agreement when it ruled on the request for injunctive relief. Therefore, the trial court granted appellee's motion for reconsideration and granted appellee's request for injunctive relief against appellant.

II. ASSIGNMENTS OF ERROR

{¶ 7} This appeal followed, and appellant brings the following two assignments of error for our review:

[I.] Where the trial court relies on erroneous facts and misconstrues a contract it abuses its discretion by granting a

motion to reconsider the denial of preliminary injunctive relief.

[II.] Where a trial court references another entry, references other documents and fails to properly define the prohibited conduct in a preliminary injunction, it abuses its discretion as [a] matter of law under Civ.R. 65(D).

III. DISCUSSION

A. Standard of Review

{¶ 8} A trial court possesses plenary power in reviewing a motion for reconsideration prior to entering a final judgment. *Vanest v. Pillsbury Co.*, 124 Ohio App.3d 525, 535 (4th Dist.1997), citing generally *Picciuto v. Lucas Cty. Bd. of Commrs.*, 69 Ohio App.3d 789, 796 (6th Dist.1990). Thus, a reviewing court will not reverse a trial court's judgment absent an abuse of discretion. *Id.* An abuse of discretion exists only where it is clear from the record that the court acted in a manner which was unreasonable, arbitrary or unconscionable. *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87 (1985).

{¶ 9} Likewise, the standard of review for this court regarding the granting of an injunction by a trial court is whether the trial court abused its discretion. *Perkins v. Quaker City*, 165 Ohio St. 120, 125 (1956). In an action for a temporary or permanent injunction, the plaintiff must prove his or her case by clear and convincing evidence. *Franklin Cty. Dist. Bd. of Health v. Paxon*, 152 Ohio App.3d 193, 202 (10th Dist.2003), citing *Yunker v. Nationwide Mut. Ins. Co.*, 18 O.O.2d 381 (1961), reversed on other grounds, 175 Ohio St. 1 (1963). Clear and convincing evidence has been defined by the Supreme Court of Ohio in *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954), as that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt, as in criminal cases. *Id.* It does not mean clear and unequivocal. *Id.*

B. First Assignment of Error

{¶ 10} In her first assignment of error, appellant contends it was error for the trial court to find that she violated the non-compete agreements by working for a competitor

and soliciting appellee's employees because the non-compete agreements did not prohibit either of these actions. We find appellant's contentions unsustainable.

{¶ 11} The complaint alleged appellant was in violation of the non-compete agreements, not because she merely worked for Angels, but because she solicited and had contact with appellee's clients, potential clients, and employees to assist in the operation of Angels. In accordance with the complaint, and contrary to appellant's assertion that the trial court found a violation of the non-compete agreements based solely upon appellant being employed by a competitor and soliciting appellee's employees, the trial court found "that evidence was presented at the hearing that [appellant] violated the 2005 non-compete and non-disclosure agreement by working for a competing company, The Angels Home Health Care Service, and by soliciting other employees of [appellee] to leave [appellee] and bring their patients to The Angels Home Health Care Service." (Decision, 5.) Thus, the trial court did not misconstrue the non-compete agreements nor rely on "erroneous facts."

{¶ 12} The enforceability of the non-compete agreements was upheld in *Americare*, thus, the issue is whether the trial court abused its discretion in finding that appellant violated the non-compete agreements. The non-compete agreements prohibit appellant from soliciting or having any contact with appellee's clients or current patients, regardless of who initiates contact, to provide home health care services. The evidence contained in the record establishes that appellant works for Angels, a competing business, and that Angels was providing care for five patients that were patients of appellee. Because the record contains evidence supporting the trial court's finding that appellant violated the non-compete agreements by soliciting or having contact with appellee's patients, we discern no abuse of the trial court's discretion in granting appellee's motion for injunctive relief. *Perkins*.

{¶ 13} Accordingly, appellant's first assignment of error is overruled.

C. Second Assignment of Error

{¶ 14} In her second assignment of error, appellant contends the trial court's decision and entry granting appellee's motion for reconsideration does not adequately define or specify the prohibited conduct. According to appellant, because the trial court's decision requires reference to another document to ascertain the terms of the injunction,

the trial court's decision is in violation of Civ.R. 65(D), which expressly prohibits such conduct by providing:

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; 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; and is binding upon the parties to the action, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the order whether by personal service or otherwise.

{¶ 15} "The rule requires that an injunctive order be 'specific and detailed enough to give * * * adequate notice of the requirements imposed * * * and * * * not too vague to be understood.' " *Mechanical Contrs. Assn. of Cincinnati, Inc. v. Univ. of Cincinnati*, 141 Ohio App.3d 333, 342 (10th Dist.2001), appeal not allowed, 92 Ohio St.3d 1418, quoting *Superior Sav. Assn. v. Cleveland Council of Unemployed Workers*, 27 Ohio App.3d 344, 348 (8th Dist.1986). " 'An ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed.' " *Id.* at 342, quoting *Planned Parenthood Assn. of Cincinnati, Inc. v. Project Jericho*, 52 Ohio St.3d 56, 60 (1990), rehearing denied, 53 Ohio St.3d 706.

{¶ 16} In granting appellee's motion for reconsideration, the trial court also ordered that its July 2010 decision denying injunctive relief be corrected to include an injunction against appellant. Because this inclusion references another document, appellant contends the trial court's decision runs afoul of Civ.R. 65(D). We disagree.

{¶ 17} Civ.R. 65(D)'s prohibition of referring to other documents relates to the description of acts prohibited, not necessarily to any reference to other documents. *Yocono's Restaurant v. Yocono*, 100 Ohio App.3d 11 (9th Dist.1994). As stated by this court, the relevant inquiry is " 'whether the parties subject to the injunctive order understood their obligation under the order.' " *Prairie Twp. Bd. of Trustees v. Hay*, 10th Dist No. 01AP-1198, 2002-Ohio-4765, ¶ 38, quoting *Williams v. Dothan*, 818 F.2d 755, 761 (11th Cir.1987).

{¶ 18} Here, the trial court found appellant violated the non-compete agreements by soliciting appellee's employees and asking those employees to bring appellee's patients

to Angels and by having contact with appellee's former patients within two years of leaving employment with appellee. The trial court also found appellant's actions constituted tortious interference of appellee's business relationships with those clients and tortious interference with appellee's non-compete agreements with its employees. After review, we conclude the trial court's decision is not too vague to be understood, and the actions prohibited by the grant of injunctive relief do not have be ascertained by reference to other documents as they can be ascertained from the trial court's October 1, 2012 decision and entry itself. *Mechanical Contrs.*

{¶ 19} Accordingly, we conclude the trial court's decision and entry does not run afoul of Civ.R. 65(D) and, therefore, overrule appellant's second assignment of error.

IV. CONCLUSION

{¶ 20} Having overruled both of appellant's assignments of error, the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

CONNOR and McCORMAC, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under authority of the Ohio Constitution, Article IV, Section 6(C).
