IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

R & T HOOD AND DUCT SERVICES, INC., a Washington corporation, Respondents, v. RICKY SPRUEL and JANE DOE SPRUEL, husband and wife, and the marital community comprised thereof; Appellants, JAMES WHEELDON and JANE DOE WHEELDON, husband and wife, and the marital community comprised thereof; KENNY HENDERSON and JANE DOE HENDERSON, husband and wife, and the marital community comprised thereof; Defendants, SAFE HAVEN HOOD AND DUCT SERVICES, an unknown entity, Appellant.	)	No. 65802-6-I DIVISION ONE UNPUBLISHED OPINION FILED: June 4, 2012

Grosse, J. — While working for R & T Hood and Duct Services, Inc. (R & T), Ricky Spruel set up a competing company and, unbeknownst to R & T, began soliciting business from R & T's customers. Finding that Spruel had violated the terms of his employment agreement, the trial court entered a preliminary injunction, found Spruel in contempt after he failed to comply with the preliminary injunction, and entered a judgment in favor of R & T for lost revenue as a sanction for the contempt. On appeal, Spruel fails to demonstrate any error or abuse of discretion in

the trial court's actions. We therefore affirm.

FACTS

R & T Hood and Duct Services, Inc., a Washington corporation, provides fire protection services to businesses, including hood, duct, and fan cleaning. Starting in August 2007, R & T employed defendants Ricky Spruel, James Wheeldon, and Kenny Henderson to provide hood, duct, and fan cleaning services to R & T's customers. Spruel, Wheeldon, and Henderson entered into employment agreements with R & T providing, among other things, that they would not (1) disclose or use confidential information about R & T's customers; (2) provide services to R & T's clients within two years of termination; or (3) solicit R & T employees to leave R & T.

In January 2008, while still employed with R & T, Spruel set up Safe Haven Hood & Duct Services (Safe Haven), and Spruel, Wheeldon, and Henderson began providing hood, duct, and fan cleaning services under the name of Safe Haven to some of R & T's clients without R & T's knowledge or consent. On June 5, 2009, after discovering Safe Haven's actions, R & T fired Spruel, Wheeldon, and Henderson. After their termination, Spruel, Wheeldon, and Henderson continued to solicit and provide services to R & T's clients.

On August 26, 2009, R & T filed this action against Safe Haven, Spruel, Wheeldon, and Henderson, alleging breach of contract, tortious interference with business relations, and unfair competition. On November 24, 2009, the court entered a preliminary injunction, enjoining the defendants from (1) utilizing R & T's confidential and proprietary information, (2) soliciting business from R & T clients, (3)

providing hood, duct, or fan cleaning services to R & T's customers, and (4) soliciting R & T employees to work for Safe Haven.

On June 9, 2010, R & T moved for an order of contempt, alleging that Safe Haven had continued to service R & T's customers in violation of the preliminary injunction. R & T supported the motion with declarations and documentary evidence. In addition to a finding of contempt, R & T requested the imposition of sanctions, including a judgment for the revenue lost as a result of the defendants' contempt and an award of attorney fees.

Safe Haven and Spruel disputed R & T's contentions, denying having knowingly solicited or serviced any of R & T's clients in violation of the preliminary injunction and alleging that R & T was attempting to drive Safe Haven out of business. Spruel also maintained that because Safe Haven was able to provide only cleaning services, R & T remained free to provide other fire prevention services to its former customers. Spruel raised a general challenge to the sufficiency of R & T's evidence, but submitted no contravening evidence.

On June 29, 2010, the trial court found defendants Safe Haven, Spruel, Wheeldon, and Henderson in contempt. The court ordered the defendants to pay R & T's attorney fees and reserved entering judgment on R & T's alleged loss of business "pending further verification of the actual amounts of lost revenue." The court denied Spruel's motion for reconsideration.

On November 12, 2010, in response to the trial court's request in the contempt order for additional evidence, R & T filed a "Motion for Entry of Final Judgment." Alleging that Spruel continued to violate the terms of the injunction by

attempting to "poach" R & T's clients, R & T requested, among other things, entry of judgment for the revenue lost from the clients that Safe Haven had stolen. R & T submitted invoices establishing the services that R & T had provided to 11 former clients in the last full year and the resulting revenue totaling $38,233.20. Based on the two-year period specified in the defendants' employment agreements, the trial court entered judgment against the defendants in favor of R & T for $76,466.40.

Spruel and Safe Haven appeal. On appeal, Spruel advances several arguments on behalf of defendants Wheeldon and Henderson. But neither defendant has participated in this appeal. Moreover, because Spruel is not an attorney, he is not permitted to represent other parties in court.[1]

ANALYSIS

Spruel first contends that the trial court erred in entering final judgment without granting him an opportunity to present "oral argument on the pleadings." This contention rests solely on Spruel's conclusory assertion that R & T's motion for final judgment was a motion for summary judgment and that he was therefore entitled to oral argument under KCLCR 56(c)(1).[2]

But R & T's motion was filed in response to the issue of sanctions, which the trial court had expressly reserved in the June 29, 2010, order of contempt. Spruel has not identified anything in R & T's motion suggesting that it was based, either in

[1] See APR 1(b); GR 24; RCW 2.48.170; Jones v. Allstate Ins. Co., 146 Wn.2d 291, 301, 45 P.3d 1068 (2002); Washington State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n, 91 Wn.2d 48, 57, 586 P.2d 870 (1978).

[2] KCLCR 56(c)(1) provides that the court shall decide "all summary judgment motions after oral argument, unless the parties waive argument."

form or in substance, on CR 56. Nor has Spruel made any showing that the trial court applied, or should have applied, the standards governing CR 56 when entering final judgment.

Moreover, oral argument on a motion is not a due process right:

> Due process does not require any particular form or procedure. . . . [It] requires only that a party receive proper notice of proceedings and an opportunity to present [its] position before a competent tribunal.[3]

The record shows that Spruel had a full and fair opportunity to present his arguments and any supporting evidence in response to the motion for contempt and the motion for final judgment. He has therefore failed to demonstrate any error or abuse of discretion in the trial court's entry of final judgment.

Spruel next contends that the trial court erred in calculating the amount of R & T's business loss as $76,466.40. He argues that a formula for remedies in the employment agreement provided for a lesser amount.

But Spruel's employment agreement expressly provided that the enumerated remedies "shall be in addition to any other such remedies available to the Employer hereunder." The trial court has broad discretion to impose sanctions following a finding of contempt.[4] The amount of the judgment does not violate the terms of the employment agreement.

Spruel further asserts that because Safe Haven was able to provide only

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[3] Rivers v. Washington State Conference of Mason Contractors, 145 Wn.2d 674, 697, 41 P.3d 1175 (2002) (internal quotation marks omitted) (alteration in original) (citations omitted).

[4] See In re Marriage of Mathews, 70 Wn. App. 116, 126, 853 P.2d 462 (1993); RCW 7.21.030.

hood, duct, and fan cleaning services, R & T could still provide "an array of fire protection services" to its former clients. Spruel reasons that R & T therefore did not lose that portion of its business.

But Spruel has not identified any evidence in the record supporting this assertion. Moreover, R & T's calculation of lost revenue was based on evidence that Safe Haven had taken over the accounts of R & T's former customers, causing a complete loss of revenue. Spruel has not demonstrated any error in the court's calculation of lost revenue.

Spruel next contends that the trial court erred in entering a preliminary injunction. The trial court has discretion to provide injunctive relief if a party demonstrates that (1) it has a clear legal or equitable right; (2) it has a well grounded fear of immediate invasion of that right; and (3) the acts it complains of are either resulting in or will result in actual and substantial injury.[5] But injunctive relief will generally not be granted when there is "a plain, complete, speedy and adequate remedy at law."[6]

Spruel asserts that because the alleged employment agreement provided an adequate remedy of monetary damages, R & T was not entitled to injunctive relief. Spruel fails, however, to address or even mention that the trial court entered detailed findings of fact and conclusions of law in support of the preliminary injunction. We will treat unchallenged findings of fact as verities on appeal.[7]

Based on unrebutted evidence raising doubts about the extent of Safe

[5] Kucera v. State, Dep't of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000).
[6] Kucera, 140 Wn.2d at 209.
[7] Marriage of Brewer, 137 Wn.2d 756, 766, 976 P.2d 102 (1999).

Haven's compliance with Washington business regulations and its ability to pay any future monetary damages, the court concluded that although R & T had a legal remedy, it was not adequate under the circumstances. The record before the trial court supported this determination.[8] The trial court did not abuse its discretion in entering the preliminary injunction.[9]

Spruel next contends that the trial court should have ordered R & T to produce a client list before entering a preliminary injunction. His reliance on Ed Nowogroski Insurance, Inc. v. Rucker[10] for this proposition is misplaced. The primary issue in Nowogroski involved whether the Uniform Trade Secrets Act, chapter 19.108 RCW, displaced the common law rule that prohibited the use of memorized confidential information to solicit a former employer's business. Although R & T alleged that Safe Haven was using confidential information, the crux of its request for injunctive relief was the defendants' violation of their employment agreements by soliciting or servicing R & T's clients. To the extent it is relevant, Nowogroski supports the enforceability of non-compete agreements.[11]

Spruel generally challenges the validity of some of the evidence that R & T submitted in support of the preliminary injunction, the order of contempt, and the final

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[8] See Cline Piano Co. v. Sherwood, 57 Wash. 239, 241, 106 P. 742 (1910) (injunctive relief appropriate when it is the speedier and more efficacious remedy).
[9] See Alderwood Assocs. v. Washington Envtl. Council, 96 Wn.2d 230, 233, 635 P.2d 108 (1981) (granting of an injunction is within the sound discretion of the trial court).
[10] 88 Wn. App. 350, 944 P.2d 1093 (1997), aff'd, 137 Wn.2d 427, 971 P.2d 936 (1999).
[11] See also Nowogroski, 137 Wn.2d at 437 (even in the absence of enforceable covenant not to compete, former employee remains under duty not to disclose trade secrets acquired in previous employment).

judgment. Among other things, he asserts that the employment agreement that he signed (1) lacks page numbers; (2) has no signature or initials on page 2; (3) lacks a provision on geographical boundaries; (4) contains potentially inconsistent fonts; (5) was not signed by R & T; (6) contains "no independent consideration" introduced after Spruel's termination; and (7) "is unreasonable in many respects."

But Spruel makes no showing that any of these allegations are in any way relevant to the validity of the employment agreement. Nor did he submit any evidence to support his bare allegations that the non-compete provision was added "after employment." Spruel further alleges that R & T's invoices cannot be "authenticated" or "substantiated." But because he provides no citation to the record or meaningful argument to support these allegations, they merit no further consideration.[12]

Finally, Spruel asserts that he did not violate the preliminary injunction because it "protected only clients that [R & T] possessed while [the defendants] were in its employ." But the preliminary injunction expressly enjoined Spruel from providing hood, duct, or fan cleaning work for any customers that R & T had serviced "after June 5, 2007."

Spruel has appended several "exhibits" and a declaration to his opening brief in support of his challenge to the validity of R & T's evidence. With one exception, these documents were not part of the record before the trial court. Those documents that are not part of the record are stricken.[13]

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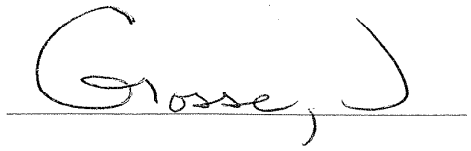
[12] See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989) (appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority).

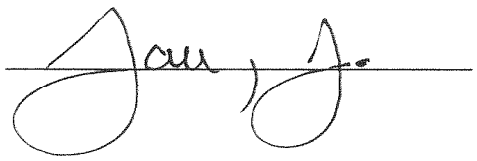
ATTORNEY FEES

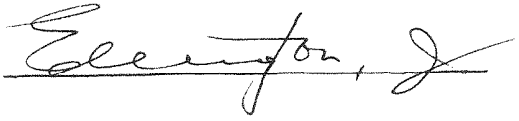
The trial court awarded R & T attorney fees based on a provision in Spruel's employment agreement. R & T's request for attorney fees on appeal is granted, subject to compliance with RAP 18.1(d).

Affirmed.



WE CONCUR:





[13] See RAP 10.3(8).