

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 22, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP161

Cir. Ct. No. 2006CV1454

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

THE PHONE LINE, INC.,

PLAINTIFF-APPELLANT,

V.

RONALD G. VAN HANDEL,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Outagamie County:
MICHAEL W. GAGE, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. The Phone Line, Inc., appeals an order denying its motion for remedial contempt, sanctions and monetary damages against Ronald Van Handel, arising from his alleged violation of an injunction imposed to enforce a noncompete agreement. The Phone Line also challenges the denial of its

request for an extension of the injunction term. We reject Phone Line's arguments and affirm the order.

BACKGROUND

¶2 In April 1996, Van Handel, then a Phone Line employee, entered into a fifteen-month noncompete agreement. Van Handel left his employment with Phone Line on July 24, 2006, and in October 2006, Phone Line filed suit seeking to enjoin Van Handel from competing either directly or indirectly for Phone Line business. Phone Line also sought "a full accounting ... for monies received and materials utilized where [Van Handel] did work on the side and billed directly while employed as a service technician for [Phone Line] and for the dollar amount plus interest that was charged."

¶3 On January 11, 2007, the circuit court entered a default order enjoining Van Handel "from competing with [Phone Line]'s business within a 45 mile radius of the City of Appleton for a period of fifteen months [until April 11, 2008]." The order further provided "[f]or a money judgment based upon the allegations contained in the complaint and that said damages shall be determined at a later date upon proof to the court." On April 29, 2008, eighteen days after the injunction expired, Phone Line moved to hold Van Handel in contempt for violating the injunction, for an additional fifteen-month extension of the injunction and for damages "as a result of his violation." After a hearing, the circuit court denied the motion and this appeal follows.

DISCUSSION

¶4 Phone Line contends the circuit court erroneously exercised its discretion by concluding remedial sanctions were not available after the injunction

expired. As the court recognized, “[a] continuing contempt is required for the imposition of a remedial sanction because remedial sanctions are not designed to punish the contemnor, vindicate the court’s authority, or benefit the public.” *Christensen v. Sullivan*, 2009 WI 87, ¶55, 320 Wis. 2d 76, 768 N.W.2d 798. Rather, the principal objective of a remedial sanction is to force the contemnor into compliance with a court order for the benefit of a private party—here, Phone Line. See *Frisch v. Henrichs*, 2007 WI 102, ¶35, 304 Wis. 2d 1, 736 N.W.2d 85; see also *Griffin v. Reeve*, 141 Wis. 2d 699, 707, 416 N.W.2d 612 (1987) (“The purpose of a remedial sanction ... is to insure present and future compliance.”).

¶5 Citing *Frisch*, Phone Line intimates Van Handel’s contempt should be considered “continuing” despite the injunction’s expiration because timing was an essential element of the injunction order. *Frisch*, however, is distinguishable on its facts. There, in context of postjudgment divorce proceedings, the court found a continuing contempt for Ronald Henrichs’ failure to timely provide copies of his tax returns and income information, as required under a 1995 order. The order provided that Henrichs “by May 12th of every year commencing in 1996 ... as long as [Henrich] has child support obligations ... produce his completed and filed personal and corporate tax returns.” *Frisch*, 304 Wis. 2d 1, ¶46. Henrichs ultimately provided the information in 2003, before the contempt hearing. Henrichs therefore argued the contempt was no longer continuing. *Id.*, ¶¶37-38.

¶6 The *Frisch* court disagreed, holding that Henrichs’ contempt was continuing because his production of documents came too late to undo the problems he had created by failing to timely produce them, and otherwise deprived his ex-wife of her ability to utilize traditional remedies in the law. *Id.*, ¶47. Henrichs, however, was under an ongoing duty to perform certain actions. Conversely, the present case involves an injunction to cease certain actions for a

specific amount of time. Moreover, unlike the *Frisch* plaintiff, Phone Line is not deprived of its ability to utilize traditional remedies in the law. As the circuit court acknowledged, Phone Line can pursue compensatory damages in a separate civil suit for breach of the noncompete agreement.

¶7 Citing *Griffin*, Phone Line nevertheless contends the force of the injunction order does not expire until the order is complied with. Again, *Griffin* is distinguishable on its facts. There, our supreme court held that “contempt is an appropriate means to enforce child support arrears after the child has reached majority.” *Griffin*, 141 Wis.2d at 704. The court noted the divorce statute expressly provides that a support order is enforceable by contempt and WIS. STAT. § 767.305 (1981-82)¹ grants the circuit court broad powers to enforce child support orders through the use of contempt proceedings. *Id.* at 705. The court further concluded:

While the [circuit] court may not modify or terminate the support order after the child reaches majority, the force of the order does not expire until the parent complies. A parent’s failure to pay child support after the child reaches majority is a continuing disobedience of a court order. The contempt is not past; it is ongoing.

Id. at 708. Unlike the present case, *Griffin* involved a continuing obligation to pay accumulated arrearages after the child reached majority. Because Van Handel was under no obligation to refrain from the enjoined actions past the specified injunction period, there is no “continuing contempt.” The circuit court therefore properly denied Phone Line’s request for remedial sanctions.

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶8 Phone Line also argues the circuit court’s denial of its motion for compensatory damages is contrary to language in the default order indicating “damages shall be determined at a later date upon proof to the court.” We are not persuaded. The default order noted that the request for a money judgment was based on allegations contained in the complaint. As noted above, the complaint sought a full accounting for monies received and materials utilized where Van Handel did work on the side and billed directly *while employed* as a service technician for Phone Line and for the dollar amount plus interest that was charged. Phone Line did not timely offer proof of those damages. Rather, it waited until the resultant injunction expired to move for damages as a remedial sanction.² Because Phone Line failed to establish a continuing contempt, the circuit court properly concluded that damages as a remedial sanction were not available after the injunction expired. *See Christensen*, 320 Wis. 2d 76, ¶55.

¶9 Finally, Phone Line argues the circuit court erred by failing to grant an additional fifteen-month extension of the injunction. Whether to grant an injunction is left to the circuit court’s discretion. *Bubolz v. Dane County*, 159 Wis. 2d 284, 296, 464 N.W.2d 67 (Ct. App. 1990). As a preliminary matter, the court acknowledged that restrictive covenants are limited and must withstand close scrutiny. *See generally Heyde Cos. v. Dove Healthcare, LLC*, 2002 WI 131, ¶16, 258 Wis. 2d 28, 654 N.W.2d 830. The court further noted that by virtue of the injunction order, the noncompete agreement had already been extended beyond its original fifteen-month term. The court therefore reasonably concluded Phone Line was not entitled to an additional extension of that term.

² Compensatory damages are a remedial, as opposed to punitive, sanction pursuant to WIS. STAT. § 785.04(1) and (2).

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

