No. 2—10—1263
Order filed March 14, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

GREGORY L. DADY, Individually and as Trustee of the GREGORY L. DADY REVOCABLE TRUST,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellee,	)	
v.	)	No. 10—CH—2638
MICHAEL S. HEALY, Individually and as Trustee of the MICHAEL S. HEALY REVOCABLE TRUST, CHARISE M. SIMMERS, Individually and as Trustee of the CHARISE M. SIMMERS REVOCABLE TRUST, and CHERRY LOGISTICS CORP., an Illinois Corporation,	)	Honorable Michael J. Colwell, Judge, Presiding
Defendants-Appellants.	)	

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: The circuit court erred in entering that portion of preliminary injunction prohibiting termination of shareholder's employment in closely-held corporation where shareholder-employee failed to establish the requirements necessary for issuance of a preliminary injunction. In particular, shareholder did not prove that he had a clearly ascertainable right to continued employment in the company or that irreparable harm will occur in the absence of an injunction.

Following an evidentiary hearing, defendants, Michael S. Healy (Healy), individually and as trustee of the Michael S. Healy Revocable Trust, Charise M. Simmers (Simmers), individually and as trustee of the Charise M. Simmers Revocable Trust, and Cherry Logistics Corp. (Cherry), an Illinois corporation, filed this interlocutory appeal pursuant to Supreme Court Rule 307(a)(1) (Ill. S. Ct. R. 307(a)(1) (eff. February 26, 2010)) seeking reversal of an order of the circuit court of Kane County granting preliminary injunctive relief to plaintiff, Gregory L. Dady (Dady), individually and as trustee of the Gregory L. Dady Revocable Trust. In particular, the circuit court's order prohibited Healy and Simmers from "altering plaintiff's rights and obligations as a shareholder, officer, director, or employee of Cherry Logistics, Inc. [*sic*], including plaintiff's rights to be employed, and to continue receiving compensation and benefits according to the corporation's past practices." Defendants assert that the trial court erred "in granting the preliminary injunction requiring continuing employment of the plaintiff." For the reasons set forth below, we agree with defendants.

I. BACKGROUND

A. History of the Parties' Relationship

Cherry is engaged in the business of providing corporate maintenance services, including landscaping services, window washing, and parking-lot maintenance. Simmers formed Cherry on July 9, 2003, although the record suggests that the corporation was not operationally active at that time. At Cherry's inception, Simmers was the sole shareholder of the corporation, as well as its sole director and its president. Simmers was married to Healy from February 2004 through April 2005.

In the summer of 2004, Healy approached Dady, about going into business together. At that time, Dady was the sole owner of a separate entity known as A-1 Outdoor Maintenance, Inc. (A-1). A-1, which Dady started in 1985, provided snow removal and landscaping services. Ultimately,

Healy and Dady agreed to an informal arrangement under which A-1 would perform and bill for snow plowing work that Healy would solicit and obtain, with any profits or losses to be split evenly. During the men's first year of business together, Healy introduced Dady to Simmers. In 2005, Cherry began providing snow removal services through contractors it hired. Eventually, Healy, Dady, and Simmers came to an agreement by which A-1 became one of the contractors employed by Cherry.

In 2006, Simmers gave up her sole ownership of Cherry. Around that time, Healy, Dady, and Simmers all formed revocable trusts which became the owners of Cherry. The Charise M. Simmers Revocable Trust held 340 shares of Cherry, the Michael S. Healy Revocable Trust held 330 shares of Cherry, and the Gregory L. Dady Revocable Trust held 330 shares of Cherry. In October 2006, Simmers, Healy, and Dady executed the "Cherry Logistics Corp. Buy-Sell and Voting Agreement" (Buy-Sell Agreement). Among other things, the Buy-Sell Agreement provided for a board of directors consisting of three individuals, one each designated by Simmers, Healy, and Dady, it placed restrictions on the transfer of shareholder's shares, and it set forth terms for the buyout of a shareholder upon his or her death or disability.

B. The Instant Litigation

On June 8, 2010, Dady, in his individual capacity and as trustee of the Gregory L. Dady Revocable Trust, filed a complaint for injunctive and other relief in the circuit court of Kane County. The following day, Dady filed a petition for a temporary restraining order. In his complaint, Dady alleged that he, Simmers, and Healy each made equal investments in Cherry "to get the corporation up and running." Dady stated that his initial investment of money was "at all times with the reasonable expectation that [he] would remain fully involved in the management and operations of

[Cherry]." Dady further alleged that in February 2010, Healy offered to purchase the shares of Simmers and Dady for $6.7 million each. Healy informed Dady that upon purchasing Simmers' shares, if Dady did not sell his interest, Healy intended to terminate Dady's employment with Cherry, remove him from the management team, and otherwise completely remove him from Cherry's operations and affairs. The February 2010 offer was never consummated. However, in May 2010, Healy informed Dady that he was purchasing Simmers' shares for $8 million, and also offered to purchase Dady's shares for the same amount. At that time, Healy reiterated that if Dady did not sell his interest in Cherry, Healy intended to completely remove him from Cherry's operations upon purchasing Simmer's shares. Dady categorized both the February 2010 and May 2010 offers as "undervalued, especially in light of new business which is virtually certain to be awarded to [Cherry] in the near future."

Dady's complaint asserts that by making the statements referenced above, Healy "manifested his intent to unlawfully and impermissibly oppress the interests of [Dady] as a shareholder in [Cherry], and deprive [Dady] of his reasonable expectation of continued involvement in the management and affairs of [Cherry]" in violation of section 12.56 of the Illinois Business Corporation Act (Act) (805 ILCS 5/12.56 (West 2010)). The complaint further asserts that Dady has no adequate remedy at law for "the irreparably damaging actions of Healy and their continuing effect." As such, he requested a temporary restraining order, a preliminary injunction, and a permanent injunction prohibiting: (1) Simmers and Healy from consummating the intended purchase of Simmers' shares by Healy and (2) Healy from acting alone or in concert with Simmers from altering Dady's "rights and obligations as a shareholder, officer, and director of [Cherry], including [Dady's] rights to conduct corporate business, to be employed, and to continue receiving

compensation and benefits according to the corporation's past practices." Dady also sought "damages in an amount to be proved at the trial on the merits" and "such other, further, or different relief as to the Court seems just [*sic*]."

On June 11, 2010, a temporary restraining order was entered, barring Healy and Simmers from consummating any stock purchase, but entering and continuing the motion as it pertained to the remainder of Dady's request for injunctive relief. Thereafter, Healy and Simmers sought to modify the temporary restraining order, allowing them to execute an agreement for Healy to purchase Simmers' shares so that Healy could obtain financing for the transaction. Although the trial court granted the request, the record indicates that Healy's intended purchase of Simmers' shares was never consummated. On August 13, 2010, the trial court denied without prejudice Dady's petition for a temporary restraining order with regards to his "employment status" with Cherry.

On October 4, 2010, Healy and Simmers terminated Dady's employment with Cherry. On October 7, 2010, plaintiff filed a renewed petition for a temporary restraining order, again invoking section 12.56 of the Act, alleging that Healy and Simmers had "combined their majority shareholder power to oppress Dady's interest by terminating his employment without cause *** in direct contravention of Dady's reasonable expectations as a shareholder of Cherry." The renewed petition was granted on October 13, 2010. The order set aside the termination of Dady's employment with Cherry and restored his employment with the company. The order also temporarily enjoined Healy and Simmers from altering Dady's rights and obligations as a shareholder, officer, and director of Cherry. The matter was continued for a preliminary injunction hearing which took place over two dates in mid-November 2010.

C. The Preliminary Injunction Hearing

1. Dady's Testimony

Dady testified that his role in Cherry is to find and create relationships with the subcontractors hired by the company. Dady stated that during the first year of his involvement with Cherry, he contributed between $120,000 and $140,000 as operating funds to get Cherry "up and running." Dady obtained a portion of these funds by refinancing his home ($94,000 to $96,000) and the rest by dipping into his savings. According to Dady, he would not have contributed this money if he did not think that he would be employed by Cherry and remain involved in the management of the company. Dady testified that his share of Cherry's income as reflected on forms K-1 was $63,933 for the 2006 calendar year, $352,765 for 2007, $1,129,609 for 2008, and $1,074,272 for 2009. Dady also received a salary from Cherry beginning in 2006 as reflected on his forms W-2 from the company. Dady earned $114,230 in 2006, $146,100 in 2007, $216,899 in 2008, and $260,129 in 2009.

Dady testified that while working for Cherry he continued to work for A-1. Dady explained that he would arrive at A-1 at 6 a.m. and leave between 8 and 8:30 a.m. He would then go to Cherry, where he would remain throughout the business day. Dady would return to A-1 at the end of the business day if needed. Dady related that because he was not involved in A-1 to the extent he would have been had he not also been working for Cherry, A-1 was not doing well financially during this time. In fact, Dady testified that it was necessary for him to contribute money to A-1 to keep the business going. Dady's forms W-2 from A-1 reflect wages of $39,000 in 2005 and $9,750 in 2006. Dady did not earn any wages from A-1 in 2007, 2008, or 2009.

Dady testified that in February 2006, his brother Jeff started working for Cherry. In 2007, Cherry disciplined Jeff because of actions he took on behalf of A-1, while A-1 was still a contractor

for Cherry, which caused A-1 to bill Cherry for services for which Jeff believed that A-1 had not been compensated. An audit revealed, however, that Cherry had overpaid A-1, and A-1 refunded approximately $10,000 to Cherry. Dady testified that he was unaware of Jeff's having caused A-1 to overbill Cherry. Jeff was terminated from Cherry in March 2009.

Dady recounted that after he began working for Cherry, Healy was "jealous" that he also owned another business, and Healy repeatedly voiced his opinion that Dady should divest himself of A-1. Dady eventually agreed to do so, and on October 1, 2009, he sold the company to Jeff for $100,000. The purchase price was to be paid in monthly installments of $500, ending in 2027. Dady acknowledged that because of the "financial times," he has yet to receive any money from Jeff for A-1. According to Dady, he has not had any involvement with A-1 since October 2009. He stated that he would not have given up his interest in A-1 had he not expected to remain employed by Cherry.

Dady testified that in February 2010, Healy approached him seeking to buy out his interest in Cherry for $6.7 million. Dady testified that Healy made a similar offer to Simmers. Dady stated that Healy was "bound and determined" to buy both parties' shares, but indicated that if he only bought Simmers' shares, he would fire Dady. Dady rejected Healy's offer. Dady testified that in May 2010, Healy approached him with a verbal buyout proposal for $8 million. Healy again told Dady that if he did not sell, he intended to fire him. Dady told Healy to put the offer in writing and that he would consider it. According to Dady, Healy never took any further action, and, in any event, he would not have been willing to sell his interest in Cherry at the $8 million price.

Dady recounted that beginning in March 2006, he began receiving sexually explicit materials from Simmers. Dady testified that at no time during his involvement with Cherry did he do anything

to encourage Simmers to send him these types of communications. Dady also stated that he did not respond to these communications, he did not welcome them, and that the communications made him feel uncomfortable. Dady also recalled times when Simmers made physical advances toward him, which, he indicated, he did not reciprocate.

On cross-examination, Dady acknowledged that, except as per the terms of the Buy-Sell Agreement, he could be a shareholder of Cherry for as long as he wanted. Dady also stated that it was his understanding that he would be an employee of Cherry for life. Dady related that this expectation arose in 2005, before he became a shareholder of Cherry, when details were worked out regarding his employment with the company. Dady admitted that his $120,000 to $140,000 "contribution" to Cherry was actually a loan for which he was paid back in full plus interest. Dady also admitted that he did not pay anything for his shares of stock in Cherry.

Dady further testified on cross-examination that section 2.3 of the Buy-Sell Agreement provides that notwithstanding any other provision or rule of law to the contrary, "all" decisions of the company, including but not limited to each matter submitted to a vote at the meeting of the shareholders, shall be made upon approval of the shareholders owning 51 percent of the company's outstanding shareholders' shares. Dady admitted that he was not aware of any provision of the Buy-Sell Agreement that would make section 2.3 inapplicable to decisions relating to his employment with Cherry or the employment of Healy or Simmers. Dady also stated that while section 2.1 of the Buy-Sell Agreement allows him to designate an individual to serve on Cherry's board of directors, there is no provision in the agreement that would require Cherry to maintain his employment with the company. Daley further testified that it was his understanding that the termination of his employment with Cherry would not alter his status as a shareholder, his right to vote his shares of

Cherry, or his right to receive dividends from Cherry. In addition, Dady testified that no one told him that there would be a change in the dividends distributed to him if he was not an employee.

Dady acknowledged that there were disagreements and "raised voices" between him and Healy. Dady testified to a mistake one snow season with contractors plowing for a national chain of pharmacies. Dady failed to communicate to the contractors that the terms with the chain called for plowing, and permitted billing, only when there were two inches or more of snow on the ground. As a result, contractors plowed pharmacy locations, and Cherry billed the chain for plowing, when there was less than two inches of snow on the ground. Cherry had to reimburse almost $7,000 to the chain. Other issues with Dady's work with contractors involved instances with two contractors who felt they had not been fully paid and who threatened to lien Cherry's clients. Healy stepped in and resolved the issues so that the contractors did not file the liens. In addition, in March 2009, after Jeff's employment with Cherry was terminated, Jeff solicited a Cherry account which he had serviced. Jeff gave the account Dady's A-1 post office box as his address. Dady testified that he did not find out about Jeff's actions until he was informed by Healy.

2. Healy's Testimony

Healy testified that the idea to form Cherry was a "combined effort" between him and Simmers. Healy was responsible for soliciting major accounts, marketing, supervising marketing personnel, negotiations, and setting terms of contracts with accounts, as well as development of new business areas such as salt brokering, insurance, meteorology, and factoring, *i.e.*, financing contractors' receivables. Healy testified that after he began soliciting businesses regarding snow removal, he began searching for contractors to fulfill the snow-removal obligations. Among the

contractors he met was Dady. Healy testified that he approached Dady at A-1 because he (Healy) had little snow plow experience and Dady had 20 years of experience in the field.

Healy testified that Cherry's three shareholders (himself, Dady, and Simmers) agreed to have the Buy-Sell Agreement prepared by an attorney. Healy testified that the purpose of the Buy-Sell Agreement was to have a written document to protect the interests of the corporation. Healy added that all three shareholders had "input" regarding the terms of the Buy-Sell Agreement. Healy testified that under the terms of the Buy-Sell Agreement, it was his understanding that as long as he performed his duties and functions to the best of his abilities, he would remain an employee of Cherry. However, he understood that he could be terminated if he did not perform his duties as an employee for Cherry.

Healy testified that between 2006 and late 2008, there were a series of issues due to Dady's failure to ensure that the contractors were satisfied in payment and that there were a series of instances in which the contractors were having "issues" with Dady. For instance, Healy testified that he became involved in a dispute with a landscaping contractor who threatened to place liens against some of Cherry's customers because Dady did not resolve the matter.

Healy testified that in February 2010, he made an offer to buy shares of stock from both Simmers and Dady. Healy stated that although he eventually reached an agreement to buy Simmers' shares in May 2010, he did not reach an agreement to buy Dady's shares because Dady was asking for "way more than the value" of the stock.

Healy testified that Dady was terminated on October 4, 2010. Healy stated that the reason for Dady's termination was "[f]ailure to disclose information" that resulted in harm to Cherry. In particular, Healy related that Dady told him that a couple of contractors felt as if they were being

"strong armed" into buying salt from Cherry. Healy asked Dady to identify the contractors, but Dady refused, stating that he wanted to see "how it plays out." Healy stated that Dady's refusal to provide the information "affected [Cherry's] relationships with contractors, and it reflected a possible conflict of interest with the vendors buying salt from Cherry." Healy testified that he discussed the situation with Simmers, and she agreed with the decision to terminate Dady's employment. Healy testified that at a meeting held on October 4, 2010, he informed Dady that he was being terminated because he failed to disclose information that Healy felt was "relative and pertinent in the well-being of the company, that he was keeping information that [Healy] considered a secret." Healy testified that he never told Dady that his rights as a shareholder were being terminated or that he was going to reduce the dividend distributed to shareholders.

Healy testified that following Dady's termination, staff morale was "unaffected" and that business continued as ususal. Healy added that several individuals assumed Dady's responsibilities at Cherry. Healy further testified that since Dady was ordered to return to work for Cherry, his presence in he office has been "harmful" in that there is a lot of tension in the office.

On cross-examination, Healy acknowledged that the termination letter given to Dady did not state anything about Dady's refusal to name the contractors who alleged that they were being "strong-armed." Healy also related that he has wanted to terminate Dady for a long time because he felt that some of Dady's actions have caused harm to Cherry. Healy also believed that Dady has held Cherry back from growing the company in new directions.

3. Simmers' Testimony

Simmers was responsible for Cherry's finances, accounting, insurance, and administrative matters. Simmers testified that she expected to remain employed by Cherry unless she made a major

mistake, caused a loss of money, stole from the company, or did something deliberately to harm the company, among other things. Simmers testified that at its early stages, Cherry was financed using her credit cards and funds from her retirement account. Simmers estimated that Cherry's gross billings in 2009 totaled roughly $14 million.

Simmers testified that no board action has been taken to remove Dady as an officer. Simmers also stated that Dady was never told that once his employment is terminated he would be unable to vote his shares to influence any decisions in Cherry. She further stated that Dady was never told that once he was no longer employed by the company he would not be entitled to dividends. Simmers related also that there are no plans to eliminate dividends.

Simmers testified that it was Dady's responsibility to inform contractors of the two-inch trigger with respect to the pharmacy properties. Simmers stated that Dady did not accept responsibility for the failure to communicate the trigger to the contractors. Simmers testified with respect to the pharmacy overbilling that problems such as that affect the customer's trust level with Cherry. She also stated that it affected her ability to be confident that Dady would correctly communicate job parameters to the contractors.

Simmers testified that whatever happened personally between her and Dady, it did not influence her decision whether to terminate Dady's employment. Simmers testified that she thought "on and off for a few years" about terminating Dady's employment. She stated that she never acted earlier because she felt sorry for Dady and she did not want to be involved in litigation. Ultimately, Simmers believed that it was best to terminate Dady's employment in order to protect and foster the growth and success of Cherry and the value of her interest in the company. Simmers testified that

as of October 2010, Healy was still working on financing to consummate his purchase of her shares of Cherry.

D. Trial Court's Ruling

On November 18, 2010, following closing arguments, the trial court granted the preliminary injunction, making the following observations:

> "Initially I would say that as far as Cherry Logistics is concerned, *** Healy is clearly the brains of the operation. He came up with the business plan, he implemented the business plan, he continues to come up with ideas to further the interests of Cherry Logistics, and he knows what he's doing in that regard, and he's very aggressive in that regard.
>
> Charise Simmers contributed a great deal of labor and effort and she testified about impoverishing herself in order to keep the company going, so she has made a major contribution to the company.
>
> Mr. Dady mortgaged his house and made a loan to the company, which has admittedly been repaid. Of the three partners, I would make the further observation that Mr. Dady would appear, to me, to be for the company the people person. I would say if I was dealing with somebody in a–who to hire to plow my driveway, I would rather talk to Mr. Dady that I would to Mr. Healy. That's just my observation.
>
> With respect to whether there's been oppression here [under section 12.56(a)(3) of the Act (805 ILCS 5/12.56(a)(3) (West 2010))], I think we have to take into account a couple things. The first of those is that Mr. Dady knew the snowplowing business. That's why Mr. Healy, who dreamed up the excellent business plan, sought him out. And he got the

information he needed from him. He learned about the business. He made him a partner so that he could continue to use that information.

And then as the business grew, I think in Mr. Healy's mind he became less important to the operation because he really knew the business which he had learned from Mr. Dady.

The very unusual relationship between his partners, a couple of them have been married, a couple of them–I don't know what exactly the relationship has been–has some kind of an impact on the goings-on here. It's a little unclear to the Court.

I frankly find Mr. Healy not to be a credible witness. I think he sort of has outsmarted himself. And he's all of the things I've indicated, brilliant businessman, knows how to formulate a plan, knows how to implement it, he's creative, he comes up with good ideas. But sometimes arrogance and a feeling that you are so superior that you are invincible kind of gets in the way of good sense, and I think that's what's happened here.

The testimony about Mr. Dady's failings with this company, the items brought to my attention through the testimony are *de minimis*. *** [H]ow does–$14 million in the last billing season and we're talking about, I don't know, $10,000 in total of a problem? It seems to me that that's *de minimis* in this particular business.

Then applying all the testimony that I've heard to the case, I can't forget the language that I read ***, what were the reasonable expectations [under section 12.56(d) of the Act (805 ILCS 5/12.56(d) (West 2010))]?

I think it's clear from the testimony of all three of these people, they expected to be employed, they expected to draw their salary, and I think that based on this record, the arguments I've heard, that Mr. Dady should continue."

The trial court then entered a written order which provided in relevant part that, for the reasons stated in open court, Healy and Simmers were prohibited from "altering plaintiff's rights and obligations as a shareholder, officer, director, or employee of Cherry Logistics, Inc. [*sic*], including plaintiff's rights to be employed, and to continue receiving compensation and benefits according to the corporation's past practices." Defendants thereafter instituted the present appeal.

II. ANALYSIS

On appeal, defendants argue that the trial court erred in granting a preliminary injunction requiring Dady's continued employment with Cherry on the basis that Dady had an expectation of continued employment and that his failings in performance were *de minimis*. The issuance of a preliminary injunction is an extreme remedy that should be used only when an emergency exists and serious harm would ensue if the injunction were not issued. *Bollweg v. Richard Marker Associates, Inc.*, 353 Ill. App. 3d 560, 572 (2004). The purpose of a preliminary injunction is not to determine any controverted rights or to decide the merits of the case. *Village of Westmont v. Lenihan*, 301 Ill. App. 3d 1050, 1055 (1998). Rather, it is to preserve the *status quo* pending a decision on the merits. *Ziller v. Rossi*, 395 Ill. App. 3d 130, 139 (2009). The party moving for a preliminary injunctive relief must show: (1) a clearly ascertainable right in need of protection; (2) irreparable harm will occur in the absence of an injunction; (3) no adequate remedy at law; and (4) a substantial likelihood of success on the merits. *Ford Motor Credit Co. v. Cornfield*, 395 Ill. App. 3d 896, 903 (2009). In addition, the trial court must consider whether the balance of hardships to the parties supports granting a preliminary injunction. *Bollweg*, 353 Ill. App. 3d at 572.

"The party seeking injunctive relief does not carry the same burden of proof that is required to prevail on the ultimate issue." *Ziller*, 395 Ill. App. 3d at 139. Rather, the moving party must

make a *prima facie* showing that there is a fair question about the existence of the claimed right and that the circumstances lead to a reasonable belief that the movant will be entitled to the relief sought. *Bollweg*, 353 Ill. App. 3d at 572. Generally, the trial court's decision to grant or deny preliminary injunctive relief is reviewed for an abuse of discretion. *Ford Motor Credit Co.*, 395 Ill. App. 3d at 903. However, if the trial court rules on a preliminary injunction without making any findings as to factual issues, we review the decision of the trial court *de novo*. *Hensely Construction, LLC v. Pulte Home Corp.*, 399 Ill. App. 3d 184, 190 (2010).

As a preliminary matter, we note that in their notice of interlocutory appeal, defendants indicate that they are challenging the order entered November 18, 2010, granting Dady's petition for preliminary injunction against defendants. However, in their brief before this court, defendants do not challenge those portions of the preliminary injunction prohibiting Healy and Simmers from altering Dady's rights and obligations as a shareholder, officer, or director of Cherry. Instead, defendants simply challenge that portion of the preliminary injunction requiring Dady's continued employment with Cherry on the basis that Dady failed to establish any of the prerequisites for such relief. Accordingly, we confine our analysis to the narrow issue of whether the trial court erred in issuing that portion of the preliminary injunction requiring Cherry to continue Dady's employment.

A. Ascertainable Right

Initially, defendants argue that the trial court erred in entering the preliminary injunction because Dady has no clearly ascertainable right to continued employment with Cherry. In support of this position, defendants assert that there is no employment agreement between Cherry and Dady and the Buy-Sell Agreement does not require any of the shareholders to be continually employed by the company. Defendants also assert that the termination of the employment of a shareholder in a

closely held corporation does not, of itself, constitute oppressive conduct as that term is used in section 12.56 of the Act (805 ILCS 5/12.56 (West 2010)). Plaintiff counters that he has the right to be free from oppression and to have his reasonable expectations as a shareholder of Cherry respected pending an order of final relief. Plaintiff adds that his reasonable expectations are not merely a job with Cherry and a salary, but day-to-day participation in the operations, management, and affairs of Cherry.

In issuing the preliminary injunction the trial court focused on section 12. 56 of the Act (805 ILCS 5/12.56 (West 2010)), which provides shareholder remedies for, *inter alia*, oppressive conduct. Specifically, section 12.56(a) provides in relevant part:

> "(a) In an action by a shareholder in a corporation that [is not publicly traded] ***, the Circuit Court may order one or more of the remedies listed in subsection (b) if it is established that:
>
> (1) The directors are deadlocked ***; or
>
> (2) The shareholders are deadlocked ***; or
>
> (3) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent with respect to the petitioning shareholder whether in his or her capacity as a shareholder, director, or officer; or
>
> (4) The corporation assets are being misapplied or wasted." 805 ILCS 5/12.56(a) (West 2010).

The statute then lists 12 remedies the court may impose in an action commenced pursuant to section 12.56(a). See 805 ILCS 5/12.56(b) (West 2010). Subsection (d) of the statute provides that, "[i]n

determining the appropriate relief to order ***, the court may take into consideration the reasonable expectations of the corporation's shareholders as they existed at the time the corporation was formed and developed during the course of the shareholders' relationship with the corporation and with each other." 805 ILCS 5/12.56(d) (West 2010).

In their briefs, the parties reference various cases regarding what constitutes oppressive conduct. However, we find that section 12.56 is not applicable as to whether Dady is entitled to a preliminary injunction with respect to his continued employment with Cherry. The issue is one of statutory construction, the cardinal rule of which is to ascertain and give effect to the intent of the legislature. *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 120 (2010). The best indication of that intent is the plain language of the statute itself. *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 120 (2010). Where the language of the statute is clear and unambiguous, a court must give it effect without resort to other aids of statutory construction. *City of Chicago v. St. John's United Church of Christ*, 404 Ill. App. 3d 505, 518 (2010).

The language of section 12.56 is clear. To invoke the provisions of section 12.56, the shareholder bringing suit must establish one of the elements set forth in section (a)(1) through (a)(4) of the Act (805 ILCS 5/12.56(a)(1) through (a)(4) (West 2010)). In this case, there was no allegation by Dady that the directors are deadlocked, that the shareholders are deadlocked, or that the corporation assets are being misapplied or wasted. See 805 ILCS 5/12.56(a)(1), (a)(2), (a)(4) (West 2010). Rather, Dady premised his action on section 12.56(a)(3) of the Act (805 ILCS 5/12.56(a)(3) (West 2010)). That provision specifically states that the remedies set forth in section 12.56 of the Act are available to a shareholder who establishes that "[t]he directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent

with respect to the petitioning shareholder *whether in his or her capacity as a shareholder, director, or officer*." (Emphasis added.) 805 ILCS 5/12.56(a)(3) (West 2010). Notably, this provision does not apply with respect to the petitioning shareholder's capacity as an *employee*, and we do not interpret defendants, in this appeal, to be challenging the injunction to the extent that it involves Dady's role as a shareholder, director, or officer of Cherry. Compare 805 ILCS 5/12.56(a)(3) (West 2010) with 15 Pa. Cons. Stat. §1767(a)(2) (West 2010) (providing for the appointment of a custodian of a closely held corporation where "the directors or those in control of the corporation have acted illegally, oppressively or fraudulently toward one or more holders or owners of 5% or more of the outstanding shares of any class of the corporation in their capacities as shareholders, directors, officers *or employees*" (emphasis added)); Minn. Stat. Ann. §302A.751(b)(2), (3) (West 2010) (allowing appropriate relief including dissolution of a corporation in an action by a shareholder where it is established that the directors or those in control of the corporation have acted fraudulently, illegally, or unfairly prejudicially "toward one or more shareholders in their capacities as shareholders or directors," or as "officers or *employees* of a closely held corporation" (emphasis added)); N.D. Cent. Code Ann. §10–19.1–115(b)(2), (3) (West 2010) (same). The legislature's decision not to reference in section 12.56(a)(3) a shareholder's capacity as an employer is telling. Indeed, Dady admittedly cites no case holding that termination of the employment of a shareholder in a closely held corporation, of itself, constitutes oppressive conduct under section 12.56(a)(3) of the Act. We also point out that, by its own terms, section 12.56(d) of the Act (805 ILCS 5/12.56(d) (West 2010)), which the trial court also relied upon in making its decision, is only applicable in determining "appropriate relief," not in determining whether the conduct of those in control warrants

any relief in the first instance. As such, we find section 12.56 inapplicable in determining whether Dady has a clearly ascertainable right to continued employment with Cherry.

Further, we do not find any right to a shareholder's continued employment with Cherry in the Buy-Sell Agreement executed by the parties. By its own terms, the principal purposes of the Buy-Sell Agreement is to "establish[] the size and composition of [Cherry's] Board of Directors, establish[] a voting agreement, assur[e] continuity in the management and ownership of [Cherry] and limit[] the manner and terms by which [Cherry's] stock may be transferred." There is no provision in the Buy-Sell Agreement that ensures a shareholder's employment with Cherry for life. Moreover, the only provision of the Buy-Sell Agreement which discusses the termination of the employment of a shareholder of Cherry is section 8. In particular, section 8.1 of the Buy-Sell Agreement defines "Total Disability." Section 8.2 then states that the "Total Disability of a Shareholder" terminates "all management authority and all rights as a director, officer, manager, supervisor, employee, agent or otherwise of the Company." Similarly, section 8.3 states that upon death of a shareholder whose life is not insured, the deceased shareholder "shall forfeit all management authority and all rights as a director, officer, manager, employee, agent or otherwise of the Company." However, no provision of the Buy-Sell Agreement states that a shareholder's employment may not be terminated for any other reason. Indeed, as noted above, the parties agreed in section 2.3 of the Buy-Sell Agreement that "all" of Cherry's decisions "shall be made upon the approval of the Shareholders owning fifty-one percent (51%) of the Company's outstanding Shareholder shares." There is no exception for matters related to the employment of shareholders.

In addition, we find no other ground upon which Dady can claim an ascertainable right to continued employment with Cherry. Absent contractual or statutory provisions, an employer may

discharge an employee without cause. *Kurle v. Evangelical Hospital Ass'n*, 89 Ill. App. 3d 45, 52 (1980). As defendants emphasize, there is no employment agreement between Dady and Cherry, there is no agreement among Dady, Healy, and Simmers for any of them to be employed by Cherry, and there is no agreement among the three shareholder trusts for Dady to be employed by Cherry. See *Kilhafner v. Harshbarger*, 245 Ill. App. 3d 227, 229 (1993) (holding that terminated employee was not entitled to a preliminary injunction reinstating her salary and benefits because she was an at-will employee and thus had no recognized right to her job). Furthermore, Dady offered no evidence to suggest that the termination of his employment was illegal or fraudulent. For these reasons, we conclude that Dady has failed to establish a fair question that he had an ascertainable right to continued employment with Cherry, and that, the trial court therefore erred in issuing that portion of the preliminary injunction imposing such relief.

B. Irreparable Harm

Defendants also insist that Dady failed to demonstrate that he will suffer irreparable harm without a preliminary injunction requiring his continued employment with Cherry. In this regard, defendants assert that there is no evidence that Dady's continued employment was necessary to assure Cherry's future success and profitability. Dady counters, however, that his termination will deprive him of "the unique benefits of hands-on, day-to-day involvement and physical presence at an enterprise of which [he] is a one-third owner."

We agree that the Dady has failed to show irreparable harm will result if he is not allowed to continue his employment with Cherry. There is no evidence that Cherry will be less profitable in Dady's absence or that his presence was required to operate Cherry. See *In re Marriage of Weber*, 182 Ill. App. 3d 212, 220 (1989) (finding that the threat of lost sales is sufficient proof of irreparable

harm). Indeed, the trial court never expressly found that irreparable harm would result in the absence of Dady's continued employment with Cherry. As such, we find that Dady has failed to establish irreparable harm with respect to his employment.

In his brief, Dady discusses his role as an officer for Cherry. He suggests that absent his continued employment with Cherry, he will be unable to carry out the managerial and executive functions as an officer. We reject this claim. Although Dady did testify at trial that he was an officer of Cherry, there was no evidence regarding what office he held or what role, duties, or functions he supposedly formed in his role as an officer. Having found that Dady failed to establish at least two of the prerequisites for issuance of a preliminary injunction, we need not address the remaining prerequisites.

III. CONCLUSION

In sum, we reverse that portion of the preliminary injunction requiring Dady's continued employment with Cherry, and any employment-related compensation and benefits, because Dady failed to establish either that he had a clearly ascertainable right to continued employment in the company or that irreparable harm will occur in the absence of an injunction. Since defendants do not challenge those portions of the preliminary injunction prohibiting Healy and Simmers from altering Dady's rights and obligations as a shareholder, officer, or director of Cherry, those provisions, including any compensation or benefits related to those roles, remain in effect. We note additionally that our resolution of this interlocutory appeal is not intended to express any opinion as to the ultimate resolution of the underlying case.

Affirmed in part and reversed in part.