2014 IL App (3d) 130937-U

Order filed August 7, 2014

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2014

DAVID KINDRED INTEGRATED MEDICINE, P.C.,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-13-0937
v.	)	Circuit No. 13-CH-382
	)	
SHAWN SNIDER, REJUV PEORIA, P.C. and INTEGRATIVE MEDICAL INNOVATIONS, INC.,	)	Honorable Michael E. Brandt,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice Schmidt specially concurred.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion by imposing a preliminary injunction against defendant for violating the noncompete clause in the parties' agreement to sell defendant's business to plaintiff.

¶ 2 Defendant-appellant, Shawn Snider, operated an integrative medicine business that provided services to patients in Illinois. He sold that business, along with its list of patients, to plaintiff, David Kindred Integrated Medicine, P.C. The agreement governing the sale of the

business included a noncompete clause, which prohibited defendant from providing integrative medical services within 30 miles of Bloomington and Peoria. After the sale of the business, defendant moved to California. He began offering integrated medical services over the Internet to patients in Bloomington and Peoria. Plaintiff moved for a preliminary injunction to enjoin defendant from violating the noncompete agreement. The court entered the injunction. Defendant filed a motion to dissolve the preliminary injunction, which the court denied. Defendant appeals, arguing that the trial court abused its discretion by imposing the injunction because defendant did not violate the noncompete clause. We affirm.

¶ 3 FACTS

¶ 4 Defendant was a nurse practitioner and director of Rejuv Peoria, P.C. (Rejuv), which provided "integrative medicine services" to patients in Illinois. Plaintiff was likewise in the business of providing integrative medicine services in and around Bloomington and Peoria, Illinois. On April 11, 2013, plaintiff and Rejuv entered into an agreement titled "Asset Purchase Agreement" (Agreement), under which plaintiff purchased Rejuv's patient lists and patient records, except those patients who requested that their records be returned to them or transferred to another clinic. The Agreement also gave plaintiff the goodwill of Rejuv's business, along with the books, files, marketing data, and any creative and promotional materials.

¶ 5 The Agreement contained a noncompete clause, prohibiting defendant from providing "integrative medical, prescriptive, health and wellness service to patients" within 30 miles of Peoria or Bloomington for three years.

¶ 6 After executing the Agreement, defendant temporarily worked for plaintiff and treated patients with plaintiff's consent until August 2013. In August 2013, defendant moved to California and began practicing integrative medicine at an entity called Advanced Center for

Integrative Medicine (ACI). On August 1, 2013, defendant sent a letter to the former patients of Rejuv, stating:

> "I will be moving my physical office to a new location in Woodland Hills, California.
>
> In my new location, I will be joining an outstanding group of healthcare professionals. I value you as a patient, and I hope to continue meeting your healthcare needs. I realize that change can be difficult but my new staff and I hope to make the transition as smooth as possible for you. See the box below for details regarding our new location, including address, phone number, and website which contains instructions on how to continue care remotely.
>
> It has been a pleasure working with you and I look forward to continuing services with you through my new location."

¶ 7 The ACI web site stated that it was providing "[a] much more affordable and convenient model for you to continue with the provider who established the protocols and built the business you have grown to trust." The web site offered "to schedule a blood draw in your location" and stated that defendant could meet with patients "in person, at your location." In addition, it stated, "Please continue to check the website for the next seminar in your area. We invite you to join us for a relaxing night out for such visits. We want to maintain continuity of care and ask that you call us at your earliest convenience."

¶ 8 On August 30, 2013, plaintiff discovered that defendant had switched control of plaintiff's data account line to defendant and locked plaintiff out of access to its phone and e-mail systems. On September 1, 2013, an associate of defendant entered plaintiff's Bloomington location and changed the locks, preventing plaintiff from accessing its business.

¶ 9 On September 4, 2013, plaintiff filed a petition for a temporary restraining order against

defendant, seeking to enjoin him from disclosing trade secrets, intervening with plaintiff's business operations, or violating the noncompete clause. The court granted the petition.

¶ 10 Plaintiff subsequently filed a complaint against defendant, Rejuv, and Integrative Medical Innovations, Inc. for, among other things, violation of the noncompete clause. Attached to the complaint was a motion for preliminary injunction. The motion incorporated the contents of the petition for a temporary restraining order. In addition, the motion alleged that defendant was violating the temporary restraining order by continuing to contact patients of the plaintiff. The court granted the preliminary injunction. Defendant filed a motion to dissolve the preliminary injunction, which the trial court denied. Defendant appeals.

¶ 11 ANALYSIS

¶ 12 Defendant argues that the trial court erred in granting plaintiff's motion for a preliminary injunction and denying defendant's motion to dissolve that preliminary injunction. The focus of defendant's arguments is that providing services remotely from California to patients located within 30 miles of Bloomington and Peoria did not violate the noncompete clause.

¶ 13 A preliminary injunction is intended to preserve the status quo pending a decision on the merits of the case. *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164 (2002). A preliminary injunction is an extreme remedy that should be employed only in situations when an emergency exists and serious harm would result if the injunction is not issued. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry. Co.*, 195 Ill. 2d 356 (2001). To obtain a preliminary injunction, the moving party must show: (1) a clearly ascertained right in need of protection; (2) irreparable injury in the absence of an injunction; (3) no adequate remedy at law; and (4) a likelihood of success on the merits of the case. *Mohanty v. St. John Heart Clinic, S.C.*,

225 Ill. 2d 52 (2006). The party seeking a preliminary injunction must raise a fair question as to the existence of each element. *Klaeren*, 202 Ill. 2d 164.

¶ 14 I

¶ 15 The parties disagree about the applicable standard of review to be applied on appeal. Plaintiff argues that the trial court's decision to impose the preliminary injunction should be reviewed for an abuse of discretion, which is the standard generally applied on review of preliminary injunctions. See, *e.g.*, *Klaeren*, 202 Ill. 2d 164. Defendant argues that whether the noncompete clause is enforceable is a question of law and therefore *de novo* review should apply.

¶ 16 Defendant is correct that, were this case to come up for review after the trial court had the opportunity to engage in factfinding at trial, the enforceability of the noncompete clause would be an issue of law amenable to *de novo* review. See *Mohanty*, 225 Ill. 2d 52. However, we are not asked to review merely the enforceability of the noncompete clause but rather the trial court's ultimate decision to impose a preliminary injunction. Therefore, our review is for an abuse of discretion.

¶ 17 II

¶ 18 A. Irreparable Injury in the Absence of an Injunction

¶ 19 In the present case, the harm to plaintiff from defendant's violation of the noncompete agreement is obvious: the loss of patients for plaintiff's medical business. "The loss of customers and sales and the threat of continuation of such losses to a legitimate business interest *** is sufficient to show that plaintiff will suffer irreparable injury unless protected." *Gold v. Ziff Communications Co.*, 196 Ill. App. 3d 425, 434 (1989). Plaintiff raised a fair question that it would suffer irreparable injury absent a preliminary injunction.

¶ 20 B. No Adequate Remedy at Law

¶ 21 Defendant makes no argument on appeal that an adequate remedy other than an injunction was available to plaintiff. Instead, defendant argues that plaintiff failed to allege specific facts at trial that would establish the absence of an adequate remedy at law.

¶ 22 A preliminary injunction should not be granted where damages caused by the alteration of the status quo pending a final decision on the merits can be compensated adequately by calculable monetary damages. *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941 (2001). In the present case, monetary damages could not compensate plaintiff for the potential loss of patients and competitive position threatened by defendant's conduct. See *Agrimerica, Inc. v. Mathes*, 170 Ill. App. 3d 1025 (1988). The risk to plaintiff was not merely the loss of income, but the loss of long-term patients and goodwill of the business. Those losses cannot be adequately compensated by calculable damages. Plaintiff made a fair showing that there was no adequate remedy available at law.

¶ 23 C. Likelihood of Success on the Merits

¶ 24 Defendant argues that plaintiff was not likely to succeed on the merits because (1) the noncompete clause was unenforceable, and (2) defendant's actions did not violate the noncompete clause. We disagree and conclude that plaintiff was likely to succeed on the merits.

¶ 25 The noncompete clause was reasonable and enforceable. We find the present situation similar to that at issue in *Health Professionals, Ltd. v. Johnson*, 339 Ill. App. 3d 1021 (2003). In that case, the court drew a distinction between noncompete clauses contained in employment contracts and those contained in agreements ancillary to the sale of a business. As to the latter, the court explained, "A noncompetition agreement ancillary to the sale of a business protects the goodwill purchased by the buyer, ensuring that 'the former owner will not walk away from the

sale with the company's customers and good will, leaving the buyer with an acquisition that turns out only to be chimerical.' " *Id.* at 1031 (quoting *Central Water Works Supply, Inc. v. Fisher*, 240 Ill. App. 3d 952, 957 (1993)). The protection described in *Health Professionals* was the reason for the noncompete clause in the present case; it was reasonable and, considering defendant's actions after the sale, sagacious.

¶ 26 We also find that defendant's actions violated the noncompete clause. The noncompete clause mandated that for three years following the Agreement, defendant would not:

> "directly or indirectly, own, operate or otherwise engage in any business that provides integrative medical, prescriptive, health and wellness service to patients relating primarily to hormone replacement therapy and relates [*sic*] services of a type and in competition with the services now offered by the Seller or in the future maybe [*sic*] offered by the Seller, within a thirty (30) mile radius of Peoria, Illinois or Bloomington, Illinois."

Defendant admits that he used the Internet to solicit clients who resided within 30 miles of Peoria and Bloomington. By soliciting those clients, defendant was engaged in the business of providing integrative medicine services to patients within the restricted areas. The fact that defendant was not physically present in Illinois does not exempt him from the noncompete clause.

¶ 27 The court did not abuse its discretion in entering the preliminary injunction.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Peoria County is affirmed.

¶ 30 Affirmed.

¶ 31 JUSTICE SCHMIDT, specially concurring:

¶ 32 I concur, but write separately to clarify my position with respect to the standard of review. Whether the noncompete clause, like any other contractual clause, is enforceable is a question of law. Defendant does not argue that the noncompete agreement is unenforceable. He argues that he did not breach the agreement. Alternatively, he argues that even if he did breach the agreement, the plaintiff did not demonstrate irreparable harm, an inadequate remedy of law, or a likelihood of success on the merits. The validity and, therefore, enforceability of any contract or any portion thereof is question of law and is reviewed *de novo* whether there has been a trial or not. Here however, defendant does not argue that the noncompete agreement is invalid. Therefore, the standard of review is abuse of discretion.