FIRST DIVISION
May 9, 2011

No. 1-09-2933

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MEADE ELECTRIC COMPANY, INC., Plaintiff-Appellant, v. JOHN WICKS, Defendant-Appellee.	) Appeal from the) Circuit Court of) Cook County.)) No. 06 CH 10043)) Honorable) Rita M. Novak,) Judge Presiding.

PRESIDING JUSTICE HALL delivered the judgment of the court.

Justices Hoffman and Rochford concurred in the judgment.

HELD: Where the plaintiff failed to prove by a preponderance of the evidence that its bidding system and the bids themselves were trade secrets, a directed finding for the defendant at the close of the plaintiff's case was not against the manifest weight of the evidence. The trial court's evidentiary rulings were not an abuse of discretion or, if error, did not result in prejudice to the plaintiff.

O R D E R

The plaintiff, Meade Electric Company, Inc. (Meade), filed a complaint against its former employee, defendant John Wicks, alleging a breach of fiduciary duty and violation of the Illinois Trade Secrets Act (765 ILCS 1065/1 *et seq.* (West 2006) (the Act)). The complaint sought damages and preliminary and permanent injunctions, barring Mr. Wicks from competing with Meade and from using Meade's cost and pricing information.

The trial court granted Mr. Wicks' motion for a directed finding at the close of Meade's case. See 735 ILCS 5/2-1110 (West 2006). Meade appeals.

On appeal, Meade raises the following issues: whether the granting of Mr. Wicks' motion for a directed finding was against the manifest weight of the evidence and whether the trial court's evidentiary rulings denied Meade a fair trial. We affirm the judgment of the trial court.

Mr. Wicks began his employment with Meade in 1998, as a journeyman electrician. Mr. Wicks' status at Meade was that of an employee. He did not have an employment contract and was not subject to a covenant not to compete. While employed at Meade, Mr. Wicks performed work as a journeyman electrician at Condell Medical Center (Condell) and Victory-Vista Hospital (Victory). Subsequently, Mr. Wicks became a project manager for Meade and prepared Meade's bids for projects at Victory, Condell and Gillette Chemical Company (Gillette).

In late 2005, Mr. Wicks took steps to set up a business venture that would compete with Meade. The company was to be called Krause Electric (Krause). Mr. Wicks' partners in the new company were Debbie Wicks, his wife, Greg Krause and Christine Hucker.

On April 3, 2006, Mr. Wicks tried unsuccessfully to e-mail the entire contents of his work laptop computer to his home computer. Later that same day, he downloaded the contents of the

laptop computer to a zip drive.

On April 7, 2006, Mr. Wicks resigned from Meade. On that day, he was given a copy of Meade's employee handbook. The handbook provided in pertinent part as follows:

> "Your employment assignments may require you to become familiar with, or handle, confidential information or information which the Company considers secret or proprietary.
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> * * *
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> The Company considers all information used to prepare bids and contracts; organization, scheduling and management of work; billing, collection and administrative procedures; and lists of customer's and their personnel's names and addresses, to be secret or proprietary. Software and information stored in computer data bases is considered secret or proprietary.
>
> Secret or proprietary information may not be used outside of your employment with the Company. State laws governing un-approved use of secret or proprietary information may vary, however, the Company will take whatever legal action is allowed in the event such information is used in competition with the Company."

A bench trial was held in this case. The relevant trial testimony is summarized below.

David A. Leali, Meade's vice-president and comptroller,

testified that Meade did electrical contracting. In generating bids for projects, Meade used the Accubid system software. The Accubid system housed Meade's time and material rates as well as pricing information for material and subcontractors. The material pricing was specific to Meade, as were the units of measure, which referred to the amount of time it took to perform a specific operation. The information would be updated by a project manager.

Mr. Leali explained that Meade limited access to the Accubid system through the use of keys. The keys had cost Meade $3,000 and were only given to project managers, some 50 individuals out of Meade's 1,500 employees. According to Mr. Leali, the project management group knew that the Accubid system was confidential. However, he did not state the basis for his knowledge.

Mr. Leali testified further that on April 7, 2006, Mr. Wicks tendered his resignation from Meade to him. Concerned that Mr. Wicks would take company information when he left Meade, Mr. Leali gave Mr. Wicks a copy of the employee handbook and had him sign acknowledging receipt of the handbook. After Mr. Wicks left Meade, Meade personnel discovered his unsuccessful attempt to e-mail the contents of his hard drive of his work laptop computer to his home computer. It was also discovered that Mr. Wicks had successfully placed the contents of the hard drive in a zip file, which could then be downloaded to another computer. The contents of the zip file included documents related to Gillette, Condell

and Victory. Mr. Leali "assumed" that Mr. Wicks took the zip file when he left Meade. 18 days after Mr. Wicks left, two other Meade employees, Frank DeAngelis and Dennis Leafblad, left Meade to work at Krause.

On cross-examination, Mr. Leali explained that, having Meade's confidential pricing and cost information, Mr. Wicks would know Meade's bid prices when he formulated Krause's bids for the projects at Victory, Condell and Gillette. Mr. Laeli agreed that this information would have been retained mentally by Mr. Wicks.

Mr. Leali acknowledged that Krause was awarded the contract for the Condell project without a bid from Mr. Wicks. He admitted that he did not know the details of any of the bids Mr. Wicks prepared after he left Meade. Mr. Leali maintained that because Mr. Wicks knew what Meade's sell rates were, he could underbid Meade. He acknowledged that the ending sell rates were disclosed to Meade's time and material customers, but even those customers were not privy to the backup detail. Mr. Leali acknowledged that he had no basis for believing that Mr. Wicks solicited employees away from Meade while he was still employed there. On redirect examination, Mr. Leali maintained that the bid information remained confidential even if it was retained mentally by Mr. Wicks.

Testifying as an adverse witness, Mr Wicks acknowledged that after leaving Meade, he continued to bid work at Condell, Victory

and Gillette. As a project manager for Meade, he estimated how much material and time was needed. The numbers were put into the Accubid system, the software Meade had purchased. Access to the Accubid system required a key. The system applied the markup and calculated the bid amount. The markups could change depending on the size of the project or the size of the available work force.

Mr. Wicks acknowledged that, after biding projects for Meade, he bid those same projects for Krause. On March 24, 2006, he submitted Meade's bid in the amount of $36,000 for the Condell mammography project. On April 27, 2006, he signed a contract on behalf of Krause for that same project for $36,300. On January 18, 2006, he bid a project for Meade at Gillette for $44,503; later, he bid the same project for Krause at $37,900. Mr. Wicks submitted a $103,891 bid on behalf of Meade for a project at Victory. On May 9, 2006, he bid the Victory project for $96,000 on behalf of Krause.

Mr. Wicks acknowledged signing a verification that he had received a copy of the Meade employee handbook. He signed it on the day he resigned from Meade.

Under examination by his own counsel, Mr. Wicks explained that he obtained the subcontract to do the Condell project because of his friendship with the general contractor. The scope of the projects at Gillette and Victory had changed since he bid them for Meade, and they had to be rebid. Meade rebid the Gillette project; the amount of its rebid was lower than Mr.

Wicks' bid on behalf of Krause.[1] Meade did not rebid the Victory project.

According to Mr. Wicks, the project managers and the project superintendent all had access to the Accubid system. Mr. Wicks' secretary had also accessed it to do pricing on change orders.

On re-cross examination, Mr. Wicks stated that when he formulated the Krause bids, he did not remember the exact amount of the Meade bids he had formulated. On redirect examination, Mr. Wicks explained that he formulated his bids for Krause using his estimating skills and did not rely on comparisons to Meade's bids.

Richard Mohlman, area manager of Meade's Lake County division, testified that he oversaw the project managers. Access to the Accubid system was restricted to project managers, who were given keys to the system. At one time, secretaries had access, but that policy had changed while Mr. Wicks was still employed at Meade. Project managers were provided with laptop commuters. They could use the laptop computers anywhere but only for business use. As a normal business practice, bids for projects were not disclosed to competitors. Each bid allowed for a specific profit amount to Meade. Mr. Mohlman was aware that Mr. Wicks had bid projects for Krause that he had previously bid while working for Meade.

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[1]The amount of Meade's rebid for the Gillette project was not stated.

On cross-examination, Mr. Mohlman acknowledged that Mr. Wicks' bid on the Gillette project for Krause was higher than Meade's rebid on that project. He further acknowledged that Meade was requested to rebid the Victory project. He believed that Meade did rebid the Victory project.

Mr. Mohlman explained that the advantage of knowing your competitors' bid amounts was that you could then underbid them. He was not aware of any reason preventing a general contractor from awarding a contract as he saw fit.

Gregory Krause testified that originally Krause used the Electric Bid Manager for calculating its bids. Krause now used the Accubid system. He agreed there was an advantage to knowing a competitor's bid prior to preparing your own bid.

Frank DeAngelis testified that he worked for Meade until April 25, 2006, when he left to work for Krause. He denied that Mr. Wicks had offered him a job prior to Mr. Wicks' resignation from Meade.

After the admission into evidence of Meade's exhibits, Meade rested. Counsel for Mr. Wicks moved for a directed finding. After hearing argument, the trial court granted Mr. Wicks' motion. The court explained its ruling as follows.

With respect to the breach of fiduciary duty claim, the court found no evidence that Mr. Wicks solicited Meade's employees or customers away from Meade. The court then determined that Meade had failed to carry its burden of proof

that its bid information was a trade secret. In the court's view, "[t]here is no clear evidence of specifically what information is actually claimed to be a trade secret." The court found that certain bid elements were neither private nor personal to Meade. There was no showing of Meade's efforts to develop its bidding process into a trade secret. While acknowledging that Meade took measures to limit access to confidential information from the majority of the employees, the court pointed out that the information was available to 50 project managers and that a secretary had been allowed to input information into the Accubid system.

The court acknowledged the evidence of Mr. Wicks' attempts to secure information from his work computers. However, the court observed that Meade allowed Mr. Wicks to take his laptop computer home, thus allowing him to copy that information at any time prior to leaving Meade. The fact that Meade waited until the day Mr. Wicks resigned to have him sign the handbook receipt evidenced Meade's lack of concern as to whether its employees knew that the bid information was to be kept secret and confidential. The court concluded that Meade could not have considered the information so valuable as to warrant protection as a trade secret.

Meade brings this appeal from the trial court's order granting Mr. Wicks' motion for a directed finding.

ANALYSIS

I. Directed Finding

Meade contends that the trial court erred when it granted Mr. Wicks' motion for a directed finding. Meade maintains that the evidence established that both the Accubid system and the actual bids for the Condell, Gillette and Victory projects were trade secrets.

A. *Standard of Review*

The determination of the standard of review applicable to this appeal depends upon the basis for the trial court's grant of the motion for a directed finding. Where the trial court finds, as a matter of law, that the plaintiff has not established a *prima facie* case, this court's review is *de novo*. *527 S. Clinton, LLC v. Westloop Equities, LLC*, 403 Ill. App. 3d 42, 52-53, 932 N.E.2d 1127 (2010). Where the plaintiff has established a *prima facie* case, the trial court considers the weight and quality of the evidence. If the trial court then finds that no *prima facie* case remains, the reviewing court applies the manifest weight of the evidence standard of review to that determination. *527 S. Clinton, LLC*, 403 Ill. App. 3d at 53.

In this case, the trial court discussed the evidence and stated, "[i]n weighing the evidence presented, I find that a directed finding is appropriate." As the trial court's ruling was based on its weighing of the evidence, the manifest weight of the evidence standard applies to our review. *527 S. Clinton,*

LLC, 403 Ill. App. 3d at 53. "A decision is said to be against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the finding is unreasonable, arbitrary, or not based on the evidence presented." *Brynwood Co. v. Schweisberger*, 393 Ill. App. 3d 339, 351, 913 N.E.2d 150 (2009).

B. Discussion

Under the Act, a "trade secret" is defined as: "information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that: (1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality." 765 ILCS 1065/2(d) (West 2006).

A plaintiff is required to prove that the information was sufficiently secret to give the plaintiff a competitive advantage and that the plaintiff took affirmative steps to prevent others from acquiring or using the information. *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1090, 874 N.E.2d 959 (2007). Generally, in ruling on a section 2-1110 motion, the evidence weighed and considered by the trial court must prove the plaintiff's case by a preponderance of the

evidence. *Baker v. Jewel Food Stores, Inc.*, 355 Ill. App. 3d 62, 68, 823 N.E.3d 93 (2005). Therefore, in order to survive the motion for a directed finding, Meade had to introduce sufficient evidence to maintain its *prima facie* case by a preponderance of all the evidence presented.

In *Stenstrom Petroleum Services Group, Inc.*, the reviewing court identified six common law factors to consider in determining whether a trade secret exists: (1) the extent to which the information is known outside the plaintiff's business; (2) the extent to which it is known by employees and others involved in the plaintiff's business; (3) the extent of the measures taken by the plaintiff to guard the secrecy of the information; (4) the value of the information to the plaintiff and to the plaintiff's competitors; (5) the amount of effort or money expended by the plaintiff in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Stenstrom Petroleum Services Group, Inc.*, 375 Ill. App. 3d at 1090.

Meade asserts that it presented sufficient evidence by satisfying all six of the *Stenstrom* factors. We disagree.

As to the first factor, the extent to which the information was known outside of Meade's business, there was evidence that Meade's bid amounts were not known to its competitors and that some of the information imputed into the Accubid system was specific to Meade. There was also evidence that the Accubid

system could be purchased by anyone. As to the second factor, the extent to which the information was known to employees, there was evidence that access to the Accubid system was limited to project managers. There was also evidence that there were some 50 project managers and that Mr. Wick's secretary had accessed the Accubid system. According to Mr. Mohlman, though, the policy of the secretaries having access had been changed while Mr. Wicks was still at Meade.

As to the third factor, the measures taken to protect the secrecy of the information, access to the Accubid system was through the use of keys, which were given only to project managers. In addition, Meade's employee handbook stated that documents used to formulate bids were confidential. There was also evidence that Meade allowed project managers, such as Mr. Wicks, to take his laptop computer anywhere, including his home, indicating a lack of concern with the security of the information on the laptop computers. The fact that Mr. Wicks, a project manager with access to the Accubid system and one who prepared the actual bids, was given the handbook containing the confidentiality policy only upon his resignation, was further evidence that the confidentiality of the bid information was not of importance to Meade.

As to the fourth factor, the value of the information to Meade and its competitors, there was no dispute that knowing the amount of Meade's bids would give a competitive edge to its

competitors. As to the fifth factor, the amount of effort or expense expended in developing the information, there was evidence that the keys to the Accubid system cost Meade $3,000 and that the system was routinely updated. From the evidence, it did not appear that a great deal of time or effort was necessary to acquire and develop the information to impute into the Accubid system. As to the sixth and final factor, the ease or difficulty with which the information could properly be acquired or duplicated by others, there was evidence that some, but not all, of the information used to formulate a bid was known to certain of Meade's customers. Even so, it appeared possible to take the known information and approximate from it what Meade's overhead and costs were.

Our review of the record confirms the trial court's finding, based on all the evidence, that the Accubid system and the actual bids were not trade secrets.[2] Meade failed to establish by a preponderance of the evidence that its Accubid system and its actual bids were sufficiently secret. The evidence established that Meade's efforts to reasonably maintain the confidentiality of the information were ineffective. The trial court's decision

[2]We acknowledge Meade's citation to *Ovation Plumbing, Inc. v. Furton*, 33 P.3d 1221 (Colo. App. 2001), in which the court declined to adopt a *per se* rule that an actual bid could never be a trade secret but conclude it was unnecessary to address that case in our analysis.

was not arbitrary or unreasonable, and was based on the evidence presented. The opposite conclusion was not clearly evident. Therefore, the trial court's directed finding for Mr. Wicks at the close of Meade's case was not against the manifest weight of the evidence. As the Accubid system and the actual bids are not trade secrets, we do not reach the issue of misappropriation.

II. Errors in Evidentiary Rulings

Meade contends that the trial court erred when it allowed Mr. Wicks' counsel to cross-examine witnesses with exhibits that had not been admitted into evidence.

A. *Standard of Review*

The abuse of discretion standard applies to our review of a trial court's evidentiary rulings. *Jones v. DHR Cambridge Homes, Inc,* 381 Ill. App. 3d 18, 34, 885 N.E.2d 330 (2008). An abuse of discretion occurs only where no reasonable person would agree with the trial court's conclusion. *Jones*, 381 Ill. App. 3d at 32.

B. *Discussion*

In the first instance of alleged error, Meade's counsel objected to Mr. Wicks' counsel's use of a document in cross-examining Mr. Leali because the document had not been admitted into evidence and then on the basis that the cross-examination was beyond the scope of direct examination. The trial court agreed that it was beyond the scope and sustained the objection. Therefore, no error occurred.

As to the second and third instances of alleged error, Meade's counsel did not renew her objection to the use of the exhibits because they had not been admitted into evidence. Instead, she objected to the admission of the exhibits into evidence. Objection to evidence on a certain ground constitutes waiver on all grounds not specified. *Hargrove v. Neuner*, 138 Ill. App. 3d 811, 816, 485 N.E.2d 1355 (1985). The purpose of the rule is to inform the trial court of the particular problem and give the opposing party an opportunity to respond to it. *Hargrove*, 138 Ill. App. 3d at 816. In the second and third instances, the failure to object in the trial court to the use of the exhibits on the basis that they had not been admitted into evidence waives any error.

Assuming, *arguendo*, that error occurred, reversal on the basis of an erroneous evidentiary ruling is not required unless the error was prejudicial or the result of the trial was materially affected. *Cretton v. Protestant Memorial Medical Center, Inc.*, 371 Ill. App. 3d 841, 854, 864 N.E.2d 288 (2007). Meade has failed to show how the rulings resulted in prejudice to it or that the rulings materially affected the outcome of the trial.

Meade's reliance on *Anderson v. Human Rights Comm'n*, 314 Ill. App. 3d 35, 731 N.E.2d 371 (2000), is misplaced. In *Anderson*, the reviewing court's conclusion that the petitioner did not receive a fair and impartial hearing was based on

numerous errors. While the errors there included the use of documents not properly admitted into evidence, there was a far more extensive use of those documents in that case than in the present case. *See Anderson*, 314 Ill. App. 3d at 48-49.

CONCLUSION

We conclude that the trial court's grant of Mr Wicks' motion for a directed finding at the close of Meade's case was not against the manifest weight of the evidence. We further conclude that there was no abuse of discretion in the evidentiary rulings of the trial court; error, if any, did not prejudice Meade or materially affect the outcome of the trial.

Affirmed.