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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0010**

Medtronic, Inc., et al.,
Respondents,

vs.

Matthew Dominic Petitti, et al.,
Appellants.

**Filed July 23, 2018
Reversed and remanded
Connolly, Judge**

Anoka County District Court
File No. 02-CV-17-3388

William Z. Pentelovitch, Wayne S. Moskowitz, John T. Duffey, Maslon Edelman Borman
& Brand LLP, Minneapolis, Minnesota (for respondents)

Edward F. Fox, Kevin P. Hickey, Mark R. Bradford, Laurel J. Pugh, Bassford Remele,
P.A., Minneapolis, Minnesota; and

John C. O'Quinn (pro hac vice), Kirkland & Ellis LLP, Washington, D.C. (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Cleary, Chief Judge;
and Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellants challenge the district court's order issuing a temporary injunction in favor of respondent, arguing that the temporary injunction impermissibly expands the scope and duration of the underlying noncompetition agreements. We agree and we reverse and remand.

FACTS

Appellants are three individuals—Matthew Petitti, J. Phillip Paulk, Nicole Bock (collectively, individual appellants)—and two corporations—St. Jude Medical, LLC, and its wholly owned subsidiary, St. Jude Medical S.C., Inc. (collectively, St. Jude). Individual appellants are Alabama residents and former sales representatives for respondents, Medtronic, Inc., and Medtronic USA, Inc. (collectively, Medtronic).

In 2013, individual appellants each signed an updated noncompetition agreement with Medtronic in exchange for promotions, restricted stock, or other benefits. The validity of this consideration is not in dispute. Because individual appellants were exclusively engaged in sales activities during the last 12 months of their employments, the parties agreed that they were subject to a one-year restrictive period. During this restrictive period, each individual noncompetition agreement prohibited each employee from disclosing confidential information and

from soliciting, selling to, contacting, or attempting to divert business from, whether directly or by managing, directing or supervising others, any Medtronic customer on behalf of a conflicting organization in connection with or relating to a competitive product or competitive research and support.

Each agreement defined “Medtronic customers” as people, entities, or institutions “to whom or to which Employee sold, negotiated the sales, supported, marketed or promoted products or services on behalf of Medtronic during the last one (1) year in which Employee was employed by Medtronic.” Each agreement also provided that if the employee breaches or violates the noncompetition agreement, “the duration of the restrictions contained therein shall be extended by the number of days the Employee remains in breach or violation thereof.” The parties referred to this as the tolling provision.

The district court found that, while employed at Medtronic, individual appellants “worked as a team jointly assigned to and covering a single territory, roughly the northern two thirds of Alabama.” Individual appellants were not assigned separate accounts for account responsibility or compensation, and their sales quota and annual performance were shared. During a July 2016 business plan for their territory, individual appellants represented themselves “as a cohesive, experienced team in [the] territory[] with a loyal customer base.”

On September 26, 2016, individual appellants resigned from Medtronic. “Immediately or shortly thereafter,” they began working for St. Jude by selling St. Jude’s products that compete with products that they had sold for Medtronic, in the same territory that they had covered for Medtronic. The district court found that individual appellants worked as a team for St. Jude just as they had for Medtronic:

They prepared a joint business plan, targeting their old Medtronic customers. They did not distinguish between restricted and non-restricted accounts. They shared a joint Outlook calendar for case coverage, and responded to requests for coverage from former clients by arranging for other team

members to cover the cases, by Outlook calendar, email, or sending text messages.

Pursuant to their employment agreements, individual appellants' resignations triggered the one-year restrictive period. On June 30, 2017, Medtronic brought suit alleging breach of contract against individual appellants and tortious interference with contracts against St. Jude. Medtronic then moved for a temporary restraining order (TRO) against individual appellants, seeking compliance with the agreement by prohibiting them from "selling to their restricted accounts." On August 10, 2017, the district court granted Medtronic's TRO, restraining each individual appellant "from soliciting, selling to, contacting, or attempting to divert business from, whether directly or by managing, directing or supervising others, any Medtronic customer" on his or her respective list of restricted accounts.

In asking the district court to temporarily enjoin individual appellants, Medtronic sought only to restrict each individual from contacting his or her own Medtronic customers—*not* from contacting the other appellants' Medtronic customers with whom that individual had no contact during the last year of his or her respective Medtronic employment. Rather, Medtronic argued to the district court that its "definition of 'Medtronic Customer' is a narrowly tailored restriction that is reasonably designed to protect Medtronic's goodwill because it is *limited to the accounts with which the employee had contact during his or her last year of employment.*" (Emphasis added.) Thus,

Medtronic itself summarily rejected any idea that it was seeking a team-wide injunction, for which the respective agreements did not provide.¹

On September 11 and 12, 2017, the district court held an evidentiary hearing regarding Medtronic's motion for a temporary injunction. While the matter was under advisement, the district court extended the TRO because each individual appellant's one-year restrictive period was about to lapse. On November 3, 2017, the district court issued a temporary injunction, enjoining *all* appellants from "soliciting, selling to, contacting, or attempting to divert business from" all those who appeared on *a single, consolidated restricted-customer list*. The district court made particular findings regarding each individual appellant and his or her restricted-customer list, but the district court did not explain why—in direct contravention of both the agreement and Medtronic's own position—it ultimately provided one list of restricted Medtronic customers for all individual appellants and banned all individual appellants from contacting anyone on the combined list.

Further, the district court ordered compliance with the injunction until September 26, 2018, even though the noncompetition agreement had a one-year term that would have expired on September 26, 2017. The district court found that individual appellants had "ongoing and flagrant violations of the noncompete agreements" and

¹ At the hearing, Medtronic admitted that, for an account to appear on an individual appellant's restricted customer list, Medtronic "had to have written evidence in our database that Ms. Bock had contact with a particular physician or a particular hospital during the last year of her employment in order to go on that list. Same with Mr. Petitti, same with Mr. Paulk."

“Medtronic did not receive the benefit of [its] bargain.” The district court quoted the tolling provision from the noncompete agreements, but did not apply the tolling provision. Instead, the district court reasoned that it had equitable discretion to extend the restrictive periods.

This appeal follows.

D E C I S I O N

Appellants argue that the district court erred by entering the temporary injunction for two reasons: (1) because it entered the injunction on a “team-wide” basis when the noncompetition agreements applied on an individual basis and (2) because the injunction extended the restrictive periods until September 26, 2018, one year after the restrictive periods in the agreements would have expired.

“A decision on whether to grant a temporary injunction is left to the discretion of the [district] court and will not be overturned on review absent a clear abuse of that discretion.” *Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993). A district court abuses its discretion when its decision goes against the record or is based on an erroneous view of the law. *State ex rel. Swan Lake Area Wildlife Ass’n v. Nicollet Cty. Bd. of Cty. Comm’rs*, 799 N.W.2d 619, 625 (Minn. App. 2011).

Appellants assert that it is an abuse of discretion to enter a temporary injunction that is based upon a legal misinterpretation of the contract. *See Ecolab, Inc. v. Gartland*, 537 N.W.2d 291, 296-97 (Minn. App. 1995) (reversing the grant of temporary injunction premised on a misinterpretation of the noncompetition agreement). Analyzing whether each individual appellant’s breaches entitles Medtronic to the injunctive relief that the

district court ordered requires interpreting each individual appellant's noncompetition agreement. The interpretation of a noncompetition agreement, as with any contract, is a question of law, which we review de novo. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011).

“Generally, injunctive relief based on a contract must be coextensive with the terms of the contract.” *Upper Midwest Sales Co. v. Ecolab, Inc.*, 577 N.W.2d 236, 244 (Minn. App. 1998) (citing *Cherne Indus., Inc. v. Grounds & Assoc., Inc.*, 278 N.W.2d 81, 93, n.6 (Minn. 1979)). “Public policy requires that restrictive covenants be strictly construed and not extended beyond the true intent of the parties.” *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N.W.2d 91, 100 (1962).

I.

Appellants argue that the district court erred because neither the agreements' terms nor principles of equity warrant extending the individual noncompetition agreements to a “team-wide” approach. For the TRO, the district court compiled separate lists of restricted customers for each individual appellant, identifying the Medtronic customers with whom each individual appellant had contact in his or her last year at Medtronic. However, for the temporary injunction, the district court merged the customers from the individual appellants' lists into a single restricted-customer list and enjoined individual appellants from contacting all of the customers on the combined list. When each individual appellant had his or her individual list, the district court identified 39 restricted Medtronic customers for individual appellant Bock, 56 for individual appellant Paulk, and 58 for individual

appellant Petitti. But, the district court’s combined list has 65 restricted Medtronic customers, which is more than any of the individual lists.

Appellants argue that the noncompetition agreements unambiguously apply the restrictive covenants on an individual basis, by specifically restricting each individual appellant from the Medtronic customers with whom he or she had direct contact during his or her last year at Medtronic. The noncompetition agreements prohibited each signatory “Employee” from disclosing confidential information and

from soliciting, selling to, contacting, or attempting to divert business from, whether directly or by managing, directing or supervising others, any Medtronic customer on behalf of a conflicting organization in connection with or relating to a competitive product or competitive research and support.

Appellants argue that the district court “apparently assumed” that the term “supported” in the noncompetition agreements’ definition of “Medtronic customer” could be given a broad meaning to justify the consolidated list of restricted Medtronic customers.

1.7 Medtronic customer(s) means any person, entity or institution, including the employees, agents or representatives who controlled, directed or influenced the purchasing decisions of any such person, entity or institution, to whom or to which Employee sold, negotiated the sales, *supported*, marketed or promoted products or services on behalf of Medtronic during the last one (1) year in which Employee was employed by Medtronic.

(Emphasis added.) The district court found that individual appellants “supported each other’s sales” by, for example, marketing themselves as a team to Medtronic customers, maintaining a joint Outlook calendar, conducting bi-monthly team meetings to discuss strategies, and sharing a list tracking the status of trials across the territory. Appellants

essentially argue that, under the noncompetition agreement, “Appellant A” supporting “Appellant B’s” sales—internally, without direct contact with the customer—does not make “Appellant B’s” Medtronic customers also “Appellant A’s” customers. We agree, and, more importantly, Medtronic agreed as well. In its reply brief on its motion for a temporary injunction, Medtronic made clear that it was not “relying on the fact that [i]ndividual [d]efendants operated as a team,” which is why Medtronic submitted “different restricted account lists, with different Medtronic [c]ustomers, for each [i]ndividual [d]efendant.”

Only an individual appellant who directly contacted a customer while at Medtronic is restricted from contacting that customer under the noncompetition provision. The contract says nothing about restricting an employee who merely supports *another* employee. Rather, a “Medtronic [c]ustomer” is anyone “*to whom or to which Employee sold, negotiated the sales, supported, marketed or promoted products or services on behalf of [Medtronic]*” during the employee’s last year of employment. Providing internal support without direct customer contact is not enough to make the customer a “Medtronic [c]ustomer” that the individual appellant is prohibited from contacting. “Support[ing]” a “Medtronic [c]ustomer” cannot be interpreted reasonably to capture internal, employee-to-employee support that does not involve direct contact with a customer.

As appellants argued, the term “supported” must be read in context. It is supporting the customer through direct contact, not merely supporting a co-worker. Although the term “supported” is not expressly defined, it appears in a list of verbs that all otherwise describe actions requiring direct contact with a customer: Medtronic customers “to whom or to

which Employee sold, negotiated the sales, supported, marketed or promoted products or services.” Under the interpretive canon of *noscitur a sociis*, “a word is given more precise content by the neighboring words with which it is associated.” *Cty. of Dakota v. Cameron*, 839 N.W.2d 700, 709 (Minn. 2014) (quotation omitted). The term “supported” should thus be interpreted to have the same characteristic as the other words in the list—a requirement of direct contact between the individual employee and the customer.

Other parts of the agreement confirm that “support” requires direct customer contact. The “Restrictions on Competition” provision sets out the restrictions on salespeople, including the individual appellants here, who were “engaged exclusively in sales activities, including selling, soliciting the sale, or supporting the sale of [Medtronic products] through *direct contact* with [Medtronic customers].” (Emphasis added.) Therefore, when reading these provisions together, it is clear that sales people are restricted from contacting the Medtronic customers with whom the individual appellants had direct contact during their last year with Medtronic, where direct contact includes selling, soliciting the sale, or support the sale of Medtronic products. *See M.M. Silta, Inc. v. Cleveland Cliffs, Inc.*, 616 F.3d 872, 877 (8th Cir. 2010) (“In gauging ambiguity, courts must read contract terms in the context of the entire agreement.”) (citing *Brookfield Trade Ctr., Inc. v. Cty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998)).

In short, if Medtronic wanted their agreements to apply to the appellants as a team, it should have drafted them that way. Consequently, we must reverse the scope of the temporary injunction because it ignores the plain language of the individual agreements as

they defined Medtronic customer. The consolidated list contravenes the express contract language, which applies to appellants individually.

Medtronic attempts to justify the temporary injunction by arguing that the district court has equitable discretion to disregard the noncompetition agreements by expanding their scope. Medtronic claims that “because [individual appellants] had operated and marketed themselves to Medtronic’s customers as a team, they had developed goodwill for Medtronic and were able to use it on behalf of St. Jude.” Because individual appellants engaged in “a calculated plan to poach restricted clients,” Medtronic claims that a joint restricted customer list was an appropriate equitable remedy.

In addition to the fact that this contradicts what Medtronic argued at the TRO hearing, Medtronic does not cite to any authority for its contention that the restrictive covenant’s scope may be disregarded and expanded in exchange for the district court’s equitable discretion under these circumstances. District courts have discretionary power to “blue pencil” overbroad restrictions. *See Bess v. Bothman*, 257 N.W.2d 791, 794 (Minn. 1977) (“The rationale of the blue pencil doctrine is that a court is merely enforcing the legal parts of a divisible contract rather than making a new contract for the parties.”). However, Medtronic cites to no authority that allows district courts to expand agreed-upon restrictions.

Minnesota courts interpret a noncompetition agreement as narrowly as possible while protecting the former employer’s legitimate business interests. *Walker Emp’t Serv., Inc. v. Parkhurst*, 300 Minn. 264, 271, 219 N.W.2d 437, 441 (1974). Without explicit findings that each name on each individual appellant’s restricted customer list qualifies as

that individual appellant’s “Medtronic customer,” the district court failed to strictly construe the noncompetition agreement. Therefore, we reverse this part of the injunction and remand to the district court to apply the contract language and specifically limit the injunction to each individual appellant’s respective customers.

II.

Appellants also argue that neither the contract terms nor principles of equity warrant extending the restrictive covenant through September 26, 2018. Under the general rule that “injunctive relief based on a contract must be coextensive with the terms of the contract,” an injunction should not be granted to enforce the agreement if the restrictive period has expired. *Cherne*, 278 N.W.2d at 93. However, there may be situations where injunctive relief that extends beyond the expiration of the restrictive period is appropriate. *Id.*

The district court found, and all parties agreed, that individual appellants were salespeople with no management duties, which, under Section 4.1 of the noncompetition agreement, subjected them to a restrictive term “for a duration of only one (1) year after the last day Employee is employed by Medtronic” The noncompetition agreement also provided:

In the event Employee breaches or violates Sections 4.1, 4.2, or 4.3 hereinabove, the duration of the restrictions contained therein shall *be extended by the number of days the Employee remains in breach or violation thereof*. This provision may be specifically enforced.

(Emphasis added.) The district court extended the restrictive period for a year, but it did not find that individual appellants remained in breach of the contract for a year. Thus,

while the district court cited this provision when establishing its authority to extend the restrictive period, it did not apply the plain language of the provision.

The district court found that individual appellants began breaching the noncompetition agreement the day that they resigned from Medtronic by finding, “All three [individual appellants] resigned simultaneously via email, and then immediately began contacting their former clients on behalf of St. Jude.” While the district court stated that individual appellants were in continuous breach, it did not apply Section 4.1. Instead, it simply found, “The evidence and testimony clearly demonstrates that [individual appellants] violated their Medtronic noncompetes. They even continued to do so after the issuance of [the district court’s] TRO” and, “The ongoing and flagrant violations of the noncompete agreements show total disregard for the contracts. Medtronic did not receive the benefit of their bargain.” At the very least, the district court found the breaches continued sometime after August 10, 2017—the date it issued its TRO. Thus, the district court did not correctly apply the tolling provision to remedy the breaches. When it tacked on an extra year to the restrictive period, it seemingly did so under its “equitable discretion” rather than by applying the contract language.

Appellants acknowledge that the district court cited to caselaw that grants district courts discretion to extend restrictive periods, but they argue that none of those cases “indicate that the parties had a specific contractual remedy governing the extension of the period.” We agree. This case is distinct from Minnesota cases carving out the exception for when a temporary injunction can contravene a noncompetition agreement by extending

its restrictive period.² Here, there is a tolling provision in Medtronic’s noncompetition agreement that provides a remedy for breach of the agreement by former Medtronic salespeople.

In an attempt to overcome this distinction, Medtronic relies on a recent unpublished case from this court that affirmed a temporary injunction extending a noncompetition agreement’s duration when the contract had the exact same tolling provision.³ *Medtronic, Inc. v. Doerr*, No. A14-1283, 2015 WL 506768 (Minn. App. Feb. 9, 2015). In that case, this court reasoned that, “Because the district court found that the wrongdoing was ‘continuing,’ the district court was not limited to enjoining [the appellants] for 34 days under the tolling provision as suggested by appellants.” *Doerr*, 2015 WL 506768, at *4, *6. In *Doerr*, this court held that despite the tolling provision, the district court was within its discretion to extend a restrictive covenant through the trial date that had been set, which was about six months longer than the one-year noncompetition term. *Id.* (citing *Cherne*, 278 N.W.2d at 93 (recognizing that “there may be situations where injunctive relief

² See *Overholt Crop Ins. Serv. Co. v. Travis*, 941 F.2d 1361 (8th Cir. 1991) (applying Minnesota law to hold that the district court did not err in extending an injunction beyond a noncompetition agreement’s two-year restrictive period because appellant’s actions and the resulting litigation did not allow respondent to receive the benefit of the bargained-for agreement). We acknowledge, as the Eighth Circuit did in *Overholt*, that when a party’s actions and the resulting litigation cause a restrictive period to run before a court has finally upheld the validity of a noncompetition agreement, and the agreement does not provide a specific remedy governing the extension of that period, the district court may have equitable discretion to extend an injunction beyond the defined restrictive period. That is not what occurred in this case.

³ We note that unpublished decisions do not have precedential authority. Minn. Stat. § 480A.08, subd. 3(c) (2016); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993).

extending beyond the expiration of the period established by the covenant is appropriate’’)). However, *Doerr* is factually distinct from this case. In *Doerr*, there were allegations that the appellants violated both a provision to which the tolling provision applied and a provision to which the tolling provision did not apply. *Id.* at *5-6. Thus, there was not a contractual remedy to address the extent of appellants’ breaches. Here, the district court solely found that individual appellants remained in violation of Section 4.1. The tolling provision explicitly applies to continuous breaches of Section 4.1. Therefore, the district court must apply the provision.

Under contract principles, when parties choose a contractual remedy, a district court cannot render the agreement meaningless by substituting its equitable discretion to fashion its own remedy for the contract language. *Morse v. Nagris*, 185 Minn. 266, 268, 240 N.W. 899, 901 (Minn. 1932) (reversing a district court order failing to enforce a contractual remedies provision and applying it as a matter of law). Thus, the tolling provision in each individual appellant’s noncompetition agreement must be applied as the sole remedy. We also reverse and remand the portion of the temporary injunction that extends the period of the injunction through September 26, 2018, so the district court may apply the tolling provision to each individual appellant.

We acknowledge that the Minnesota Supreme Court has recently held that contract language that compels a court to conclude that the requirements for issuance of a permanent injunction have been met is unenforceable. *St. Jude Med., Inc. v. Carter*, ___ N.W.2d ___, 2018 WL 3131144 (Minn. June 27, 2018). This holding is not inconsistent with ours. The Minnesota Supreme Court reasoned that upon a party breaching a contract, the issue of

whether equitable relief for the nonbreaching party is warranted is exclusively within the district court's discretion. *Id.* at *4

The relevant, unenforceable contract language in *Carter* was “[i]n the event [Carter] breaches the covenants contained in this [a]greement, [he] recognizes that irreparable injury will result to [St. Jude Medical], that [St. Jude Medical's] remedy at law for damages will be inadequate, and that [St. Jude Medical] shall be entitled to an injunction to restrain the continuing breach by [Carter].” *Id.* at *3 (some alterations in original). The Minnesota Supreme Court noted that a party seeking a permanent injunction must prove that the equitable relief is necessary to prevent irreparable harm and any legal remedy would be inadequate. *Id.* at *4. Thus, the Minnesota Supreme Court concluded that mere contract language does not entitle the party seeking an injunction to a presumption that these requirements are met. *Id.* at *5-6.

When reaching its conclusion, the Minnesota Supreme Court included the following language:

When equitable considerations are present, we will consider factors beyond the intent of the parties, no matter how unambiguously that intent may be expressed in a contract provision.

Id. at *3. Although the Minnesota Supreme Court broadly stated that district courts may disregard unambiguous contract language “[w]hen equitable considerations are present,” its holding is focused on the fact that parties cannot instruct a district court that it must grant a permanent injunction based on contract language agreeing that upon a breach, the nonbreaching party will be irreparably harmed and legal remedies would be insufficient.

In the instant case, there is no contract language that compels the district court to grant equitable relief. Instead, the dispute centers around whether parties may negotiate the scope of any equitable relief should there be a breach of a noncompetition agreement and should the court grant an injunction. Our conclusion is yes. Once parties in a restrictive noncompetition agreement, which is to be strictly construed, agree about the scope of relief upon a court granting an injunction, courts cannot—in their discretion—disregard the contract language by *expanding* the scope of relief, absent unusual circumstances. Those circumstances are not present here.

Both *Carter* and the instant case deal with limitations for injunctions. But the two cases involve different contexts. In *Carter*, the limitation applies in the onset of an injunction—a district court may disregard contract language that attempts to satisfy the requirements that a party seeking a permanent injunction must demonstrate. In the instant case, the limitation applies to the parameters of the temporary injunction—when a district court crafts an injunction’s parameters, it should generally not disregard the underlying contract’s terms by issuing an injunction that expands those terms. That way, parties will truly know what the benefit of their bargain is and, more importantly, what it is not.

Reversed and remanded.