

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0003**

American Academy of Traditional Chinese Medicine, Inc., et al.,
Respondents,

vs.

Zuobiao Yuan,
Appellant.

**Filed August 12, 2024
Reversed
Bratvold, Judge**

Ramsey County District Court
File No. 62-CV-21-380

Aaron R. Thom, Samantha J. Ellingson, Thom Ellingson, PLLP, Minneapolis, Minnesota
(for respondents)

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appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson,
Judge.*

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant and respondents agreed to restrictive covenants as part of appellant's
employment agreement. Respondents sued appellant for breach of that agreement. They

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

later reached a settlement agreement as to the lawsuit, which included a permanent injunction that incorporated restrictive covenants for a 30-month period. Appellant seeks review of the district court's sanction order finding him in contempt for violating the injunction. Appellant contends that (1) the district court exercised its criminal contempt powers and failed to follow procedural safeguards; (2) the record does not support the district court's finding of contempt; (3) the permanent injunction is not sufficiently clear to be enforced in contempt proceedings; (4) the district court abused its discretion by resetting the 30-month compliance period; and (5) the district court abused its discretion by imposing a fine of \$18,000 for the violations. We conclude that the district court exercised its criminal contempt powers without following procedural safeguards. Thus, we reverse and need not decide the other four issues.

FACTS

On April 9, 2018, appellant Zuobiao Yuan signed an employment agreement with respondents American Academy of Traditional Chinese Medicine Inc. and TCM Health Center Inc. Respondents provide traditional Chinese medicine services, including acupuncture, and jointly operate five clinics located in Edina, Minneapolis, Roseville, St. Louis Park, and St. Paul. The employment agreement stated that Yuan would "provide services as an acupuncturist/instructor for and on behalf of" respondents and that Yuan agreed to abide by restrictive covenants that prohibited him from soliciting respondents'

current or former patients, operating a competitive business within a certain radius of respondents' clinics, or disclosing confidential information, among other things.¹

On October 1, 2020, Yuan began working as an acupuncturist at an Edina clinic that was not operated by respondents (clinic one). On November 1, 2020, Yuan also began working as an acupuncturist at a second clinic that was not operated by respondents and had locations in Edina and St. Paul (clinic two). Yuan stopped working for respondents on October 31, 2020.

On November 12, 2020, respondents notified clinics one and two that Yuan's employment with them violated his employment agreement with respondents. Clinic two terminated Yuan's employment five days later. Clinic one informed respondents that, "based on recent discussions" with Yuan, it identified "three (3) patients that [it] now believes were former patients" of respondents but that "Yuan will not solicit" respondents' "former . . . patients during the period of any remaining restrictive covenants." Yuan kept working at clinic one until August 2021.

In January 2021, respondents sued Yuan for breach of contract, along with other claims, alleging that Yuan "materially breached" several of the employment agreement's restrictive covenants and "engaged in a scheme to use [respondents'] confidential information to divert [their] valuable customer goodwill and relationships." Yuan answered and denied all claims.

¹ In 2023, the legislature enacted Minn. Stat. § 181.988, subd. 2(a), which provides, "Any covenant not to compete contained in a contract or agreement is void and unenforceable." This section, however, applies to contracts or agreements made on or after July 1, 2023, and thus does not apply here. 2023 Minn. Laws ch. 53, art. 6, § 1, at 49-50.

In September 2021, Yuan opened his own clinic in Edina. Respondents moved for a temporary injunction, seeking to enforce the employment agreement. Yuan opposed the motion for a temporary injunction. On January 21, 2022, the district court issued a temporary injunction prohibiting Yuan “from soliciting any current or former patients” of respondents, among other things. The district court later modified the temporary injunction to also prohibit Yuan from treating respondents’ current or former patients.

On May 31, 2022, respondents moved for summary judgment; Yuan opposed the motion. On September 26, 2022, the district court granted respondents’ motion “with respect to liability and breach of the non-solicitation and non-disclosure provisions” of the employment agreement and denied the motion “in all other respects.” The district court noted that the record included “undisputed evidence that Yuan violated the non-solicitation and non-disclosure provisions” in the employment agreement by “repeatedly” contacting and soliciting respondents’ “current and former patients.”

On March 22, 2023, the parties reached a settlement agreement in which Yuan agreed to pay respondents \$80,000. As part of the settlement agreement, respondents and Yuan stipulated to the district court’s entry of a permanent injunction that provided:

- Yuan shall not own, operate, work for, or be directly or indirectly affiliated with any person, firm, clinic, company, hospital, health center, government agency, or other entity, which, in whole or in part, is or was during Yuan’s employment with [respondents] directly or indirectly in competition with [respondents] . . . at any location in the following counties: Ramsey, Hennepin, Dakota, Anoka, Carver, or Scott
- Yuan shall not treat or solicit current or former patients of [respondents] Yuan shall also:

- (a) continue to state in all advertising that he cannot treat former or current patients of any [of respondents'] clinic[s];
- (b) notify potential patients, in the initial online or written intake forms that patients receive in advance of or at their appointments or initial visit, that he is not allowed to treat [respondents'] patients or former patients; and
- (c) obtain the acknowledgement of all such potential patients that they have not been treated by [respondents], in advance of appearing for treatment by Yuan; and
- (d) provide to [respondents] by email, no later than the first business day of each month, the full list of all patients that Yuan has treated during the preceding month.

The permanent injunction also provided that the above restrictions “shall continue for a period of thirty (30) months after their commencement” and that, if Yuan violates the injunction, “the thirty (30) month period shall be extended or tolled by a length of time equal to that period beginning when such violation commenced and ending when the activities . . . ceased.” The district court entered the permanent injunction without change on March 27, 2023.

Yuan’s counsel withdrew. On April 21, 2023, respondents notified Yuan that based on his “most recent patient lists . . . it appear[ed] that Yuan ha[d] gone back to treating their patients” and included the names of five former or current patients. Yuan, self-represented, responded that he was “confused that this happened again” because he was notifying “every patient . . . that [he] cannot treat [respondents'] former patients.” The parties attempted to resolve the issue through mediation but failed.

On October 16, 2023, respondents moved for an order finding Yuan in contempt of court, arguing that he “treated at least 18 of [respondents'] patients” in violation of the permanent injunction. Respondents submitted an affidavit from their owner, who averred

that “each patient can bring \$960 to \$2,000 worth of income to the clinic during each ailment period.” Yuan filed a memorandum opposing the motion and contending that respondents lacked proof that the patients he treated were respondents’ former patients, he “took more measures” than required by the permanent injunction, and he did not “intentional[ly]” violate the injunction.

On November 6, 2023, the district court held a hearing at which the parties appeared. During the hearing, the district court issued an oral order for sanctions, finding that Yuan “treated 18 former patients of [respondents] after the settlement agreement was reached.” The district court also determined that, “[a]s a sanction for that conduct,” Yuan must pay “\$1,000 for each one of those 18 patients” based on respondents’ affidavit asserting that an average patient brings in “somewhere between \$960 and \$2,000.” The district court ordered that Yuan’s “clinic be closed and shuttered until payment is made” and that “when the clinic reopens the [30-month] period of compliance will restart.” The district court then “issue[d] a stay pending appeal” on the condition that Yuan “obtain either a bond or post \$18,000 with the court.”²

Following the hearing, the district court issued a written order for sanctions corresponding to the above ruling, including the stay pending appeal. The written order did not state that the 30-month compliance period “will restart” when Yuan’s clinic reopens, but provided that it “incorporates the order issued on the record during the November 6, 2023 hearing and adopts its factual findings and legal conclusions.” Yuan appeals.

² Respondents’ brief to this court states that Yuan “deposited \$18,000 with the district court” and “continued operating his clinic.”

DECISION

“The district court’s decision to invoke its contempt powers is subject to reversal for abuse of discretion.” *Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 239 (Minn. 2019) (quotation omitted). The district court abuses its discretion by making “findings unsupported by the evidence or by improperly applying the law.” *Id.* (quotation omitted). “The factual findings of a contempt order are subject to reversal only if clearly erroneous.” *Mower Cnty. Hum. Servs. ex rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996).

Yuan challenges the district court’s sanctions order on five grounds: (1) the district court exercised its criminal contempt powers and failed to follow procedural safeguards; (2) the record does not support the district court’s finding of contempt; (3) the permanent injunction is not sufficiently clear to be enforced in contempt proceedings; (4) the district court abused its discretion by resetting the 30-month period of compliance with the injunction; and (5) the district court abused its discretion by imposing a fine of \$18,000. Because the first issue is dispositive, we address only that issue and need not discuss the other four issues.

A. The first issue is properly before this court.

Yuan argues that “the contempt order is an exercise of the district court’s criminal contempt powers” and that, because Yuan was not “afforded procedural due process protections,” the order must be reversed. Respondents argue that Yuan “waived the argument that the district court was acting within its criminal contempt powers” by failing to raise it below. Yuan’s reply brief argues that “the issue is preserved” because Yuan’s

memorandum opposing respondents' contempt motion "can fairly be construed" as objecting to "having to pay a penalty for each past, unintentional violation" of the stipulated permanent injunction. Alternatively, Yuan argues that, "even if not preserved, review is nonetheless appropriate under Minn. R. Civ. App. P. 103.04" and is in "the interests of justice."

During district court contempt proceedings for violating the permanent injunction, Yuan was self-represented and did not raise the first issue argued in his brief to this court. Appellate courts may, however, "decide an issue not presented to or considered by the trial court when the issue is plainly decisive of the entire controversy on its merits, is raised prominently in the briefing, does not prejudice either party, or involves a question of law not dependent on new or controverted facts." *Miller v. Soo Line R.R.*, 925 N.W.2d 642, 653 (Minn. App. 2019) (quotations omitted); *see also* Minn. R. Civ. App. P. 103.04 (providing that this court may review "any other matter as the interest of justice may require").

The first issue was "fully briefed by the parties" on appeal, was raised prominently in briefing by both parties, and involves a question of law that does not turn on disputed facts; consideration of the issue also does not prejudice respondents. *Miller*, 925 N.W.2d at 653 (considering an issue not decided below when it was briefed by the parties and involved a question of law and there was no prejudice); *see also Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002) (considering an issue not raised below and noting that neither party "was represented by counsel" at the relevant hearing). Accordingly, we may review, in the

interest of justice, whether the district court improperly exercised its criminal contempt powers without following procedural safeguards.

B. The district court exercised its criminal contempt powers when it fined Yuan for past violations of the permanent injunction.

Caselaw distinguishes between two types of contempt orders—criminal and civil—based on the purpose of the order. *Hopp v. Hopp*, 156 N.W.2d 212, 216 (Minn. 1968). The purpose of criminal contempt orders is “[p]unishment for past misconduct.” *Id.* (emphasis omitted). A sanction for criminal contempt “is absolute and not subject to mitigation if the contemnor alters his future conduct.” *Minn. State Bar Ass’n v. Divorce Assistance Ass’n*, 248 N.W.2d 733, 741 (Minn. 1976).

“Civil contempt sanctions are intended to operate in a prospective manner” by compelling “future compliance with a court order.” *Swancutt*, 551 N.W.2d at 222 (quotation omitted). In other words, a civil contempt sanction is “remedial rather than punitive.” *Id.* The Minnesota Supreme Court has stated that a civil contempt sanction “affords the contemnor the keys to his jail cell in that the sentence is conditioned upon his continued noncompliance with the court order.” *Minn. State Bar Ass’n*, 248 N.W.2d at 741.

In the settlement agreement, the parties stipulated to the district court’s “entry of a permanent injunction” providing that Yuan would not “treat or solicit current or former patients of [respondents].” The district court then issued a permanent injunction that prohibited Yuan from treating respondents’ current or former patients for 30 months. Following a hearing on respondents’ motion to hold Yuan in contempt, the district court determined that Yuan was “in contempt” of the settlement agreement because he “treated

eighteen former or [current] patients” of respondents. As a sanction, the district court: required Yuan to pay a \$1,000 fine per current or former patient he treated, totaling \$18,000; mandated that Yuan “shutter[] and close[]” his clinic until making “payment on the bond”; and directed that the 30-month period of compliance would restart upon Yuan reopening his clinic.

Yuan argues that the \$1,000 fine per patient was an exercise of the district court’s “criminal contempt powers” because it “was imposed for past conduct.” Yuan relies on *River Towers Ass’n v. McCarthy*, in which the district court issued a temporary restraining order (TRO) after McCarthy, a resident of the River Towers condominiums, “continually harangued security guards, River Towers officials, and other tenants.” 482 N.W.2d 800, 802-03 (Minn. App. 1992), *rev. denied* (Minn. May 21, 1992). The TRO prohibited McCarthy from “communicating with River Towers security staff except in emergencies, and prohibit[ed] all but written or telephonic communication with designated River Towers Association officials.” *Id.* at 803. “River Towers produced several affidavits documenting [McCarthy’s] numerous violations of the temporary injunction,” including “a verbal and physical assault” on a caretaker. *Id.* The district court “found McCarthy in civil contempt,” fined him \$250, and “awarded River Towers \$13,368.33 in attorney fees and costs.” *Id.*

On appeal, McCarthy argued that the \$250 fine stemmed from the district court’s criminal contempt powers “because the fine was an unconditional punishment for past conduct.” *Id.* at 804. We agreed, concluding that the fine “was an exercise of criminal contempt power” because there was “no provision for McCarthy to purge the contempt”

and “no mechanism for compelling future compliance.” *Id.* at 805. We therefore reversed the finding of contempt “[b]ecause there was no contempt trial.” *Id.*

Yuan argues that the \$18,000 fine “is no different than the \$250 fine imposed in *River Towers*” because “[b]oth fines were imposed to punish past noncompliance with an injunction.” We agree with Yuan that the district court exercised its criminal contempt powers when it fined Yuan. Yuan is not able to “purge himself and end the sanction” by complying with the permanent injunction. *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989). As detailed above, “[c]ivil contempt proceedings are designed to induce future performance of a valid court order, not to punish for past failure to perform.” *Id.* Even if Yuan stops treating or soliciting respondents’ current or former patients in the future—as mandated by the permanent injunction—he will still owe \$18,000 for his past violations of the permanent injunction. In other words, Yuan’s future compliance with the permanent injunction will not remove the \$18,000 sanction.

Respondents argue that the district court’s sanction was “proper” because “the party aggrieved by the contempt [is] entitled to the damages” or indemnification, as authorized by Minn. Stat. § 588.11 (2022). Section 588.11 provides:

If any *actual loss or injury* to a party in an action or special proceeding, prejudicial to the person’s right therein, is caused by such contempt, the court or officer, in addition to the fine or imprisonment imposed therefor, may order the person guilty of the contempt to pay the party aggrieved a sum of money sufficient to indemnify the party and satisfy the party’s costs and expenses, including a reasonable attorney’s fee incurred in the prosecution of such contempt

(Emphasis added.)

Respondents' claim that the fine was for "actual loss" is unavailing. We acknowledge that, at the end of the contempt hearing, the district court stated that respondents "should be made whole." The record, however, does not show that respondents suffered an "actual loss or injury" of \$18,000, as section 588.11 requires. Respondents' memorandum in support of their motion for contempt argued that Yuan should "pay a sanction of \$1,000 for each of the eighteen (18) patients he treated" and that, if Yuan "protests the monetary amount," the district court can order an accounting of Yuan's clinic "in order to assess . . . the *amount obtained by Yuan* from violating" the stipulated permanent injunction. (Emphasis added.)

Respondents submitted an affidavit from their owner, who averred that "the economic value of each patient" is "\$960 to \$2,000." Accordingly, nothing in the record suggests that respondents suffered an actual loss of \$18,000. Rather, the \$18,000 sanction appears to estimate Yuan's profits from treating 18 patients, not respondents' actual losses. *Cf. Olson v. Rugloski*, 277 N.W.2d 385, 388 (Minn. 1979) (stating that "[l]ost profits may be recovered if they are a natural and proximate result of the breach and are proved with reasonable, although not absolute, certainty" and affirming an award of lost profits where the record included customer testimony and tax returns).

We conclude that the district court exercised its criminal contempt powers when it imposed the \$18,000 sanction against Yuan. Criminal contempt proceedings involving "disobedience of any lawful judgment, order, or process of the court" require "procedural safeguards including prosecution by the state, trial by jury, and proof beyond a reasonable

doubt.” *State v. Mason (In re Cascarano)*, 871 N.W.2d 34, 38 (Minn. App. 2015) (quotations omitted). But Yuan had no such procedural safeguards.

Because the district court erred by imposing criminal contempt sanctions without following procedural safeguards, we reverse. Accordingly, we need not decide the other four issues raised in Yuan’s brief to this court. Nothing in this opinion precludes future enforcement of the permanent injunction by conditions tied to Yuan’s compliance.

Reversed.