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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0850**

Bruber Financial Services, Inc. d/b/a Persolvent,
Respondent,

vs.

Arux Software, Inc.,
Appellant.

**Filed January 6, 2025
Affirmed
Cleary, Judge***

Hennepin County District Court
File No. 27-CV-22-11075

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Aaron Gott, Luke Hasskamp, Ruth Glaeser, Bona Law PC, Minneapolis, Minnesota; and

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Considered and decided by Slieter, Presiding Judge; Cochran, Judge; and Cleary, Judge.

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

NONPRECEDENTIAL OPINION

CLEARY, Judge

Following the district court's denial of appellant's motion to dissolve a temporary injunction, appellant argues the district court abused its discretion by determining that its off-the-record guidance about the scope of the injunction did not constitute a changed circumstance. Appellant also argues that the injunction violates antitrust law and public policy, is improperly based on partnership law, and improperly requires appellant and respondent to continue working together. We conclude that the district court did not abuse its discretion by determining that the off-the-record guidance did not constitute a changed circumstance and that the remaining arguments are not properly before us. We affirm.

FACTS

This case arises out of the fraying relationship between two business entities that operate Eleyo, a software product that some Minnesota school districts use to manage payment and registration for after-school and community-education programs. Appellant Arux Software, Inc. developed and owns the software. In 2011, Arux licensed its software to respondent Bruber Financial Services, Inc. d/b/a Persolvent. Under the licensing agreement, Persolvent processed payments, marketed the software, and paid royalties to Arux. In turn, Arux maintained the software and provided technical support. When the licensing agreement was set to expire, Persolvent exercised an option to extend the agreement until 2037.

By 2021, Arux and Persolvent's relationship was strained. Arux contracted to sell its software to the Minneapolis Parks and Recreation Board without using Persolvent as

the payment processing company, which led to arbitration that resolved in Persolvent's favor. Persolvent then sued Arux for developing a new version of the software and independently marketing it to customers while withholding software updates from Persolvent, alleging that Arux failed to meet its obligations under the parties' agreements and the partnership they formed through their joint commercialization of Eleyo.

Persolvent moved to enjoin Arux from competing with Eleyo. In April 2023, the district court issued an order granting a temporary injunction ("original injunction"). The district court found that Arux had "forged ahead with separately marketing its software," utilizing a different payment processing company and a different name. Based on the district court's determination that Persolvent could likely establish that it formed a partnership with Arux, the district court determined that Arux would have a duty not to compete with Eleyo. The district court also found that Eleyo "cannot survive direct competition from [Arux]." Accordingly, the district court enjoined Arux "from competing directly with Eleyo." Arux filed a notice of appeal of the original injunction order pursuant to Minn. App. P. 103.03(b) and, the next day, moved to stay the temporary injunction pending appeal.

A few months later, the district court issued an order amending the original injunction ("injunction"). The district court acknowledged that the original injunction "failed to address the ramifications of [Arux's] dissociation" from the partnership. The district court held that Arux had no underlying statutory duty not to compete because of its dissociation. After considering new evidence about how Arux would be harmed by its inability to compete, alongside its previous finding that "allowing [Arux] to compete for

business with current Eleyo customers will mean an end to Eleyo,” the district court issued the amended injunction “that treads the middle ground and frees [Arux] to market its business to entities that are not current customers of Eleyo.” The injunction order read, in part: “Defendant is temporarily enjoined from soliciting any current customers of the Eleyo branded or marketed software or from taking any action that would undermine those customers’ ability to continue to use and enjoy the Eleyo branded software.” It also incorporated the memorandum attached to the order.

After the injunction issued, Arux stipulated to dismiss its appeal of the original injunction order. No party appealed the injunction order.

In November 2023, Arux requested “the [district c]ourt’s confirmation that it does not violate the temporary injunction if a customer [of Eleyo] unilaterally approaches Arux” and purchases an Arux product. Instead of confirming, the district court offered guidance to the parties (“the guidance”) that Arux would violate the injunction by selling its product to a current Eleyo customer. While the judge delivered the guidance at an off-the-record conference, the parties’ accounts of the judge’s statements were undisputed. According to Arux, the then-presiding judge said that, under the injunction, solicitation included a situation in which “a current Eleyo customer sought out Arux’s new software entirely of its own volition.” Arux reported that the then-presiding judge suggested it “prepare a ‘script’ . . . to explain [to current Eleyo customers] that Arux could not conduct any new business with them.” According to Persolvent, the judge said that the injunction “does not allow ‘entertaining requests’ from Eleyo customers to switch” to the new Arux software, and the judge “further stated that by creating . . . ‘Eleyo Customer Interest Forms,’ Arux

had made school districts the ‘lead dancer’ in Arux’s attempt to ‘dance around the injunction.’” Shortly after the off-the-record conference, the then-presiding judge retired.

Arux moved to dissolve the injunction, arguing that the guidance transformed the non-solicitation requirement into a noncompete requirement in violation of Minnesota antitrust law. The Office of the Attorney General for the State of Minnesota (AGO) filed a two-page letter in the case, urging the district court “to be mindful of . . . antitrust laws, and the interests of the people of Minnesota in robust competition.” The AGO expressed “no position on the facts underlying the instant dispute.”

After a hearing on the motion, the district court determined that the guidance was not a change in circumstances that justifies dissolving the temporary injunction and denied Arux’s motion.

Arux appeals.

DECISION

Arux challenges the district court’s denial of its motion to vacate the amended injunction. We review a district court’s refusal to dissolve a temporary injunction for a “clear abuse of discretion.” *In re Amitad, Inc.*, 397 N.W.2d 594, 596 (Minn. App. 1986) (citing *Foote v. City of Cosby*, 306 N.W.2d 883, 884 (Minn. 1981)). A district court abuses its discretion if its decision is against the facts in the record or misapprehends the law. *State ex rel. Swan Lake Area Wildlife Ass’n v. Nicollet Cnty. Bd. of Cnty. Comm’rs*, 799 N.W.2d 619, 625 (Minn. App. 2011). “We view the facts in favor of the party who prevailed below.” *Upper Midwest Sales Co. v. Ecolab, Inc.*, 577 N.W.2d 236, 240 (Minn. App. 1998).

A district court may issue a temporary injunction “to preserve the status quo until trial on the merits.” *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 226 (Minn. App. 2002), *rev. denied* (Minn. Feb. 4, 2002). Once issued, the injunction may be modified or vacated if “the circumstances have changed and it is just and equitable to do so.” *Channel 10, Inc. v. Indep. Sch. Dist. No. 709, St. Louis Cnty.*, 215 N.W.2d 814, 829 (Minn. 1974). Changed circumstances include “(1) changes in operative facts, (2) changes in the relevant decisional law, and (3) changes in any applicable statutory law.” *Jacobson v. County of Goodhue*, 539 N.W.2d 623, 626 n.3 (Minn. App. 1995) (citing 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 2961, at 402-03 (2d ed. 1995)). This limitation ensures the stability of “continuing injunctive relief based on adjudicated facts and law” while permitting courts to respond when “significant changes in law or facts” turn an injunction “into an instrument of wrong.” *Sys. Fed’n No. 91, Ry. Emps.’ Dept., AFL-CIO v. Wright*, 364 U.S. 642, 647 (1961).

To begin, we disagree with Arux’s assertion that the changed-circumstances requirement is “not ‘strict’” and that a district court can dissolve an injunction “for any . . . good reason.” Arux does not support this position with binding authority, instead citing federal caselaw and a nonprecedential opinion by this court, *Bonanza Grain, Inc. v. Roverud Construction, Inc.*, No. C1-89-1315, 1989 WL 153820, at *2 (Minn. App. Dec. 26, 1989). *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions are “not binding authority”). In any event, *Bonanza Grain* is inapposite because there, we considered a district court’s authority to modify an injunction based on the enjoined party’s noncompliance. 1989 WL 153820, at *2. We did not consider

the situation presented here, in which an enjoined party preemptively asks for guidance about whether certain conduct would violate an injunction and receives clarification from the district court.¹ Therefore, we consider whether the district court abused its discretion by finding no changed circumstances.

First, Arux argues that the injunction implicitly permitted it to accept business from current Eleyo customers, so the district court's guidance allegedly withdrawing that permission constituted a changed circumstance. Arux points to the injunction's language "temporarily enjoin[ing] [Arux] from soliciting any current customers of . . . Eleyo." Arux contends that the injunction's use of "solicit" prohibited only "active initiation or approach on the seller's part."² And Arux claims that the injunction recognized Arux's right to

¹ Further, more recent federal caselaw and nonprecedential opinions by this court have clarified that a district court must find changed circumstances before modifying or dissolving an injunction. *See Walker Prop. of Woodbury II, LLC v. City of Woodbury*, No. A10-940, 2010 WL 5156116, at *2-*3 (Minn. App. Dec. 21, 2010) (remanding for additional findings on whether there was a "substantial change in circumstances" justifying the dissolution of a temporary injunction); *Ahmad v. City of St. Louis*, 995 F.3d 635, 640 (8th Cir. 2021) ("Modifying or dissolving a preliminary injunction is proper only when there has been a change of circumstances . . . that would render the continuance of the injunction in its original form inequitable." (quotation omitted)).

² Arux relies on several cases holding that solicitation requires initiation on the seller's part. *See, e.g., Miller v. Honkamp Krueger Fin. Servs., Inc.*, 9 F.4th 1011, 1016-17 (8th Cir. 2021) (noting that South Dakota narrowly construes its statutory exception allowing non-solicitation as generally prohibiting contracts restraining profession, trade, or business); *Honeywell Int'l Inc. v. Stacey*, No. 13-CV-3056, 2013 WL 9851104 (D. Minn. Dec. 11, 2013) (noting multiple cases from various jurisdictions supporting its conclusion that a non-solicitation contract term does not bar "merely accepting business" (quotation omitted)). Arux also cites Minnesota statutes and rules that include seller-initiated conduct as solicitation, Minn. Stat. § 325E.26 (2024) (personal solicitation using automatic dialing-announcing devices); Minn. R. Pro. Conduct R. 7.3(a) (attorney solicitation of clients) and exclude buyer-initiated contact from restrictions on solicitation, Minn. Stat. § 60K.46 (2024) (personal solicitation of insurance sales); Minn. Stat. § 325G.06 (2024) (home-solicitation sales).

compete against Eleyo and permitted it to exercise that right, so long as it did not seek out Eleyo customers.

Whether a prohibition on any sales to current Eleyo customers existed in the injunction or emerged through the guidance is a question of contract interpretation. Minnesota courts interpret an injunction consistent with its purpose, *see Ladwig v. Chatters*, 623 N.W.2d 266, 267-68 (Minn. App. 2001), and avoid a construction that “would render the injunction meaningless,” *Electro-Craft Corp. v. Controlled Motion, Inc.*, 332 N.W.2d 890, 904 (Minn. 1983). *See also Stieler v. Stieler*, 70 N.W.2d 127, 131-32 (Minn. 1955) (explaining that a district court’s interpretation must give “full effect . . . to that which is necessarily implied in the judgment, as well as to that actually expressed therein.”). “We defer to a district court’s interpretation of its own order.” *LaChapelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000). To the extent that an injunction is unclear or ambiguous, the district court may clarify or interpret it. *Tarlan v. Sorensen*, 702 N.W.2d 915, 919 (Minn. App. 2005).

Here, the district court determined that the guidance was “not a new interpretation or expansion” of the injunction and thus not a changed circumstance. Rather, it held that the guidance “clarif[ied] that the [parties’] conduct at the time of the conference did indeed violate the terms of the injunction” and “reiterat[ed] . . . the purpose of the modified injunction.”

Reading the amended injunction as a whole, we find adequate support for the district court’s conclusion that the guidance did not change the injunction. The district court explained that the purpose of the injunction was to “tread[] the middle ground” between

two findings: that Arux’s business would be at risk if Arux was completely constrained from the market, and that “allowing [Arux] to compete for business with current Eleyo customers will mean an end to Eleyo.” In light of that purpose, the district court determined that permitting Arux “to market its business to entities that are not current customers of Eleyo strikes a better balance.” It also allowed Arux “to engage[] in such limited competition as described” but explicitly prohibited Arux from “soliciting” current Eleyo customers. A prohibition on sales to current Eleyo customers is consistent with the limited competition described in the injunction.

Moreover, the record reflects that the district court merely reiterated the injunction’s purpose at the off-the-record conference. There, the district court stated that, by creating “‘Eleyo Customer Interest Forms,’ Arux had made school districts the ‘lead dancer’ in Arux’s attempt to ‘dance around the injunction.’” These facts, viewed in the light most favorable to Persolvent, reveal the district court’s concern that Arux’s conduct undermined the injunction’s purpose—to enable limited competition to preserve both Arux and Eleyo. A party is not excused from complying with an injunction based on an interpretation that “would render the injunction meaningless.” *Electro-Craft*, 332 N.W.2d at 904. We discern no abuse of discretion in the district court’s determination that the clarification did not change the injunction.

We acknowledge that the word “solicit” suggests that Arux was prohibited from actively initiating sales to Eleyo customers. But in light of the injunction’s purpose, *Ladwig*, 623 N.W.2d at 267, and the “great weight” we give “a district court’s construction of its own ruling . . . on appeal,” *Tarlan*, 702 N.W.2d at 919, which applies even when the

district court interprets the order of a predecessor judge, *see Johnson v. Johnson*, 627 N.W.2d 359, 363-64 (Minn. App. 2001), *rev. denied* (Minn. Aug. 15, 2001), we discern no abuse of discretion in the district court’s determination that the guidance merely clarified the injunction.

Accordingly, we conclude that there was no change in circumstances that would warrant reexamination of the injunction. The guidance merely clarified how the injunction—which was based on adjudicated facts and law—would apply to Arux’s proposal that it could sell to existing Eleyo customers who unilaterally reached out to it. Arux has cited no caselaw in which a court has found that the interpretation of an injunction satisfies the changed-circumstances requirement. And the supreme court has held that, when a judgment is uncertain, the interpretation or clarification of that judgment “involves neither an amendment of its terms nor a challenge to its validity.” *Stieler*, 70 N.W.2d at 131. Federal courts have applied a similar principle to a district court’s clarification of the scope of an injunction. *See Flavor Corp. of Am. v. Kemin Indus., Inc.*, 503 F.2d 729, 732 (8th Cir. 1974) (holding that a district court’s clarification of the scope of an injunction was not a “modification” requiring a showing of changed circumstances). This principle comports with the policy basis of the changed-circumstances requirement, as parties would be unable to rely on the stability of injunctive relief based on adjudicated facts and law, *Wright*, 364 U.S. at 647, if an injunction could be dissolved each time that the district court clarified its meaning without modifying its scope.

Arux alleges three additional changed circumstances, but none of them change the factual and legal basis for the injunction. First, Arux asserts that school districts now want

to buy its software. But the injunction contemplated that Arux's new software would be offered to school districts and imposed terms on those offers. Second, Arux points out that the parties' relationship has deteriorated, making the injunction "even less manageable." But litigation disputes over discovery issues and failed attempts to reach agreement do not preclude Arux from continuing to provide technical support to Eleyo customers, as the injunction requires. Finally, Arux claims that Persolvent changed its legal position about an "ongoing partnership" duty not to compete, but Arux offers no legal support for its claim that this is a sufficient change in operative facts or decisional law. In short, none of these allegations represent changes in the adjudicated facts and law that warrant a dissolution or further amendment of the injunction.

Because we discern no abuse of discretion in the district court's changed-circumstances determination, we affirm the district court's denial of Arux's motion to dissolve the injunction. *See Jacobson*, 215 N.W.2d at 829 (stating that a district court may vacate an injunction if circumstances change). We need not reach Arux's additional arguments related to antitrust principles and the legal basis for the injunction, which it could have properly raised on direct appeal from the injunction within 60 days of its entry, Minn. R. Civ. App. P. 103.03(b), 104.01, subd. 1.

Affirmed.