

*This opinion is nonprecedential except as provided by  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  
A25-1472  
A25-1473**

Continua Interiors of Minnesota, LLC,  
Respondent,

vs.

Brandon Hess, et al.,  
Appellants (A25-1472),

Continua Interiors of Minnesota, LLC,  
Respondent,

vs.

Mark Lorenson, et al.,  
Appellants (A25-1473).

**Filed April 6, 2026  
Affirmed  
Smith, Tracy M., Judge**

Hennepin County District Court  
File Nos. 27-CV-25-14362, 27-CV-25-14133

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Considered and decided by Smith, Tracy M., Presiding Judge; Wheelock, Judge; and Halbrooks, Judge.\*

## **NONPRECEDENTIAL OPINION**

**SMITH, TRACY M.**, Judge

In these consolidated appeals, appellants challenge temporary injunctions<sup>1</sup> filed in two pending district court actions brought against them by respondent Continua Interiors of Minnesota, LLC, to enforce noncompete and confidentiality agreements. Because we discern no abuse of discretion in the district court’s grant of the temporary injunctions, we affirm.

## **FACTS**

Continua is a business that provides furniture, audio visual (AV), and architectural design, service, sales, distribution, and installation for customers including businesses, education, health care, and government. The individual appellants—Brandon Hess, Sam Daley, Frank Janecek, Jeremy Schneider, Mat Cigan, and Mark Lorensen—are all former employees of Continua and current employees of appellant Conference Technologies, Inc. (CTI). CTI is an AV business specializing in broadcast, AV and information technology services, live event production, and meeting room AV solutions.

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

<sup>1</sup> Although the district court orders were titled temporary restraining orders (TRO), the orders are effectively temporary injunctions because they were not entered ex parte. *See* Minn. R. Civ. P. 65.01-.02.

In brief, the individual appellants all originally worked for Intereum, Inc., in various capacities for varying lengths of time. Each individual appellant signed an employment agreement with Intereum that contained a confidentiality clause and a noncompete clause. In 2023, Intereum entered into an asset purchase agreement (APA) with Continua,<sup>2</sup> under which Continua purchased Intereum's assets and liabilities. On the closing date of the APA, the individual appellants stopped working for Intereum and began working for Continua. Approximately two years later, the individual appellants left Continua and began working for CTI. Continua brought suit against CTI and the individual appellants. Continua sought temporary injunctions enforcing the confidentiality and noncompete clauses in the employment agreements. Appellants opposed the temporary injunctions, arguing with respect to the noncompete clause that the noncompete period began to run when the individual appellants stopped working for Intereum and had expired by the time they began working with CTI. The district court rejected the argument and granted the temporary injunctions with respect to both clauses.

With that overview, we provide the following more detailed background.

### ***Individual Appellants' Employment Agreements***

Two agreements play a role in this dispute: (1) the employment agreement between each of the individual appellants and Intereum and (2) the APA between Intereum and Continua.

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<sup>2</sup> At the time of the purchase agreement, Continua was called Intereum Holdings, LLC (a separate entity from Intereum, Inc.). Intereum Holdings subsequently changed its name to Continua Interiors of Minnesota, LLC. To avoid confusion between Intereum, Inc., and Intereum Holdings, we refer to respondent by its current name, Continua, throughout.

Beginning with the employment agreement with Intereum, there are four provisions of the employment agreement that are relevant here: the confidentiality provision, the noncompete provision, the transferability provision, and the remedies provision.

The confidentiality provision provides that the employees agree not to “use or disclose any Confidential Information or permit any person to examine, copy or otherwise receive any Confidential Information” during or after their employment with Intereum.

The noncompete provision provides that, during employment with Intereum and for 12 months after their “employment with Intereum ends,” the employees will not engage in certain competitive activities “with another person or entity, within any geographical area in which Intereum, at any time during [their] employment with Intereum, was engaged in sale, marketing, or distribution of a Company Product.” Specifically, the provision states that the employees may not

1. directly or indirectly participate in or support in any capacity the manufacture, invention, development, sale, solicitation of sale, marketing, testing, research or other business aspect of any actual or projected product, product line or service designed, developed, manufactured, marketed or sold by anyone other than Intereum that performs similar functions, is used for the same general purposes as or is otherwise competitive with a Company Product;
2. disrupt, damage, impair, or interfere with the business of Intereum whether by way of interfering with or disrupting Intereum’s relationship with employees, customers, agents, representatives or vendors; or
3. employ or attempt to employ (by soliciting or assisting anyone else in the solicitation of) any of Intereum’s then employees on behalf of any other entity, whether or not such entity competes with Intereum.

The noncompete provision also requires that former employees provide a copy of the agreement to a new employer if reemployed during the 12-month restrictive period.

The transferability provision provides that “Intereum may transfer or assign this Agreement or its rights to obligations under the Agreement to any successor or assign, or to any person or entity that purchases substantially all of the assets and/or stock of Intereum.”

Lastly, the remedies provision states: “You understand that violation of this Agreement would result in immediate and irreparable injury to Intereum; accordingly, you agree that Intereum has the right to obtain an injunction to specifically enforce the terms of this Agreement, and to obtain any other legal or equitable remedies which may be available.”

### ***Asset Purchase Agreement***

Turning to the APA between Intereum and Continua, there are two provisions that are especially relevant. The first is Section 1.1 of the APA, which provides that, as of the closing date, Intereum will convey and Continua will acquire all of Intereum’s “property, rights, and assets<sup>[3]</sup> . . . to the extent that such assets, properties and rights exist as of the Closing Date.” The second provision is Section 6.3, which provides:

Commencing on the Closing Date, [Intereum] shall terminate all employees of the Business who are actively at work on the Closing Date, and, at [Continua’s] sole discretion, [Continua] may offer employment, on an “at will” basis, to any or all of such employees. Each employee who accepts employment with [Continua] shall be deemed a “**Transferred Employee**”.

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<sup>3</sup> In a provision that is not relevant here, certain assets are excluded.

On June 16, 2023, the transaction closed and Continua acquired Intereum. Per the APA, Intereum terminated all employees on that date.<sup>4</sup> Effective that same day, some of Intereum’s former employees, including the individual appellants, were hired by Continua and considered “transferred employees” per the APA. The transferred employees did not sign a new employment agreement with Continua.

***Individual Appellants’ Departures from CTI and Subsequent Legal Actions***

In April 2025, Continua terminated Lorenson’s employment. Shortly after his discharge, Lorenson began working for CTI as its regional vice president. Approximately two months later, Hess, Daley, Janecek, Schneider, and Cigan terminated their employment with Continua and began working for CTI.

Continua initiated the actions underlying this appeal. In the first action, Continua alleged breach of contract by Lorenson, tortious interference with a contract by CTI, and tortious interference with contracts by Lorenson and CTI. In the second action, Continua alleged breach of contract and breach of fiduciary duty by Hess, Daley, Janecek, Schneider, and Cigan; tortious interference and aiding and abetting breach of fiduciary duty by CTI; and civil conspiracy by all appellants aside from Lorenson.

Continua moved for a TRO and temporary injunction in both actions, alleging that the individual appellants were working for CTI in the same AV industry; that the individual appellants were using confidential business information, customer knowledge, and contact

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<sup>4</sup> As the district court noted, the sale occurred prior to the effective date of a recent statute limiting noncompetition agreements, which became effective July 1, 2023. *See* Minn. Stat. § 181.988 (2024); 2023 Minn. Laws ch. 53, art. 6, § 1, at 1268.

information acquired during their employment with Continua; and that several customers had been solicited by appellants “in recent days” in violation of their employment agreements. Following briefing by the parties and a motion hearing, the district court granted a temporary injunction in each case, although it exercised its discretion to narrow the scope of the noncompete provision.<sup>5</sup>

The temporary injunctions enjoined the individual appellants from (1) soliciting or marketing CTI’s products or services to any Continua customer that the individual appellants worked with or to any known prospective customers of Continua, (2) soliciting other Continua employees to end their employment with Continua or to work with CTI, or (3) disclosing Continua’s confidential information. The temporary injunctions also enjoined CTI from (1) using or sharing any of Continua’s confidential information as defined in the confidentiality agreement or (2) permitting any individual appellant to act in violation of the order.

CTI and the individual appellants appealed. Continua moved to consolidate the two cases, and we granted the motion to consolidate.

## **DECISION**

Appellate courts review the grant of a temporary injunction for an abuse of discretion. *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321 (Minn. 1965). An abuse of discretion occurs when a district court “bases its decision to grant injunctive

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<sup>5</sup> In enforcing noncompete agreements, courts have the discretion to modify overly restrictive provisions. *Davies & Davies Agency, Inc. v. Davies*, 298 N.W.2d 127, 133 (Minn. 1980).

relief on an erroneous interpretation of the law or if it disregards facts.” *First & First, LLC v. Chadco of Duluth, LLC*, 999 N.W.2d 553, 557 (Minn. App. 2023), *rev. denied* (Minn. Feb. 20, 2024). The burden falls on the party challenging an injunction to show that an abuse of discretion occurred. *Id.* Appellate courts review “the facts in the light most favorable to the prevailing party.” *Metro. Sports Facilities Comm’n v. Minn. Twins P’ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *rev. denied* (Minn. Feb. 4, 2002).

Minnesota Rules of Civil Procedure 65.02 governs temporary injunctions. “A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on its merits.” *Miller v. Foley*, 317 N.W.2d 710, 712 (Minn. 1982). But “[n]ot every change in circumstances merits such relief.” *Id.* “Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held.” *Id.*

Courts consider five factors, known as the *Dahlberg* factors, to determine whether to grant a temporary injunction:

- (1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.

- (2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.

- (3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.

- (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.

(5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

*Dahlberg*, 137 N.W.2d at 321-22 (footnotes omitted). These five factors inform whether a party's rights will be irreparably harmed. *DSCC v. Simon*, 950 N.W.2d 280, 286 (Minn. 2020).

Appellants specifically challenge the district court's determination with respect to the third *Dahlberg* factor, arguing that the district court erred by finding that Continua is likely to succeed on the merits. Appellants also challenge more generally the district court's overall determination that Continua has incurred or will incur irreparable harm. We address the arguments in turn.

#### **A. Likelihood of Success of the Merits**

The district court analyzed Continua's likelihood of success on the merits on its breach-of-contract and tortious-interference claims, noting that Continua's claims against the individual appellants are primarily based on breach of contract.<sup>6</sup>

##### **1. Continua's Likelihood of Success on its Breach-of-Contract Claims**

To determine whether Continua is likely to succeed on the merits of its breach-of-contract claims, the district court had to engage in contract interpretation to the extent required to determine whether success is likely under the terms of the contract. If a contract is unambiguous, its interpretation is a question of law that appellate courts review de novo.

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<sup>6</sup> The district court declined to analyze the likelihood of success on the merits for the breach-of-fiduciary-duty and civil-conspiracy claims because it determined that the record was not sufficiently developed on those claims.

*Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *rev. denied* (Minn. July 19, 2011). All the parties agree that the employment agreements are unambiguous; we agree, too, and we thus apply de novo review of the contract terms.

To succeed on its breach-of-contract claims against the individual appellants, Continua will be required to prove: “(1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant.” *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). Minnesota courts look upon covenants not to compete “with disfavor and scrutinize them with care.” *Freeman v. Duluth Clinic, Ltd.*, 334 N.W.2d 626, 630 (Minn. 1983).

Continua alleges breach of the noncompete provision in the employment agreements that the individual appellants signed with Intereum. Under Minnesota law, a noncompete agreement in an employment agreement is assignable as part of the sale of a business in order to protect the goodwill of the business. *Dr. L.M. Saliterman & Assocs., P.A. v. Finney*, 361 N.W.2d 175, 178 (Minn. App. 1985). When the language of a noncompete agreement shows that the parties to the agreement contemplated and agreed to the future assignment of the parties’ respective interests, the agreement is assignable, even if the employee subsequently objects. *Id.*

Appellants do not dispute that their noncompete agreements were assigned to Continua when Continua purchased Intereum via the APA or that Continua obtained the right to enforce the noncompete agreements. Appellants argue instead that, because the individual appellants’ employment with Intereum ended at the time of the sale to Continua,

the only right that was transferred to Continua with respect to the noncompete provision was the right to enforce the provision for 12 months following its purchase of Intereum. Continua counters that it fully stepped into Intereum's shoes when it purchased Intereum and the individual appellants began working for Continua, and that the 12-month period was not triggered until the individual appellants' employment with Continua ended.<sup>7</sup> We are persuaded by Continua's argument.

In support of their position, appellants emphasize the language of the noncompete provision in the employment agreements. It states: "During your employment with Intereum and for a period of 12 months (1) year *after your employment with Intereum ends*, you will not [engage in the specified competitive activities]." (Emphasis added.) But the employment agreements also contain a transferability provision. That provision allows Intereum to "transfer or assign this Agreement or its rights to obligations under the Agreement to any successor or assign, or to any person or entity that purchases substantially all of the assets and/or stock of Intereum." As appellants recognize, such a transfer or assignment happened here.

Appellants also argue that the language "your employment with Intereum ends" would have to include "successors or assigns" to extend to Continua in that context. The argument is unconvincing. The transferability provision applies to the entire employment agreement—it was therefore not necessary to repeat the words "any successor or assign, or

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<sup>7</sup> As noted above, the individual appellants did not leave Continua's employ until approximately two years after Continua purchased Intereum.

[purchaser of] substantially all of the assets and/or stock” in every provision of the agreement.

Appellants also emphasize that, under Section 6.3 of the APA, Intereum was required to terminate its employees’ employment on the closing date and that the individual appellants, who were offered employment by Continua, became Continua’s employees on that date. Thus, they contend, the 12-month period must have been triggered on that date. In oral arguments, appellants made a more expansive version of this argument, asserting that, in the context of an asset purchase agreement, as opposed to a stock purchase agreement, the noncompete period is always triggered at the point of purchase because the employees will necessarily have a new employer. We are not convinced.

As a general rule, “[a]n assignment operates to place the assignee in the shoes of the assignor, and provides the assignee with the same legal rights as the assignor had before assignment.” *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004). Under the noncompete provision here, the individual appellants could not compete with Intereum during their employment with Intereum or for 12 months thereafter. We agree with the district court that, at least based on the record at this point in the case, upon the transfer or assignment of the noncompete provision, Continua stepped into the shoes of Intereum and had the right to enforce the noncompete provision during the term of the individual appellants’ employment with Continua and for 12 months thereafter.

We note that, although Minnesota caselaw has recognized the assignability of noncompete agreements, *see Saliterman*, 361 N.W.2d at 178, it has not addressed the specific question of when a post-employment noncompete period is triggered in the context

of an assignment. The district court here looked to an Eighth Circuit decision addressing this question in a case arising under another state’s law. In *Stuart C. Irby Co., Inc. v. Tipton*, the Eighth Circuit considered when a noncompete provision was triggered following the sale of a business via an asset purchase agreement. 796 F.3d 918, 921, 924-25 (8th Cir. 2015). In that case, the transferred employees argued that the postemployment noncompete period was triggered at the time of the sale and had expired by the time that the employees left the purchaser Irby’s employ. *Id.* at 924-25. The federal district court agreed, granting summary judgment on Irby’s breach-of-contract claims to the employees. *Id.* at 925. The Eighth Circuit reversed and remanded for a trial, explaining:

The district court found that Irby only partially stepped into [the seller’s] shoes as a result of the assignment, reasoning that Irby could enforce the non-compete agreements . . . but only could do so for one year after [the employees] left [the seller’s] employ. . . . The district court offered no legal support for this peculiar result, and we see no reason to deviate from the normal manner in which the assignment of contract rights operates. Consequently, we conclude that if the non-compete agreements were in fact assigned to Irby, it fully stepped into [the seller’s] shoes and received [the seller’s] rights in full force and effect as to the party charged.

*Id.* (quotations omitted). Although the Eighth Circuit’s decision does not govern us, we conclude that the district court did not abuse its discretion by applying *Irby*’s reasoning here.

Appellants argue that *Irby* is distinguishable because, there, the employees’ transition to their new employer “appear[ed] to have been seamless,” with the transferred employees keeping the same benefits and seniority and performing the same job duties. *See id.* at 921. But our ruling here does not necessarily mean that an APA could never

trigger a post-employment noncompete provision. For example, if the scope of an employee's work changed significantly between the first and second employer or if the prohibited conduct covered by a noncompete agreement expanded significantly because the second employer covered a larger geographic area, it is possible that a different result could follow. But such facts have not been alleged here.

Additionally, we observe that the district court's finding that appellants engaged in behavior that is likely a breach of the noncompete provision is supported by the record. For example, the record contains evidence that appellants directly solicited former clients, including through direct emails to accounts they held while at Continua, expressing a desire to "reconnect." There is also evidence in the record that Lorensen solicited Continua employees to work for CTI. And lastly, according to affidavits of Continua employees, certain large clients that were previously assigned to individual appellants have decreased their communications with Continua and are likely to switch to CTI.

For these reasons, we conclude that the district court did not abuse its discretion by finding that Continua is likely to succeed on the merits of its breach-of-contract claim for the individual appellants' breach of the noncompete provision of the employment agreements.

Continua also alleges breach of the employment contracts' confidentiality provision. Because we conclude that the district court did not abuse its discretion by determining that Continua is likely to succeed on the merits of its breach-of-contract claim based on the noncompete provisions, we need not reach the issue of likelihood of success based on the confidentiality provision.

## **2. Continua's Likelihood of Success on its Tortious-Interference Claims**

The district court also found that Continua presented “a colorable potential claim against CTI for tortious interference with its contractual relationships sufficient to support limited temporary injunctive relief against CTI.” Appellants do not separately address this finding or argue that Continua is unlikely to succeed on its tortious-interference claim, beyond arguing that the noncompete provision expired 12 months after Continua purchased Intereum. Because we reject that argument and appellants assert no other challenges to the district court’s finding, we do not address it further. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (holding that arguments not raised in briefs are forfeited).

### **B. Irreparable Harm**

We next turn to appellants’ argument that the district court abused its discretion by entering the temporary injunctions because the record does not support a determination of irreparable harm.

To obtain temporary injunctive relief, Continua had to show that its rights would be “irreparably injured before a trial on the merits is held.” *Miller*, 317 N.W.2d at 712. “Generally, the injury must be of such a nature that money damages alone would not provide adequate relief.” *Haley v. Forcelle*, 669 N.W.2d 48, 56 (Minn. App. 2003), *rev. denied* (Minn. Nov. 25, 2003). “Irreparable injury can be actual or threatened.” *St. Jude Med., Inc. v. Carter*, 913 N.W.2d 678, 684 (Minn. 2018) (quotation omitted). “The threatened injury must be real and substantial. The burden is not insignificant: the party must show that irreparable injury is *likely*, not just possible.” *Id.* (quotation and citations

omitted). A former employee's solicitation of a former employer's customers may be a basis to infer some irreparable harm. *Thermorama, Inc. v. Buckwold*, 125 N.W.2d 844, 845 (Minn. 1964).

In *Carter*, the supreme court explained that “there are circumstances in which it may be appropriate for a district court to infer irreparable harm,” including “situations where customer good will is at stake, when an employee takes business secrets with an intent to benefit from the secrets, or when a risk exists that the secrets will be disclosed in the subsequent employment and result in irreparable damage.” 913 N.W.2d at 685. But the supreme court also emphasized, “Breach of a covenant not to compete, standing alone, does not so readily indicate irreparable injury to the employer. Injury is not shown by the mere fact that the employee has left the service and has entered the employ of a rival concern.” *Id.* (quotation omitted). The supreme court noted that it is “cautious about enjoining former employees due to the risk of constraining their ability to make a living” and that it thus “require[s] ‘some *proof* of irreparable damage’” before issuance of an injunction. *Id.* (quoting *Menter Co. v. Brock*, 180 N.W. 553, 555 (Minn. 1920)).

The district court here found that “Continua has presented evidence to support that CTI . . . is pursuing hiring of Continua's existing AV employees and customers, and the marketing of Continua's customers including key large customers” and that each individual appellant had access to confidential information and held goodwill with Continua's existing customers. It concluded that Continua was likely to suffer irreparable harm because the loss of goodwill with customers is an “intangible asset” that “money cannot replace” and that “the record supports an imminent threat of irreparable harm of disclosure,

direct or indirect, and inevitable use of Continua’s confidential business information in relation to work for CTI” because each of the individual appellants holds confidential business information and they “cannot simply forget what they know.”

Appellants advance three arguments challenging the district court’s determination, which we address in turn.

### **1. Remediation through a Damages Award**

Appellants argue, first, that the district court abused its discretion because Continua failed to demonstrate that any harm suffered due to violation of the noncompete provision could not be remediated through an award of damages. We are not persuaded.

In *Medtronic, Inc. v. Advanced Bionics Corporation*, we upheld a temporary injunction when an employer sought to enforce a noncompete agreement against a former employee who was soliciting past customers. 630 N.W.2d 438, 452-53 (Minn. App. 2001). We rejected the former employee’s argument that any loss of goodwill could be compensated by monetary damages. *Id.* at 453. We explained that the former employee’s customer knowledge gives him “insight into customer preferences” and “may also help [the former employee] anticipate [the employer’s] marketing plans, business plans, product development, and marketing strategy.” *Id.* Our decision in *Medtronic, Inc.* supports the district court’s determination here that loss of goodwill could give rise to irreparable harm not compensable by monetary damages. In addition, as Continua argues, the difficulty in ascertaining the precise dollar value of the harm to its goodwill and business relationships weighs in favor of temporary injunctive relief. “When there is difficulty and uncertainty in determining damages, it may be far better to prevent injury through a temporary injunction

than to attempt to compensate the injured party after the injury has occurred.” *Metro. Sports Facilities Comm’n*, 638 N.W.2d at 223.

## **2. Threat to Customer Goodwill**

Appellants next argue that Continua failed to establish irreparable harm because it did not demonstrate a threat to customer goodwill. Contrasting their case with *Medtronic, Inc.*, they contend that, here, the district court abused its discretion because it failed to specifically determine the extent of each former employee’s individual “grasp” on goodwill, when the employees all had different job titles and responsibilities. They also argue that Continua failed to produce any evidence of a “finite market for AV services” or that the former employees offered “niche service” to Continua’s clients. The individual appellants assert in their affidavits that “Continua operates on a broader scale than CTI,” primarily because Continua’s business—unlike CTI’s—includes furniture in addition to AV and because Continua operates throughout the Midwest—in Illinois, Minnesota, Missouri, and Wisconsin—while CTI operates mostly in Minnesota.

We disagree that the district court abused its discretion by determining that the individual appellants had a grasp on goodwill with clients without evaluating the extent of the goodwill grasped by each appellant individually. The record shows that all the individual appellants interacted with clients directly, albeit in various ways. Contrary to appellants’ assertion, the district court did not determine that the individual appellants “all held an identical, indispensable grasp on the goodwill of Continua customers.” Instead, the district court’s order reflects that it separately considered each individual appellant’s role:

Lorenson and the Individual [appellants] *each* held positions with Continua in which they directly worked with and oversaw these AV customer accounts, worked with the decisionmakers within those accounts, serviced the accounts and planned growth in relation to the customers. The record supports the Individual [appellants] *each* hold goodwill with Continua's existing customers and the prospective customers that they were involved in marketing that belongs to Continua. The record also supports that *each* of the Individual [appellants] was provided access to its confidential business information and data. Lorenson, Schneider had the highest level of confidential information and strategies.

(Emphasis added.) Additionally, although Continua may operate on a broader scale than CTI, Continua does provide similar AV-related services and has an interest in serving at least some of the same customers.

### **3. Disclosure of Confidential Information**

Lastly, appellants contend that the district court abused its discretion because Continua failed to establish that the individual appellants have disclosed or will disclose confidential information. The district court found:

In light of the evidence of CTI's efforts to target Continua's existing customers and to solicit existing employees to leave employment for CTI, the record supports an imminent threat of irreparable harm of disclosure, direct or indirect, and inevitable use of Continua's confidential business information in relation to work for CTI. These employees cannot simply forget what they know. The imminency of this threat is supported by evidence that Individual [appellants] are reaching out to former customers for business and that CTI seeks to obtain Continua AV and Healthcare Team employees to service CTI's customers.

Although, as appellants point out, "[i]njury is not shown by the mere fact that the employee has left the service and has entered the employ of a rival," *Brock*, 180 N.W. at 554, the

district court cited more than just the fact that the individual appellants began working for a new employer. As the district court noted, and the record supports, appellants are actively recruiting Continua employees and customers, and are reaching out to those customers, representing that they will have continuity in services if they switch to CTI. Although, as the district court acknowledged, there is no evidence or allegation that confidential information was “improperly downloaded, printed, or removed” from Continua, such conduct is not necessary for a finding that there is a risk of disclosure of confidential information. *See Carter*, 913 N.W.2d at 685.

Finally, we note that the remedies provision in the individual appellants’ employment agreements states that a breach constitutes “immediate and irreparable injury.” However, as the district court noted, and as all parties recognize, the supreme court has held in the context of a permanent injunction that courts are “not required to find irreparable harm based solely on the language of a private agreement,” reasoning that “[a]llowing the terms of private agreements to dictate whether a court must issue an injunction would interfere with a court’s equitable jurisdiction and powers.” *Id.* at 680-81, 683. But, as the district court also noted, the supreme court has observed that courts “may consider contractual provisions”—along with other evidence—in determining whether to infer harm. *Id.* at 685. The contractual provision here lends some support to the other evidence demonstrating irreparable harm.

In sum, the district court did not abuse its discretion by determining that Continua was likely to suffer irreparable harm in the absence of a temporary injunction.

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Viewing the facts in the light most favorable to Continua, we conclude that appellants have not met their burden to show that the district court abused its discretion by granting the temporary injunctions. *See First & First, LLC*, 999 N.W.2d at 557.

**Affirmed.**