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2017 IL App (3d) 160676-U

Order filed June 21, 2017

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2017

MICHELLE McMANUS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Counter Defendant/Appellant,	)	Rock Island County, Illinois.
	)	
v.	)	Appeal No. 3-16-0676
	)	Circuit No. 16-L-67
ANNE B. RICHARDS,	)	
	)	Honorable Joseph F. Fackel,
Defendant-Counter Plaintiff/Appellee.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Carter and O'Brien concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion by denying the plaintiff's motion for a preliminary injunction after finding plaintiff failed to establish the lack of an adequate remedy at law.

¶ 2 The plaintiff, Michelle McManus, filed an interlocutory appeal from the trial court's October 3, 2016, order denying her motion for preliminary injunction. We affirm.

FACTS

¶ 3

¶ 4

On May 23, 2016, the plaintiff, Michelle McManus, filed a complaint and jury demand containing counts for injunctive relief (count I), breach of contract (count II), breach of fiduciary duty (count III), and breach of duty of good faith and fair dealing (count IV) against the defendant, Anne Richards. McManus and Richards are orthodontists who maintained an orthodontic practice together, known as Quad City Orthodontic Group, LLC (QCOG), a limited liability company, with offices in Rock Island, Illinois and Bettendorf, Iowa. McManus and Richards are the only members of QCOG and also own together QCO Properties, LLC (QCO Properties). QCO Properties is a limited liability company that owns the property in Rock Island, Illinois where QCOG conducts its business.

¶ 5

On December 30, 2011, McManus and Richards entered into a contract titled, “Agreement for Sale of Membership Interest in Limited Liability Company, and Agreement for the Conducting of Professional Business Operations” (QCOG Operations Agreement). The QCOG Operations Agreement became effective on January 1, 2012. The QCOG Operations Agreement stated that Richards was currently the owner of a 100% membership interest in the company. The QCOG Operations Agreement further provided that McManus wished to purchase a total of 50% of Richards’s membership interest in the company, in increments over a period of seven years, under the terms and conditions of the QCOG Operations Agreement.

¶ 6

Paragraph 19 of the QCOG Operations Agreement contained a provision addressing the contingencies for a voluntary and involuntary dissociation of McManus from the joint dentistry practice under the company name, QCOG. Paragraph 19 of the QCOG Operations Agreement is set forth below:

“In the event that [McManus] should voluntarily elect to no longer practice dentistry under the joint dental practice with Dr. Richards, all percentages of Membership Interest purchased by [McManus] from [Richards], by way of this Agreement, shall be sold back to [Richards], under the terms of this Agreement, for a discounted price of fifty percent (50%) of the Purchase Price heretofore paid by [McManus] to [Richards]. \*\*\* [Richards] reserves the right, at her sole discretion, to pay the discounted price to [McManus], for the repurchase of [McManus’s] Membership Interest, either as a single payment, or quarterly over a period of three years.

In the event that Richards finds cause to involuntarily disassociate McManus from the Company’s dental practice, Richards shall give written notice to [McManus] of said involuntary disassociation decision setting for the [sic] last day of McManus’ association with the Company and the joint dental practice. [Richards] then, within ninety (90) days of the last day of McManus’ association, shall repurchase all of [McManus’s] Membership Interest at one hundred percent (100%) of the Purchase Price heretofore paid to [Richards] by [McManus]. [Richards] reserves the right, at her sole discretion, to pay the price to [McManus], for the repurchase of [McManus’s] Membership

Interest, either as a single payment, or quarterly over a period of three years.”

¶ 7 According to the allegations of the complaint, on April 27, 2016, McManus received emails indicating that passwords for the QCOG accounting site and bank account had been changed. Later, after McManus’s workday on that date, Richards and Denise Coyne, the QCOG office manager, approached McManus at the Rock Island office. Richards personally presented McManus with a proposed document titled, “Purchase and Sale Agreement,” (2016 Proposed Purchase and Sale Agreement) indicating the parties intended to “stop their partnership,” or words to that effect.<sup>1</sup> McManus advised Richards that McManus would review the documents at home and contact Richards later.

¶ 8 In her complaint, McManus alleged that Richards was without cause to involuntarily disassociate McManus from the dental practice in 2016 and violated the provisions of the QCOG Operations Agreement by failing to provide McManus with written notice of the involuntary dissociation. McManus also asserted that since April 27, 2016, Richards wrongfully excluded McManus from the QCOG practice and denied McManus access to the business premises.

¶ 9 In count I of the complaint, McManus sought injunctive relief based on her assertion that she “has a legitimate right to continue in the orthodontic practice of QCOG.” On June 20, 2016, Richards filed an answer to McManus’s complaint, her affirmative defenses, and a counterclaim.

¶ 10 On August 3, 2016, McManus filed a motion for preliminary injunction. In the motion, McManus claimed she has been unable to treat her patients since April 27, 2016, a direct consequence of Richards’s wrongful exclusion of McManus from the QCOG practice and business premises. McManus asked the trial court to grant the preliminary injunction and restore

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<sup>1</sup>According to the 2016 Proposed Purchase and Sale Agreement, Richards owned a 55% membership interest in QCOG and McManus owned a 45% membership interest.

the status quo, by allowing McManus to return to her status as a member of the QCOG practice with full rights to practice orthodontics at the QCOG business premises.

¶ 11 On September 30, 2016, the court held an evidentiary hearing on McManus's motion for a preliminary injunction. In support of McManus's request for a preliminary injunction, McManus called Richards as an adverse witness. Richards testified that on April 27, 2016, she met with McManus, in the presence of Coyne, and handed Richards the 2016 Proposed Purchase and Sale Agreement. According to Richards's testimony, Richards believed this written document was sufficient to involuntarily dissociate McManus from QCOG.

¶ 12 In addition, during her testimony, Richards explained that Richards and McManus had very different management styles with respect to the management of employees. Richards testified that McManus's close relationships with employees led to insubordination by some employees. Richards testified that on March 28, 2016, McManus said words to the effect of, "I don't like you (Richards) and I just wanted to let you (Richards) know you have the right to fire me until the end of this year." Richards testified she chose to involuntarily dissociate McManus from the dental practice so that Richards did not have to practice in a hostile work environment.

¶ 13 During the hearing, McManus's attorney questioned Richards about the projected future distributable profits for QCOG for 2016 and 2017. The projected future distributable profits discussed during Richards's testimony was contained in exhibit F, a document prepared by the attorney for McManus and admitted into evidence. The projected future distributable profits were calculated based on the assumption that McManus remained with the practice.

¶ 14 Next, McManus called Coyne as a witness. Coyne explained to the court that Coyne believed that Richards was justified in expelling McManus from the practice because they did not get along, there was a great deal of tension in the office, and the office environment was not

healthy for the orthodontists and their employees. Coyne also testified that McManus chose to be friends with some employees outside of work and this had a negative impact in the office. Coyne said that she observed McManus question Richards's procedures regarding the order in which Richards saw patients. Coyne also testified that McManus complained to Richards and Coyne that McManus felt the staff of the Rock Island, Illinois office was upset because they were working more hours than the staff of the Bettendorf, Iowa office. At one point, McManus paid the staff of the Rock Island office cash out of her own pocket to address this concern.

¶ 15 McManus also testified during the hearing on the motion for preliminary injunction. McManus acknowledged that when McManus left the meeting with Richards and Coyne on April 27, 2016, McManus knew that Richards had attempted to terminate her from QCOG.

¶ 16 McManus testified that about two and a half months prior to the disassociation, tensions grew between McManus and Richards. For example, McManus told Richards that Richards's practice of adding procedures to patients' visits was not conducive to seeing patients in a timely manner. McManus testified that Richards was disrespectful to McManus and the employees at times. Finally, McManus testified that at the time of the hearing, McManus still had a membership interest in QCOG and Richards had not repurchased the interest as required by the QCOG Operations Agreement.

¶ 17 On October 3, 2016, following the hearing on McManus's motion for a preliminary injunction, the trial court signed an order denying McManus's motion after making the following findings:

“1) The parties were unable to get along and had explored options for ending the relationship. Obviously, Dr. McManus would benefit from Dr. Richards' dissociating her which probably kept

Dr. McManus from quitting. The Court does not believe that forcing the parties to work together will serve or be in the best interests of either party.

2) The Court FINDS that only one of the four elements for Plaintiff to prevail have [sic] been met. This case presents itself as one for damages and it appears there are assets available to satisfy an award.”

¶ 18 On November 1, 2016, McManus filed a timely notice of interlocutory appeal from the trial court’s October 3, 2016, court order denying her motion for a preliminary injunction.<sup>2</sup>

¶ 19 ANALYSIS

¶ 20 In this appeal, McManus argues that the trial court erred by denying her motion for a preliminary injunction. Richards contends that the trial court’s decision is supported by the evidence and should be affirmed.

¶ 21 The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits of a cause of action. *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Ry. Co.*, 195 Ill. 2d 356, 365 (2001). Our supreme court has cautioned that a preliminary injunction is “an extreme remedy” that should only be granted in situations where “an emergency exists and serious harm would result if the injunction is not issued.” *Id.*

¶ 22 A party seeking a preliminary injunction must establish four elements before an injunction will be granted: (1) a clearly ascertained right in need of protection, (2) an irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of

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<sup>2</sup>On June 20, 2016, Richards filed a motion for summary judgment on all counts of McManus’s complaint. On November 30, 2016, the trial court issued an order granting Richards’s motion for summary judgment. Subsequently, McManus filed a separate appeal related to the summary judgment ruling in case No. 3-17-0055.

success on the merits. See *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006). The case law provides that the failure to prove any one of the four elements requires denial of a motion for a preliminary injunction. *Yellow Cab Co., Inc. v. Production Workers Union of Chicago & Vicinity, Local 707*, 92 Ill. App. 3d 355, 356 (1980). The trial court must also conclude the balance of the hardships to the parties supports the grant of a preliminary injunction. *Northwest Podiatry Center, Ltd. v. Ochwat*, 2013 IL App (1st) 120458, ¶ 30. Generally, the trial court's decision to grant or deny a preliminary injunction will not be disturbed absent an abuse of discretion. *Mohanty*, 225 Ill. 2d at 80. "A trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would adopt the court's view." *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill. App. 3d 374, 378 (2010) (internal quotations omitted). On an appeal from an order granting or denying a preliminary injunction, the reviewing court will not decide controverted facts or the merits of the case. *Scheffel Financial Services, Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 9.

¶ 23 We begin by examining whether the trial court abused its discretion by finding that McManus failed to make a *prima facie* showing that she lacked an adequate remedy at law, a necessary element for a trial court to favorably resolve a request for the extraordinary relief provided by a preliminary injunction. An adequate remedy at law exists where a plaintiff's injury can be adequately remedied with monetary damages. *People ex rel. Madigan v. Excavating & Lowboy Services, Inc.*, 388 Ill. App. 3d 554, 565-66 (2009). If, on the other hand, money damages are insufficient to compensate the injury or the injury cannot be properly quantified in terms of money, then the extraordinary remedy of injunctive relief is appropriate. *Id.* To determine the adequacy of a legal remedy, courts consider whether "it is clear, complete, and as



practical and efficient as the equitable remedy.” *Tamalunis v. City of Georgetown*, 185 Ill. App. 3d 173, 189-90 (1989). Illinois courts have repeatedly held that money damages are the appropriate remedy for a breach of contract. *Illinois Beta Chapter of Sigma Phi Epsilon Fraternity Alumni Board v. Illinois Institute of Technology*, 409 Ill. App. 3d 228, 232 (2011). “Injunctive relief is disfavored where the gravamen of a complaint is breach of contract and the trial court could award damages if it found a breach occurred.” *Id.*; see also *Franz v. Calaco Development Corp.*, 322 Ill. App. 3d 941, 948 (2001); *Northrop Corp. v. AIL Systems, Inc.*, 218 Ill. App. 3d 951, 954-55 (1991).

¶ 24 Here, the crux of McManus’s complaint is a breach of contract action. In count I of the complaint, McManus requests injunctive relief based on her allegation that she “has a legitimate right to continue in the orthodontic practice of QCOG.” In addition, McManus was able to calculate the projected future distributable profits for QCOG for 2016 and 2017 based on the assumption that McManus remained in the joint dentistry practice. These calculations were set forth in exhibit F, and presented to Richards during Richards’s testimony before the court. Hence, we conclude this evidence supports the trial court’s conclusion that money damages could be calculated and represents the viable remedy in this case arising from Richards’s involuntary disassociation of McManus from the joint practice that was purportedly contrary to the terms of the QCOG Operations Agreement.

¶ 25 The trial court also found that the balance of hardships to the parties did not support the entry of a preliminary injunction to maintain the status quo during litigation over the breach of the provisions of the QCOG Operations Agreement. We agree. The record clearly demonstrates that both personal and professional conflict was growing between Richards and McManus. The

trial court's conclusion that forcing the parties to work together would not be in the best interests of either party was well supported by the evidence.

¶ 26 We are mindful that McManus claims she has no adequate remedy at law because she suffered damage to the relationships she developed with patients over the years while practicing at QCOG. McManus also has concerns about ongoing damage to her reputation and goodwill. However, based on this record, we conclude McManus failed to present sufficient credible evidence concerning existing or future damage to her professional reputation or goodwill. In addition, due to existing tensions, it is unlikely that the damage to McManus's reputation and professional goodwill, if any, would be mitigated or repaired by injunctive relief to continue their joint dentistry practice. For these reasons, we hold that the trial court did not abuse its discretion by concluding that McManus failed to establish that she lacked an adequate remedy at law.

¶ 27 For the foregoing reasons, we conclude the trial court did not abuse its discretion in denying McManus's motion for a preliminary injunction.

¶ 28 CONCLUSION

¶ 29 The judgment of the circuit court of Rock Island County is affirmed.

¶ 30 Affirmed.