[Cite as *Premier Health Care Serv. v. Schneiderman*, 2001-Ohio-7087.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

PREMIER HEALTH CARE SERVICES, INC., et al. :

Plaintiffs-Appellants : C.A. CASE NO. 18795

v. : T.C. CASE NO. 00 2698

NORMAN SCHNEIDERMAN, M.D., et al. :

Defendants-Appellees :

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O P I N I O N

Rendered on the 28TH day of December, 2001.

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FREDERICK N. YOUNG, J.

Premier Health Care Services (hereinafter "Premier") and New Century Physicians (hereinafter "NCP") are appealing the judgment of the Montgomery County Common Pleas Court overruling their motion for a preliminary injunction.

In 1992, the doctors, including Dr. Schneiderman, who staffed Miami Valley Hospital's emergency trauma center (hereinafter "ETC") merged their group with Premier with the hospital's consent upon the understanding that these doctors would continue to staff the ETC. Premier had a contract with Miami Valley Hospital (hereinafter "MVH") to run MVH's ETC until 2003 and an automatic annual renewal after that. Premier had several other contracts to run other emergency rooms in the Dayton, Columbus, and Lima areas. During the 1990s, the doctors, who staffed emergency rooms managed by Premier, were both shareholders and employees of Premier. In 1998, Premier created an affiliate, NCP, and the doctors became shareholders of NCP and employees of Premier. The doctors signed employment contracts with both NCP and Premier. These employment contracts contained restrictive covenants which prohibited them from working at MVH for one year if they left their positions with Premier or NCP.

From 1998 to 2000, the relationship between the doctors at MVH ETC and Premier was deteriorating. The primary concern was regarding the amount of money the doctors in the MVH's ETC were earning in comparison to the amount of money Premier was receiving as a result of the MVH contract. In 1998, Dr. Schneiderman, the director of the ETC, was chosen to be Chief of Staff Elect with a two year term immediately preceding a term as Chief of Staff at MVH. Dr. Schneiderman was to begin his term as Chief of Staff on June 1, 2000. On April 27, 2000, Dr. Schneiderman sent a letter to

MVH executives informing them of his intention to step down as Director of Emergency Services on May 30, 2000, due to his upcoming term as Chief of Staff of MVH. In his letter, Dr. Schneiderman expressed that as a part of this resignation he would cease his active, substantial and continuing participation in the management of the ETC.

The contract between MVH and Premier had a provision in Section 2, which stated:

> The Hospital has entered in to this Agreement relying on the active, substantial and continuing personal participation in the management of the Center by Norman Schneiderman, M.D. Dr. Schneiderman will serve as the Director of Emergency Medical Services (DEMS). Dr. Schneiderman shall give the hospital thirty (30) days' written notice of any intent to change the scope of his participation in the management of the Center. If Dr. Schneiderman shall, for any reason, cease his active, substantial and continuing participation in the management of the Center, the Hospital shall have the right to terminate this agreement upon ninety (90) days written notice to the Professional Corporation.

Pursuant to this contract provision, on May 11, 2000, MVH sent Premier a written notice that it was terminating the MVH contract on August 31, 2000. The notice explained that the termination was based upon the above quoted section of the contract and Dr. Schneiderman's notice of resignation.

On June 1, 2001, MVH's ETC physicians, Campbell, Chapman, Chellis, Eilers, Hawk, Maclean, Malone, Marriott, Pacholka, Pangalangan, Rymer, Spears, and Wright each tendered his or her resignation from NCP effective August 31, 2000. On June 9, 2000, Premier sent a notice to these doctors that if they reported to work on June 12 at MVH's ETC, their employment with NCP was terminated.

On June 5, 2000, NCP fired Dr. Schneiderman; Dr. Doerger, co-Director of the Emergency Center; and Dr. Gupta, who had worked at the MVH ETC since 1978. On

June 8, 2000, MVH notified Premier that firing Dr. Schneiderman, Dr. Doerger, and Dr. Gupta was considered a material breach of the Premier's contract and that unless this breach was cured by June 9, 2000, Premier should consider the MVH Contract terminated as of June 12, 2000. Premier did not rehire Dr. Schneiderman, Dr. Doerger, and Dr. Gupta. Therefore, on June 12, 2000, MVH entered into a temporary contract for emergency medical services with Miami Valley Emergency Specialists LLC (hereinafter "MVES"). MVES currently employs all of the physicians in the MVH's ETC who were formerly employees of NCP and has done so since June 12, 2000. MVES presently provides emergency medical services to MVH's ETC. Thus, the doctors who previously practiced in MVH's ETC as employees of NCP under the contract between Premier and MVH now provide emergency medical services at MVH's ETC as employees of MVES.

All of the doctors who were employed by NCP working in MVH's ETC signed employment contracts which contained the following language:

> * * * The Employee shall not, without prior written consent of the Employer, during the Term and for the 12-month period succeeding the date of the Employee's termination of employment with the Employer for any reason whether directly or indirectly, individually or as a partner, member, employee, officer, director, manager, shareholder, agent, contractor or otherwise in concert with any other person or entity, (I) do anything to adversely influence or interfere with any agreement and/or relationship between the Employer and/or Premier and the Hospital or (ii) render any medical services at the Hospital other than as an Employee of the Employer.

On June 5, 2000, Premier and NCP filed a complaint along with a motion for a preliminary injunction, enjoining Dr. Schneiderman, Dr. Gupta, and Dr. Doerger, the original three defendant physicians, from working at MVH. On October 13, 2000, Premier and NCP filed an amended complaint, adding fourteen individual defendants: Dr. Campbell, Dr. Chapman, Dr. Chellis, Dr. Eilers, Dr. Hawk, Dr. Maclean, Dr. Malone, Dr. Marriott, Dr. Pacholka, Dr. Pangalangan, Dr. Rymer, Dr. Spears, Dr. Wright, and Greg Kooyman,[1] and two corporate defendants, MVES and MVH. In the supplemental complaint, Premier and NCP requested preliminary injunctions enjoining the individual Physicians from providing services at MVH. On October 31, 2000, the Defendants moved for summary judgment on certain issues. On December 6, 2000, Premier and NCP filed a supplemental motion for a preliminary injunction seeking to enjoin the individual Physicians from employment at MVH and related relief. Premier never requested a hearing on their motion for a preliminary injunction.

On March 1, 2001, the trial court overruled Premier and NCP's motion for a preliminary injunction. Premier and NCP have filed this appeal from that determination.

Appellants, Premier and NCP, raise the following as their sole assignment of error:

> THE TRIAL COURT ERRED BY GRANTING A SUMMARY DENIAL OF THE APPELLANTS' MOTION FOR A PRELIMINARY INJUNCTION.

Appellants argue the trial court erred in determining that it had little likelihood of success on the merits, that the injunction was against the public interest, the public and MVH would be injured by the injunction and granting the injunction would not prevent

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[1] These physicians along with Dr. Schneiderman, Dr. Gupta, and Dr. Doerger will hereinafter collectively be referred to as "Physicians."

irreparable harm to Appellants and, therefore, overruling their motion for a preliminary injunction. We disagree.

I. Standard of Review

Appellants and Appellees are unable to agree as to the standard of review. Appellants assert that the appropriate standard of review is de novo, while Appellees argue the standard of review should be abuse of discretion. We reach the same result regardless of which standard of review is used.

The standard of review for summary judgment decision on appeal is de novo review. *Quill v. R.A. Investment Corp.* (1997), 124 Ohio App.3d 653, 661; *Amerifirst Savings Bank of Zenia v. Krug* (1999), 136 Ohio App.3d 468, 483. However, the standard of review for a denial of a preliminary injunction is abuse of discretion. *Garono v. State* (1988), 37 Ohio St.3d 171, 173. Other Ohio appellate courts have reviewed a preliminary injunction which has been denied upon the filing of a summary judgment motion with a de novo standard of review. *Reasoner v. Randle* (Jan. 11, 2001), Ross App. No. 00CA2557, unreported; *Consumeracq, Inc. v. Stiffey* (Apr. 26, 2000), Lorain App. No. 99CA007361, unreported. Additionally, some federal courts have held that when a preliminary injunction is decided upon a summary judgment motion, the standard of review is de novo. *Inland Empire Pub. Lands Council v. United States Forest Serv.* (C.A. 9 1996), 88 F.3d 754, 759; *White v. Colorado* (C.A. 10 1996), 82 F.3d 364, 396. However, other federal courts have held that when reviewing a preliminary injunction which was decided based upon a determination from a summary judgment motion, the proper standard of review for the preliminary injunction is abuse of discretion. *Masimo*

Corp. v. Mallinckrodt, Inc., (C.A. Fed Cir. Aug. 8, 2001), Case No. 01-1038, 2001 U.S. App. Lexis 18032; *Helifix, Ltd., v. Blok-Lok, Ltd.* (C.A. Fed. Cir. 2000), 208 F.3d 1339, 1345; *Al-Jabbar A'La v. Cobb* (C.A. 6 Mar. 14, 2000), Case No. 98-5257, 2000 U.S. App. Lexis 4176.

Appellants argue that the standard of review should be *de novo* because the trial court explained in its decision that it was deciding Appellants' motion for a preliminary injunction based upon the Appellees' motion for summary judgment. Additionally, Appellees argued for a denial of Appellants' preliminary injunction in its motion for summary judgment, stating "no genuine issue of material fact exists with respect to * * * whether preliminary and permanent injunction relief is appropriate." (Defts. Reply Memo. to Mot. Sum. Jgmt. p.33). Moreover, the trial court denied the request for a preliminary injunction as a part of its decision on the motion for summary judgment. However, the trial court also stated that assuming *arguendo* that the summary judgment decision was in error that the preliminary injunction would still be denied.

Additionally, Appellants argue that if we utilize the abuse of discretion standard of review, then the trial court automatically abused its discretion by failing to hold a hearing on the preliminary injunction prior to denying it. Ohio appellate courts in other districts have held that failing to hold an evidentiary hearing on a motion for a preliminary injunction is an abuse of discretion. *Johnson v. Morris*, 108 Ohio App.3d 343, 352; Security First Group, Inc. v. Smith (Feb. 13, 1990), Franklin App. No. 89AP-176, unreported. However, we are not bound by this case law and find such a rule would be illogical in the instant case. Here, the trial court determined on a motion for partial

summary judgment that the restrictive covenants are not enforceable and, as this was not a final appealable order, this determination has not been appealed. Upon making this determination, the trial court denied the request for a preliminary injunction, finding that the Appellants are unlikely to succeed on the merits of the case since the restrictive covenants were not enforceable. It would be illogical to reverse this case for a hearing on the preliminary injunction when the trial court has already determined through summary judgment that the restrictive covenants are not enforceable, and thus the Appellants are clearly not likely to succeed on the merits. A hearing on the preliminary injunction after the trial court's ruling on summary judgment would serve no useful function, and thus we will not find that the trial court's failure to hold a hearing on the preliminary injunction was an abuse of discretion.

Yet, after reviewing the merits of the case we conclude that we reach the same result regardless of whether we utilize a *de novo* or abuse of discretion standard of review. As we find that the trial court's decision would be affirmed under either standard of review and the stricter standard is *de novo*, we will review the trial court's decision under a *de novo* standard of review.

II. Preliminary Injunction

Appellants argue that the trial court erred in overruling its motion for a preliminary injunction. We disagree.

An injunction is an equitable remedy which should only be used when there is not an adequate remedy available at law. *Garono, supra* at 173. One does not have a right to an injunction, but a trial court may in its discretion grant an injunction to prevent a future wrong which the law is unable to do. *Id.* In determining whether to grant injunctive

relief, the court considers the following factors:

> (1) the likelihood or probability of a plaintiff's success on the merits; (2) whether the issuance of the injunction will prevent irreparable harm to the plaintiff; (3) what injury to others will be caused by the granting of the injunction; and (4) whether the public interest will be served by the granting of the injunction.

Corbett v. Ohio Bldg. Auth. (1993), 86 Ohio App.3d 44, 49. We have previously stated that, "the purpose of a preliminary injunction is to preserve the status quo." *Westco Group, Inc. v. City Mattress*, (Aug. 15, 1991), Montgomery App No. 12619, unreported.

a. *The likelihood or probability of Appellants' success on the merits*

Appellants argue that the trial court erred in concluding that there was little likelihood of success on the merits because the trial court had determined in a motion for summary judgment that the restrictive covenants were not enforceable. We disagree. The issue of whether the trial court properly determined in granting partial summary judgment that the restrictive covenants in the employment contract were not enforceable is not currently before this court.

A covenant not to compete will be enforced to the extent necessary to protect an employer's legitimate business interests, even if it imposes unreasonable restrictions. *Raimonde v. Van Vlerah* (1975), 42 Ohio St.2d 21, 71 O.O.2d 12. If no legitimate business interest of the employer exists to protect, then a non-competition agreement is unreasonable. *Westco Group, supra*. "A covenant restraining an employee from competing with his former employer upon termination of employment is reasonable if the restraint is not greater than is required for the protection of the employer, does not impose undue hardship on the employee, and is not injurious to the public." *Raimonde,*

supra.

Additionally, restrictive covenants are not favored under law, particularly among physicians, which have a greater impact on the public. *Ohio Urology, Inc. v. Poll* (1991), 72 Ohio App.3d 446, 452-453. However, restrictive covenants between physicians are not per se unenforceable and may be enforced via injunctive relief if it is reasonable. *Id.* at 454.

The trial court determined that Appellants did not have a legitimate business interest to protect through obtaining the preliminary injunction and, therefore, determined that the restrictive covenant was unreasonable. Also, the trial court found that an injunction enforcing the restrictive covenant would be injurious to the public. Thus, the trial court found the restrictive covenant was unenforceable, and that since Appellants were unlikely to succeed on the merits, found that this factor weighed in favor of denying the preliminary injunction. Moreover, the injunction is greater than what is required to protect Appellants because the Appellants will not suffer irreparable harm without the injunction.

We will first address the issue of whether an injunction enforcing the restrictive covenant would be injurious to the public. As discussed more completely in (d), we agree with the trial court that granting the injunction would be injurious to the public. MVH's ETC is the only level one trauma center in the Miami Valley area and losing these Physicians could result in the loss of the level one status and could negatively impact patient care. Appellants point to the deposition testimony of Scott Dillon, a vice-president for a competing emergency services provider, who stated that contractual turnovers in emergency trauma centers replacing sixteen physicians had occurred without patient

care being affected, although he cautioned that it was uncommon. (Dillon Depo. pp. 41-43, 51-53). Further, Appellants assert that several other providers are qualified to replace these Physicians, including itself. (Schneiderman Depo. p. 255; Rymer Depo., pp. 51-52). However, although other physicians may be attainable who have similar training and educational qualifications, this does not account for the loss of the efficient working relationship currently existing between the parties. Mr. Dillon conceded that his knowledge of MVH was limited to patient volumes and admitted that medical staff, nursing, and referral patterns would have to be rebuilt if the Physicians were replaced. (Dillon Depo. p. 19, 43-44). Additionally, Dillon stated that it would be difficult to recruit and place sixteen board certified physicians. (Id. p. 41). We find this evidence overwhelmed by the deposition testimony of Thornton, Boosalis, Schneiderman, and Arquilla that patient care would be negatively impacted by the loss of the efficient, effective working relationship between MVH's ETC medical staff, nurses, and referring physicians and the Physicians. We find that an injunction preventing the Physicians from working at the hospital would be injurious to the public.

As to whether a legitimate business interest exists which an injunction would protect, Appellants point to the Physicians' acknowledgment of a legitimate interest in their employment contracts in preserving Appellants' contract with MVH and preventing former employees from competing with them for it, and preventing competition with the former employees for patients in the area, recruiting physicians, and other hospital contracts. Although at the time of the signing of the employment agreement between the parties a legitimate business interest may have existed for the injunction in Appellants preserving their exclusive contract with MVH, at the time Appellants sought a preliminary

injunction preventing all sixteen Physicians from working at MVH's ETC in October of 2000, this legitimate business interest no longer existed because MVH had terminated the contract with Appellants. Also, MVH would no longer contract with Appellants because of this experience but was instead consulting other providers in case the injunction was granted. (Thornton Aff. ¶ 8; Dillon Depo. p. 41-43). Moreover, Appellants acknowledged that it is unfair competition and indefensible to attempt to enforce a restrictive covenant to prevent Appellants' former employees from working at a particular hospital after termination of Appellants' contract with that hospital. (Augustine Depo. p. 432-33). In so doing, Appellants admitted that they do not have a legitimate business interest in preventing Physicians from working at MVH after the contract between MVH and Appellants was terminated. Therefore, since the contract between MVH and Appellants was terminated at the time of the request for the injunction, Appellants no longer had a legitimate business interest in protecting and preserving the contract.

Additionally, Appellants argue that the contract between MVH and Appellants was not legitimately terminated. Appellants argue that the contract only permitted MVH to terminate the contract for any reason upon Dr. Schneiderman ceasing "his active, substantial and continuing participation in the management of the [ETC]." Appellants argue that Dr. Schneiderman continues to actively participate in the management of the ETC. However, Dr. Schneiderman and Mr. Thornton, president of MVH, both state in their affidavits that Dr. Schneiderman has ceased his active, substantial and continuing participation in the management of the ETC. (Ex. 5 & 6 attached to Deft. Reply Memo. for Mot. Sum. Judgt.). Additionally, in his letter of resignation, Dr. Schneiderman stated that he was ceasing his active and substantial participation in the ETC when he resigned

as medical director of the ETC. The day to day operations of MVH's ETC have been managed by Drs. Panagalangan and Doerger jointly since June 12, 2000. (Campbell Depo. p. 29; Chellis Depo. p. 152-153; Coalt Depo. p. 79, 91-92; Doerger Depo. p. 18-33; Hall Depo. p. 18-20; Hawk Depo. p. 62; Kooyman Depo. p. 97-98, 185; McEldowney Depo. p. 55; Pangalangan Depo. p. 20-21). Although Dr. Schneiderman voluntarily performed a few limited administrative tasks during the brief period of time after he resigned and before replacement medical directors were appointed, we find the evidence demonstrates that Dr. Schneiderman had ceased his active and substantial participation in the ETC and, therefore, MVH was proper to terminate the contract with Appellants.

Also, Appellants assert that they have a legitimate business interest in not having to compete with Physicians for patients in the area when recruiting new physicians, and for other hospital contracts. Preventing ordinary competition is not a legitimate business interest which can be protected by a restrictive covenant. *Westco Group, Inc., supra*. As explained in section (b), any competition Appellants would have with Physicians or MVES would be ordinary competition, and thus not a legitimate business interest. Moreover, Appellants' closest hospital is in Springfield, Ohio in Clark County, and by the very nature of emergency care an individual in need of emergency care in Springfield is unlikely to travel to Dayton and vice versa. As to competing with Appellants for other hospitals' contracts, the injunction would only prevent the Physicians from working at MVH's ETC, not another hospital, so the injunction would not prevent the Physicians from competing with Appellants for other hospitals' contracts. Therefore, this does not amount to a legitimate business interest.

Also, Appellants assert that they have a legitimate business interest in protecting

their confidential documents. However, as is discussed more fully in section (b) Physicians do not have any confidential information or trade secret, such as a billing practice, of Appellants which they could use to unfairly compete against Appellants. Therefore, we cannot find that Appellants have a legitimate business interest which the requested injunction would protect.

Finally, as is discussed in depth in section (b), Appellants will not suffer irreparable harm by the failure to receive an injunction. Therefore, the injunction is not narrowly tailored to protect Appellants' interests but is greater than is necessary because it goes beyond Appellants' needs for protection.

Thus, we find that Appellants are unlikely to succeed on the merits of their case in obtaining an injunction because the injunction would be injurious to the public. Moreover, the Appellants cannot articulate a legitimate business interest which would be protected by an injunction enforcing the restrictive covenant. As a result, the restrictive covenant is unreasonable and unlikely to be enforced. Therefore, due to the injurious nature to the public of the injunction, the lack of a legitimate business interest, and that the injunction is greater than what is required to protect Appellants, they are unlikely to succeed on the merits of the instant action. This factor supports denying the motion for a preliminary injunction.

b. *Whether the issuance of the injunction will prevent irreparable harm to [Appellants]*

An important purpose of injunctive relief is to prevent future irreparable injury, not to redress past wrongs. *Clark v. Mt. Carmel Health* (1997), 124 Ohio App.3d 308, 315. Actual harm has been found where an employee possesses knowledge of an employers' trade secret and then works in direct competition with the former employer. *Proctor &*

Gamble Co. v. Stoneham (2000), 140 Ohio App.3d 260 (reversing a trial court for denying an injunction where the employee possessed trade secrets from his former employer). Appellants first point to provisions in the Physicians' employment agreements which state that the employee waives any claim that Appellants have an adequate remedy at law. However, we do not find that such a vague allegation of irreparable injury is sufficient in light of the facts which demonstrate that no irreparable harm would occur.

Yet, Appellants assert that the grant of a preliminary injunction will prevent their suffering of irreparable harm. First, Appellants assert that without the injunction they will suffer irreparable harm in the loss of the contract for emergency services with MVH. However, MVH has already terminated the contract based upon Dr. Schneiderman ceasing his active, substantial and continuing participation in the management of the ETC. (Schneiderman Aff. ¶ 4). Additionally, MVH will never do business with Premier or NCP again because of Premier and NCP's behavior giving rise to this lawsuit. (Thornton Aff. ¶ 8). Therefore, even if the Physicians are prohibited from working in the MVH's ETC, Premier and NCP will not have their contract with Premier restored. In fact, without these Physicians, Premier would have no advantage over any other emergency services providers. (Boosalis Depo. p.141-144). Also, MVH has already begun looking at emergency service providers, other than Premier and NCP, to staff its ETC if the injunction was granted. (Dillon Depo. p. 41-43). Therefore granting the injunction would not prevent the alleged irreparable harm to Appellants of their loss of MVH's ETC contract.

Also, Appellants assert that they would suffer irreparable harm by having to compete with the Physicians at MVH's ETC for patients in the area and for recruitment of

physicians. Appellants do not staff any hospital in Dayton, Ohio. The closest hospital in which it staffs is located in Springfield, Ohio in Clark County. The very nature of emergency care is that the patient must quickly get to a doctor. If a patient is in Springfield and is in need of emergency care, it is axiomatic that they will go to the Springfield hospital and not drive to a hospital in another county and vice versa. Additionally, MVH's ETC is a level one trauma center, while the hospitals in Springfield are not. Moreover, emergency center physicians are in a unique position as compared to other physicians who may sign a restrictive covenant. Emergency center physicians do not develop relationships with patients and then upon leaving the practice may take the patients with them as physicians in typical practices may. Emergency center physicians often only see a patient on one occasion and even then only briefly until the patient is either dismissed or admitted. Therefore, there is not the threat of emergency center physicians taking patients away and the physicians are in an unique position. Finally, the injunction would not prevent the Physicians from working at any of the other hospitals in the Dayton or Miami Valley area and therefore competing against Appellants' managed emergency centers in Springfield and when recruiting physicians. Finally, even if the injunction was granted the Appellants would still have to compete for recruiting doctors and with the Springfield emergency centers with whoever MVH contracts with to staff its ETC since MVH will not contract again with Appellants.

Additionally, Appellants argue that they will suffer irreparable harm in the form of the disclosure of confidential financial documents. Appellants point to two pages of historical volume and billing data for MVH's ETC dating back to 1988, which was five years before Premier had a contract with MVH. MVH provided these pages to two local

banks to inform them of the revenue history generated by MVH's ETC for financing purposes. Arquilla Depo. at 328-29; Stose Depo. at 20. Appellants argue that the Physicians should not have given the information to MVH. However, Premier was contractually bound by the contract with MVH to each year provide "the Hospital President and the Chief Executive Office, or his designee with an accountant's statement of gross patient billings and actual collections for all professional services rendered by [Premier] in the [ETC] for the year then ending." (Ex. B to Defts. Mot. Sum. Judgt. ¶ 20). MVH is not required to keep this information confidential. Further, Tom Arquilla, MVH's chief financial officer, stated in his deposition that he could have recreated the two pages of information from other information MVH had available to it. (Arquilla Depo. p. 364-66). In this case, Appellants do not assert that the Physicians would be improperly using confidential billing practices or techniques learned from Appellants but instead point to two pages of information which was given to MVH over a year ago. Premier had to provide this information to MVH regardless and MVH could assemble this information from other sources. These two documents with patient volumes do not amount to trade secrets as in *Proctor and Gamble*. Physicians do not have any trade secrets, such as a billing practice, of Appellants and thus no irreparable harm in the form of unfair competition with Appellants. We do not find that the preliminary injunction would prevent Appellants from suffering irreparable harm in the form of Physicians giving billing and patient volume information marked confidential to MVH.

Also, Appellants argue that without the preliminary injunction they will suffer irreparable harm in having to compete with the Physicians for contracts for emergency staffing at other hospitals. However, the injunction which Appellants seek would only

prevent these Physicians from working at MVH for one year. The restrictive covenant which Appellants seek to have enforced does not mention limiting the Physicians' ability to work at other hospitals. Therefore, even if the preliminary injunction was granted it would not prevent these Physicians from working at other hospitals in the Dayton area and competing with Appellants. Thus, this is not an irreparable harm which the preliminary injunction would prevent.

Finally, any damages which Appellants may suffer as a result of the Physicians continuing to be employed at MVH's ETC could be compensated through monetary damages. The dominant irreparable harm which Appellants point to in seeking their injunction is interference of the Physicians in the contract with MVH. As MVH refuses to ever contract with the Physicians again, the injunction will not restore the contract relationship between Appellants and Premier. However, money damages could compensate Appellants for the loss of the contract. Additionally, Appellants state in their appellate brief that the injunction would "punish corporate theft." (Appellants' brief p. 17). However, the purpose of an injunction is not punishment and Appellants could be more appropriately compensated in monetary damages. A preliminary injunction is only appropriate where no adequate remedy exists in law, unlike this situation in which Appellants may be compensated through damages Therefore, Appellants would not suffer irreparable harm if the preliminary injunction is denied.

c. *What injury to others will be caused by the granting of the injunction*

d. *Whether the public interest will be served by the granting of the injunction*

The Physicians stated in their depositions that they would not have difficulty in finding work if unable to work at MVH. Therefore, the public and MVH are the others

who would be most severely injured in the granting of the injunction. Thus, these factors will be addressed together.

The primary goal of preliminary injunctive relief is to preserve the status quo pending final determination of the matter. *Ohio Urology Inc. v. Poll, supra*. However, in the instant case, Appellants seek to reverse the status quo by obtaining a preliminary injunction. Granting the preliminary injunction would serve to rip all of MVH's ETC Physicians, who are currently providing excellent emergency services to injured community members, away from the hospital for a year and leave MVH to struggle to find physicians to fill the vacancy. Therefore the purpose of the preliminary injunction that the Appellants seek would not be to preserve the status quo but to destroy the status quo.

Even if the Physicians were phased out over 60 days and were replaced by other physicians, there would still be a negative impact on MVH's ETC. MVH is the only level one trauma center in the Miami Valley area, taking the most critically injured patients in the area. The Physicians staffing the MVH have in many cases worked at MVH's ETC for fifteen to twenty years. The goal of the requested preliminary injunction would be to remove all of the Physicians from the MVH and leave the hospital to find an entirely new emergency center physician staff. Mr. Thornton, the president of MVH, explained that the reason MVH's ETC had such a reputation for quality and being good was because of its efficiency and effective quality, which is based on the over thirty years of trust built in to the relationship between the doctors and medical staff. (Thornton Depo. p. 225). Mr. Thornton explained that losing the Physicians would have a negative impact on MVH's ETC, stating that it would be hard to bring new people in and have them work with the same level of efficiency, and a trusting working relationship. (Id. p. 221-23, 225, 477-79).

Mr. Thornton continued on to explain that the efficiency of the medical staff greatly contributes to patient care, explaining that the interaction between the doctors, staff, and subspecialists and their knowledge of each other impact patient care. (Id. p. 227).

Mary Boosalis, the chief operating officer of MVH, explained the importance to the public of a well functioning MVH ETC, stating that it was the only level one trauma center in the community and was therefore a critical part of the community. (Boosalis Depo. p. 41-42). Additionally, the MVH's ETC provides one-third of the patients admitted to the hospital, if the ETC was functioning poorly it could mean a loss of business for MVH. (Id. 41-42, 88). The Physicians are extremely valuable to maintaining the appropriate care for a level one trauma center. (Id. 87). The Physicians leaving would be very disruptive to MVH's ETC, possibly starting a domino effect with the ETC nurses leaving next and possibly resulting in the dissatisfaction of physicians who refer patients to MVH's ETC. (Id. 149-50). Ms. Boosalis testified in her deposition that MVH's ETC nurses had already communicated anxiety to her about losing any of the ETC physicians because they believed they were integral to running the ETC and maintaining a level one trauma status. (Id. 74-75). Thomas Arquilla, MVH's chief financial officer, also agreed that without the Physicians in the MVH ETC chaos and disruption would occur. (Arquilla Depo. p. 199). Dr. Schneiderman summed up the negative impact of the loss of the Physicians by stating that the patient's quality of care would significantly suffer, the medical staff would significantly suffer, and in short it would be a "disaster." (Schneiderman Depo. p. 278-279).

We find the evidence is clear that the loss of these Physicians from MVH's ETC would at the least disrupt the medical services provided to the public by MVH's ETC and

could cause such an extreme disruption that patient care would suffer and the ETC lose its level one trauma status. While Appellants argue that there is a public policy interest in punishing the Physician's theft of the MVH contract, we find that this is substantially outweighed by the upheaval in the medical care in MVH's ETC if the injunction is granted. If the injunction is granted the working relationship between the physicians and medical staff will be destroyed and patient care will be negatively impacted. As MVH's ETC is the only level one trauma center in the community, the possible loss of this status and disruption in patient care are extremely strong public policy rationales for denying the injunction. Therefore we find that the public interest weighs strongly against the granting of the injunction and that the community will suffer in a loss of quality in their patient care and a possible loss of a level one trauma center. Both of these factors strongly support denying the preliminary injunction.

Therefore, we find Appellants are unlikely to succeed on the merits, that Appellants will not suffer irreparable harm without the injunction, the injunction will harm the public, and thus, the public interest weighs against granting a preliminary injunction. As a result, we agree with the trial court that no genuine issues of material fact remain on Appellants' motion for a preliminary injunction. The judgment of the trial court overruling Appellants' motion for a preliminary injunction is affirmed.

. . . . . .

BROGAN, J., concurs:

BROGAN, J., concurs:

I concur with Judge Young that the trial court properly denied Premier's preliminary injunction because there is undisputed evidence that Premier no longer has

any legitimate business interest to protect. (MVH has made it clear it will not engage in any future business relationship with Premier or New Century Physicians, Inc.).

It was, therefore, unnecessary for the trial court to also determine that a preliminary injunction would adversely affect the public interest. In any event, an injunction could be granted giving the hospital time to replace its emergency room physicians. Medicine is a highly competitive field in urban communities. Surely, there are trained emergency room physicians in this country who would gladly come to Dayton to practice their specialty in a prestigious trauma center like MVH. I agree with Judge Fain that there was conflicting evidence on this issue, but I would not reverse the trial court on an issue I believe it considered unnecessarily.

FAIN, J., dissents:

In my view, there are genuine issues of material fact precluding summary judgment. Therefore, I would reverse the summary judgment rendered by the trial court, and remand this cause for a hearing on the merits of the preliminary injunction.

There was conflicting evidence on the issue of whether the issuance of a preliminary injunction would adversely affect the operation of the Miami Valley Hospital emergency room to the extent that the public interest would be adversely affected. While it may be that the plaintiffs' evidence on this issue is "overwhelmed" by the evidence proffered by the defendants, weighing of this conflicting evidence is, in my view, inappropriate when determining whether there is a genuine issue of material fact.

The testimony of Dr. Augustine, at his deposition, to which the opinion of this court refers is as follows:

> Q. Do you agree with the statements made in paragraph 3 of this document? Let's take them a sentence at a time. First it says it is not the intention of Premier nor is it reasonably defensible to restrict Premier employees from working at a contract site whose contract is not renewed ***by Premier***. Would you agree with that?
>
> A. I would agree with that.

(Emphasis added.)

If Premier fails to renew its contract with Miami Valley Hospital to provide emergency room services, it has abandoned its competitive interest in those services, and it would obviously be inequitable for it to enforce a covenant not to compete under those circumstances. That is, in my view, completely distinguishable from a situation involving non-renewal, or cancellation, of the contract by Miami Valley Hospital. Under those circumstances, Premier has not abandoned its competitive interest in providing those services.

Finally, I do not agree that Premier should be precluded from enforcing, by injunction, the covenant with its employees not to compete merely because there is no longer any realistic hope that Premier could get the work if its former employees were prevented from competing with it. I see two problems with this analysis. First, Premier has presented evidence to the contrary, which, in my view, precludes summary judgment. Second, this approach rewards the employee who violates a covenant not to compete so successfully that the customer – in this

case, Miami Valley Hospital – asserts that it will not consider returning to its former provider.

Like my colleagues, I am squeamish about enforcing covenants not to compete in the medical profession. I find it likely that the defendants would prevail on the public policy argument after a hearing on the merits. However, I am not prepared to hold that there is no genuine issue of material fact on the state of the record in this case.

Although the trial court disposed of the preliminary injunction by summary judgment, the record before it was voluminous, dwarfing the record of most trials on the merits. Perhaps the parties did not intend to submit any additional evidence. If so, they could have submitted the issue of the preliminary injunction for resolution on this record, stipulating the admissibility of all the evidence. Instead, the defendants moved for summary judgment on this record. It was their burden to establish that there is no genuine issue of material fact. In my view, they have failed to meet that heavy burden.

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