[Cite as *Try Hours, Inc. v. Douville*, 2013-Ohio-53.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Try Hours, Inc.	Court of Appeals No. L-12-1025
Appellee	Trial Court No. CI0201106636
v.	
Bryan Douville, et al.	**DECISION AND JUDGMENT**
Appellant	Decided: January 11, 2013

* * * * *

Gregory H. Wagoner, for appellee.

John S. Wasung, Thomas P. Sullivan, and Susan Healy Zitterman, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} Appellant, Bryan Douville, appeals the judgment of the Lucas County Court of Common Pleas, which held that he violated the terms of his employment agreement with appellee, Try Hours, Inc., and granted Try Hours' motion for a preliminary injunction. For the following reasons, we affirm.

I. Facts and Procedural Background

{¶ 2} Try Hours is a trucking company that focuses on the expedited freight industry. While Try Hours has its principal place of business in Toledo, Ohio, it conducts business nationally. The expedited freight industry is a niche industry within the broader trucking industry. Due to current economic conditions, the expedited freight industry is extremely competitive.

{¶ 3} Douville is one of Try Hours' former employees. As a result of his prior experience in the trucking industry, he was hired as Try Hours' director of operations on February 24, 2010. Prior to the commencement of his employment, Douville was required to sign an employment agreement. The employment agreement includes numerous provisions, one of which is a covenant not to compete, which provides:

> For a period of one year after the termination of employment, employee agrees that he/she shall not engage either directly or indirectly, as an employee, investor, shareholder, officer, director or agent of any company which competes with [Try Hours] in terms of providing transportation services for hire within the continental United States. For purposes of this paragraph, the term "compete" shall mean any company which provides transportation services for hire on an expedited basis as that term is generally understood in the transportation industry.

{¶ 4} In addition to forbidding Douville's employment with a competing employer within one year of his employment with Try Hours, the employment agreement prohibits solicitation of Try Hours' employees and customers.

{¶ 5} On October 14, 2011, Try Hours terminated Douville's employment, stating as its basis that Douville was not a good fit for the organization. Pursuant to his termination, Douville executed a separation agreement, which entitles him to two weeks' pay and health insurance benefits through the end of the year. In addition, the separation agreement includes an integration clause that states:

> The parties agree that this Agreement constitutes the entire Agreement between the parties as to the subject matter of this Agreement and no prior or subsequent oral Agreements, representations or understandings shall be binding upon the parties and such shall be null and void and shall have no effect.

Notably, the separation agreement did not reference the covenant not to compete from the employment agreement.

{¶ 6} Believing the separation agreement superseded the employment agreement, Douville assumed he was freed from the covenant not to compete. Thus, on November 11, 2011, he began work as a compliance officer with another Toledo-based company, Premium Freight Management ("PFM").

{¶ 7} PFM also conducts business within the trucking industry. Specifically, PFM pairs truck drivers with customers who need goods shipped in a time-sensitive, expedited fashion.

{¶ 8} After learning of Douville's new position with PFM, Try Hours filed suit against Douville and PFM, alleging that Douville breached his employment agreement. On November 18, 2011, Try Hours filed a motion for a preliminary injunction, in which it sought to have Douville enjoined from working for PFM in accordance with the covenant not to compete. The trial court held a hearing on December 5, 2011.

{¶ 9} The court determined that the separation agreement did not supersede the employment agreement and that the covenant not to compete was reasonable. Accordingly, on December 12, 2011, the court granted Try Hours' motion for a preliminary injunction, thereby prohibiting Douville from "having any competition with [Try Hours] for a one-year period, as set forth in Paragraph 5 of the employment contract." Douville now timely appeals the trial court's judgment.

II. Assignments of Error

{¶ 10} Douville makes the following assignments of error:

1. The Trial Court Erred In Finding That The Separation Agreement Between Appellant And Appellee Did Not Nullify The Prior Employment Contract Including The Noncompete Provision

2. The Trial Court Erred By Issuing A Preliminary Injunction Preventing Appellant From Obtaining Employment In His Chosen

Profession For One Year Nationwide In Accordance With Ohio Civil Rule 65, And *E^2 Solutions v. Hoelzer*, 2009-Ohio-772

3. The Trial Court Erred In Finding The One Year Duration And Nationwide Scope Of The Injunction Reasonable And Imposing The Injunction Upon Appellant, In Accordance With *Rogers v. Runfola & Associates, Inc.*, 57 Ohio St.3d 5, 565 N.E.2d 540 (Ohio 1991).

III. Analysis

A. Separation Agreement

{¶ 11} In his first assignment of error, Douville argues that the trial court erred when it found that the separation agreement did not nullify the covenant not to compete contained in the employment agreement. Try Hours argues that the "clear and unambiguous" terms of the separation agreement, paired with Douville's actions subsequent to its execution, demand the conclusion that the separation agreement did not void the covenant not to compete.

{¶ 12} The interpretation of a written contract is a question of law. *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978), paragraph one of the syllabus. Therefore, we review the trial court's decision de novo. *Matrix Technologies, Inc. v. Kuss Corp.*, 6th Dist. No. L-07-1301, 2008-Ohio-1301, ¶ 11, citing *Grabnic v. Doskocil*, 11th Dist. No. 02-P-0116, 2005-Ohio-2887. It is presumed that the intent of the parties rests in the language they chose to employ in the contract. *Kelly v. Med. Life Ins. Co.*, 31 Ohio St.3d 130, 509 N.E.2d 411 (1987), paragraph one of the syllabus.

"When the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties." *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 797 N.E.2d 1256, 2003-Ohio-5849, ¶ 11. Ordinary words in a written contract must be "given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument." *Alexander* at paragraph two of the syllabus.

{¶ 13} It is only when a contract is ambiguous that a court may look outside the four corners of the document to ascertain the parties' intent. *Id.* at ¶ 12; *Shifrin v. Forest City Enterprises, Inc.*, 64 Ohio St.3d 635, 637, 597 N.E.2d 499 (1992). "As a matter of law, a contract is unambiguous if it can be given a definite legal meaning." *Westfield* at ¶ 11. A contract is ambiguous if, after applying established rules of interpretation, the written instrument, "* * * remains reasonably susceptible to at least two reasonable but conflicting meanings, when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement * * *." 11 Lord, *Williston on Contracts*, Section 30.4, 39-41 (4 Ed.1999).

{¶ 14} Here, we conclude that the separation agreement did not supersede the employment agreement and the covenant not to compete contained therein. Douville draws our attention to the integration clause contained in the separation agreement, and argues that it is ambiguous on the issue of whether the parties intended the separation agreement to supersede the covenant not to compete. Further, he argues that the ambiguity should be resolved against the drafter of the agreement, which was Try Hours.

However, our review of the separation agreement reveals no ambiguity as to the meaning of the integration clause.

{¶ 15} First, the clause is expressly limited in scope to the subject matter of the separation agreement. The subject matter of the separation agreement is clear. Specifically, the separation agreement relates to the benefits Try Hours was willing to provide to Douville in exchange for his release of any and all claims he may have had against Douville stemming from his employment. Indeed, the separation agreement does not reference the employment agreement or the covenant not to compete.

{¶ 16} Second, the integration clause excludes "prior or subsequent *oral* Agreements, representations or understandings." Douville admits that the word "oral" modifies the word "Agreements." Here, we have a prior *written* agreement, namely the employment agreement. Thus, the fact that the prior agreement is in written form leads us to conclude that the integration clause contained in the separation agreement is, by its very terms, inapplicable to the employment agreement.

{¶ 17} Having determined that the subject matter of the separation agreement is different from that of the employment agreement, and that the exclusion of prior or subsequent oral agreements does not implicate the employment agreement, we conclude that the trial court did not err when it found that the covenant not to compete was unaffected by the separation agreement. Accordingly, Douville's first assignment of error is not well-taken.

B. Preliminary Injunction

{¶ 18} In his second assignment of error, Douville argues that the trial court erred by granting Try Hours' motion for a preliminary injunction, thereby preventing him from obtaining employment in his chosen profession for one year. Try Hours contends that the trial court did not abuse its discretion in granting the preliminary injunction, since its decision was rooted in the enforcement of a valid and reasonable covenant not to compete.

{¶ 19} Decisions of trial courts to grant or deny motions for preliminary injunctions are subject to review on appeal under an abuse of discretion standard. *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988); *Neal v. Manor*, 6th Dist. No. L-07-1055, 2008-Ohio-257, ¶ 12. An abuse of discretion "implies not merely error of judgment, but perversity of will, passion, prejudice, partiality, or moral delinquency." *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 590-591, 113 N.E.2d 14 (1953). The term has been defined as "a view or action that no conscientious judge, acting intelligently, could have honestly taken." *Id*. When applying the abuse of discretion standard of review, an appellate court must not substitute its judgment for that of the trial court. *In re Jane Doe 1*, 57 Ohio St.3d 135, 138, 566 N.E.2d 1181 (1991).

{¶ 20} "The party requesting a preliminary injunction is required to show that '(1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury if the injunction is not granted, (3) no third parties

will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction.'" *Island Express Boat Lines Ltd v. Put-in-Bay Boat Line Co.*, 6th Dist. No. E-06-002, 2007-Ohio-1041, ¶ 92, quoting *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st Dist.2000). We do not make our decision based on any single factor. Instead, we balance the factors in order to reach an equitable result. *Keefer v. Ohio Dept. of Job and Family Services*, 10th Dist. No. 03AP-391, 2003-Ohio-6557, ¶ 14.

Likelihood of Success on the Merits

{¶ 21} First, Douville argues that Try Hours failed to demonstrate a substantial likelihood of success on the merits. In order to prevail on the merits, Try Hours must show that the restraint imposed by the covenant not to compete is reasonable. *Raimonde v. Van Vlerah*, 42 Ohio St.2d 21, 25, 325 N.E.2d 544 (1975). To do so, Try Hours must demonstrate that the restraint "(1) is required to protect the legitimate interests of the employer, (2) does not impose an undue hardship on the employee, and (3) is not injurious to the public." *Restivo v. Fifth Third Bank of Northwestern Ohio*, 113 Ohio App.3d 516, 519, 681 N.E.2d 484 (6th Dist.1996), citing *Raimonde* at paragraphs one and two of the syllabus; *Rogers v. Runfola & Assoc., Inc.*, 57 Ohio St.3d 5, 8, 565 N.E.2d 540 (1991).

{¶ 22} The necessity of the covenant not to compete in this case was established by the testimony of Try Hours' owner and CEO, Tim Wojkiewicz. In his testimony, Wojkiewicz stated that the expedited freight industry is extremely competitive. He

testified that maintaining the private nature of sensitive company information is absolutely critical to Try Hours' ability to compete. Wojkiewicz justified Try Hours' use of covenants not to compete by noting the realities of the expedited trucking industry. He explained that the industry's demand for quality drivers exceeded the supply of those drivers. Thus, he reasoned that Try Hours would lose its competitive advantage if it were unable to protect itself against a former employee's dissemination of sensitive company information such as the names of its drivers. Therefore, Wojkiewicz stated that the covenant not to compete is essential to the success of the company. Indeed, he stated that Try Hours would not have hired Douville without his execution of the employment agreement.

{¶ 23} Douville argues that Try Hours' failure to uniformly apply its requirement that all employees sign a covenant not to compete calls into question whether the covenant is necessary to protect Try Hours' legitimate interests. In support of his argument, Douville offers two instances in which Try Hours made exceptions to their otherwise standard procedures. First, Douville points to Wojkiewicz's admission that Try Hours' president, Steve Wharton, was not required to execute an employment agreement containing a covenant not to compete. Second, Douville highlights Try Hours' failure to enforce the covenant not to compete against Dan Dawson, a former employee who went to work for a competitor at the conclusion of his employment with Try Hours.

{¶ 24} We are not persuaded by Douville's argument. In the first instance, Wojkiewicz explained that he did not require Wharton to execute a covenant not to compete because he did not consider Wharton to be an "employee." This was a reasonable conclusion, since Wharton was actually the company's president.

{¶ 25} In the second instance, Douville claims that Try Hours was estopped from enforcing the covenant not to compete because of its prior failure to enforce the covenant against Dawson. In general, "'waiver by estoppel' exists when the acts and conduct of a party are inconsistent with an intent to claim a right, and have been such as to *mislead* the other party to his prejudice and thereby estop the party having the right from insisting upon it." (Emphasis added.) *Mark-It Place Foods, Inc. v. New Plan Excel Realty Trust, Inc.*, 156 Ohio App.3d 65, 804 N.E.2d 979, 2004-Ohio-411, ¶ 57 (4th Dist.).

{¶ 26} While it may be true that Try Hours has made one exception to its enforcement of the covenant not to compete in the past, there is no evidence that Try Hours mislead Douville by failing to bring suit against Dawson. Thus, Douville's reliance on the doctrine of waiver is misplaced. We conclude that Try Hours has demonstrated its need for the covenant not to compete in order to protect its legitimate business interests.

{¶ 27} Next, Douville argues that the covenant not to compete imposes an undue hardship upon him. The trial court's judgment entry, which paraphrases the covenant not to compete, prohibits Douville from "engaging in any activity, either directly or indirectly, for any company which provides transportation services for hire on an

expedited basis for a one (1) year period from date of termination." Douville contends that this prohibition essentially precludes him from seeking employment in the entire trucking industry, "the only industry in which he has worked for more than eleven years."

{¶ 28} "A determination that a covenant is unduly harsh requires a much greater standard than determining whether the covenant is merely unfair." *Robert W. Clark, M.D., Inc. v. Mt. Carmel Health*, 124 Ohio App.3d 308, 318, 706 N.E.2d 336 (10th Dist.1997). Further, "[u]ndue hardship cannot be determined on a post hoc basis, but rather by the terms of the agreement at the time it was entered into." *N. Frozen Foods, Inc. v. McNamara*, 8th Dist. No. 71378, 1997 WL 691182, *2 (Nov. 6, 1997).

{¶ 29} Notwithstanding Douville's assertion to the contrary, Try Hours has demonstrated that the covenant not to compete does not impose an undue hardship upon Douville. First, Douville's statement that the covenant will effectively eliminate his ability to secure employment anywhere within the trucking industry is incorrect. The terms of the agreement expressly limit the restriction to employers engaged in the movement of expedited freight. The record shows that the expedited freight industry is not the equivalent of the trucking industry in general. Rather, it is a small subset of the trucking industry.

{¶ 30} Second, we believe the one-year term applicable to the covenant not to compete is reasonable in length. Although Douville may endure some hardship during the one-year period, Try Hours has demonstrated that the covenant not to compete is narrow in scope and will not impose an *undue* hardship.

{¶ 31} Finally, Douville contends that the covenant not to compete is injurious to the public. In support of this contention, Douville essentially restates the same arguments he made concerning Try Hours' prior failure to enforce the covenant not to compete. Thus, Douville's arguments fail for the reasons discussed above.

{¶ 32} Having met the test for reasonableness set forth in *Raimonde*, Try Hours has demonstrated a likelihood of success on the merits.

Irreparable Injury

{¶ 33} Next, we look to the record to determine whether the injunction was necessary to prevent irreparable injury to Try Hours. Douville argues that Try Hours cannot show that it will suffer irreparable injury if the injunction is not granted. We disagree.

{¶ 34} "[A] plaintiff is required to establish actual irreparable harm or the existence of an actual threat of such injury when the equitable remedy of an injunction is sought." *Restivo*, 113 Ohio App.3d at 519, 681 N.E.2d 484, citing *Ohio Urology, Inc. v. Poll*, 72 Ohio App.3d 446, 594 N.E.2d 1027 (10th Dist.1991). In such a case, proof of irreparable harm must be by clear and convincing evidence. *Hack v. Sand Beach Conservancy Dist.*, 176 Ohio App.3d 309, 2008-Ohio-1858, 891 N.E.2d 1228, ¶ 23 (6th Dist.).

{¶ 35} In deciding whether to grant a motion for a preliminary injunction in the context of covenants not to compete, "[c]ourts have found that an actual threat of harm exists when the employee possesses knowledge of the employer's trade secrets and

begins working in a position that causes [him] to compete directly with the former employer * * *." *Jacono v. Invacare Corp.*, 8th Dist. No. 86605, 2006-Ohio-1596, ¶ 38, citing *Stoneham*, 140 Ohio App.3d at 274, 747 N.E.2d 268. Further,

> a threat of harm warranting injunctive relief can be shown by facts establishing that an employee with detailed and comprehensive knowledge of the former employer's trade secrets and confidential information now works for a competitor of the former employer in a position that is substantially similar to the position held during the former employment. *Id.*

{¶ 36} It is clear from the record that Douville was privy to Try Hours' confidential information. Wojkiewicz testified that, as director of operations, Douville "provided a lot of reports for the president for their Monday meetings and has access to every bit of [Try Hours'] information." Specifically, Douville had access to Try Hours' "turn-down list, the customers that move freight, the pricing that they had, [and Try Hours'] quality and service scores." This testimony is substantiated by Douville's own admission that he oversaw all of Try Hours' operations.

{¶ 37} Further, Try Hours has demonstrated that Douville is working for a company that directly competes with Try Hours in the expedited freight industry, in a position that causes him to compete with Try Hours. Speaking about his job responsibilities at PFM, Douville stated: "I look at the Sylectus Alliance Board and bid on for-hire carriers' freight to move, to pull in, if I can get them." Wojkiewicz's

testimony reveals that the carriers are crucial to Try Hours' success. In his testimony, Wojkiewicz states:

> The drivers are very important to the company inasmuch as the industry has shrunk driver-wise. * * * So they're more important than ever, because if you don't have trucks you can't haul any freight. So we – we ask that people do not – since they speak to our drivers regularly, daily, many sometimes more than once a day, we don't want them to be recruiting our – our contractors. They're as important to us as our clients and our employees.

{¶ 38} The fact that Douville's job responsibilities include securing truck drivers to haul expedited freight for PFM establishes that Douville is competing with Try Hours in his new position. Notably, Douville's own testimony confirms that he competes with Try Hours. When asked if he thought that he was competing with Try Hours in his new position at PFM, Douville stated: "in one aspect, sure." Thus, Try Hours has provided clear and convincing evidence to establish that it will suffer irreparable injury if the injunction is not granted.

Third-Party Harm and the Public Interest

{¶ 39} Next, Douville argues that the injunction harms third parties and the public interest. He argues that Try Hours is interfering with his right to work and his right to contract. Douville argues that, by interfering with his right to work, Try Hours is

negatively impacting the competitive environment and, consequently, harming the industry as a whole.

{¶ 40} In its appellate brief, Try Hours argues that the injunction is narrowly drawn, and only restrains Douville from securing employment within the expedited freight industry. We agree.

{¶ 41} The judgment entry specifically prohibits Douville from working for any company that "provides transportation services for hire *on an expedited basis* for a one (1) year period." Contrary to his assertion, the injunction does not make Douville unemployable. Douville clearly possesses marketable skills that will allow him to secure employment with another transportation company that is not engaged in the expedited freight business. While Douville claims that most transportation companies now have expedited freight divisions, he offers little evidence to support that claim, other than an estimate that several hundred trucking companies have expedited freight divisions. Try Hours correctly notes that the injunction permits Douville to secure employment with any trucking company, so long as that company is not engaged in the expedited freight business. Thus, we conclude that the harm to third parties or the public interest is slight.

{¶ 42} Having evaluated the factors applicable to preliminary injunctions, and having concluded that each factor supports the trial court's issuance of a preliminary injunction in this case, we find Douville's second assignment of error not well-taken.

C. Scope and Duration

{¶ 43} In his third assignment of error, Douville argues that the trial court erroneously determined that the covenant not to compete was reasonable based on its misapplication of *Rogers v. Runfola & Assoc., Inc.*, 57 Ohio St.3d 5, 565 N.E.2d 540 (1991). The court, in its judgment entry, cited to *Runfola* as support for the following statement: "The Court further finds that the time and radius of the non-competitive [clause] are reasonable due to the nature of the business that is involved." Contrary to the trial court's conclusion, Douville argues that proper application of *Runfola* commands the conclusion that the nationwide scope of the covenant not to compete in this case is unreasonable and unenforceable.

{¶ 44} *Runfola* involved a dispute between a court reporting agency, Runfola & Associates, Inc., and two of its former court reporters, Barbara Rogers and Nicholas Marrone. *Id.* at 5. Rogers and Marrone brought suit against Runfola, seeking a declaratory judgment concerning the validity and enforceability of an employment agreement between themselves and Runfola. *Id.* The employment agreement contained a covenant not to compete, which prohibited employment with a competitor located within Franklin County, Ohio for a period of two years. *Id.* at 6. In addition, the covenant not to compete prohibited Rogers and Marrone from soliciting Runfola's clients or using any information they received on behalf of Runfola for their own benefit. *Id.*

{¶ 45} The trial court held in favor of Rogers and Marrone, and determined that the covenant not to compete was unenforceable. *Id.* On appeal, the court of appeals

affirmed, based on its independent determination that the covenant was reasonable. The Ohio Supreme Court disagreed with the lower courts' determination that the covenant was unenforceable. Instead, the court utilized its authority to make the covenant reasonable and, thus, enforceable. *Id.* at 8. In so doing, the court considered the following list of factors originally set forth in a prior Ohio Supreme Court decision:

> [T]he absence or presence of limitations as to time and space, * * * whether the employee represents the sole contact with the customer; whether the employee is possessed with confidential information or trade secrets; whether the covenant seeks to eliminate competition which would be unfair to the employer or merely seeks to eliminate ordinary competition; whether the covenant seeks to stifle the inherent skill and experience of the employee; whether the benefit to the employer is disproportional to the detriment to the employee; whether the covenant operates as a bar to the employee's sole means of support; whether the employee's talent which the employer seeks to suppress was actually developed during the period of employment; and whether the forbidden employment is merely incidental to the main employment. *Raimonde*, 42 Ohio St.2d at 42, 325 N.E.2d 544.

{¶ 46} After considering the factors, the court held that the time and space limitations were too broad and resulted in an unreasonable restraint on Rogers and Marrone. *Runfola*, 57 Ohio St.3d at 8, 565 N.E.2d 540. The court reached its conclusion

based in part on the unique nature of the court reporter profession. *Id.* Further, the court noted that Rogers and Marrone had worked exclusively as court reporters, presumably pointing to the fact that it would have been difficult for them to secure employment in a different field. *Id.* Accordingly, the court narrowed the scope of the covenant, and prohibited Rogers and Marrone from working as a court reporter for a period of one year within the city limits of Columbus, Ohio. *Id.* at 9.

{¶ 47} Based upon our review of *Runfola*, we find it to be inapplicable to this case. The court in *Runfola* was faced with a covenant not to compete that was facially unreasonable. We are not faced with such a covenant here. Rather, we agree with the trial court that the covenant not to compete at issue in this case is reasonable. That determination is based on our application of the three elements set forth in *Raimonde*.[1] Since our application of those elements leads us to conclude that the covenant not to compete is reasonable, we need not engage in *Raimonde's* factor-based analysis, which is only applicable when a court is modifying an otherwise *unreasonable* covenant not to compete. *Id.* at 8.

{¶ 48} This case is similar to *Ganguly v. Mead Digital Sys.*, 2d Dist. No. 8225, 1984 WL 3858 (Sep. 20, 1984). In *Ganguly*, the court upheld a two-year, nationwide covenant not to compete. In so doing, the court noted that Ganguly worked in a niche

[1] *Raimonde* requires the employer to demonstrate that the restraint on its former employee imposed by the covenant not to compete "(1) is required to protect the legitimate interests of the employer, (2) does not impose an undue hardship on the employee, and (3) is not injurious to the public." *Restivo*, 113 Ohio App.3d at 519, 681 N.E.2d 484, citing *Raimonde* at paragraphs one and two of the syllabus.

industry that was highly competitive. *Id.* at *6. Further, he was not rendered unemployable through the enforcement of the covenant. *Id.* at *5.

{¶ 49} Just as in *Ganguly*, there is ample evidence that suggests that the expedited freight industry is a fiercely competitive, niche industry. Further, the nationwide scope of the covenant not to compete is particularly necessary in light of the fact that the trucking industry is a multistate industry. Limiting the scope of the covenant not to compete to fifty miles from Try Hours' headquarters (as Douville suggests) does not sufficiently protect the legitimate business interests of Try Hours.[2] Indeed, the nature of the trucking industry forces Try Hours to compete with trucking firms across the nation. Thus, we conclude that the nationwide covenant not to compete is reasonable in this case. Further, we hold that the covenant's one-year term is also reasonable. Accordingly, Douville's third assignment of error is not well-taken.

[2] Notably, Douville asks this court to narrow the geographic scope of the covenant not to compete to fifty miles. However, Douville fails to mention the fact that, even if we were to do so, his employment with PFM would still violate the terms of the covenant not to compete. In deciding to work for PFM, Douville has chosen to work for one of Try Hours' direct competitors, which is headquartered less than four miles from Try Hours. In addition, Douville readily admits that PFM was founded by several of Try Hours' former employees, who have been successfully sued in the past by Try Hours for breaching their covenants not to compete.

IV. Conclusion

{¶ 50} Based on the foregoing, the judgment of the Lucas County Court of Common Pleas is hereby affirmed. Costs are hereby assessed to appellant in accordance with App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE

_____
JUDGE