United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 6, 2023

Lyle W. Cayce
Clerk

No. 23-60233

Tribal Solutions Group, L.L.C.; Tribal Communications, L.L.C.,

Plaintiffs—Appellants,

versus

Joseph Valandra; Clayton Wooley; Jase Wilson; Michael Faloon; Tribal Ready, Incorporated; Fictitious Defendants A through Z,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:23-CV-10

Before Wiener, Willett, and Douglas, *Circuit Judges*.

Per Curiam:*

Appellants, Tribal Solutions Group, LLC ("TSG") and Tribal Communications, LLC ("TC"), appeal the district court's denial of their motion for a preliminary injunction after concluding that they failed to show

* This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

a substantial threat of irreparable harm. Having reviewed the evidence, arguments, and applicable law, we find no abuse of discretion and AFFIRM.

I.

TSG and TC are Mississippi-based corporations that provide services to tribal communities. TSG was formed by Dan Davis in 2018 and "support[s] efforts in healthcare, education, broadband expansion, and economic development." TC is an affiliated outgrowth of TSG "formed to develop broadband internet access for Native American tribes throughout the United States." Davis manages and owns the voting shares for both entities.

TSG and TC sued former TC Senior Vice President Joseph Valandra, former independent contractor Clayton Wooley, former vendor Jase Wilson, and former vendor Michael Faloon, for allegedly stealing TC's trade secrets and breaching fiduciary duties to form a new company, Tribal Ready, Inc. The complaint alleges, *inter alia*, violations of the Defend Trade Secrets Act, the Mississippi Uniform Trade Secrets Act, and the Computer Fraud and Abuse Act, along with claims for conversion, conspiracy, and breach of fiduciary duties.

Shortly after filing suit, TSG and TC moved for a preliminary injunction seeking to broadly enjoin Valandra, Wooley, Wilson, and Faloon from pursuing potential TC business opportunities and using any information learned from or taken from TC or TSG.[1] Following an

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[1] The exact language in the motion for a preliminary injunction states:

> Plaintiffs ask the Court to enjoin all Defendants and their officers, agents, servants, employees, and attorneys and anyone in active concert or participation with them from (1) pursuing any and all existing and potential business opportunities of TC, (2) doing business with any and all business partners with which they worked with at TC or TSG, (3) doing business

evidentiary hearing that included testimony from Davis and Wooley, the district court denied the motion after concluding that TSG and TC failed to show a substantial threat of irreparable harm. TSG and TC timely appealed. We have jurisdiction from an interlocutory order denying a preliminary injunction pursuant to 28 U.S.C. § 1292(a)(1).

II.

"The decision to grant or deny a preliminary injunction is discretionary with the district court." *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). Accordingly, we review a district court's grant of a preliminary injunction for an abuse of discretion, reviewing factual findings for clear error and legal conclusions de novo. *Harrison v. Young*, 48 F.4th 331, 339 (5th Cir. 2022).

III.

To obtain the "extraordinary remedy" of a preliminary injunction, a movant must show a likelihood of success on the merits and "demonstrate a substantial threat of irreparable injury if the injunction is not granted; the threatened injury outweighs any harm that will result to the non-movant if the injunction is granted; and the injunction will not disserve the public interest." *Atchafalaya Basinkeeper v. U.S. Army Corps of Eng'rs*, 894 F.3d 692, 696 (5th Cir. 2018).

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with any and all existing clients of TC and TSG without the express permission of TC and TSG; (4) doing business with any and all entities with which they sought to do business for TC and TSG; (5) using any information learned from or taken from TC or TSG to do business with any entities; (6) using the trade secrets and confidential information of TC and TSG to do business with any entities; or (7) disclosing the trade secrets and confidential information of TC and TSG.

The only issue before us is whether the district court clearly erred in finding that TSG and TC failed to provide evidence of irreparable harm absent injunctive relief. *See Paulsson v. Geophysical Servs., Inc. v. Sigmar*, 529 F.3d 303, 313 (5th Cir. 2008) (concluding district court's finding of irreparable harm was not clear error); *see also Emerald City Mgmt., L.L.C. v. Kahn*, 624 F. App'x 223, 224-25 (5th Cir. 2015) (unpublished) (same). "In general, a harm is irreparable where there is no adequate remedy at law, such as monetary damages." *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). Irreparable harm is "more than speculative; there must be more than an unfounded fear on the part of the applicant." *Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022) (internal quotation and citation omitted).

The district court assumed without deciding that the first, third, and fourth elements of a preliminary injunction were satisfied. But it was not persuaded that TSG and TC would suffer irreparable injuries absent an injunction. Specifically, it found "[t]hey have an adequate remedy at law: those monetary damages they might prove up during this suit." Although some of the alleged injuries are not merely financial—including "loss of business opportunities, goodwill, customer relations, and erosion of TC's market position"—the district court concluded that TSG and TC had failed to provide evidence to support those harms.

Specifically, the district court found that TSG and TC "offered no concrete evidence to substantiate the alleged injury to their reputation or loss of goodwill," noting that the declarations submitted in support of their motion and Davis's testimony never claimed loss of reputation or goodwill or explained how such losses would result in irreparable harm. The district court rejected the argument that lost profits would be difficult or impossible to calculate because TSG and TC "presented no evidence to support th[at] argument." As to the argument that the economic loss was so great as to threaten the existence of its business, the district court noted that TSG and

TC "ha[d] offered no such fact or expert testimony" to support such a finding, as "each of their invocations of the 'loss of business' exception was a pure recitation of law, devoid of any application to the facts or record in this case."

Before us, TSG and TC make substantially the same showing, outlining valid theories of irreparable harm without connecting those theories to evidence in the record besides recounting the facts underlying this case generally. We do not contest that loss of business opportunities, goodwill, customer relations, and erosion of market position are potentially irreparable injuries warranting injunctive relief. Reputational injury may be used to establish irreparable harm, *Emerald City Mgmt.*, 624 F. App'x at 224, but the showing of injury must be more than speculative. *See Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

After reviewing the record before us, we see no abuse of discretion or clear error in the district court's determination that TSG and TC failed to show irreparable harm absent an injunction because monetary damages provide adequate relief. Following the testimony of the parties' witnesses, the district court engaged in a lengthy back-and-forth with TSG's and TC's counsel in an effort to solicit evidence of irreparable harm. For each harm alleged, however, the district court repeatedly noted that monetary damages would be available as a remedy. Counsel was unable to point to concrete evidence, despite the voluminous record produced this early in the litigation, to establish the requisite injury or show how monetary damages were insufficient.

All the cases cited by TSG and TC on appeal are readily distinguishable because of the evidence proffered. *See, e.g., Allied Mktg. Grp. v. CDL Mktg., Inc.*, 878 F.2d 806, 810 n.1, 813-14 (5th Cir. 1989) (finding damage to the goodwill of plaintiff by considering evidence of actual

confusion on part of customers); *TLS Mgmt. & Mktg. Servs., LLC v. Mardis Fin. Servs., Inc.*, No. 3:14-CV-881, 2018 WL 3698919, at *5, *12 (S.D. Miss. Aug. 3, 2018) (finding damage to goodwill of plaintiff stemming from defendants' misrepresentation of ties to plaintiff); *see also CyberX Grp., LLC v. Pearson*, No. 3:20-CV-2501-B, 2021 WL 1966813, at *5, *10-11 (N.D. Tex. May 17, 2021) (finding evidence of loss of goodwill because, *inter alia*, the healthcare industry has unique challenges and defendants violated valid non-compete agreements)[2]; *Taylor v. Cordis Corp.*, 634 F. Supp. 1242, 1250-51 (S.D. Miss. 1986) (noting breach of non-compete agreement supports claim of irreparable injury). There is no such evidence here.[3]

IV.

"Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of [an injunction], are not enough." *Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) (alteration in original) (quoting *Morgan v. Fletcher*, 518 F.2d 236, 240 (5th Cir. 1975)). "The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, [weighs] heavily against a claim of irreparable harm." *Id.* The district court's irreparable harm finding was not clear error, and it did not

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[2] At the evidentiary hearing before the district court, counsel for TSG and TC admitted that "we don't have a noncompete agreement here."

[3] Even if TSG and TC had presented evidence of lost goodwill, we have found that "[t]he lost goodwill of a business operated over a short period of time is usually compensable in money damages." *DFW Metro Line Servs. v. Sw. Bell Tel. Co.*, 901 F.2d 1267, 1269 (5th Cir. 1990). Like the plaintiff in *DFW Metro*, TC was in business for approximately 18 months before the instant suit commenced. Likewise, we have rejected "conclusory" assertions of lost business opportunities without "specific facts" to support those losses. *See Kemlon Prods. & Dev. Co. v. United States*, 638 F.2d 1315, 1322 (5th Cir. 1981).

abuse its discretion in denying a preliminary injunction on the record before it.

AFFIRMED.