STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0074

Daniel Call,
Respondent,

vs.

Ralph Call,
Appellant,
Winco, Inc.,
Defendant.

Filed September 3, 2019
Affirmed
Reyes, Judge

LeSueur County District Court
File No. 40-CV-18-19

Cory A. Genelin, Zachary C. Graham, Gislason & Hunter, L.L.P., Mankato, Minnesota (for respondent)

Kay Nord Hunt, Keith J. Broady, Bryan R. Feldhaus, Lommen Abdo, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Cleary, Chief Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

REYES, Judge

In this appeal from judgment following a court trial in a family business dispute, appellant argues that the district court erred by (1) finding that, as chief executive officer,

appellant had no authority to terminate another officer; (2) enjoining appellant from exercising executive authority without special-master approval; (3) finding that appellant did not have a reasonable expectation to remain CEO for as long as he wished; and (4) finding that changing the number and identity of the board of directors does not require unanimous consent. We affirm.

FACTS

Winco, Inc. is a Minnesota corporation that manufactures generators and has been in existence since 1927. Appellant Ralph Call began working for Winco in the late 1980s and was its sole shareholder from then until 2012. Ralph[1] hired his son, respondent Daniel Call, to work for Winco in 2009, with the understanding that Daniel would eventually own a significant share of Winco. Ralph intended to give all ownership of Winco to Daniel and his other son, Peter Call.

The Winco board of directors appointed Daniel as president in early 2014 and continued to reelect him through 2017. Ralph made a series of stock transfers to Daniel and Peter. By 2016, Ralph became a minority shareholder, owning 10% of Winco stock, with Daniel owning 50% and Peter owning 40%. At some point in 2017, the parties' relationship became dysfunctional. Peter returned his shares to Winco in December 2017 and resigned "as an officer, director, and employee of [Winco]." Currently, Daniel owns 65% of Winco shares and Ralph owns 35% of Winco shares. The parties agree that, prior to December 22, 2017, Ralph served as the CEO of Winco, and Daniel as the president.

[1] Because the parties and other involved persons share the same last name, we refer to them by their first name.

Ralph and Daniel were the sole shareholders, officers, and members of the board of directors.

At a special shareholder's meeting on December 22, 2017, Daniel attempted to appoint his wife, Laura Call, to the board of directors. At a shareholder's meeting on December 29, 2017, Daniel, Ralph, and Laura were present. Ralph attempted to unilaterally adjourn the meeting, but the parties did not take a vote. As a result, the meeting continued with only Daniel and Laura present. Daniel attempted to remove Ralph as CEO, asserting that a quorum of directors present voted to remove him. On January 2, 2018, Ralph attempted to terminate Daniel's employment with Winco. The parties dispute the validity of each other's actions.

On January 4, 2018, Daniel filed suit against Ralph, seeking a declaratory judgment and injunctive relief, claiming breach of fiduciary duty and unfairly prejudicial conduct. The district court held a court trial in May 2018. On July 30, 2018, the district court issued its order holding that both Ralph and Daniel breached duties owed to each other as shareholders of a close corporation. The district court held that Daniel's attempt to install Laura to the board and remove Ralph as CEO unfairly prejudiced Ralph as the minority shareholder. It also found invalid Ralph's attempt to fire Daniel as president. It reinstated the structure of Winco to its status prior to December 22, 2017, with the exception of Peter resigning and returning his shares to the company. Thus, Ralph is currently the CEO and chairman of the board, and Daniel is the president.

In August 2018, the district court appointed a special master to assist the parties with restructuring the management of Winco and enjoined both parties from independently

taking any action to modify the governance or financial structure of Winco. This appeal follows.

D E C I S I O N

I. The district court properly determined that Daniel's officer position is controlled by the board of directors.

Ralph argues that, as the CEO of Winco, he had the authority under Winco's bylaws to terminate Daniel as a Winco employee, and, as a result, Daniel is obligated to return his shares of the company. We are not persuaded.

We construe a corporation's bylaws according to the same rules of construction applied to contracts. *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004), *review denied* (Minn. Apr. 4, 2005). The interpretation of a contract is a question of law subject to de novo review. *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011). In an unambiguous contract, we construe the language according to its "plain and ordinary meaning." *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 67 (Minn. 1979) (citations omitted). A contract is ambiguous only if, based upon its language, it is reasonably subject to more than one interpretation. *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). The parties agree, as do we, that Winco's bylaws are unambiguous.

Winco's bylaws provide, in section 4.4, that "An officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement, if any." Bylaws have the same force and effect as provisions of a corporation's charter or

articles of incorporation and must be obeyed by the corporation and its directors, officers, and shareholders. *Diedrick v. Helm*, 14 N.W.2d 913, 921 (Minn. 1944). Similarly, under the Minnesota Business Corporation Act (MCBA), an officer can be removed by an affirmative vote of a majority of the board of directors present. Minn. Stat. § 302A.341, subd. 2 (2018). The statute authorizes the CEO to remove an officer appointed by the CEO, but otherwise provides that officer removal is subject to the board's authority. *Id.*

The district court found, and the parties agree, that Ralph is the CEO and Daniel is the president of Winco. And the plain language of Winco's bylaws, consistent with the MBCA, state that an officer may be removed by resolution approved by a majority vote of the directors present. As a result, Daniel's tenure as president is controlled by the board of directors, not the CEO alone.

Ralph cites no authority to support his argument that he could unilaterally terminate Daniel's employment simply because of his CEO status. There is nothing in Winco's bylaws to suggest that the CEO has the authority to terminate another officer without board approval. The record shows that the board of directors appointed Daniel to an officer position, and as a result, his removal is subject to its authority.

Ralph distinguishes between Daniel's role as an employee and as an officer of Winco and argues that he fired Daniel only as an employee, not an officer. Ralph relies on *Gunderson v. All. of Comput. Prof'ls, Inc.*, 628 N.W.2d 173, 184 (Minn. App. 2001), for the proposition that Daniel can be fired as an employee even though he is also a shareholder. But *Gunderson* did not address terminating an officer, which is the issue here. His reliance on *Pedro v. Pedro*, 489 N.W.2d 798, 803 (Minn. App. 1992), *review denied*

(Minn. Oct. 20, 1992), is similarly unpersuasive. *Pedro* acknowledges that a shareholder/employee of a corporation can have two distinct interests in the corporation, one as an owner and the other as an employee. *Id.* But here, Ralph is contending that Daniel has two separate employment interests as the president and as an employee, not as president and shareholder.[2]

II. The district court did not abuse its discretion when it enjoined both parties from taking action without approval from the special master.

Ralph argues that the district court abused its discretion by enjoining him from exercising his authority as CEO because it acted sua sponte and lacked authority to order the injunction. We are not persuaded.

We will not reverse a district court's decision to grant a temporary injunction absent a clear abuse of discretion. *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). A district court can appoint a special master to address post-trial matters that cannot be addressed effectively and timely by a district court judge. Minn. R. Civ. P. 53.01(a)(3). A district court may create equitable remedies based on the exigencies of each case so as to accomplish justice. *Pooley v. Mankato Iron & Metal, Inc.*, 513 N.W.2d 834, 837 (Minn. App. 1994), *review denied* (Minn. May 17, 1994).

[2] Ralph further takes issue with the district court's determination that he did not have authority to unilaterally adjourn the meeting on December 29, 2017. He contends that the district court's adjournment finding is clearly erroneous, but he does not present any support for this argument, other than pointing to his CEO status and stating that, "Winco operated under the rule that if Ralph wanted to adjourn a board of directors meeting he could do so." He argues that Daniel did not have authority to appoint his wife to the board or remove him as CEO. But the district court found in Ralph's favor on both of these issues.

Under the MBCA, a district court "may grant *any* equitable relief it deems just and reasonable in the circumstances" when the directors of a corporation have acted in a manner unfairly prejudicial toward one or more shareholders. Minn. Stat. § 302A.751, subd. 1(b)(3) (2018) (emphasis added).

The district court enjoined Daniel from holding a shareholder meeting and enjoined Ralph from exercising any executive authority over Winco without approval from the special master. After trial, the district court found that Daniel's attempt at firing Ralph unfairly prejudiced Ralph as a minority shareholder. The parties are the sole directors, officers, and shareholders of Winco and have both attempted to take unilateral action against the other. The district court's appointment of a special master and enjoinment of certain actions without the special master's approval is reasonable in these circumstances. Therefore, the district court acted within its discretion under the MBCA to craft equitable relief based on the facts of the case.

III. The district court did not clearly err in finding that Ralph could not remain CEO for as long as he wished.

Ralph argues that he can remain CEO of Winco indefinitely until he decides to step down and that the district court's finding to the contrary is clearly erroneous. We disagree.

Whether a shareholder's reasonable expectation of employment has been frustrated is a question of fact. *Gunderson*, 628 N.W.2d at 186. To determine whether expectations are reasonable, the district court may rely on written or oral agreements between shareholders or shareholders and the corporation. *Id.* at 184. In close corporations, shareholder expectations are not always encompassed in written agreements, and written

agreements are not always dispositive of shareholder expectations. *Haley*, 669 N.W.2d at 58.

The district court found that Ralph did not have a reasonable expectation to remain as CEO indefinitely because, although Ralph testified to agreements that he could stay on as long as he wished, no other evidence corroborated these alleged agreements. The district court found that, in fact, Ralph made multiple statements in written correspondences indicating his expectation to step down and let his sons take over leadership while acting as an advisor.

The record supports the district court's findings. The shareholder's agreement states that, "the shareholders agree to elect Ralph Call to the board of directors [and as board chairman] as long as he is willing to serve." But no similar language allows Ralph to remain as CEO indefinitely. Daniel also testified that no agreement provided that Ralph had a right to remain as CEO indefinitely and that Daniel only intended for Ralph to remain CEO for the time being.

Moreover, prior to 2017, Ralph sent emails and other written communications indicating that Daniel and Peter were in control of Winco. Ralph wrote in 2014 that, in "a few years, [Daniel and Peter] will be the sole owners of the company." He wrote in 2015 that he planned to make Daniel and Peter majority owners of Winco, and wrote, "that will mean that they can kick me out if they are so inclined." Also in 2015, Ralph wrote that "the company is theirs and they will have to step up and make it run as it should. I am willing to keep advising them as long as they want my advice but they will be totally in the drivers seat." In March 2017, Ralph told Daniel, "You own the company. I have given it

to you. No one can remove you. You can only remove yourself." Moreover, when Ralph began gifting Winco's stock to Daniel and Peter, he did not include any writing or document that provided for him to remain CEO indefinitely. The record indicates that Ralph began transitioning ownership and leadership of Winco to his sons and planned to act as an advisor if needed.

Ralph relies on his trial testimony to support his position that he intended to remain CEO for as long as he wished. He testified that "I think it's always been understood that I would be the last word or the final word or that I was the – the ultimate manager of the company, that the other people in the company reported to me." However, the district court rejected this uncorroborated testimony as in conflict with his prelitigation statements. It is not this court's role to make findings of fact on appeal. *Fontaine v. Steen*, 759 N.W.2d 672, 679 (Minn. App. 2009). And we do not reconcile conflicting evidence in an appeal from a bench trial. *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002).

Ralph also contends that he had the reasonable expectation to remain chairman of the board for as long as he wished, so this expectation also extends to the CEO position because the CEO and chairman positions "were always occupied by the same person." Ralph points to no authority or evidence in the record to support this allegation. And the district court rejected the argument that the two positions were merged. Moreover, Daniel testified that the chairman of the board and the CEO were not the same role. Ralph further argues that the district court clearly erred by "suggesting that Ralph as CEO did not have authority to actively manage Winco." But the district court did not suggest that Ralph did

not have the authority to manage Winco as CEO, just that he did not have the reasonable expectation to remain in the position for as long as he wanted. The record supports the district court's findings.

IV. Winco's bylaws require a majority rather than a unanimous shareholder vote to change the number and identity of the board of directors.

Ralph argues that there must be unanimous consent of all shareholders in order to change the number or identity of the directors on Winco's board. We disagree.

As previously stated, the bylaws are unambiguous, so we look to their plain meaning. Section 2.5.1 of Winco's bylaws state that, at shareholder meetings, "the shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote." Section 3.2, which pertains to electing the board of directors, states that, "[t]he [b]oard of [d]irectors shall consist of one or more directors as shall be determined by the shareholders, from time to time."

The plain meaning of the bylaws do not support Ralph's interpretation. Moreover, Ralph's interpretation is inconsistent with Minnesota law. Minn. Stat. § 302A.215, subd. 1 (2018), provides that "[u]nless otherwise provided in the articles, directors are elected by a plurality of the voting power of the shares present and entitled to vote on the election of directors at a meeting at which a quorum is present."

Ralph argues that the bylaws' use of the word "shareholders" in the plural means that an action to change the number and identity of the board must be by unanimous consent. Ralph relies on the testimony of Henry Zaidan, the secretary of Winco when the bylaws were adopted, to show that they intended to require unanimity to allow a minority

shareholder to block majority shareholders. But a party is not permitted to demonstrate ambiguity in an otherwise unambiguous contract by extrinsic evidence. *Trebelhorn v. Agrawal*, 905 N.W.2d 237, 243 (Minn. App. 2017). Instead, we must enforce the contract according to its plain and ordinary meaning, even if the result is harsh. *Id.*

Ralph further contends that this court should consider Winco's past course of dealing in interpreting the bylaws. But course of dealing cannot be considered when the contract is unambiguous. *Cornell v. N.F.C. Eng'g Co.*, 144 N.W.2d 369, 371-72 (Minn. 1966). Winco's bylaws, consistent with Minnesota law, require only a majority of shareholders to elect the number and identity of board members.

Affirmed.