In the Missouri Court of Appeals
Eastern District

DIVISION TWO

CHEMLINE INCORPORATED,	)	No. ED108603
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of Saint Louis County
v.	)	18SL-CC04666
	)	
TIMOTHY MAUZY	)	Honorable Kristine A. Kerr
	)	
Appellant.	)	Filed: March 2, 2021

Introduction

Timothy Mauzy ("Mauzy") appeals from the trial court's judgment finding him in contempt of an injunction order that prohibited him from contacting certain customers from his previous employment with Chemline Incorporated ("Chemline"). The contempt judgment also assessed a $2,000.00 compensatory fine based on this contemptuous conduct and awarded Chemline $6,000.00 in attorneys' fees. Mauzy asserts three points on appeal, arguing the trial court erred in: finding him in contempt because the injunction order did not clearly, unambiguously, and expressly prohibit his complained-of conduct (Point I); assessing the compensatory fine because there was no evidence that Chemline suffered actual damages (Point II); and awarding attorneys' fees to Chemline because Mauzy did not violate the injunction order

(Point III). We affirm in part and reverse and remand in part for further proceedings consistent with this opinion.[1]

Factual and Procedural Background

For over five years, Mauzy was employed by Chemline as a sales representative. Chemline required its sales representatives to enter into restrictive covenants, which included non-competition and non-solicitation provisions. In May of 2018, Mauzy left his employment with Chemline and began working in a sales capacity at IXS Coatings. Both IXS Coatings and Chemline are in the business of providing custom coatings for use in industrial and commercial applications and are direct marketplace competitors.

In December of 2018, Chemline filed a petition for injunctive relief and damages based on allegations that Mauzy had violated the non-competition and non-solicitation provisions of his employment agreement. On March 11, 2019, the trial court entered an order of permanent injunction ("the Order") prohibiting Mauzy from, in relevant part, contacting five customers with whom Mauzy had a relationship during his employment at Chemline: Albers Spray Solutions, Benchmark Foam, the Protective Group/Point Blank, BP Surface Solutions, and Alberts Industrial Coatings. It is undisputed that Mauzy contacted individuals who were employed by these customers during the twelve-month period covered by the Order. Testimony found credible by the trial court established that: Mauzy met Matt Frey ("Frey") of Benchmark Foam in person on or about July 10, 2019, and otherwise contacted Frey over thirty times; and Mauzy contacted Clay Butler of BP Surface Solutions and was contacted by Seth Albers of Albers Spray Solutions.

[1] We deny Chemline's motion for attorneys' fees related to this appeal, which this Court ordered taken with the case.

On July 19, 2019, Chemline filed a motion for contempt and to show cause alleging that Mauzy's interactions with Frey constituted a willful violation of the Order. The trial court found that Mauzy engaged in willful disobedience of the Order, entered a judgment of contempt, and awarded Chemline $6,000.00 in attorney's fees. The trial court also ordered Mauzy to pay a $2,000.00 compensatory fine to Chemline after finding that Mauzy had interfered with Chemline's business relationships, despite also finding "that Chemline cannot demonstrate a quantified diminution in their business sales as a result of [Mauzy's] complained-of conduct."

This appeal follows.

Standard of Review

We review a contempt judgment under the same standard as other court-tried matters, announced in *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). *Wuebbeling v. Wuebbeling*, 574 S.W.3d 317, 327 (Mo. App. E.D. 2019). That is, we will affirm the judgment unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Id.* On review, we defer to the trial court's credibility determinations and recognize the trial court is free to accept or reject all, part, or none of the testimony presented. *Id.* We view the evidence and inferences therefrom in the light most favorable to the judgment and we will affirm if the judgment can be sustained on any ground supported by the record. *Id.* Moreover, "we will not reverse the trial court's ruling on a civil contempt motion absent a clear abuse of discretion." *Id.* An abuse of discretion occurs when the trial court's ruling is clearly against the logic of the circumstances and is so arbitrary and unreasonable as to shock our sense of justice and indicate a lack of careful consideration. *Id.*

Discussion

Point I

In his first point on appeal, Mauzy argues the trial court erred in finding him in contempt because his complained-of conduct was not clearly, unambiguously, and expressly prohibited by the Order. We disagree.

To be found in civil contempt, the record must show: (1) an individual had an obligation to perform or refrain from some action under a court order, and (2) the individual failed to meet that obligation. *Id.* The judgment, order, or decree supporting a contempt charge "must precisely advise the individual of what conduct is forbidden," meaning that the directive "must be so definite and specific as to leave no reasonable basis for doubt of its meaning" and it may not be expanded by implication in a contempt proceeding. *Id.* at 328–29 (internal quotations and citation omitted). Therefore, in reviewing a trial court's judgment of contempt, we are guided by the express dictates of the court order which the contemnor is alleged to have disobeyed. The general rules of construction apply and thus "[w]ords and clauses used in the order, judgment or decree must be construed in accordance with their natural import." *Carter Cty. R-1 Sch. Dist. v. Palmer*, 627 S.W.2d 664, 665 (Mo. App. S.D. 1982).

i. No reasonable basis exists to doubt that the Order's directive prohibited Mauzy's complained-of conduct

Mauzy does not challenge the trial court's findings regarding his complained-of conduct—namely, that he was in contact with employees of the prohibited company customers during the twelve-month period specified in the Order—and only challenges the conclusion that such conduct violated a clear and unambiguous directive of the Order. Mauzy advances two arguments for why his conduct was not clearly prohibited and why he cannot therefore be found in contempt. First, Mauzy contends the Order only specifically prohibited him from contacting the listed *companies* and not their individual employees. Second, Mauzy contends the nature of this contact was wholly personal—not sales- or business-related—and that the Order did not

prohibit maintaining personal relationships with individual employees of the listed companies. We disagree and address each argument in turn.

a. The prohibition on contacting company customers includes the individual company employees at issue here

We first address Mauzy's argument that he cannot be found in contempt because the Order only prohibited him from contacting the listed *company customers*, which does not encompass *individual employees* of those companies. In support of this construction, Mauzy argues that a business entity is separate and distinct from its employees and that, because the Order only lists the company names, Mauzy was only prohibited from, "for example, sending a solicitous or introductory letter, fax, or email to the Companies' attention, appearing at their physical offices, or calling their general phone line."[2] We disagree.

Under the circumstances here, the prohibition on contacting the company customers encompasses the employee contact points with whom Mauzy closely worked. This understanding is supported by substantial evidence in the record. Indeed, both at the injunction hearing and the contempt hearing, the parties and their attorneys interchangeably utilized terms such as the names of the companies, "customers," "accounts," and the individual points of contact to refer to the same conceptual customer entities. For example:

- Mauzy's statements equated the company customers and the individual employee contacts, such as: "I contacted most of the customers that I had become close with ..." followed by "I had known those guys for quite some time, became friends with them…"; and answering the question "[o]ther than Matt Frey at Benchmark

[2] Mauzy also supports this argument by contrasting the language covering the companies—whose names are listed—with the language outlining Mauzy's prohibited actions—which explicitly covers Mauzy and his "agents, servants, and employees or anyone acting on his behalf." We are not persuaded by this difference in language. It is not reasonably understood that language referring to one individual would include the conduct of any other individual unless specifically stated; conversely, it is reasonably understood under the circumstances here that listing a company name would include sales-related points of contact. Moreover, it is "common practice to make [an] injunction run to classes of persons through whom the enjoined party may act, such as agents, servants, employees, aiders, abettors, etc." so that the enjoined party may not easily circumvent any obligations. *Chem. Fireproofing Corp. v. Bronska*, 542 S.W.2d 74, 80 n.1 (Mo. App. 1976) (internal quotations and citation omitted).

Foam, what other customers listed in [the Order] have you contacted?" with "I have contacted or I've been in contact with on occasion Seth Albers from Albers Spray Solutions, and some of the employees at BP Surface Solutions."

- Chemline's founder and CEO equated Benchmark Foam with Frey by stating "[Mauzy's] been in contact with Benchmark, who has no problem letting us know that he talks to Tim [Mauzy] almost weekly," specifically stating that the "he" referred to was Frey.

- Mauzy's counsel equated the company customer accounts and the individual employee contacts, asking Mauzy: "So earlier you testified that you contacted a number of other customers or accounts. Were you contacting these individuals in their capacity as individuals because you considered them friends?"; and "you have not solicited any business from those five companies since March 11? … Indirectly solicit[ed] anything, tried to hint to those people that you wanted them to buy from you?"

In addition, this reading of the Order is reasonable and expected given the protectable interest at issue. "Customer contacts are a protectable commodity because goodwill develops between the customers and the employer through its employees whose job it is to meet and converse with the customer while representing the employer." *Systematic Bus. Servs., Inc. v. Bratten*, 162 S.W.3d 41, 51 (Mo. App. W.D. 2005).

> [T]he rationale for protecting 'customer contacts' is that, in the sales industry, a customer's goodwill toward a company is often attached to the employer's individual sales representative, and the employer's product or service becomes associated in the customer's mind with that representative. The sales employee is thus placed in a position to exert a special influence over the customer and entice that customer's business away from the employer.

Id. (internal quotations and citations omitted). Customer contacts are protectable due to the personal nature of sales and the effort undertaken by sales representatives to build goodwill with customers, frequently through individual personal relationships. *See Healthcare Servs. of the Ozarks, Inc. v. Copeland*, 198 S.W.3d 604, 611 (Mo. banc 2006) (defining protectable contacts as "essentially the influence an employee acquires over his employer's customers through

personal contact") (internal quotations and citation omitted). Here, all parties testified to the importance of personal relationships in the coatings sales business and to the time, effort, and money expended to develop close relationships with individual points of contact at company customers.

Given the above, it would be illogical that the Order's prohibition on contacting company customers would only apply to the companies' formal front offices, as Mauzy contends. Rather, the Order's prohibition on contacting customers is reasonably understood to cover both the formal front offices and the individual points of contact and relationships that Chemline—through Mauzy—had spent time, effort, and money developing. *Accord Systematic Bus. Servs.*, 162 S.W.3d at 51–52 (analyzing former employee's ability "to influence relevant contact persons" and "decision makers located at Respondents' customers" during discussion of restrictive covenant prohibiting soliciting business from Respondents' "customers").

Simply because the Order does not exhaustively list the individual customer contacts covered by the prohibition does not mean it is so vague that Mauzy cannot be held in contempt thereof. In this regard we find instructive *State ex rel. Girard v. Percich*, 557 S.W.2d 25, 40 (Mo. App. 1977). In *Girard*, the court was presented with the question of whether union members could be found in contempt for adopting a policy of following customers, even where the underlying restraining order "did not specifically forbid following." *Id.* at 28, 34, 40. In affirming, the court explained that such conduct was included in the order's express prohibition on "intimidation, harassment, and coercion of customers," reasoning that:

> [t]he meaning of these terms is clear to one acting in good faith. The court was not required to denominate every type of prohibited conduct which would intimidate, harass and coerce customers. Use of generic terms was sufficient to give petitioners fair warning. If they questioned the permissibility of this practice, the proper course was a motion to modify the order, not reckless disobedience of its literal terms.

Id. at 40.

Similar to *Girard*, we find the meaning of the Order's prohibition on contacting company customers "clear to one acting in good faith," given the way the parties employed the relevant terms throughout this litigation and given the protectable interest at issue. We therefore find no error in the trial court's conclusion that the Order's express prohibition on contacting the listed company customers encompassed individual company employees who served as Mauzy's points of contact and with whom Chemline spent time, money, and effort developing relationships.

b. The prohibition on "contacting" encompasses all forms of contact, not only those explicitly for the purpose of soliciting business

We also disagree with Mauzy's argument that the Order's prohibition on "contacting" the company customers encompassed only business-related solicitation and not personal communication. The Order's express directive prohibited Mauzy from "contacting" the listed customers, with no limitations.

The Order's prohibition on "contacting" must be construed in accordance with the natural import of the verb "to contact." *See Carter Cty.*, 627 S.W.2d at 665 (words and clauses "must be construed in accordance with their natural import"). Webster's Dictionary defines "contact" as a transitive verb that means "to enter or be in contact with: join" and "to get in communication with." *Contact*, Webster's Dictionary (3d ed. 2002). Therefore, under the plain terms of the Order, Mauzy was prohibited from engaging in all forms of communication with the listed company customers and employee contacts.[3]

[3] Indeed, Mauzy admitted at the contempt hearing that his argument was not based on the express language of the Order itself:

> Q [Chemline's counsel]: "But if I understand your affidavit correct[ly], what you believe that the Court Order says is you couldn't solicit him?
> A [Mauzy]: That's correct.
> Q: Can you point to this Court Order, and take your time, point to this Court Order and tell me where it says you can contact him but you can't solicit him?
> A: No, it doesn't say that.

Although Mauzy argues that a prohibition on all forms of communication is unenforceable, the enforceability of the Order is not before this Court and a challenge to clarify or modify the Order should have been brought prior to an appeal from a contempt judgment. *See Girard*, 557 S.W.2d at 40 ("[i]f [contemnors] questioned the permissibility of this practice, the proper course was a motion to modify the order, not reckless disobedience of its literal terms").

> Where one has a genuine doubt as to whether his proposed conduct would be violative of the order because of its alleged vagueness, the proper procedure is not to act in reckless disregard of the potential restraint imposed. Once a court of general jurisdiction, having equity powers, issues an order upon pleadings properly before it, the order must be scrupulously obeyed even though it may prove to be erroneous. It is the function of the court in the first instance to judge the legality of its decision and until that decision is modified or reversed it must be respected under pain of contempt. Any attack on the propriety of the order must be by judicial process and not willful disobedience.

Id. at 37–38. Here, Mauzy testified he knew of the Order and its terms, considered himself bound by it, and did not appeal or otherwise challenge the Order. Therefore, the Order stands as written and we give its words their natural import. *See Carter Cty.*, 627 S.W.2d at 665 (general rules of construction apply in contempt proceedings and "[w]ords and clauses used in the order, judgment or decree must be construed in accordance with their natural import").

We find no error in the trial court's conclusion that the Order's prohibition on "contacting" encompassed all communications.

ii. Because Mauzy's undisputed conduct violated the Order's express prohibition on contacting the listed customers, Mauzy can be held in contempt thereof

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> ***
> Q: But again I'm not asking your understanding I'm asking where does it say you can contact him but you can't solicit him?
> A: I don't see it in either of these paragraphs [of the Order].
> ***
> A: Again, my assumption was that I could continue to maintain friendships as long as I didn't solicit their business.
> Q: But you agree with me that's not what the Court Order says, right?
> A: That's not what's written.

On the record here, there are no reasonable bases to doubt the meaning of the Order's express prohibition on contacting the named company customers. Given this conclusion and that the parties do not dispute Mauzy's conduct, we affirm the trial court's judgment of contempt. It is undisputed that Mauzy's main points of contact at the prohibited company customers were the same employees with whom he had built personal relationships for sales purposes and with whom he was in contact after leaving Chemline; namely, Frey, Mr. Albers, and Mr. Butler. It is similarly undisputed that Mauzy was in contact with these individuals during the twelve-month period following the Order, including "talk[ing] regularly" to Frey. Therefore, the trial court did not err in finding Mauzy in contempt of the Order's express prohibition on contacting the company customers during the twelve-month period following entry of the Order.

Point I is denied.

Point II

In his second point on appeal, Mauzy argues the trial court erred in assessing the $2,000.00 compensatory fine because there was no evidence that Chemline suffered actual damages as a result of his contemptuous conduct.[4] We agree and remand to the trial court for reconsideration of the compensatory fine.

"Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained." *Frantz v. Frantz*, 488 S.W.3d 167, 172 (Mo. App. E.D. 2016). The latter "compensatory fines" are available in the discretion of the trial court to compensate the party whose rights were prejudiced by the contempt. *In re Marriage of*

[4] Mauzy asserts the trial court's judgment in this case was one of civil, not criminal, contempt. Chemline does not contest this characterization and, given the circumstances of this case, we assume the judgment here was one of civil contempt.

Hunt, 933 S.W.2d 437, 448–49 (Mo. App. S.D. 1996). Because its purpose is remedial, a compensatory fine must be related to the actual damage suffered by the complainant for injury caused by the contemptuous conduct. *Id.* at 449. Unless is it related to actual damages, an outright fine is generally "not appropriate for civil contempt because it is not designed to cure but is intended to punish." *Levis v. Markee*, 771 S.W.2d 928, 932 (Mo. App. E.D. 1989).

Chemline argues the compensatory award here was properly based on lost profits and damaged business relationships, which are inherently difficult to reduce to a specific monetary value. Although "lost-profits determinations are based on estimations of prospective or anticipated profits and cannot be expected to operate as an exact science," *Gateway Foam Insulators, Inc. v. Jokerst Paving & Contracting, Inc.*, 279 S.W.3d 179, 186 (Mo. banc 2009), Chemline did not present any evidence of lost profits. As the *Gateway Foam* court noted, "a party must produce evidence that provides an adequate basis for estimating the lost profits with reasonable certainty." *Id.* (internal quotations and citation omitted). Here, despite the trial court's finding that Mauzy's willful disobedience of the Order had "weakened and placed divisions in the relationship between Benchmark and Chemline," we are unable to find any evidence in the record of the valuation of such diminished relationships or of other monetary losses. Most importantly, we cannot ignore the trial court's express finding "that Chemline cannot demonstrate a quantified diminution in their business sales as a result of [Mauzy's] complained-of conduct."

Because the trial court expressly found that Chemline could not demonstrate a quantified diminution in business sales due to Mauzy's contemptuous conduct and because there is no other evidence in the record of the value of any resulting loss to Chemline, the trial court had nothing before it on which to base a "compensatory fine." *See Tashma v. Nucrown, Inc.*, 23 S.W.3d 248,

252 (Mo. App. E.D. 2000) (finding "compensatory" contempt fine improper where complainant "never testified nor produced any evidence of any monetary loss suffered under the agreement" and where accountant testified complainant was not owed any money); *Levis*, 771 S.W.2d at 932 (finding error in "compensatory" contempt fine of $1,500.00 where there was no evidence amount was compensatory or related to actual damages suffered); *Angell v. Angell*, 674 S.W.2d 147, 149 (Mo. App. W.D. 1984) (finding civil contempt fine improper where "there [was] no evidence as to the value of the property which [complainant] contended remained missing … nor did the order finding [contemnor] in contempt make any finding as to the value of the property taken and retained by [contemnor]").

On the record here, the trial court erred in assessing the $2,000.00 fine and we remand for reconsideration of the propriety of a compensatory fine. *See Tashma*, 23 S.W.3d at 253 (remanding for reconsideration of monetary sanctions, including compensatory contempt fine); *Angell*, 674 S.W.2d at 149 (same).

Point II is granted.

Point III

In his third point on appeal, Mauzy argues the trial court erred in awarding $6,000.00 in attorneys' fees to Chemline because he did not violate the injunction order, willfully or otherwise. We disagree.

In a civil contempt proceeding, a trial court has the inherent authority to assess attorneys' fees for willful disobedience of a court order "as part of the costs and expenses incurred by the complainant in the prosecution of the contempt proceedings." *Levis*, 771 S.W.2d at 932. We will affirm an award of attorneys' fees unless it constitutes an abuse of discretion. *Id.*

The trial court here faced a question of credibility of whether Mauzy believed in good faith that his actions were not prohibited by the Order or whether he was attempting to circumvent the letter and spirit of the Order by redefining its terms to suit his needs. On this matter the trial court specifically found that Mauzy engaged in willful disobedience of the Order and that, given the "nature of the sales business, [Mauzy's] belief that he 'thought he could maintain friendships as long as [he] didn't solicit their business' is a method of circumventing the intent of the [trial c]ourt's previous order, which was to refrain from contacting the listed customers."

Given our discussion in Point I, *supra*, regarding the reasonableness of Mauzy's interpretation of the Order and his admissions that his "assumptions" about the Order's meaning were not supported by its plain text, we are inclined to agree with the trial court's determination that Mauzy willfully disobeyed the Order.[5] We cannot say the trial court abused its discretion in awarding Chemline attorneys' fees in the amount of $6,000.00.

Point III is denied.

Conclusion

The trial court's judgment is affirmed in part and reversed and remanded in part. We affirm the judgment finding Mauzy in contempt of the injunction order and we affirm the related grant of attorneys' fees to Chemline in the amount of $6,000.00. We reverse the portion of the judgment assessing a $2,000.00 fine and remand to allow the trial court to reconsider whether a compensatory fine is proper here.

[5] Mauzy has not pointed us to any evidence in the record showing that his actions—particularly in contacting Frey over thirty times—were not in willful violation of the Order. Indeed, the only statement in Mauzy's appellate briefing regarding a lack of willfulness is a footnote that states: "Even if the Court would find that Mr. Mauzy's actions amounted to a violation of the Injunction Order, it would be a further leap to find that not only was it a violation but a willful violation."

Robin Ransom, Presiding Judge

Sherri B. Sullivan, J., and Lisa P. Page, J., concur.