

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALICE MAKARIAN AND AMERICAN
DENTAL MANAGEMENT, INC.,
Appellants,
vs.
RED ROCK DENTAL, LLC, AND
SCOTT MADSEN, D.D.S.,
Respondents.

No. 47438

FILED

MAY 27 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a preliminary injunction in a business tort and contract action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Respondent Dr. Scott Madsen sued his partner, appellant Alice Makarian, and her company, appellant American Dental Management,¹ on his own behalf and on behalf of respondent Red Rock Dental, LLC, the dental practice he and Makarian founded, alleging that Makarian had engaged in fraudulent billing practices and accounting. Madsen sought a restraining order during the pendency of the suit to prevent Makarian from working at or entering Red Rock Dental, altering or destroying the financial records, using the business name, and removing patient and provider lists. The district court entered a preliminary injunction in which it barred Makarian and her husband from

¹Madsen also named Makarian's husband in his complaint. Makarian's husband is not a party to the appeal and the record does not reveal if he filed a responsive pleading in this action. Therefore, we do not consider the propriety of the injunction as it concerns Makarian's husband.

Red Rock Dental's premises, discontinued any salary or profit distributions to Makarian, limited Madsen's salary to \$10,000 monthly, ensured that both parties had full access to the business records, and required Madsen to post a \$50,000 bond. Makarian now appeals that order. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

We review a district court's decision to grant a preliminary injunction for an abuse of discretion and will only reverse an order regarding a preliminary injunction if the district court applied an incorrect legal standard or made a clearly erroneous finding of fact.² The district court's judgment will be affirmed if supported by substantial evidence.³ Substantial evidence supports a conclusion when a reasonable person could reach that conclusion based on the evidence.⁴ Finally, we will not disturb the district court's weighing of conflicting evidence.⁵

Makarian argues that by failing to hold a full evidentiary hearing, the district court deprived her of the opportunity to present evidence refuting Madsen's allegations or undermining the credibility of his witnesses. Madsen argues that Makarian waived this argument by

²Attorney General v. NOS Communications, 120 Nev. 65, 67, 84 P.3d 1052, 1053 (2004).

³See Zupancic v. Sierra Vista Recreation, 97 Nev. 187, 194, 625 P.2d 1177, 1181 (1981) (upholding a district court's judgment granting a permanent injunction as supported by substantial evidence).

⁴Manwill v. Clark County, 123 Nev. ____, ____ n.4, 162 P.3d 876, 879 n.4 (2007).

⁵Zupancic, 97 Nev. at 194, 625 P.2d at 1181.

failing to request an evidentiary hearing at the district court and by failing on appeal to cite authority requiring such a hearing. Generally, we will not consider an argument that a party raises for the first time on appeal,⁶ and we need not consider an appellant's argument if he or she fails to support it with legal authority.⁷ After reviewing the record, we conclude that Makarian failed to properly preserve this issue for appeal and has therefore waived her argument.

Additionally, even if Makarian had not waived the argument, the district court did not abuse its discretion by failing to hold a formal evidentiary hearing. A preliminary injunction does not violate due process if the party against whom it is sought is given notice and an opportunity to be heard, which are reasonable under the circumstances of the case.⁸ In this case, both Makarian and Madsen submitted several affidavits, including expert reports, to the district court before the hearing. Although the district court stated that the testimony of the experts would not assist him in making a decision, the district court did not prevent Makarian from arguing against the injunction or place any limitation on the scope of her argument. The district court hearing in this case gave Makarian a reasonable opportunity to be heard such that there was no violation of due process.

⁶Nevada Power Co. v. Haggerty, 115 Nev. 353, 365 n.9, 989 P.2d 870, 877 n.9 (1999).

⁷Schwartz v. Eliades, 113 Nev. 586, 590 n.3, 939 P.2d 1034, 1036 n.3 (1997).

⁸Dangberg Holdings v. Douglas Co., 115 Nev. 129, 145-46, 978 P.2d 311, 321-22 (1999).

Makarian argues that Madsen's allegations were insufficient to support the district court's decision to grant the preliminary injunction and that the district court failed to consider factors that weighed against the issuance of a preliminary injunction. A preliminary injunction is proper where the moving party shows that he or she is likely to succeed on the merits of the case and that the conduct he or she seeks to enjoin, if allowed to continue, would cause irreparable harm for which no adequate remedy at law exists.⁹ District courts have discretion to consider the balance of the hardships in a particular case and the public interest in granting or denying an injunction.¹⁰

To prove that he had a likelihood of success on the merits of the case, Madsen submitted hundreds of pages of patient files and billing records, and both Madsen and Makarian submitted experts' opinions regarding those records. Experts for both parties agreed that improper accounting practices had been used or improper billing had occurred. Under the partnership contract, Makarian was responsible for billing and accounting. Therefore, a reasonable person could conclude from this evidence that Madsen had a substantial likelihood of succeeding on the merits of his allegations that Makarian committed fraud.

Regarding irreparable harm, Madsen alleges that allowing Makarian to continue to work at Red Rock Dental after discovering that

⁹Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987); see also, NRS 35.010.

¹⁰Clark Co. School Dist. v. Buchanan, 112 Nev. 1146, 1150, 924 P.2d 716, 719 (1996) (holding that district courts "may . . . weigh the public interest and the [parties'] relative hardships").

she fraudulently billed clients and receiving complaints about her from clients would harm the good will of the business. Madsen supports this allegation of irreparable harm by asserting in his affidavit that several clients complained about Makarian and specifically alleging that Makarian's fraud "destroyed [his] good reputation." Madsen also provided a client's written complaint about Makarian. A reasonable person could conclude from this evidence that Makarian's threatened action—returning to work—would have caused Red Rock Dental irreparable harm. Although Makarian's past fraudulent actions alone could not constitute future harm,¹¹ the effects of her actions on the company's clientele could have damaged the business's good will if she continued to work there as she desired. Such damage would not be readily repaired by monetary or other legal damages; thus, an injunction is an appropriate remedy.¹² Therefore, we conclude that substantial evidence supported the district court's conclusion that allowing Makarian to return to work at Red Rock Dental would cause Madsen irreparable harm.

As stated above, it is within the discretion of the district court to determine how the injunction, if granted, would harm the enjoined party and to balance that harm against the potential for harm to the

¹¹See Sherman v. Clark, 4 Nev. 138, 141 (1868) (“[A]n injunction is only issued to prevent apprehended injury or mischief, and affords no redress for wrongs already committed.”).

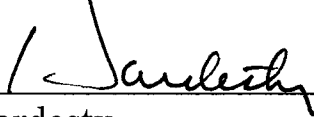
¹²See Hansen v. Edwards, 83 Nev. 189, 191, 426 P.2d 792, 793 (1967) (affirming the issuance of an injunction to protect a business's goodwill based on an action from the non-compete clause of a contract).

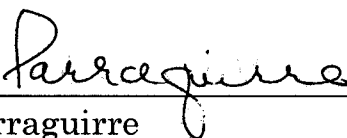
moving party if the injunction did not issue.¹³ Even though the record does not reflect that the district court made such a determination, its failure to do so does not require reversal.

Although Makarian failed to raise the issue, we note that the order in this case did not state the reasons for its issuance as required by NRCP 65(d). However, we will not invalidate a preliminary injunction for failure to state the reasons for its issuance if such reasons are clear from the record.¹⁴ As reflected above, the record sufficiently conveyed the reasons for issuing a preliminary injunction in this case.

We conclude that the district court did not abuse its discretion in granting the preliminary injunction and substantial evidence supports the injunction. We therefore

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

¹³Buchanan, 112 Nev. at 1150, 1153, 924 P.2d at 719, 721.

¹⁴Dangberg Holdings v. Douglas Co., 115 Nev. 129, 144, 978 P.2d 311, 320 (1999).

cc: Hon. Michelle Leavitt, District Judge
Jerry J. Kaufman, Settlement Judge
Patti, Sgro & Lewis
Hall Jaffe & Clayton, LLP
Eighth District Court Clerk