

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. BARON, M.D., LTD., A
NEVADA PROFESSIONAL
CORPORATION; BAM GP, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; BCG, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND
DIAGNOSTIC IMAGING OF
SOUTHERN NEVADA LIMITED
PARTNERSHIP, A NEVADA LIMITED
PARTNERSHIP,

Appellants,

vs.

ERIC A. GERSON, M.D., AN
INDIVIDUAL,
Respondent.

No. 49238

FILED

SEP 05 2008

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a motion for a preliminary injunction. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

Appellants sought a preliminary injunction to enforce non-compete agreements against respondent, a former employee and partner/shareholder of appellants. The district court denied the motion on the basis that appellants failed to show irreparable harm, as required for issuance of a preliminary injunction.

We review the grant or denial of a preliminary injunction for an abuse of discretion.¹ When seeking a preliminary injunction, the moving party must show a “reasonable probability of success on the merits” and “irreparable harm for which compensatory damages is an inadequate remedy.”² Appellants argue that there was irreparable harm based on respondent’s subsequent employment with a hospital as its radiologist. Additionally, appellants argue that irreparable harm was shown based on a phrase in the parties’ contract that stated violation of the non-compete agreement automatically constituted irreparable harm. Respondent argues that his employment at the hospital does not compete with appellants’ businesses and therefore does not violate the non-compete agreement; thus, there was no irreparable harm or likelihood of success on the merits. After reviewing the briefs, appendices, and transcripts on appeal, we affirm the district court’s denial of the preliminary injunction motion.

We conclude that the district court did not abuse its discretion in determining that appellants failed to meet the “irreparable harm” requirement. The minimal, if any, competition between respondent’s current employment and appellants’ businesses does not sufficiently establish that appellants would suffer harm for which compensatory damages would be inadequate. Further, based on this lack of competition, the language in the parties’ non-compete agreements stating that

¹Labor Comm’r v. Littlefield, 123 Nev. 35, 39, 153 P.3d 26, 28 (2007).

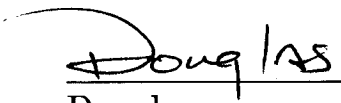
²Camco, Inc. v. Baker, 113 Nev. 512, 516, 936 P.2d 829, 831 (1997) (quoting Dixon v. Thatcher, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987)).

irreparable harm is agreed upon if the non-compete agreement is violated does not provide a sufficient basis to meet the necessary requirements, as success on the merits is unclear. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Hardesty


_____, J.
Douglas

cc: Hon. Douglas W. Herndon, District Judge
Lansford W. Levitt, Settlement Judge
Harrison, Kemp, Jones & Coulthard, LLP
Jones Vargas/Las Vegas
Eighth District Court Clerk