IN THE SUPREME COURT OF THE STATE OF NEVADA

TRIDENT PREPAID, INC., A NEVADA CORPORATION,
Appellant,
vs.
GADE E. WILLIAMS,
Respondent.

No. 39216

FILED

AUG 22 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal by Trident Prepaid, Inc., from a summary judgment in an action to enforce a settlement agreement.

Trident entered into a settlement agreement with respondent Gade E. Williams to resolve claims arising out of Williams' former employment with Trident. Williams agreed to extend the non-competition covenant contained in his employment contract by one month and release Trident from future claims arising out of his employment. In return, Trident paid Williams $9,200.

Trident sued Williams, alleging he breached the settlement agreement's restrictive covenant. The district court found the restrictive covenant overly broad and granted Williams' motion for summary judgment. On appeal, Trident alleges the settlement agreement should be enforced regardless of whether the covenant not to compete was reasonable.

We review summary judgment orders de novo.[1] Summary judgment is proper when no genuine issues of material fact exist and the

[1]Dermody v. City of Reno, 113 Nev. 207, 210, 931 P.2d 1354, 1357 (1997).

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moving party is entitled to judgment as a matter of law.[2] A genuine issue of material fact exists when "the evidence is such that a reasonable jury could return a verdict for the non-moving party."[3] This court assesses "[t]he pleadings and proof offered at the district court . . . in a light most favorable to the nonmovant."[4]

"The doctrine of equitable estoppel prevents a person 'from taking an inequitable advantage of a predicament in which his own conduct ha[s] placed his adversary.'"[5] The elements of estoppel are:

> (1) the party to be estopped must be apprised of the true facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting estoppel has the right to believe it was so intended; (3) the party asserting estoppel must be ignorant of the true state of facts; [and] (4) he must have relied to his detriment on the conduct of the party to be estopped.[6]

Williams entered into a settlement agreement with Trident, accepted $9,200 in compensation, and allegedly breached a non-

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[2]Id.

[3]Id.

[4]Id.

[5]Ikon Office Solutions v. American Office, 178 F. Supp. 2d 1154, 1164 (D. Or. 2001) (quoting W. Page Keeton, Prosser and Keeton on Torts, § 105 (5th ed. 1984)).

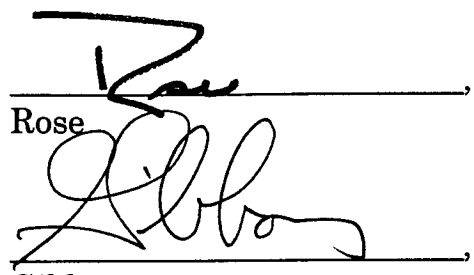
[6]NGA #2 Ltd. Liab. Co. v. Rains, 113 Nev. 1151, 1160, 946 P.2d 163, 169 (1997) (quoting Cheqer, Inc. v. Painters & Decorators, 98 Nev. 609, 614, 655 P.2d 996, 998-99 (1982)).

competition clause contained in the agreement. Now he claims the settlement agreement's clause is overbroad and unenforceable.

We hold the district court must determine whether Williams is estopped from challenging the settlement agreement's validity. If the district court finds Williams is estopped from contesting the restrictive covenant, it must then determine whether Williams breached the restrictive covenant. If the district court finds Williams breached the covenant, it must then determine the damages incurred resulting from a one-month breach of the restrictive covenant.

Accordingly, we

ORDER the judgment of the district court REVERSED and REMAND for further proceedings in accordance with this order.



_____, J.
Rose

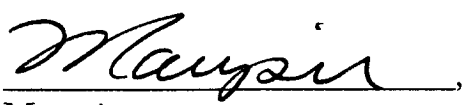
_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Law Offices of Robert P. Spretnak
Mark E. Trafton
Clark County Clerk

MAUPIN, J., concurring in part and dissenting in part:

Appellant entered into a settlement agreement with respondent, whereunder respondent agreed to extend the covenant to not compete in his employment contract by a period of one month and release all of his claims against appellant arising from his employment. The release and extension was given in exchange for a final payment of $9,200. In my view, an agreement not to compete for a period of one month supported by good and sufficient consideration is per se reasonable. Accordingly, this matter should be remanded for a trial to determine if the settlement agreement, i.e., the one-month covenant not to compete, has been breached and, if so, the extent of damages sustained.

Having taken the above position, I would caution the parties that the damages sustained by virtue of a claimed breach of a one-month extension of the covenant would seem speculative at best. Thus, the relief accorded appellant by the majority, or that I would be willing to confer, may cost these parties more in attorney's fees and costs than the matter is worth to either side.

 , J.

Maupin