

IN THE SUPREME COURT OF THE STATE OF NEVADA

BURNETT, DIAMANT, EVANS, MERRIMAN,
OLSEN, LTD., A NEVADA PROFESSIONAL
CORPORATION D/B/A ANESTHESIOLOGY
CONSULTANTS, INC.,
Appellant,

vs.

ALBERT YEH, M.D.; AND YUN SZU YEH, M.D.,
A NEVADA PROFESSIONAL CORPORATION,
Respondents.

No. 41829

FILED

MAY 03 2005

JANETTE W. HOOKER
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal from a district court order granting a preliminary injunction in a contract action. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

The district court granted respondents' motion for a preliminary injunction by prohibiting appellant from terminating the parties' agreement under which respondent Dr. Yeh provided independent contractor services to appellant. The district court, however, gave appellant the alternative option of terminating Dr. Yeh in return for appellant's agreement to release Dr. Yeh from the covenant not to compete contained within the parties' agreement, until the court could conduct a full evidentiary hearing on the issues. Finally, the district court directed respondents to post a \$5,000 bond for possible damages, if appellant was wrongfully enjoined.

A preliminary injunction may be granted when it appears that the plaintiff is entitled to the relief demanded in the complaint, and that continuance or commission of some act during the litigation would result in great or irreparable injury to the plaintiff for which monetary damages

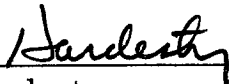
are inadequate.¹ A district court has discretion to grant a preliminary injunction, and this court will not overturn the district court's decision absent an abuse of that discretion.²

We have reviewed the briefs and record, and we conclude that the district court abused its discretion by issuing the preliminary injunction. Dr. Yeh argued that appellant breached the parties' agreement by terminating Dr. Yeh as an independent contractor and preventing him from becoming a shareholder of the appellant corporation. Dr. Yeh specifically sought an injunction that required appellant to make him a shareholder of appellant's corporation, or to retain Dr. Yeh as an independent contractor.

We conclude that any injury suffered by Dr. Yeh can be adequately compensated through monetary damages.³ Accordingly, we reverse the district court's order granting the injunction and setting a bond.

It is so ORDERED.


_____, C.J.
Becker


_____, J.
Hardesty


¹See NRS 33.010; see also Dangberg Holdings v. Douglas Co., 115 Nev. 129, 142, 978 P.2d 311, 319 (1999).

²See S.O.C., Inc. v. The Mirage Casino-Hotel, 117 Nev. 403, 407, 23 P.3d 243, 246 (2001); see also NRCP 65(c).

³We note that in the preliminary injunction motion, respondents did not specifically challenge the reasonableness of the covenant not to compete concerning its duration and scope, or seek to enjoin the covenant's enforcement. Thus, that issue is not before us on appeal.

ROSE, J., dissenting:

Here, the district court's injunction is reasonable and well within the court's discretion. As I would affirm the district court's order, I dissent.

 _____ J.
Rose

cc: Hon. Jessie Elizabeth Walsh, District Judge
I.R. Ashleman, Settlement Judge
Lionel Sawyer & Collins/Las Vegas
McCrea Martin Allison, Ltd.
Clark County Clerk