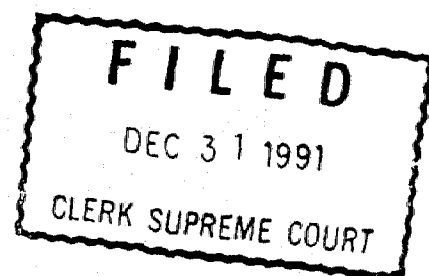


IN THE COURT OF APPEALS OF IOWA

No. 1-433 / 90-1812



JIM HAYDEN FORD-MERCURY, INC.,

Plaintiff-Appellee/Cross-Appellant,

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vs.

MICHAEL CHISHOLM,

Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Mitchell County, Paul W. Riffel, Judge.

Michael Chisholm appeals a district court decision enforcing, with modification, a noncompetition agreement. Jim Hayden Ford, Inc., cross-appeals the modification portion of the district court's decision. **AFFIRMED.**

Brian R. McPhail of Gross & McPhail, Osage, for appellant.

Ralph A. Smith of Noah & Smith, Charles City, for appellee.

Heard by Schlegel, P.J., and Sackett and Habhab, JJ.

HABHAB, J.

Jim Hayden Ford, Inc., (Hayden Ford) is a franchised automobile dealership in Osage, Iowa, engaged in the sale of cars. In September 1988 Hayden Ford hired Michael Chisholm, an Osage resident, as a salesman.

The defendant had no previous sales experience. The personnel manual which the plaintiff's office manager reviewed with the defendant contained a noncompetition agreement. The defendant initially refused to sign the agreement. The plaintiff presented evidence the defendant was informed signing the agreement was a condition of employment with the plaintiff. The defendant presented evidence the office manager discounted the effect of the agreement by indicating it was unenforceable. In any case, the defendant signed the noncompetition agreement which provided, in part:

Upon termination of employment, whether by termination of this Agreement, wrongful discharge, or otherwise, employee shall not directly or (sic) indirectly, (within a 100 mile radius) enter into or engage generally in competition with the Employer, either as an employee, employer, agent, officer, consultant, director, stockholder, or any other capacity for a period of five years after the date of termination of his employment hereunder. This covenant on the part of the Employee shall be construed as an agreement independent of any other provision of this Agreement.

Hayden Ford presented evidence justifying the terms of the agreement. It showed the extensive training given to its sales persons, including various educational materials consisting of video tapes, a satellite information service,

and participation in daily sales meetings, along with supervision by other members of the staff. Additionally, during his employment Chisholm had access to customer lists and participated in discussions concerning advertising campaigns. Chisholm attempted to minimize the information he received while employed by Hayden Ford by claiming the training was similar to that at most dealerships.

Chisholm resigned on April 18, 1989, taking all sixty to eighty purchase orders he had generated during his employment. He claimed he resigned his position when he became aware of illegal activities consisting of the making of false warranty claims, falsifying a window sticker, and forging customers' signatures. Hayden Ford attempted to discount this evidence.

In June 1989 Chisholm took a sales position in his father's used car business in Osage. He claimed he did not solicit any of Hayden Ford's customers and his father's business consisted of walk-in customers.

Hayden Ford brought the present action to enforce the noncompetition agreement. After a trial, the district court entered judgment partially enforcing the agreement. The court concluded the restrictions in the noncompetition agreement were too broad. It modified them to one year in a fifty-mile radius. The court determined the potential for damage to Hayden Ford's business by an ex-employee justified a noncompetition agreement. It further concluded

Chisholm failed to establish the noncompetition agreement was unenforceable. The court determined the agreement should be enforced from the date of the decree.

Chisholm appeals from the trial court's ruling, contending Jim Hayden Ford had no protectable interest justifying a noncompetition agreement with sales personnel. He raises other objections to the trial court's ruling as well. Jim Hayden Ford argues the trial court erred by not enforcing the noncompetition agreement to its full extent.

As this case was tried in equity, our review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of facts, especially concerning the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

We determine from our review of the facts and the trial court's ruling the trial court has properly applied the appropriate law. The trial court's opinion sets out the legal standard for adjudicating noncompetition agreements:

The general rule in Iowa is that a noncompetition agreement arising in an employment relationship will be enforced if (1) the restriction is reasonably necessary for the protection of the employer's business and (2) is not unreasonably restrictive of the employee's rights and (3) is not prejudicial to the public interest. Lamp v. American Prosthetics, Inc., 379 N.W.2d 909, 910 (Iowa 1986); Iowa Glass Depot, Inc. v. Jindrich, 338 N.W.2d 376, 381 (Iowa 1983); Ehlers v. Iowa Warehouse Co., 188 N.W.2d 368 (Iowa 1971). The rule requires an application of a reasonableness standard in maintaining a proper balance between the interests of the employer and the employee. While fair protection must be afforded to the business interest of the employer,

the restriction on the employee must not be greater than necessary to protect said interest. Furthermore, the restriction must not be so oppressive as to create hardships for the employee out of proportion to the benefits accruing to the employer. Iowa Glass Depot, Inc. v. Jindrich at 381.

The plaintiff has the burden of proving the reasonableness of the restrictions. Assessing the reasonableness of the restrictions requires an examination of both the time and area restrictions contained in the noncompetition agreement--in this instance five years and a 100-mile radius. Id.

If the court finds the restrictions to be too broad to be enforced, it may modify the restrictive covenant to allow partial enforcement. Lamp v. American Prosthetics, Inc. at 910; Ehlers v. Iowa Warehouse Co., 188 N.W.2d 368 (Iowa 1971).

* * *

An injunction to enforce a non-competition agreement normally is effective on the date of the employee's termination. In this case, however, the one-year period of restraint would have already expired if measured from the date that defendant quit his employment with the plaintiff. The principles applied by our supreme court in Presto-X-Co. v Ewing, 442 N.W.2d 85, 90 (Iowa 1989) are also applicable herein and the court concludes that the injunction against the defendant shall be effective for one year from the date of this decree.

We agree with the above legal standards and adopt the above statement as our own. The trial court properly considered Hayden Ford's special training program for its sales personnel and its extensive advertising within a fifty-mile radius. Likewise, we note Chisholm took all sixty to eighty purchase orders he had generated with him when he left Hayden Ford's employ. A witness testified this would be cause for some concern. We agree.

We note with approval the trial court's modification of the noncompetition agreement. The trial court modified the agreement to restrict Chisholm's right to work as a car sales person for one year within a fifty-mile radius. It reasoned the clause's restrictions as written were too broad. We agree.

We conclude the trial court correctly found Hayden Ford had a protectable interest due to its extensive advertising and sophisticated sales training program. We further conclude these interests were adequately protectable by a one-year, fifty-mile radius noncompetition restriction.

All other issues raised by either party are either covered by this opinion or are without merit. We affirm the trial court in full.

Costs of this action taxed one-half to each party.

AFFIRMED.