

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

BRITTANY HENDRICKSON and)
NASHVILLE PHYSICAL THERAPY &)
PERFORMANCE, PLLC,)

Plaintiffs,)

v.)

CHRISTI WILLIAMS,)

Defendant.)

Case No. 24-0201-BC

ORDER

This matter came before the Court on April 9, 2024 for a hearing on Defendant/Counter-Plaintiff Christi Williams’s Motion for a Temporary Injunction (“Williams” and the “Motion”). The individual parties, Plaintiff/Counter-Defendant Brittany Hendrickson (“Hendrickson”) and Williams, are or were 50/50 members of the Plaintiff Nashville Physical Therapy & Performance, PLLC (“NPT”). Their rights and obligations are set out in the October 18, 2019 Operating Agreement (the “Operating Agreement”). The entity is governed by the Tennessee Revised LLC statute codified at Tenn. Code Ann. § 48-249-101, *et seq.* (the “Revised LLC Act”).

The members are in a dispute regarding various matters associated with NPT. They attempted to negotiate a “business divorce” in the fourth quarter of 2023. That failed, and on December 20, 2023, Hendrickson’s lawyer sent Williams a letter that stated, among other things:

[A]fter reviewing your latest offer to Ms. Hendrickson, it is clear you are drastically inflating the value of your membership interest in NPT. Pursuant to Paragraphs 8.03(ii), 11.03(vii), and 12.02 of the operating agreement, regardless of whether Ms. Hendrickson purchases or terminates your membership interest in NPT, the value of your membership interest is determined by performing the following calculation

The letter then includes an estimate of “much less than \$20,000” based upon what Hendrickson asserts is the applicable language in the Operating Agreement. The letter then states the parties have been “hopelessly deadlocked regarding the valuation” for more than 30 days and, pursuant to 8.03(ii) and 12.02 of the Operating Agreement, Hendrickson was getting a valuation of Williams’s interest from the accountant and payment would be made per Section 12.04.

On January 9, 2024, through counsel, Williams rejected Hendrickson’s allegations of inappropriate conduct and the valuation estimates and requested that they continue to negotiate in good faith. The parties continued to correspond regarding these issues in January and early February of 2024, disputes regarding their actions, the relationship, the valuation models and application of the Operating Agreement to the situation.

On February 21, 2024, Hendrickson’s counsel wrote Williams’s counsel that Williams’s interest in NPT was being terminated pursuant to Sections 11.03.1(vii) and 11.03.2 of the Operating Agreement. Hendrickson and NPT filed suit against Williams on the same day, focusing her non-verified complaint solely on her allegations of wrongdoing against Williams, omitting any reference to their failed negotiations for a buyout. The complaint alleged common law claims of breach of contract, conversion and unjust enrichment, statutory claims under the Revised LLC Act, and, alternatively, a declaratory judgment that Williams was terminated and to determine the value of her membership interest. The relief requested includes judicial expulsion, damages, fees, and an accounting of Williams’s activities with her other business.

This matter was originally assigned to another chancellor and was reassigned to the Business Court Pilot Project pursuant to a joint request of the parties, and assignment by the Chief Justice of the Tennessee Supreme Court, on March 21, 2024. On that same date, the Court issued an Order notifying the parties of its intention to do Rule 16 case management upon the filing of a

responsive pleading. Williams filed her answer, a verified counter-complaint and the Motion on March 25, 2024. The Court set the Motion for hearing on April 9, 2024. Williams brings similar claims, including conversion, unjust enrichment, and for declaratory relief, seeking a finding that Hendrickson breached the Operating Agreement by wrongfully terminating Williams's membership interest and failure to pay her salary, among other items.

The status of the parties' relationship, as discussed in further detail below, is that Hendrickson has unilaterally terminated Williams from NPT, cutting off her access to all financial and business information, all systems and all facilities. She has also stopped all payments of salary and otherwise to Williams. Hendrickson's justification for doing so is her termination of Williams as a member of NPT pursuant to Section 11.03.1(vii) of the Operating Agreement. Hendrickson also cites Section 8.03 of the Operating Agreement as a basis for her decisions and her valuation mechanism as set out in Section 12.02.

Williams filed the Motion to regain access to NPT and to reestablish her rights as a member pending the outcome of this litigation. She requests a temporary injunction as follows:

- Access to NPT accounts and systems;
- To be treated as a member with the rights set out in 8.01 and 8.02 of the Operating Agreement¹;
- An injunction against either party using NPT assets to fund the litigation; and
- An injunction against either party withdrawing NPT funds other than salary.

In response, Hendrickson objects to the Motion, but agrees that an Order including the following would be appropriate pending the outcome of the case:

¹ Williams modified this request at the hearing, noting that Section 8.01(vi) and (vii)'s requirement that all members approve expenditures or financial commitments in excess of \$500 to be unrealistic, and was apparently not the way Hendrickson and she had been operating NPT.

- An injunction against either party using NPT assets to fund the litigation;
- An Order requiring Plaintiffs to deposit Williams’s monthly salary with the Court, the disposition of which would be made at the conclusion of the case; and
- Provision of monthly financials to the Court, to be filed under seal, evidencing NPT’s business operations in the ordinary course².

The Court has a limited record to work from, and a she said/she said version of what occurred between the parties. Pursuant to Rule 65, the Court must make findings of fact and conclusions of law. In addition, given that this case was assigned to the Business Court for application of its customized case management practices, and its authority to enforce the terms of the Operating Agreement through injunction or other equitable relief pursuant to the Revised LLC Act at Section 203(b), the Court incorporates some initial case management into this injunction order.

Findings of Fact Based Upon the Record³

The parties are both physical therapists who met in 2018. Hendrickson sought to start a physical therapy business and Williams was a physical therapy professor at Belmont University who also had a side business called Velocity Performance and Prevention, LLC (“Velocity”). Velocity and Williams engaged in a number of industry related activities, including producing some continuing education classes and doing business advising and mentoring.

² Upon a discussion of this item at the hearing, the Court explained its reticence about creating unnecessary circumstances for under seal filing given the public policy that the public shall have access to public records and documents, including court filings, and the “‘strong presumption in favor of openness’ regarding court records.” *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996); *In re NHC-Nashville Fire Litig.*, 293 S.W.3d 547, 561 (Tenn. Ct. App. 2008). Plaintiffs’ counsel explained the intention to provide oversight without providing Williams access given the allegations regarding her conduct. The Court’s position on that issue is discussed later in this Order.

³ The hearing was lengthy and the Court had many questions about NPT’s business operations that were not in the record, some of which were not disputed. To the extent those assertions were not disputed, and are relevant to the Court’s findings and conclusions, they are incorporated herein based upon the Court’s case management function.

Hendrickson and Williams decided co-own a business in 2019 “to render physical therapy or other related services.” (Oper. Ag. §2.03). They executed the Operating Agreement to govern their relationship. The notable portions for the purposes of the Motion and the Court’s initial case management are:

Section 8.01 – General management of the business requiring a majority vote of members for a list of fourteen categories of decisions;

Section 8.02 – Major decisions for the business requiring unanimous approval of members for a list of three categories of decisions;

Section 8.03 – Deadlock in voting setting out a process for a buyout between members if there is a deadlock in voting on any item requiring a majority vote of members;

Section 9.01 – Diligence and conflicts setting out the members’ duty to “diligently pursue and promote the best interests” of NPT but acknowledging it is not their sole or principal business activity and identifying Williams’s then-existing work with Velocity which she agrees “will not actively participate in the same physical therapy services” as NPT;

Section 11.03(vii) – Termination of a member for “[u]nremedied failure” to “fulfill any obligation to [NPT] as specified in this Agreement when such failure has continued for a period of thirty (30) days after written notice of the requirement”;

Section 12.01 – Agreed value for purchase of a terminated member’s interest; and

Section 12.02 – Calculating value for purchase of a terminated member’s interest.

Generally, Hendrickson worked with NPT full-time and Williams part-time, which was reflected in their salary differences (\$10,000 a month for Hendrickson and \$2500 a month for Williams). They took additional draws of excess funds based upon other calculations not fully evidenced or explained in this limited record. Hendrickson saw the vast majority of NPT’s

physical therapy patients although Williams worked more in the summer when she was not teaching at Belmont and provided physical therapy-related wellness services to some business clients. Hendrickson did most of the day-to-day operation of NPT which, prior to this dispute, was a thriving business with several independent contractors and/or employees and four locations.

NPT has an outside accountant, Christine Kinsley, CPA, who does some work for it although the extent of the current engagement is unknown. NPT also uses an outside vendor for payroll services whose work is based on information provided by NPT, through Hendrickson. NPT uses Quickbooks for some of its accounting as well as a patient scheduling system PT Everywhere. Hendrickson and Williams manage the landlord relationships for the four locations where NPT rents space. The business does not, it appears, have any debt other than ordinary business obligations all of which are currently being serviced. It is unclear what tangible business assets NPT owns other than furniture and fixtures needed to provide physical therapy services, and to perform its administrative functions, as well as accounts receivable. Intangible assets would include the client base and goodwill. There is nothing in the record about the value of NPT although it is apparent the parties have a significant difference of opinion regarding how it should be valued for buyout purposes.

Hendrickson alleges that Williams was tasked with developing and growing the continuing education business for NPT and that, instead, she created a website and social media for Velocity to post ads for continuing education courses that competed with NPT. It is disputed what Hendrickson knew about Williams's outside continuing education activities through Velocity or otherwise prior to December of 2023, other than her teaching at Belmont. There is some evidence she was aware of those activities, and it is undisputed she knew of Velocity generally. Williams also attests to Hendrickson's knowledge through her sworn statements and verified counter-claim.

Hendrickson's sworn testimony is less clear on this issue. Regardless, the Court does not make any findings at this time regarding those allegations, which will require further proof and likely credibility determinations. It is not alleged that Williams was providing physical therapy or related wellness, non-education, services through any entity other than NPT.

Hendrickson and Williams worked together until the fourth quarter of 2023 when Hendrickson approached Williams about buying her share of NPT. They negotiated until they reached an impasse in December. For the first time, in the December 20, 2023 letter, Hendrickson made the allegations against Williams regarding inappropriate competition through continuing education activities and incorporated that discussion into the buyout negotiations, citing Section 11.03.1(vii) of the Operating Agreement. In that letter, Hendrickson's counsel stated:

pursuant to Paragraph 11.03(vii) of the operating agreement, may this letter serve as notice of your failure to promote NPT's best interests. Please remedy the breach by ceasing all Velocity Education operations within thirty days of the date of this letter. If you fail to remedy your breach, I will have no choice but to send Mr. Halle a letter demanding he cease and desist his continued involvement with Velocity Education or potentially face liability for intentional interference with a business relationship.

In her lawyer's January 5, 2024 response letter, Williams disputes these allegations. The parties were still negotiating their relationship on February 2, 2024 when that same lawyer wrote Hendrickson's lawyer as follows:

I am writing in response to your letter dated January 19, 2024.⁴ As I indicated on the phone, at this point in time, our clients are far apart. We do not believe it will be productive to recount once again all of the erroneous facts and conclusions in your letters, except to reiterate that our client has neither breached the operating agreement nor any duty owed to your client, and that we are [sic] defend that position in court if necessary. You make mention of the fact that "thirty days haven now passed" since your initial letter requesting Ms. Williams cure the alleged breaches. Even if it were true that the conduct you allege constituted a breach did actually constitute a breach, our client has not undertaken any Velocity Education operations for well over thirty days that you reference in your letter. It

⁴ This letter is not in the record.

is impossible for her to cease and desist from something that she is not actually doing.

The context of that letter otherwise focuses on Hendrickson's and Williams's buyout negotiations and differences of opinion regarding value.

Hendrickson's response, on February 21, 2024, stated:

I write to provide you with notice that Ms. Williams' interest in Nashville Physical Therapy & Performance, PLLC ("NPT") is hereby terminated. Pursuant to Section 11.03.1(vii) and 11.03.2 of NPT's Operating Agreement, Ms. Williams' unremedied failure to cease providing physical therapy services that compete directly with NPT's business interests constitutes a failure to fulfill her obligations under Section 9.01 of the Operating Agreement.

On or about that same date, Hendrickson cut off Williams's access to all NPT systems, including communication, scheduling, and financial. She has not had access to NPT facilities or financial accounts, nor has she been paid a salary. Hendrickson asserts this was necessary given Williams's terminated status, and what she has later discovered was inappropriate use of email and provision of confidential information to third parties. The allegations of inappropriateness are disputed and the Court does not find the record to support them at this time.

Conclusions of Law

Injunction Standard

Under Rule 65.04 of the Tennessee Rules of Civil Procedure, "[a] temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual." Tenn. R. Civ. P. 65.04(2).

In considering a request for a temporary injunction, a trial court must apply a four-factor test, adopted from the standard applied in federal courts. Those factors are: (1) the likelihood that the plaintiff will succeed on the merits; (2) the threat of irreparable harm to the plaintiff if the injunction is not issued; (3) the balance between the harm and the injury that granting the injunction would inflict on the defendant; and (4) the public interest. *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020). All factors are to be considered, and no single factor is controlling. To demonstrate the factor of likelihood of success on the merits, the quantum of proof is that the movant must “clearly show . . . that its rights are being or will be violated.” Tenn. R. Civ. P. 65.04(2); *Moody v. Hutchinson*, 247 S.W.3d 187, 199 (Tenn. Ct. App. 2007).

Additionally, the Court recognizes that an injunction is an extraordinary and unusual remedy that should only be granted with great caution, *Malibu Boats, LLC v. Nautique Boat Co.*, 997 F.Supp.2d 866, 872 (E.D. Tenn. 2014), and that no irreparable injury exists to justify a temporary injunction if the movant has a full and adequate remedy, such as monetary damages, available for an injury, *Tennessee Enamel Mfg. Co. v. Hake*, 194 S.W.2d 468, 470 (Tenn. 1946); *Fort v. Dixie Oil Co.*, 95 S.W.2d 931, 932 (Tenn. 1936). As the party seeking relief, the burden of proof is on Plaintiff to demonstrate entitlement to the relief sought.

Plaintiff's Entitlement to Injunctive Relief

The Operating Agreement governs Hendrickson's and Williams's relationship as members of NPT. Hendrickson relied on both Section 8.03 regarding deadlocks and Section 11.03.1(vii) regarding unremedied failure by a member to cure an obligation to justify declaring Williams terminated as a member and locking her out of the company. The Court finds Williams likely to prevail on her counter-claim for declaratory relief regarding her rights under the Operating Agreement and Hendrickson unlikely to succeed on her similar claims. Based on the limited record

before it, the Court finds Hendrickson was unjustified in declaring Williams terminated as a member of NPT under either provision.

First, the Court does not find it likely that the deadlock provision was triggered by the impasse in buyout negotiations. Section 8.03 is only triggered if there is a deadlock between the members in voting on items requiring a majority vote, as set out in 8.01. They were negotiating a termination to their relationship through a buyout, commonly referred to as a “business divorce.” This was not a deadlock within the meaning of 8.03; thus, that provision is inapplicable to this dispute.

Second, the Court finds it unlikely Hendrickson can justify terminating Williams pursuant to 11.03.1(vii) because the current record does not support a finding that Williams failed to remedy an obligation to NPT within thirty (30) days after notice of the failure. Even if Williams failed to meet an obligation to NPT, which the Court does not find supported by the limited record, there is no evidence she continued the allegedly offending acts after Hendrickson’s notice. The record is devoid of any evidence otherwise. The timing of the allegations, in the context of the negotiations, lends doubt to their validity, but a technical application of the Operating Agreement to the notice cannot support the February 21, 2024 unilateral termination. Thus, the Court finds it is likely Williams will succeed on her claims that she was wrongfully terminated and she has the right to continue as a member of NPT with all rights and privileges afforded her through that membership.

Given the current circumstances, the Court finds Williams’s interest in the relief requested outweighs those of Hendrickson to control the business without her. Further, the Court finds the public interest is served by recognizing the rights and obligations of LLC members, as set out in the Revised LLC Act, to each other and their business as set out in their governing documents and by statute.

Conclusion

The Court therefore finds Williams is entitled to the relief sought in the Motion and she is GRANTED an injunction as follows:

Hendrickson, individually and through NPT, is enjoined from interfering in Williams right to participate in the business as a member consistent with the rights and obligations set out in the NPT Operating Agreement and those generally afforded PLLC members through the Tennessee Revised LLC statute codified at Tenn. Code Ann. § 48-249-101, *et seq.* This includes restoring Williams’s access to all NPT systems and accounts and facilities. Neither Hendrickson or Williams, however, is limited by the \$500 restriction set out in Section 8.01 of the Operating Agreement. Williams is entitled to the restoration of her salary, and Hendrickson is entitled to continue to draw her salary. Neither Hendrickson or Williams is entitled to any other payments from NPT unless they agree to same, including the payment of legal fees for all issues raised in this litigation on behalf of any party.

Williams is further required, pursuant to Tennessee Rule of Civil Procedure 65.05, to post a bond of \$1,000 to secure the injunction, to be retained by the Court until the outcome of this litigation.

The Court recognizes that running a business together given the pendency of this litigation, and the allegations between Hendrickson and Williams, is awkward. It can also lead to extreme difficulties making day-to-day decisions. However, the alternative is the appointment of a Receiver to operate the business which arrangement is expensive and removes control from both members. The Court does not believe, based upon the limited information it has about the operations and the resolution-oriented attitudes of counsel, such an appointment is necessary at this juncture. The status quo is subject to change if requested through a well-supported motion submitted by either party.

The Court **SETS** a Rule 16 Conference in this matter for **Monday, April 29, 2024 at 11:00 a.m.** for the parties to appear through counsel to report on the status of NPT’s operations given this injunction, and to set a case management plan for this case to proceed toward resolution through a trial or dispositive motions.

It is so ORDERED.

s/Anne C. Martin

ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

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