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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0089**

M.A.A.C., Inc.,  
Respondent,

vs.

Harley J. Winters, d/b/a Harley's Dig-All,  
Appellant.

**Filed September 12, 2022  
Affirmed  
Bryan, Judge**

Chippewa County District Court  
File No. 12-CV-20-528

Jason G. Lina, Fluegel, Anderson, McLaughlin & Brutlag, Chartered, Morris, Minnesota  
(for respondent)

Jonathan D. Wolf, Rinke Noonan, Ltd., St. Cloud, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Cochran, Judge; and Bryan,  
Judge.

**NONPRECEDENTIAL OPINION**

**BRYAN**, Judge

In this appeal from judgment in favor of respondent following a bench trial, appellant asserts the following three errors: (1) the district court improperly relied on deposition testimony as substantive evidence; (2) the district court erroneously denied appellant's continuance request; and (3) the district court erroneously determined that

appellant breached the duty of loyalty he owed to respondent. We conclude that the district court did not abuse its discretion when it admitted the deposition transcript as substantive evidence or when it denied the request to postpone the trial. We also conclude that, based on applicable caselaw, appellant breached his duty of loyalty to respondent, and we affirm the district court.

## FACTS

Respondent M.A.A.C., Inc. (MAAC) filed a civil lawsuit, alleging that former employee and appellant Harley J. Winters breached the duty of loyalty that he owed MAAC. More specifically, the complaint alleges that MAAC provided dust control work for Southern Minnesota Beet Sugar Cooperative (SMBSC) and that Winters, while employed by MAAC, submitted a competing bid to perform the same dust control work through the business name Harley's Dig-All. The case proceeded to a bench trial, and the district court found in favor of MAAC, entering judgment in the amount of \$73,071 plus costs and disbursements. Winters appeals. Given the issues raised, we briefly summarize the pretrial proceedings before addressing the evidence presented and the district court's order.

Winters originally had an attorney representing him, but on June 15, 2021, Winters discharged his attorney. On July 9, 2021, just a few days before a pretrial status conference, Winters requested a continuance of the September 2021 trial date to find a new attorney. In his request, Winters stated that he fired his attorney because the attorney "was not serving [his] best interests," "thought [Winters] was guilty," and Winters wanted more time to locate an "unbiased" attorney. Winters also claimed that because MAAC had been

previously represented by many local attorneys, these attorneys had a conflict of interest, and Winters found it difficult to retain an attorney. The district court denied his request for a continuance, and Winters represented himself at the trial on September 23, 2021.

At trial, the district court admitted the testimony of Winters and of the president of MAAC (D.L.). The district court also received several exhibits, including the 2020 bid that Harley's Dig-All made to SMBSC, MAAC paperwork involving its former bids to SMBSC, and Winters's deposition transcript. MAAC listed the entire transcript from Winters's deposition on its pretrial exhibit list as item 19: "Deposition Transcript of Harley Winters." The list also included a separate reference to "[a]ny documents necessary for impeachment or rebuttal" as item 21. The entire deposition was admitted into evidence without objection. The evidence presented established the following undisputed facts.

MAAC is a corporation founded over 30 years ago that has performed demolition services, hazardous material abatement, and dust control work. MAAC hired Winters in 2006. Winters mainly worked for MAAC during the week, and on the weekends, he would do snow removal and dirt work under the name Harley's Dig-All. Around 2007, Winters approached D.L. and suggested that MAAC look into providing dust control work for SMBSC. After this suggestion, MAAC submitted its first bid to SMBSC and began providing dust control services, which involved buying and renting trucks, locating and securing water sources, and making other preparations and investments. When MAAC began bidding on the SMBSC contract, MAAC bid \$65 an hour, but later increased the bid to \$155 an hour after performing the contract for many years. MAAC received a 50% profit on the SMBSC contract. Although the bidding process on the SMBSC contract was

public, MAAC was the only bidder every year from 2007 through 2019, and MAAC won the SMBSC contract in each of those years.

In June 2020, Winters began preparing to rent the same trucks that MAAC previously used to fulfill the SMBSC contract. On June 17, 2020, Winters submitted a bid for the SMBSC contract under the name Harley's Dig-All for \$140 an hour. Winters was still employed by MAAC at this time. Prior to this point, Winters had not performed any dust control services as Harley's Dig-All. On July 7, 2020, Harleys' Dig-All was awarded the SMBSC contract. Two days later, D.L. discovered that Harley's Dig-All won the SMBSC contract instead of MAAC, and he terminated Winters's employment. Winters performed the contract and earned around \$133,570 from the 2020 SMBSC contract.

Following trial, the district court issued its findings of fact, conclusions of law, and order. The district court relied on statements from Winters's deposition to support the following two findings of fact:

8. In 2017, Mr. Winters started thinking that MAAC was not doing a good enough job on the SMBSC contract. He believed that if he had the contract, he could have more drivers and do a better job. (See Winters' deposition.)

...

11. Mr. Winters intended to perform the SMBSC contract in his off time while he was still working for MAAC. (See deposition.)

The district court concluded that Winters breached his duty of loyalty because he submitted a bid while still employed by MAAC.

## DECISION

Winters asserts that the district court erred by relying on his deposition testimony as substantive evidence, denying his request for a continuance to retain new counsel, and concluding that he breached the duty of loyalty.<sup>1</sup> We address each in turn.

### I. Admission of Deposition Transcript as Substantive Evidence

Winters first argues that the district court improperly relied on his deposition transcript when it made its findings of fact.<sup>2</sup> Because the outcome would be the same even without the two findings of fact that were based on the deposition transcript, we conclude that Winters has not shown that he was prejudiced by the district court's decision to admit the deposition transcript as substantive evidence.

We review decisions regarding admission of evidence for an abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). Further, we reverse improper evidentiary rulings only upon a showing of prejudice. *Id.* at 46 (“Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party’s ability to demonstrate prejudicial error.” (quotation omitted)). “An error is prejudicial if it might reasonably have changed the result.” *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010) (quotation omitted).

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<sup>1</sup> Winters also contested the award of costs and disbursements but later withdrew this issue.

<sup>2</sup> We are concerned that Winters did not properly preserve this issue because he did not raise an objection to the admission of the deposition transcript. *See* Minn. R. Evid. 103(a)(1) (stating the general requirement of timely objection or motion to strike to preserve an evidentiary issue for review); *see also Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1988) (concluding that issues not argued to and considered by the district court are forfeited). We need not address forfeiture in light of our decision regarding the failure to establish prejudicial error.

We first observe that generally, depositions may be admitted “for any purpose.” *E.g., State, by Clark v. Wolkoff*, 85 N.W.2d 401, 412 (Minn. 1957) (“the deposition of an adverse party may be used for any purpose” (quotation omitted)); Minn. R. Civ. P. 32.01(a) (“Any deposition may be used . . . for any purpose permitted by the Minnesota Rules of Evidence.”). However, we need not determine whether, in this specific case, it was an abuse of discretion to admit the entire deposition transcript as substantive evidence because Winters has not established prejudicial error. In making the two disputed findings, the district court determined that Winters believed he could do a better job than MAAC and that Winters’s intended to perform the dust control work outside of his scheduled hours of employment with MAAC. Winters makes no explanation of how these findings affected the outcome of the case. In our view, neither fact bears directly on the district court’s analysis of the duty of loyalty, which centered on undisputed testimony that, at the time he submitted a competing bid, Winters was still a MAAC employee. Because omission of the two contested findings would not have changed the outcome, we conclude that Winters did not show that admission of his deposition prejudiced him.

## **II. Denial of Request for Continuance**

Winters next argues that the district court erred when it denied his request for a continuance. Because of the length of time from the denial of his continuance request until the start of the scheduled trial and given the uncomplicated nature of the trial, we conclude that the district court did not abuse its discretion.

The Minnesota General Rules of Practice allow a district court to grant a continuance after a trial setting has been established by motion or when a judge determines

that an emergency exists. Minn. R. Gen. Prac. 122. “Withdrawal of counsel,” however, “does not create any right to continuance of any scheduled trial or hearing.” Minn. R. Gen. Prac. 105. Further, when a continuance is requested in order to obtain counsel, two months is sufficient time to retain counsel, depending on the nature of the parties’ dispute. (See *Hamilton v. Hamilton*, 396 N.W.2d 91, 94 (Minn. App. 1986) (holding that two months was sufficient time to obtain a new attorney). We review a district court’s denial of a continuance for abuse of discretion. *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 418 (Minn. App. 2010). “The test is whether a denial prejudices the outcome of the trial.” *Weise v. Comm’r of Pub. Safety*, 370 N.W.2d 676, 678 (Minn. App. 1985).

In this case, over three months elapsed from the date Winters discharged his attorney and the date that the trial occurred. Over two months elapsed from the date that the district court denied the continuance and the date of the trial. In addition, the disputed issues were straightforward. The entire trial lasted less than one day and involved only two witnesses. The transcript of the trial comprises only 53 pages. Just as in *Hamilton*, two months was sufficient time to retain new counsel for these limited trial issues. For these reasons, we conclude that the district court did not abuse its discretion when it denied Winters’s motion for a continuance.

### **III. Conclusion that Winters Breached the Duty of Loyalty**

In his primary argument, Winters contests the district court’s conclusion that he breached the duty of loyalty. We agree with the district court.

The duty of loyalty prohibits an employee “from soliciting the employer’s customers . . . or otherwise competing with [its] employer.” *Rehab. Specialists, Inc. v.*

*Koering*, 404 N.W.2d 301, 304 (Minn. App. 1987). Winters argues that this court should eliminate the duty of loyalty because it is generally unfair to employees. In the alternative, Winters argues that if we continue to recognize the duty of loyalty, this court should conclude that *Rehab. Specialists* does not apply to the conduct at issue here: submitting a competing bid when the bidding process is open to the public. We review these arguments de novo. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007); *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003).

We are not convinced by Winters's arguments. As a general matter, Winters does not point to any legal authority that permits this court to eliminate the duty of loyalty. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (observing that such requests are the province of the supreme court or the legislature), *rev. denied* (Minn. Dec. 18, 1987); *see also, e.g., LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000) (stating that because of this court's limited function "it cannot create public policy"), *rev. denied* (Minn. May 16, 2000). More specifically, *Rehab. Specialists* remains good law and we are bound to apply its holding that an employee violates the duty of loyalty when it solicits customers or otherwise competes with its employer while still employed. 404 N.W.2d at 304.

We also disagree with Winters's alternative argument that *Rehab. Specialists* does not extend to the specific conduct at issue here. Importantly, we note that the parties do not contest the facts regarding Winters's conduct. Winters admits that he had knowledge about the details of truck rental and other aspects of how MAAC fulfilled and obtained the SMBSC dust control contract. Winters also agrees that he was an employee of MAAC at the time that he bid on the SMBSC contract and that MAAC submitted a bid for the same



work. Likewise, Winters agrees that SMBSC accepted his bid and rejected MAAC's competing bid, while he was still employed by MAAC. Although Winters correctly notes that the SMBSC bidding process was open to any person or business entity and that the bidding process started anew each year, this open and year-to-year bidding process does not alter the fact that Winters and MAAC submitted competing bids for the same work in the same year while Winters was employed by MAAC. Contrary to Winters's argument, his conduct falls within the prohibition in *Rehab. Specialists*. By submitting a bid for the same work as MAAC, Winters competed with MAAC for the same customer, breaching the duty of loyalty he owed to MAAC.<sup>3</sup>

**Affirmed.**

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<sup>3</sup> We need not determine whether SMBSC was a customer of MAAC because the duty of loyalty prohibits conduct that constitutes soliciting customers as well as conduct that otherwise competes against one's employer. In addition, the uncontested facts show that Winters's conduct went well beyond the permissible preparation that an employee may take. *Rehab. Specialists*, 404 N.W.2d at 304 (noting that an employee who is contemplating leaving an employer may, while still employed, prepare to enter into competition with the employer). Here, Winters did more than prepare to compete, he actually submitted a competing bid, and MAAC did not terminate his employment until after MAAC learned that SMBSC had awarded Winters the contract.