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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

September 11, 2013

To:

Hon. Lee S. Dreyfus Jr.  
Circuit Court Judge  
Waukesha County Courthouse  
515 W. Moreland Blvd.  
Waukesha, WI 53188

Kathleen A. Madden  
Clerk of Circuit Court  
Waukesha County Courthouse  
515 W. Moreland Blvd.  
Waukesha, WI 53188

Robert B. Corris  
Robert B. Corris, S.C.  
W309N6399 Lakeview Ln., Ste. 100  
Hartland, WI 53029

Dean P. Delforge  
Law Office of Dean P. Delforge S.C.  
15850 W. Bluemound Rd., Ste. 200  
Brookfield, WI 53005-6007

Michael E. McMorrow  
Glen Oaks Office Park  
1017 Glen Oaks Lane, #105  
Mequon, WI 53092

American Instrument Corporation  
c/o Jeff Quinn  
702 Rose Dr.  
Hartland, WI 53029

Industrial Calibration Services, LLC  
665 E. Industrial Dr.  
Hartland, WI 53029

You are hereby notified that the Court has entered the following opinion and order:

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2013AP532-FT                      American Instrument Corporation v. Industrial Calibration  
Services, LLC (L.C. # 2009CV2791)

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

On appeal, James R. Parins challenges a circuit court order finding that he violated a stipulation in which he agreed not to compete with his former employer, American Instrument Corporation (AIC). Pursuant to a presubmission conference and this court's order of March 26, 2013, the parties submitted memorandum briefs. Upon review of those memoranda and the record, we affirm.

In 2009, AIC sued Parins and two other former employees. AIC alleged that the employees left AIC and used AIC's property and proprietary information in their new venture to compete with AIC. In August 2010, Parins agreed not to compete with AIC for a specified period, and the parties stipulated to a \$50,000 monetary judgment against Parins. However, if Parins fully complied with the stipulation, the judgment would be reduced to \$10,000. The stipulation's noncompete provisions are at the heart of the litigation now on appeal:

For a period beginning on September 15, 2010 and ending on September 15, 2012, Mr. Parins shall not: (1) operate any business that competes with [AIC] in the field of instrument calibrations within the Restricted Areas ... (2) perform work or provide services in competition with [AIC] in the field of instrument calibrations in the Restricted Areas ... (3) accept employment with any person or entity conducting business as a competitor of [AIC] in the field of instrument calibrations within the Restricted Areas... ; and/or (4) assist any person or entity that conducts business or provide services in competition with [AIC] in the field of instrument calibrations within the Restricted Areas ....

The stipulation defined "instrument calibration" as "the sale, repair, and/or calibration of any and all types of temperature instrumentation, infra-red instrumentation, hardness testing equipment, and testing equipment, PH testing equipment, electronic calibration testing equipment, and dimensional gages [sic]." A violation of the stipulation entitled the other party to an injunction to enforce the stipulation plus attorney's fees and costs incurred to enforce the stipulation.

The circuit court entered a September 1, 2010 order essentially restating the terms of the stipulation. However, the order varied slightly from the stipulation in the following respect relevant to Parins' appeal: whereas the stipulation defined "instrument calibration" as "the sale, repair, and/or calibration of any and all types of temperature instrumentation," the order's

definition of “instrument calibration” did not include “sale.” The stipulation was attached to the order.

In October 2012, AIC moved the circuit court to find Parins in contempt for violating the September 2010 order. AIC alleged that before the two-year term of the stipulation expired, Parins performed instrument calibrations for a competitor, Matrix Sensors. Matrix “provides an alternative for temperature sensing and thermal analysis” and “certification and calibration of instrumentation.”<sup>1</sup>

Parins opposed AIC’s motion. Parins argued that Matrix does not compete with AIC because Matrix only calibrates the instruments it manufactures. In contrast, AIC performs ISO accredited field calibrations, which Matrix does not perform. Essentially, Parins argued that he was working “in-house” for Matrix on its own products, and therefore neither he nor Matrix competes with AIC.

After an evidentiary hearing, the circuit court found that Parins violated the stipulation because he tested and calibrated Matrix units,<sup>2</sup> which was “instrument calibration” as defined in the stipulation. The court also found that Matrix competes with AIC because Matrix manufactures equipment that competes with equipment sold and serviced by AIC. The court

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<sup>1</sup> Parins was actually employed by W/S Machine & Tool, Inc. The owner of W/S also owns Matrix. Parins calibrated Matrix manufactured instruments.

<sup>2</sup> AIC’s owner, Jeffrey Quinn, testified that Matrix and AIC sell some of the same products. Quinn testified that AIC saw documentation that Parins calibrated a Matrix unit owned by one of AIC’s customers after Matrix repaired the unit. AIC serviced and calibrated that unit for its customer under a service contract. Parins also calibrated other units which AIC would have been able to calibrate.

Parins testified that he calibrated units for Matrix during the stipulation’s term.

reasoned that Matrix is a competitor even though it does not perform the same ISO accredited calibration and testing performed by AIC. The court extended Parins' non-competition period for an additional year to September 15, 2013, and granted the \$50,000 judgment to AIC contemplated by the stipulation. Parins appeals.

We will affirm the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2) (2011-12). Construing the stipulation presents a question of law that we decide independently of the circuit court. *Stone v. Acuity*, 2008 WI 30, ¶21, 308 Wis. 2d 558, 747 N.W.2d 149.

It is undisputed that Parins, while employed by Matrix, calibrated instruments manufactured by Matrix. Parins argues on appeal that the circuit court could not have found him in contempt of the September 2010 order because the court based its ruling on the "instrument calibration" definition in the stipulation, when the same definition did not appear in the order Parins allegedly violated. Parins' attempt to separate the stipulation and the order is unavailing for two reasons.

First, even though AIC brought a contempt proceeding, the circuit court found that Parins violated the stipulation after the parties fully litigated the nature of Parins' work and the prohibitions imposed by the stipulation. The circuit court did not find Parins in contempt of the September 2010 order.

Second, there is no indication in this record that by entering the September 2010 order, which did not precisely track the stipulation, the circuit court intended to alter the stipulation. The September 2010 order states that the court reviewed the stipulation, which set out the parties' agreement, and the order attempted to restate the stipulation's terms. The stipulation was

attached to the September 2010 order; the order contemplated that the parties would keep the terms of the stipulation and the order confidential. At the final hearing before the court entered the order, neither party disavowed any provision of the stipulation. That the order did not precisely track the stipulation did not create any ambiguity or right in Parins to allege that he was not bound by the stipulation.

Parins next argues that he did not violate the stipulation because he provides non-accredited calibration services “in-house” at Matrix, while AIC provides ISO accredited field calibration services to its customers. The stipulation does not draw this distinction. The stipulation unambiguously prohibits employment by and calibration of instruments for a competitor of AIC. *Id.*, ¶21.

The circuit court’s findings that Parins calibrated instruments at Matrix and Matrix competes with AIC are supported in the record and are not clearly erroneous. Credibility determinations regarding any conflicting testimony were for the circuit court. *Micro-Managers, Inc. v. Gregory*, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988). The stipulation prohibited Parins from calibrating instruments for a competitor. Parins violated the stipulation.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is affirmed.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*