COURT OF APPEALS
DECISION
DATED AND FILED

February 1, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 98-2114

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

DAVID ISRAEL,

PLAINTIFF-RESPONDENT-CROSS-APPELLANT,

v.

AARON ISRAEL,

DEFENDANT-APPELLANT-CROSS-RESPONDENT.

APPEAL and CROSS-APPEAL from an order of the circuit court for Milwaukee County: MICHAEL J. SKWIERAWSKI, Judge. *Affirmed.*

Before Fine, Schudson and Curley, JJ.

¶1 PER CURIAM. Aaron Israel appeals from the trial court's final order, following a bench trial and dissolution hearing, declaring and dissolving a partnership he had with his son, David Israel, and accounting for the partnership

proceeds. Aaron does not challenge the partnership declaration or dissolution, but argues that the trial court erred in its subsequent accounting of the partnership. David cross-appeals. He argues that the trial court erred in denying his request for attorneys' fees. On both the appeal and cross-appeal, we affirm.

BACKGROUND

¶2 For many years, Aaron and David worked together in the real estate business, owning and managing numerous commercial and residential properties. In 1986, David, with the assistance of a $3.7 million loan from Aaron, purchased four properties in the Milwaukee area, occupied by Sentry food stores. In return, David executed a $3.2 million note to Aaron and granted him a mortgage on the four properties. In 1987, following various transactions involving the Sentry properties and others they owned, David conveyed the Sentry properties to Aaron for $4.5 million (the $3.7 million David paid in 1986, plus Aaron's assumption of an $800,000 construction loan). David continued, however, to manage the Sentry properties, receive the rents from them, and pay various loans and expenses for them. Later in 1987, for tax purposes, Aaron and David restructured their arrangement by executing ninety-nine-year leases for the Sentry properties, with Aaron as landlord and David as tenant.

¶3 In 1992, as a result of conflicts that had developed between them, David informed Aaron that he wanted to dissolve their partnerships. Various difficulties continued and, in 1994, David received certified letters from one of Aaron's attorneys claiming that David had defaulted in payment of rents for the Sentry properties. Thus, on April 27, 1994, David filed the underlying action seeking declaratory relief to confirm the existence of the partnership owning the Sentry properties, and to protect his ownership interests. One month later, in a

separate action in Cook County, Illinois, Aaron sought an accounting and dissolution of all their Illinois partnerships.

¶4 Following a bench trial, the trial court concluded: "Aaron and David intended to and did form a general real estate partnership to acquire, develop and manage the Sentry store properties for their mutual benefit. Aaron owns 54% of the partnership and David owns 46%." The court explained that "[w]hile the form of part of their relationship is as landlord and tenant under the leases, the evidence shows that the leases were used for tax reasons only and were not intended to change the partnership relationship that existed between Aaron and David." The court further concluded that "[a]s a result of Aaron's attempts to treat David as a tenant only and terminate David's interest in the properties," it was not "reasonably practicable for David to carry on the business of the partnership with Aaron." Thus, the court ordered dissolution of the partnership and held a hearing to determine the final accounting and distribution of partnership assets.

APPEAL

¶5 Although, at trial, Aaron disputed the existence of the partnership, on appeal, he does not challenge the trial court's conclusions declaring the existence of the partnership and requiring its dissolution. He does, however, contend that the trial court's accounting was flawed and he asks this court to remand the matter "for a full accounting of the disbursement of the partnership's income and receipts and disposition of partnership mortgage loan proceeds."

¶6 Aaron argues that David was the managing partner of the Sentry properties and therefore was responsible for providing the records to facilitate a fair accounting. Aaron contends that David failed to provide the necessary records and, instead, produced only his summary accounting for his management of the

Sentry properties. Aaron maintains that the trial court erred by failing to resolve against David "[a]ll doubts and obscurities created by David's failure to provide [additional records]" regarding "unaccounted loan proceeds and rents," and by "thrust[ing] the burden upon Aaron" to produce evidence to dispute David's summary. We disagree.

¶7 Following dissolution of a partnership, "[w]here a voluntary settlement cannot be achieved because of partnership discord … an action lies in equity for an accounting." ***Gull v. Van Epps***, 185 Wis.2d 609, 622, 517 N.W.2d 531, 536 (Ct. App. 1994). "[D]epending on the size of the partnership and the nature of the partnership's practice," the accounting process may leave "judicial resources … considerably strained." ***Id.*** at 626, 517 N.W.2d at 537. "Fortunately, the trial court has broad discretion to accomplish a fair accounting between the parties because an action for the dissolution of a partnership and the liquidation of its affairs is a proceeding in equity." ***Id.*** at 626-27, 517 N.W.2d at 537. Unless the trial court erroneously exercised discretion, we will not reverse its decision in equity. *See* ***Consumer's Coop. v. Olsen***, 142 Wis.2d 465, 472, 419 N.W.2d 211, 213 (1988).

¶8 Aaron's arguments are premised on his contention that David was the managing partner, responsible for producing the records on which the court's accounting would be based. Regardless of whether David would be deemed the managing partner, however, the fact remains that he and his father, according to the trial court's undisputed findings, "did business together on an informal basis," and they "ha[d] not used written partnership agreements for any of the properties in which they were the only two partners." As David points out, partnerships, according to a comment to the Uniform Partnership Act, "are often informal or even inadvertent[;] no books and records are enumerated as mandatory." UNIF.

PARTNERSHIP ACT § 403 cmt. 1 (1997 & Supp. 1999). Thus, not surprisingly, courts conducting an accounting of an informal partnership often have little choice but to relinquish ideal accounting practices in favor of the best information and evidence the parties have offered. *See* ***Simoni v. Simoni***, 50 Cal. Rptr. 37, 39 (Cal. Dist. Ct. App. 1966) ("[A] trial court must do the best it can. It cannot accomplish the impossible, or make clear transactions of many previous years when the partners themselves did not do so.").

¶9 The trial court did exactly that and, in fact, Aaron ultimately acquiesced to the trial court methodology to which he now objects. During the first phase of the trial, at which the court determined the existence of the partnership, David presented an accounting, which, he testified, he had prepared to the best of his ability. At the trial, however, David, as well as Aaron's accountant expert, identified mistakes in the accounting and made adjustments in Aaron's favor. Subsequently, as the court was setting the schedule and procedures for the dissolution hearing, David's lawyer expressed concern that Aaron's lawyer was suggesting that they "start all over again and hire another accountant," and proposing that they "go back to day one" rather than utilize the evidence developed at the trial. Aaron's lawyer responded: "That's not the case, Your Honor. I think [David's lawyer] misconstrues what [Aaron] has proposed. In fact, what we anticipate is very close to what [David's lawyer] anticipated…." He then added: "I do not see a reconstruction of the books and records from day one. I don't think it's feasible. I don't think it's possible."

¶10 Accordingly, the trial court stated that it had "a record that was made during the trial, and that's the record that [the trial court] intend[s] to deal with." The court added, however, that while it would "work off the basic accounting for payments made to other entitities and draws, et cetera produced by David during

the trial and criticized by the witnesses on behalf of the defense," it also would "welcome" each party's "own version of the calculation based on the evidence in the record." The court specifically stated that it did not think it needed "$50,000 worth of accountants" to produce a new accounting, and concluded by asking, "Okay?" Aaron did not object.

¶11 David contends that Aaron, by failing to object to the trial court's accounting procedure, waived the issue he now presents on appeal. David is correct. Generally, a party must object to preserve an issue for appeal. *See* ***Bavarian Soccer Club, Inc. v. Pierson***, 36 Wis.2d 8, 15, 153 N.W.2d 1, 4 (1967) ("The purpose of objecting in the trial court is to give that court an opportunity to correct its own errors and thus avoid the raising of issues on appeal for the first time."). Further, to preserve the issue for appeal, a party must apprise the trial court of the specific basis for the objection. *See* ***State v. Corey J.G.***, 215 Wis.2d 395, 405, 572 N.W.2d 845, 849 (1998). Aaron did neither.

¶12 Aaron maintains that his acquiescence in the trial court related only "to the *length* of time required for an accounting to be performed on the books and records of the partnership." The record, however, belies his claim. Although previously, in his "Brief in Support of Accounting and Proposal for Distribution of Properties," Aaron had argued that the trial court "should have allowed a full and complete accounting by Arthur Andersen or another accounting firm," he never renewed that request as the parties discussed the appropriate procedures with the trial court at the subsequent hearing. He neither called the trial court's attention to the assertion in his brief nor asked the trial court to rule on it. He never objected to the trial court's declaration of the streamlined accounting approach the court indicated it would employ. And, as quoted above, Aaron's counsel's comments,

and the trial court's comments, clarify that Aaron was agreeing not only to the timing, but also to the method of the court's accounting.

¶13 We conclude, therefore, that the trial court, properly viewing the accounting as an equitable process, and reasonably relying on the best available information provided by both parties, properly exercised discretion in utilizing the accounting introduced at the earlier phase of the trial.

CROSS-APPEAL

¶14 David cross-appeals. He argues that Aaron committed constructive fraud by denying the existence of the partnership and, therefore, should be liable for reasonable attorneys' fees he (David) had to incur in order to establish the existence of the partnership. David contends that the trial court erred by failing to "clarify the authority of a trial court to award reasonable attorneys' fees under [the] circumstances [of this case]." He postulates that "[t]he trial court's apparent reservation about its authority to award [him] reasonable attorneys' fees caused by Aaron's constructive fraud may have affected its decision on [his] fee petition." (record reference omitted).

¶15 Aaron responds that, although at one point the trial court expressed doubt about whether it had authority to order attorneys' fees under these circumstances, ultimately it concluded that it had such authority. Aaron contends that the trial court then exercised discretion and concluded that awarding David attorneys' fees would not be appropriate. Aaron is correct. The trial court stated:

> All right. Well, I may agree that it is possible under the law to get attorney's fees under this kind of circumstance, but that doesn't answer the final, ultimate question on whether it's appropriate, and when it's appropriate depends on a host of equitable considerations, I think.

> And my view of all of those equitable considerations in this case lead [sic] me to a conclusion it's not appropriate to assess those attorney's fees against Aaron Israel, not because I think Aaron Israel knew, believed all along that there was no partnership. I found to the contrary in this lawsuit, and despite the protestations here today, I found quite to the contrary, but this was a doomed relationship from the day that this family started falling apart in their business relationships, and to suggest that one party caused the total demise of this family business and family relationship is probably wrong.
>
> I would suspect it's more than one at fault. It usually takes multiple parties to stop communicating, to lead to this kind of total estrangement of the family members, and that's at the heart of this whole thing.
>
> Whether Aaron Israel's conduct in the context of that whole family situation is the straw that broke the camel's back here or led to this lawsuit, if it wasn't that it would have been something else. It would have been some other excuse to force these people into court to dissolve their business relationship ….
>
> … I think the whole thing was inevitable, unavoidable unless people acted rationally which these people haven't in their family relationships, and I'm not going to assess all the attorney's fees against one party when I suspect both sides are at fault in this whole thing falling apart.
>
> That's, for lack of any other better legal or equitable basis for declining [David's] request, … my reason for declining it. I don't think it's fair under these circumstances. Everybody ought to pay their own attorney's fees, so the request is denied.

¶16 Thus, the record refutes David's contention. It confirms that the trial court acknowledged its possible authority to order attorneys' fees. On appeal, David only raises the issue of the trial court's authority; he does not challenge the trial court's exercise of discretion in denying his request. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392, 398 (Ct. App. 1995) (appellate court need not consider "amorphous and insufficiently developed" argument). David offers no reply to Aaron's arguments in the cross-appeal. *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493, 499 (Ct.

App. 1979) (unrefuted arguments deemed admitted). Therefore, on the cross-appeal, we also affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.