COURT OF APPEALS
DECISION
DATED AND FILED

October 9, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2798 **Cir. Ct. No. 01-CV-186**

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

ROY J. WOLOSEK,

PLAINTIFF-RESPONDENT,

V.

RANDOLPH L. WOLOSEK,

DEFENDANT-APPELLANT.

APPEAL from an judgment of the circuit court for Portage County: FREDERIC FLEISHAUER, Judge. *Modified and, as modified, affirmed.*

Before Deininger, P.J., Dykman and Vergeront, JJ.

¶1 DYKMAN, J. Randolph L. Wolosek appeals from an order to liquidate R&R Farms, a joint venture, to pay the debts of the joint venture, to equalize capital contributions by paying Roy J. Wolosek $17,899.95, and to share any remaining profits equally between the joint venturers. He argues that (1) R&R Farms was not a joint venture; (2) the equalization payment is unlawful

remuneration to a joint venturer; (3) a $36,000 loan from Bancroft State Bank is a debt of the joint venture; and (4) the court prematurely allocated the assets of the joint venture. We modify the trial court's order to eliminate Randolph's personal liability for the equalization payment of $17,899.95 to Roy. We also conclude that the order, as written, encompasses the Bancroft State Bank as a debt of the joint venture and permits Randolph to recover any wind-up expenses he incurs. In all other respects, we affirm.

FACTS

¶2 Roy and Randolph Wolosek entered into a farming operation together in 1996 called R&R Farms. The brothers did not have a written agreement about the terms of their business relationship. Randolph, who lived in Texas, provided most of the financial support for the farm by contributing money, acquiring loans, and purchasing land and other assets. Roy lived in Wisconsin and provided skill and labor on a day-to-day basis at the farms. Roy's monetary contribution was nominal, and he did not receive compensation for the services he provided. The brothers managed the farm in this manner until Randolph returned to Wisconsin in April 2000, when the brothers worked together on the farm. In September 2000, Roy stopped participating in the farm operations, terminating the brothers' business relationship.

¶3 Roy sued Randolph to recover the value of his share of the business. He asked the court to liquidate its assets in accordance with partnership law. The court appointed a certified public accountant as a referee to audit R&R Farms. Adopting most of the Referee's findings, the trial court determined that the brothers had engaged in a joint venture. The court ordered the joint venturers to sell all the joint venture property, to pay the joint venture debts, to pay Roy

$17,899.95 to equalize the capital contributions, and to split the remaining profits from the sale of proceeds equally. The trial court also made Randolph personally liable to Roy for Roy's equalization payment in the event that the proceeds of the liquidation did not cover this debt.

STANDARD OF REVIEW

¶4 This appeal requires us to review mixed issues of fact and law. An appellate court must separate the factual determinations from the conclusions of law and apply the appropriate standard of review to each part. ***DOR v. Exxon Corp.***, 90 Wis. 2d 700, 713, 281 N.W.2d 94 (1979), *aff'd* 447 U.S. 207, 100 S. Ct. 2109 (1980). We will not set aside the trial court's findings of fact unless clearly erroneous. WIS. STAT. § 805.17(2) (2001-02).[1] However, "whether the facts fulfill a particular legal standard is a question of law." ***Nottleson v. DILHR***, 94 Wis. 2d 106, 116, 287 N.W.2d 763 (1980). We review matters of law without deference to the trial court. ***First Nat'l Leasing Corp. v. Madison***, 81 Wis. 2d 205, 208, 260 N.W.2d 251 (1977).

JOINT VENTURE EXISTED

¶5 Randolph argues that the business arrangement between the brothers did not constitute a joint venture. He claims there was no agreement to share both profits and losses and that Roy was not a party to important business deals, such as a land contract and business loans. He also argues that the business relationship could not be a joint venture because joint ventures are only single transactions.

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

¶6 Generally, a joint venture exists when a business relationship has the following four elements: "(1) Contribution of money or services but not necessarily in equal proportion by each of the parties; (2) joint proprietorship and mutual control over the subject of the venture; (3) an agreement to share profits though not necessarily the losses, and (4) a contract express or implied establishing the relationship." ***Edlebeck v. Hooten***, 20 Wis. 2d 83, 88, 121 N.W.2d 240 (1962). The joint venture has less formal requirements than a partnership, but still serves a "community of interest as to the purpose of the undertaking." ***Id.*** In ***Barry v. Kern***, the court described a joint venture as "confined in its scope principally to a single transaction." ***Barry v. Kern***, 184 Wis. 266, 268, 199 N.W. 77 (1924). Joint ventures, however, have evolved over time. Almost forty years after ***Barry***, the Wisconsin Supreme Court characterized joint ventures as having the four elements identified above. Notably, the court did not limit joint ventures to business relationships that had only a single transaction.

¶7 We conclude that the Referee's findings sufficiently establish that each joint venture requirement existed. Specifically, both brothers contributed to the farming operation: Randolph contributed money and Roy contributed labor. The record establishes that Roy had at least some proprietorship and mutual control over the farming activities. The fact that Randolph lived in Texas and the farm was located in Wisconsin strongly suggests that someone other than Randolph contributed to managing the farm. Likewise, Roy received no wage or compensation for his services, as would an employee. This fact supports the position that the brothers intended Roy to receive a portion of the profits. Randolph has not persuaded us that Roy agreed to work free of charge for three years without an interest in the profits. Finally, the farming operation was named "R&R Farms," which suggests that Randolph and Roy were working together.

¶8 Accordingly, we conclude that the trial court's findings of fact were not clearly erroneous. We also conclude that those facts constitute a joint venture as a matter of law.

BANCROFT LOAN

¶9 Both parties claim that the trial court's order excluded the Bancroft State Bank loan from the debts the joint venture must pay. We disagree with the parties' interpretation of the order. The order reads: "The debts of the joint venture shall be paid including the Doern land contract, the note to FM Bank, the referee's bill and costs and fees." The Bancroft State Bank loan was a debt of the joint venture. The Referee found that Randolph used the $36,000 from the Bancroft State Bank to purchase "farm inputs for the operation." Neither party disputed this finding at trial. Because the Bancroft State Bank loan was a debt of the joint venture, the trial court's order encompasses payment of this debt. It is immaterial that the order does not identify the Bancroft State Bank by name, as it does the note to FM Bank.

¶10 Roy claims that the joint venture is not liable for the $36,000 Bancroft State Bank lent to Randolph. He argues that Randolph failed to present evidence at trial that this debt was necessary to wind up the joint venture or was incurred during the joint venture. He claims that Randolph's testimony establishes that from 1997 to September 2000 the only outstanding debt from the farming operation was a loan from FM Bank. Roy contends that the joint venture cannot be liable for any debt incurred between September 2000 and December 31, 2000, because the venture had dissolved in September 2000 when Roy stopped participating in the farming operation.

¶11 Roy's arguments fail for several reasons. Since the court allocated the profits and assets of the joint venture equally, fairness requires that the parties equally share the debts incurred to acquire these assets and profits. Although the joint venture may have dissolved in September 2000, the winding up process continued beyond December 31, 2000, as evidenced by this litigation. "In the absence of an express agreement the laws relating to partnerships apply to joint ventures." ***Employers Mut. Liability Ins. Co. v. Parker***, 266 Wis. 179, 181, 63 N.W.2d 101 (1954). Under WIS. STAT. § 178.25, a partnership does not terminate until the partners complete the winding up of affairs. Because the Referee's findings sufficiently establish that Randolph used the Bancroft State Bank loan to pay for the farming operation, both parties are liable for this debt.[2] It is immaterial that Randolph may have incurred the debt during the winding up process.

EQUALIZING CAPITAL INVESTMENTS

¶12 The trial court awarded Roy $17,899.95 to equalize the capital investments in the joint venture and ordered that both the joint venture and Randolph individually were liable for this debt to Roy. Randolph characterizes this equalizing payment as remuneration for Roy's services on the farm. Such payment would be contrary to partnership law. *See* WIS. STAT. § 178.15(6). Randolph claims that the fact that Roy provided services on a day-to-day basis supports his position. Thus, Randolph argues that Roy may only receive compensation for his labor by profit sharing in the joint venture.

[2] This conclusion is not a determination of Roy or Randolph's obligation to the bank. It pertains only to their relationship to each other as joint venturers.

¶13 The trial court found that Roy's labor was a capital asset. Under ***Thompson v. Beth***, the court's finding is not clearly erroneous. ***Thompson v. Beth***, 14 Wis. 2d 271, 279, 111 N.W.2d 171 (1961). In that case, two people entered into a partnership whereby one partner contributed money and the other contributed skill and labor. ***Id.*** at 276. The partners did not enter into a written agreement. ***Id.*** Upon dissolution, the court recognized the capital investment of skill and labor as distinct from unlawful remuneration for acting in the partnership business. ***Id.*** at 279. Likewise, the trial court in this case determined that the Wolosek brothers entered into a joint venture, whereby one contributed money and the other contributed skill and labor. Randolph claims that ***Thompson*** is not applicable to our case because the Referee testified that he would have expensed, rather than capitalized, these services if he were in the Wolosek brother's situation. But we affirm the trial court's decision because it is the trial court's prerogative to disregard this opinion testimony.

TIMING OF COURT ORDER

¶14 Randolph contends the trial court made a final settlement of accounts before winding up, contrary to ***Lange v. Bartlett***, 121 Wis. 2d 599, 602, 360 N.W.2d 702 (Ct. App. 1984). We do not need to address ***Lange***. The trial court's order neither values the assets of the joint venture nor awards any party a dollar amount constituting his value of the joint venture profits. Instead, the trial court's order equally divides any profits available after paying the joint venture debts and equalizing payment for capital contribution. Determining a percentage for allocating profits does not adjudicate the final settlement amounts. The profit (or loss) sharing will depend on how much money, if any, is available at the end of the wind-up.

¶15 Although the trial court determined the value of the equalizing payment, this adjudication is permissible because the amount of capital invested in this joint venture will not change during the wind-up. The trial court, however, incorrectly granted Roy judgment against Randolph for the balance of the equalization payment if the proceeds from the sale of the joint venture assets do not cover the payment. The record does not show that there was an agreement between the brothers creating such liability for Randolph. Accordingly, Roy may recover his equalization payment only from the joint venture assets. We modify the trial court's order to eliminate Roy's judgment against Randolph.

¶16 Randolph also claims that it is not clear whether the trial court decided that a wind-up or a continuation was to occur. The trial court ordered the parties to sell all the property of the joint venture, to pay the debts, to equalize capital contributions, and to split the profits from sale proceeds. Although the trial court did not use the phrase "wind-up," the order effectively liquidates the joint venture in accordance with WIS. STAT. § 178.35. We conclude that the trial court ordered a wind-up in lieu of a continuation.

¶17 Finally, Randolph argues it is unclear from the trial court's order how to account for his post-trial expenses and services pursuant to WIS. STAT. § 178.15(6). Section 178.15(6) allows compensation for services provided by a surviving partner during wind-up when the partnership dissolves due to the death of a partner. ***Gull v. Van Epps***, 185 Wis. 2d 609, 624-27, 517 N.W.2d 531 (Ct. App. 1994). Because the joint venture did not dissolve because a joint venturer died, Randolph cannot recover compensation for services he may provide during the wind-up process. However, Randolph may recoup wind-up expenses under WIS. STAT. § 178.35(2)(b). That statute directs partnerships to discharge liabilities "owing to partners other than for capital and profits" after liabilities owed to

creditors (other than partners). ***Id.*** The record does not contain any information about whether Randolph has actually incurred any wind-up expenses. If such expenses arise, Randolph may recover his expenses pursuant to § 178.35(2)(b).

By the Court.—Judgment modified and, as modified, affirmed.

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