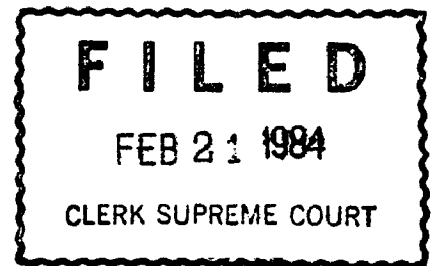


IN THE COURT OF APPEALS OF IOWA



R. E. GRIMM and DONALD HARTMAN,)

Plaintiffs-Appellants,)

Filed February 21, 1984

301

vs.)

ROGER McINTOSH, ROBERT)
McINTOSH, and JOHN McINTOSH,)

3-400
83-591

Defendants-Appellees.)

Appeal from the Iowa District Court for Clayton County - C. W. Antes,
Judge.

Plaintiffs appeal from judgment for defendants in an equitable action seeking partition or, alternatively, involuntary dissolution of the parties' association and distribution of its assets. REVERSED AND REMANDED.

Rolland E. Grefe and Craig S. Shannon of Grefe & Sidney, Des Moines, for
plaintiffs-appellants.

Donald H. Gloe of Miller, Pearson, Gloe, Burns & Beatty, P.C., Decorah, for
defendants-appellees.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

Plaintiffs appeal from judgment for defendants in an equitable action seeking partition, or alternatively, involuntary dissolution of the parties' association and distribution of assets. We reverse and remand.

In 1956 and 1957 eight acquaintances, including the five parties to this action, acquired a boat and leasehold interest in Mississippi River island property. They referred to themselves as the Crazy Eight Boat Club.

By 1963, three members of the group not parties to the present action had withdrawn. In 1982 plaintiffs, alleging that the leased property was held by the parties as tenants in common, filed a petition in equity seeking partition or, alternatively, involuntary dissolution of the club and distribution of its assets.

At trial plaintiffs presented evidence that the fair market value of the leased property had greatly increased since 1963. The trial court, however, found that that evidence lacked credibility. The court found against the plaintiffs.

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7); Citizens Savings Bank v. Sac City State Bank, 315 N.W.2d 20, 24 (Iowa 1982).

The trial court concluded that the Crazy Eight Boat Club was a voluntary unincorporated association and the appellants could claim no proportionate share of the club's property. Iowa defines such an association as "a group of persons formed voluntarily without a charter for the purpose of promoting a common enterprise or objective." Health Care Equalization Committee v. Iowa Medical Society, 501 F. Supp. 970, 976 (1980). We believe this definition fits this club perfectly—it is nothing more or less than a group of persons, which group was formed voluntarily and without a charter in order to promote a common goal. In this case, that goal is to enjoy the use of a boat and cabin on an island in the Mississippi River. The club had a separate checking account out of which all bills connected therewith were paid. The lease on the island was executed in the club's

name. The members of the club agreed to act by majority rule. Under these circumstances, we believe the club involved in this case may be properly considered to be a voluntary unincorporated association.

Such a finding, however, does not end the inquiry. We conclude that plaintiffs are not limited by any "bylaw" to recovering only their initial capital contributions. It is not claimed that any such written bylaw exists. It is true that three former club members, all of whom had withdrawn from the club by 1963, were paid only their initial contributions. Defendants' attempt to elevate that fact to the status of a bylaw, however, must fail. There was no evidence that that compensation arrangement was intended to be permanent and applicable to all future withdrawals from the club. Instead, it appears from all the evidence, as the majority indicates, that that arrangement was only agreed to as being equitable at that point in time and nothing further.

In addition, we believe that it would be grossly unfair to limit plaintiffs to recovering the few hundred dollars they initially invested back in the 1950's when, during the intervening years, the value of the club's enterprise and assets has been multiplied many times over by inflation and the combined efforts of all club members. Although courts are generally loathe to interfere in the internal affairs of voluntary unincorporated associations, judicial relief will be given in cases where an association's action is oppressive and unreasonable. 7 C.J.S. Associations § 8 at 39-40 (1980); 6 Am. Jur. 2d Associations and Clubs § 27 at 453-54 (1963); Kentucky High School Athletic Association v. Hopkins County Board of Education, 552 S.W.2d 685, 687 (Ky. Ct. App. 1977); State ex rel. Smith v. Kanawha County Court, 78 W.Va. 168, 174-75, 88 S.E. 662, 665 (1916).

Therefore, for the foregoing reasons, we reverse the ruling of the trial court and find that the five individuals each owned a one-fifth undivided share in the cabin and boat as tenants in common. We remand the case to the trial court with instructions that it determine the fair market value of the property and settle this

dispute with a buy and sell agreement between the parties; or, alternatively, partition the property as requested in the petition. See Neoco, Inc. v. Christenson, 312 N.W.2d 559, 560 (Iowa 1981).

We do not need to reach the merits of the remaining issues.

REVERSED AND REMANDED.