

IN THE COURT OF APPEALS OF IOWA

No. 3-414 / 92-1340

FILED

NOV 29 1993

CLERK SUPREME COURT

CURTIS HENNINGSEN and JANELL
HENNINGSEN, Husband and Wife,

Appellants,

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vs.

CHARLES HENNINGSEN and PATRICIA
HENNINGSEN, Husband and Wife,

Appellees.

Appeal from the Iowa District Court for Palo Alto
County, Frank B. Nelson, Judge.

Curtis appeals the district court's decision concerning
the dissolution of the parties' farm partnership. Charles
cross appeals. **AFFIRMED AS MODIFIED.**

William M. Alexander, Laurens, for appellants.

Frances L. Davis, Emmetsburg, for appellees.

Heard by Schlegel, P.J., Oxberger, C.J., and
Sackett, J. Donielson, J., takes no part.

SCHLEGEL, P.J.

This case involves the dissolution of a farming partnership formed by two brothers, Curtis and Charles Henningsen. The parties entered into an oral agreement whereby they would combine their crop and livestock production. They never made a formal agreement and apparently never kept a consistent or accurate accounting of the partnership assets.

Curtis and Charles purchased property referred to as the "Haar" property to assist the partnership. Charles lived on the property. It also contained the hog production facilities and some storage and drying facilities for their crop production.

Charles brought to the partnership livestock, hay, rye seed, and corn seed with a value of approximately \$30,179. Curtis brought a full line of machinery and leases to approximately 977.5 acres of ground.

The brothers conducted the farming partnership during 1987, 1988, and 1989. Several disputes arose between the parties. While the parties apparently had agreed Charles would purchase one-half of the farm equipment brought by Curtis to the partnership, this never took place.

Problems also arose concerning the separation of personal and partnership assets. Curtis borrowed from a bank in Emmetsburg to make cash rent payments on leased farmland. The borrowings included a roll-over from

Curtis's personal farming operations in excess of \$100,000. The borrowings also included monies used for Curtis's personal expenditures. The corn crop for the 1987 crop year was sealed with all government checks going to Curtis. He used partnership funds to to pay the rent on land used to store his 1986 crop. Curtis received payment from the government for storing this 1986 crop.

Apparently, many expenditures by one party were disputed by the other. For example, Charles was not reimbursed for improvements he made to the "Haar" property.

In 1990 Curtis and his wife, Janell, filed a petition for partition of the "Haar" property. The action was eventually expanded to include a dissolution of the partnership between the parties. The court appointed a referee to make recommendations concerning the winding up of partnership affairs and the partition of the "Haar" property.

The referee, in an amended report, recommended that the "Haar" property be sold, certain expenses deducted, and the proceeds divided equally between the parties. In winding up the partnership's affairs, the referee determined that Curtis owed Charles \$4781.13. Both Curtis and Charles filed objections to the referee's report with the district court.

The district court accepted a large portion of the referee's report. It determined Curtis owed Charles

\$8768.01 to wind up the partnership's affairs. It upheld the referee's recommendations regarding the partition of the "Haar" property. Curtis appeals, and Charles cross-appeals.

Initially, we consider the proper scope of review. The essential character of a cause of action and the relief it seeks, as shown by the complaint, determine whether an action is at law or equity. Moseback v. Blythe, 282 N.W.2d 755, 758 (Iowa App. 1979). This action was brought to partition real estate under Iowa Rule of Civil Procedure 270 and is in equity. The accounting of the farm partnership was considered by the district court in equity. See Berry Seed Co. v. Hutchings, 247 Iowa 417, 422-24, 74 N.W.2d 233, 236-38 (1956). "The decision whether a case should be heard in equity is discretionary with the trial court; as such, it is presumptively correct." Kreamer v. College of Osteopathic Medicine and Surgery, 301 N.W.2d 698, 700 (Iowa 1981). Consequently our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the district court, but are not bound by them. Iowa R. App. P. 14(f)(7).

The district court appointed a referee under Iowa Rule of Civil Procedure 207. Iowa Rule of Civil Procedure 214 provides that the district court "shall accept [the referee's findings] unless clearly erroneous; and may adopt, reject or modify the report wholly or in any part."

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Iowa R. Civ. P. 214. To the extent the findings of the referee are adopted by the district court, they are deemed to be the court's. Iowa R. Civ. P. 179. Our courts have stated:

Under each rule it is the duty of the trial court, as well as this court, to review the master's findings of fact and it is our particular duty to determine whether they are clearly erroneous.

Nelson v. Barnick, 245 Iowa 982, 988, 63 N.W.2d 911, 915 (1954). In discussing Nelson, our supreme court stated:

[I]t is the duty of this court to review the evidence before the master in an equity case to determine whether the findings adopted by the court are clearly erroneous. And in doing so we are not limited to considering whether there is sufficient evidence to sustain the findings but we consider the entire record and can either adopt, reject, or modify the findings and report. . . . The above properly expresses the effect of "clearly erroneous." A reference in an equity action does not deny a trial de novo here.

Iowa Pub. Serv. Co. v. Sioux City, 252 Iowa 380, 386, 107 N.W.2d 109, 112 (1961).

Everyone involved with this case agrees the accounting at the dissolution of the partnership is very complex and confusing. The referee examined the financial records and testimony of the parties carefully, yet amended his report just a few days after it was submitted to the court. The district court evaluated the evidence and the referee's report, adopting the report with some modifications. We, in our de novo review, have examined the evidence in the record, the referee's report, the parties' objections to the report, the district court's order, and the arguments

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urged on appeal. We believe the approach taken by the referee and the court more clearly and carefully addresses the confusion than the summary approach urged by appellants. Our confidence in the more detailed approach is increased because we performed the calculations and adjustments using both approaches with very similar results.

We find, based on our evaluation of the record before us, the district court's modification of the referee's report correctly and equitably allocates the partnership assets. We agree with the district court's approach to the various corn transactions. We believe combining all the corn transactions simplifies the evaluation and produces an accurate result. We find the district court incorrectly applied the adjustment to the hog valuation. The court modified the referee's report, which showed Curtis owing Charles \$2466.50, calculating that Curtis owed Charles \$8990.00. We find the correct adjustment of \$5.00 per head for 373 hogs results in Curtis owing Charles \$4331.50 ($2446.50 + 1865$) and modify the district court's order accordingly. We agree with the court's resolution of the sealed corn disposition. We also agree with the court's judgment concerning Charles's payments on Curtis's line of credit.

We therefore modify the district court's judgment to reflect the adjustment in the hog valuation. This adjustment decreases the amount Curtis owes Charles from \$8768.01 to 4109.51 ($8768.01 - (8990.00 - 4331.50)$). The

judgment of the district court is affirmed as modified.
Costs of this appeal are taxed to Curtis.

AFFIRMED AS MODIFIED.