IN THE COURT OF APPEALS OF IOWA

No. 1999-527 (9-788) / 98-1296
Filed March 15, 2000

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CLERK SUPREME COURT

ROBERT JAKOBITZ,
Appellant,

vs.

CHARLES E. CLYMER and DANIELLE CLYMER d/b/a LEESBURG FARMS,
Appellees.

Appeal from the Iowa District Court for Warren County, Dale B. Hagen, Judge.

Plaintiff appeals the district court's entry of judgment against the defendants in this action for partnership accounting and related tort and contract actions involving a horse breeding partnership. **AFFIRMED BUT REMANDED FOR A SINGLE, LIMITED PURPOSE.**

Theodore F. Sporer and Zorica Llic of Sporer Law Firm, P.C., Des Moines, for appellant.

Randy Hefner and James L. Bergkamp, Jr., of Van Werden & Hefner, Adel, for appellees.

Heard by Sackett, C.J., Hecht, JJ., and Habhab, S.J.

HABHAB, S.J.

The trial court entered judgment in favor of the plaintiff, Robert Jakobitz, and against the defendant, Charles E. Clymer. In doing so, it specifically found that the defendant, Charles E. Clymer, had made an accounting of those assets involved in that partnership which it found to exist. As part of those assets, there remained two two-year old horses, and by agreement of counsel, the title to those two horses was to vest in the defendant, Clymer, and the plaintiff's judgment was increased to $2,763.44 plus interest. The plaintiff, Robert Jakobitz, appeals and we affirm on all issues. We do, however, remand for a single, limited purpose.

Background facts. In March of 1995, Robert Jakobitz and Charles E. Clymer entered into a written stallion lease agreement under which Clymer rented the horse, Runaway Dash,[1] from Jakobitz and arranged to sell the stallion's breeding services to various mare owners. As to that agreement and that horse, there is little, if any, dispute that a partnership agreement existed.

There is a conflict, however, as to the remaining dealings of the parties. Jakobitz claims they agreed to a full partnership, including joint ownership of the entire horse breeding operation and all of the horses. Clymer argues the partnership they agreed to began and ended with Runaway Dash and any horses resulting from dealings with the stallion. Clymer admits that a second venture was entered into by both parties when he bought a thoroughbred named Late Act and sold a half interest to Jakobitz.

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[1] Runaway Dash died in April, 1996. Clymer and Jakobitz divided the insurance proceeds.

The partnership relationship left the management functions in the hands of Clymer since he physically cared for the horses and arranged for the breeding sessions. Jakobitz was peripherally involved, being updated by Clymer on the status of the operation. Jakobitz alleges the agreement specified that Clymer would provide an annual accounting and payment of profits from the partnership.[2] When this did not occur on or near July 15, 1996, Jakobitz filed a lawsuit against Clymer to dissolve the partnership and divide the assets.

Scope of review. The parties disagree as to the scope of review for this court. In this respect, a legal or equitable nature of a proceeding is determined by the pleadings, the relief sought and the nature of the case. *Eldridge v. Herman,* 291 N.W.2d 319, 321 (Iowa 1980). Ordinarily, this court reviews a case as it was tried below. *Atlantic Veneer Corp. v. Sears,* 232 N.W.2d 499, 502 (Iowa 1975).

Jakobitz, however, now argues that since his action involved an accounting upon a dissolution of a partnership, which is equitable in nature, that our review should be de novo. As it relates to the accounting division of the plaintiff's action, there is merit in that argument. Since it sounds in equity, our review of this portion of the proceedings is de novo.

It goes without saying, "[i]n equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them." Iowa R. App. P. 14(f)(7).

As to the remaining issues, it is clear to us that those were tried as a law action. Jakobitz docketed the case at law, the parties throughout the trial, tried

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[2] During partnership discussions, Clymer made a 1995 accounting for Runaway Dash's breeding efforts which Jakobitz believed, at the time, to be accurate. Jakobitz later

those issues as a law action, made objections to evidentiary evidence and asked the court to rule thereon. As it relates to the ruling on the objections, the supreme court has stated the practice of ruling on objections during the trial is normally an indication of a law action. *Sille v. Shaffer,* 297 N.W.2d 379, 380-81 (Iowa 1980).

It cannot go unnoticed that of the seven divisions of the plaintiff's petition, six seek actual or actual and punitive damages and one seeks an accounting. Except for the division relating to the accounting, the primary purpose of this lawsuit was to seek monetary damages, both actual and punitive. As we said in Mosebach, "[i]f, as here, both legal and equitable relief are demanded, the action is ordinarily classified according to what appears to be its primary purpose or its controlling issue." *Mosebach v. Blythe,* 282 N.W.2d 755, 758 (Iowa App. 1979) (citation omitted). As our supreme court stated in *Atlantic Veneer Corp.,* "[w]e see no insuperable difficulty in reviewing the equitable issues by trial de novo, while considering the alleged errors asked to be corrected in the law action, in an appeal from the final judgment on the merits." *Atlantic Veneer Corp.,* 232 N.W.2d at 502 (citing *Ontjes v. McNider,* 275 N.W. 328, 331 (Iowa 1937)).

Putting aside in a separate division the accounting controversy, we find the trial was conducted at law, thus our review is for errors. *Henning v. Security Bank,* 564 N.W.2d 398, 399 (Iowa 1997). The court's findings, therefore, have the effect of a jury verdict and are binding on this review if there is substantial evidence to support them. *Id.* Substantial evidence is such that reasonable minds would accept it as adequate to reach the findings of the court. *Id.* "In evaluating the sufficiency of the evidence, we view it in its light most favorable to

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claimed this accounting was inaccurate.

sustaining the court's judgment. We need only consider the evidence favorable to the judgment, whether or not it is contradicted." *Manson State Bank v. Tripp,* 248 N.W.2d 105, 107 (Iowa 1976) (citations omitted).

Type of partnership. Jakobitz asserts the partnership agreement entered into by both parties was a business-wide partnership, entailing the entire horse operation run by Clymer. Clymer contends there were two individual agreements consisting of a partnership for the stallion's breeding business and, later, a partnership with half interest for each party in the thoroughbred known as Late Act. The trial court found that the parties had entered into two separate agreements rather than one ongoing partnership as Jakobitz claims. We agree.

The only document used to evidence the partnership agreement is entitled "Stallion Lease" and discusses only Runaway Dash and any subsequent acquisition of horses directly related to this animal. Jakobitz claims that although it mentions only Runaway Dash, it does not expressly limit the partnership to this single horse. On the other hand, it is conspicuously silent about any other horses or the business as a whole. It merely explains the rights and obligations of each party in relation to this single horse and its breeding business. There were several other horses in Clymer's possession which Jakobitz does not even seek damages for. Like the trial court, we conclude that there was not a full, ongoing partnership between these parties.

Because the parties each express an opposite opinion about what the agreement entailed and the only written document is, at the least, incomplete on its face, much of this decision relied on the credibility the court assigned to each party. Jakobitz argues the court erred in according credibility to Clymer because

of his actions in this case. However, as the trial court has the advantage of hearing the testimony firsthand and observing the witnesses on the witness stand, we give particular weight to the findings of credibility. *Tim O'Neill Chevrolet, Inc. v. Forristall,* 551 N.W.2d 611, 614 (Iowa 1996). We conclude the record contains substantial evidence to find as the trial court did, that the parties had entered into two separate ventures rather than one, all-encompassing partnership.

Alleged fraud by Clymer. The fraud that Jakobitz claims took place involved the purchase of a horse named Late Act. Jakobitz alleges that Clymer told him, as a partner, that the business needed $12,500 to purchase the throroughbred horse when the actual cost of the horse was $10,000. Clymer claims the purchase of Late Act was an individual purchase, outside the scope of their Runaway Dash agreement. He located Late Act and paid the purchase price of $10,000, the inspection fees and transportation expense. Clymer then offered to sell a half-interest in Late Act to Jakobitz for the amount of $12,500.

Jakobitz contends the fiduciary relationship between partners extends beyond the scope of the partnership to all relationships of confidence. *Wheeler v. Waller,* 197 N.W.2d 585, 587-88 (Iowa 1972). He contends Clymer's actions in this deal amount to fraud. However, the case Jakobitz relied on refers to dealings between real estate brokers on one specific transaction. Clymer correctly asserts the purchase of Late Act was a business investment outside the scope of his relationship with Jakobitz, relieving him of any fiduciary duty toward Jakobitz in this transaction. *Wilson v. IBP, Inc.,* 558 N.W.2d 132, 138 (Iowa 1996). A "fiduciary relationship exists between two persons when one of them is

under a duty to act for or to give advice for the benefit of another upon matters *within the scope of the relationship.*" *Id.* (citations omitted) (emphasis added). Jakobitz did not conduct any independent research or even ask Clymer the price he paid for the horse. Because we have found the court did not err in finding two separate partnership agreements, we also find Clymer's actions were outside the scope of the Runaway Dash agreement. Therefore, there was no fiduciary duty owed by Clymer to Jakobitz regarding the purchase of Late Act. We conclude there was substantial evidence to support the trial court's finding on the issue of fraud. We affirm on this issue.

Partnership accounting. Jakobitz alleges Clymer, as the managing partner, had a duty to provide a full and accurate accounting. Iowa Code section 486.20 (1997) provides that "[p]artners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability." Since we have determined that the trial court did not err in finding that there were two separate ventures entered into by the parties rather than one ongoing partnership, Jakobitz is only entitled to view the accounting records of the applicable activities. Like the trial court, we find that the AQHA reports and the Iowa Department of Agriculture reports, which are verifiable by the breeding reports of the mare owners, were sufficient to render a full accounting for the ventures the parties were involved in.

We have treated this portion of our opinion as sounding in equity. Thus, we have made a de novo review of the record. In doing so, we conclude that the

defendant, Clymer, has carried his burden to account for the partnership assets. In this respect, we agree with the trial court when it stated:

> There is no evidence that indicates that the accounting is anything other than what he [Clymer] has said it to be. So the court finds that he has made an accounting.
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> There has also been a counter claim for an accounting by the defendants, and I don't believe that Mr. Jakobitz had anything he could account for. So that cause of action is satisfied as well.

As noted earlier, although we are not bound by the trial court's factual findings, we give weight to them, particularly with regard to credibility of witnesses. *Hanson v. Minette,* 461 N.W.2d 592, 593 (Iowa 1990). We affirm on this issue.

Motion for a new trial. The scope of review for a motion for a new trial is an abuse of discretion by the trial court. *Carolan v. Hill,* 553 N.W.2d 882, 885 (Iowa 1996). In ruling on such motions, the trial court has broad but not unlimited discretion. Iowa R. App. P. 14(f)(3). We will reverse only upon a finding of an abuse of that discretion. *Foggia v. Des Moines Bowl-O-Mat, Inc.,* 543 N.W.2d 889, 891 (Iowa 1996). An abuse of discretion is shown only where such discretion was exercised by the court on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 543 (Iowa 1996). The court did not abuse its discretion by denying the motion for a new trial. We affirm on this issue.

Limited remand as it relates to accounting. Jakobitz asserts he was informed by a mare owner after the trial that there was another Runaway Dash foal that was not included in Clymer's accounting or the court's assessment for damages. He claims Clymer was aware of and was hiding the foal until after the

trial, deliberately excluding the $1,250 value of the foal from any damages ordered. Clymer contends that he did not verify the existence of a foal during the trial but did, in fact, state during the trial that there may be an unaccounted for foal from Bill Fairfield, a mare owner. Jakobitz had access to this "new information" during the trial and failed to verify this information himself. We think this, and only this issue, should be resolved by the trial court and therefore, remand this case for the determination as to whether there is another Runaway Dash foal that was not included in Clymer's accounting or the court's assessment for damages. On remand, if indeed a foal exists, such a finding shall be entered by the trial court and value attributed to that foal. Consistent with the parties previous agreement concerning the two foals previously mentioned in this opinion, title to the newly discovered foal shall vest in Clymer and Jakobitz' judgment shall be increased by one-half of the value of that foal as fixed by the trial court. If such foal does not exist, Jakobitz takes nothing further on this limited remand.

Conclusion. We find there is substantial evidence to support the findings of the trial court and having considered all other arguments raised on appeal, whether discussed specifically in this opinion or not, we affirm. Likewise from our de novo review of the record, we affirm the trial court on the accounting portion of this appeal. As noted, we remand this case for a single, limited purpose.

EXCEPT FOR THE LIMITED REMAND, AFFIRMED IN ALL RESPECTS.