

IN THE COURT OF APPEALS OF IOWA

No. 2-66 / 90-1846

FILED

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CLERK SUPREME COURT

KARL KNUDSON,

Appellee,

vs.

MARK MURPHY,

Appellant,

and

FIRST INTERSTATE BANK OF CRESCO, N.A.,

Defendant.

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Appeal from the Iowa District Court for Howard County,
R. J. Curnan, Judge.

Murphy appeals district court's judgment awarding
Knudson \$14,771.34 in an accounting for termination
pursuant to the parties' partnership agreement. **REVERSED.**

Michael K. Kennedy of Kennedy and Kennedy, New Hampton,
for appellant.

Peter C. Riley of Tom Riley Law Firm, P.C.,
Cedar Rapids, for appellee.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

SCHLEGEL, J.

Mark Murphy, an established sole practitioner, and Karl Knudson, a lawyer with little experience in the practice, formed a partnership for the practice of law. This appeal concerns the dissolution of their partnership. We disagree with the district court's interpretation of their partnership agreement and thus reverse.

In 1984 the parties established a law partnership in Cresco, Iowa, with Knudson becoming a fifty-percent partner in Murphy's practice. As part of the agreement, Knudson paid Murphy \$14,125. The partnership agreement provided that if the partnership was terminated in the first year, Murphy would reimburse Knudson for his monetary contribution. In 1985 the partnership agreement was amended to extend the termination provision.

Murphy had a substantial farming operation, and financial difficulties with that operation caused him to spend an increased amount of time away from the partnership. Murphy was also a part-time magistrate and became a full-time magistrate on September 1, 1987. The parties amended the partnership agreement to reflect this situation. The parties agreed Murphy would receive 100 percent of the revenue from his tax practice and fifty percent of the fees on contingency fee cases with which he was involved. Knudson would receive the remaining partnership income and assume the obligation to pay all the partnership expenses.

In early 1987 Murphy approached Knudson about his desire to sell his interest in the partnership. Murphy claims an agreement was reached, but Knudson denies such. In October 1987 the partnership was terminated by Murphy giving notice to Knudson. Knudson then notified Murphy he elected to terminate under the termination provision of the partnership agreement as amended in 1985. Knudson claimed the net amount Murphy owed him pursuant to the agreement was \$17,236.90.

After commencing the partnership dissolution action, Knudson filed a motion for summary judgment. On September 29, 1989, the district court partially granted the motion for summary judgment, finding the agreement as amended was unambiguous and that the termination provision as amended governed the present termination. After a trial, the district court entered an order recognizing the partnership had terminated pursuant to the rights under the partnership agreement. Applying the amended termination provision of the agreement for each party to reclaim the assets he contributed, the district court found Murphy owed Knudson the sum of \$15,228.06, which included Knudson's initial monetary contribution. The district court offset this amount by Murphy's interest in the partnership law account in the amount of \$456.72. The district court entered a judgment in favor of Knudson and against Murphy in the net amount of \$14,771.34.

Murphy filed a motion for amendment of ruling pursuant to Iowa Rule of Civil Procedure 179(b). On October 31, 1990, the district court denied the motion. Murphy appeals. He claims the district court failed to consider his contribution to the partnership and that Knudson decimated the income-producing assets. He also believes the case must be remanded for a specific order on the fixed assets.

The original partnership agreement of September 10, 1984, provided in paragraph 7(a)(2):

If the partnership is terminated in its first year, a final accounting will be made as of the effective date of the termination, and each partner will be entitled to a 50% share of any net profits from the partnership after accrued expenses. Each partner will reclaim the real and personal property and other assets he contributed upon formation of the partnership, as recited in paragraph #2 of this partnership agreement; will resume any indebtedness on any such property which the partnership assumed upon its formation; and will reimburse the partnership to the extent it made payments towards the principal of any such indebtedness. In the event partnership profits have been used to make substantial improvements to property which is returned to a party upon termination of the partnership in its first year, the partnership shall be reimbursed for any such amounts. Murphy shall reimburse Knudson the money paid over pursuant to Paragraph #2(e) of this agreement. Clients served by the partnership will be notified of its dissolution, and may choose which partner shall retain possession of their files.

Paragraph (2)(e) provided for a payment from Knudson to Murphy of \$14,125. The agreement continues in paragraph 7(b) with provisions to govern termination after the first year. The amendment of August 1, 1985, extended paragraph

7(a)(2): "The provisions of paragraph 7(a)(2) shall remain effective after September 1, 1985, and shall be utilized in lieu of paragraph 7(b) if either partner elects to utilize paragraph 7(a)(2)."

Under the trial court disposition of this case, Knudson got a one-half interest in Murphy's established law firm without payment. If the \$14,125 is returned to Knudson, he will have paid nothing for the benefits he received. Further, Murphy is left with nothing because all the income-producing assets of the partnership have been dissipated. We realize, however, the parties renegotiated other items to suit Murphy.

Our review in this case is de novo. We note that equity jurisdiction gives a court flexibility to work out the equities between the parties. Farmers Savs. Bank v. Gerhart, 372 N.W.2d 238, 245 (Iowa 1985) (citing Skubal v. Meeker, 279 N.W.2d 23, 27 (Iowa 1979)). We have the power to impose equitable terms. Caldwell v. City of Ottumwa, 198 Iowa 666, 673, 200 N.W. 336, 339 (1924).

We find the distribution of the partnership is inequitable. Knudson was the scrivener of the agreement and its amendments. The amendment extended the "termination during the first year" provision indefinitely. A buyer cannot purchase something, use it, and then indefinitely hold the power to return the depleted item. We find that after a reasonable passage of time the extension provision no longer controls.

Applying equitable principles, we determine paragraph 7(b)(2) of the agreement, providing for termination after the first year, controls the dissolution of this partnership. Murphy need not reimburse Knudson for the \$14,125. After payment of all debts and obligations of the partnership, the assets of the partnership shall be divided equally between the parties. Costs are to be split equally between the parties.

REVERSED.