IN THE COURT OF APPEALS OF IOWA

No. 5-016 / 93-1973



**JIM GROSSNICKLE and JAN GROSSNICKLE,**

Appellants,

**vs.**

**WILDLANDS FOR THE FUTURE, LTD.,**

Appellee.

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Appeal from the Iowa District Court for Monroe County, James D. Jenkins, Judge.

The Grossnickles appeal from an order denying their request for dissolution of the defendant corporation. **AFFIRMED.**

Wythe Willey of Wythe Willey Law Office, Cedar Rapids, for appellants.

Diane M. Stahle of Davis, Hockenberg, Wine, Brown, Koehn & Shors, P.C., Des Moines, for appellee.

Considered by Habhab, P.J., and Cady and Huitink, JJ.

**CADY, J.**

Wildlands for the Future, Ltd. (Wildlands) is a corporation which owns 3,626 acres of land used for farming and recreation. The articles of incorporation authorize the issuance of 50,000 shares of common stock with a par value of $10 per share.

Jim Grossnickle is a minority shareholder of Wildlands. Jan Grossnickle is Jim's wife. In September 1983 Grossnickle bought 1,042 shares (about ten percent) of Wildlands stock for $100,000. He bought additional shares in 1984, 1986, and 1987. In 1985 the articles of incorporation were amended to reduce the par value to $1 per share. Grossnickle claims a total investment of $185,500.

In 1988, Grossnickle did not receive notice of Wildlands' annual meeting. At that meeting the shareholders agreed to issue 240,000 shares of stock at par value.

The Grossnickles filed this action seeking a complete or partial dissolution of Wildlands alleging, among other things, that their ownership in the corporation had been unfairly diluted. Following a hearing, the district court denied the Grossnickles' petition. The court found that Wildlands was an active, closely held corporation being managed "as well as one could expect and better than most" and that the corporation owned land which provides its shareholders a substantial income tax shelter and recreational opportunities. The court found that the Grossnickles' investment was diluted because they declined to buy more stock, not because of oppressive conduct or corporate waste and mismanagement.

The Grossnickles appeal.

Under Iowa's Business Corporation Act, the court may dissolve a corporation upon a petition by a shareholder when, among other reasons, the shareholder can demonstrate "illegal, oppressive, or fraudulent" acts by the directors or those in control of the corporation. Iowa Code § 490.1430 (1993). We must decide in this case if the actions of the management committee constituted oppressive behavior. Our review is de novo.

"Oppressive" conduct is not defined by Iowa statute, or the Model Business Corporation Act. Maschmeier v. Southside Press, Ltd., 435 N.W.2d 377, 379 (Iowa App. 1988). It is, however, considered to be an expansive term, and covers a variety of situations centered on improper conduct. Id. at 380. This broad standard provides latitude for courts to determine, on a case-by-case basis, whether the conduct at issue serves to frustrate the legitimate expectations of minority shareholders, or whether the acts are so severe that they warrant dissolution. McCauley v. Tom McCauley & Son, Inc., 724 P.2d 232, 236 (N.M. App. 1986).

We have previously recognized that oppressive conduct involves a course of action which is "burdensome, harsh and wrongful." Maschmeier, 435 N.W.2d at 380 (quoting Baker v. Commercial Body Builders Inc., 507 P.2d 387, 392 (Or. 1973)). It is a "lack of probity and fair dealing with the affairs of a company to the prejudice of some of its members, or a visual departure from the standards of fair dealing, and a violation of fair play in which every shareholder who entrusts his money to a company is entitled to rely." Id.

Many factors have been considered to help draw the parameters of oppressive conduct in the context of closely held corporations. Included is the reasonable expectations of the shareholder derived from the shareholders' original agreement. McCauley, 724 P.2d at 237. On the other hand, mere dissatisfaction on the part of a minority shareholder does not support dissolution. Id. Mismanagement and the misapplication of corporate assets is the type of conduct which can amount to oppression. Maschmeier, 435 N.W.2d at 380-81.

Grossnickle alleges five grounds to support his claim of oppression. They are: 1) failure to pay any return on his investment; 2) concealment of corporate affairs; 3) disregard of corporate procedures; 4) losses caused by concealment; and 5) self-dealing. On our review of the facts, we agree with the trial court that the executive committee did not engage in oppressive conduct.

Oppression is not found simply because a minority shareholder's expectations of the return on investment have not been met. Smith v. Leonard, 876 S.W.2d 266, 272 (Ark. 1994). Disappointment does not constitute oppression. Id. Moreover, acts of the controlling shareholders are not oppressive simply because they do not meet with the approval of the minority. See 19 Am. Jur. 2d Corporations § 2767, at 570 (1986). The totality of the circumstances surrounding the acts, as well as the corporations overall financial condition must be considered. Id.

Under the circumstances of this case, the failure of the Grossnickle's to receive a return on their investment was not oppressive. The Wildlands corporation never accumulated sufficient reserves to pay dividends. Furthermore, the decision to change the par value of the stock did not impact the value of the Grossnickle's stock.

We acknowledge that the remaining claims made by the Grossnickles could support dissolution of a corporation for oppressive conduct. Under the circumstances of this case, however, they do not.

The concealment claim is based largely on the failure of the board to give Jim Grossnickle notice of the 1988 annual meeting. This act was isolated and explained as a mistake. At all other times and in other respects, Grossnickle had full access to corporate information and was given notices of all meetings. The claim that the corporation disregarded procedures is generally based on the personal use of corporate assets, issuing unauthorized stock, and ignoring preemptive rights. We agree with the trial court that the corporation kept adequate records and did not divert corporate assets to personal use. The instances of diversion of assets was explained as a bookkeeping oversight and was promptly corrected. Likewise, the issuance of stock beyond the number of shares authorized in the articles of incorporation is correctable without the need to dissolve the corporation. Furthermore, the evidence did not support the claim that Grossnickle was denied the opportunity to purchase a proportionate amount of additional stock offered by the corporation.

Similarly, the evidence did not support the claim that poor decisions by management committee caused losses to the corporation. The corporation was solvent, and able to pay its debts.

The evidence does indicate that there was self-dealing between some officers of the corporation, but this does not justify dissolution since there was no evidence that the transactions were unreasonable or hidden. See Cookies Food Products Inc. v. Lakes Warehouse Distrib. Inc., 430 N.W.2d 447, 452-53 (Iowa 1988).

We have considered all claims raised by Grossnickle. We affirm the trial court.

**AFFIRMED.**