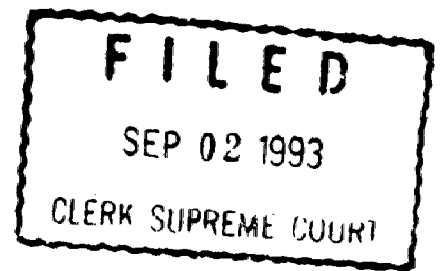


IN THE COURT OF APPEALS OF IOWA

No. 3-023 / 92-417



LOREN L. SIEBKE,

Appellee,

vs.

GERALD A. SIEBKE,

Appellant.

000497

Appeal from the Iowa District Court for Scott County,
James E. Kelley, Judge.

Defendant appeals the trial court's distribution of
assets from the dissolution of a family farm partnership.

AFFIRMED.

John C. Hendricks and Eric J. Thomsen of Stanley,
Rehling, Lande & Van Der Kamp, Davenport, for appellant.

Gary D. McKenrick of Gomez, May; McKenrick & Kelly,
Davenport, for appellee.

Considered by Oxberger, C.J., and Schlegel and Habhab,
JJ.

000438

HABHAB, J.

Plaintiff Loren L. Siebke and defendant Gerald A. Siebke are brothers. In 1978 they entered into an oral agreement to become partners in a farming operation. Initially the partnership was a livestock operation, engaged in raising hogs and beef cattle. The parties' father, Donald Siebke, owned a 181-acre farm in rural Scott County. At that time Donald was not involved in livestock. The partnership made improvements to certain buildings on the farm and used these for their livestock operation.

When the partnership formed, Gerald had a degree from the University of Iowa in accounting and was employed at Deere & Company as an accountant. Loren had completed high school the year previously and was working for Donald on the family farm. The parties agreed that Gerald would supply almost all of the capital for the partnership and Loren would supply most of the labor. They also agreed that after twenty or thirty years they would have an equal partnership.

Gerald testified he spent between twelve to twenty-four hours per week working for the partnership. He did all of the bookkeeping and taxes for the partnership. Gerald worked with the cattle on weekends and some evenings. He was still employed full-time with Deere. Loren testified he spent about fifty hours per week on partnership business. He was primarily responsible for taking care of

the hogs. Loren also worked for Donald in his grain operation.

In 1983 Donald retired and moved to town. The partnership began renting Donald's land and began a crop operation in addition to the livestock operation. Loren was primarily responsible for the crop operation.

In October 1989, Gerald quit his job at Deere and began working full-time for the partnership. Sometime in 1989, Loren told Gerald he could no longer be a partner with him. Loren filed a petition in November 1990 to dissolve the partnership.

At the trial Gerald stated he should be awarded 80% of the partnership assets and Loren should be awarded 20%. He based this proposed division upon the fact that he supplied almost all of the capital for the partnership. Loren asked that each partner be awarded 50% of the partnership assets.

The district court looked at the 1988 partnership tax return, which was prepared before a dispute arose between the parties. In the return the partners reported that Gerald's share of capital was 60% and Loren's share was 40%. The court found the parties' operation did not change after 1988. The court therefore ordered that 60% of the parties' assets should be awarded to Gerald and 40% to Loren. Gerald has appealed.

Actions for the dissolution of a partnership sound in equity and receive a de novo review on appeal. Engel v. Vernon, 215 N.W.2d 506, 512 (Iowa 1974). We review the

000500

facts as well as the law and enter the conclusion we deem proper. Id.

Gerald states that because there was no written or oral agreement for the dissolution of the partnership, the court must apply Iowa Code section 544.40 (1991), now section 486.40 (1993). He claims that under this section he is entitled to at least 77.6% of the partnership assets, which represents the percentage of the capital he contributed.

Generally, in the dissolution of a partnership, the net assets are determined after all the affairs of the partnership have been concluded and wound up, and a distribution is made among the partners according to their respective shares. Wolf v. Murrane, 199 N.W.2d 90, 100 (Iowa 1972). The question here is whether there was any agreement between Gerald and Loren concerning their respective shares in the partnership.

In Iowa, the terms of a partnership agreement need not be formally expressed, but may be inferred or established, in whole or in part, from the acts of the parties. Medd v. Medd, 291 N.W.2d 29, 34 (Iowa 1980). The partners' intentions may be gleaned from their conduct and the circumstances surrounding their transactions. Thorp Credit, Inc. v. Wuchter, 412 N.W.2d 641, 647 (Iowa App. 1987). Insofar as a partnership agreement covers the relationship of the parties, it is a contract between them. Wolf, 199 N.W.2d at 97.

We agree with the district court that the evidence shows that the parties did have an agreement concerning their respective shares in the partnership. Thus, section 544.40 is inapplicable to this case. When the partnership started, Gerald held a larger share in the partnership. However, the parties anticipated that Loren's work would build up his share in the partnership, so that eventually Gerald and Loren would have equal shares.

We also agree with the district court that the last true indicator of the parties' agreement concerning their respective shares was the 1988 tax return. We therefore affirm the district court's conclusion that Gerald is entitled to 60% of the partnership assets and Loren is entitled to 40% of the partnership assets.

Costs of this appeal are assessed to Gerald Siebke.

AFFIRMED.