IN THE COURT OF APPEALS OF IOWA 353

No. 1-106 / 90-662

PAUL D. PONCY, D.O.,

Appellee,

vs.

M. G. PARKS, STEPHEN S. JEWETT,

Defendants,

and

CHARITON VALLEY MEDICAL CENTER, P.C.,

Appellant.

FILED
SEP 24 1991
CLERK SUPREME COURT

Appeal from the Iowa District Court for Appanoose County, James P. Rielly, Judge.

Appellant appeals a district court judgment against the corporation for $119,401. **AFFIRMED AS MODIFIED.**

Sidney E. Drake of Drake, Wilson & Jay, Centerville, and David L. Phipps and Gary A. Norton of Whitfield, Musgrave & Eddy, Des Moines, for appellant.

Kenneth L. Keith and Lloyd E. Keith of Keith, Orsborn, Milani & Neary, Ottumwa, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J.

Plaintiff Paul D. Poncy, D.O., was a shareholder in Chariton Valley Medical Center, P.C., along with two other medical doctors, M. G. Parks and Stephen Jewett. When Poncy decided to leave the corporation in October 1988, the parties were unable to reach an agreement concerning the corporation's purchase of his shares. Poncy brought this suit in equity seeking a determination of the value of his share in the professional corporation.

Chariton Valley Medical Center was organized as a corporation in 1976. Attorney Richard Howes drew up several corporate documents, including bylaws, organizational minutes, an employment agreement, and a stock redemption agreement. The Articles of Incorporation were signed by the original incorporators, Parks, Jewett, and Dr. Gary Gustafson. No signed copies of any other corporate documents were produced at trial. The provisions of the unsigned corporate documents were followed when Gustafson withdrew and when Poncy bought into the corporation.

The district court concluded the unsigned corporate documents were binding on the parties. The court determined Poncy was entitled to $119,401, and entered judgment against the corporation for that amount. This amount represented Poncy's interest in the assets, $26,396.72, and accounts receivables, $70,081.57. The

court added $5,080 as a refund for malpractice premiums paid and $574 for services rendered after October 31, 1988. The court then subtracted $2,500 which Poncy owed the corporation. Finally, the court found Poncy should be reimbursed $19,166 for tail medical malpractice liability insurance. Tail insurance would cover claims made against Poncy for work he performed for the corporation prior to the time the corporation changed to claims-made malpractice insurance. The corporation now appeals.

I. This case was heard in equity. It follows our review is de novo. Holi-Rest, Inc. v. Treloar, 217 N.W.2d 517, 523 (Iowa 1974). Although we are not bound by trial court's fact-findings they are accorded weight, especially when considering the credibility of witnesses. Id.

II. The corporation contends the court erred in finding the unsigned documents were binding on the parties. It states there was never any intent the stock redemption agreement or employment agreement would be effective. Furthermore, the corporation asserts that any agreement between the parties had been modified. It points out that while profits had been divided evenly at the time of incorporation, by the time Poncy withdrew compensation was based entirely on productivity. The corporation believes Poncy should receive $50,795.

The relationship between a corporation and its stockholders is contractual. Berger v. Amana Society, 250

Iowa 1060, 1065, 95 N.W.2d 909, 912 (1959). The corporate charter and state statutes are considered part of the contract. Id. at 1066. Iowa Code section 496C.14 provides that a professional corporation may set forth in its articles of incorporation or bylaws an agreement on how it will purchase its own shares. The Chariton Valley Medical Center, P.C., did have such an agreement, although it was not signed by the parties.

Signatures of the parties are not essential for establishment of a binding contract if manifestation of mutual expressions of assent is otherwise shown. Service Employees International, Local No. 55 v. Cedar Rapids Community School District, 222 N.W.2d 403, 407 (Iowa 1974). Even if neither party has signed a contract, it still may be binding if there has been mutual assent. Id.

Equity regards substance over form and disregards technicalities to prevent injustice. Bump v. Stewart, Wimer & Bump, P.C., 336 N.W.2d 731, 736 (Iowa 1983). An equity court will not hesitate to indulge in inferences which will avoid unfair or inequitable results. Holden v. Construction Machinery Co., 202 N.W.2d 348, 361 (Iowa 1972). An equity court may enforce an agreement if it is evident an agreement has been reached and the parties have accorded full recognition to it. Id. at 363.

We conclude the evidence in this case shows the parties agreed to and recognized the payout formula to be used when

a doctor left the practice. This formula was used when Dr. Gustafson left the practice. The fact that the original formula for compensating the doctors had not been followed does not mean other portions of the corporate documents should not be followed. See Maschmeier v. Southside Press, Ltd., 435 N.W.2d 377, 383 (Iowa App. 1988). We hold the buy-out formula in the corporate documents is binding on the parties.

Both parties agree the court incorrectly added $5,080 because this amount was already reflected in Poncy's share of the assets. We reduce Poncy's judgment by $5,080.

III. The corporation contends Poncy should not be reimbursed $19,166 for the cost of tail insurance. The shareholders had agreed to start a fund for malpractice tail insurance, but no money was ever placed in the fund. The corporation disputes the court's finding that the corporation had the intent to reimburse shareholders for tail insurance. The corporation also asserts if the malpractice tail insurance is a corporate debt, Poncy should be responsible for one-third of it.

We find the cost of tail insurance is a corporate debt. The corporation realized a benefit when the type of malpractice insurance coverage was changed in 1984. The shareholders realized this change in coverage would probably necessitate the purchase of tail coverage sometime in the future. Although a fund for tail insurance was not

actually started; equity regards as done that which ought to be done. See Bump, 336 N.W.2d at 736.

However, because the $19,166 is a corporate debt, each shareholder is responsible for one-third of that amount. We reduce Poncy's judgment by $6,388.66.

IV. The corporation also contends it should be allowed to pay the judgment amount in installments. The stock redemption agreement provides for 24 monthly payments.

As noted above, the corporate documents are binding on the parties and should be followed. The method of payment in a corporate buy-out should be made in a manner consistent with the bylaws. Maschmeier, 435 N.W.2d at 383. We conclude the corporation has 24 months from the date this opinion is filed to pay the judgment in full.

V. In summary, Poncy was awarded $119,401 by the district court. We have reduced that amount by $5,080 and $6,388.66. Poncy is now awarded the amount of $107,932.34. We enter judgment against Chariton Valley Medical Center, P.C., for that amount. The judgment may be paid in 24 monthly installments of $4,497.18 plus interest. Costs are assessed one-half to each party.

AFFIRMED AS MODIFIED.