IN THE COURT OF APPEALS OF IOWA

No. 0-515 / 90-236

FILED
MAY 29 1991
CLERK SUPREME COURT

265

DIXIE SHELTON,

Appellant,

vs.

NANCY DIGMAN,

Appellee.

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

Plaintiff sought accounting of partnership of certified shorthand reporters. She appeals judgment in her favor for $6,263, claiming goodwill of partnership was valued too low. **AFFIRMED.**

Michael J. Coyle of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, for appellant.

Michael A. Stapleton, Dubuque, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Plaintiff Dixie Shelton brought this action for an accounting of the partnership "Reporting Services," in which she had formerly been a partner. The district court awarded Shelton $6,263.18, plus interest, for her portion of the partnership. We affirm.

The business known as Reporting Services was established in Dubuque, Iowa, by David Kirk. Reporting Services provided freelance certified shorthand reporter services. Kirk also started businesses under the name of Reporting Services in Davenport, Iowa; Rockford, Illinois; Rock Island, Illinois; and Rochester, Minnesota. These businesses were loosely associated, and each was independently owned.

In 1979 Dixie Shelton and Nancy Digman bought the Reporting Services business in Dubuque from Kirk. They each paid Kirk $5,000 up front. Kirk also received five percent of the gross receipts of the business for the first two years, which came to $9,120. Thus, the purchase price was $19,120. Of this amount, $10,000 was allocated to goodwill. The remainder of the purchase price paid for the physical assets of the business.

Shelton and Digman were partners and worked as reporters in the partnership. Income was not shared equally, but each partner was compensated for work actually done based on a charge for reporting time, a charge for mileage, and a charge per page for the original document

transcribed. The income from fees they charged for copies of the original was used to pay business expenses of the partnership. Any income remaining at the end of a year was divided between the two partners equally. Over the years, two-thirds of the income was attributable to Digman, and one-third was attributable to Shelton.

Shelton left the partnership on February 2, 1987. Digman continued to operate in Dubuque under the name of Reporting Services, but in October 1988 changed the name of the business to Reporting Associates. Shelton and Digman made offers to buy each other out, but no agreement could be reached.

Shelton subsequently brought this action for an accounting. The district court determined that Shelton was entitled to $2,603.62 for reporting time, $109.56 for mileage, and $2,800 for discounted accounts receivable. $750 was deducted as one-half of current long-term debt. The court valued the goodwill of the business at $3,000, and awarded Shelton one-half, or $1,500. Shelton was awarded a judgment of $6,263.18, plus interest.

Shelton appealed, claiming the goodwill was valued too low and she should receive something to reflect the going concern value of the business.

Actions for accounting upon dissolutions of partnerships are in equity and our review is therefore de novo. Jensen v. Schreck, 275 N.W.2d 374, 378 (Iowa 1979); Iowa R. App. P. 4. We have a duty to examine the entire

record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). We are not bound by the findings of the trial court, but give weight to them. Hum v. Ulrich, 458 N.W.2d 615 (Iowa App. 1990).

We first consider the question of whether a going concern value should be added into the value of the business. Shelton contends that the value of Reporting Services should be enhanced in order to reflect the fact that Digman did not have to start the business; it was already operational when she took over. However, the element of value designated a "going concern" is but another name for "goodwill". Cedar Rapids Gas Light Co. v. City of Cedar Rapids, 144 Iowa 426, 434, 120 N.W. 966, 969 (1909). We do not believe there should be a separate addition to the value of Reporting Services to reflect a going concern value.

Turning then to the issue of goodwill, we realize that "when one partner succeeds to all of the interests of a partnership and the future of the enterprise looks promising, the successor in interest should be required to pay some amount for the goodwill of the business." Wolf v. Murrane, 199 N.W.2d 90, 100 (Iowa 1972). Ordinarily, goodwill is an asset of a partnership, and unless it is without value, should be accounted for upon dissolution. Hum v. Ulrich, 458 N.W.2d 615, 617 (Iowa App. 1990), (citing Wolf v. Murrane, 199 N.W.2d 90, 100 (Iowa 1972)).

The issue in this case involves the goodwill of the partnership, not the goodwill of the individual partners. Generally, a partnership name is only an element of goodwill. Engel v. Vernon, 215 N.W.2d 506, 514 (Iowa 1974). Goodwill will not necessarily follow the partnership name where the personalities of the respective partners played a dominant role in obtaining and retaining customers. Id. This is particularly true in a professional partnership. See Bump v. Stewart, Wimer & Bump, P.C., 336 N.W.2d 731, 736 (Iowa 1983).

The certified shorthand reporters in this partnership were required to be licensed by the state. See Iowa Code § 602.3101 et seq. The goodwill generated by Reporting Services was primarily associated with the individual partners and not with the partnership. The reputation of the business depended to a great extent on the skill, speed, and promptness of each reporter.

Shelton presented the testimony of Charles Westphal, a certified shorthand reporter in competition with Reporting Services in Dubuque. Westphal testified that Reporting Services had goodwill worth $15,300. The trial court specifically stated that it gave little credence to Westphal's testimony. Although we are reviewing the record de novo, we give special deference to the trial court's findings concerning the credibility of witnesses. Iowa R. App. P. 14(f)(7).

We believe that $3,000, the amount of goodwill as found by the trial court, is equitable under the circumstances of this case. Shelton is entitled to one-half of this amount, or $1,500.

We also affirm the judgment to Shelton of $6,263.18. We also affirm the assessment of interest from August 4, 1988, the date the petition for accounting was filed.

AFFIRMED.