FILED
JUN 30 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DEAN WOLF and HELEN WOLF,	)	
Appellees,	)	Filed June 30, 1978
v.	)	
JANELLE MURRANE and THOMAS MURRANE,	)	535 2-60555
Appellants.	)	

Appeal from Story District Court - Paul E. Hellwege, Judge.

Defendants appeal from trial court judgment in an action to determine the actual value of a dissolved partnership's "unfinished business." Affirmed in part, modified in part, and remanded.

Thomas L. McCullough, of Sac City, and Joseph G. Bertroche and William M. Murray, of Bertroche & Hagen, of Des Moines, for appellants.

William A. Singer, of Pasley, Singer, Pasley & Holm, of Ames, for appellees.

Heard by Allbee, C.J., Snell, Oxberger and Carter, JJ. Donielson, J., takes no part.

PER CURIAM 277

The parties to this action were partners in a travel agency enterprise known as Trans-Travel. The plaintiffs petitioned to dissolve the partnership in January of 1969. Following trial court judgment in 1970 and review by the supreme court, Wolf v. Murrane, 199 N.W.2d 90 (Iowa 1972), a remand was ordered to determine "the actual value of the unfinished business of the partnership as of the date of dissolution but later completed." The other value determinations necessary to divide the partnership net assets have been made by the supreme court. Defendants appeal from the March 14, 1977 judgment entered after trial on remand.

The major undertaking affecting the value of "unfinished business" of Trans-Travel was a group tour of the orient organized for the Lions Club of Iowa. The work involved was begun prior to plaintiffs' October 31, 1968 departure and completed during the year subsequent thereto, 1969. On appeal, the controversy has been narrowed to the legitimacy of certain expenses defendants seek to deduct from the income of the Lions tour. The parties have characterized these as overhead expenses, collection expenses, and trip expenses. Our review of the evidence presented in the trial court is de novo. Rule 4, Rules of Appellate Procedure; Wolf v. Murrane, 199 N.W.2d 90, 99 (Iowa 1972).

I. Overhead expenses. Evidence regarding the controverted expenses was presented at trial primarily through the testimony and reports of two accountants, Gene Dougherty, a court appointed C.P.A., and Kevin Stear, a C.P.A. retained by defendants. Prior to trial Dougherty and Stear conferred and reconciled certain differences in their reports. One area of agreement was that a certain proportion of the undisputed 1969 Trans-Travel overhead expenses must be allocated to "unfinished business." The accountants agreed that the necessary proportion should be found by applying to the 1969 overhead the ratio of the receipts from the Lions tour to total Trans-Travel receipts for 1969. Both Dougherty and Stear testified that they applied this formula. However, Dougherty found a 31% ratio and Stear a 41% ratio. The trial court found 20% to be the proper ratio.

The trial court apparently adopted its 20% figure in response to Dougherty's testimony that his 31% figure was an upper limit and that the actual ratio was somewhere between 31% and zero because the trip was actually sold prior to the dissolution of the partnership. We feel compelled, however, to adopt either the 31% or 41% ratio, both of which find some support in the evidence. The record evidence, taken

as a whole, provides no rational basis for adopting a different ratio. Application of the ratio to the overhead was the accepted method of bypassing the impossible task of attempting to account for each minute of time and dollar of expense necessary to expedite the tour. For this reason, much of the evidence relied on to undermine the accuracy of the ratios is inconsistent with the method agreed upon and therefore of no assistance.

The components of Dougherty's 31% ratio of Lion tour receipts to 1969 Trans-Travel receipts were itemized in his report. (Plaintiffs' Exs. I, II.) Those of Stear's 41% ratio were not itemized in his report. (Defendants' Exs. A, B.) Stear testified that his figure for the Lions tour receipts was more than $90,000 higher than Dougherty's because Dougherty's figure did not include advance deposits from the Lions required by Trans-Travel which the partnership allowed the Lions to hold in a special savings account. Accepting momentarily the propriety of including the $90,000 in the formula, Stear still failed to account for approximately $80,000 of alleged 1969 Trans-Travel receipts necessary to justify his 41% ratio. That being the case we accept the better documented 31% ratio found by Dougherty. It is the best evidence available. See Petty v. Haas, 122 Iowa 257, 259, 98 N.W. 104 (1904). The allowable overhead expense is thereby determined to be $3737.67.

II. Collection expenses. The agreement with the Lions club members provided for cash payments prior to the trip. Because only 122 people made the trip rather than the anticipated 144, the cost to the Lions was unexpectedly, proportionately increased. After the trip several Lions members balked at paying the increase. Trans-Travel, having paid the required amount prior to the trip, therefore incurred the expense of initiating numerous small claims actions in their attempt to recover the money expended. The defendants itemized these expenses and the trial court allowed $523.20, including attorney fees. Not allowed by the court were the $870 of travel, motel and food expenses spent by defendants in order to testify in the small claims actions. In so ruling the court seemed to give force to paragraph eight (8) of the partnership agreement which provided that each partner would work without compensation, accepting only their share of the partnership profits.

While we recognize that the partnership agreement is a contract between the parties, Wolf v. Murrane, 199 N.W.2d 90, 97 (Iowa 1972), we conclude the agreement does not cover this issue. Acting on the equitable principle that defendants could have

reasonably anticipated plaintiffs' equal participation in the collection effort had the partnership continued, we modify the collection expense allowed by including 50% of the $870 expense item. This has the result of increasing the trial court's finding on this issue from $523.20 to $958.20. See Roth v. Boies, 139 Iowa 253, 270-71, 115 N.W. 930 (1908); 60 Am. Jur. 2d, Partnership § 233.

III. Trip expenses. These expenses were incurred because of and at the time of the Lions club tour. They include telephone calls, bills for advertising the tour, compensation for defendants and other employees, and interest on loans made to the partnership by defendants. Of the $674.68 claimed for telephone calls, the trial court allowed $324.85, reflecting those calls which had either an overseas source or destination. We affirm this allowance. We likewise affirm the trial court allowance of $519.75 for items such as advertising.

Other items of "trip expenses" require modification. Defendant submitted a bill of $2700 for his services in the orient. We conclude, for the same reasons stated in division II, supra, that 50% of this sum, or $1350, should be allowed. Defendants also requested an allowance of $885.49 which represents 9% annual interest on $30,000 of loans made to the partnership by them. The trial court disallowed this item after presuming that the loans were necessitated by defendant's decision to allow the Lions club to hold their cash advances in a savings account for their own benefit. Because we find that the loan was necessary at the time to offset the additional trip cost occasioned by the unexpectedly low number of Lions on the trip, we conclude that some interest expense is allowable. See Cass v. Ney, 209 Iowa 17, 22, 227 N.W. 512 (1929); Coldren v. Clark, 93 Iowa 352, 61 N.W. 1045 (1895); 60 Am. Jur. 2d, Partnership § 287. In determining the interest expense, however, we limit the annual rate thereof to 6%, the rate authorized for such loans by paragraph seven (7) of the partnership agreement. The interest expense thus allowed is $540.66, and total trip expenses allowed are $2735.26.

IV. Computing from the $7699.97 "starting point" figure agreed to by the parties and court below, and deducting the expenses allowed above, we find the value of the unfinished business of Trans-Travel to be $268.84. We remand to the trial court for entry of judgment based on this finding and the supreme court remand order reported at 199 N.W.2d 90, 101 (Iowa 1972). The determination of costs made by the trial court below is affirmed. Costs on appeal are charged to plaintiffs.

Affirmed in part, modified in part, and remanded.