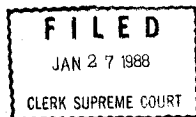


IN THE COURT OF APPEALS OF IOWA



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VERA B. ATKINSON, Executor of the)
Estate of MILTON E. ATKINSON;
VERA ATKINSON, SANDRA ATKINSON,)
and BRUCE ATKINSON,)

Plaintiffs-Appellants,)

Filed January 27, 1988

vs.)

DENNIS B. NEWBERG and)
LA DONNA NEWBERG,)

7-468
86-1527

Defendants-Appellees.)

Appeal from the Iowa District Court for Plymouth County (No. 24272),
Dewie J. Gaul, Judge.

Plaintiffs appeal from the trial court's decision in an action for a partnership accounting wherein the trial court adopted a special master's report which was generally favorable to defendants. **AFFIRMED.**

Joe Cosgrove of Yaneff & Cosgrove, Sioux City, for plaintiffs-appellants.

Patrick N. Murphy of Dull, Murphy & Dull, Le Mars, for
defendants-appellees.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

DONIELSON, P.J.

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Plaintiffs appeal from the trial court's decision in an action for a partnership accounting wherein the trial court adopted a special master's report which was generally favorable to defendants. We affirm.

From 1969 to 1980, Dennis Newberg and Milton Atkinson were partners in a farming operation. Atkinson provided the land and buildings, Newberg provided the labor and machinery, and the two split any profits or losses on a 50-50 basis.

In about 1979, tensions developed between the partners, and in 1980, the partnership was dissolved. Atkinson and his relatives (co-owners of the land) later filed the present action for an accounting. (Atkinson's executor has been substituted as a party following Atkinson's death.)

The trial court appointed a special master to resolve the complicated factual issues. The special master issued a report generally favorable to Newberg. The special master concluded, as Newberg had argued, that the partners had reached a satisfactory accounting and settlement between themselves at the end of each year.

The trial court later entered a judgment adopting the conclusions of the special master. The Atkinsons have appealed from this judgment.

Our scope of review is de novo. Iowa R. App. P. 4. In equity cases we give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

L. The Atkinsons contend the evidence did not support the special master's finding that the partners had reached a mutually satisfactory accounting of their respective partnership interests at the end of each year. Newberg argues that the closing of the books at the end of each year based on a review

of invoices, receipts, billings, and cancelled checks is to be construed as a settlement and acceptance of their accountings as between themselves; he contends since Atkinson had no quarrel or complaint with him in reference to the bookkeeping or accounting for ten years, that constitutes manifestation of assent of the "account stated." An "account stated" may be clarified as follows:

When the parties to a joint venture have had an accounting between or among themselves as to the amount of profits which each is to have, it constitutes an account stated between the parties, and in accordance with the well settled rule, cannot be reopened or set aside unless impeached for fraud or mistake, especially if the parties have allowed it to stand for a long time without objection.

Johanik v. Des Moines Drug Company, 240 Iowa 310, 314, 36 N.W.2d 370, 372 (1949). Atkinsons reply that the year-end accounting was merely a profit and loss statement for tax purposes and that there was no discussion between the two parties in regard to their respective interests in the partnership capital.

Iowa Rule of Civil Procedure 214 states that the court shall adopt the master's findings of fact unless clearly erroneous. A finding of fact is clearly erroneous if the reviewing court, upon an independent evaluation of the entire record, has a definite and firm conviction that a mistake has been committed.

Rowen v. LeMars Mut. Ins. Co. of Iowa, 347 N.W.2d 630, 634 (Iowa 1984).

The trial court adopted the special master's conclusion that the year-end accountings resulted in an "account stated." We agree that this factual determination is not clearly erroneous and thus affirm the trial court in this finding. While Atkinsons claim Newberg did not meet his burden to prove that the year-end accountings amounted to an agreement that the partners regarded the contributions and withdrawals as equal, we find otherwise. Atkinsons contend the year-end accounting was merely a profit and loss statement. Even so, Atkinsons concede that the profits and losses were to be split on a 50-50 basis. Numerous

years went by without objection by Atkinsons. We affirm the trial court in its conclusions.

II. The Atkinsons also challenge the conclusion by the special master and the trial court that the annual accountings constitute a binding agreement between the partners that their relative partnership interests are satisfactory. They argue more than a profit and loss statement is needed to determine a partner's interest in capital. The court in Johanik, 240 Iowa at 314, 36 N.W.2d at 372, stated that the amount of profits each party is to receive constitutes an account stated. Since the parties were to share profits or losses equally, we find no error occurred in finding the annual accountings amounted to accounts stated.

III. In addition, the Atkinsons contend the special master and the trial court erred by finding that there was insufficient evidence of fraud or mistake to justify setting aside the annual settlements. See Johanik, 240 Iowa at 315, 36 N.W.2d at 373. Atkinsons argue Newberg wrongfully retained cash proceeds from the marketing of partnership livestock and used money for purely personal purposes. We agree with the trial court that the master was in a position of viewing the witnesses in light of the conflicting testimony on this issue and that he was in a better position to judge the integrity and fair dealing of the parties. See id. at 316, 36 N.W.2d at 373. We do not find the master's finding of fact that there was no fraud involved to be clearly erroneous. Atkinsons have not met their burden in establishing fraud by proof that is clear, satisfactory, and convincing. Id.

IV. Finally, the Atkinsons contend the trial court should have required Newberg to bear the burden to prove the fairness of the annual accountings. Because we held in section III of this opinion that there was not substantial evidence of self-dealing, we find the trial court did not err in not placing the

burden of proof of the accountings with Newberg. See Clinton Land Company v. M/S Associates, Inc., 340 N.W.2d 232, 234-35 (Iowa 1983).

Accordingly, we affirm the trial court in all respects.

AFFIRMED.