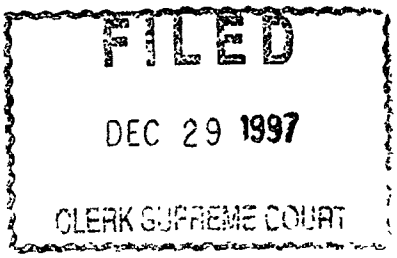
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IN THE COURT OF APPEALS OF IOWA

No. 7-449 / 96-1161
Filed December 29, 1997



RODNEY FASTERT, on Behalf of FASTERT HOLSTEINS, A Partnership,
Appellee,

vs.

JOHN FASTERT,
Appellant.

Appeal from the Iowa District Court for Lyon County, Joseph J. Straub, Judge.

Defendant John Fastert appeals from the entry of a decree dissolving a business partnership. **AFFIRMED.**

Michael R. Bovee of Montgomery, Barry & Bovee, Spencer, for appellant.

Keith Thompson, Wolff, Whorley, DeHoogh & Thompson, Sheldon, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

STREIT, P.J.

One brother appeals a trial court's holding that the partnership agreement with the other brother did not govern the entire business relationship between the siblings. Prior to December 1, 1989, Rod and John Fastert owned registered Holstein dairy cows individually and jointly. They, with their father, Ernest, worked a family milk cow operation. The arrangement with Ernest was he would care for all the cows, pay all the expenses, and receive all the milk money and the bull calves from all the cows. Rod and John paid no expenses and received no milk money, but did keep the heifer calves from their individually-owned cows. Ernest Fastert sold his Holstein herd in August 1989.

The partnership agreement between Rod and John, signed December 1, 1989, but effective September 1, 1989, provided, "[a]ll property originally brought into the partnership or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property." The brothers contributed cattle to the partnership worth $62,150. The 1989 schedule K-1's showed each partner contributed fifty percent and had a fifty-percent ownership interest in the partnership. However, the cattle listed on the partners' contribution to capital did not include all of the individually-owned cattle.

The record reveals the partners operated the partnership in a manner similar to the prior arrangement with their father. The partnership owned some cows. The partners also owned some cows individually. The partnership cared for all the cows,

paid all the expenses, and received all the milk money and the bull calves from all the cows. The heifer calves from the individually-owned cows were kept by their respective owners. The partners shared equally in the profits and losses of the partnership.

Following continued disputes between the partners, on December 15, 1994 Rod petitioned the court to dissolve the partnership pursuant to Iowa Code chapter 486. On December 13, 1994, the partnership held a dispersal sale. A serious dispute arose between the partners concerning the distribution of the net proceeds. Rod claimed he should receive the proceeds from the sale of his personal cows and heifers and half the proceeds from the sale of partnership cows and heifers. John claimed all the animals sold were partnership property and all the proceeds should be divided equally between the partners.

After trial in April, 1996, the court granted a decree of dissolution of the partnership. The court determined the partners had continued in a course of conduct similar to their association with their father, instead of following the terms of the partnership agreement. The court found certain cows and heifers belonged to Rod personally. The court ordered the parties to follow the dissolution procedures in section 486.40. John appeals, arguing the court erred in its determination the parties had not followed the partnership agreement and that certain of the cows and heifers were owned by Rod personally.

This action was tried in equity. Our review is de novo. Iowa R. App. P. 4. We examine the entire record and determine the parties' rights anew from the evidence presented. *Griess & Ginder Drywall, Inc. v. Moran,* 561 N.W.2d 815, 816 (Iowa 1997). Although we give weight to the fact findings of the district court, we are not bound by them. Iowa R. App. P. 14(f)(7).

Article VIII of the partnership agreement provides in part:

> All property originally brought into the partnership or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property. A complete inventory showing the ownership and value of all property used in the partnership shall be made at the time that this Agreement starts and at the end of each year thereafter. All of the property listed on said inventory shall be considered partnership property.

John asserts the financial statements prepared for their lender constitute the inventory required by this article and show the animals claimed by Rod are partnership property. Rod responds that the inventory prepared at the beginning of the partnership, showing contributions to capital demonstrates he did not contribute the animals and their progeny he now claims as his personal property. John's wife prepared a breakdown of the proper allocation of the December, 1994 dispersal sale proceeds for the partnership's tax accountant. This document clearly shows both partnership and individual ownership of cows and heifers sold. Rod owned some cows and heifers individually. Not all of the cows and heifers cared for by the partnership were partnership property. We affirm the trial court on this issue.

Our review of the record convinces us that John and Rod, notwithstanding the language of the partnership agreement, operated their business essentially the same as they had operated with their father. Their past and continued course of dealing assists us in understanding their partnership agreement. *Dunn v. General Equities of Iowa, Ltd.*, 319 N.W.2d 515, 516-17 (Iowa 1982); *see* Restatement (Second) of Contracts § 223 (1979). It supplements and qualifies their agreement. *Id.* In addition, John handled the registration of the animals and cannot now say he thought the animals claimed individually by Rod belonged to or were registered in the name of the partnership. We do not agree with the trial court there was an oral agreement between the parties. However, their conduct evidenced a meeting of the minds. Their prior course of dealing and their conduct during the partnership persuade us their actual operating practices did not entirely follow the partnership agreement language. *See Central Iowa Grading, Inc. v. UDE Corp.*, 392 N.W.2d 857, 860 (Iowa App. 1986); *Adair County Farm Service v. Creston Feed & Grain, Inc.*, 390 N.W.2d 608,610-11 (Iowa App. 1986). We affirm the trial court on this issue.

John also argues the cows and heifers should be considered partnership property because the partnership paid all the expenses for these animals. As discussed above, the conduct of the parties belies this assertion. The partnership continued the same course of conduct as the brothers' earlier association with their father. The cases John cites in support of his argument are inapposite. They confirm that property purchased with partnership funds are partnership property even if titled differently. The cows and heifers claimed by Rod were not purchased with partnership funds.

Simply caring for the animals with partnership funds does not convert them to partnership property.

We conclude any other arguments raised by John are either covered by this opinion or are without merit. We therefore affirm the trial court in all respects.

AFFIRMED.