

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD R. SCOTT, III,

Plaintiff/Counter-Defendant-
Appellee,

V

DAVID L. SCOTT,

Defendant/Counter-Plaintiff/Third-
Party Plaintiff-Appellant,

and

SCOTT MACHINE, INC.,

Third-Party Defendant-Appellee.

UNPUBLISHED
December 4, 2001

No. 221514
Jackson Circuit Court
LC No. 97-079697-CB

Before: O’Connell, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

David L. Scott appeals as of right from a judgment in favor of Edward R. Scott, III, and Scott Machine, Inc. (“Scott Machine”), which was entered at the conclusion of David L. Scott’s proofs in a bench trial. We affirm.

Although the trial court stated that it was granting appellees’ motion for summary disposition, in light of the fact that the motion was decided after consideration of appellant’s proofs at trial, the motion was more akin to a motion for directed verdict, which, in a bench trial, is treated as a motion for involuntary dismissal under MCR 2.504(B)(2). See *Sands Appliance Services v Wilson*, 231 Mich App 405, 409; 587 NW2d 814 (1998), rev’d on other grounds 463 Mich 231 (2000); *Samuel D. Begola Services, Inc v Wild Brothers*, 210 Mich App 636, 639; 534 NW2d 217 (1995). Therefore, the proper standard of review in this matter is the clearly erroneous standard. *Phillips v Deihm*, 213 Mich App 389, 397; 541 NW2d 566 (1995). We will not overturn the trial court’s decision unless the evidence manifestly preponderates against the decision. *Id.*

To the extent that appellant argues that the trial court’s decision, as an involuntary dismissal, lacked sufficient findings of fact and conclusions of law as required by MCR 2.517, we find this argument to be without merit. The brief findings indicate that the trial court was

aware of the issues, correctly applied the law, and provide a sufficient basis to facilitate appellate review. See *Triple E Produce Corp v Matronardi Produce, LTD*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

In his counter-claim, appellant alleged that Edward Scott breached a duty to the partnership created by appellant and Edward Scott. The trial court concluded that appellant failed to establish that any such duty existed. As a partner, Edward Scott did owe a fiduciary duty to the partnership. See MCL 449.21. However, the breaches alleged by appellant were the result of conduct taken by Scott Machine. While Edward Scott was president of Scott Machine, the decisions of Scott Machine were made by the board of directors, not Edward Scott, individually. Appellant has offered no authority for the proposition that Edward Scott can be held liable to the partnership, or appellant, for the actions taken by a separate, corporate entity. Without such authority, appellant's counter-claim must fail as a matter of law.

As for appellant's third-party complaint against Scott Machine, the trial court found that appellant's proofs in this regard were "totally lacking." After a review of the evidence, we find no clear error. Perhaps the biggest evidentiary shortfall was appellant's failure to introduce the lease into evidence. Without the lease, it is difficult, if not impossible, to determine the exact nature of the duties that Scott Machine had in regard to the partnership and its property. Based on appellant's testimony, the documentary evidence introduced by appellant, and the conflicting testimony of appellee Edward Scott, we simply cannot conclude that the evidence manifestly preponderates against the trial court's decision.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Michael R. Smolenski