

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT BEALS, EUGENE P. HARMON,
KAREN R. MARCEAU, Personal Representative
of the Estate of KEITH A. MARCEAU, EUGENE
R. MARCEAU and ROBERT J. MARCEAU,

Plaintiffs-Appellants,

v

R. DOUGLAS MARCEAU, BLAYNE
ANDRESEN and FOUR FORTIES CLUB,

Defendants-Appellees.

UNPUBLISHED

August 4, 2009

No. 285591

Dickinson Circuit Court

LC No. 06-014508-CB

Before: Owens, P.J., and Servitto and Gleicher, JJ.

PER CURIAM.

In this partnership dispute, plaintiffs appeal by leave granted a circuit court order denying their motion for summary disposition and granting defendants' motion for summary disposition. We reverse and remand for further proceedings, and decide this appeal without oral argument pursuant to MCR 7.214(E).

In September 1990, members of the Douglas family sold four 40-acre parcels of property to the Four Forties Club, Inc., in anticipation of the instant parties' establishment of a corporate entity. The parties opted not to form a corporation, and the Douglasses in March 1997 executed a corrected warranty deed conveying the property to the seven individual parties as tenants in common. Also in 1997, the parties signed a partnership agreement "to purchase, maintain, sell, or . . . acquire" the four parcels for use as a hunting camp.

In July 2006, each plaintiff authored a separate written request for dissolution of the partnership. In August 2006, plaintiffs commenced this action seeking to dissolve the partnership under MCL 449.31(1)(b), and a partition of the real property that the parties owned as tenants in common. In an amended complaint, plaintiffs added a count requesting a winding up of the partnership pursuant to MCL 449.37.

Defendants filed a motion for summary disposition premised on MCR 2.116(C)(8) and (10), asserting that plaintiffs' remedy was limited to the terms of the partnership agreement, which only contemplated withdrawal under § 7. Plaintiffs then moved for summary disposition

under MCR 2.116(C)(9) and (10), on the basis that because the partnership agreement contained no dissolution procedures or set term of partnership existence, the Michigan partnership statutes entitled plaintiffs to dissolve the partnership. At a summary disposition hearing, the circuit court found that the clear language of the agreement envisioned no way out of the partnership but for a request to withdraw from the partnership. The circuit court granted defendants summary disposition under MCR 2.116(C)(8) and (10), and additionally ordered that when the appeal period expired, defendants had the right to purchase each plaintiff's partnership interest for \$6,000, in return for which plaintiffs would convey their real property interests to defendants.¹

Plaintiffs now challenge the circuit court's summary disposition ruling, which we review de novo. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). To the extent our review of the ruling involves contractual or statutory interpretation, we also consider these legal questions de novo. *Auto-Owners Ins Co v Amoco Production Co*, 468 Mich 53, 57; 658 NW2d 460 (2003); *Citizens Ins Co v Secura Ins*, 279 Mich App 69, 72; 755 NW2d 563 (2008). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint,² and a motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. MCR 2.116(G)(5).

The partnership agreement contains the following withdrawal provision:

§ 7. WITHDRAWING PARTNER:

Any active partner may withdraw from the partnership upon thirty (30) days written notice to the other partners. The withdrawal of a partner shall have no effect upon the continuance of the partnership. The remaining partners shall have the same rights with respect to this property as provided below in the event of the death of a partner. The purchase price and manner of payment is set forth in paragraph 10.

Section 8 of the agreement sets forth that a partner's death has no effect on "the continuance of the partnership," while § 9 provides that "a deceased or retiring partner" shall be paid the nonnegotiable amount of \$6,000. As the parties agree, their agreement does not mention dissolution.

The Uniform Partnership Act, MCL 449.1 *et seq.*, defines "dissolution of a partnership" as "the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business." MCL 449.29. According to MCL 449.31,

¹ Plaintiffs moved for reconsideration, which the circuit court denied.

² "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh, supra* at 621.

Dissolution is caused:

- (1) Without violation of the agreement between the partners:
 - (a) By the termination of the definite term or particular undertaking specified in the agreement,
 - (b) *By the express will of any partner when no definite term of particular undertaking is specified,*
 - (c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,
 - (d) By the expulsion of any partner from the business bona fide in accordance with such power conferred by the agreement between the partners;
- (2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time[.] [Emphasis added.]

“The right of a partner to dissolve . . . is a right inseparably incident to every partnership,” and “[t]here can be no such thing as an *indissoluble* partnership. *Atha v Atha*, 303 Mich 611, 614; 6 NW2d 897 (1942) (internal quotation omitted, emphasis in original). “[T]he Michigan rule, by statute . . . as well as the common law,” is that a partnership contract that does not contain a stipulated term of duration “may be dissolved by either partner at his own will at any time.” *Posner v Miller*, 356 Mich 6, 9; 96 NW2d 110 (1959).

Defendants reiterate their position that partnership agreement § 7 constitutes the sole means by which a partner may leave the partnership, and that a withdrawal does not result in dissolution. This position conflates the distinct concepts of withdrawal and dissolution, which are not the same. See, e.g., *Karber v Karber*, 145 Ariz 293, 294-295; 701 P2d 1 (Ariz App, 1984); *Young v Cooper*, 30 Tenn App 55, 72-77; 203 SW2d 376 (1947). The agreement in this case undisputedly contains no language forbidding the dissolution of the partnership, nor would the presence of such language preclude a partner from exercising his right to seek dissolution. *Atha, supra* at 614. “When the agreement is silent as to the consequences of dissolution by less than all the partners, the . . . Uniform Partnership Act applies and determines the rights of the parties.” *Fischer v Brancato*, 937 SW2d 379, 383 (Mo App, 1996); accord, *Girard Bank v Haley*, 460 Pa 237, 242; 332 A2d 443 (1975); *Warnick v Warnick*, 76 P3d 316, 320 (Wyo, 2003); *Park Cities Corp v Byrd*, 534 SW2d 668, 672 (Tex, 1976).

The record reflects that the five plaintiff partners all authored in clear and unambiguous written terms their desires that the partnership be dissolved. Given these clear expressions of desire, and plaintiffs’ indisputable rights to seek dissolution notwithstanding the absence of any dissolution reference in the partnership agreement, the circuit court should have granted plaintiffs summary disposition pursuant to MCR 2.116(C)(10). Furthermore, because the partnership agreement does not contain a specific period of duration, plaintiffs have not

wrongfully attempted to dissolve the partnership. We direct the circuit court on remand to dissolve and wind up the partnership according to the terms of the agreement and the procedures set forth in the Uniform Partnership Act. See, e.g., MCL 449.40.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens

/s/ Deborah A. Servitto

/s/ Elizabeth L. Gleicher