

IN THE UTAH COURT OF APPEALS

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Sherald James,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20040163-CA
v.)	
)	
Melvin J. Hunt, Ronella B.)	F I L E D
Hunt, LeGrand T. Hunt, Bernie)	(October 20, 2005)
Annette Hunt, Terry W. Hunt,)	2005 UT App 447
and Phyllis W. Hunt,)	
)	
Defendants and Appellees.)	

Fourth District, Nephi Department, 970400101
The Honorable Fred D. Howard

Attorneys: Howard Chuntz, Orem, for Appellant
Randall K. Spencer and Jennifer Gowans, Provo, for Appellees

Before Judges Greenwood, McHugh, and Thorne.

THORNE, Judge:

Sherald James appeals the trial court's decision, following a six-day bench trial, denying him his claimed partnership interest. We affirm.

James challenges the trial court's findings that he had abandoned his interest in the partnership, that his claimed additional contributions to the partnership were actually loans, and that the partners had not revised their partnership agreement to grant James a fixed interest in the partnership.

"A trial court's findings of fact will not be set aside unless clearly erroneous." Chen v. Stewart, 2004 UT 82, ¶19, 100 P.3d 1177. "[T]o establish that a particular finding of fact is clearly erroneous, 'an appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be against the clear weight of the evidence.'" Id. (quoting In re Estate of Bartell, 776 P.2d 885, 886 (Utah 1989)); see also

Parduhn v. Bennett, 2005 UT 22, ¶25, 112 P.3d 495.¹ To properly discharge this duty, an appellant "must present, in comprehensive and fastidious order, every scrap of competent evidence [that] supports the very findings the appellant resists." Neely v. Bennett, 2002 UT App 189, ¶11, 51 P.3d 724 (quotations and citation omitted).

The purpose of this rigorous and strict requirement is to promote two interrelated court objectives: efficiency and fairness. A proper marshaling of the evidence promotes efficiency by avoiding "retrying the facts" and by assisting the appellate court in its "decision-making and opinion writing." It promotes fairness by requiring that the appellants bear the expense and time of marshaling the evidence rather than putting the appellee in the "precarious position" of performing the appellant's work at "considerable time and expense." This deference to a trial court's findings is "based on and fosters the principle that appellants rather than appellees bear the greater burden on appeal."

Chen, 2004 UT 82 at ¶79 (citations omitted). Therefore, to succeed in his challenge, James "must provide a precisely focused summary of all the evidence supporting the findings" he challenges on appeal, and not "merely re-argue the factual case [he] presented in the trial court." Id. at 2004 UT 82 at ¶77 (emphasis added). "If the evidence is inadequately marshaled, this court assumes that all findings are adequately supported by

¹In Parduhn v. Bennett, the supreme court summarized the marshaling duties as follows:

To successfully challenge an ultimate finding of fact, an appellant must first marshal all the evidence in support of the finding and then demonstrate that the evidence is legally insufficient to support the finding even when viewing it in a light most favorable to the court below. An appellant must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists. Moreover, an appellant may not simply review the evidence produced at trial, nor may she re-argue the factual case [she] presented in the trial court.

2005 UT 22, ¶25, 112 P.3d 495 (quotations and citation omitted).

the evidence" and we may conclude that the findings are adequately supported by the unmarshaled evidence. Id. at ¶19.

Here, rather than marshaling the evidence, James instead has chosen to reargue the factual evidence he presented to the trial court. He has not summarized the evidence supporting the trial court's findings, nor has he attempted to demonstrate why this evidence does not support the findings he is challenging. As a result, "we do not consider those findings properly challenged and, therefore, assume that the evidence supports them." Id. at ¶13.

However, even were we to review James's arguments on their merits, the outcome would remain unchanged. Assuming that he satisfied his burden to marshal the evidence, we review the trial court's factual findings for clear error, and in the absence of clear error we will affirm the findings. We will find clear error only if, after looking at the record as a whole, we are left with a "'definite and firm conviction that a mistake has been made.'" In re Gen. Determination of Rights of Water, 2004 UT 67, ¶37, 98 P.3d 1 (citation omitted). The parties in this case presented the trial court with a plentitude of evidence supporting their relative positions during the trial. Nothing in the record indicates that James's evidence was more compelling than the Hunts' evidence, and in fact, the trial court went to great lengths to identify the evidence that supported its findings. Although a different fact finder might have reached a different conclusion based on the evidence presented, that is not the proper test to apply to challenges to factual findings. If we were reviewing James's challenges to the findings, we would conclude that the trial court's findings were adequately supported and not clearly erroneous.

Accordingly, we affirm the trial court's findings and order.

William A. Thorne Jr., Judge

WE CONCUR:

Pamela T. Greenwood, Judge

Carolyn B. McHugh, Judge