IN THE COURT OF APPEALS OF IOWA

No. 3-183 / 12-1009
Filed April 24, 2013

GALEN RASMUSSEN,
Plaintiff-Counterclaim Defendant-Appellee,

vs.

ROBERT L. JACKSON,
Defendant-Counterclaim Plaintiff-Appellant.

Appeal from the Iowa District Court for Wayne County, Sherman W. Phipps, Judge.

Robert Jackson appeals the district court's ruling granting judgment and equitable relief to Galen Rasmussen. **AFFIRMED.**

Unes J. Booth of Booth Law Firm, Osceola, for appellant.

Gregory Milani of Orsborn, Milani & Mitchell, Ottumwa, for appellee.

Heard by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

This appeal stems from a dispute between neighboring landowners concerning land and bison. The central dispute relates to whether the landowners entered into a partnership to raise a bison herd.

I. Background Facts and Proceedings

Robert Jackson, one Sharon Magee, and another person agreed to raise a common bison herd. Magee owned land across the road from Jackson and purchased a twenty-eight-percent interest in the herd. She paid Jackson to manage her portion of the herd. The entire herd was allowed to graze on her property as well as Jackson's.

Galen Rasmussen became interested in the operation. According to Jackson, he "wanted buffalo, . . . wanted land." At the same time, Magee wanted to exit the operation. Jackson contacted Rasmussen, who bought the land from Magee. He also reached an agreement with Magee to purchase her share of the herd. That agreement was not consummated.

Jackson helped manage Rasmussen's land while Rasmussen was out of the country. Rasmussen, in turn, allowed the entire bison herd to graze on his property.

Eventually, the friendship between the two men deteriorated. Jackson recorded a "right of first refusal" to purchase Rasmussen's land that he asserted was signed by Rasmussen. Rasmussen formally notified Jackson that he could no longer graze the herd on his land.

Rasmussen sued Jackson to quiet title in his land and for slander of title, conversion, "rent, trespass and damages," and punitive damages. Jackson

counterclaimed for breach of a partnership agreement and other claimed violations of the Uniform Partnership Act, fraud, exemplary damages, a statutory injunction, replevin, "right of first refusal," breach of contract, deficiency judgment, and attorney fees.

Following trial, the district court (1) quieted title to the land in Rasmussen, (2) rejected Rasmussen's slander of title claim, (3) granted Rasmussen judgment for conversion and rent, trespass, and damages, (4) denied Rasmussen's request for injunctive relief, and (5) did not rule on Rasmussen's punitive damages request. With respect to Jackson's counterclaims, the court found "there is not now, nor has there ever been, a partnership between [Jackson and Rasmussen.]" The court dismissed all counterclaims based on a partnership, did not rule on Jackson's fraud claim, found moot the claim for an injunction, and dismissed the remaining claims.

On appeal, Jackson contends (1) he and Rasmussen were partners, (2) Rasmussen granted him an enforceable "right of first refusal" to purchase Rasmussen's farmland in the event Rasmussen put it on the market, and (3) Rasmussen committed fraud. The parties state that the case was tried in equity and our review is de novo. Based on their agreement, we will review the record de novo.

II. Claims Under Uniform Partnership Act

In his counterclaim, Jackson alleged that Rasmussen entered into an agreement with Magee "for the purchase [of] her 320 acre farm in Wayne County, Iowa, and to purchase her twenty-eight percent (28%) partnership interest in bison (buffalo) and related equipment." He further alleged that he and

Rasmussen "entered into an oral agreement to continue the partnership enterprise which [he] previously had with [] Magee." He claimed Rasmussen breached the partnership agreement and breached his partnership duties in violation of Iowa Code section 486A.405 (2007). He sought Rasmussen's expulsion from the partnership and damages caused by the disassociation, as well as dissolution of the partnership together with resulting damages.

As noted, the district court ruled against Jackson on the predicate question of whether Jackson and Rasmussen formed a partnership. We agree that is the decisive issue.

A partnership is "an association of two or more persons to carry on as co-owners a business for profit . . . ." Iowa Code §486.101(6). The term "association" signifies that the partnership is "an entity separate from the partners." 5 Matthew G. Dore, *Iowa Practice Series: Business Organizations* § 1:5(1), at 12 n.1. The term "co-owners" does not mean "ownership of a business in the equity sense" but "the power of ultimate control." *Id.*

Persons may "organize a partnership informally, without any written agreement, or even by accident." *Id.* § 1:5(1), at 12; *see* Iowa Code §§ 486A.202(1) ("Except as otherwise provided in subsection 2, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership."), .101(7) (defining "partnership agreement" as an agreement "whether written, oral, or implied"). "All that is necessary to establish a partnership is that the parties carry on a business for profit with the . . . intention . . . that they share ownership (control) of the business." Dore, *Iowa Practice Series*, § 1:5(1), at 12; *see also*

Uniform Partnership Act § 202, cmt. 1 (1997) (providing that "the phrase, 'whether or not the persons intend to form a partnership' merely codifies the universal judicial construction of UPA Section 6(1) that a partnership is created by the association of persons whose intent is to carry on as co-owners a business for profit, regardless of their subjective intention to be 'partners'").

In determining whether a partnership has been formed, certain rules apply. *See* Iowa Code § 486A.202(2). First, joint ownership "does not by itself establish a partnership, even if the co-owners share profits made by the use of the property." *Id.* § 486A.202(2)(a). Second, "[t]he sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived." *Id.* § 486A.202(2)(b). Finally, "[a] person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment of" certain enumerated expenses. *Id.* § 486A.202(2)(c).

Applying the first rule, the record reveals there was no joint ownership of property. Magee's farmland was in her name exclusively. Rasmussen purchased the property with a loan in his name alone and titled the property in his name alone. *See id.* § 486A.204(4) ("Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes."). The cost of maintaining the land remained Rasmussen's responsibility. While Jackson assisted with maintenance, he billed Rasmussen for the work.

As for the bison herd, Rasmussen entered into a written agreement with Magee to purchase twenty-eight percent of the herd, with the actual number of bison to be determined at a later date. Also to be determined at a later date were Jackson's fees for managing the herd. Payment for the animals was to be "a mutually beneficial and flexible agreement between Sharon Magee and Galen Rasmussen." The agreement ended with the statement, "[t]here is to be no partnership as such between Galen Rasmussen and Bob Jackson."

Ultimately, no money for the bison changed hands and no bison were identified as belonging to Rasmussen. In fact, according to Rasmussen, Jackson placed a lien on Magee's percentage of the herd, precluding a transfer of the bison to him. In short, the bison were never jointly owned by Jackson and Rasmussen.

Nor was equipment for maintenance of the herd purchased jointly. While Jackson testified that he expected Rasmussen to contribute to the purchase of additional equipment, he acknowledged that this equipment would be titled in Rasmussen's name exclusively.

To summarize, joint ownership is not conclusive evidence of a partnership, but, in this case, it was not even presumptive evidence of a partnership, because there was no evidence that Rasmussen jointly owned property with Jackson.

We turn to the second rule relating to the sharing of gross returns. Under the terms of Jackson's agreement with Magee, Magee was to pay forty percent of the expenses related to maintaining the common herd and was to receive twenty-eight percent of the proceeds. Assuming this arrangement could be characterized as a partnership, Rasmussen categorically stated he did not wish

to participate in such an arrangement with Jackson. He testified, "I always intended from the beginning and stated from the beginning I wanted my own bison on my side of the road." He expressed a hope that he would have enough bison to slaughter to make payments on his farm and on the bison. That hope was not realized.

We recognize Jackson testified to discussions with Rasmussen concerning the number of bison that would be slaughtered per year. However, he presented scant, if any, evidence that they shared gross returns. Accordingly, to the extent the sharing of gross returns could constitute evidence of a partnership, this factor was not present.

This brings us to the third rule concerning receipt of a share of profits. This presumptive factor in favor of finding a partnership was not present.

Returning to the definition of a partnership as "an association of two or more persons to carry on as co-owners a business for profit," we find no evidence of an association distinct from Jackson and Rasmussen. *Id.* § 486A.201(1) ("[P]artnership is an entity distinct from its partners."). We also find no evidence that Rasmussen had the power of ultimate control over a for-profit business distinct from his own business enterprise. Because there was no evidence of a partnership, we affirm the district court's dismissal of Jackson's counterclaims under the Uniform Partnership Act.

III. Right of First Refusal

Jackson next asserts that, by quieting title in Rasmussen, the district court denied his request for enforcement of a right of first refusal.

"A right of first refusal is a conditional option which is dependent upon the decision to sell the property by its owner." 17 C.J.S. *Contracts* § 58 (2011). It is considered a weak option, because it does not require the owner to offer the property for sale. *Id.*

> Once the holder of a right of first refusal receives notice of a third party's offer, the right of first refusal is transmuted into an option, and the parties must then strictly comply with the terms stipulated in the contract for the exercise of the option to be effective. That is, on notice of a bona fide offer from a third party, a right of first refusal ripens into an option to purchase according to the terms of the offer.

Id.

At trial, Rasmussen acknowledged that he entered into a "gentlemen's agreement" to give Jackson the right to buy the property at fair market value if he chose to sell it. While he disagreed that the document Jackson proffered as evidence of this agreement was the document he signed, he testified that, as Jackson's friend, he was willing to give him first option to buy the land. He even testified that he repeatedly offered Jackson the opportunity to buy the property, but Jackson declined. He eventually listed the property with a realtor but received no offers that would have triggered an obligation to approach Jackson again.

Based on this record, we agree with the district court that Rasmussen did not breach Jackson's right of first refusal. We affirm the dismissal of this counterclaim.

IV. Fraud

Jackson finally contends that Rasmussen committed fraud by "fraudulently misrepresent[ing] his intention to become [his] partner." As noted at the outset,

the district court did not rule on this issue. Accordingly, error was not preserved. *See Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002).

AFFIRMED.