**IN THE COURT OF APPEALS OF IOWA**

No. 9-763 / 09-0349
Filed December 30, 2009

**MARK REED and LORI REED,**
Plaintiffs-Appellants/Cross-Appellees,

**vs.**

**BILL REED, JANET REED, JERRY REED, JULIE REED and REED'S FINEST WOOD, INC.,**
Defendants-Appellees/Cross-Appellants.

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Appeal from the Iowa District Court for Taylor County, Douglas F. Staskal, Judge.

Plaintiffs Mark and Lori Reed appeal and defendants Bill, Janet, Jerry, Julie, and Reed's Finest Wood, Inc., cross-appeal from a district court order making a certain division of Reed Farm Partnership and Reed's Finest Wood, Inc. **AFFIRMED.**

J.C. Salvo and Bryan D. Swain of Salvo, Deren, Schenck & Lauterbach, P.C., Harlan, for appellants.

Richard O. McConville of Coppola, McConville, Coppola, Hockenberg & Scalise, P.C., West Des Moines, for appellees.

Heard by Sackett, C.J., Vaitheswaran and Danilson, JJ.

**SACKETT, C.J.**

Plaintiffs, Mark and Lori Reed, appeal and defendants, Bill, Janet, Jerry, Julie, and Reed's Finest Wood, Inc., cross-appeal from a district court order making a certain division of Reed Farm Partnership (Partnership) and Reed's Finest Wood, Inc. (Reed's Inc.). Plaintiffs contend on appeal that the district court should have found the Partnership owned additional real estate, which should have been divided with the other Partnership property. The defendants on cross-appeal contend the district court erred in structuring an accounting that failed to account for excessive salaries paid to the plaintiffs, and that plaintiffs should have been charged with a portion of a debt owed to Janet. We affirm.

**BACKGROUND AND PROCEEDINGS.** Defendants Bill and Janet Reed are the parents of plaintiff Mark Reed and defendant Jerry Reed. Lori is Mark's wife and Julie is Jerry's wife. Bill and Janet were married in 1954. By 1975 they owned, as tenants in common, and were farming some 800 acres of land. Besides the two sons who are parties to this litigation, Bill and Janet had a third son, Doug, and a daughter, neither of whom are parties to this litigation. After Jerry and Mark graduated from high school, they helped in the family farming operation and farmed on both their parents' land and rented land. In 1977 Jerry and Julie bought a 160-acre farm.

On January 4, 1985, the partnership was formed by written agreement. Bill and his three sons[1] signed the agreement and from that point on Bill, Jerry, and Mark conducted their farming operations as a partnership. On April 1, 1995,

[1] The third son, Doug, withdrew from the partnership shortly after it was formed, claims no financial interest in it, and is not a party to this action.

Bill, Jerry, and Mark signed articles of incorporation to form a woodworking business, Reed's Inc. Three other corporations were formed to operate Breadeaux Pizza franchises.[2] These corporations are now dissolved. The profits from all these entities were to be divided equally among Bill, Jerry, and Mark. At times, the partnership and one or more of the corporations may have subsidized the other.

In October of 2007, plaintiffs filed this action seeking dissolution of the Partnership and Reed's Inc. In answer to plaintiffs' petition, defendants asked that the petition seeking dissolution of both entities be dismissed but that there be a full and complete accounting, and Mark be ordered to withdraw from the entities.

Prior to trial, to the credit of the parties and their attorneys, they entered into an extensive pre-trial stipulation wherein they agreed there was a breakdown of the Partnership and the three men would have an equal interest in the assets of both the Partnership and Reed's Inc. so the assets and liabilities could be assigned interchangeably once the court determined the assets and liabilities of both entities. Mark agreed that if he received his fair share, the Partnership could remain a viable entity. The parties also stipulated to certain assets they considered property of the two entities, as well as the values of certain assets.

They further stipulated that the major issue, though not the only issue facing the court, was whether five pieces of farm real estate were assets of the Partnership. The farms in question are the 800 acres owned by Bill and Janet as

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[2] Apparently plaintiffs were primarily responsible for the corporate businesses and after they were established, Mark limited his work for the partnership.

tenants in common prior to the establishment of the Partnership, and the 160 acres that Jerry and Julie purchased prior to the formation of the Partnership. The defendants contended this land is not property of the Partnership. The plaintiffs contended it is, arguing that the Partnership purchased the farms by paying off the indebtedness on the land.

The district court, in a complete and well-reasoned opinion, resolved the issue, finding that although the three partners were farming when the Partnership was formed, Bill and Jerry[3] were the only ones who, at that time, owned farmland. The court then found:

> The partnership agreement clearly distinguishes between property that was to be contributed to the partnership and property that was to be contributed for the partnership's use. Even Mark testified that he was never told that the original farms were being conveyed to the partnership. Rather, he was told the farms would be "available" to the partnership.

The court further found, based on the testimony of Bill, Jerry, and the farm accountant, that the payments made on the farms in question were made by the Partnership in the form of rent payments to the owners of the farms, who then reported the payments as income and paid the indebtedness. The court also said that even if Bill and Jerry had contributed their farms to the partnership, they would have made capital contributions grossly out of proportion to those made by Mark, as the three men enjoyed equal draws. Considering these and other findings, the court found that none of the parties, including Mark, ever intended

[3] We recognize that these farms were also owned by the respective wives who were not partners, as did the district court.

Bill and Janet's original 800 acres and Jerry and Julie's 160 acres to be partnership assets.

Mark was awarded about $900,000 in properties and removed as a partner from the Partnership. Reed's Inc. was one of the assets awarded to Mark. The court denied the defendants' claim that Mark's share of the assets of the business should be offset by what defendants' argued were excessive salaries Mark and Lori took from Reed's Inc. from 1997 through 2007, and denied defendants' claim Mark should be responsible for a portion of a debt the Partnership owed to Janet. The district court then made further orders to facilitate the distribution that are not at issue here.

**SCOPE OF REVIEW.** Our standard of review is determined by the nature of the trial proceeding. *See Ralfs v. Mowry*, 586 N.W.2d 369, 371 (Iowa 1998). This action was filed and tried in equity. The parties agree, as so do we, that our review is therefore de novo. *Medd v. Medd*, 291 N.W.2d 29, 32 (Iowa 1980). We give weight to the district court's findings of fact, but are not bound by them. Iowa R. App. P. 6.904(3)(*g*) (2009); *Davis v. Roberts*, 563 N.W.2d 16, 19 (Iowa Ct. App. 1997).

**FARMLAND IN PARTNERSHIP.** Plaintiffs contend that the district court should have treated Bill and Janet's 800 acres and Jerry and Julie's 160 acres as property of the Partnership. Defendants argue this was not error because the farms were owned by individuals prior to the formation of the Partnership and were never partnership assets.

The parties appear to agree that in addressing this issue we need look to Iowa Code section 486A.204 (2007).[4] This section provides:

> 1. Property is partnership property if acquired in the name of any of the following:
>
> a. The partnership.
>
> b. One or more partners with 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 but without an indication of the name of the partnership.
>
> 2. Property is acquired in the name of the partnership by a transfer to any of the following:
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> a. The partnership in its name.
>
> b. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
>
> 3. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with 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.
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> 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.

Plaintiffs contend, relying on section 486A.204(3), that the property is presumed to be property of the Partnership because it was purchased with partnership assets. Defendants contend, relying on section 486A.204(4), that the property is presumed to be separate property, even though it was used for partnership purposes.

A presumption calls for a certain result unless the party adversely affected overcomes it with other evidence. Black's Law Dictionary 1223 (8th ed. 2004). The burden of persuasion thus shifts to the party with the duty to overcome the

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[4] We do note that this statute was not in effect when the Partnership was established, as it was not enacted until 1998. *See* 1998 Iowa Acts ch. 1201, § 11.

presumption. *See id.* The presumption must be overcome by a quantum of evidence. *In re Estate of Liike*, ___ N.W.2d ___, ___ (Iowa Ct. App. 2009); *see also In re Estate of Givens*, 254 Iowa 1016, 1024, 119 N.W.2d 191, 195 (1963).

We first determine which parties, if any, enjoy a presumption. For the property to be presumed to be property of the Partnership under section 486A.204(3), plaintiffs have the burden to show the property was purchased with partnership assets. It is clear that the original purchases of the 800 and 160 acres did not involve money from the Partnership. Plaintiffs therefore must show that the payments towards debt on these lands paid for the farms. Defendants contend the payments made were in essence rent for the use of the land, as the Partnership collected all the income from the land. Plaintiffs argue the land in question was subject to substantial debt when the Partnership was formed and in addition to farm expenses, the Partnership paid real estate taxes and tiling and ditching expenses, which improved the land. Plaintiffs also contend income from the corporations at times went to debt payments of this land.

The district court did not find, in the evidence introduced, that the Partnership paid for this land and neither do we. In saying this, we recognize, as did the district court, that there are irregularities as to how payments were treated for income tax purposes. We also recognize that while plaintiffs have directed us to some evidence they contend supports their position, it is impossible on this record for us to find that payments made actually paid for the land. While there are Partnership returns in the record, they do not segregate the income from this land from the income from other land the Partnership was farming. Nor is there

evidence from which we could determine where the payments made were in excess of generally-recognized rent for the land. Plaintiffs, having failed to show that the Partnership paid for the land in question, enjoy no presumption under section 486A.204(3).

The defendants have shown, and plaintiffs cannot seriously dispute, that the farmland in question was not held in the name of the Partnership. Therefore, under section 486A.204(4), a presumption is created that the land is not a partnership asset. *Liike*, ___ N.W.2d at ___; *see also Benson v. Webster*, 593 N.W.2d 126, 131-32 (Iowa 1999) (describing how a party's admission may create a presumption under the law); *Van Zwol v. Branon*, 440 N.W.2d 589, 591 (Iowa 1989) (same). However, this inference can be rebutted by proof that the land was a partnership asset. *See Benson*, 593 N.W.2d at 131-32 (noting that a legal presumption may be overcome when undisputed and uncontroverted facts to the contrary are established); *Van Zwol*, 440 N.W.2d at 591 (same); *Liike*, ___ N.W.2d at ___.

The partnership agreement was to have had attachments A and B. According to the partnership agreement, attachment A was to show the capital contributed to the partnership and attachment B was to show property being made available for partnership use. As to attachment B, the agreement specifically provided, "It will remain the *personal* property of the respective contributing partner." There was no A or B attached to the signed partnership agreement.

A document entitled "Reed Farms (a Partnership) Balance Sheet" dated January 1, 1985, was not attached to the partnership agreement but was found by Janet in going through old records. The district court found it to be of the same vintage as the agreement and determined it supported the conclusion that the 800 acres and 160 acres were not contributed to the Partnership. An attorney and an accountant who did work for Bill and Janet both testified that neither ever indicated the 800 acres of land was contributed to the Partnership as an asset, and an attorney who drew their wills prior to this litigation testified that in drawing their wills they considered the 800 acres theirs. Bill, Janet, Jerry, and Doug all testified the land was not Partnership property.

We consider these factors, other factors considered by the district court, and the district court's credibility findings, and find that the plaintiffs failed to rebut the presumption that the land was not property of the Partnership. We affirm on this issue.[5]

We consider the defendants' arguments on cross-appeal, and adopt the district court's reasoning, in denying the defendants credit for alleged excess salaries paid, and in not ordering plaintiffs to pay an old note to Janet.

**AFFIRMED.**

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[5] We need not and do not address the issue of whether Janet and Julie's undivided interest in the land could be found to be partnership assets. They were neither partners nor parties to the partnership.