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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1383**

Ben Tahja, et al.,
Respondents,

vs.

Vanessa Autio,
Appellant,

Daniel Autio,
Respondent,

Autio Homes,
Defendant.

**Filed August 24, 2020
Affirmed
Johnson, Judge**

St. Louis County District Court
File No. 69DU-CV-15-2194

Scott A. Witty, Hanft Fride, Duluth, Minnesota (for respondents Ben Tahja and Amber Bailey)

Brian C. Bengtson, Lano, O'Toole & Bengtson, Ltd., Grand Rapids, Minnesota (for appellant)

Daniel Autio, Floodwood, Minnesota (*pro se* respondent)

Considered and decided by Reyes, Presiding Judge; Johnson, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Two married couples worked together in a small business for five years before they had a falling-out. After a court trial, the district court found that the business was a partnership and that each couple owned half of the business. The district court ordered injunctive relief with respect to the partnership's assets and awarded damages to one couple to compensate them for the profits that were withheld from them. We conclude that the district court did not clearly err by finding that a partnership existed, that the partnership owned certain assets, and that the damages award should include profits earned by a newly established company. We also conclude that the district court did not err by awarding pre-verdict interest. Therefore, we affirm.

FACTS

In 2007, Vanessa Autio and Daniel Autio started a business called Autio Homes, which operated an adult foster-care home in the city of Floodwood. In 2009, they invited Ben Tahja and Amber Tahja to join the business. They agreed that Vanessa would be responsible for the company's finances, Ben would manage human resources, Daniel would perform maintenance and fill in where needed, and Amber would handle staffing and oversee the clients' medical care.

The business operated successfully for several years. In 2011, it expanded by purchasing a second property and starting a second adult foster-care home. But interpersonal conflicts arose in 2014 and 2015, and Vanessa forced Amber and Ben out of

the business. Ben later requested that the Autios purchase the Tahjas' interest in the business, but Vanessa did not respond.

In September 2015, Ben and Amber commenced this action against Vanessa, Daniel, and Autio Homes. The Tahjas alleged that Autio Homes was a partnership that was formed by an oral agreement between the parties. They asserted claims of breach of fiduciary duty and breach of contract. For relief, they requested a declaration that Autio Homes was a partnership with each party owning an equal share of the business, an accounting, and damages. Vanessa and Autio Homes answered the complaint and denied the existence of a partnership. Daniel did not respond to the complaint.

Vanessa and Daniel separated in 2014, and their marriage was dissolved in 2016. Vanessa has since changed her surname to Crist. Ben and Amber separated in late 2014 or early 2015, and their marriage was dissolved in 2016. Amber has since changed her surname to Bailey. For the sake of clarity and ease of reference, we will use the parties' first names when referring to them individually and their married surnames when referring to them as couples.

The case was tried to the district court on four days, concluding in April 2018. Ben and Amber testified on their own behalf and called two additional witnesses, including Daniel, whose testimony generally supported the Tahjas' claims.

The Tahjas and Daniel testified as follows: In January 2009, the parties orally agreed that the Autios and the Tahjas would form a partnership. The partners agreed that business decisions would be made by a majority vote. The parties agreed that the Tahjas would "buy in" to Autio Homes for \$300,000, which would be paid in monthly installments

of \$5,000 through deductions from the Tahjas' monthly distribution of profits. After five years, the buy-in amount was fully paid such that the Tahjas owned one-half of the business. The Tahjas' buy-in payments financed an expansion of the business, including the addition of a fourth bedroom to the first home and the purchase of the second home. Partnership funds were used to pay the annual fees for the licenses that allowed the business to operate the homes. The Tahjas received their share of profits by both cash and checks. The Tahjas and Daniel admitted that the partners presented Autio Homes to others as a sole proprietorship but explained that the partners did so in order to maintain a tax exemption on one of the homes.

Vanessa testified as follows: The parties never discussed forming a partnership. The parties orally agreed that the Tahjas would be employees or independent contractors, with each earning \$30,000 to \$35,000 per year. She fired Amber in December 2014 and fired Ben in March 2015. The Tahjas' names were not on the titles to the real properties, the mortgages on those properties, or the business's bank accounts. She never received any money from the Tahjas for a buy-in or for expenses. The Tahjas were compensated only by check and never with cash. The references in the company's records to \$5,000 payments did not reflect buy-in payments. The licenses that are necessary to operate the group homes are not transferrable.

Vanessa called three other witnesses, one of whom is a certified public accountant who had prepared the Autios' tax returns. The accountant testified that neither Vanessa nor Daniel ever informed her that Autio Homes was a partnership and that she understood the business to be a sole proprietorship.

The district court filed its findings of facts, conclusions of law, and order in September 2018. The district court found that the parties formed a partnership by an oral agreement in January 2009. The district court found that, based on the Tahjas' payment of \$300,000 and their contributions of labor, skill, and expertise, they owned 50 percent of the business. The district court concluded that the partnership must be dissolved and its assets liquidated. The district court ordered Vanessa to provide an accounting within 90 days. The district court also found that Vanessa breached her fiduciary duties to the Tahjas by not distributing to the Tahjas their share of profits after March 2015 and, accordingly, was liable to the Tahjas for unpaid profit distributions from March 2015 to December 2015.

In July 2019, the district court filed an order to resolve the remaining issues concerning the relief granted to the Tahjas. The district court found that the partnership owned both homes and their furnishings as well as both licenses necessary for the operation of the homes. The district court also found that the Tahjas were entitled to damages in the amount of \$175,159 to reflect their half of the business's profits between March and December of 2015. The district court later granted the Tahjas' motion for \$72,607 in pre-verdict interest and \$475 in post-verdict interest. Vanessa appeals.

DECISION

I. Existence of Partnership

Vanessa first argues that the district court erred by finding that the parties operated the business as a partnership.

In Minnesota, partnerships are governed by the Minnesota Uniform Partnership Act of 1994. *See* Minn. Stat. §§ 323A.0101-.1203 (2018). A partnership is defined as “an

association of two or more persons to carry on as co-owners a business for profit.” Minn. Stat. § 323A.0101(8). Such an association may exist “whether or not the persons intend to form a partnership.” Minn. Stat. § 323A.0202(a). “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 . . . for services as an independent contractor or of wages or other compensation to an employee.” Minn. Stat. § 323A.0202(c)(3)(ii). An oral agreement generally is “sufficient to establish a partnership relationship.” *Maras v. Stilinovich*, 268 N.W.2d 541, 544 (Minn. 1978). Indeed, the term “partnership agreement” is defined by the act to mean “the agreement, *whether written, oral, or implied*, among the partners concerning the partnership.” Minn. Stat. § 323A.0101(9) (emphasis added).

The existence of a partnership is a question of fact. *Cyrus v. Cyrus*, 64 N.W.2d 538, 541 (Minn. 1954). “[A] trial court’s finding that a partnership exists must be sustained if the evidence as a whole reasonably shows that the parties have entered into a contractual relation whereby they have combined their property, labor, and skill in an enterprise or business as co-owners for the purpose of joint profit.” *Id.* In reviewing a district court’s finding that a partnership existed, this court applies a clear-error standard of review. Minn. R. Civ. P. 52.01; *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

In this case, the district court found that the parties entered into an oral agreement whereby the Tahjas would be equal partners and 50-percent owners of the business. The district court found that the parties agreed to a buy-in amount of \$300,000, which was to be paid in monthly installments of \$5,000 that were deducted from the Tahjas’ monthly distributions of profits. The district court found that the Tahjas made all required

payments. The district court also found that, after the Tahjas became partners, they paid half the expenses of the business and received half the profits. The district court based its findings on the testimony of Daniel and the Tahjas, whom it found to be credible, as well as numerous exhibits.

Vanessa challenges the district court's findings by emphasizing the evidence she presented at trial. But her arguments are inconsistent with the principle that, in a court trial, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01; *see also LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017). Many of her contentions are based on the fact that Autio Homes presented itself to the public and to clients as a sole proprietorship. But how a business is presented to others is not determinative of the question whether a partnership actually existed:

It is the substance and not the name of the arrangement which determines the legal relation of the contracting parties to each other. . . . If a partnership in fact exists, from the situation and matters intended by the partners, no concealment of name, no verbal equivalent for the ordinary phrases of profit or loss, no indirect expedient for enforcing control over the adventure will prevent the substance and reality of the transaction being adjudged to be a partnership. The courts will not countenance ingenious contrivances for giving persons the whole of the advantages of a partnership, without subjecting them, as they thought, to any of the liabilities, and an agreement which attempts to carry out a joint venture for the mutual profit of the adventurers and evade their responsibility for the losses may be enforced and construed as creating a partnership.

Randall Co. v. Briggs, 248 N.W. 752, 754 (Minn. 1933) (quotation omitted). The district court specifically found that the presentation of Autio Homes as a sole proprietorship was

a subterfuge to maintain a beneficial tax exemption that the parties believed would have been lost if the business had been reported as a partnership. Vanessa has not established that the district court's findings are not supported by evidence in the trial record.

Thus, the district court did not clearly err by finding that Autio Homes was a partnership.

II. Identification of Partnership Property

Vanessa also argues that the district court erred by finding that real property and licenses used by the business are property of the partnership and, thus, subject to the district court's order that partnership assets be liquidated.

“Property acquired by a partnership is property of the partnership and not of the partners individually.” Minn. Stat. § 323A.0203. “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.” Minn. Stat. § 323A.0204(c). However, “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.” Minn. Stat. § 323A.0204(d). Therefore, the use of real property in a partnership's business operations “is not of itself, when standing alone, sufficient to establish an intent to contribute it to the partnership assets.” *Cyrus*, 64 N.W.2d at 543. But

improvements made to the property using partnership funds, “although not of controlling significance, tend to show an intent that the land should be partnership property.” *Id.*

The district court found that both homes and both licenses were partnership assets. Vanessa argues that the district court erred with respect to both the real property and the licenses.

With respect to the two homes, Vanessa asserts that she and Daniel acquired the first home before the Tahjas joined the business, that both homes were acquired with funds provided by the Autios, and that the Autios’ names were on the titles of both properties. In response, the Tahjas argue that Vanessa used revenue generated by the business to purchase the second home and to improve and maintain both homes. The Tahjas argue further that, because expenses of the business were shared, their \$300,000 buy-in would be an unfair windfall for Vanessa if it were not considered an investment in the real property.

Evidence in the record supports the district court’s finding that both homes are partnership property. That the Autios held title to them is not dispositive. *See* Minn. Stat. § 323A.0204(c). The district court found that the Tahjas contributed some of the money used for an addition to one of the homes and paid half of the purchase price of the other home. Such facts support a finding that the homes were partnership property. *See Cyrus*, 64 N.W.2d at 543. In addition, the Tahjas persuasively argue that the district court’s finding is justified by their capital contribution of \$300,000.

With respect to the licenses, Vanessa relies on evidence that they are in her name and are non-transferable. In response, the Tahjas rely on evidence that the business paid the annual fees for both licenses. The Tahjas also contend that the district court’s finding

concerning the licenses is justified by their \$300,000 capital contribution. The Tahjas further contend that Vanessa's argument is inconsistent with evidence that she attempted to transfer one of the licenses while the case was pending in district court. Indeed, in July 2018, Vanessa signed an agreement to sell the business, which then consisted of one home and one license, so long as the licensing agency consented to the transfer of the license. We note that, by statute, a license for a residential program for persons with disabilities "is not transferable or assignable." Minn. Stat. § 245A.043, subd. 1 (2018). But the applicable statute contains provisions which allow for temporary licensure following a change in ownership of a licensed residential program and streamline the license-application process for the new owners. *See id.*, subds. 3-4. The uncertainty of continued licensure may affect the valuation of a license, but it does not preclude a finding that the license is a partnership asset. Because there is evidence in the record to support the district court's finding that the licenses were partnership assets, we cannot conclude that the district court's finding concerning the licenses is clearly erroneous.

Thus, the district court did not clearly err by finding that the two homes and two licenses used by the business are partnership assets that are subject to the court's liquidation order.

III. Damages for Breach of Fiduciary Duty

Vanessa next argues that the district court erred by awarding the Tahjas damages of \$175,159, which the district court found was the amount of half of the profits of the business between March and December 2015.

The district court found that Vanessa did not distribute the Tahjas' share of profits to them after February 2015. The district court found that the Tahjas remained half-owners of the partnership from March 2015 to December 2015 and were entitled to half the profits earned during that period. The district court rejected Vanessa's argument that the Tahjas are not entitled to the profits of Autio Homes, Inc., a corporation she established in May 2018, reasoning that the Tahjas' ownership interest survived Vanessa's conversion of the business from a partnership to a corporation.

On appeal, Vanessa makes a single, relatively narrow argument concerning damages: she contends that the district court erred by including in the amount of damages the profits that were earned by the new corporation, Autio Homes, Inc. She contends that the district court should not have awarded damages for profits earned by the corporation because the corporation is not a defendant in this action. In response, the Tahjas argue that the conversion of the business from a partnership to a corporation required the consent of all partners. The Tahjas contend that it would be unfair to allow Vanessa to effectively extinguish their ownership interest in the partnership by converting it to a corporation.

The Tahjas are correct that Vanessa's incorporation of the business is inconsistent with partnership law. The statute allows a partnership to be converted to a corporation. Minn. Stat. § 323A.0902, subd. 1. However, "A plan of conversion must be consented to by all the partners of a converting partnership," absent a contrary provision in a partnership agreement. Minn. Stat. § 323A.0902, subd. 3. Because the Tahjas did not consent to the incorporation of Autio Homes, Inc., Vanessa is not permitted to use the incorporation to deny the Tahjas their share of the profits of the business. *See Prince v. Sonnesyn,*

25 N.W.2d 468, 473-74 (Minn. 1946) (affirming district court order setting aside formation of corporation on equitable grounds).

Thus, the district court did not err by awarding to the Tahjas half of the profits earned by the business between March and December 2015.

IV. Pre-Verdict Interest

Vanessa last argues that the district court erred by awarding the Tahjas pre-verdict interest.

“Except as otherwise provided by contract or allowed by law, preverdict, preaward, or prereport interest on pecuniary damages shall be computed . . . from the time of the commencement of the action or a demand for arbitration, or the time of a written notice of claim, whichever occurs first.” Minn. Stat. § 549.09, subd. 1(b) (2018). “For a judgment or award over \$50,000, . . . the interest rate shall be ten percent per year until paid.” *Id.*, subd. 1(c)(2). This court applies a *de novo* standard of review to a district court’s interpretation of this statute. *Miller v. Soo Line R.R. Co.*, 925 N.W.2d 642, 655 (Minn. App. 2019).

The district court awarded the Tahjas pre-verdict interest in the amount of \$72,607. Vanessa argues that the Tahjas are not entitled to pre-verdict interest on the ground that their damages were unliquidated and unascertainable. In response, the Tahjas argue that the recovery of pre-verdict interest is allowed regardless of whether damages were liquidated or ascertainable.

The Tahjas are correct that the ascertainability of damages does not affect entitlement to pre-verdict interest under section 549.09. Pre-verdict interest may be

awarded “regardless of the ascertainability of the judgment.” *Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 391 (Minn. App. 2004), *review denied* (Minn. Aug. 25, 2004). As a result, “When damages are not readily ascertainable, . . . preverdict interest should be calculated exclusively under section 549.09, subd. 1(b).” *Hogenson v. Hogenson*, 852 N.W.2d 266, 274 (Minn. App. 2014). The district court’s award of pre-verdict in this case is consistent with the statute and the applicable caselaw.

Thus, the district court did not err by awarding pre-verdict interest to the Tahjas.

Affirmed.