

DA 18-0431

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 170N

BONNIE BALLOU, Individually as General Partner
of L O Ranch Limited Partnership, and L O RANCH
LIMITED PARTNERSHIP, a Montana Limited Partnership,

Plaintiffs and Appellants,

v.

WILLIAM WALKER, Individually as Former General
Partner of L O Ranch Limited Partnership,

Defendant and Appellee.

WILLIAM WALKER,

Counterclaimant and Appellee,

v.

BONNIE BALLOU,

Counterclaimant and Appellant,

and

DORAN PRIEWE,

Third Party Defendant and Appellee.

APPEAL FROM: District Court of the Sixteenth Judicial District,
In and For the County of Carter, Cause No. DV 6-2014-5
Honorable Michael B. Hayworth, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Brandon J.T. Hoskins, Afton E. Ball, Moulton Bellingham PC, Billings,
Montana

For Appellee:

Michelle M. Sullivan, Sullivan Miller Law PLLC, Billings, Montana

Brianne C. McClafferty, Holland & Hart LLP, Billings, Montana

Submitted on Briefs: May 29, 2019

Decided: July 23, 2019

Filed:



A handwritten signature in blue ink, appearing to read "Ben Gray", is written over a horizontal line. The signature is stylized and cursive.

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Bonnie Ballou (Ballou), individually as a general partner of L O Ranch Limited Partnership (the Partnership), appeals from an order of the Sixteenth Judicial District Court, Carter County, ordering the Partnership to purchase former general partner William Walker's (Walker) 53.25% interest and declaring the fair market value of Walker's interest as \$1,421,863. We affirm.

¶3 This case is before the Court for the second time, and we accordingly recite the factual and procedural background only as necessary to address this appeal. *See Ballou v. Walker*, 2017 MT 197, 388 Mont. 283, 400 P.3d 234 (*Ballou I*). Eunice Walker established the Partnership, which was governed by a Partnership Agreement, in conjunction with the Eunice I. Walker Revocable Trust (the Trust) to transfer her property to her children. Upon Eunice's passing in July 2009, the Trust's assets were distributed and the Partnership was equally divided among Eunice's five children, including Walker and Ballou. Due to monetary contributions Walker made at the Partnership's creation, Walker owned a greater stake in the Partnership than his siblings. Subsequent litigation between the siblings led to a buyout, which was effectuated in

March 2013 through a stipulated global settlement agreement and a release of claims (Settlement Agreement). The Settlement Agreement contained a release provision that forever barred the parties from bringing any future action against any involved parties based on claims that could have been alleged in the settlement and release proceedings. The buyout resulted in only Walker and Ballou owning and managing the Partnership, with Walker owning 53.25% with 1% general partner interest and Ballou owning 46.75% with .5% general partner interest.

¶4 In July 2013, Walker distributed Partnership funds to himself, violating the Partnership Agreement which required all general partners to consent to fund disbursements. Ballou, in accordance with the Partnership Agreement, pushed to remove Walker as a general partner based on his unauthorized disbursement. She sought to convert Walker's interest to a limited partner interest and then attempted to expel Walker as a limited partner. The District Court invalidated Ballou's attempt to expel Walker, Ballou appealed that decision to this Court, and we reversed and remanded to the District Court for valuation of Walker's interest in accord with the Partnership Agreement's parameters. *Ballou I*, ¶¶ 1, 24. We ordered the District Court to value Walker's interest at fair market value at the time of the withdrawal event. *Ballou I*, ¶ 18.

¶5 On remand, the District Court held a valuation hearing, at which Walker and Ballou both presented valuation expert testimony. The experts each testified to the methodology they used in calculating the Partnership's value and Walker's percentage of that value. Ballou's valuation expert, Seth Blades, CPA/CFF and certified valuation

analyst, averaged three appraisal amounts of the Partnership's property to establish a baseline value. He then applied discounts of the profession to calculate what he believed to be the property's fair market value and valued Walker's 53.25% interest at \$463,000. Walker's valuation expert, Joanne Sheridan, CPA/CFF and certified valuation analyst, applied the Asset Approach method of valuation to establish her own baseline value. She then applied discounts to calculate what she believed to be the property's fair market value and valued Walker's 53.25% interest at \$1,190,400.

¶6 The District Court took issue with the discounts both parties' valuation experts applied to calculate the fair market value of Walker's interest. To resolve any discordant testimony, the District Court applied the Partnership Agreement's considerations. It found Ballou's expert applied discounts that "over-lap or double count" the Partnership Agreement's considerations and discounts not considered in the Partnership Agreement. The court also found Walker's expert's discounts were absent from the Partnership Agreement. Thus, the District Court applied the correct discounts, pursuant to § 16.6 of the Partnership Agreement, to the fair value of the property to determine the fair market value of Walker's interest. It valued Walker's interest at \$1,421,863. Ballou appeals.

¶7 Ballou raises two issues on appeal which we address in turn. She first argues the District Court erred in its valuation of Walker's interest by applying fair value instead of fair market value, which this Court required on remand. Ballou asserts the District Court arbitrarily determined the value of Walker's Partnership interest with no substantial

evidence to support its decision. The construction and interpretation of a written agreement are questions of law that we review for correctness. *Ophus v. Fritz*, 2000 MT 251, ¶ 19, 301 Mont. 447, 11 P.3d 1192; *see also Mary J. Baker Revocable Trust v. Cenex Harvest States, Coops., Inc.*, 2007 MT 159, ¶ 19, 338 Mont. 41, 164 P.3d 851. “[A] partnership agreement governs relations among the partners and between the partners and the partnership.” Section 35-10-106, MCA. “A partnership agreement is essentially a contract between the partners and, therefore, is to be interpreted and applied in accordance with principles of contract law.” *In re Estate of Bolinger*, 1998 MT 303, ¶ 54, 292 Mont. 97, 971 P.2d 767. As this Court previously held in *Ballou I*, “The language of a contract governs its interpretation when the language is clear, explicit, and without absurdity.” *Ballou I*, ¶ 15 (*citing Whary v. Plum Creek Timberlands, L.P.*, 2014 MT 71, ¶ 10, 374 Mont. 266, 320 P.3d 973).

¶8 Section 16.6 of the Partnership Agreement designates the criteria to value an exiting partner’s interest: “[T]he Partnership or remaining Partners shall purchase the withdrawing Partner’s Partnership Interest for its fair market value.” The section dictating how to calculate the exiting partner’s interest at fair market value sets forth six relevant valuation factors. The District Court fairly weighed both parties’ testimony and applied the six valuation factors outlined in § 16.6 when valuing Walker’s interest, explicitly describing its process in its findings of fact. While the Partnership Agreement does not define the term fair market value, its explicit criteria dictating how to calculate a partner’s interest at the fair market value illustrates the Partnership Agreement’s intent.

The District Court applied the fair market value as intended by the Partnership Agreement's terms. Substantial evidence provided by both experts and the Partnership Agreement supported its conclusion. Accordingly, we affirm the District Court's valuation of Walker's interest.

¶9 Second, Ballou argues the trial court committed reversible error by excluding Leo O'Brien's (O'Brien) testimony regarding Walker's capital account balance prior to March 2013. The District Court determined O'Brien's testimony and report, which suggested Walker's actions prior to March 2013 should result in an adjustment to Walker's interest, was irrelevant in the current valuation proceedings. The court accordingly barred Ballou from presenting the testimony and report at the valuation hearing. District courts have broad discretion regarding evidentiary matters, and we review evidentiary determinations for an abuse of discretion. *State v. Hocevar*, 2000 MT 157, ¶ 54, 300 Mont. 167, 7 P.3d 329.

¶10 "A release is a contract, governed by contract law." *Jacobsen v. Allstate Ins. Co.*, 2009 MT 248, ¶ 51, 351 Mont. 464, 215 P.3d 649. Section 4(a) of the Settlement Agreement, which was effectuated by all parties in March 2013, contained a release, which stated:

The parties hereby settle, compromise and forever release, discharge, waive and covenant not to sue upon any and all claims, debts, rights, causes of action, and liabilities, whether known or unknown, asserted or unasserted, foreseen or unforeseen, alleged or which could have been alleged in the proceedings. . . . [T]his settlement, compromise, release, discharge and waiver constitutes a full and final release and discharge by each party of the other party . . . from all claims, demands, and causes of action each party

may now have or which may hereafter accrue, arising out of or related to, in any way, the above matters.

¶11 Ballou intended O'Brien's report to prove that the alleged deficit in Walker's capital account required a dollar-for-dollar reduction in Walker's interest. However, O'Brien's testimony is more relevant to the financial disputes that were at issue in 2011, before the parties executed the Settlement Agreement in March 2013. When the parties executed the Settlement Agreement, they agreed to a complete release, waiver, and discharge of all claims. They explicitly agreed that no one could bring a claim in the future that could have been brought before the Settlement Agreement took effect. Ballou sought to admit O'Brien's testimony during the 2018 proceedings to criticize Walker's actions in 2011. However, when Ballou executed the Settlement Agreement in March 2013, she waived her right to challenge any alleged wrongdoing that had already occurred. We conclude the District Court did not abuse its discretion by excluding O'Brien's testimony and we affirm its decision.

¶12 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶13 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ DIRK M. SANDEFUR

/S/ JAMES JEREMIAH SHEA

/S/ BETH BAKER

/S/ INGRID GUSTAFSON