IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

ROBERT GRUNDSTEIN, Appellant, v. LEON GRUNDSTEIN, MARGARET GRUNDSTEIN, MIRIAM GRUNDSTEIN, Respondents.	)	No. 65462-4-I UNPUBLISHED OPINION FILED: July 25, 2011

Spearman, J. — Robert Grundstein appeals the summary judgment dismissal of his suit alleging wrongdoing by his brother Leon Grundstein in his management of their mother's living trust. Robert also challenges the trial court's award of attorney fees to Leon. Because Robert failed to support his opposition to summary judgment with any evidence, we affirm the dismissal of his suit. Because Robert's claims in the trial court and on appeal totally lack merit and present no debatable issues, we also affirm the trial court's award of attorney fees and award Leon his attorney fees on appeal.

BACKGROUND

In August 2009, Robert Grundstein filed a complaint in Snohomish County Superior Court for partition under chapter 7.52 RCW of a half share investment in an assisted living community called Scriber Gardens and for breach of fiduciary duty by

his brother Leon Grundstein. In his complaint, Robert alleges that Leon breached his fiduciary duty as trustee of Dorothy Grundstein's trust by refusing to provide tax forms to the beneficiaries as required by a court-ordered final accounting of the trust. The complaint seeks partition of the Scriber Gardens share and an order compelling Leon to provide tax forms showing the trust's income. In December 2009, a commissioner granted Robert's motion to amend the complaint to add allegations as a second count of breach of fiduciary duty or constructive fraud and claiming a right to an accounting of a corporation known as Gencare, of which Leon is president.

In January 2010, Leon filed a motion for summary judgment dismissal. According to Leon, the living trust of Dorothy Grundstein owned a half membership interest in Scriber Gardens, LLC. Leon provided declarations and court records to establish that in July 2006, Robert filed an action in King County Superior Court to remove Leon as trustee of the trust. After Dorothy died in 2008, the court dismissed Robert's petition, approved Leon's accounting, and ordered distribution of the trust's assets, including a one-fourth share of the half membership interest in Scriber Gardens each to Leon, Robert, and their two sisters. Robert did not appeal. Leon also argued that as a matter of law, Robert is not entitled to the relief he seeks in the current action.

In response, Robert argued that summary judgment was premature, claimed that Leon embezzled money from the trust and refused to provide accountings for the trust, and indicated that he needed financial information from Leon as discovery in order to properly value the Scriber Gardens share for partition. Robert did not provide

any evidence in opposition to the summary judgment motion.

In March 2010, the trial court granted summary judgment dismissal and an award of attorney fees to Leon based on its finding that Robert's claims "were frivolous and unsupported by any legal precedent."[1] In May 2010, the trial court denied Robert's motion for reconsideration. In June 2010, the trial court entered judgment against Robert for $11,235.40 for Leon's attorney fees and costs.

Robert appeals.

DISCUSSION

A motion for summary judgment may be granted when there is "no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."[2] A summary judgment motion must be supported by affidavits and set forth facts that would be admissible in evidence.[3] The moving party bears the initial burden of showing the absence of an issue of material fact.[4] If the moving party is a defendant who meets the initial burden, then the inquiry shifts to the party with the burden of proof at trial.[5] A plaintiff opposing summary judgment may not rest upon the mere allegations of his pleading, but must support his response with affidavits, memoranda, or other supporting documentation that set forth specific facts showing that there is a genuine issue for trial.[6] Sworn or certified copies of all papers or parts

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[1] Clerk's Papers at 18.

[2] CR 56(c).

[3] CR 56(e).

[4] Right-Price Recreation, LLC v. Connells Prairie Community Council, 146 Wn.2d 370, 381-82, 46 P.3d 789 (2002).

[5] Id.

thereof referred to in an affidavit shall be attached and served with the affidavit.[7] If that party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial, then the court should grant the motion."[8] We will affirm the trial court's judgment on any theory established by pleadings and supported by proof.[9]

Robert first contends that Leon's summary judgment motion was premature because it was heard before the discovery deadline. He argues that the need for additional discovery is demonstrated by a discovery order entered by a commissioner after the trial court heard the summary judgment motion. But Robert fails to explain or establish how additional discovery would produce evidence of any set of facts entitling him to the relief he seeks.

In his complaint, Robert first sought partition of the "Scriber Gardens ½ share" under RCW 7.52.010, which provides a cause of action for partition of real property held by tenants in common. Robert describes Scriber Gardens as a "real estate asset."[10] But a membership share in Scriber Gardens LLC is not real property, but personal property, and even a member would not have an interest in specific property owned by the LLC.[11] Moreover, even assuming without deciding that Robert could

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[6] CR 56(e).

[7] CR 56(e).

[8] Right-Price, 146 Wn.2d at 382 (internal quotation marks omitted) (quoting Young v. Key Pharms., Inc., 112 Wn.2d 216, 225, 770 P.2d 182 (1989)).

[9] Wendle v. Farrow, 102 Wn.2d 380, 382, 686 P.2d 480 (1984).

[10] Appellant's Reply Br. at 4.

[11] RCW 25.15.245(1) provides, "A limited liability company interest is personal property. A member has no interest in specific limited liability company property."

seek partition of an interest in an LLC under some other legal theory, it is undisputed that Robert did not appeal or seek enforcement of the King County Superior Court order directing that "[t]he Schreiber [sic] Gardens investment shall be divided by December 31, 2008."[12] Despite acknowledging in his complaint that his suit in King County was a "successful" action to "force trust disbursement,"[13] Robert fails to identify any evidence tending to show that the ordered division has not taken place or that he holds his one-fourth interest in the one-half share of Scriber Gardens as a tenant in common with any other beneficiary.

Similarly, Robert failed to produce any evidence to support his second claim, in which he alleged generally that that Leon breached his fiduciary duty as a trustee for the trust. And Robert fails to acknowledge that the King County Superior Court specifically found that Leon had "given a full accounting to all heirs"[14] in his role as trustee and approved his accounting and distribution of trust assets.

His third claim, although by no means clear, appears to seek disclosure of certain records of Gencare, Inc., a corporation owned solely by Leon, on a theory that an ownership interest in Scriber Gardens LLC includes some interest in Gencare. Again, Robert offered no evidence to support any factual assertion regarding Gencare in his amendment to the original complaint.

Given Robert's failure to produce any evidence to support any of his claims in response to Leon's summary judgment motion, the trial court properly granted

[12] Clerk's Papers at 130.

[13] Clerk's Papers at 64.

[14] Clerk's Papers at 128.

summary judgment. And despite his claim that the summary judgment motion was

premature, Robert does not identify with particularity any evidence that he expected to receive in discovery that would tend to prove his vague claims. Instead, his allegations and discovery requests appear to be based on nothing more than speculation. The trial court did not err in dismissing his suit.

Without citation to relevant authority or the record and without reasonable argument, Robert next contends that his complaint identified legal obligations and equitable remedies.[15] He also argues that the trial court should have "pierced the corporate veil" and applied the "reasonable expectations doctrine" to remedy the "oppression of minority shareholders."[16] But summary judgment is appropriate where, as here, Robert fails to identify any evidence in the record raising a genuine issue of fact for trial as to whether Leon violated a particular legal obligation to Robert justifying a remedy.

Robert next assigns error to the trial court order granting summary judgment on all his claims, contending that the entry of a minute order with respect to only a single claim "curtails further jurisdiction over matters under scrutiny at the time."[17] He also complains that the trial court refused to consider an unpublished case from this court and suggests that GR 14.1(a), which prohibits citation to unpublished opinions of this court, is unconstitutional and "plainly wrong."[18] Because Robert fails to provide relevant authority or reasonable analysis to support these claims, we need not

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[15] See RAP 10.3(a)(6).

[16] Appellant's Brief at 8-9.

[17] Id. at 13.

[18] Id. at 16.

address them.

Next, Robert claims that the trial court should have allowed him to amend his complaint to include a claim of breach of contract and seek dissolution of the LLC. We review a decision to deny a motion to amend a complaint for abuse of discretion.[19] In deciding whether to grant a motion to amend, "the court may consider the probable merit or futility of the amendments requested."[20]

In denying the motion to amend as futile, the commissioner cited RCW 25.15.275, which allows only a member or manager to seek dissolution of an LLC in superior court. Noting that Robert was not a member or manager of the LLC, the commissioner denied the motion to amend without prejudice should Robert establish that he was entitled to seek dissolution. On appeal, Robert does not claim to be a member or manager of the LLC or address the commissioner's reasoning but merely quotes CR 15(a), which directs leave to amend "shall be freely given when justice so requires." Robert fails to establish an abuse of discretion here.

Robert also challenges the trial court's award of attorney fees and costs to Leon, arguing that the award was arbitrary, without authority, and shocks the conscious because the trial court did not understand the basis in equity for his claims or that his suit would contribute to Washington jurisprudence on limited liability companies. He also contends that he presented debatable issues with reasonable cause and the merit of his suit was established when two commissioners denied

[19] Wilson v. Horsley, 137 Wn.2d 500, 505, 974 P.2d 316 (1999).

[20] Doyle v. Planned Parenthood of Seattle-King County, Inc., 31 Wn. App. 126, 131, 639 P.2d 240 (1982).

Leon's earlier motions to dismiss. But Robert fails to support any of these claims with citation to relevant authority or the record.

RCW 4.84.185 authorizes an award of attorney fees for opposing a frivolous action.[21] An action is frivolous under RCW 4.84.185 if, when considered in its entirety, it "cannot be supported by any rational argument on the law or facts."[22] We review a trial court's decision to award attorney fees and costs under RCW 4.84.185 for a clear abuse of discretion.[23] The trial court based its award of fees and costs on its written finding that "[p]laintiff's claims were frivolous and unsupported by any legal precedent."[24] A review of the record supports the conclusion that Robert's suit was entirely frivolous and without support in law or fact. Robert fails to establish error.

Again without citation to authority, Robert next contends that when read together, RCW 4.84.010, .080, and .185 limit the allowable rate of attorney fees to $200 per hour. RCW 4.84.010(6) provides for an award of costs for "[s]tatutory attorney and witness fees." RCW 4.84.080 sets "costs to be called the attorney fee" at $200. RCW 4.84.185 allows the court to "require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in

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[21] RCW 4.84.185 provides in pertinent part: "In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense."

[22] Tiger Oil Corp. v. Dep't of Licensing, 88 Wn. App. 925, 938, 946 P.2d 1235 (1997).

[23] Fluke Capital & Mgt. Servs. Co. v. Richmond, 106 Wn.2d 614, 625, 724 P.2d 356 (1986).

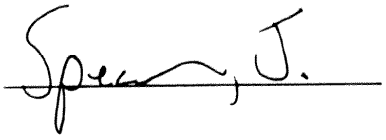
[24] Clerk's Papers at 18.

opposing" a frivolous action. None of these sections sets a limit on hourly rates that form the basis of such fees.

The court below awarded attorney fees to Leon. Robert contends Leon's attorney improperly appeared in the action for their two sisters, which constituted a conflict of interest because, as beneficiaries of the trust, they were properly plaintiffs and aligned with him. Robert contends the attorney fees award was error. But Robert named his sisters as defendants and presents nothing from them asserting any perceived conflict.

Finally, Leon requests an award of attorney fees on appeal under RAP 18.9(a), claiming Robert filed a frivolous appeal. An appeal is frivolous "if the appellate court is convinced that the appeal presents no debatable issues upon which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal."[25] There are no debatable issues here. Robert had no basis to file this suit, let alone appeal its dismissal. We therefore award Leon his fees and costs for defending this appeal, subject to his compliance with RAP 18.1(d).

Affirmed.



WE CONCUR:

[25] In re Marriage of Foley, 84 Wn. App. 839, 847, 930 P.2d 929 (1997).

Becker, J.

Grosse, J.