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STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2238

Steven M. Maus,
Respondent,

vs.

George J. Galic,
Appellant,

vs.

William Lewis, nominal defendant,
Respondent.

Filed December 16, 2008
Affirmed
Lansing, Judge

Hennepin County District Court
File No. 27-CV-99-005673

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Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and Minge, Judge.

U N P U B L I S H E D   O P I N I O N

LANSING, Judge

This dispute between the two majority partners in a limited-liability partnership arises out of a court-supervised winding-up of the partnership business. On appeal from judgment following remand, George Galic disputes the district court's division of escrowed sale proceeds and its refusal to release trust-account funds maintained, according to stipulation, in lieu of a supersedeas bond. By notice of review, Steven Maus disputes the district court's division of profits from five separate sources, the allocation of penalty and interest on 1999 taxes, the allocation of interest on a capital account, and an order for attorneys' fees. Because the district court properly applied the law, relied on facts supported by the record, and acted within its equitable powers in supervising the winding-up of the partnership business, we affirm.

F A C T S

George Galic and Steven Maus formed Galic/Maus Ventures, L.L.P. (GMV) by written agreement in November 1985. William Lewis, who is not a party to this appeal, later became a minority partner. Over the next thirteen years, GMV evolved into a multi-million dollar business by developing patented techniques for making injection-molded plastics for optical lenses and compact discs. One of GMV's main products was the RoboCoater, a turnkey system that automates the entire process of molding and coating eyeglass lenses.

GMV sold its optical-lens business and related assets to Optics Technology, Inc. (OTI) in April 1998. Under the asset purchase agreement that set forth the terms of the sale, OTI agreed to pay GMV $4,500,000, with $1,000,000 to be retained in an escrow account to indemnify OTI for potential losses, including losses related to patent infringement. The purchase agreement provided that OTI had authority to instruct the escrow agent to withhold the amount of money that OTI in good faith believed that it would incur in future losses. The agent was authorized to disburse the escrowed funds to GMV if OTI did not provide a claim of loss by April 8, 1999, one year from the closing date.

About the same time that OTI and GMV agreed to the purchase, the relationship between Maus and Galic deteriorated. Maus sued Galic in March 1999, alleging that Galic had breached his contractual and statutory obligations. Maus later amended the complaint to request a decree of dissolution. Galic counterclaimed on April 2, 1999, alleging wrongful dissolution.

Meanwhile, as the escrow agreement's one-year deadline approached, OTI asserted a good-faith belief that one of the patents it had obtained from GMV was invalid. As a result, the escrow agent allowed only $400,000 to be disbursed. Over the next year, Galic implemented a strategy to collect the remaining $600,000 in the escrow account. In June 2000, he successfully collected the $600,000, plus $22,000 in interest.

The litigation between Maus and Galic was tried in the district court with an advisory jury in August 2000. Relying on the advisory jury's answers to special verdict questions, the district court found that Galic had breached the partnership agreement and violated a statutory duty. The district court ordered dissolution by judicial decree effective August 18, 2000, and appointed a special master to hear and make recommended findings on the distribution of the partnership assets. In July 2001 the district court adopted the special master's report and recommendation. The order, as adopted, provided that each of the three partners—Galic, Maus, and Lewis—was entitled to his individual "capital account," which accurately reflected capital contributions to the partnership. To distribute the partnership's noncash assets, the order devised a bidding process. Maus successfully bid for all of the business lines, and the partnership accounts were debited and credited accordingly.

Neither Galic nor Maus was satisfied with the district court's method of distributing the partnership assets. Galic appealed to this court and Maus filed a notice of review. *Maus v. Galic*, 669 N.W.2d 38, 42 (Minn. App. 2003). We held that the district court acted within its equitable powers by dividing the capital accounts and devising the bidding process. *Id.* at 48. But we concluded as a matter of law that, under the partnership agreement and the statute, the partnership had been dissolved, not at the conclusion of the district court proceeding, but on April 2, 1999, when both Maus and Galic had, in their respective pleadings, manifested their dissolution intent. *Id.* at 45. The case was remanded to the district court to apply the April 2, 1999 dissolution date to its distribution determinations. *Id.* at 45-46.

On remand, the district court reappointed the special master to effectuate the remand instructions. Following an evidentiary hearing, the special master issued a report, and the district court countersigned the report in February 2005. In response to posttrial motions, the district court filed amended findings of fact, conclusions of law, and order for judgment in November 2007. Galic then appealed and Maus filed a notice of review.

D E C I S I O N

"Actions for accounting and dissolution of a partnership are equitable actions." *Maras v. Stilinovich*, 268 N.W.2d 541, 544 (Minn. 1978). In reviewing the exercise of equitable powers in the dissolution of a partnership, appellate courts analyze whether the district court exercised "its powers to find the most advantageous plan which will not prejudice the rights of either party." *Id.* In general, we uphold the district court's determinations if they are "fair under the circumstances." *Id.* We "consider the facts proved within the allegations of the complaint, in connection with the whole body of the substantive and remedial law of the state." *Prince v. Sonnesyn*, 222 Minn. 528, 537, 25 N.W.2d 468, 473 (1946) (quotation omitted).

If the dissolution action raises an issue on the construction or effect of an agreement, we review that issue as a matter of law, unless an ambiguity exists. *See Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267, 271 (Minn. 2004) (reviewing interpretation of management agreement de novo as issue of law). The district court's resolution of an ambiguity may present an issue "in the nature of a finding of fact." *Trondson v. Janikula*, 458 N.W.2d 679, 682 (Minn. 1990) (concluding that resolution of ambiguity in partnership agreement presented factual finding). On appeal, "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous." Minn. R. Civ. P. 52.01.

Having established the standard of review, we turn to the two issues raised by Galic and the eight issues raised by Maus. Of these ten issues, six challenge the district court's distribution of postdissolution profits—one challenge was raised by Galic and five by Maus. Maus's three remaining issues challenge the district court's allocation of the penalty and interest on 1999 taxes, the allocation of interest on a capital account, and the district court's order for attorneys' fees. Galic's remaining issue is whether the court improperly refused to release trust-account funds maintained, according to stipulation, in lieu of a supersedeas bond.

I

We first address the six challenges to the distribution of postdissolution profits. The district court, on remand, stated that its mandate was "to divide profits after April 2, 1999, into those derived from existing sales contracts or licenses on partnership projects and those derived from new sales contracts or licenses and to limit Maus's profits to those derived from the former." The district court took the language directly from the opinion in the first appeal. *Maus*, 669 N.W.2d at 45-46. Although we read the language to be more specific on establishing the date and to be more general in addressing the division of profits, the language adequately summarizes the district court's charge. The language does not suggest that it is intended to supersede the partnership agreement or the application of statutory requirements, and the district court did not interpret it as a supersession.

The district court, recognizing its equitable and fact-finding responsibilities, interpreted the language "[d]erived from" to mean "sufficient to cause the item of profit to have been reaped." The district court further concluded that if a profit is only "loosely related to a preexisting sales contract, [it] is not derived from the [sales contract]." We recognize that different ways may exist to define the phrase "derived from," but the fact that we might state it in a slightly different way "is not sufficient to find the [district] court's interpretation to be clearly erroneous." *See Trondson*, 458 N.W.2d at 682 (affirming district court's interpretation of ambiguity in language of limited partnership agreement). Essentially, the district court reasonably applied the phrase "derived from" to distinguish between a payment resulting directly from a preexisting contract, and a payment that is merely tangential to a preexisting contract.

Galic's single distribution-of-profits challenge is to the district court's determination that he must share equally with Maus the $622,000 that was received from the escrow account established for a portion of the OTI sale proceeds. The district court determined that the escrow profits were from a contract that existed before April 2, 1999 because they were part of the $4,500,000 sale price that OTI agreed to pay GMV in April 1998 for its optical-lens business. Although Galic implemented an offset strategy to collect the money that OTI put into escrow, the district court's finding that the escrow profits were from the 1998 OTI contract rather than from Galic's postdissolution offset strategy is not clearly erroneous and is well within the district court's equitable powers to reach a fair resolution in the winding-up procedure. Consequently, we decline to set aside this determination.

Maus's five challenges to the distribution of profits include the profits from selling RoboCoaters 10 and 11, profits from payments made by a customer, profits from selling inserts, profits from selling molds, and profits referred to as "wind-up" profits. Although we are not persuaded that any of the five challenges demonstrate that the district court erred or acted beyond its equitable powers, we address each of these challenges individually.

Maus's first challenge is to $290,551.78 that Galic earned from manufacturing and selling two RoboCoaters—RoboCoaters 10 and 11—as part of his offset strategy. The district court determined that the profits from RoboCoaters 10 and 11 were not from a sales contract or license that existed before April 2, 1999, because Galic built RoboCoaters 10 and 11 on speculation and contracted to sell them after April 2, 1999. The record supports these findings. Although Galic built RoboCoaters 10 and 11 as part of his strategy to acquire the escrow profits from the 1998 OTI contract, the district court's finding that the profits from RoboCoaters 10 and 11 were from Galic's postdissolution contracts to sell RoboCoaters 10 and 11 rather than from the 1998 contract is not clearly erroneous and is well within the district court's equitable powers to fairly divide the postdissolution profits.

Maus's second challenge is to the district court's determination that postdissolution payments from A-1 Engineering were not from an existing sales contract or license. A-1 made one payment to GMV in April 2000 and a second payment to GMV in July 2000. These payments totaled $16,764.94. The district court determined that the A-1 payments were not from a contract that existed before April 2, 1999 because "[t]here was no contract, written or oral" that required A-1 to make these payments. The record supports the district court's finding. At the remand hearing, Galic testified that no agreement existed that required A-1 to make the payments to GMV. He explained that GMV's continuing relationship with its customers made it "less of a problem for A-1 to get paid" when it repaired and provided replacement parts for GMV's molds. In reciprocity, A-1 chose to pay GMV the fifteen percent difference between the retail list-price and the original-equipment-manufacturer's price. The district court's finding does not represent clear error and is within its equitable powers to divide the postdissolution profits fairly.

Maus's third argument relates to the sale of RoboCoater inserts to two different customers, Gentex and Polyvision. Maus contends that these profits were "earned as a result of transactions that had begun long before the dissolution date of the GMV partnership." But the record demonstrates that Gentex did not contract to purchase the inserts until June 1999. Galic testified that he built the 164 inserts without a "binding purchase order or contractual commitment" and that Gentex did not issue a purchase order for the inserts until June 1999—after Galic made several adjustments to the inserts to satisfy Gentex's quality-control requirements. Therefore, the record supports the district court's finding that the Gentex insert profits were not from contracts or licenses that existed before April 2, 1999. The record similarly supports the district court's characterization of the transaction with Polyvision as a postdissolution profit not derived from a preexisting contract or license. In making this finding, the district court recognized that GMV received a purchase order and down payment for 195 inserts from Polyvision before April 2, 1999, but it emphasized that Maus received his share of the predissolution down payment, that Maus tried to shut down the repair shop in the summer of 1999 to save overhead expense, and that Galic personally paid the shop rent and utilities following dissolution. The district court's findings on the insert profits are supported by the record and well within its equitable powers.

Maus's fourth challenge is to the distribution of $39,377.09 in profits that Galic received after the dissolution date from selling molds to Polyvision. The record supports the district court's finding that these profits were not from contracts or licenses that existed prior to the dissolution date. Polyvision submitted its purchase order for the molds to GMV in May 1999, after the partnership dissolution. The district court's findings are supported by the record and within its equitable powers.

Maus's fifth challenge is to the "wind-up profit." This term refers to $34,486.80 that Galic received when he returned or liquidated unused hardware that he had purchased to make RoboCoaters after the partnership's dissolution. The district court suggested that the term "wind-up profit" was a misnomer and explained that "[t]he report for [the wind-up] category shows a profit because the cost of the items Galic sold or got refunds for are not shown on it, but are found among the expenses for the RoboCoaters 10 and 11." Because Maus has not identified any evidence that contradicts the district court's finding that the "wind-up profit" was not an actual profit, his final argument is unpersuasive.

Neither Galic nor Maus has demonstrated that the district court's division of profits on remand amounted to clear error or exceeded its equitable powers to reach a fair resolution. Consequently, we decline to set aside these determinations.

II

On remand Maus argued that he was entitled to an additional credit to his capital account for a penalty-and-interest payment of $16,852 that GMV made to the State of Minnesota for the partnership's failure to make nonresident withholdings for Maus between September 1998 and April 2000. Maus had become a "nonresident" partner for tax purposes when he moved to Texas in 1998.

The penalty-and-interest issue was discussed at the hearing in February 2001. Maus testified that he believed he had been damaged in "[t]he amount of the penalty and interest for the belated [tax] filing." When Galic's counsel pursued the issue, however, Maus stated that he believed the "money can be recovered," and Maus's counsel told the court, "I don't know of any penalties that have been assessed [] yet, and our view very well may be that any penalties that are assessed we will bring them up with [the tax preparer's] malpractice carrier." When Maus submitted his final arguments to the special master in April 2001, Maus conceded that his capital account should be reduced by $64,421, the entire amount that was paid to Minnesota in 2000 "for state income tax withholding." This statement confirmed that Maus was not seeking damages at that time for the belated tax filing.

The district court did not address the penalty-and-interest issue in its July 2001 order, presumably because Maus had conceded the issue. The district court did, however, address Maus's claim that he was entitled to damages because Galic, in personally preparing the partnership's tax returns from 1986 to 1998, had made numerous errors. The district court concluded that the "errors did not disproportionately benefit or harm either partner" and that Galic "has, by his services, more than fulfilled the obligation to pay nominal damages to Maus." This part of the district court's order adequately addressed the tax-related issues that were raised by the parties.

Furthermore, this issue was raised and decided in the previous appeal. *See Maus*, 669 N.W.2d at 46 (addressing Maus's challenge to reduction of his capital account). In that opinion, we rejected Maus's challenge to the reduction in his capital account because he had acknowledged in the district court proceedings that his capital account was properly reduced. *Id.* The penalty-and-interest issue was beyond the scope of the remand, and the district court did not err when it declined to rule on Maus's motion to credit his capital account with an additional $16,852.

III

Maus also argues that the district court erred on remand when it determined that the interest earned on the money in the dissolution trust account "[f]or the years 2000 forward" should be divided between the partners based on the amounts attributable to their individual capital accounts. Maus contends that the partnership agreement requires all interest income to be distributed equally between Maus and Galic.

The dissolution trust account was established in 1999. The district court's order states that the trust account contains the proceeds from the partners' capital accounts and that the trust account earned $438,875.14 in interest between April 2, 1999 and July 29, 2004. Maus does not dispute these findings on appeal.

In determining how the interest income should be distributed, the district court examined the partnership agreement. The district court noted that neither the partnership agreement nor its addenda addressed "interest or investment income" even though they each specifically addressed how to divide "partnership project profit," "net proceeds," and "future payments." Thus the district court concluded that, although the interest earned on the account through 1999 should be equally distributed, the interest earned on the account "[f]or the years 2000 forward" should be divided based on each partner's capital-account balance.

Both the record and the governing statute support the district court's conclusion. The governing statute, since repealed, is Minn. Stat. §§ 323.01-.49 (2000), *repealed by* 1997 Minn. Laws ch. 174, art. 12, § 68, at 1163, 1998 Minn. Laws ch. 262, § 12, at 194. *See Maus*, 669 N.W.2d at 44 n.2 (applying chapter 323 because of delayed effective date of chapter 323A). Absent a specific agreement between partners, each partner should receive the interest on the capital he contributed "from the date when repayment should be made." Minn. Stat. § 323.17(4). Under this provision, Galic presumably would have received the interest earned on his individual capital account beginning on April 2, 1999 if the parties had not agreed to an annual accounting based on the calendar year. The district court therefore did not err when it allocated the interest earned on the dissolution trust account "[f]or the years 2000 forward" based on the amounts attributable to the partners' individual capital accounts.

IV

Maus's last argument is that the district court erred by ordering him to pay $12,265 in attorneys' fees to Galic. The district court's undisputed findings on this issue state that Galic's counsel incurred $16,265 in fees to correct problems with the exhibits for the 2003 appeal. Maus's counsel, after insisting on preparing the exhibits for the appeal, created these problems by failing to submit many exhibits, mislaying the originals and all copies of some exhibits, and erroneously reporting that many of the trial exhibits had not been received. The district court determined that the task of preparing the exhibits should have been a joint undertaking between the parties and that it reasonably should have cost Galic $4,000. Thus the district court ordered Maus to pay Galic $12,265—the difference between the actual cost and the reasonable cost.

Maus argues that the district court lacked jurisdiction to order these attorneys' fees because they were based on work done to prepare for proceedings in the appellate court, not the district court. In support of his argument, Maus relies on Minn. R. Civ. App. P. 139.06 which is the procedural rule for obtaining attorneys' fees on appeal, but that rule does not directly address preparation of the district court record. It is generally "the better practice . . . for the appellate courts themselves to determine appropriate attorney fees for the appeals portion of the lawsuit." *Hughes v. Sinclair Mktg., Inc.*, 389 N.W.2d 194, 200 (Minn. 1986). But when the district court is in a superior position to make a determination, appellate courts may direct the district court to exercise jurisdiction over the issue of fees. *See Federated Mut. Ins. Co. v. Concrete Units, Inc.*, 363 N.W.2d 751, 757 (Minn. 1985) (directing district court on remand to determine attorneys' fees incurred in defending against appeal as well as declaratory judgment action).

In this case, it was appropriate for the district court to address attorneys' fees. The district court's order states that the special master, who assisted the district court judge, had "extensive involvement" in correcting the numerous problems with the exhibits and preparing the parties' stipulation relating to exhibits. Because of the district court's specific knowledge of the work and time involved in the preparation of the record, the special master and district court were best suited to determine the appropriateness of the amount of fees. We therefore reject Maus's argument that the district court erred when it ordered him to pay $12,265 in attorneys' fees to Galic.

V

Having addressed Maus's eight issues, we turn to the last of Galic's two issues. Galic argues that the district court erred when, based on a 2003 stipulation between Galic and Maus, it denied Galic's motion for a distribution of $1,200,000 from the dissolution trust account. The stipulation provided that the trust account's funds would be maintained in lieu of a supersedeas bond. Galic asserts that $1,200,000 represents the amount in the dissolution trust account to which Maus can make no legal claim and requests that it be distributed to him immediately because it currently is "earning interest of less than [one percent] per annum."

The 2003 stipulation plainly states that disbursements may not be made from the dissolution trust account until the parties' appellate rights are completely exhausted:

> Each party agrees that the funds to this credit on deposit with the [district court] shall remain on deposit until *all* appellate rights of the other party are exhausted, including *any* petitions for review to the Minnesota Supreme Court and *any* review by the Supreme Court should it grant review.

(Emphasis added.) Because the parties' appellate rights have not yet been exhausted, this language unambiguously supports the district court's determination.

Galic contends that the stipulated language does not refer to the exhaustion of all appellate rights, but only to the exhaustion of appellate rights arising from the district court's December 2002 judgment. He also asserts that, because the stipulation contained mutual waivers of supersedeas bonds, it should not be applied to the money Galic seeks because the money is not necessary to secure Maus's claims. But, the stipulation indicates that the parties entered the agreement as they contemplated "an appeal from the judgment entered in this matter on December 27, 2002," and proceedings on remand are a *continuation* of the original proceedings. *McClelland v. Pierce*, 376 N.W.2d 217, 219 (Minn. 1985). Furthermore, the language of the stipulation indicates only that the December 2002 judgment and prospective appeal prompted the parties to enter the stipulation. The stipulation globally applies to *all* appellate rights and *any* petitions for review. The stipulation does not state that funds may be released if they are not necessary to secure the other party's claims. To the contrary, the stipulation suggests that both parties sacrificed an earlier distribution of funds to avoid legal fees associated with "claims against the other for the delay in distributing their monies." We therefore conclude that the district court did not err when it determined that the 2003 stipulation prohibits the distribution.

Finally, we note that Galic states in his brief that any disposition of this appeal will require a limited remand "because the partners' capital accounts were last updated as of July 29, 2004," and the district court must account for interest income earned and expenses paid since that date. He suggests that "the account balances will also need to be updated to reflect the resolution of the still disputed taxation of cost issues." Because these specific issues are not raised in this appeal, a remand is unnecessary; Galic is free to file a motion in the district court to address these issues.

Affirmed.