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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0254**

Kirk James Hiner, et al.,
Respondents,

vs.

Jeffrey H. Boldon,
Appellant,

Boldon Recycling and Converting, Inc.,
Defendant.

**Filed April 22, 2008
Affirmed
Hudson, Judge**

Goodhue County District Court
File No. 25-C2-05-001650

Mary L. Hahn, Ronald L. Moersch, Hvistendahl, Moersch & Dorsey, P.A., 311 South Water Street, P.O. Box 651, Northfield, Minnesota 55057-0651 (for respondents)

Geoffrey Colosi, Colosi & Associates, LLC, 4856 Banning Avenue, White Bear Lake, Minnesota 55110; and

Michael C. Hager, 301 Fourth Avenue, Suite 270, Minneapolis, Minnesota 55415 (for appellant)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Poritsky, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HUDSON, Judge

In this action challenging the district court's imposition of an equitable remedy under Minn. Stat. § 322B.833 (2006) (the Limited Liability Company Act), appellant argues that the district court (1) erroneously failed to distinguish between a corporation and its sole shareholder; (2) failed to address various alleged breaches of fiduciary duty by a corporate treasurer to the corporation; and (3) abused its discretion in awarding attorney fees to respondents. Because appellant failed to provide a sufficient record for appellate review, we affirm.

FACTS

Jeffery Boldon and Kirk Hiner met in 2002. Hiner and Boldon organized Hiner Boldon LLC (the LLC) in October 2003 and are the only members of the LLC.¹ The LLC does not have a member-control agreement, operation agreement, or a buy-sell agreement. Hiner is also the sole owner of South State Bedding (SSB), a Minnesota corporation. Boldon's son owns and operates Boldon Recycling and Converting, Inc. Hiner Boldon, LLC; SSB; and Hiner, as an individual, are the respondents in this case. Boldon and Boldon Recycling and Converting, Inc. are the appellant.

In 2002, Hiner and Boldon decided to purchase a commercial property located in Kenyon, Minnesota. In order to purchase the property, Hiner and Boldon took out a \$400,000 mortgage. Hiner and Boldon also each contributed \$25,000 toward the

¹ Hiner Boldon, LLC is filed with the Minnesota Secretary of State as "Hiner Bolden, LLC," which is a misspelling of Boldon's last name.

purchase price of the Kenyon property. Between 2003 and 2004, the LLC began having financial difficulties, primarily because of difficulties securing and maintaining renters for the Kenyon property. By 2006, the Kenyon property was in foreclosure.

Because of financial difficulties and significant personal and professional conflicts between the LLC members, in September 2005, respondents filed a complaint seeking, among other things, equitable relief and attorney fees under Minn. Stat. § 322B.38 (2006), and judicial intervention under Minn. Stat. § 322B.833 (2006). Appellant filed an answer and counterclaim requesting, among other things, judicial intervention and sale of Hiner's interest in the LLC to Boldon under Minn. Stat. § 322B.833, subd. 2 (2006).

After a five-day court trial, the district court concluded as follows:

Much of the difficulty of this case stems from the members' lack of formal roles in the LLC. Further, the LLC members often and regularly treated themselves synonymously with their other business ventures. Thus, it has been extremely difficult for this Court to determine who was wearing what hat at particular times.

.....

Hiner and Boldon are deadlocked in their management of the LLC, and are unable to break the deadlock. Only Judicial intervention will solve this deadlock. The parties concede this point. Both parties owed a duty to each other and to the LLC to act in an honest, fair, and reasonable manner in the operation of the LLC. Both parties have violated these duties, to varying degrees. With this in mind, the Court has considered the appropriate relief under all the facts and circumstances of this case.

The district court found that “Hiner and SSB jointly contributed a total of \$89,345.12 to the LLC” and that “Boldon contributed a total of \$32,830.71” to the LLC.

The district court noted that Hiner

did not separate out Hiner contributions from SSB contributions. Hiner testified that when the LLC needed money, he would contribute money from wherever he could get it, which was primarily from SSB. [The LLC’s accountant] testified that, for purposes of accounting and tax preparation for the LLC, it makes no difference whether it was Hiner or SSB that contributed monies to the LLC. The Court finds [that] there was no improper motive or intent behind SSB’s contributions to the LLC. The court finds there was no improper motive on the part of Hiner, when Hiner used SSB funds to keep the LLC afloat.

The district court decided that “[u]nder the facts and circumstances of this case . . . it would be inequitable to order winding up through liquidation” and that “it would be inequitable to order a complete equalization of contributions by the LLC members.” Consequently, the district court ordered Hiner to form a successor organization and continue the business of the LLC and also ordered that “Boldon shall not be involved in this successor organization in any manner and shall have no interest whatsoever in this successor organization.” The district court granted Hiner judgment in the amount of \$8,670 to equalize the contributions of the LLC members. The district court also concluded that it was “reasonable and necessary” to award Hiner \$40,000 in attorney fees and costs.

Appellant moved for amended findings of fact, conclusions of law, judgment, order and remittitur, or, in the alternative, a new trial and/or stay. The district court denied appellant’s motion. This appeal follows.

DECISION

Appellant argues that (1) the district court erred by attributing contributions to the LLC to a non-member, SSB; (2) the district court failed to address Hiner's breaches of duty to the LLC; and (3) the district court abused its discretion by awarding respondent attorney fees.

The appellant bears the burden of providing an adequate record. *Grundtner v. Univ. of Minn.*, 730 N.W.2d 323, 334 (Minn. App. 2007). "It is elementary that the party seeking review has the duty to see that the appellate court is presented with a record which is sufficient to show the alleged errors and all matters necessary for consideration of the questions presented." *Truesdale v. Friedman*, 267 Minn. 402, 404, 127 N.W.2d 277, 279 (1964). This court may dismiss an appeal where appellant fails to provide an adequate record for review. *Noltimier v. Noltimier*, 280 Minn. 28, 29, 157 N.W.2d 530, 531 (1968). This court reviews a district court's factual findings for clear error and its legal conclusions de novo. *State v. Jackson*, 742 N.W.2d 163, 168 (Minn. 2007).

Appellant has provided this court with only a partial transcript of the proceedings before the district court. The court trial took place over the course of five days with multiple witnesses. But appellant has only provided this court with a partial transcript of Hiner's testimony as well as the transcript of the testimony of the accountant for the LLC. Based on representations from the parties' respective attorneys at oral argument, these transcripts apparently represent between 10 and 40 percent of the testimony heard by the district court.

Appellant challenges the district court's factual findings and legal conclusions, but has provided this court with an incomplete record with which we may review those findings and conclusions. Appellant would have this court rely on his assertion that he provided this court with all of the "relevant" testimony. Respondents do not agree that all relevant portions of the record have been presented, and we decline to rely on the contested assertion. Appellant's failure to provide this court with a complete record renders effective appellate review virtually impossible. *See State v. Vang*, 357 N.W.2d 128, 128 (Minn. App. 1984) (concluding that appellant's failure to provide a complete transcript made appellate review impossible).

If we were to attempt review on this incomplete record, we could not conclude that the district court erred. Section 322B.833, subdivision 1, grants the district court the authority to grant "any equitable relief it considers just and reasonable." Appellant has not shown that the relief granted by the district court violated this grant of authority. Specifically, in the absence of any formal LLC agreements, documents, resolutions, or minutes establishing the parties' actual membership interests, the district court did not clearly err in its accounting of the LLC members' contributions to the LLC. Appellant's arguments that the district court failed to address Hiner's breaches of duty to the LLC and abused its discretion by awarding respondent attorney fees are not supported by the record before this court.

Affirmed.