

LEO LORENTZ, Employee/Appellant, v. DANIEL NYQUIST, UNINSURED, Employer, and SPECIAL COMP. FUND.

WORKERS' COMPENSATION COURT OF APPEALS  
DECEMBER 19, 2000

No. [REDACTED SSN]

HEADNOTES

EXCLUSIONS FROM COVERAGE - PARTNER IN BUSINESS OR FARM OPERATION; STATUTES CONSTRUED - MINN. § 176.041, SUBD. 1(e). Substantial evidence supports the compensation judge's finding that the petitioner was a partner engaged in a farming operation pursuant to Minn. Stat. § 176.041, subd. 1(e) and therefore was excluded from workers' compensation coverage.

Affirmed.

Determined by: Rykken, J., Johnson, J., and Pederson, J.  
Compensation Judge: Peggy A. Brenden

OPINION

MIRIAM P. RYKKEN, Judge

The petitioner appeals the compensation judge's findings that the petitioner was excluded from workers' compensation coverage as an employee of a family farm and also as a partner in a farming operation. We affirm the compensation judge's finding that the petitioner was a partner in a farming operation, and do not address the issue of whether the petitioner was an employee of a family farm.

BACKGROUND

In July 1991, Leo Lorentz, the petitioner, began renting a house on the farm property of Daniel and Helen Nyquist, for \$250 per month. A few months later, the petitioner was approached by Daniel Nyquist with an arrangement whereby the petitioner would perform chores around the farm in lieu of paying rent. The petitioner began helping with the crop farming and the dairy operation.<sup>1</sup> The petitioner testified that he kept track of hours worked more or less than the value of \$250 per month. Daniel Nyquist testified that there was no arrangement to pay the petitioner for hours worked over \$250 per month or to receive an additional rent payment for hours under that amount.

In April 1996, the Nyquists and the petitioner discussed the prospect of the petitioner taking over the dairy operation upon Daniel Nyquist's retirement in January 1999. On

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<sup>1</sup> The petitioner had full-time employment elsewhere from 1991 until June 1996.

April 23, 1996, Daniel and Helen Nyquist, their son Mark Nyquist, and the petitioner met with the Nyquist's accountant. The Nyquists proposed that the petitioner would quit his current job and begin full time in the dairy operation and perform chores around the farm, and the petitioner would receive a third of the proceeds of the milk checks from the creamery. In addition, Daniel Nyquist would sell the petitioner bull semen which he could use to inseminate the cows, and the calves would belong to the petitioner; expenses associated with the new calves would be payable by the petitioner. The plan was designed to increase the petitioner's equity interest in the herd and to phase him into the dairy business. On June 1, 1996, the petitioner began working full time in the dairy operation.

On September 19, 1996, the petitioner was picking corn on property owned by Dwight Nyquist, who is Daniel Nyquist's brother, and leased to Mark Nyquist, who is Daniel Nyquist's son. The corn picker broke down, and the petitioner asked Dwight Nyquist for assistance. During the repair, the petitioner removed a hydraulic hose and the hydraulic system lost pressure, causing the head of the picker to drop. Dwight Nyquist was pinned, but managed to extricate himself. The petitioner claims that the picker struck him in his mid back, low back, and right leg. The Nyquists claim that the petitioner did not indicate that he was injured in this incident. The petitioner did not seek treatment for any symptoms relating to this alleged injury until on or after August 20, 1997. The petitioner continued to run the dairy operation until February 1, 1998.

On April 15, 1999, the petitioner filed a claim petition alleging entitlement to temporary total disability benefits and medical expenses for a specific injury which occurred on September 19, 1996. Later, the petitioner amended his claim to include a Gillette injury culminating on January 31, 1998. A hearing was held on March 15 and 16, 2000. The compensation judge dismissed the petitioner's claim, finding that he was excluded from coverage under the workers' compensation act as an employee of a family farm and also as a partner. The petitioner appeals.

## STANDARD OF REVIEW

In reviewing cases on appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1998). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, "[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Id.

## DECISION

### Partnership

The compensation judge found that the petitioner was a partner in a farming operation. The workers' compensation act does not apply to a partner engaged in a farm operation. Minn. Stat. § 176.041, subd. 1(e);<sup>2</sup> Tentis v. Kenneth Schumacher, slip op. (W.C.C.A. Oct. 2, 1989).

“A partnership is an association of two or more persons to carry on an activity as co-owners for profit.” Bradley v. Bradley, 554 N.W.2d 761 (Minn. App. 1996), pet. for rev. denied (Minn. Dec. 23, 1996). Further, a partnership is a contractual arrangement established by the consent of the contracting parties. Spearman v. Salminen, 379 N.W.2d 627, 631 (Minn. App. 1986). “If a contract fails to disclose an express agreement, the law may imply one based upon the circumstances or acts of the parties. No legal distinction results from a contract expressed in writing, verbally, through actions or by a combination of the three.” Georgens v. Federal Deposit Ins. Corp., 406 N.W.2d 95 (Minn. App. 1987). Whether a contract is implied is a question of fact to be determined from the conduct and statements of the parties. Bergstedt, Wahlberg, Berquist Associates, Inc. v. Rothchild, 302 Minn. 476, 479-80, 225 N.W.2d 261, 263 (1975).

The compensation judge in this case concluded that the agreement reached by the parties in April 1996 “clearly contemplated more than a simple ‘day’s work for a day’s wage’ arrangement.” The compensation judge reasoned as follows:

There was no effort to compute [the petitioner’s] compensation based upon time worked, which is generally how a farm laborer’s wage is calculated. I also consider it significant that [the petitioner’s] 1/3 share of the milk checks was roughly twice what he would have received if he had been paid on a time worked basis. [The petitioner] was able to hire help on his own, and did so on at least one occasion. His income was based on the net proceeds of each milk check. He was required to pay 1/3 of the expenses incurred in getting the milk to market. Additionally, he had an ownership interest in the dairy herd which continued to grow throughout the period June 1, 1996 through January 1998.

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<sup>2</sup> Minn. Stat. § 176.041, subd. 1(e) states as follows:

Subdivision 1. Employments excluded. This chapter does not apply to any of the following: . . .

(e) a partner engaged in a farm operation or a partner engaged in a business and the spouse, parent, and child, regardless of age, of a partner in the farm operation or business.

(Memo. at 6; record cites deleted; emphasis in original.) The compensation judge compared this case to the Tentis case. In the Tentis case, this court agreed that a farm laborer was not a partner, even though the relationship was “close to being one of partners engaged in a farming operation” where the laborer had none of his own funds or equipment invested in the operation and did not pay any of the expenses of the operation. Unlike the Tentis case, the petitioner in this case had his own funds invested, and paid expenses on the part of the herd which he owned.

The compensation judge recognized that the parties had not intended to form a partnership in June 1996, but concluded that under the circumstances, the parties’ agreement represented a partnership on September 19, 1996, and January 31, 1998. We agree. The parties may not have intended to form a partnership, but they did mutually agree to share profits from the milk checks, share expenses, and to gradually transfer ownership of the herd, all indicia of co-ownership. The petitioner argues that dividing the milk check was sharing of gross revenues, not of profits. However, the employee was also required to pay a proportionate share of expenses, and his income was based upon the net proceeds of each milk check. The parties shared profits, not simply gross revenues. In this case, the parties clearly entered into a contractual arrangement as discussed in April 1996, and as operated from July 1996 through February 1998. That the agreement was not in writing is not determinative. Substantial evidence supports the compensation judge’s finding that the petitioner was a partner engaged in a farming operation since he acted as a co-owner, and not an employee. The compensation judge accordingly determined that the petitioner was excluded from coverage under the Workers’ Compensation Act. We affirm.

Since we have affirmed the petitioner’s exclusion from workers’ compensation coverage as a partner engaged in a farming operation, we need not address whether he was also excluded as an employee of a family farm. As discussed above, the petitioner was not an employee at the time of his claimed injuries, but was a partner.