

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

DONALD R. CARLSON and LOIS B.
CARLSON, husband and wife,

Plaintiffs/Counter-Defendants,

v

File No. 00-5153-CB
HON. PHILIP E. RODGERS, JR.

BRUCE A. CARLSON and SHARON S.
CARLSON, husband and wife,

Defendants/Counter-Plaintiffs.

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DECISION AND ORDER

The Plaintiffs' complaint and the Defendants' counter-claim were tried to a conclusion on April 3, 2001. The Court then requested that the parties submit post-trial conclusions of fact and law. Following the receipt and review of those documents, the Court heard closing arguments on April 23, 2001, in Leland, Michigan. The Court took the matter under advisement and will now provide its findings of fact and conclusions of law. MCR 2.517.

Introduction

This case involves the dissolution of a family partnership in Leelanau County, Michigan. The Plaintiffs are the mother and father of the Defendant Bruce Carlson, and Sharon Carlson is Bruce Carlson's wife. Sadly, despite extensive efforts to resolve this dispute and repair the rent in the family relationship through alternative dispute resolution and a settlement conference, the parties were not able to do so. The Court will now make its best effort to resolve the legal

dispute with a clear understanding that it does not have the capacity to repair the familial relationship.

The legal issues presented to the Court are relatively narrow. A family partnership has been dissolved and the parties seek the Court's assistance in winding it up and dividing its assets. Plaintiffs also seek a judgment for the unpaid balance of \$10,000 owed them by Bruce Carlson on a 1997 loan in the original amount of \$20,000.

There is no dispute that the parties' farmed together pursuant to the terms of an oral family partnership. Nor do they dispute that the partnership was terminated on June 2, 1995. The dispute concerns the nature of the assets within the partnership and how they should be divided.

The Plaintiffs claim that the partnership assets consist of the farm equipment and do not include any real estate. The Plaintiffs propose that the Court divide the equipment in accordance with a proposal identified as Plaintiffs' exhibits 18 and 19.

As to the claim for \$10,000 owing on a 1997 loan, Bruce Carlson admitted owing that money when he testified during the trial. This balance is due and a judgment may be entered accordingly.

Neither party seeks an accounting and that claim has been abandoned. There is debt owed to PCA. With reference to Plaintiffs' exhibit 8, it is evident that the loan balance at the time the partnership terminated was \$101,748.94. Each of the issues between the parties will now be addressed separately.

Real Estate

Although the Defendants have made a claim for an ownership interest in the 85 acres which Plaintiff Donald Carlson inherited from his father, Rudolph Carlson, neither party expected the Defendants would own any of the Plaintiffs' land unless and until they bought it. The parties sought the assistance of counsel and began the process of estate planning with an eye towards a proposed sale of Plaintiffs' real property to the Defendants. This process was never completed, an agreement was never executed and the Defendants have no claim to the Plaintiffs' real estate.

Trees Planted by Defendants

There is no dispute that the Defendant Bruce Carlson planted fruit trees on land owned by the Plaintiffs. There is also no dispute that trees are fixtures and a part of the real estate. The Defendants seek an interest in revenues from the production of these trees in the future. However, there is no evidence before the Court from which it could determine the Defendants' interest in the trees' production simply by having furnished them. Indeed, it is evident from the testimony received in Court that a productive fruit tree receives intense annual care. Orchard maintenance includes fertilizing, pruning and spraying trees and then harvesting fruit. Without significant ongoing annual care and maintenance, fruit trees have little if any productive value. Recognizing that the Defendants have captured the entire revenue stream from those trees which they planted on the Plaintiffs' property through 1999, any claim to a future interest in the revenues from these trees appears speculative and unwarranted by the facts developed at trial.

Further, Defendant Bruce Carlson appears to recognize that he has no economic interest in trees he does not own or lease as he has negotiated tree leases with other farmers for 25 to 30 year terms, which terms reflect the useful life of a fruit tree. The trees on Plaintiffs' property were purchased with funds derived in part from Plaintiffs' farm and none of the revenues from Defendants' trees were shared with the Plaintiffs. In the absence of a documented written interest in these trees, the Court finds no basis to award any portion of the future revenue stream to Defendants.

Equipment

Although the Defendants assert a right to buy all of the partnership equipment for \$10,000, this claim is predicated on the aborted estate planning effort. Since this agreement never came to fruition, the rights associated with it never matured. The equipment must be equitable divided.

The Court recognizes that the Defendants increased their farm debt dramatically after the partnership was dissolved and that Defendants have made substantial payments on this debt. Part of this debt reflected the purchase of an expensive tree shaker. However, the Defendants also captured the entire revenue stream from fruit production on Plaintiffs' land that had previously been shared with Plaintiffs.

Accordingly, the Court believes that an equitable division of the partnership assets would see the cherry shaker awarded to the Defendants and the remaining equipment divided equally pursuant to those lists of equipment identified as Plaintiffs' exhibits 18 and 19.

Debt

The partnership is presently without debt. At the time the partnership dissolved, its debt totaled approximately \$101,748.94. Thereafter, the Defendants took possession of the \$18,650.94 in the farm account and transferred it to a new account in their own name. The Defendants continued to pursue fruit farming operations and never accounted to Plaintiffs for any revenues derived from 1994 through 1999 on the Plaintiffs' home farm. Additionally, Plaintiffs provided Defendants with half of their 1995 cattle production.

It is evident to the Court that Defendants received a sufficient stream of income from fruit production on Plaintiffs' land to retire the partnership debt. The Court has also awarded the cherry shaker to Defendants which accounted for much of this debt. Neither Plaintiffs nor Defendants owe funds to each other. The Court cannot conduct an accounting to determine what, if any, net balance might be owed, since the parties agree an accounting is impossible.

Conclusion

In conclusion, the Court finds that the Defendants have no legal or equitable interest in Plaintiffs' real estate or the fruit trees planted thereon. The partnership has no debt and neither Plaintiffs nor Defendants are entitled to reimbursement from each other for any monies other than the \$10,000 Bruce Carlson acknowledges he owes to his parents. The Defendants are awarded the cherry shaker and the remaining equipment shall be divided equally. A judgment consistent with this Decision and Order shall be noticed for entry by the Plaintiffs pursuant to procedure described in MCR 2.602(B)(3). The pleadings filed by the parties were not frivolous and no sanctions will be ordered. Each party having prevailed in part, no costs will be taxed.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____