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2019 IL App (3d) 180032-U

Order filed February 6, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

CAROL A. SCHULTZ, CLARENCE R. SCHULTZ, MARLENA J. ANDERSON, MEGAN E. DAHLINGER, JOSHUA M. RYAN, SARAH B. JOHNSON, ADAM O. RYAN, and SHARON K. HALPIN,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, Grundy County, Illinois.
Plaintiffs-Appellants,	)	Appeal No. 3-18-0032 Circuit No. 14-CH-52
v.	)	
DONALD J. HALPIN,	)	
Defendant-Appellee.	)	The Honorable Lance R. Peterson, Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Justice Wright specially concurred.
Justice Carter dissented.

ORDER

¶ 1 *Held*: The circuit court abused its discretion when it ordered the dissolution of a partnership, rather than the expulsion of one of the partnership's members.

¶ 2 The plaintiffs, various members of the Omer Halpin Family Farms partnership, filed a civil complaint against one of the members of the partnership, defendant Donald Halpin, seeking

to expel him from the partnership. Alternatively, the plaintiffs requested the partnership's dissolution. The circuit court ruled that the plaintiffs had carried their burden on both theories; however, the court ruled that the most equitable solution was to dissolve the partnership. On appeal, the plaintiffs argue that the court erred when it entered judgment for dissolution rather than expulsion. We reverse and remand with directions.

¶ 3 FACTS

¶ 4 Most of the background facts of this case have been set forth in a previous decision, *Schultz et al. v. Halpin*, 2016 IL App (3d) 160210-U (unpublished order under Supreme Court Rule 23); we set out those facts necessary for an understanding of the current appeal and supplement them as needed.

¶ 5 In 1976, Omer Halpin entered into a partnership agreement with his five children: Daniel Halpin, Patricia Ryan, Carol Schultz, Dale Halpin, and Donald Halpin. The partnership was named Omer Halpin Family Farms and was created "for the purpose of carrying on the business of grain farming and related business." The partnership agreement required the partners to "make and render each to the other a full and correct account of all profits or increases" at least once a year. The agreement also provided that "[p]roper books of account shall be kept by the Partnership" and that "each partner shall at all times have free access to examine, copy or take extracts from the same."

¶ 6 The partnership agreement further provided in pertinent part:

> "The business of the Partnership shall be conducted by a Managing Agent to be selected by the Partners. The Managing Agent shall receive all income, pay all bills, distribute all profits and do such other things as is necessary to properly manage the

> Partnership. If the Managing Agent selected by the Partners shall be one of the Partners, the selection of such agent shall be by unanimous vote of the Partners."

The agreement allowed surviving partners to purchase the interest of a deceased partner as long as payment was made to the personal representative of the deceased partner within a certain time. Partners were allowed to retire or withdraw from the partnership after giving notice to the remaining partners.

¶ 7 In 1978, Omer Halpin's wife, Dorothy Halpin, took his place as partner and was the partnership's managing agent. That same year, the partners amended the partnership agreement to include additional capital from each partner. The amendment also added the following language to the partnership agreement: "If at any time during the continuance of the Partnership, the parties shall determine it necessary to make any alterations in this Partnership Agreement, they may do so with the written consent and agreement of a majority of both numbers and interests of the partners." The amendment was signed by Dorothy and all of her children.

¶ 8 Daniel Halpin died in 1992. He was survived by his spouse, Sharon Halpin, and two children, Marlena Anderson and Megan Dahlinger. At a partnership meeting in 1993, the partnership approved the transfer of Daniel's partnership interest to his daughters in equal shares, with income and voting rights transferred to his widow.

¶ 9 In 2004, Dale Halpin withdrew as a partner. In 2011, Omer died, and Dorothy died shortly thereafter. A partnership meeting was held by phone on July 13, 2011. At that time, Patricia Ryan was elected manager of the partnership.

¶ 10 From 1976 to 2014, the defendant farmed the partnership property. He initially farmed it with his father and siblings. Later, the defendant and his brother, Dale, farmed the property

together until 2004. At some point thereafter, the defendant entered into a lease arrangement, paying cash rent to the partnership to farm the partnership property. In September 2011, the partnership sent the defendant a notice of termination of his lease. The defendant ignored the notice and continued to farm the land.

¶ 11 In 2012, Patricia died. She was survived by three children, William Ryan, Sarah Ryan, and Adam Ryan. After Patricia's death, the defendant began acting as manager of the partnership even though the partners never elected him managing agent. He took control of the partnership checkbook and began using it.

¶ 12 In 2015, plaintiffs Carol Schultz, her husband, Clarence Schultz, Marlena Anderson, Megan Dahlinger, Joshua Ryan, Sarah Johnson, Adam Ryan, and Sharon Halpin filed a two-count complaint against the defendant. Count I sought expulsion of the defendant from the partnership. Count II, stated in the alternative, sought dissolution of the partnership.

¶ 13 In count I, the plaintiffs alleged that the partnership has not had a managing agent since Patricia's death but that defendant has possessed and controlled the partnership assets since then. Plaintiffs alleged that the defendant breached the partnership agreement and his duties as a partner by (1) failing to make and render an accounting, (2) refusing to pay profits to the partners, (3) denying partners access to the partnership books and records, (4) refusing to make himself available for annual partnership meetings, (5) refusing to transfer possession of the partnership property, (6) refusing to provide information about the partnership to other partners, and (7) not acting fairly as a tenant-farmer of the partnership property.

¶ 14 In count II, the plaintiffs alleged that the economic purpose of the partnership "is and has been unreasonably frustrated by the disagreement of the parties." They further alleged that the defendant had engaged in conduct that makes it "not reasonably practicable to carry on business

in the partnership with Donald J. Halpin." Defendant filed a motion to dismiss the complaint, which the circuit court denied. The defendant filed a counterclaim, alleging breach of contract and seeking declaratory judgment.

¶ 15 The plaintiffs testified that the defendant took control of the partnership checkbook after Patricia died, but he was never elected managing agent of the partnership nor authorized to incur or pay expenses on behalf of the partnership. The partners never received an accounting from the defendant. They last received a distribution from the partnership in January of 2013. They testified that they cannot get along with the defendant. Defendant has ignored their requests to participate in meetings and discuss partnership business. The partners stated that the defendant was to pay them rent based on a percentage of the profits he made for selling crops from the partnership property. The partners requested crop yield records from the defendant, which he refused to provide.

¶ 16 The defendant testified that he had an agreement with the partnership to farm the partnership property on a cash rent basis for an unspecified amount of rent. He agreed that he did not have a lease agreement with the partnership after 2011 but continued to farm the partnership land. He testified that he paid rent to the partnership until 2015. He agreed that the partners asked him for information about his yields from the partnership property, which he refused to provide. He did not create income and expense reports for the partnership. He testified that planting should take place in mid-April.

¶ 17 In September 2015, the plaintiffs filed a petition for the appointment of a receiver to manage the partnership assets. The defendant filed a motion to dismiss the petition. On April 11, 2016, the circuit court denied the defendant's motion and granted the plaintiffs' petition, finding that appointment of a receiver was appropriate because the partnership income and

property "is in danger of loss from misconduct." The court found that there were "no accountings for several years," "actions taken not authorized by the partnership," and "comingling" of partnership and personal assets by the defendant. The court further found "issues of deception, dispute, [and] mismanagement" that prevented the partnership from functioning. The court acknowledged that appointing a receiver "is an extreme remedy" but stated that the partnership "can't function" because the defendant and the other partners "can't agree on anything."

¶ 18 The court appointed Randall Fransen of the First National Bank of Dwight as receiver with "full authority and power to manage all partnership assets, including leasing the real property to a suitable tenant on suitable terms." Upon appointment of the receiver, the court ordered the plaintiffs "to post $200,000 bond and surety to be approved by the court."

¶ 19 Four days later, the plaintiffs filed a motion to modify the circuit court's order, seeking to waive the bond. They argued that they were unable to secure a bond and that further delay in attempting to obtain a bond would put the partnership "at risk of substantial loss, either in reduced yields, or potentially not being able to plant at all for 2016."

¶ 20 A hearing was held on the plaintiffs' motion on April 25, 2016. At that hearing, the plaintiffs presented evidence that they contacted two different insurance companies to try to obtain a bond but were denied because the companies could not adequately assess the risk and did not want to issue a bond on behalf of six individuals who were "spread all over the country." The circuit court granted the plaintiffs' motion to waive bond, finding that "there is good cause to waive Plaintiffs' bond" for two reasons: (1) no insurance company would issue a bond to the plaintiffs, and (2) it had not yet decided who the partners are. Nevertheless, the court ordered the

plaintiffs to "make a good-faith and reasonable effort to obtain a $200,000 bond and surety by May 24, 2016."

¶ 21 The defendant appealed the circuit court's decisions to appoint a receiver and waive the plaintiffs' bond. This court affirmed the court's rulings. *Schultz et al. v. Halpin*, 2016 IL App (3d) 160210-U (unpublished order under Supreme Court Rule 23).

¶ 22 Another hearing was held on May 24, 2016, at which it was determined who had rights to income from the partnership and in what percentages. In addition, though, the court stated it was prepared to rule on the plaintiffs' complaint. The court stated, *inter alia*, that the evidence supported both counts—dissociation and dissolution. However, the court stated it was going to dissolve the partnership due to the myriad problems the partnership had in merely functioning.

¶ 23 On July 25, 2016, the circuit court announced its decision on the complaint and issued a written order. The court found that the defendant's conduct related to the partnership made it "not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement." Accordingly, the court found that the plaintiffs had carried their burden on both counts of the complaint. Nevertheless, the court decided to enter judgment in favor of the plaintiffs on count II after finding that dissolution was the more equitable remedy. In part, the court based its ruling on the fact that the defendant was the only partner who farmed the property continuously for decades such that the court had "no idea how the business would continue" without the defendant. The court also found it significant that "there was never a plan presented if the Court chose dissociation how this property would be farmed and run as a business going forward." Thus, the court found that dissolution gave the partners the opportunity to purchase the property and thereby attempt to continue the original purpose of the partnership.

¶ 24 The plaintiffs attempted to appeal the circuit court's ruling, but that appeal was dismissed for lack of a final, appealable order.

¶ 25 On October 14, 2016, the circuit court entered an order setting the procedure for dissolution. The court also stated that the order of October 14, 2016, denying relief on count I of the complaint was final and appealable.

¶ 26 The plaintiffs again attempted to appeal, but the appeal was dismissed due to lack of compliance with Supreme Court Rule 304(a) (eff. Mar. 8, 2016). *Schultz et al. v. Halpin*, 2017 IL App (3d) 160700 (unpublished order under Supreme Court Rule 23(c)).

¶ 27 Further matters were litigated related to the dissolution and wrap-up of the partnership, culminating in the circuit court's order of December 14, 2017, which, *inter alia*, ordered a sale of the partnership property. Pursuant to the plaintiffs' request, the court also included a specific Rule 304(a) finding that the order of October 14, 2016, was final and appealable.

¶ 28 The plaintiffs appealed.

¶ 29 ANALYSIS

¶ 30 On appeal, the plaintiffs argue that the circuit court erred when it entered judgment for dissolution rather than expulsion. They contend that because they carried their burden on both counts and because dissolution was pled in the alternative, the court should have entered judgment on their preferred relief of expulsion. In addition, the plaintiffs allege error in the court basing its decision in part on factors not relevant to the proofs on the complaint; *i.e.*, that the defendant had farmed the property for decades and that the court was not provided with any proof that the partnership could continue in the defendant's absence.

¶ 31 Undoubtedly, parties are allowed to plead in the alternative in Illinois. 735 ILCS 5/2-604 (West 2014). However, a court sitting in equity possesses the discretion to award the relief it believes best suits the situation before it:

> "In fashioning a remedy, courts have broad discretion to grant the relief that equity requires. [Citation.] Relevant considerations include both what is fair and what is workable. [Citation.] Any prejudice inuring to a party must be taken into account. [Citation.] Additionally, courts may consider the relative benefits and hardships to the parties in crafting an appropriate remedy. [Citation.]" *Westcon/Dillingham Microtunneling v. Walsh Construction Co. of Illinois*, 319 Ill. App. 3d 870, 878 (2001); see also *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) (holding that "equitable remedies are a special blend of what is necessary, what is fair, and what is workable").

A circuit court abuses its discretion when its "ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

¶ 32 Initially, we note that the plaintiffs phrase their argument in part in terms of a claimed entitlement to elect their remedy. However, the doctrine of election of remedies is an estoppel theory and not one that affirmatively entitles a plaintiff to choose which equitable remedy the court should order once it has determined that the plaintiff has carried its burden of proof on both alternative theories. As this court recently pointed out in *Anekom, Inc. v. Estate of Demith*, 2018 IL App (3d) 160554, "[t]he election of remedies doctrine *precludes* a party from pursuing two or

more inconsistent remedies for the same injury or cause of action." (Emphasis added.) *Id.* ¶ 35. In essence, the doctrine acts to bar plaintiffs from asserting inconsistent remedial rights. *Lampa v. Finkel*, 278 Ill. App. 3d 417, 424 (1996). Furthermore, and of paramount performance to this case, the doctrine of election of remedies does *not* apply in cases in which "inconsistent or alternative remedies are joined in the same pleading." *Premier Electrical Construction Co. v. La Salle National Bank*, 132 Ill. App. 3d 485, 495 (1984). Thus, while the plaintiffs absolutely had the right to request alternative theories of relief in their single complaint, the doctrine of election of remedies does not change the fact that it was the court, acting in its equitable capacity, that had the discretion to order the relief it believed most appropriate.

¶ 33 Our review of the record, however, reveals that the circuit court's decision to order the dissolution of the partnership was arbitrary and unreasonable. While the court found it significant that the plaintiffs had presented it with no plan regarding how the partnership would function without the defendant, the nature of the case was such that the plaintiffs were under no obligation to present the court with such a plan nor do we find any request by the court that they do so. In addition, the court's finding that it had "no idea how the business would continue" without the defendant was largely irrelevant. It would be up to the partnership to determine how to operate moving forward. There was no requirement in the partnership agreement that the partnership property be farmed by a partner. Rather, the organization was free to choose any person to whom the property would be leased and by whom it would be farmed.

¶ 34 The defendant's unauthorized seizure of the partnership's financial and operational reins and his refusal to relinquish them and to otherwise comply with partnership rules after the deaths of Omer and Dorothy in 2011 appear to be the sole causes of the partnership's dysfunction. His exclusion from the partnership would cure that dysfunction. While dissolution would also cure

it, that remedy punishes the plaintiffs for the defendant's wrongdoing by requiring them to sell their property, repurchase it, and reorganize as a new business entity with no apparent legal or equitable benefit to anyone except, perhaps, the defendant—a person who has arguably forfeited any right to such consideration by this conduct.

¶ 35 Under these circumstances, we hold that the circuit court's dissolution of the partnership constituted an abuse of discretion. We reverse the court's decision and remand with directions to enter an order expelling the defendant from the partnership.

¶ 36 CONCLUSION

¶ 37 The judgment of the circuit court of Grundy County is reversed, and the cause is remanded with directions.

¶ 38 Reversed and remanded with directions.

¶ 39 JUSTICE WRIGHT, specially concurring.

¶ 40 I concur in the result.

¶ 41 JUSTICE CARTER, dissenting.

¶ 42 I respectfully dissent from the majority's decision in the present case. I would find that the trial court did not err when it ordered that the partnership be dissolved, rather than expelling Donald Halpin from the partnership. In determining that dissolution was the more fair and just remedy, the trial court considered all of the evidence presented and made very specific findings: that Donald was one of the only two original partners still remaining; that Donald was the only partner or person who had actually farmed the property continuously for 30 or 40 years; that the parties had not presented to the trial court any type of plan for how the property would be farmed and run as a business going forward if Donald was expelled from the partnership (who would farm the property and keep the books and accounts); that on the record presented, the trial court

had no idea how the business was going to continue; and that dissolution would give each of the partners an equal opportunity to try to obtain ownership of the property going forward. Those findings were consistent with the evidence presented and support the trial court's decision that dissolution was the appropriate remedy to award the plaintiffs. Although, as the majority notes, the plaintiffs were not required to present a plan to the trial court for how the partnership would move forward if Donald was expelled, the plaintiffs certainly could have done so, and it was not improper for the trial court to consider the lack of such a plan in determining the appropriate remedy. For all the reasons stated, I would conclude that the trial court's ruling did not constitute an abuse of discretion. See *Blum*, 235 Ill. 2d at 36; *Lemon*, 411 U.S. at 200 (recognizing that in shaping equity decrees, the trial court is vested with broad discretionary power and appellate review is correspondingly narrow). I, therefore, dissent from the majority's decision in the present case, which reaches the opposite conclusion.