IN THE COURT OF APPEALS OF IOWA

No. 1-305 / 10-1430
Filed July 13, 2011

PAUL E. JOCHIMSEN,
Plaintiff-Appellant,

vs.

WAPSI HUNTING CLUB, INC.
and JAMES WILLIAMS,
Defendants-Appellees.

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge.

Paul Jochimsen appeals the district court's decision declining to dissolve the Wapsi Hunting Club, Inc. or to impose alternative equitable relief. **AFFIRMED.**

A. John Frey, Jr., Clinton, for appellant.

Gary J. Rolfes of Mayer, Lonergan & Rolfes, Clinton, for appellees.

Heard by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.

We are asked to decide whether four members of the Wapsi Hunting Club, Inc. (WHC) engaged in oppressive conduct. Club member Paul Jochimsen asserts the four members acted oppressively when they amended the corporation's governing documents, admitted new member James Williams, and declined to adopt several of Jochimsen's proposals. Jochimsen asks us to dissolve WHC or to grant alternative equitable relief, including canceling defendant Williams's membership.

Because none of the actions or inactions of the four members ran contrary to their fiduciary duties, denied Jochimsen his reasonable expectations, or imposed upon him burdensome, harsh, and wrongful conduct, we conclude their conduct was not oppressive. The district court was correct in declining to grant relief.

I. Background Facts and Proceedings

Jochimsen is one of six members of the defendant-corporation, WHC, a mutual-benefit corporation under Iowa Code chapter 504 (2009). WHC was incorporated in 1948 "for the purpose of amusement and the promotion of athletics, not for profit, among its members."[1] Since incorporation, WHC has acquired approximately 300 acres of Wapsipinicon River-bottom land, which club

[1] The full statement provides:

> The objects of this Corporation shall be for the purpose of amusement and the promotion of athletics, not for profit, among its members by promoting hunting; fishing; shooting; trapping; propogation, breeding or raising of all kinds of wild life, game birds, both wild and domesticated; game animals, both wild and domesticated; also the conservation thereof; trap shooting; skeet shooting, and all other and varied activities incident thereto.

members and their families use for hunting, fishing, and various outdoor recreation. Jochimsen testified the value of WHC's land has increased "tremendously" over the years.

Jochimsen joined WHC in 1971 and is currently WHC's longest-serving member.[2] When he joined, Jochimsen resided in Clinton County, Iowa—where he lived for "50-some years" and worked as a dairy farmer. In 1993, he moved to Missouri. Jochimsen testified that since his move, he returns to Clinton County about once a month to see family and has visited the club several times. He testified he "come[s] up every year on second season and . . . drive[s] deer for them, walk[s] around the timber, . . . [and has] a meal at noon." He participates in work days and club meetings. He also testified that the last time he hunted on WHC property "would have been '95 or -6."

A. Membership Decline

The composition of club membership has changed over the years. The corporation began with nine members—the number provided for in the original 1948 Articles. Since that time, as members redeemed their shares or passed away, the membership declined to five members—the minimum number before dissolution under WHC's articles of incorporation and bylaws in effect at the time.[3] Between 1991 and 2008, no new members were admitted to WHC. Jochimsen testified that since 1991, existing members proposed and discussed several possible new members, but WHC did not admit any of the prospective

[2] The members at the time of trial were Paul Jochimsen, age seventy-three; LeRoy Jensen, seventy-two; Ken Hartman, sixty-five; Duane Hite, sixty-five; James Cady, fifty-one; and James Williams, fifty-nine.

[3] The 1998 Restated Articles required a board of directors comprised of at least five, but not more than eight directors.

members. Jochimsen testified that in September 2008, he moved for all members' sons to be admitted, but his motion failed on a vote of three to two.

Jochimsen further testified that in May 2008, the members held a special meeting where he expressed concern about the fact that WHC had only five members. In light of his concern about membership numbers, he proposed WHC hire a corporate attorney to review its governing documents. The motion passed, and an attorney reviewed WHC's articles and bylaws. In November 2008, all four members, with only Jochimsen protesting, adopted amended and restated articles and bylaws. The amendments adopted through this process were the impetus for the present suit.

B. 2008 Amendments to Articles and Bylaws; Admission of New Member, Williams

The original articles authorized the corporation's members to amend the articles or bylaws by a two-thirds vote. In this case, the members adopted three amendments by a vote of four to one, satisfying the two-thirds requirement. Only Jochimsen voted against the changes—he asserts they are oppressive.

Amendment 1: The original 1948 articles and bylaws required members to unanimously approve the admission of a new member. In 2008, four members voted to reduce the requirement to admit new members from a unanimous vote to a three-fourths vote. Jochimsen alleges this change is oppressive.

After adopting the three-fourths vote requirement, four members—again, with only Jochimsen voting "no"—approved a new member, Williams. Jochimsen testified he and Williams never met before Williams was admitted to WHC.

Jochimsen maintains such admission was contrary to the club's past practice, where prospective members were introduced to all WHC members and participated in various activities before joining. Jochimsen seeks to cancel Williams's membership.

Amendment 2: The original 1948 articles mandated a minimum of six and maximum of nine members on the board of directors. The 2008 amendment to the articles removed that provision and provided the "number of Directors shall be fixed by the Bylaws." The amended 2008 bylaws provide that the "Board of Directors . . . shall consist of all the member[s] [of] the Corporation" and further provide that "[e]very Member shall be on the Board of Directors and shall serve for the duration of their membership." Jochimsen contends that amending the articles so they no longer mandate a minimum number of directors is oppressive.

Amendment 3: The original 1948 articles and bylaws did not specify how the corporation's assets would be distributed in the event WHC dissolved. The 2008 amendment provides that upon dissolution, WHC's assets will be "distributed pro rata to the members." The amended articles also include a "No Impairment of Restrictions" clause. That clause states that the "Distribution of Assets on Dissolution" provision (along with several restrictions including limiting the corporation to non-profit status and limiting compensation) "shall not be repealed, impaired, or weakened in any way . . . by amendment . . . or in any other manner." Jochimsen contends this change is oppressive.

C. Members' Rejection of Jochimsen's Proposals

The original 1948 documents provided that WHC's membership certificates would be nontransferable and redeemable by only the corporation for the sum of $125. In 1965, the buyout price was amended and WHC thereafter redeemed certificates for the purchase price paid for the membership plus any capital contributions remitted during the term of the membership. The 2008 amendments retained the non-transferable nature of the certificates and the buy-out calculation adopted in 1965. Jochimsen contends that retaining "the old buy-in and buy-out" rules is inequitable "where the value of corporate assets has soared" and other rules have been changed.

Jochimsen contends, moreover, that he suggested transferring WHC's assets to a charity, rather than the members, upon dissolution; that membership be made transferable; or that they dissolve the corporation. The other members declined to adopt these suggestions, which Jochimsen argues is oppressive.

D. District Court Proceedings

On April 8, 2009, Jochimsen filed a petition against defendants WHC and Williams, asking for two remedies. First, he sought a declaratory judgment—requesting that the court

> declar[e] [the] repeal of the unanimous vote requirement for admission of a new member to be unlawful and void and further declaring the controlling members' attempt to admit a new member into the corporation without unanimous vote to be null and void.

Second, Jochimsen asked the court to dissolve WHC or grant alternative equitable relief. He alleged that WHC's members "have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent," and such conduct

justifies judicial dissolution as provided in Iowa Code section 504.1431. Jochimsen also proposed several alternative remedies he believed were acceptable in lieu of dissolving WHC.[4]

On July 29, 2010, the district court entered a decree concluding

> Jochimsen . . . failed to prove that the defendant club, by its majority member directors, committed any act violative of its articles of incorporation or bylaws then in effect, or [committed any] unlawful act by amending the corporate articles and bylaws in 2008 on a four-to-one vote, changing the requirement of a unanimous vote of all members for acceptance of a new member to a three-quarters majority vote.

The court reasoned that under the restated articles in effect at the time of the disputed action, the majority had authority to amend the corporate documents by less than unanimous vote and no evidence demonstrated the majority violated the statute.

The court further concluded that Jochimsen

> failed to prove that the defendant club, by its majority member directors, denied him his reasonable expectation. He has also failed to prove that they have imposed upon him burdensome, harsh, and wrongful conduct or violated their fiduciary duties of good faith and fair dealing to his prejudice. Moreover, he has no damages. The Court recognizes that Jochimsen's position that the Club formally address the question of how to dispose of its substantial assets upon dissolution is compelling, but it is not the Court's province to change the terms that the members knowingly, voluntarily and intelligently

[4] He indicated that the "reasonable alternatives to dissolution" include:

> (a) Reinstatement of the unanimous vote requirement for admission of members;
> (b) Cancellation of the membership of Jim Williams . . . ;
> (c) Inclusion in the Articles of Incorporation of a provision, revocable only by unanimous vote, authorizing transfer of membership upon withdrawal or death of a member;
> (d) Providing . . . an opportunity for the corporation or the controlling members . . . to purchase the Plaintiff's membership interest for the amount of his pro rata interest in corporate assets at fair market value as if the corporation were being dissolved.

> entered into for disposition of their memberships when they joined, for so long as it is not illegal or oppressive. . . . Thus, in the final analysis, applying the general applicable principles of law to these facts, the Court finds and concludes that Jochimsen fails to prove that the majority committed oppressive acts to his prejudice.

Jochimsen appeals.

II. Scope and Standard of Review

The district court tried this case in equity. On appeal, we review a case in the same manner it was tried before the district court. Therefore, we review the issues de novo. Iowa R. App. P. 6.907; *Schildberg v. Schildberg*, 461 N.W.2d 186, 190 (Iowa 1990). In our de novo review, we examine both the facts and the law and decide the issues anew. *SDG Macerich Props., L.P. v. Stanek Inc.*, 648 N.W.2d 581, 584 (Iowa 2002). We give weight to the district court's fact findings, especially those assessing witness credibility, but we are not bound by those findings. *Id.*

III. Merits

Jochimsen alleges that the following five actions and two failures to act amount to oppressive conduct by the majority members: (1) causing "membership numbers to decline from 8 to 5, allowing 4 to control"; (2) admitting a new member without introducing him to Jochimsen; (3) removing the unanimous-vote requirement for admitting new members; (4) amending the articles and bylaws to permit corporate control to be exercised by fewer directors; (5) amending the Articles and Bylaws to distribute corporate assets to members in the event of dissolution; (6) "[r]efus[ing] to adopt rules preventing freeze out of members by death, even though the corporate assets are worth more than

$500,000 and the purchase price for a member's certificate is about $3,300"; and (7) "[r]efus[ing] to adopt rules preventing a windfall to surviving members on dissolution."

Jochimsen contends that these

> affirmative acts and refusals to act are a breach of the fiduciary duty of the majority members, which deprive [him] of his reasonable expectations of benefits of membership in this nonprofit mutual benefit corporation. If relief is not granted, Paul will be "frozen out" when he dies and his membership redeemed for a fraction of his pro-rata share of the value of the corporate assets. After his death, the younger members can change the rules to suit themselves or simply wait to see who will be the last man standing and $500,000 wealthier.

Jochimsen contends we should preclude Williams from participating in a "liquidating dividend" in the event we dissolve WHC. He suggests, as an alternative solution to dissolution, that the court allow memberships "to be freely transferable, or at least transferable on death." He contends moreover, he should be compensated for his "attorney's fees and litigation expenses at trial and on appeal."

WHC and Williams contend there has been no oppressive conduct. To the contrary, the members argue, "the conduct of the other directors has been to ensure the continued operation of the Club." They assert their conduct did not violate any of Jochimsen's reasonable expectations. They also contend Jochimsen should not be allowed attorney fees and expenses.

A. Legal Principles

Iowa Code section 504.1431(1)(b)(2) provides that a district court may dissolve a corporation if the "directors or those in control of the corporation have

acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent." Before dissolving a corporation, a court must consider whether "reasonable alternatives to dissolution" exist and whether dissolution best protects the interests of the members. Iowa Code § 504.1431(2)(a), (c). Because Jochimsen claims WHC's members acted oppressively and does not argue their acts were fraudulent or illegal, we focus only on whether their conduct was oppressive.

The code does not define "oppression" in this context, so we look to prior judicial articulations of corporate oppression to decipher the meaning of that term. In *Maschmeier v. Southside Press, Ltd.*, this court stated that

> [t]he alleged oppressive conduct by those in control of a close corporation must be analyzed in terms of "fiduciary duties" owed by majority shareholders to the minority shareholders and "reasonable expectations" held by minority shareholders in committing capital and labor to the particular enterprise, in light of the predicament in which minority shareholders in a close corporation can be placed in a "freeze-out" situation.

435 N.W.2d 377, 380 (Iowa Ct. App. 1988) (citing *Balvik v. Sylvester*, 411 N.W.2d 383 (N.D. 1987)).

Corporate directors' fiduciary duties are twofold: a duty of care and a duty of loyalty. *Cookies Food Prods., Inc. v. Lakes Warehouse Distrib., Inc.*, 430 N.W.2d 447, 451–52 (Iowa 1988) (analyzing fiduciary duties in a close corporation). Some authorities equate the fiduciary duties of those in a close corporation with the fiduciary duties that partners in a partnership owe to one another. Francis C. Amendola, et al., *Closely held Corporations*, 18 C.J.S. § 379 (2011).

With respect to the reasonable-expectation prong, the *Balvik* court explained:

> A court considering a petition alleging oppressive conduct must investigate what the majority shareholders knew, or should have known, to be the petitioner's expectations in entering the particular enterprise. Majority conduct should not be deemed oppressive simply because the petitioner's subjective hopes and desires in joining the venture are not fulfilled. Disappointment alone should not necessarily be equated with oppression.

411 N.W.2d at 387 (citation omitted).

The *Maschmeier* court also cited with approval the Oregon Supreme Court's definition of oppressive conduct, as

> burdensome, harsh and wrongful conduct; a lack of probity and fair dealing with the affairs of a company to the prejudice of some of its members, or a visual departure from the standards of fair dealing, and a violation of fair play on which every shareholder who entrusts his money to a company is entitled to rely.

435 N.W.2d at 380 (quoting *Baker v. Commercial Body Builders Inc.*, 507 P.2d 387, 392 (Or. 1973)) (citation omitted).

B. Analysis

At the outset, we observe a distinction between this case and *Maschmeier*, where the court found that the parent-shareholders oppressed their two sons, who were also shareholders. In that case, parent-shareholders collectively held fifty-two percent of the corporation's shares, were the corporation's only officers and directors, and acted in concert when they engaged in the oppressive conduct. *See generally Maschmeier*, 435 N.W.2d at 377. In contrast, each member of WHC held an equal membership interest in the corporation, acted as a director, and possessed the same rights in voting under WHC's governing documents. Jochimsen points to no evidence of a voting

agreement or collusion between the four members alleged to comprise the "majority" shareholders. Given this difference between the two cases, for the purposes of our oppression analysis, we hesitate to confer the status of "minority" member on Jochimsen or "majority" members on the defendants. *See Balvik*, 411 N.W.2d at 384 (noting that "Sylvester receiv[ed] seventy percent [of the corporation's stock] and Balvik receiv[ed] thirty percent of the stock" and stating, "thus Balvik held only a minority voice in the management of the corporation"); *Gensemer v. Hallock*, 707 N.E.2d 1156, 1157, 1160 (Ohio Ct. App. 1997) (observing that four people each owned "one-quarter of the stock" of a close corporation and stating that "there are no majority or minority shareholders involved here". *But see Jorgensen v. Water Works, Inc.*, 582 N.W.2d 98, 100, 103 (Wis. Ct. App. 1998) (observing that six shareholders "[e]ach received thirty-four shares of Water Works stock" and referring to the four defendants as "majority shareholders").

But even if we consider Jochimsen to be a "minority member" of the corporation, we agree with the district court's conclusion the conduct of the other four members did not rise to the level of oppressive conduct. Specifically, none of their actions or inactions denied Jochimsen his reasonable expectations or imposed upon him burdensome, harsh, and wrongful conduct.

Throughout his arguments, Jochimsen attributes to the four members an intent to dissolve WHC after Jochimsen's death and to jockey "to be the last man standing" in hopes of receiving a large payout from WHC's assets. His concern is speculative. The other members testified to the contrary—that they intend for

WHC to "exist in perpetuity" and do not desire to dissolve the corporation. Nothing in the record persuades us their testimony is insincere. Accordingly, we do not entertain Jochimsen's speculation in deciding the oppression issue.

We reject Jochimsen's argument that the four other members engaged in oppressive conduct by "[holding] the club to 5 members" and by admitting Williams without first introducing him to Jochimsen. It is undisputed that membership declined as a consequence of members who redeemed their shares or passed away—not because of conduct on the part of the four members. Jochimsen conceded in his testimony that the other members suggested adding several different people over the years. Because the decline in membership did not result from the other members violating their fiduciary duties and did not defeat Jochimsen's reasonable expectations, it does not amount to oppressive conduct. To the extent Jochimsen had an expectation of meeting prospective members before their admission, under the circumstances of this case including Jochimsen's residence in Missouri, we cannot say that admitting Williams without introducing him to Jochimsen rises to the level of oppression.

We also conclude the four members did not act oppressively when they adopted the three amendments to WHC's articles and bylaws that are at issue in this case: removing the unanimous-vote provision for admitting new members; eliminating the requirement for a minimum of five directors; and providing for distribution of WHC's assets to its members in the event of dissolution. The members did not violate their fiduciary duties or Jochimsen's reasonable expectations when they adopted these amendments and doing so was not

burdensome, harsh, or wrongful conduct. The articles expressly authorized the members to amend the governing documents by a two-thirds vote; the members complied with this provision when four out of five members voted to adopt the disputed changes. We cannot conclude that adopting these amendments was oppressive merely because the members voted to change provisions contrary to Jochimsen's preference, because Jochimsen expressed disappointment in the outcome, or because he attributed the members' conduct to motivations that are not supported by the record. *See Balvik*, 411 N.W.2d at 387 ("[C]onduct should not be deemed oppressive simply because the petitioner's subjective hopes and desires in joining the venture are not fulfilled. Disappointment alone should not necessarily be equated with oppression.").

We also conclude the four members did not act oppressively when they declined to adopt Jochimsen's proposals to change the buy-out provision by increasing the sum paid when a member redeems his share or passes away, to make membership transferable, to "transfer assets on dissolution to a charity . . . or to dissolve the corporation." We note that WHC has always restricted members' ability to transfer their certificates by providing that only the corporation could redeem the certificates. And it has always provided the price at which the certificate would be redeemed; that price has never correlated with the value of WHC's assets or the liquidation value of the corporation. Rather, since incorporation, the members have known they could not transfer their interests and for decades, the members have reasonably expected to receive what they paid into the corporation—nothing more. Moreover, the record suggests that

paying the liquidation value of the members' certificates would be unsustainable and would cause WHC's corporate existence to end. In light of these observations, we cannot conclude the members engaged in oppressive conduct by carrying these provisions forward into their 2008 amended articles and bylaws.

Likewise, declining to adopt a provision transferring WHC's assets to a charity, rather than the members, in the event of dissolution was not oppressive conduct. That decision was not contrary to the members' fiduciary duties or Jochimsen's reasonable expectations. And it was not burdensome, harsh, or wrongful, especially given that transferring the assets to WHC's members is sanctioned by Iowa Code section 504.1405(1)(g).

Further, we disagree with Jochimsen's contention he has been frozen out of the membership-admission process, frozen out of a "substantial profit" in the event the corporation dissolves, and frozen out by the old buy-out provisions that pay a relatively small redemption price in light of the value of WHC's assets. Jochimsen has not been frozen out of any rightful benefits he has in the corporation. A freeze-out occurs when controlling members deny a minority member his or her rightful interest in the corporation. *Balvik*, 411 N.W.2d at 386. Jochimsen has a rightful interest in using WHC's property for recreational purposes, to receive back his initial investment plus his capital contributions, and to participate in decisions affecting the membership-admission process. Jochimsen is still entitled to participate in membership admission and voting. The record contains no evidence the other members have colluded to vote

contrary to Jochimsen's preferences. The only evidence we have to support his argument he has been frozen out of the membership process is that he voted against admitting a new member when the other members voted to admit that person. That single incident does not demonstrate Jochimsen has been "completely frozen out" of the membership process.

Significantly, Jochimsen does not have a right to or an interest in WHC's income, profits, earnings, assets, to a greater redemption price, or to a "substantial profit." The most Jochimsen is entitled to, monetarily, is the amount of his initial investment, plus any additional capital contributions. Jochimsen cannot be frozen out of benefits to which he is not entitled.

Finally, Jochimsen suggests canceling Williams's membership as an alternative equitable remedy to dissolution. Because we conclude Jochimsen has not demonstrated oppressive conduct warranting relief, we decline to cancel Williams's membership. We also decline Jochimsen's request for attorney fees.

AFFIRMED.