IN THE COURT OF APPEALS OF IOWA

No. 3-1000 / 12-2105
Filed January 9, 2014

VIRGIL MOORE and MARILYN I. MOORE,
Plaintiffs-Appellees/Cross-Appellants,

vs.

PIONEER ESTATES, L.C., EASTER LAKE ESTATES, INC., and RONALD L. WOODS,
Defendants-Appellants/Cross-Appellees.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge.

Pioneer Estates, L.C., Easter Lake Estates, Inc., and Ronald Woods appeal and Virgil and Marilyn Moore cross-appeal from the district court's valuation of the Moores' interest after their withdrawal from Pioneer Estates, L.C. and the district court's decisions regarding the operation of the business by Woods. **AFFIRMED ON BOTH APPEALS.**

Gary Dickey of Dickey & Campbell Law Firm, P.L.C., and Todd Strother of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellants.

Thomas D. Hanson of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellees.

Heard by Danilson, C.J. and Vaitheswaran and Potterfield, JJ.

POTTERFIELD, J.

Pioneer Estates, L.C. (Pioneer), Easter Lake Estates, Inc. (Easter Lake), and Ronald Woods appeal and Virgil and Marilyn Moore (the Moores) cross-appeal from the district court's decision regarding Virgil and Marilyn Moore's withdrawal from and the continuing operation of Pioneer. Pioneer, Easter Lake, and Ronald Woods argue the district court erred in its award of pre-filing interest to the Moores from the date of their withdrawal from Pioneer. The Moores argue the district court erred in finding they had no standing to petition for the judicial dissolution of Pioneer, in valuing their interest as of the date of their withdrawal from Pioneer, and in failing to find (and award punitive damages for) a breach of fiduciary duty by Easter Lake and Woods. We affirm finding the prefiling interest was warranted, the Moores could not bring an action for judicial dissolution, the court properly valued the Moores' interest as of the date of their withdrawal, and no breach of fiduciary duty occurred.

I. Facts and proceedings.

In 1989, Ronald Woods decided to build apartments on property he owned in Des Moines, Iowa. He approached his friend Virgil Moore for assistance with financing. Moore cosigned the loan to develop the project, and the parties entered into an agreement awarding a seventy-five percent interest in the apartment complex to Easter Lake and a twenty-five percent interest to Virgil and his wife, Marilyn Moore. After several years of operation, the Moores and Easter Lake (with Woods as its representative) decided to organize the business as a limited liability corporation. Pioneer Estates, L.C. was formed in 1993. The articles of organization mirrored the ownership interests of the prior agreement

and designated Woods as the manager of Pioneer. Woods managed the day-to-day operations of Pioneer; the Moores were not involved in these operations, but Virgil met regularly with Woods regarding the business, and had access to the checking account and records.

Until 2004, regular profit distributions were made to the owners. At that time, the tax abatement on the property had ended, and the apartment units needed repair and remodeling. After 2004, no profit distributions were made to either member. The Moores filed a notice of withdrawal from the company in 2007, which became effective six months later, on October 4, 2007. On August 10, 2007, Easter Lake offered the Moores $225,000 for their twenty-five percent interest in Pioneer. Woods indicated that Pioneer Estates, L.C. would have to dissolve as a consequence of the Moores' withdrawal.

One year later, on October 27, 2008, the Moores instituted this action against Pioneer and Woods. On April 21, 2010, Woods and Pioneer sold the property to Woods' daughter and son-in-law for $1.79 million.

In their petition against Pioneer, Woods, and Easter Lake, the Moores raised five counts in which they: sought to have Pioneer judicially dissolved; applied for an appointment of a receiver for Pioneer; requested an order for accounting against Pioneer, Easter Lake, and Woods; alleged a breach of fiduciary duty against Easter Lake and Woods; alleged fraudulent misrepresentation against Easter Lake and Woods; and allaged breach of contract against Easter Lake. The accounting action was dismissed prior to trial.

The court rejected the Moores' application for a receiver because the Moores were no longer members of Pioneer. Similarly, the court found the

Moores lacked standing to bring the action for judicial dissolution. It did find Pioneer owed the Moores for their twenty-five percent interest in the company, calculating the value as of the time their withdrawal became effective in 2007. After careful consideration of the assets and liabilities of Pioneer as of January 1, 2008, the court valued the Moore's interest at $414,488.68. Regarding the Moores' claims for breach of fiduciary duty, the court thoroughly analyzed each point of error, concluding:

> [Woods] has proved that he acted in good faith and honestly. In reaching this conclusion, the court has considered the following factors: First, while the amount of payments at issue seem very large, for example, cell phone bills totaling $26,000, they were made over a lengthy period of time, eleven or more years. Second, in most cases, the amounts that the Moores complain about include payments made through April 2010 when Ronald sold the major assets of Pioneer. This unfairly inflates those amounts because it includes amounts expended over a two-and-one-half year period when the Moores had no interest in Pioneer, having withdrawn in October 2007. Third, suspicion is understandably generated just by saying that [Woods] operated several companies from the Pioneer office and by pointing out that he made payments to or that benefitted some of his relatives. But none of those other businesses, by their very nature, required the day-to-day extent of management that Pioneer required. Sharon Garneau testified that ninety-nine percent of the business operated out of the Pioneer office was Pioneer business. Additionally, some of the businesses that used Pioneer space were businesses in which Virgil also had an interest. As to the use of relatives, Pioneer was a small to medium sized business. Common sense and experience tell us that it is not unusual for relatives of owners to be employed in such businesses. Fourth, there is no reason to doubt that [Woods] considered Virgil to be a good friend. [Woods] offered Virgil a twenty-five percent interest in the business for no contribution other than cosigning a loan. Fifth, [Woods] kept meticulous records of the operation of Pioneer's business. He was criticized for the manner in which some expenses were categorized in the accounting system, although the evidence suggests that he is not the one who did the categorization. However, there is no criticism of the volume or detail of the records he did keep. As is discussed a bit more fully below, the Moores' expert's analysis in support of their claims fails from a severe lack of specificity. The Moores

> explain this not by pointing to the lack of available records regarding Pioneer's business but because of the volume of those records and the inconsistent categorization of payments in the accounting system. Their expert, or another expert, could have done a complete audit of Pioneer's business transactions over the entire period at issue using the records that [Woods] kept. Sixth, in this same vein, there is no evidence that [Woods] hid anything from the Moores. Virgil was never denied access to records nor does he claim he was denied such access. He and Ronald regularly met for breakfast or lunch to discuss business. Virgil was regularly provided with copies of monthly and annual financial statements and tax returns and he was certainly sophisticated enough to understand them. He was a signatory on the business checking account and so had complete access to checking records and, as noted, he was involved in other business ventures both with and without [Woods]. Finally, it is simply hard to believe that Virgil was completely unaware that Pioneer was paying expenses that he now complains about, such as for [his and Woods]'s breakfast and lunch meetings or for [Woods]'s life insurance premiums, as examples. That is not to say that Virgil is being dishonest and it is not to place the burden on him to prove the fairness of any self-dealing. It is simply to say that he may see as wrong now what he once found acceptable. The court could not find that [Woods] was being dishonest for operating Pioneer in a manner that Virgil approved. All of these considerations, along with others like [Woods] and Virgil's history and the court's observations of them during the trial, lead the court to conclude that [Woods] operated Pioneer in all respects in good faith and honestly vis-a-vis the Moores.

The district court also noted that even if some breach of fiduciary duty had occurred, the Moores presented insufficient evidence of damages, concluding, "There is just no basis from which the court could confidently determine a reasonable damage award." The court did, however, credit the Moores for insurance premiums paid by Pioneer for coverage of non-Pioneer entities which had not yet been reimbursed by Woods. It did not find these payments were made in bad faith. The court also rejected the Moores' fraudulent misrepresentation, breach of contract, and punitive damage claims. Pioneer and Woods appeal the assessment of pre-filing interest, and the Moores cross-appeal

the date of calculation of damages, the rejection of their breach of fiduciary duty claim and other rulings by the trial court.

II. Analysis

We address the cross-appeal first, as the issues raised by the Moores relate to the effect of their withdrawal from Pioneer and their status after withdrawal, both issues relate to Pioneer's appeal of the assessment of pre-filing interest.

A. Cross-appeal of the Moores.

The Moores argue the district court erred in finding they lacked standing to petition for judicial dissolution, determining the value of their interest at the time of withdrawal, holding Pioneer was not liable for any breach in fiduciary duties, and declining to award punitive damages. We review these arguments for the correction of errors at law. Iowa R. App. P. 6.907.

1. *Effect of withdrawal on right to sue for dissolution.* The district court determined the Moores did not have standing to bring their petition for judicial dissolution as they became "mere creditors" of Pioneer after their withdrawal from the company. We agree with the district court that the Moores could not bring an action for judicial dissolution of Pioneer as a limited liability company after withdrawing.

As previously noted, Pioneer's articles of organization, read together with Iowa Code section 490A.1301, should have resulted in the beginning of the winding-up process leading to dissolution of Pioneer in 2007.

Our statutory provision for judicial dissolution of a limited liability company in effect at the time of these events reads:

> On application *by or for a member*, the district court of the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

Iowa Code § 490A.1302 (emphasis added).[1] We turn to our well-established rules of statutory interpretation to aid in the application of this section to the point of error assigned by the Moores.

> Our first step in ascertaining the true intention of the legislature is to look to the statute's language. We do not search beyond the express terms of a statute when that statute is plain and its meaning is clear. Moreover, we must read a statute as a whole and give it its plain and obvious meaning, a sensible and logical construction.

Gardin v. Long Beach Mortgage Co., 661 N.W.2d 193, 197 (Iowa 2003) (internal citations and quotation marks omitted). We find the language of this statute is clear—only members or designees of members are allowed to bring an action for judicial dissolution. In the context of the statute as a whole, distinction is made between members and former members. *See* Iowa Code 490A.1304(2) (providing distribution of assets to former members shall be made to satisfy liabilities for distribution upon withdrawal and other entitlement to distributions). After the Moores withdrew from Pioneer, they were no longer members of the company.

Pioneer's articles of organization provide for the continuance of the organization "until the . . . withdrawal of any member." The articles are silent as to the procedure for withdrawal. The applicable procedure for withdrawal, then,

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[1] We note that Iowa Code chapter 490A was repealed by our legislature effective December 31, 2010. Limited liability companies are now governed by chapter 489, the "Revised Uniform Limited Liability Company Act." Iowa Code § 489.101 (2013). Because this action was commenced in 2008, we apply the 2007 code.

is outlined in Iowa Code section 490A.704. Iowa Code § 490A.704A(1)(c) ("If no provision is made in the operating agreement, a limited liability company whose original articles of organization were filed with the secretary of state and effective on or prior to June 30, 1997, is subject to section 490A.704."). This section provides:

> A member may withdraw from a limited liability company at the time or upon the happening of events specified in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not specify in writing the time or the events upon the happening of which a member may withdraw, a member may withdraw upon not less than six months' prior written notice to each member . . . .

Id. § 490A.704. The Moores gave notice of withdrawal from Pioneer in April of 2007. They did not file this action until October of 2008. At that point, they were no longer members of Pioneer and therefore could not file an action for judicial dissolution. *Id.* § 490A.1302.

Further, we note Pioneer's articles of organization drafted for the operation of Pioneer as a limited liability company provided that the corporation's life would be a maximum of thirty years or until "the withdrawal of any member." This provision, read together with Iowa Code section 490A.1301 ("A limited liability company . . . is dissolved and its affairs shall be wound up . . . [a]t the time or on the happening of an event specified . . . in the articles of organization or an operating agreement to cause dissolution."), resulted in the beginning of the winding-up process of Pioneer in 2007.[2] A judicial dissolution was not possible

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[2] Pioneer continued filing its biennial reports with the secretary of state—while continuing to operate and hold itself out as a limited liability company; beyond the winding up period it had no power to make these filings. *See, e.g.*, Iowa Code 489.702 (2011) (outlining the powers of an LLC during the winding-up period).

after the withdrawal of the Moores. *See id.* § 490A.1301 (stating dissolution and winding up begins "upon the happening of *the first to occur* of" an event specified in statute or the articles of organization, unanimous written consent, the entry of a decree of judicial dissolution, or administrative dissolution). However, we note Pioneer's dissolution would not be complete until the effective date of its articles of dissolution. *See id.* § 490A.1305 (2).

2. *Date of valuation of interest.* The Moores next claim the district court erred in valuing their interest in the company at the date of their withdrawal, instead of as of the date of trial. They reason that because their withdrawal should have triggered the dissolution of Pioneer under its articles of organization, their interest should be valued after the winding up of the company. Again, we turn to the statute. Iowa Code § 490A.805 governs the distribution upon withdrawal of a member from a limited liability company; it reads:

> Except as otherwise provided in this chapter, upon withdrawal, a withdrawing member is entitled to receive any distribution to which the member is entitled under the articles of organization or an operating agreement. If not otherwise provided in the articles of organization or an operating agreement, the member is entitled to receive, within a reasonable time after withdrawal, *the fair value of the member's membership interest as of the date of withdrawal*, based on the member's right to share in distributions from the limited liability company.

(Emphasis added). The Moores argue this section is inapplicable, because their withdrawal triggered the subsequent dissolution of the company under Pioneer's operating agreement. Indeed, under our statute, upon a triggering event as outlined in the operating agreement, the LLC "is dissolved." *Id.* 490A.1301. However, the Moores admit, and our statute provides, that for a period of time after the triggering of the dissolution of a limited liability company, the business

continues to exist for the purpose of winding up its affairs. *See id.* §§ 490A.1303 ("Unless otherwise provided in the articles of organization or an operating agreement, members who have not wrongfully dissolved a limited liability company may wind up the company's affairs . . . ."), 490A.1305 (stating articles of dissolution shall be delivered to the secretary of state to be filed after the winding up of the limited liability company and "[t]he winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonably adequate provision therefor has been made" and dissolution finalized "upon the effective date of its articles of dissolution").

It is clear from our statute that the Moores were owed the value of their interest as of the time of their withdrawal as withdrawing members under Iowa Code § 490A.805—a separate and distinct time period from the payment of continuing members and other ongoing creditors after the dissolution of Pioneer—the payment to take place after the winding up of the business.[3] Id. § 490A.1304 ("Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed in the order as follows: 1. To creditors, including members who are creditors . . . . 2. Unless otherwise provided . . . to members and former members in satisfaction of liabilities for distributions . . . . ").

[3] We emphasize that the Moores and Woods (as representative of Easter Lake) were free to craft more specific Articles of Organization that would provide for the valuation of the interest of withdrawing members *after* the dissolution and winding up of Pioneer. Iowa Code §§ 490A.703; 490A.805.

We also note the cessation of Pioneer's existence as a limited liability company does not mean Pioneer cannot continue to conduct business—the continued operation of business outside our limited liability framework is possible, though it may not be advisable. *See id.* § 490A.202 ("[A] limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs."). Easter Lake continued the operation of Pioneer—of which it owned a seventy-five percent interest. The district court properly determined the Moores' interest at the time of their withdrawal.

3. *Breach of fiduciary duty claims.* As their final issue on appeal, the Moores claim both that the district court erred in finding no breach of fiduciary duty by Woods and Easter Lake, and in not awarding punitive damages for the alleged breaches. They allege Easter Lake/Woods committed misconduct in:

> 1) failing to disburse Moores' ownership interests to them after Moores' withdrawal and after the sale of Pioneer, 2) failing to disburse available funds to [the Moores] since early 2004 . . . ,3) charging unauthorized and excessive management fees, 4) making improper and unauthorized charges on the account of Pioneer for business expenses of other entities owed by Woods, 5) borrowing funds from Pioneer for business entities owned by Woods and Woods personally, 6) paying personal living expenses for Woods and his family from Pioneer funds, and 7) entering into transactions with Pioneer which were unfair to Pioneer and benefited only Woods, his family, and entities owed by him.

We begin by noting, as above, that the Moores' ongoing interest as members in the company ceased once their withdrawal was final from Pioneer. We therefore do not consider any claim which extends the liability of Easter Lake or Woods to the Moores beyond October 2007, when the Moores' withdrawal became effective. Iowa Code section 490A.706 reads that the manager of a

limited liability company "shall discharge that manager's duties as a manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner the manager believes to be in the best interest of the limited liability company."

Our supreme court has not evaluated the scope of this fiduciary duty; however, we look to our general rules of owner liability in business organizations to aid our construction. *See, e.g.*, *Estate of Countryman v. Farmers Co-op. Ass'n*, 679 N.W.2d 598, 604 (Iowa 2004) (applying agency and corporate law to analyze liability of manager of limited liability company for committing a tort). We give deference to the district court's factual findings and we are bound by them where they are supported by substantial evidence; this deference does not extend to its determinations of law. *R.E.T. Corp. v. Frank Paxton Co., Inc.*, 329 N.W.2d 416, 419 (Iowa 1983). Our review of the evidence is in the light most consistent with the judgment. *Id.* "Evidence can be contradictory and remain substantial." *Id.* We agree with the Moores that under our corporate law, "When self-dealing is demonstrated, the duty of loyalty supersedes the duty of care, and the burden shifts to the director to prove that the transaction was fair and reasonable to the corporation." *Cookies Food Prods., Inc., by Rowedder v. Lakes Warehouse Distrib., Inc.*, 430 N.W.2d 447, 453 (Iowa 1988). Extrapolating this rule to our limited liability corporation laws, if Woods engaged in self-dealing, he must show that transaction was fair and reasonable to Pioneer. *Compare* Iowa Code § 496A.34 (providing standards of self-dealing for a director in a corporation) *with* § 490A.708 (setting forth standards of self-dealing for a

manager in an LLC). Iowa Code section 490A.708 sets forth the standard of self-dealing for a manager in an LLC, and reads in relevant part:

> 1. A conflict of interest transaction is a transaction with the limited liability company in which a manager of the limited liability company has a direct or indirect interest. A conflict of interest transaction is not voidable by the limited liability company solely because of the manager's interest in the transaction if any one of the following is true:
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> a. The material facts of the transaction and the manager's interest were disclosed or known to the managers or a committee of managers and the managers or a committee of managers authorized, approved, or ratified the transaction.
>
> b. The material facts of the transaction and the manager's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction.
>
> c. The transaction was fair to the limited liability company.
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> 2. For purposes of this section, a manager of the limited liability company has an indirect interest in a transaction if either:
>
> a. Another entity in which the manager has a material financial interest or in which the manager is a general partner is a party to the transaction.
>
> b. Another entity of which the manager is a director, officer, manager, or trustee is a party to the transaction and the transaction is or should be considered by the limited liability company.

Contrary to the Moores' assertions that the district court shifted the burden to them to prove the self-dealing transactions were unfair, we find the court maintained the proper burden and carefully analyzed the (at times) contradictory evidence. The parties have a longstanding relationship; they were business partners for two decades. This relationship extended to other business ventures as well. Virgil and Woods met regularly to discuss the business. As the trial court noted, the record in this case is large—Woods kept extensive documentation of Pioneer's transactions. These transactions were relayed to Virgil and documents were available for his inspection. Virgil had access to the

company checkbook, and after he and Woods fought in 2004, Woods made documents available for Virgil's review.

As to the Moores' specific complaints, the expense report kept by Woods showed the company was operating at a loss from 2003–2008 (with one year of positive net income in 2005), and could not pay out available funds to the Moores. Next, the Moores assert that there was no evidence Woods paid back loans and payments from Pioneer to other companies; however, the ledgers introduced at trial show loans and payments were made and reimbursed. The same evidence shows personal loans made from Pioneer to Woods were also repaid. As for charging excessive management fees, Woods did not increase his fee until the Moores withdrew, and at that time he obtained a bid for outside management which the trial court found credible. We therefore find Woods behaved fairly and reasonably towards the corporation, and conclude there was no breach of fiduciary duty in these points of error. *See id.*; *Cookies Food Prods., Inc.*, 430 N.W.2d at 453.

Finally, the Moores point to expenses paid by Woods on behalf of his family, but the testimony shows, and the district court found, that Woods' family worked for Pioneer in various capacities. Also inherent in the district court's opinion is an element of estoppel—because this method of business had been practiced by Woods for over twenty years, the Moores could not now complain. Given the long duration of the business and relationship between the parties, we agree with the district court. *See, e.g.*, *Hanson v. Minette*, 461 N.W.2d 592, 596 (Iowa 1990) ("If a trust beneficiary consents to an act of the trustee prior to or during the commission of the act, he cannot hold the trustee liable for it."). We

find Woods demonstrated his behavior was in good faith and fair and reasonable to Pioneer, given his repayments and the traditional practice of the business. *See Cookies Food Prods., Inc.,* 430 N.W.2d at 453.

In sum, we find substantial evidence supports the district court's decision that no breach of fiduciary duty occurred here. We therefore do not address the Moores' claim that they were entitled to punitive damages for the claimed breaches of Woods/Easter Lake's fiduciary duties.

B. Appeal of Pioneer, Woods, and Easter Lake

Pioneer, Woods, and Easter Lake solely argue on appeal that the district court erred in taxing it with pre-filing interest. They argue the date of calculation of damages was uncertain, making pre-filing interest inappropriate. Both parties agreed the Moores were owed some amount of money for their interest in Pioneer, though the exact amount was uncertain.

"When, as here, a definite amount of recovery has been fixed by the trier of fact for a damage item shown to be complete at a particular time, interest should be allowed as to that item from the time that the damage was shown to be complete." *Gosch v. Juelfs*, 701 N.W.2d 90, 92–93 (Iowa 2005). Pioneer relies on our decision in *Breton Nat'l Bank v. Ross*, 492 N.W.2d 441 (Iowa Ct. App. 1992). In that case, we noted:

> The general rule followed by Iowa courts is interest [on a judgment] runs from the time money becomes due and payable. In the case of unliquidated claims, as in this case, the money becomes due and payable on the date the damages become liquidated, which is usually the date of judgment. The Iowa courts, however, have recognized an exception to the unliquidated claims rule when the damage is complete at a specified time. In such a situation, interest runs from the time the damage is complete even though the damage has not been fixed in a specific sum.

Breton Nat'l Bank, 492 N.W.2d at 443 (internal citations and quotation marks omitted, modification in original). The Moores were owed their interest in Pioneer within a reasonable time from withdrawing from Pioneer. Iowa Code section 490A.805 is the statutory directive that requires a withdrawing member of an LLC to receive fair value as of the date of withdrawal—a date certain.[4] As we determined above, their interest in Pioneer and its operations ceased at that time. The damage to the Moores was complete at that time; we therefore affirm the district court's award of pre-filing interest. *See Gosch*, 701 N.W.2d at 92–93.

We affirm the district court's opinion on all issues. Costs on appeal and cross-appeal are taxed equally between the parties.

AFFIRMED ON BOTH APPEALS.

[4] As noted above, we decline the Moores' invitation to ignore the statute as "simply inapplicable" in Pioneer's circumstances where the Articles of Organization require dissolution upon withdrawal.