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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0293**

Jerry Agnes,
Respondent,

vs.

Rick Steile, et al.,
Appellants.

**Filed March 24, 2009
Affirmed
Randall, Judge***

Polk County District Court
File No. 60-C4-06-000126

Michael L. Jorgenson, Charlson & Jorgenson, P.A., 119 West Second Street, P.O. Box 506, Thief River Falls, MN 56701 (for respondent)

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Considered and decided by Toussaint, Chief Judge; Worke, Judge; and Randall,
Judge.

UNPUBLISHED OPINION

RANDALL, Judge

Respondent Jerry Agnes brought an action against appellants Rick Steile and Jerrick Construction, Inc., seeking involuntary dissolution of Jerrick Construction and

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

other relief. After a court trial, the district court dissolved the corporation, resolved numerous claims of the parties, and divided the assets equally. Appellants appealed the judgment; respondent filed a notice of review. Appellants and respondent challenge various aspects of the court's resolution of their claims and its division of assets. Respondent also contends the court made a clerical error. We find the district court's decisions within its discretion and its findings of fact supported by the evidence. Respondent may apply to the district court for correction of clerical errors, if any. We affirm.

FACTS

In 1999, respondent Jerry Agnes and appellant Rick Steile formed appellant Jerrick Construction, Inc.¹ Respondent and appellant were the sole shareholders, with each holding a 50% interest in the corporation; respondent was the president and appellant was the vice-president. The corporation primarily performed directional drilling, in which the operator uses a machine to bore horizontally or diagonally through the ground to install underground cables.

Before forming the corporation, the parties agreed that respondent, who was experienced in directional drilling, would operate the boring machine from which the company's revenue would be derived, and that he would manage the crew. Appellant, who at that time had no experience drilling, would be the main customer contact, making bids and scheduling jobs. They also agreed that each would receive a weekly salary of

¹ Appellants Rick Steile and Jerrick Construction are represented by the same counsel on appeal. In this opinion, "appellants" refers to both, "appellant" refers to Steile, and "the parties" refers to Agnes and Steile.

\$1,250, although they had no agreement as to how much time each would spend at the business. Further, if either took an additional payment from the corporation, they agreed that it would be considered a draw to the shareholder taking the money, and the corporation would have an accounts payable owed to the other shareholder for the same amount.

The corporation obtained jobs, hired additional employees each year, and accumulated equipment. But the parties' business relationship became increasingly difficult, after several years, broke down due to differences the parties had regarding management of the corporation. In particular, respondent asserted that he was often unfairly treated in a number of ways.

In June 2005, respondent hired a third party to operate the directional boring machine, walked off the job site, and never returned to the business. He continued to receive his salary and had the use of the corporate credit card and telephone until October 2005. Appellant then increased his own compensation by more than \$26,000 for the next six months, contending that he was performing appellant's duties as well as his own.

Around November 2005, appellant formed his own directional boring corporation, Steile Construction, Inc. It performed a job for one of Jerrick's customers while Jerrick was still in existence. That customer paid with a check made out to Jerrick Construction, but appellant kept this money, contending that it was for work done by Steile Construction. In addition, appellant worked with Jerrick's customer base after he started Steile Construction.

In January 2006, respondent brought a complaint seeking involuntary dissolution of the corporation, and the court appointed two receivers. An auction was conducted to sell the assets of Jerrick Construction, and the proceeds were used to pay off corporate debt and bills. After collecting additional amounts due from customers, a positive balance was left in the receivers' account.

The court then held a two-day trial to address the numerous claims of the parties and resolved those claims and issued findings. After posttrial motions by both parties, the court issued amended findings and judgment was entered. Appellants filed a notice of appeal, and respondent filed a notice of review.

D E C I S I O N

Findings of fact of a district court sitting without a jury “shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01.

A corporation may be dissolved by a court order. Minn. Stat. § 302A.701(c) (2008).

A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets . . . [i]n an action by a shareholder when it is established that . . . the directors or the persons having authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock.

Minn. Stat. § 302A.751, subd. 1(b)(1) (2008). In an action involving a closely held corporation, which is defined as one with no more than 35 shareholders,

the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of all shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.

Id., subd. 3a (2008); Minn. Stat. § 302A.011, subd. 6a (2008) (defining closely held corporation).

The court may appoint receivers who have the authority, subject to the order of the court, to collect corporate assets and sell or otherwise dispose of the property of the assets. Minn. Stat. § 302A.753, subd. 2 (2008). “After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders” *Id.*, subd. 4 (2008). The district court here declared the management deadlocked, ruled on claims by the parties as to the amounts due them upon dissolution of their corporation, and divided the assets equally.

I.

Valuation

The first issue concerns the court's valuation of Jerrick Construction and its customer base. Valuation of property will be reversed only if clearly erroneous. *Spinnaker Software Corp. v. Nicholson*, 495 N.W.2d 441, 445 (Minn. App. 1993) (addressing fair value of dissenting minority shareholder's stock), *review denied* (Minn. Mar. 30, 1993).

The court ruled that respondent was entitled to compensation for the value of Jerrick Construction's established customer base, because appellant breached his

fiduciary duty and used Jerrick Construction's resources, including its customer base, for his own gain. The court determined that neither party provided it with "a detailed, reliable, financial evaluation for this customer base," finding flaws with both of the experts that the parties produced, but found that appellant's expert was more reliable than respondent's expert. The court then found that the overall value of Jerrick Construction was \$200,000. It further ruled that by walking off the job, respondent harmed the value of the corporation, essentially reducing its value by one-half, to \$100,000. The court then ruled that appellant and respondent were each entitled to \$50,000.

"Assigning a specific value to an asset is a finding of fact; disputes as to asset valuation are to be addressed to the trier of fact, and conflicts are to be resolved in that court. " *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975) (addressing valuation issue in dissolution proceeding).

The trial court is not bound by the opinion of any witnesses concerning values. The weight and credibility of expert testimony is for the fact-finder to determine. The opinions of expert witnesses are only advisory and the [fact-finder] may weigh such evidence in the light of all the facts and opinions presented to it and draw its own conclusions.

Rainforest Cafe, Inc. v. State of Wis. Inv. Bd., 677 N.W.2d 443, 451 (Minn. App. 2004) (quotations and citations omitted) (addressing fair value of dissenting shareholder's stock). "The weight and credibility to be given to the opinion of an expert lies with the factfinder." *State ex rel. Trimble v. Hedman*, 291 Minn. 442, 456, 192 N.W.2d 432, 440 (1971).

Both parties take issue with the \$200,000 base valuation. We have reviewed the testimony of the experts, as well as all other testimony and evidence. Based on all of the testimony as to valuation, and considering that the experts provide only advisory opinions to the district court which should be considered in light of all the facts, we hold that the district court, which has wide discretion when weighing conflicting testimony on valuation, was fair and reasonable. *See Rainforest Cafe*, 677 N.W.2d at 451 (providing that opinions of experts are advisory); *Wopata v. Wopata*, 498 N.W.2d 478, 485 (Minn. App. 1993) (stating that the district court has broad discretion in making valuation decisions).

Respondent challenges the district court decision that when he left, the value of the corporation was halved, based on the court's reasoning that he was essentially one-half of the corporation's work force. He asserts that there should not have been any "markdown" and that he should have been awarded half of the \$200,000 valuation, or \$100,000. On the other hand, appellant argues that because the court cut the value of Jerrick Construction in half because respondent walked off the job and left the company, appellant should be entitled to keep \$100,000 and respondent should not receive anything. Appellant misses the point. Respondent left a business with a value of at least \$100,000. It is self-evident that appellant then used Jerrick Construction for his own gain. Awarding respondent 50% of the value after the markdown was fair. The district court's decision was not clearly erroneous, but rather, fair and equitable.

II.

Additional salary

Next, the district court ruled that because appellant admittedly paid himself an additional salary of over \$26,000 for some six months after respondent stopped working for Jerrick Constructon, respondent should likewise be granted this amount.

In an action involving closely held corporations, the court must consider the shareholder's duty "to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of all shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other." Minn. Stat. § 302A.751, subd. 3a. Here, the district court found that the parties agreed that each would receive a weekly salary of \$1,250, and, if either took an additional payment out of the corporation, they agreed that this would be considered a draw to the shareholder taking the money, and the corporation would have an accounts payable to the other shareholder for an equal amount. Appellant disputes the existence of this policy. Our review of the record shows that the district court's findings are supported by the evidence and reasonable.

Appellant contends that this result is unfair because appellant assumed respondent's duties after respondent walked out. The district court, however, cited testimony that the parties' agreement was not based on the amount of time the owners provided toward the profitability of the corporation. The court found this evidenced by the facts that during the first year or two of the business, appellant continued to draw a full salary during the time he was working at his separate custom harvesting business and

that respondent continued to receive a salary for several months even after walking off the job in June 2006. The court heard testimony by respondent as to the long hours that respondent spent doing the hot and physically demanding job of drilling for a five-year period, while appellant performed the less-strenuous tasks of making bids and scheduling jobs. The court found as follows:

Both parties' testimony indicates that nowhere in the corporate agreement did the parties provide for additional monetary payments to a director/shareholder for performing additional work. In fact, the parties' agreement provided that all additional sums paid to directors/shareholders were to be considered a draw to the shareholder taking the money and the corporation would have an accounts payable to the other shareholder for an equal amount.

The court found that appellant's "additional payments to himself were actually draws to him as a shareholder of the corporation," and ruled that respondent was owed that amount pursuant to the corporate agreement. This reasoning and the findings are supported by the record and are reasonable.

III.

Award of profits

The district court also ruled that appellant breached his fiduciary duty toward Jerrick Construction when he used its resources for Steile Construction to perform work for a customer of Jerrick Construction while Jerrick Construction still existed, and that respondent was entitled to half of the profits derived from this work. Appellant argues that this was clearly erroneous because the evidence showed that no Jerrick Construction

employees were used for this job and instead he paid the “former” Jerrick employees and he paid Jerrick to rent its directional boring machine.

Appellant’s version of these events did not preclude the court’s findings, nor its award of half the profits from this job to respondent.

Next, respondent asserts that, based on both his counsel’s and appellant’s counsel’s erroneous comments, the district court made a clerical error as to this payment. The district court may correct clerical mistakes “at any time upon its own initiative or on the motion of any party and after such notice, if any, as the court orders. *During the pendency of an appeal, such mistakes may be corrected with leave of the appellate court.*” Minn. R. Civ. P. 60.01 (emphasis added). Under rule 60.01, the district court, not this court, must order the corrections. *Id.* Respondent has not asked leave from this court to ask the district court to make the correction. Neither party is precluded from moving the district court to correct any error allegedly made.

IV.

Draws

Respondent argues that the district court erred by failing to award him an equivalent amount for corporate draws by appellant for which appellant provided no receipts. After extensive testimony by the parties on various issues related to the corporate draws, the court concluded, in relevant part, that because both parties admittedly took corporate draws but did not provide the court with enough evidence to determine the extent to which each party used the assets for personal gains, neither would

be reimbursed for draws by the other party. This finding was supported by the evidence and reasonable.

V.

Property division

Finally, respondent argues that the district court erred by failing to compensate him for corporate assets that appellant wrongfully withheld from the auction, including drill rods, a welder, and the corporate pick-up truck that appellant used. We have extensively reviewed the evidence, as did the district court. The district court's findings are supported by the evidence and reasonable.

Affirmed.