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**IN THE
COURT OF APPEALS OF INDIANA**

JASON DOBOSIEWICZ,
Appellant-Defendant,

vs.

DAVID J. DRAJER and IRENE CARLSON,
Appellees-Plaintiffs.

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) No. 71A04-0701-CV-20
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APPEAL FROM THE ST. JOSEPH CIRCUIT COURT
The Honorable Michael Gotsch, Judge
Cause No. 71C01-0602-PL-23

September 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Jason Dobosiewicz appeals the trial court's judgment that he was not a partner in the business entity, Landscape Concepts. We affirm.

Issue

The issue before us is whether the trial court properly determined that the business relationship between Dobosiewicz and Irene Carlson and David Drajer was not a partnership.

Facts

In early 2003, Dobosiewicz approached Carlson, his aunt, about financial and tax problems with his landscaping business, Jason's Landscaping Company. Carlson shared Dobosiewicz's financial troubles with her husband, Drajer, Dobosiewicz's uncle. Carlson and Drajer were retired and they agreed to help Dobosiewicz resolve his financial difficulties by forming and funding a new business entity entitled Landscape Concepts. Drajer and Carlson are listed as the sole owners of Landscape Concepts.

In 2003, Landscape Concepts began operation. During that year, most of the business profits were paid toward the debt of the enterprise. However, Dobosiewicz performed landscaping services for Landscape Concepts for which he received payment. Carlson signed checks issued to Jason's Landscaping from the Landscape Concepts checking account that Dobosiewicz did not have access or authority to use. The records for the 2003 fiscal year indicate that Dobosiewicz received \$26,590.00 for services rendered to Landscape Concepts. Landscape Concepts also provided Dobosiewicz with an IRS form, 1099-MISC, for purposes of filing his federal income taxes.

Carlson and Drajer refinanced nine items of business equipment that previously belonged to Dobosiewicz to facilitate operation of Landscape Concepts. These items include a 1999 Bobcat loader, 1992 Kabota tractor, 1994 Chevrolet truck, 1986 CMC truck, 2003 Brillion seeder, 2003 Hydraulic remote assembly, 2003 Land Pride Quick Hitch, and a 2003 Harley power rake. Carlson and Drajer are currently making loan repayments on these items. The equipment is currently in Dobosiewicz's possession. The value of these items is estimated to exceed \$50,000.

On February 8, 2006, Carlson and Drajer filed a Complaint in Replevin against Dobosiewicz seeking possession of the property that they refinanced. In turn, Dobosiewicz filed a counterclaim requesting dissolution of the partnership. The two-day trial was held on June 29 and July 11, 2006. On October 27, 2006, the trial court determined that Drajer and Carlson did not form a business partnership with Dobosiewicz and dismissed Dobosiewicz's counterclaim for dissolution of partnership. The trial court also ordered the return of any property contributed, provided, or purchased by Drajer or Carlson for Landscape Concepts. Dobosiewicz now appeals.

Analysis

Although the trial court entered findings of fact and conclusions thereon, the record does not reflect a request for such findings by either party. Where the trial court enters specific findings of fact and conclusions sua sponte, we apply the following two-tier standard of review: whether the evidence supports the findings, and whether the findings support the judgment. Learman v. Auto Owners Ins. Co., 769 N.E.2d 1171, 1174 (Ind. Ct. App. 2002), trans. denied. The trial court's findings and conclusions will

be set aside only if they are clearly erroneous, that is, when the record contains no facts or inferences supporting them. Id. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. Id. Sua sponte findings control only as to the issues they cover and a general judgment will control as to the issues upon which there are no findings. Id. A general judgment standard entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence. Id.

Dobosiewicz contends that the trial court erred in its determination that Landscape Concepts did not operate as a partnership between himself and Carlson. The existence of a partnership is generally a question of fact. Weinig v. Weinig, 674 N.E.2d 991, 994 (Ind. Ct. App. 1996). Under Indiana Code Section 23-4-1-6(1), a partnership is defined as two or more persons carrying on a business for profit. To establish a partnership relationship between parties, there must be: (1) a voluntary contract of association for the purpose of sharing profits and losses that may arise from the use of capital, labor, or skill in a common enterprise; and (2) an intention on the part of the parties to form a partnership. Weinig, 674 N.E.2d at 995. Further, the intention that controls in determining the existence of a relationship is the legal intention deducible from the acts of the parties. Id. The intention to form a partnership is determined by examining all the facts of the case and the conduct of the parties. Id.

The record does not indicate that Carlson, Drajer, and Dobosiewicz intended to share in the profits from Landscape Concepts.

“Receipt by a person of a share of the profits of a business is prima facie evidence that a person is a partner in the business, but no such inference shall be drawn if such profits were received in payment for the following:

- (a) as a debt by installments or otherwise;
- (b) as wages of an employee or rent to a landlord.”

Ind. Code § 23-4-1-7(4). Here, as found by the trial court, the business entity, Landscape Concepts, was titled to Carlson and Drajer. Significantly, Dobosiewicz did not have access or authority to use Landscape Concept’s checking account. Dobosiewicz received wages for landscaping services he provided to Landscape Concepts. In 2003, the checks Dobosiewicz received from Landscape Concepts were made payable to Jason’s Landscaping, totaled about \$26,590.00, and were signed by Carlson. Moreover, landscape Concepts provided Dobosiewicz with an IRS Form for purposes of filing his federal income taxes. Although Dobosiewicz contributed skill and labor to Landscape Concepts, the record indicates that he did not share in business profits and therefore has not established prima facie the existence of a business partnership between him and Carlson and Drajer consistent with Section 23-4-1-7(4)(b).

Dobosiewicz also claims that a business partnership existed between him and Carlson and Drajer under a theory of partnership by estoppel. To prevail, Dobosiewicz must demonstrate that a third party reasonably relied on Dobosiewicz’s purported partner status as a partner to his or her detriment. See Ind. Code § 23-4-1-16. In other words, partnership by estoppel is only relevant with regard to third parties. J.M. Schultz Seed Co. v. Robertson, 451 N.E.2d 62, 65 (Ind. Ct. App. 1983). The instant dispute only involves the original purported “partners” and not liability to a third party. Estoppel,

under Indiana Code Section 23-4-1-16, requires a holding out and a reliance. Id. These elements have not been satisfied here and partnership by estoppel cannot be established.

Conclusion

The trial court's conclusion that a partnership did not exist between Dobosiewicz and Carlson and Drajer was not clearly erroneous. We affirm.

Affirmed.

KIRSCH, J., and ROBB, J., concur.