2016 IL App (3d) 160210-U

Order filed October 19, 2016

---

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

| | | |
|---|---|---|
| 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-Appellees, | ) | Appeal No. 3-16-0210 |
| v. | ) | Circuit No. 14-CH-52 |
| DONALD J. HALPIN, | ) | Honorable Lance Peterson |
| Defendant-Appellant. | ) | Judge, Presiding. |

---

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

---

**ORDER**

¶ 1 *Held*: Trial court did not abuse discretion by appointing receiver for partnership where court found that partnership property was "in danger of loss from misconduct." Trial court did not err in waiving bond for plaintiffs upon appointment of receiver where no insurance company would issue bond to plaintiffs.

¶ 2 Plaintiffs, who claim a partnership interest in the Omer Halpin Family Farms Partnership, filed a two-count complaint against defendant, Donald Halpin, one of their partners, seeking

dissolution of the partnership or, alternatively, disassociation of Donald from the partnership. Plaintiffs filed a petition for the appointment of a receiver for the partnership. The trial court granted the petition, appointed a receiver and ordered plaintiffs to post a $200,000 bond. Soon thereafter, plaintiffs filed a motion to modify, seeking waiver of their bond. The trial court granted the motion and waived the bond. Defendant appeals, arguing that the trial court erred in (1) appointing a receiver, and (2) waiving plaintiffs' bond. We affirm.

¶ 3 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."

¶ 4 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.

¶ 5 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.

¶ 6 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.

¶ 7 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.

¶ 8 From 1976 to 2014, defendant farmed the partnership's farmland. He initially farmed with his father and siblings. Later, defendant and his brother, Dale, farmed the property together until 2004. At some point thereafter, defendant started paying cash rent to the partnership to farm the partnership property. In September 2011, the partnership sent defendant a notice of termination of his lease. Defendant ignored the notice and continued to farm the land.

¶ 9 In 2012, Patricia died. She was survived by three children, William Ryan, Sarah Ryan and Adam Ryan. After Patricia's death, defendant began acting as manager of the partnership

even though the partners never elected him managing agent. Defendant took control of the partnership checkbook and began using it.

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

¶ 11 In count I, 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 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.

¶ 12 In count II, 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 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 trial court denied. Defendant filed a counterclaim, alleging breach of contract and seeking declaratory judgment.

¶ 13 Plaintiffs testified that 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

defendant. They last received a distribution from the partnership in January of 2013. They testified that they cannot get along with defendant. Defendant has ignored their requests to participate in meetings and discuss partnership business. The partners stated that defendant was to pay them rent based on a percentage of the profits he made selling crops from the partnership property. The partners requested crop yield records from defendant, which he refused to provide.

¶ 14 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.

¶ 15 In September 2015, plaintiffs filed a petition for the appointment of a receiver to manage the partnership assets. Defendant filed a motion to dismiss the petition. On April 11, 2016, the trial court denied defendant's motion to dismiss and granted 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 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 defendant and the other partners "can't agree on anything."

¶ 16 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 plaintiffs "to post $200,000.00 bond and surety to be approved by the court."

¶ 17 Four days later, plaintiffs filed a motion to modify the trial 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."

¶ 18 A hearing was held on plaintiffs' motion on April 25, 2016. At that hearing, 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 trial court granted 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 plaintiffs, and (2) it had not yet decided who the partners are. Nevertheless, the court ordered plaintiffs to "make a good-faith and reasonable effort to obtain a $200,000 bond and surety by May 24, 2016."

¶ 19 ANALYSIS

¶ 20 I. Appointment of Receiver

¶ 21 A petition for appointment of a receiver is addressed to the sound discretion of the court. *Witters v. Hicks*, 335 Ill. App. 3d 435, 440 (2002). The purpose of appointing a receiver is to preserve the property for the benefit of all concerned. *Equitable Trust Co. of New York v. Chicago, Peoria & St. Louis R.R. Co.*, 223 Ill. App. 445, 448 (1921). A court has the power to appoint a receiver when conditions of dissension, dispute, fraud or mismanagement make it

impossible for a corporation to carry on its business or preserve its assets. *Duval v. Severson*, 15 Ill. App. 3d 634, 642-43 (1973). The appointment of a receiver is a drastic remedy that is to be exercised with great caution and only when the court believes there is imminent danger of loss. *Steinwart v. Susman*, 94 Ill. App. 2d 471, 476 (1968).

¶ 22 Here, the evidence showed that defendant was in violation of the partnership agreement by acting as managing agent when he was not authorized to do so, failing to provide accountings to the other partners, refusing to provide records to the partners, comingling assets, and refusing to participate in partnership meetings. The court granted plaintiffs' petition for appointment of a receiver because it found that the partnership property was "in danger of loss from misconduct" and that "issues of deception, dispute, [and] mismanagement" prevented the partnership from functioning. These are valid bases for the appointment of a receiver. See *Duval*, 15 Ill. App. 3d at 642-43; *Steinwart*, 94 Ill. App. 2d at 476.

¶ 23 Defendant contends that appointment of a receiver was unnecessary because the evidence showed only that the partners disagreed, not that they could not conduct partnership business. We disagree. The trial court acknowledged that appointing a receiving is a drastic remedy but found that it was necessary because the partners could not agree on anything and could not function as a partnership. Under these circumstances, the trial court did not abuse its discretion in granting plaintiff's petition for appointment of a receiver.

¶ 24 II. Waiver of Bond

¶ 25 Section 2-415(a) of the Code of Civil Procedure (Code) provides in pertinent part:

> "Before any receiver shall be appointed the party making the application shall give bond to the adverse party in such penalty as the court may order and with security to be approved by the court conditioned to pay all damages

including reasonable attorney's fees sustained by reason of the appointment and acts of such receiver, in case the appointment of such receiver is revoked or set aside. Bond need not be required, when for good cause shown, and upon notice and full hearing, the court is of the opinion that a receiver ought to be appointed without such bond." 735 ILCS 5/2-415(a) (West 2014).

¶ 26 A trial court may waive bond following a hearing if good cause is shown why the bond is waived. *Iowa Structures Unlimited, Inc. v. First National Bank of Moline*, 99 Ill. App. 3d 180, 184 (1981). When a trial court decides to waive bond, it is not enough for the trial court to state that bond is waived "upon good and sufficient showing." *Sherman Park State Bank v. Loop Office Building Corp.*, 238 Ill. App. 450, 451 (1925). Rather, the court must state the specific reason or reasons why it is waiving bond. *Id*. at 451-52; *Iowa Structures Unlimited, Inc.*, 99 Ill. App. 3d at 184. This is so that the appellate court can determine if the trial court's reasoning constitutes "good cause shown," as required by the statute. *Little v. Chicago National Life Insurance Co.*, 273 Ill. App. 148, 151 (1933).

¶ 27 Here, after receiving plaintiffs' motion to waive bond, the trial court held a hearing and ruled that "good cause" was shown to waive plaintiffs' bond because no insurance company would issue plaintiffs a bond and the court had not yet determined who the partners of the partnership were. By holding a hearing and providing reasons for its determination that "good cause" was shown, the trial court complied with the requirements of section 2-415(a) of the Code and the case law interpreting it. See 735 ILCS 5/2-415(a) (West 2014); *Iowa Structures Unlimited, Inc.*, 99 Ill. App. 3d at 184; *Sherman Park State Bank*, 238 Ill. App. at 451-52.

¶ 28 Now, we must determine if the trial court's reasoning constitutes "good cause shown" for waiver of the bond. See *Little*, 273 Ill. App. 3d 151. The evidence presented at the hearing

established that plaintiffs attempted to obtain a bond from multiple sources but were unsuccessful because no insurance company was willing to issue a bond to them. Because no company would issue plaintiffs a bond, the evidence supported the court's finding that "good cause" existed to waive the bond requirement.

¶ 29 The judgment of the circuit court of Grundy County is affirmed.

¶ 30 Affirmed.