COURT OF APPEALS
DECISION
DATED AND RELEASED

August 28, 1997

NOTICE

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3652

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MICHAEL H. LAURITZEN,

PLAINTIFF-RESPONDENT,

v.

RICHARD GOHLKE AND CYNTHIA GOHLKE,

DEFENDANTS-APPELLANTS.

APPEAL from an order of the circuit court for Waupaca County: PHILIP M. KIRK, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Richard Gohlke and Cynthia Gohlke appeal from an order approving a receiver's final account and distributions. We affirm.

This action was commenced by Michael H. Lauritzen seeking the dissolution of L & L Enterprises of Waupaca, Inc., under § 180.1430(2)(a), STATS. The ground for dissolution was that Lauritzen and the other member of the board of directors, Richard Gohlke, were deadlocked in the management of the corporate affairs. The complaint alleged that Lauritzen owned one-half of the corporate shares, while Gohlke and his wife, Cynthia Gohlke, jointly owned the other half. The court dissolved the corporation and appointed a receiver to wind up and liquidate its business and affairs. After a protracted bidding procedure, the receiver and the court accepted Lauritzen's bid of $276,001 for the assets and liabilities of the corporation. Richard Gohlke bid $140,000.

Following affirmation of that sale, but before the final accounting, the receiver arranged for Lauritzen to pay an additional $10,000 to instead receive the Gohlkes' shares of stock, thereby allowing the corporation to remain an ongoing enterprise. However, the Gohlkes refused to sign the papers to transfer the stock certificates. At a hearing on the final accounting, counsel for the Gohlkes objected to the accounting because it treated the $10,000 as part of the purchase price which would be divided equally between the shareholders. The practical effect would be that the Gohlkes would receive only $5,000, which they claimed was not their original understanding. Lauritzen and the receiver agreed to amend the accounting so that the Gohlkes would receive the full $10,000. The court ordered the Gohlkes' stock certificates surrendered, ordered that new stock certificates be issued to Lauritzen, vacated the earlier decree of dissolution and approved the final accounting. The Gohlkes appeal.

We first note that the Gohlkes' briefs refer to "facts" regarding other litigation between the parties which are not of record in this appeal. We are

confined to the record on appeal. ***State v. Aderhold***, 91 Wis.2d 306, 314, 284 N.W.2d 108, 112 (Ct. App. 1979). We do not consider the extraneous material.

The Gohlkes first argue that the receiver "improperly conducted" his duties as receiver. Specifically, they argue that he failed to uncover illegal activities by Lauritzen such as illegal disbursements of corporate property and funds. This record is devoid of any information about what the receiver did or did not do to discover illegal activities. The argument is meritless.

The Gohlkes argue that the receiver failed to do his duty to maximize the value of the corporation and that it was sold for an "unrealistically low" value. The record contains no information or appraisal establishing a "realistic" value. It is also perplexing how Richard Gohlke can make this argument when his own bid was barely half the amount eventually received. We reject the argument.

The Gohlkes argue that the circuit court erred when it allowed the proceedings to become a stock sale rather than an asset sale. However, they are vague about the remedy they seek for this alleged error. They appear to continue the argument by asserting that $10,000 was not a fair price to pay for the stock transfer. Thus, their proposed remedy appears to be that Lauritzen should pay them more money.

We have already concluded that the Gohlkes have shown no improper activity on the part of the receiver. There is no reason to upset the sale of L & L Enterprise's assets to Lauritzen. However, there is no authority in Chapter 180 permitting the trial court to order Gohlke to relinquish his shares of stock, absent a stipulation of the parties to do so.

The record is unclear as to whether there was an agreement to transfer the stock for $10,000 more than the price accepted by the receiver for the corporation's assets. Therefore we remand to the trial court and direct the parties to notify the trial court and each other in writing whether there was an agreement to transfer the stock for $10,000 more than the price accepted by the receiver for the assets of the corporation. If the parties agree that they came to this agreement, or if a party fails to respond within thirty days of remittitur, the trial court may reinstate its order of November 4, 1996. If the parties disagree, the trial court shall conduct an evidentiary hearing and determine whether the parties had a valid agreement to transfer the stock for $10,000. If they did, the trial court may re-enter its order. If they did not, the trial court shall enter an order directing the receiver to complete the sale of the corporation's assets to Lauritzen, and the Gohlkes to return the $10,000.

The result of corporate dissolution is that the Gohlkes will be required to return the $10,000 premium paid for the sale of the stock and L & L Enterprises will be dissolved. We recognize that the Gohlkes will thus pay $10,000 to have an asset-less corporation dissolved, but that is apparently the request they make in both their brief in chief and reply brief. Accordingly, we affirm in part, reverse in part and remand for further proceedings not inconsistent with this opinion.

In their reply brief the Gohlkes argue that Lauritzen has been unjustly enriched and should be ordered to pay restitution to them. We do not consider arguments raised for the first time in a reply brief. ***In re Estate of Bilsie***, 100 Wis.2d 342, 346 n.2, 302 N.W.2d 508, 512 (Ct. App. 1981).

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.