COURT OF APPEALS
DECISION
DATED AND FILED

September 21, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1633 **Cir. Ct. No. 2003CV92**

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

KAREN SIMS,

PLAINTIFF-RESPONDENT,

V.

BRUCE WEEGMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: BENJAMIN D. PROCTOR, Judge. *Affirmed.*

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 DYKMAN, J. Bruce Weegman appeals from a judgment enforcing the buy-out provision in a partnership agreement between Weegman and Karen Sims. Weegman contends the trial court erred in enforcing the buy-out provision because Sims sued for and obtained dissolution and winding-up of the partnership

under WIS. STAT. § 178.27 (2003-04),[1] and thus the court improperly mixed the remedies for partnership dissolution and contract. Weegman also argues that the trial court erred in finding that Sims had negotiated in good faith for a purchase price of his interest as required under their agreement. Lastly, Weegman argues that the trial court erred in enforcing the buy-out provision of the partnership agreement because that provision was unconscionable and therefore unenforceable. Because we conclude that Weegman has not presented any convincing argument that the trial court erred, we affirm.

Background

¶2 The following is taken from the circuit court's findings of fact and the parties' affidavits. In March 1992, Karen Sims and Bruce Weegman formed KAB Partnership. Sims and Weegman executed the KAB Partnership Agreement (KAB Agreement) to govern KAB. An attorney assisted the parties in drafting the KAB Agreement, and both Sims and Weegman were involved in the drafting.

¶3 When KAB was formed, Weegman was the general manger of Heckel's, a restaurant Sims owned. KAB was formed to purchase the land on which Heckel's was located (the Hastings Way property). The parties intended the equity in KAB to allow Weegman to purchase Sims's interest in KAB when Sims retired. KAB purchased the Hastings Way property in March 1992 for $310,000.00. It later purchased another parcel of land (the Osseo property) in 1997 for $88,311.40.

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶4 In November 2001, Weegman sent Sims his notice of intent to retire from KAB. That notice triggered Sims's option to purchase Weegman's interest in KAB under the KAB Agreement. Sims then offered to purchase Weegman's interest in KAB, and the parties entered a series of negotiations over the value of Weegman's interest. When those negotiations failed, Sims commenced this action for equitable dissolution and winding-up of KAB under WIS. STAT. § 178.27.[2]

¶5 Sims moved for partial summary judgment in August 2003, asking the court to declare the value of KAB was $310,000 under the KAB Agreement.[3] Weegman opposed the motion, arguing that because Sims had sued for dissolution and winding-up, she could not ask the court to construe the KAB Agreement. Sims replied that her complaint supported her motion for summary judgment because it stated that the KAB Agreement existed, Weegman had given notice of his intent to retire, and the parties were unable to agree on a wind-up of the partnership. The court denied the motion for summary judgment.

¶6 Following trial, the court found that Sims had attempted to negotiate in good faith for a purchase price of Weegman's interest in KAB and that the buy-out provision was not unconscionable. The court's judgment dissolved KAB

---

[2] Sims's complaint concerned four businesses with shared interests between Weegman and Sims. By the time of trial, the only remaining issue was the KAB Partnership.

[3] The KAB Agreement states, in ¶15(b):

> Within thirty (30) days of an actual or constructive Sale Notice being given, the purchasing Partner and the selling Partner shall make a good faith effort to agree upon the fair market value of the tangible assets owned by the Partnership. If there is no written agreement as to said value within said thirty (30)-day period, the value shall be $310,000.00. Goodwill shall not be considered in establishing any values hereunder.

under WIS. STAT. § 178.27, increased the buy-out price to include the Osseo property, and allowed Sims to purchase Weegman's interest in KAB for that modified amount. Weegman now appeals from the circuit court's judgment.

Discussion

¶7 Weegman contends the trial court erred by (1) mixing remedies under a WIS. STAT. § 178.27 partnership dissolution and under a contract by dissolving the partnership and then enforcing the buy-out provision in the KAB Agreement; (2) finding that Sims negotiated in good faith for the purchase price of Weegman's interest in KAB; and (3) finding the buy-out provision of the KAB Agreement was not unconscionable. We discuss each argument in turn.

(1) *Mixing Remedies*

¶8 Weegman asserts that the trial court was required to allow him to force a sale of KAB under WIS. STAT. § 178.33 rather than enforce the buy-out provision of the KAB Agreement. Weegman relies on ***Dreifuerst v. Dreifuerst***, 90 Wis. 2d 566, 573, 280 N.W.2d 335 (Ct. App. 1979). In ***Dreifuerst***, we concluded that a partner in an action for dissolution, in the absence of a partnership agreement providing otherwise, had the right to force a sale of the business. We explained:

> Winding-up is the process of settling partnership affairs after dissolution. Winding-up is often called liquidation and involves reducing the assets to cash to pay creditors and distribute to partners the value of their respective interests. Thus, lawful dissolution (or dissolution which is caused in any way except in contravention of the partnership agreement) gives each partner the right to have the business liquidated and his share of the surplus paid *in cash*.

Id. at 570. We concluded that "[s]ince the statutes provide that, unless otherwise agreed, any partner who has not wrongfully dissolved the partnership has the right to wind up the partnership and force liquidation, he likewise has a right to force a sale, unless otherwise agreed." ***Id.*** at 573. Thus, ***Dreifuerst*** addresses the right of a partner to demand the sale of business assets in the absence of a partnership agreement. It does not discuss the result of a court applying remedies under both a WIS. STAT. § 178.27 partnership dissolution and a contract. ***Dreifuerst*** thus lends no support to Weegman.

¶9 Weegman concludes his argument by asserting: "The mixing of the remedies of dissolution of the partnership and enforcement of the buy-out provisions of the KAB Agreement is simply not allowed under Wisconsin law." However, he cites no authority for that proposition, and, beyond this sentence, does not develop this argument. Undeveloped arguments asserted without supporting legal authority are inadequate, and we will not consider them. ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987) (citing ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W. 2d 370 (Ct. App. 1980)). We conclude that Weegman has not sufficiently developed the argument that the trial court improperly mixed remedies, and we therefore do not address it on the merits. *See* ***id.***

¶10 Weegman also argues that the trial court's decision to modify the buy-out provision to include the purchase price of the Osseo property was "not allowed by law." Again, he cites no authority for that proposition. In response, Sims asserts that the trial court reformed the KAB Agreement in equity to include the Osseo property in the buy-out price based on the mutual mistake of the

parties.[4] *See* ***Krause v. Hartwig***, 14 Wis. 2d 281, 111 N.W.2d 138 (1961); ***Owen v. Wangerin***, 985 F.2d 312, 316 (7th Cir. 1993). In his reply brief, Weegman contends the trial court could not equitably reform the KAB Agreement because neither party had requested it to reform the contract or asserted a mutual mistake. He relies on ***Owen***, 985 F.2d 312, for this assertion. However, ***Owen*** does not address whether a court may reform a contract absent a motion by either party. Instead, ***Owen*** reviews a trial court's granting summary judgment on a party's claim for reformation. ***Id.*** at 316. Thus, ***Owen*** is inapposite.

¶11 Because Weegman does not provide authority for his argument that the court did not have the authority to modify the buy-out provision, we do not address it further. *See* ***Roehl v. American Family Mut. Ins. Co***., 222 Wis. 2d 136, 149, 585 N.W.2d 893 (Ct. App. 1998); ***Gulrud***, 140 Wis. 2d at 730.

(2) *Sims's Good Faith Negotiations*

¶12 Weegman next argues that the trial court erred in finding that Sims negotiated in good faith for the purchase price of his interest in KAB. A determination of good faith is a finding of fact, and that finding by the trial court will not be disturbed unless it is clearly erroneous. ***Amoco Oil Co. v. Capital Indem. Corp.***, 95 Wis. 2d 530, 542, 291 N.W.2d 883 (Ct. App. 1980) ("The existence or nonexistence of good faith as an issue is usually determined by the

[4] The trial court found:

> Equity requires that the terms of Paragraph 15(b) of the Partnership Agreement be modified to reflect the intent of the parties with respect to valuation of KAB's tangible assets. The value of the tangible assets of KAB is set at $398,311.40 representing the sum of the purchase price of KAB's tangible assets.

trier of fact. Findings of such fact will not be upset on appeal unless contrary to the great weight and clear preponderance of the evidence.") (citations omitted).[5] When, as here,

> the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility of the witnesses. When more than one reasonable inference can be drawn from the credible evidence, the reviewing court must accept the inference drawn by the trier of fact.

Noll v. Dimiceli's, Inc., 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983). We thus look to whether the record supports the trial court's finding that Sims negotiated in good faith.

¶13 Good faith requires "honesty in fact and the observance of reasonable commercial standards of fair dealing." WIS. STAT. § 403.103(d); *see also* ***Mid Wisconsin Bank v. Forsgard Trading, Inc.***, 2003 WI App 186, ¶9, 266 Wis. 2d 685, 668 N.W.2d 830. Weegman argues that Sims failed to negotiate with him in good faith by discussing their other businesses when negotiating to purchase Weegman's interest in KAB.[6] However, Weegman has not explained

---

[5] While the standard is now clearly erroneous, we rely on cases explaining the "great weight and clear preponderance" test for guidance. ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983) ("While we now apply the 'clearly erroneous' test …, cases which apply the 'great weight and clear preponderance' test … may be referred to for an explanation of this standard of review because the two tests in this state are essentially the same.") (citation omitted).

[6] The following stipulation was read into the record at trial:

> The stipulation is there were a series of offers made by Karen Sims to Bruce Weegman from 2000 through 2002. The offers discussed the assets and values of the KAB Partnership and also dealt with the assets and values of other businesses the two of them were involved with. All offers dealt with a resolution of all business relationships and not solely with KAB Partnership.

how the court's finding that Sims negotiated in good faith was clearly erroneous. He argues here, as he did to the trial court, that Sims's discussing their other businesses in their negotiations over KAB means that she did not negotiate in good faith. He has not argued that the court's finding of good faith was not supported by evidence in the record.[7] *See* ***Noll***, 115 Wis. 2d at 643.

¶14 We conclude that the record supports the trial court's determination that Sims negotiated in good faith for a purchase price of Weegman's interest in KAB, and that finding was therefore not clearly erroneous. On summary judgment, Sims submitted two affidavits to the court detailing her negotiations with Weegman for a purchase price. Letters between Weegman's and Sims's attorneys regarding a purchase price were admitted as evidence during trial. Weegman testified that the parties negotiated over the price of his interests in their shared businesses, although never exclusively on the value of KAB. We conclude that this evidence supports the trial court's finding that Sims negotiated in good faith for a purchase price of Weegman's interest in KAB.

(3) *Unconscionability of the KAB Agreement*

¶15 Finally, Weegman argues that the trial court erred in enforcing the buy-out provision in the KAB Agreement because that provision is unconscionable and therefore unenforceable. Because the determination of unconscionability is a legal conclusion intertwined with factual findings, we review de novo but give weight to the circuit court's findings. ***Wisconsin Auto***

[7] Also, as Sims points out, Weegman has cited no authority for the proposition that, in order to be in good faith, negotiations must focus solely on the price of KAB. We therefore will not address that argument. *See* ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987) (citing ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W. 2d 370 (Ct. App. 1980)).

Title Loans, Inc. v. Jones, 2005 WI App 86, ¶12, 280 Wis. 2d 823, 696 N.W.2d 214 (citation omitted).

¶16 Unconscionability is "the absence of a meaningful choice on the part of one party, together with contract terms that are unreasonably favorable to the other party." ***Id.***, ¶13 (quoting ***Leasefirst v. Hartford Rexall Drugs, Inc.***, 168 Wis. 2d 83, 89, 483 N.W.2d 585 (Ct. App. 1992)). It requires a finding of both substantive and procedural unconscionability. ***Id.*** Substantive unconscionabilty "refers to the reasonableness of the contract terms agreed upon by the contracting parties," and procedural unconscionability focuses on "the meeting of the minds of the parties to the contract." ***Id.*** Here, the trial court found that the buy-out provision to the KAB Agreement was not unconscionable. We agree.

¶17 Both Sims and Weegman testified as to their intent on entering into the KAB Agreement to help Weegman build equity and eventually buy out Sims's interest when she retired. Although Weegman testified there was no discussion of the $310,000 limit set in the buy-out provision, he testified on cross-examination about his involvement in the drafting of the KAB Agreement:

> Q: You helped select Dave Anderson as the attorney to draft the Partnership Agreement, correct?
>
> A: Yes.
>
> Q: You had direct contact with Attorney Anderson about the drafting of the Partnership Agreement, correct?
>
> A: I'm sure, yes.
>
> Q: Before signing the Partnership Agreement, you discussed it with Attorney Anderson, correct?
>
> A: To some degree, I'm sure I did.
>
> Q: Mr. Anderson answered all your questions prior to signing the Partnership Agreement, correct?

A: I'm not certain what questions I had, but that would be typical.

Q: He answered all the questions you posed of him, correct?

A: Yes.

Q: And Mr. Anderson was acting as the partnership's attorney; isn't that correct?

A: He was.

….

Q: No one pressured you into signing the Partnership Agreement, correct?

A: Nobody pressured me.

¶18 Weegman testified that he was a high school graduate and had been working for Heckel's since 1978. The KAB Agreement was signed in 1992. Sims testified that she set the $310,000 limit in the buy-out provision anticipating she would retire, and understanding she would only get that amount under their agreement. She further testified that Weegman never expressed any dissatisfaction with the terms of the KAB Agreement or asked for any terms to be changed. ***Id.*** On those facts, we conclude there was ample support for the trial court's findings that the parties had equal bargaining power in drafting the agreement and that it did not favor either party. We conclude the trial court did not err in finding there was no unconscionability to render the KAB Agreement unenforceable. We therefore affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.