

IN THE SUPREME COURT OF IOWA

Supreme Court Case Nos. 22-0259

BRIAN HORA and GREGG HORA, as Shareholders of HORA FARMS,
INC. and as Beneficiaries of THE CELESTE N. HORA TRUST,
Plaintiffs-Appellants/Cross-Appellees,

vs

KEITH HORA, Individually, as Director and Officer of HORA FARMS, INC.,
as a Shareholder of HORA FARMS, INC., and as Trustee of THE CELESTE
N. HORA TRUST; KURT HORA, HEATHER HORA, HK FARMS, INC.,
and HORA FARMS, INC.,
Defendants-Appellees/Cross-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
WASHINGTON COUNTY, IOWA
BUSINESS COURT CASE NO. EQEQ006366

THE HONORABLE SEAN MCPARTLAND

KURT HORA, HEATHER HORA and HK FARMS, INC.'S FINAL REPLY
BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Iowa Code § 490.746(2) allows the court to order the plaintiff in a derivative proceeding to pay any defendant’s expenses—including attorney’s fees—when the proceeding was commenced or maintained for an improper purpose or without reasonable cause. Were the actions of Gregg and Brian to force their father and brother out of the family farming operation to gain control of it “improper” so as to support an award of expenses? Given that Gregg and Brian established the template for many of the practices about which they complain, did the District Court correctly determine that they did not lack “reasonable cause” so as to support an award of Defendants’ expenses under Iowa Code § 490.746(2)?

Cases

Winner v. Cataldo, 559 So.2d 696 (Fla. Dist. Ct. App. 1990)

Statutes

Iowa Code § 490.746

Rules

Iowa R. App. P. 6.907

ARGUMENT

I. The HK Defendants have satisfied the actual requirements of Iowa Code § 490.746(2).

A. Scope and standard of review.

With respect to their own claim that Hora Farms should pay their fees and expenses under Iowa Code § 490.746, Brian and Gregg argue for a de novo standard of review. (Plaintiffs' Brief, pp. 83-84.) Without explanation or direct authority, however, they argue that an abuse of discretion standard should apply to the HK Defendants' fee claim. (Plaintiffs' Reply, pp. 85-86.) Iowa Code § 490.746 is not so fickle. As part of this derivative action—an equitable proceeding—the HK Defendants' fee application should be reviewed de novo. Iowa R. App. P. 6.907.

B. Iowa Code § 490.746 does not contain an “entire proceeding” provision.

Brian and Gregg argue that § 490.746 provides a court with discretion to require a derivative plaintiff to pay expenses only if “the *entire proceeding* [is] without reasonable cause or for improper purpose.” (Plaintiffs' Reply, p. 86.) (emphasis supplied) The phrase “entire proceeding” does not appear in § 490.746(2). To succeed on their fee claim, Iowa law does not require the HK

Defendants to prove that each tactic in this years-long attempted takeover was without cause or for an improper purpose. Plaintiffs provide no Iowa authority to the contrary, and their Florida authority is distinguishable. *Winner v. Cataldo*, 559 So.2d 696 (Fla. Dist. Ct. App. 1990), concerned the appeal of an award of attorney’s fees to a defendant in a derivative action who was dismissed out before final judgment in the case. The statute at issue in *Winner* provided that if the court “shall find that the action was brought without reasonable cause; such court may then require the plaintiff...to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.” *Winner*, 559 So.2d at 697. Applying the statutory language to the dismissed defendant, the court stated “[t]o obtain fees under this section...the entire action must have been brought without reasonable cause, not just the claim against one defendant.” *Id.* In *Winner* it appears that the case had merit in regard to at least some of the defendants. *Id.* In this case, however, Brain and Gregg can point to no win at the trial level. In fact, there is evidence in this case of Brian and Gregg’s own bad behavior—a fact pattern apparently not present in *Winner*.

More to the point, while Brain and Gregg may feel it was “appropriate for Gregg to address HFI’s substantial debts,” (Plaintiffs’ Reply, p. 88) the way in which Plaintiffs chose to address such perceived problems matters. The

District Court was clear in noting its disapproval of Brian and Gregg's actions. (See App. Vol. I p. 0564.) *Winner* does not support Brian and Gregg's position. More importantly, neither does the plain language of § 490.746(2)

C. The HK Defendants have paid fees.

Plaintiffs' actions in how they commenced and maintained this action have caused the HK Defendants to incur significant fees and expenses. This is no paper debt. The HK Defendants They have made payments over twenty-five times over the course of this litigation and continue to make payments (See App. Vol. I pp. 0692-0836.)

CONCLUSION

HK Defendants respectfully request that the judgment denying their fee application be reversed, with all amounts requested therein assessed against Plaintiffs.

Dated: September 28, 2022

/s/ Joseph W. Younker

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/s/ Joseph W. Younker
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September 28, 2022
Date

CERTIFICATE OF SERVICE

I certify that on September 28, 2022, I served the foregoing Reply Brief of Kurt Hora, Heather Hora and HK Farms, Inc. by electronically filing the document with EDMS, which will notify the following parties of the electronic filing:

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CERTIFICATE OF COSTS

I, the undersigned, hereby certify that the true cost of producing the necessary copies of the foregoing Reply Brief of Kurt Hora, Heather Hora and HK Farms, Inc. was \$N/A and that the amount has been paid in full by HK Defendants.

/s/ Joseph W. Younker