

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KURT P. HAAS, ET AL	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiffs-Appellees	:	Hon. Sheila G. Farmer, J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	
	:	Case No. 2007-CA-0061
ALLAN B. MAUST, ET AL	:	
	:	
Defendants -Appellants	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Fairfield County Court of Common Pleas, Case No. 03CV133

JUDGMENT: Affirmed in part; Reversed in part and Remanded

DATE OF JUDGMENT ENTRY: November 14, 2008

APPEARANCES:

For Plaintiffs-Appellees

For Defendants-Appellants

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Gwin, P.J.

{¶1} Defendants Allan B. and Rebecca S. Maust appeal a declaratory judgment of the Court of Common Pleas of Fairfield County, Ohio, entered in favor of plaintiffs Kurt and Lettie Haas. Appellants assign four errors to the trial court:

{¶2} “I. DID THE TRIAL COURT ERR IN REFUSING TO CONDUCT A JURY TRIAL ON THE ISSUES BEFORE THE COURT AS CONTAINED IN THE COMPLAINT AND THE COUNTER/CROSS-COMPLAINT?”

{¶3} “II. DID THE TRIAL COURT ERR IN RESTRICTING THE INITIAL TRIAL SOLELY TO COUNT ONE OF THE PLAINTIFFS’ TWO COUNT COMPLAINT AND REFUSING TO TRY AT THE SAME TIME THE ISSUES RAISED BY COUNT TWO AND THE DEFENDANTS COUNTER/CROSS-COMPLAINT, INCLUDING THE REQUEST FOR AN ACCOUNTING FROM THE PLAINTIFFS THAT THE CAPITAL ACCOUNTS BE ADJUSTED TO PROPERLY REFLECT THE CAPITAL CONTRIBUTIONS OF THE PARTIES?”

{¶4} “III. WAS THE DECISION AND JUDGMENT OF THE TRIAL SUPPORTED BY THE EVIDENCE REQUIRED BY LAW OR IS IT, IN FACT, AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE?”

{¶5} “IV. IS THE DECISION AND JUDGMENT OF THE TRIAL COURT CONTRARY TO LAW?”

{¶6} On February 19, 2003, appellees filed a complaint containing two counts. The first count sought a declaratory judgment to determine if the parties had formed a corporation and if so, to delineate the rights of the parties with regard to the corporation.

The second count alleged appellant Allan Maust had breached his fiduciary duty to the corporation and to appellees.

{¶7} Appellants filed an answer and a counterclaim, seeking an accounting from appellees, a finding that appellants had contributed real estate to the corporation, for which appellants were entitled to compensation or credit, or in the alternative, an order dissolving the corporation and distributing the assets according to the parties' capital contributions.

{¶8} On February 17, 2006, the trial court sustained appellees' motion to bifurcate the trial. The court ordered the issue presented in appellees' complaint relating to the declaratory judgment action would be tried to the court without a jury, and appellants' counterclaim would be tried before a jury on a separate date. The court did not make an order regarding count two of the complaint alleging appellant Allan Maust breached his fiduciary duty to appellees and the corporation.

{¶9} After a bench trial, the trial court made extensive findings of fact. In addition to determining the parties had formed a corporation with each of the four parties receiving 25 shares of stock, the court made findings of fact and conclusions of law regarding the issues of whether appellants had contributed the real estate in question and whether they were entitled to credit for the value of the property. In the judgment entry of May 31, 2007, the court summarized its findings:

{¶10} "1. Plaintiffs Kurt and Lettie Haas and Defendants Allan and Rebecca Maust are each the owners of 25% of the outstanding shares of Haas & Maust Farms, Inc. 2. Defendants Allan Maust and Rebecca Maust are not due any credit, either of

additional shares or other compensation, as there was no superior capital contributions or services rendered to the Corporation by the Defendants.”

I & II

{¶11} Appellees state they specifically requested the trial court to limit the declaratory judgment portion of the bifurcated hearing to the preliminary issues based exclusively on the law, and thereafter, to allow the appellants a jury trial. Appellees concede the trial court exceeded the preliminary issues, and we find the court made numerous findings of fact which essentially disposed of appellees’ second cause of action and the counterclaim. Appellees nevertheless argue the court’s findings will not affect a subsequent jury trial on those factual issues. We do not agree. The judgment appealed from is a final order and would have been the law of the case in any subsequent hearings.

{¶12} The first and second assignments of error are sustained.

III & IV

{¶13} In their third and fourth assignments of error, appellants argue the trial court’s judgment was against the manifest weight of the evidence and contrary to law. Because we vacate the court’s judgment on the factual issues, we find these assignments of error are moot.

{¶14} For the foregoing reasons, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is affirmed in part and reversed in part. The trial court’s first declaration of May 31, 2007, that plaintiffs Kurt and Lettie Haas and defendants Allan and Rebecca Maust are each owners of 25% of the outstanding shares of Haas & Maust Farms, Inc. is affirmed. The court’s second declaration, the defendants Allan and

Rececca Maust are not due any credit, either of additional shares or other compensation as there was no superior capital contributions or services rendered to the corporation by the defendants is vacated. The findings of fact and conclusions of law contained in the trial court's November 16, 2006 judgment entry are vacated. The cause is remanded to the court for further proceedings in accord with law and consistent with this opinion.

By Gwin, P.J.,

Farmer, J., and

Edwards, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KURT P. HAAS, ET AL	:	
	:	
Plaintiffs-Appellees	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ALLAN B. MAUST, ET AL	:	
	:	
	:	
Defendants-Appellants	:	CASE NO. 2007-CA-0061

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is affirmed in part and reversed in part. The trial court's first declaration of May 31, 2007, that appellants and appellees are each owners of 25% of the outstanding shares of Haas and Maust Farms, Inc. is affirmed. The court's second declaration, appellants are not due any credit, either of additional shares or other compensation as they made no superior capital contributions or services to the corporation is vacated. The court's findings of fact and conclusions of law of November 16, 2006 are vacated. The cause is remanded to the court for further proceedings in accord with law and consistent with the opinion. Costs to appellees.

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JULIE A. EDWARDS