UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Driscoll v. Dennis

513 F. App'x 702 (10th Cir. 2013) · No. 11-1442 · Decided January 8, 2013

SUMMARY

The Tenth Circuit affirmed the district court's judgment for the defendants after a bench trial concerning the alleged conversion of 250,000 shares of Lifeline Therapeutics stock. The court held that the district court did not legally err in evaluating the evidence and did not clearly err in finding that Rosemary Driscoll failed to prove ownership of the shares.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Per Curiam; Lucero; Hartz; Holmes
JURISDICTION	Federal
DECIDED	January 8, 2013
DOCKET	11-1442
DISPOSITION	affirmed
PROCEDURAL POSTURE	Rosemary Driscoll appealed from the district court's judgment following a bench trial denying her claims because she failed to prove ownership of the 250,000 shares of stock allegedly converted by the defendants.
STANDARD OF REVIEW	In an appeal from a bench trial, factual findings are reviewed for clear error and legal conclusions are reviewed de novo. A factual finding must be upheld if it is permissible in light of the evidence; where two views of the evidence are permissible, the factfinder's choice cannot be clearly erroneous.
PRECEDENTIAL VALUE	unpublished, nonprecedential; persuasive value only except under law of the case, res judicata, and collateral estoppel
PARTIES	Rosemary Driscoll v. Eric A.M. Dennis, Clark C. Griffith, Law Office of Clark C. Griffith, a Minnesota Professional Association

TOPICS

appellate procedure · standard of review · commercial litigation · contracts · conversion

PRACTICE AREAS

appellate procedure · commercial litigation · contracts · torts · corporate law

QUESTIONS PRESENTED

1. Whether the district court legally erred by treating the absence of stock certificates in Rosemary Driscoll's name as dispositive of her ownership claim.
2. Whether defendants' untimely and allegedly evasive responses to requests for admissions conclusively established Driscoll's ownership of the 250,000 shares under Federal Rule of Civil Procedure 36.
3. Whether the district court clearly erred in finding that Driscoll failed to prove ownership of the 250,000 shares despite testimony and emails supporting her position.

HOLDINGS

1. The district court did not hold as a matter of law that ownership could be established only by a stock certificate bearing Driscoll's name; it made a factual finding that Driscoll failed to prove ownership based on the evidentiary record.
2. The district court was not required to treat the defendants' responses to the requests for admissions as conclusively establishing Driscoll's ownership because the requests were compound and ambiguous and therefore had limited practical effect.
3. The district court did not clearly err in finding that Driscoll failed to prove ownership of the 250,000 shares because the record supported more than one permissible view of the evidence and the district court permissibly chose not to credit her position.

KEY QUOTATIONS

> *“In an appeal from a bench trial, we review the district court’s factual findings for clear error and its legal conclusions de novo.”* (-5-)

> *“If the district court’s account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently.”* (-7-)

> *“Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous,”* (-7-)

> *“The judgment of the district court is AFFIRMED.”* (-8-)

FACTUAL BACKGROUND

William Driscoll, the late husband of plaintiff Rosemary Driscoll, managed family holdings of Lifeline Therapeutics stock, including shares allegedly belonging to Rosemary. In 2005, transactions involving Eric Dennis, Clark Griffith, and Christopher Micklatcher resulted in certificate no. 1135 representing 350,000 shares, of which 250,000 shares were allegedly Rosemary's, being transferred and sold without payment to the Driscolls or Micklatcher. The district court found that defendants received the proceeds but concluded that Rosemary had not sufficiently proved ownership of the 250,000 shares because the certificate and related records identified the shares as Micklatcher shares and other evidence was conflicting.

PROCEDURAL HISTORY

Driscoll asserted claims for breach of contract, unjust enrichment, negligence, breach of fiduciary duty, and conversion arising from the disposition of 250,000 shares of Lifeline Therapeutics stock. After a bench trial, the United States District Court for the District of Colorado found that the defendants had obtained proceeds from the shares without paying anyone but concluded that Driscoll had not sufficiently shown that she owned the shares. The district court denied her claims, and the Tenth Circuit affirmed under 28 U.S.C. § 1291.

DISPOSITION

affirmed

CASES CITED

- Keys Youth Servs., Inc. v. City of Olathe, 248 F.3d 1267, 1274 (10th Cir. 2001)
- Dixon v. Kirkpatrick, 553 F.3d 1294, 1303 (10th Cir. 2009)
- Rolscreen Co. v. Pella Prods. of St. Louis, Inc., 64 F.3d 1202, 1210 (8th Cir. 1995)
- Weyerhaeuser Co. v. Brantley, 510 F.3d 1256, 1262 (10th Cir. 2007)
- Anderson v. City of Bessemer City, 470 U.S. 564, 573-74 (1985)
- Holdeman v. Devine, 572 F.3d 1190, 1192 (10th Cir. 2009)