SUPREME COURT OF MONTANA

Whitehorn v. Whitehorn Farms, Inc.

195 P.3d 836 (Mont. 2008) · No. DA 07-0325 · Decided October 28, 2008

SUMMARY

The Supreme Court of Montana affirmed the denial of Brian Whitehorn's claim that he was an oppressed minority shareholder of Whitehorn Farms, Inc. The court held that the corporation's failure to pay dividends or repurchase his shares did not establish oppression, and that his removal as an employee, officer, and director was justified by his conversion of corporate property. The court also concluded that no fiduciary duty to Brian had been breached.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Jim Rice; Karla M. Gray; James C. Nelson; John Warner; Brian Morris
JURISDICTION	Montana
DECIDED	October 28, 2008
DOCKET	DA 07-0325
DISPOSITION	affirmed
PROCEDURAL POSTURE	Brian Whitehorn appealed from a bench-trial judgment denying his claim that he was an oppressed minority shareholder and granting Whitehorn Farms' conversion counterclaim.
STANDARD OF REVIEW	The court reviews findings of fact for clear error and conclusions of law for correctness. Findings are clearly erroneous if unsupported by substantial credible evidence, based on a misapprehension of the effect of the evidence, or if the appellate court is left with a definite and firm conviction that a mistake was made.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Brian D. Whitehorn v. Whitehorn Farms, Inc., Earl G. Whitehorn, Wayne A. Whitehorn

TOPICS

corporate law · fiduciary duty · dissolution · remedies · appellate procedure

PRACTICE AREAS

corporate law · commercial litigation · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether the District Court erred in holding that Brian Whitehorn was not an oppressed minority shareholder.
2. Whether the corporation's failure to pay dividends, failure to repurchase Brian's shares, and lack of marketability of the shares constituted oppression.
3. Whether the majority shareholders breached fiduciary duties to Brian by removing him as an employee, officer, and director rather than pursuing less harmful alternatives.
4. Whether Brian's appellate arguments concerning shareholder oppression constituted an impermissible change in legal theory.

HOLDINGS

1. The District Court correctly held that Brian was not an oppressed minority shareholder. The evidence did not show dishonest, wrongful, oppressive, or squeeze-out conduct directed at his shareholder rights.
2. The corporation's failure to pay dividends and repurchase Brian's shares did not, under the circumstances, establish shareholder oppression or entitle Brian to a forced repurchase.
3. The corporation and controlling shareholders did not breach fiduciary duties to Brian by removing him as an employee, officer, and director after his misconduct.
4. The court declined to exclude Brian's shareholder-oppression arguments as an entirely new theory on appeal because the complaint had asserted shareholder oppression and the District Court had addressed that issue, although Brian had changed the emphasis of his argument.

KEY QUOTATIONS

> *“"[T]he fiduciary duty between stockholders of a close corporation is one of the utmost good faith and loyalty. However, the controlling group should not be stymied by a minority stockholder's grievances if the controlling group can demonstrate a legitimate business purpose and the minority stockholder cannot demonstrate a less harmful alternative."”* (¶ 34)

> *“"Brian Whitehorn has reaped what he sowed"”* (¶ 38)

FACTUAL BACKGROUND

Whitehorn Farms, a closely held family farming corporation, was owned principally by Brian, Earl, and Wayne Whitehorn. Brian served as an employee, officer, director, and shareholder, but he took more grain than the corporation had authorized as an in-kind distribution, directed the proceeds to an account associated with his organization, and used an unauthorized corporate account for personal items. The corporation removed him as an employee, officer, and director. Brian claimed that his termination, the corporation's failure to pay dividends, the lack of a share repurchase, and the resulting lack of access to the value of his shares constituted shareholder oppression.

PROCEDURAL HISTORY

Brian filed suit in the Twelfth Judicial District Court, Chouteau County, seeking dissolution of Whitehorn Farms or an order requiring the corporation to repurchase his shares based primarily on his termination as an employee, officer, and director. After a jury-waived trial, the District Court found that the corporation had acted reasonably, rejected the oppression claim, and found Brian liable for conversion of corporate assets. Brian appealed only the denial of his oppression claim, and the Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Hidden Hollow Ranch v. Fields, 2004 MT 153, 321 Mont. 505, 92 P.3d 1185
- Ray v. Nansel, 2002 MT 191, 311 Mont. 135, 53 P.3d 870
- Becker v. Rosebud Operating Servs., Inc., 2008 MT 285, 345 Mont. 368, 191 P.3d 435
- Fox v. 7L Bar Ranch Co., 198 Mont. 201, 645 P.2d 929 (1982)
- Daniels v. Thomas, Dean & Hoskins, Inc., 246 Mont. 125, 804 P.2d 359 (1990)
- Sletteland v. Roberts, 2000 MT 382, 304 Mont. 21, 16 P.3d 1062