IN THE SUPREME COURT OF TEXAS

NO. 06-0815

JESSE C. INGRAM, PH.D. AND BEHAVIORAL PSYCHOLOGY CLINIC, P.C., PETITIONERS,

v.

LOUIS DEERE, D.O. AND HILLVALE MEDICAL GROUP ASSOCIATION D/B/A/ HILLVALE MEDICAL ASSOCIATION, RESPONDENTS

ON PETITION FOR REVIEW FROM THE COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

Argued February 16, 2008

JUSTICE JOHNSON, concurring.

Deere sued Ingram, claiming they formed a partnership for the purpose of creating an interdisciplinary pain clinic. The jury found they did. The trial court, however, eventually granted Ingram's motion for judgment notwithstanding the verdict and entered a take-nothing judgment. The court of appeals reversed in part, reinstating the jury verdict. 198 S.W.3d 96, 104-05.

In this Court, Ingram claims Deere offered no evidence that a partnership was formed. *See* TEX. REV. CIV. STAT. art. 6132b-2.03(a).

The jury charge contained seven questions. Question One asked

> Did [Deere] and [Ingram] form a joint venture[1] without giving it a name for the purpose of a interdisciplinary pain clinic that included the following terms:
> . . .
> That [Deere] and [Ingram] would each own 50% of the unnamed joint venture;
> . . . .

The jury was also instructed to consider the factors enumerated in the Texas Revised Partnership Act to determine whether a joint venture was created. *See id.* It found that a joint venture was created. Ingram challenges the legal sufficiency of the evidence to support the jury's answer.

I agree that evidence of one factor normally, but not necessarily always, will be legally insufficient to support a partnership finding. The Court says even considering Deere's testimony that Ingram said "this was a joint venture, or that we were partners, or we were doing this together," the evidence is legally insufficient as to any factor, including the factor of intent to form a partnership. I disagree the evidence was legally insufficient to support a finding of intent. After all, the jury *did* determine Deere's testimony was credible. Otherwise, it could not have found a joint venture existed.

However, we need not labor over whether Deere's testimony was legally sufficient evidence as to intent to form a partnership. Regardless of such testimony, there was no evidence to support the specific term of ownership percentage included in Question One.

According to the charge, one of the terms Deere had the burden of proving was that he and Ingram "would each own 50% of the unnamed joint venture." Deere did not object to Question One, so sufficiency of the evidence is measured against the charge as it was given. *Osterberg v. Peca*,

---

[1] The jury question inquired about a "joint venture." As the Court notes, the parties reference the relationship both as a joint venture and a partnership. ___ S.W.3d ___, ___ n.2.

12 S.W.3d 31, 55 (Tex. 2000) ("[I]t is the court's charge, not some other unidentified law, that measures the sufficiency of the evidence when the opposing party fails to object to the charge.").

Deere offered no evidence that equal ownership of the business was ever discussed. Certainly there is no evidence that an agreement was reached for the business to be owned equally. Because there is no evidence that Deere and Ingram agreed to each own fifty percent of the allegedly formed joint venture, Deere did not carry his burden of proof under the jury charge. *See Sw. Bell Tel. Co. v. Garza*, 164 S.W.3d 607, 618-19 (Tex. 2004) (citing *Wal-Mart Stores, Inc. v. Sturges*, 52 S.W.3d 711, 715 (Tex. 2001)).

For the foregoing reasons, I join the Court's opinion except for Part II-D 2. I also join the Court's holding that the evidence is legally insufficient to support a judgment for Deere and join the Court's judgment.

_____

Phil Johnson
Justice

OPINION DELIVERED: July 3, 2009