

FILED

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

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CLERK OF DISTRICT COURT
SCOTT COUNTY, IOWA

DEBRA J. STORK, SHERRY O'KEEFE,)
MICHELLE WEBER, KELLY GILHOOLY,)
LISA TANK,)

Law No. 122451

Petitioners,)

v.)

GIRL SCOUTS OF EASTERN IOWA,)
AND WESTERN ILLINOIS, INC.)

RULING ON PETITIONERS'
MOTION TO STRIKE
RESPONDENT'S EXHIBITS
AND TRIAL BRIEF AND
RULING ON PETITIONERS'
AMENDED PETITION

Respondent.)

This matter came for a contested trial before the Court on January 21-22, 2014. Petitioners, Debra J. Stork, Sherry O'Keefe, Michelle Weber, Kelly Gilhooly, and Lisa Tank (hereinafter "Petitioners"), appeared personally and were represented by attorney Susan M. Hess. Respondent, Girl Scouts of Eastern Iowa and Western Illinois, Inc. (hereinafter "GSEIWI"), personally appeared through the President of the Board, Teresa Colgan, and Chief Executive Officer, Diane Nelson. GSEIWI was represented by attorney Henry G. Neuman.

Prior to the trial starting, Petitioners filed a Motion to Strike Respondent's Exhibits and Trial Brief. The court heard oral argument on Petitioners' motion and found it should be and is hereby denied.

The Court has now considered the testimony presented, the exhibits admitted into evidence and the contents of the court file. Exhibits 1 through 24 were admitted into evidence on behalf of the Petitioners. Exhibits A through L were admitted into evidence on behalf of the Respondent. The Court being fully advised makes the following findings and conclusions.

PROCEDURAL BACKGROUND

On March 25, 2013, Petitioners filed an Amended Petition for Declaratory Judgment and Motion for Temporary Injunction. Petitioners subsequently withdrew their Motion for Temporary Injunction.

Count I of the Amended Petition requests a declaratory judgment from the Court ruling that Petitioners are legally entitled to vote on GSEIWI's sale of land under Iowa Code § 504.1202. Count II of the Amended Petition alleges that GSEIWI's board of directors breached its fiduciary duties to its members by violating GSEIWI's bylaws and the Iowa Code. Under Count II, Petitioners requested a declaratory judgment from the Court ruling that: (1) GSEIWI's board of directors did not comply with Petitioners' records request under Iowa Code § 504.1602; (2) GSEIWI's board of directors did not provide adequate notice to its members of the board meeting scheduled for March 28, 2013 in violation of GSEIWI's bylaws; and (3) GSEIWI's board of directors prohibited its members from attending the board meeting scheduled for March 28, 2013. Count II asks the Court to order Respondent to comply with Iowa Code Chapter 504, to give proper notice of its meetings, and to allow members to attend board meetings.

In a summary judgment ruling filed on December 10, 2013, this Court found Petitioners' Count I should go to trial. It also found under Count II, the only issue that should go to trial was whether GSEIWI's board of directors provided adequate notice to its members of the board meeting scheduled for March 28, 2013 in violation of GSEIWI's bylaws.

FINDINGS OF FACT

The Court must decide the facts from the evidence. The Court considers the evidence using its observations, common sense and experience. The Court will try to reconcile any conflicts in the evidence, but if the Court cannot, the Court accepts the evidence it finds more believable.

In determining the facts, the Court may have to decide what testimony to believe. The Court may believe all, part, or none of a witness's testimony. In determining what testimony to believe, the Court considers the reasonableness and consistency of the testimony with other evidence and, additionally, whether a witness has made inconsistent statements, as well as the witness's appearance, conduct, age, intelligence, memory, knowledge of the facts, interest in the trial, motive, candor, bias and prejudice.

In this case, the Court had no issues with the credibility of any of the witnesses. In the Court's opinion, all of the witnesses who testified were truthful and fully believed what they said. They have different perceptions and opinions, but none were deceitful or untruthful. With these concepts in mind, the Court finds the following facts:

GSEIWI is a nonprofit corporation organized under the laws of the State of Iowa with its principal place of business in Bettendorf, Iowa. All of the Petitioners are registered voting members of GSEIWI. On February 5, 2013, GSEIWI announced to its members that its board of directors would vote on whether to approve a recommendation by GSEIWI's property committee to sell four tracts of land owned by GSEIWI: Camps Conestoga, Little Cloud, L-Kee-Ta, and Tahigwa. GSEIWI's board of

directors planned to vote on the property committee's recommendation on March 28, 2013 after considering feedback submitted by GSEIWI members at various town hall meetings throughout the region. The board subsequently postponed the meeting to April 11, 2013 when it determined it had inadvertently not sent proper notice of the March 28, 2013 meeting to its members.

Several town hall meetings were held. Some members felt the town hall meetings were controlled and opposing opinions to the sale of the camps were squelched. Notwithstanding that opinion, GSEIWI's property committee submitted a new recommendation to the board before the meeting on April 11, 2013. In its new report, GSEIWI's property committee recommended that GSEIWI redevelop Camp Conestoga as its primary residential camp, sell the land at Little Cloud and L-Kee-Ta unnecessary for GSEIWI activities, and sell all property at Tahigwa.

The board of directors rejected the property committee's second recommendation. Instead, on April 11, 2013, GSEIWI's board of directors decided to redevelop Camp Conestoga into GSEIWI's primary residential camp, operate outdoor activity centers at Little Cloud, L-Kee-Ta, and Tahigwa, and sell any land at the four sites not utilized by those facilities. There is no prohibition against GSEIWI selling all of its camp properties.

The Court carefully considered all the testimony presented and the exhibits admitted. Further facts relevant to the legal conclusions are set forth in the analysis below.

CONCLUSIONS OF LAW

It is evident the various Girl Scouts who testified, including Plaintiffs, are passionate about, dedicated to, and grateful for their Girl Scout membership and camping experiences. The court does not doubt their sincerity or the importance of these experiences to these women. They all gave compelling stories of what they believe Girl Scout camping has done for them. These women are truly sisters in their Girl Scout experience and feel very strongly that the four camps they attended were very instrumental in their experiences, in their lives and in their development into strong, independent and successful women.

The question before this court, however, is not to question the value of the experiences of these women, but rather, to answer the question of whether the sale of these camps is in the regular course of GSEIWI's activities, and if so, whether they are a sale of "all or substantially all" of GSEIWI's assets. The answers to these questions will determine whether GSEIWI is *legally required* to get membership approval before selling any or part of any property.¹

I. Count I - Must GSEIWI comply with Iowa Code § 504.1202?

Iowa Code Chapter 504 governs nonprofit corporations. Section 504.1201 is entitled "Sale of assets in regular course of activities and mortgage of assets." Section 504.1202 is entitled "Sale of assets other than in regular course of activities." The difference in requirements of these two sections depends on whether the sale of the asset is in the usual course of business of the nonprofit organization or not. There is

¹ There is no law prohibiting GSEIWI from getting membership approval for these types of decisions and it may well choose to do that whether it is legally required to do so or not. The question before this Court is whether GSEIWI is legally required to get that permission.

little to no guidance on what constitutes "the regular course of business" for this particular statute.

Girls Scouts of the United States of America (GSUSA) is the national organization under which GSEIWI is chartered. In 2007, nationally there were 312 separate Girl Scout councils. GSUSA required the councils to merge smaller councils into larger councils. After the required mergers, there were 112 remaining chartered councils. In this case, GSEIWI was formed by the merger of several Girl Scout councils from Iowa and Illinois. Prior to that merger, some of the Girl Scout councils that merged into GSEIWI had sold camp properties and real estate and some had not. There are only seven of the 112 remaining councils that do not own residential camp property.

An employee of GSUSA testified Girl Scout councils buy and sell real estate in the normal course of their business, including camp properties. She was unaware of any instance where the membership was required to approve the sale of camp property. In the normal course of business, the boards of directors of the council make that determination.

It is undisputed since 2007; GSEIWI has purchased real estate, but has not sold any real estate. It is also undisputed that GSEIWI's primary mission and charitable purpose is to build girls of courage, confidence and character who make the world a better place and to that end to develop, manage and maintain Girl Scouting throughout the area of its jurisdiction.

Given that only seven of the remaining 112 councils do not own residential camp property leads the Court to the conclusion buying and selling camp property is commonly done. Further, the fact that some of the councils which merged into GSEIWI

had sold camp property, and GSUSA's practice and understanding that councils commonly buy and sell camp property without membership approval, all contribute to the Court's conclusion the sale of camp properties is an activity that is done in the normal course of GSEIWI's activities. As such, GSEIWI is required to follow Iowa Code § 504.1201, which does not require approval of its members unless required by its articles of corporation. See Iowa Code § 504.1201(2). This determination is fatal to Petitioners' claim under Count I.

II. Count I - Assuming § 504.1202 applies, is member approval required?

Despite this Court's conclusion Iowa Code § 504.1201 applies, this Court will also analyze this case as if the sale of the camp properties was a sale of assets outside GSEIWI's regular course of activities, which would then implicate Iowa Code § 504.1202(2). Under Iowa Code § 504.1202(2), a nonprofit corporation may only sell all, or substantially all, of its property outside the ordinary course of business only by authorization from its board, from persons whose approval is required under its articles, and from its members by "by two-thirds of the votes cast or a majority of the voting power, whichever is less."

Both parties agree this issue is a matter of first impression for Iowa courts. After doing its own independent research, the court agrees. Due to the lack of relevant case law in Iowa, similar cases from other jurisdictions may be informative. *Butcher v. Girls Scouts of Tribal Trails Council, Inc.*, cited by both parties, closely mirrors the facts of the present case. See 779 N.E.2d 946, 947-48 (Ind. Ct. App. 2002).²

² At trial, Petitioners argue *Butcher* does not apply, but this Court disagrees. Its factual and legal analysis is closest to the same questions presented here.

In *Butcher*, the court interpreted a statute very similar to the Iowa statute at issue here. 779 N.E.2d at 947. In *Butcher*, the court noted the issue of whether the sale of the property constituted “all or substantially all” of the nonprofit corporation’s property had been construed by decisions in other jurisdictions. *Id.* A generally accepted principle emerged from these cases that a disposition of corporate assets may be considered “substantially all” if *either* its quantitative or qualitative impact, or both, would fundamentally change the nature of the corporation. *Id.*; see, e.g., *South End Improvement Group, Inc. v. Mulliken*, 602 So.2d 1327 (Fla. Dist. Ct. App. 1992) (emphasis added).

Thus, this court will determine whether the sale of these camps by GSEIWI could be considered a sale of all or substantially all of its assets under either a qualitative analysis or a quantitative analysis.³

A. Change of the Corporate Activity – Qualitative Analysis:

Petitioners assert the sale of the four camps by GSEIWI would fundamentally alter the existence or purpose of the organization. Article III of GSEIWI’s articles of incorporation states that the purpose of GSEIWI is to “offer all girls ... an opportunity to participate in the Girl Scout program ... [and] to build girls of courage, confidence and character ... [and] to develop, manage and maintain Girl Scouting....” GSEIWI notes that camping is not mentioned, and asserts that the organization’s purpose has been facilitated by a variety of activities, including camping.

The testimony established camping is a core function and program for the Girl

³ At trial, Petitioners stated they were not arguing a quantitative analysis should be considered, but instead argued the Court could find in their favor using a qualitative analysis only. Despite this concession, the Court will analyze both prongs of the *Butcher* analysis starting with the qualitative analysis urged by Petitioners.

Scouts. However, *owning* an actual camp for that camping is not. Some camping is done in public parks and in day camps. Camp activities can be provided through leasing or renting camp facilities for camping activities for members.

GSEIWI also has other programs other than camping for their girls, including outreach programs in urban centers where girls try to help prisoners, for example. Some programs promote STEM (Science, Technology, Engineering, and Math) programs. GSEIWI has art programs for girls. GSEIWI partners with community services such as museums, the University of Iowa for medical programs, and other career-based activities to provide programs for its girls. GSEIWI has girls who sign up to do nothing other than be in a troop and do community service. Girls who are members of GSEIWI can participate in over 650 programs outside of attending camp functions. Clearly, Girl Scouting involves a link to outdoor activities, but there are a myriad of ways that can be accomplished.

Petitioners and others testified that camping is an essential activity of the Girl Scout program and is the heart and soul of the Girl Scout program. That may have been true when Juliet Lowe formed the Girl Scout organization, but like most things, that has changed over time. It is undisputed GSEIWI has 20,000 members under its jurisdiction, of which 16,000 are girl members. However, because girls and their interests have changed over the years, fewer and fewer Girl Scouts are attending camps. Nationally, the average percentage of Girl Scouts who attend camp is five percent of a council's members. GSEIWI has a higher percentage than the national average. Ten percent of its girl members attend camps. Approximately 1,200 of the 16,000 girl members of GSEIWI go to residential camp each year. Even if that number was doubled or tripled,

it is hardly the majority of GSEIWI's girl members.

This Court does not doubt the passion Petitioners and others feel about their camping experiences. However, the Court is confident girls who have not attended camp also have some of those same passionate feelings about the programs in which they have participated as a Girl Scout. All witnesses testified the ultimate purpose of Girl Scouting is to help build the next generation of young, female leaders who have confidence, courage and character. The evidence was overwhelming that can be done without having a girl attend camp.

The Court finds GSEIWI's ownership of camps is not essential to the Girl Scouts mission and that selling camps would not fundamentally alter the existence or purpose of the organization, nor would that prevent GSEIWI from carrying out its mission. Petitioners' qualitative argument fails.

B. Sale of Substantially All of the Corporate Property - Quantitative Analysis:

In *Butcher*, the Girl Scout council attempted to sell a tract of land that made up approximately 27 to 44 percent of the organization's total assets. 779 N.E.2d at 947. The court held that the sale of land in *Butcher* did not constitute "all, or substantially all" of the Council's assets because the land was not the organization's "largest, most significant, and single most valuable possession" nor would it "severely hamper" the Council's ability to carry out its mission." *Id.* at 950.

The *Butcher* court pointed out how other jurisdictions considered both quantitative and qualitative factors in determining whether a proposed transaction triggers dissenters' rights. *Id.* at 949; see also, e.g., *Gimbel v. Signal Co.*, 316 A.2d 599, 606 (Del. C. 1974), *aff'd*, 316 A.2d 619 (Del. 1974); *Campbell v. Vose*, 515 F.2d 256, 259 (10th

Cir. 1975) (transfer of 33% of assets (all operating assets) was substantially all because transfer was last step in corporate reorganization); *In re Multiponics, Inc.*, 453 F.2d 853, 854 (5th Cir. 1972) (lease of 91% of acreage owned by corporation was substantially all); *Katz v. Bregman*, 431 A.2d 1274 (Del. C. 1981) (plant constituting over 51% of corporation's assets and generating 45% of sales was 'substantially all' of its assets); *Stiles v. Aluminum Products Co.*, 338 Ill. App. 48, 86 N.E.2d 887, 888 (1949) (sale of 64% of assets was substantially all); *Prince George's Country Club, Inc. v. Edward R. Carr, Inc.*, 235 Md. 591, 202 A.2d 354, 359 (1964) (sale of assets, including land, valued at \$1.13 million and a retention of assets worth \$20,000 was sale of 'substantially all' of assets).

GSEIWI's independent accountant testified the four camp properties GSEIWI owns represent 35 percent of its total assets. That percentage has been consistent for the past couple of years and takes into account the appraised value of the camps, not their book values. If book values are considered, the total percentage drops to 28.6 percent of total assets.

Petitioners argue cash should not be considered an asset when determining if the camp properties are substantially all of GSEIWI's assets. If cash is ignored as an asset, then the camps are approximately 50 percent of GSEIWI's total assets. Thus, the first question is whether cash assets should be considered in this analysis, and if so, whether 35 percent qualifies as a sale of substantially all of GSEIWI's assets? The second question is if cash assets are ignored, does 50 percent constitute a sale of substantially all of GSEIWI's assets?⁴

⁴ Arguably, the Court should not reach either of these questions since Petitioners argued at trial they were not making a quantitative claim. However, qualitative evidence was presented at trial and Petitioners

This Court finds even if GSEIWI's cash assets are ignored, which the Court believes should not be, a sale of all the camps, or approximately 50 percent of the assets less cash assets, is not a sale of substantially all of GSEIWI's property.⁵ Only one of the cases cited herein recognized a sale of less than a majority (more than 50 percent) of assets to be a sale of substantially all of the assets. *See Campbell v. Vose*, 515 F.2d at 259. There, 33 percent was substantially all of the assets because the transfer was the last step in a corporate reorganization. That is not the case here. Thus, a sale of all of GSEIWI's camps is not a sale of "substantially all" of its assets even if cash is not considered an asset. If cash assets are considered, the percentage drops to 35 percent, which clearly is not substantially all of GSEIWI's assets.

III. Count II - Did GSEIWI provide adequate notice of its 03/28/13 board meeting?

In Count II of the Amended Petition, Petitioners allege they did not receive notice of the time and place of the board meeting scheduled for March 28, 2013. That is true; however, because GSEIWI realized they had not properly noticed the board members, they rescheduled the meeting to be held on April 11, 2013. Debra Stork testified proper notice was given to the members for the April 11, 2013 meeting.

Since the March 28, 2013 meeting was not held, but was rescheduled and proper notice was given of the rescheduled meeting, Petitioners' Count II fails.

vigorously questioned its validity in their cross examination of Respondent's witnesses, so the Court will consider this evidence as well.

⁵The Court finds that the plain meaning of the statute encompasses all corporate assets that can be sold, leased, exchanged, or *disposed* of. *See* Iowa Code § 504.1202(1) (emphasis added). The use of the term "property" in subsection 1 refers to all items owned by the corporation that can be sold, leased, exchanged, or disposed of, rather than to only real property and equipment. *Id.* Further, the court in *Butcher* analyzed Indiana's similarly worded statute as if it encompassed all of the organization's assets. *See* 779 N.W.2d at 950.

RULING

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Petitioners' Motion to Strike Respondent's Exhibits and Trial Brief is DENIED in its entirety.

IT IS FURTHER ORDERED that Petitioners' Amended Petition is DENIED in its entirety.

IT IS FURTHER ORDERED that court costs are assessed against Petitioners.

Dated: March 3, 2014.

A handwritten signature in cursive script, reading "Marlita A. Greve", is written over a horizontal line.

Marlita A. Greve
District Court Judge
Seventh Judicial District