Court of Appeals of Washington, Division 1.

AMERICAN CHIROPRACTIC CLINIC, INC., Appellant,
v.
Eric Stephen SAUNDERS and Michelle Saunders and the marital community composed thereof, Respondents.
No. 45815-9-I.
July 9, 2001.

Appeal from Superior Court of King County, Docket No. 98-2-17129-4, judgment or order under review, date filed 12/10/1999; Jay White, Judge.
Brian K. Leonard, Attorney At Law, Shoreline, WA, Edward P. Weigelt, Jr., Attorney At Law, Lynnwood, WA, for petitioner(s).
John C. Peick, Trujillo Peick Lingenbrink & Magladry PS, Bellevue, WA, Jennifer K. Kramer, Peick & Assosciates P.S., Gig Harbor, WA, for respondent(s).

UNPUBLISHED OPINION

ELLINGTON.
*1)
American Chiropractic Clinic, Inc. brought an action for breach of contract against Eric Stephen Saunders. Saunders moved for summary judgment based on the statute of limitations, judicial estoppel, and illegality of the corporate entity. The trial court granted the motion and dismissed. **We affirm, holding the corporation was unlawfully engaged in the practice of chiropractic**.

FACTS
American Chiropractic Clinic, Inc. (ACC) is a corporation that operated a national chain of chiropractic offices. ACC recruited young chiropractors, installed them in clinics as employees, and ultimately sold them the clinic practices. In 1985, ACC owned at least four clinics in western Washington. Burl Pettibon is a chiropractor licensed to practice in Washington. He formed ACC and set up a trust called Justicia Trust, which was the sole shareholder of ACC. Burl Pettibon was trustee of Justicia Trust and acted as the 'promoter' for ACC. Eric Saunders came to Washington to learn Pettibon's chiropractic techniques. In July 1987, Saunders entered into a joint venture with ACC for the development and sale of a clinic in Renton, from which another chiropractor had recently departed. Although the clinic was already operating, the contract provided that Saunders and Pettibon as promoter for ACC would 'establish' and operate the clinic in Renton. As provided by the agreement, Pettibon was director of the clinic and had charge of employees, finances, and office management. ACC received the net profit after expenses. Also per the agreement, Saunders was an employee of ACC for 12 months, then purchased the clinic. The sales agreement included three notes with varying payment schedules and maturities.

Saunders commenced purchase payments in June 1988. The clinic experienced financial difficulties in 1991 and Saunders ceased making payments. Meanwhile, Pettibon was under investigation by the IRS from 1980 until he filed personal bankruptcy in 1992. In an adversary proceeding in the bankruptcy, Pettibon testified that Saunders no longer owed any money to ACC.

In 1998, ACC brought suit against Saunders for breach of his contract to purchase the clinic. Saunders raised affirmative defenses including the statute of limitations, judicial estoppel, and illegal contract, and sought summary judgment on those grounds. Without stating its reasons, the trial court granted the motion and dismissed.

Standard of Review

We review summary judgment orders de novo. Tran v. State Farm Fire & Cas. Co., 136 Wn.2d 214, 224, 961 P.2d 358 (1998). A summary judgment motion should be granted when it can be stated as a matter of law that there is no genuine issue as to any material fact, reasonable persons could reach but one conclusion, and the moving party is entitled to judgment as a matter of law. CR 56(c); Kahn v. Salerno, 90 Wn.App. 110, 117, 951 P.2d 321 (1998). An order granting summary judgment may be affirmed on any grounds supported by the record. Gustav v. Seattle Urological Assoc., 90 Wn.pp. 785, 789 n. 3, 954 P.2d 319 (1998).

DISCUSSION
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The parties do not dispute that the practice of chiropractic is a learned profession. See RCW 18.25.011. Washington has long prohibited corporations from engaging in the practice of the learned professions, even if the corporation's only activity is to engage the services of a licensed practitioner. State ex rel. Standard Optical Co. v.Supr. Ct. for Chelan Cty., 17 Wn.2d 323, 328, 135 P .2d 839 (1943) (corporation may not engage in practice of learned professions by hiring licensed practitioner); State v. Boren, 36 Wn.2d 522, 532, 219 P.2d 566 (1950) (non-dentist who employs a licensed dentist practices dentistry unlawfully); State ex rel. Lundin v. Merchants Protective Corp., 105 Wash. 12, 17, 177 P. 694 (1919) (corporation may not lawfully engage in the practice of law); Deaton v. Lawson, 40 Wash. 486, 82 P. 879 (1905) (unlicensed person may not engage in the practice of medicine by employing a licensed agent). Simply put, the ethical obligations to clients or patients should not be compromised by obligations to shareholders. "One who practices a profession is responsible directly to his patient or his client. Hence he cannot properly act in the practice of his vocation as an agent of a corporation or business partnership whose interests in the very nature of the case are commercial in character." Standard Optical, 17 Wn.2d at 331-32 (quoting Ezell v. Ritholz, 198 S.E. 419, 424 (S.C.1938)).

In 1969, Washington enacted a narrow exception to the common law rule. The Professional Service Corporations Act (PSCA) permits licensed professionals to organize and become shareholders in a corporation to provide professional services. RCW 18.100.050(1). Under the PSCA, lawyers, doctors, dentists, optometrists, and other

professional specialists are authorized to form a corporate entity within their respective practices. All shareholders and officers, except the secretary and treasurer, are required to be licensed professionals. RCW 18.100.050(1), .065. No professional service corporation may issue any of its capital stock except to an individual eligible to be a shareholder or to the trustee of a qualified trust. RCW 18.100.110. A qualified trust is a voting trust or a charitable remainder trust. RCW 18.100.030(5)(a), (b).

As a standard for-profit corporation, ACC is disqualified from engaging in the practice of chiropractic. Nor is it eligible for status as a professional services corporation because its sole shareholder, Justicia Trust, was neither a voting nor a charitable remainder trust. ACC's ownership and operation of chiropractic clinics is illegal, and Saunders argues that ACC is therefore precluded from enforcing its contracts.

The leading case is Morelli v. Ehsan, 110 Wn.2d 555, 756 P.2d 129 (1988). Morelli entered into a limited partnership with Ehsan, a licensed physician, for the operation of a medical clinic. Morelli managed the business operations of the clinic and Ehsan served as medical director.
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Morelli loaned the partnership $75,000. The partnership subsequently failed, and Morelli petitioned the court for dissolution and an accounting. The court found the partnership agreement illegal as a matter of law because the non-licensed partner operated a medical clinic, and denied Morelli an accounting on grounds that illegal agreements are void and courts will not enforce them: 'If the business of a partnership is illegal, we will not entertain an action for an accounting and distribution of the assets....' Morelli, 110 Wn.2d at 561 (citation omitted). ACC contends that Morelli applies only to partnerships and actions for an accounting. We disagree. In Morelli, the court rejected the inverse argument: that the PSCA applied only to corporations and not to partnerships. The court noted that the purpose of the PSCA is to prevent unlicensed persons from participating in a business that provides professional services, and applies to limited partnerships as well as corporations. Morelli, 110 Wn.2d at 561.

ACC nonetheless argues that it met the spirit, if not the technical requirements, of the law, because the trust and corporation were formed with the advice of counsel in the belief that they were in compliance with Washington law, and the trustee and beneficiaries are licensed practitioners. Again, we disagree. First, good faith does not create legality. Morelli, 110 Wn.2d at 562. [FN1] Further, one of the distinguishing characteristics of a professional services corporation is that each of the licensed professionals remains personally liable for his or her professional services. RCW 18.100.070. This is in contrast to the standard corporate form in which personal liability is imposed against shareholders only in exceptional circumstances. See Meisel v. M & N Modern Hydraulic Press Co., 97 Wn.2d 403, 410, 645 P.2d 689 (1982) (liability assessed against shareholders when corporation has been intentionally used to violate or evade a duty owed to another); Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp., 85 Wn.App. 695, 707-08, 934 P.2d 715 (1997). As a standard corporation, ACC circumvented the personal liability that is the keystone of the PSCA. Such circumvention is the antithesis of the spirit of the PSCA.

FN1. The Morelli court affirmed the denial of an accounting even though the parties believed they were acting within the law, because enforcement of the notes would sanction the illegal partnership and allow the enforcement of an illegal agreement. Morelli, 110 Wn.2d at 564. See also Walsh v. Brousseau, 62 Wn.App. 739, 745-46, 815 P.2d 828 (1991) (contract for sale of goodwill of law practice illegal although neither party intended to enter into illegal contract).

ACC contends its ownership and management were no different from those held lawful in Pritchard v. Conway, 39 Wn.2d 117, 234 P.2d 872 (1951). Pritchard involved the sale of a deceased dentist's practice. As payment, the widow was to receive more than half of the net profits for the first five years. The dentist-buyer could not make a down payment, so the contract provided the widow was to manage and supervise the business operations of the clinic in order to protect her security interest.

Immediately after the decision in State v. Boren, 36 Wn.2d 522, 219 P.2d 566 (1950), holding that only a licensed dentist may own or operate an office for the practice of dentistry, Mrs. Pritchard's buyer declared the contract illegal insofar as it provided for her participation in the business, and declined to pay for anything but the equipment.

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The court found nothing unlawful in the widow's ownership of the property, and held that while she could not have hired a dentist to run the clinic, she had the right to sell what she legally owned. Pritchard, 39 Wn.2d at 121. As to the widow's participation in the operation of the business, the contract expressly provided the dentist-buyer had exclusive control over the conduct of the professional practice; the court observed that unlicensed personnel routinely handle the business details of a professional practice. The court held that the widow's participation did not amount to ownership, management or operation of a dental practice such as to constitute illegal practice of dentistry. Pritchard, 39 Wn.2d at 122.

By contrast, ACC's ownership of the clinic was unlawful from its inception. ACC started, owned and operated the Renton clinic long before Saunders contemplated its purchase. It hired personnel (including the chiropractors), managed all business operations, and participated in generating goodwill and accounts receivable. ACC then entered into the joint venture with Saunders. ACC's activities are not similar to those of the seller in Pritchard, and Pritchard is inapposite.

Finally, ACC makes a severability argument. The PSCA does not prevent a non-professional from owning and selling the assets of a professional practice. Boren, 36 Wn.2d at 532; see also Pritchard, 39 Wn.2d at 121. ACC contends that even if some of the provisions of the contract are unlawful and therefore unenforceable, the provisions for sale of the assets are preserved by the severability clause [FN2] of the contract. This might be true if the sale of assets had been clearly separable from the remainder of the transaction, but that was not the case.

FN2. 'In the event any portion or portions of this Agreement are determined invalid or unenforceable as a matter of law by any court or courts, said determination shall have no effect on the validi(ty) or enforceablility of any remaining provision.' Clerk's Papers at 121.

The purchase price of the clinic was to be $250,000, [FN3] plus accounts receivable. Three notes were executed. Note C was for accounts receivable. ACC now contends Notes A and B should be enforced because they represented payment for 'equipment, goods, leasehold improvements, and other property owned by ((ACC).' Brief of Appellant at 5. But neither the contract nor the notes so stipulate. According to the contract, Note A was for the down payment and Note B was for the balance of the purchase price. [FN4]

FN3. This price was later reduced by $40,000.

FN4. The agreement reducing the purchase price to $160,000 states that 'Note B is to secure the purchase of those items listed on schedule 1,' Clerk's Papers at 73, but schedule 1 is not included in the Clerk's Papers.

Pettibon testified that the $250,000 was simply a price he wanted for 'setting these young men up in practice.' Clerk's Papers at 228. He set the same price on every practice he sold for ACC, regardless of its assets or success. He was unable to identify the value of the equipment, goodwill, or patient files of the Renton clinic. Thus, nothing in the contract or the notes separates goods and equipment or leasehold improvements from the goodwill created by the unlawful participation of ACC in the establishment and management of the clinic. Enforcing any of the notes would sanction the illegal arrangement and enforce an illegal agreement. [FN5] See Morelli, 110 Wn.2d at 564. Because the illegality affects all the notes, the severability clause saves nothing. Because the issue of illegality is dispositive, we do not address the statute of limitations or judicial estoppel.

FN5. ACC does not invoke the in pari delicto rule, under which equally culpable parties will be left as the court finds them, but a less culpable party may obtain enforcement of an illegal contract. Morelli, 110 Wn.2d at 562.

Attorney Fees
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The contract provided for attorney fees in the event of litigation, and Saunders requests that we award fees on appeal. Although Saunders assigns a separate section to the subject of attorney fees in his brief, he devotes only one paragraph and cites no authority as required by RAP 18.1. A party must inform the court of the appropriate grounds for an award of attorney fees; argument and citation to authority are required under the rule. Wilson Court Ltd. Partnership v. Tony Maroni's, Inc., 134 Wn.2d 692, 710 n. 4, 952 P.2d

590 (1998). We have held the contract illegal and unenforceable, and Saunders has provided us with no basis upon which to enforce any part of it.

We deny attorney fees on appeal. [FN6] We affirm the summary judgment.

FN6. The trial court reserved the question of fees pending this appeal. We make no ruling as to the propriety of such fees.