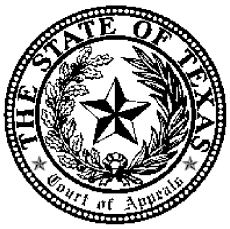
Affirmed and Opinion filed October 18, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00065-CV

MICHAEL OKPAMEN, Appellant

V.

LELEITH LEVY, DELIA BARNES, AND DLM HOME HEALTH SERVICES, Appellees

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On Appeal from the 333rd District Court
Harris County, Texas
Trial Court Cause No. 95-27270

O P I N I O N

In this suit arising out of a partnership agreement, appellant, Michael Okpamen, appeals a judgment rendered on the jury's verdict awarding him $33,333.33, plus prejudgment and postjudgment interest. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In February, 1994, Okpamen and appellees, Leleith Levy and Delia Barnes, formed a partnership named DLM Home Health Services ("DLM") for the purpose of operating a home health service. Each partner was to own one-third of the partnership and the partners

were to divide equally any profits. Disagreements arose among the partners; and, in May 1995, Okpamen arrived at the DLM office to find he was locked out of his office. He observed a note on the receptionist's desk informing him Levy owned a 60-percent interest and that his services were terminated.[1]

Okpamen sued Levy, Barnes, and DLM for breach of a partnership agreement, breach of fiduciary duty, and defamation. Okpamen sought dissolution of the partnership, an accounting of the partnership assets, the recovery of damages, and related injunctive relief. Appellees answered with general denials, and Levy and Barnes counterclaimed against Okpamen, alleging acts of self-dealing, misappropriation, and conversion. After a three-day trial, the jury found the net value of the partnership, DLM, was $100,000 at the time of its termination, and that Okpamen, Levy, and Barnes each owned 331/3 percent of DLM.

On May 18, 1999, the trial court rendered judgment on the verdict and ordered that Okpamen recover from Levy and Barnes, jointly and severally, $33,333.33, plus prejudgment and postjudgment interest. On June 2, 1999, however, the trial court rendered judgment Okpamen take-nothing because appellees had provided proof Okpamen was liable to appellees in an amount exceeding $33,333.33.

Okpamen filed a motion to correct judgment and in the alternative for a new trial. He argued:

> All questions of fact were determined in the answers to question[s] propounded to the Jury. The Jury determined that the Plaintiff's percentage interest in DLM Home Health Services was 331/3%. Further, the net value of the business was found by the Jury to be $100,000.00. Therefore the value of the business owned by the Plaintiff would be calculated to be $33,333.33
>
> In his petition, the Plaintiff pled that he was entitled to an accounting

[1] The trial exhibits on which appellant relies for this background information are not part of the record on appeal. There is no appellees' brief, however, and appellant's facts are, therefore, unchallenged. *See* TEX. R. APP. P. 38.1(f) (stating, in civil case, court will accept as true the facts stated by appellant unless another party contradicts them). Additionally, we do not rely on these background facts in arriving at our decision in this case.

> of Partnership assets and shoud [sic] receive his share of the partnership. All evidence of a financial nature which was admitted at trial was potentially probative of the net value of the business. Therefore, any questions regarding offset or another affirmative defense (even if pled) were of necessity determined in the question regarding the net value of the business. When the Jury determined the net value of the business and the percentage interest owned by the respective owners, no issue of fact remained regarding the financial interest that the Plaintiff had in the business.

In their response to Okpamen's motion, appellees represented Okpamen had received the accounting he requested:

> The Court finally expressed the view that plaintiff Michael Okpamen, was entitled to an accounting. The Court further embraced the position of submitting one issue to the jury. The issue the Court favored was "the value of the partnership at the time of the dissolution."
>
> The Court then indicated that after the jury returns a verdict on the value issue, "we will do the numbers."
>
> Never-the-less [sic], plaintiff pushed for a second issue. The issue being what percent of the partnership did plaintiff own."

Okpamen filed a notice of appeal. On September 9, 1999, while the appeal was pending, the trial court rendered a "corrected final judgment" granting the same relief as the May 18, 1999 judgment. Okpamen filed a motion to dismiss the appeal, and this Court ordered the appeal dismissed.[2]

Appellees then filed a motion for new trial. Okpamen responded in part:

> This Court has made its decision to reform the Judgment based upon the fact that the Jury Question asked for the net value of the business of D.L.M. Home Health Services. The decision of the Court to Correct the Judgment on September 9, 1999 regarding the Plaintiff's 33 1/3% interest in the net value of the business is correct. Therefore the Court should not grant a New Trial or a Corrected Judgment on this issue, and the Judgment for $33,333.33 plus interest and costs of court should stand as signed and rendered.

[2] Opinion issued September 30, 1999.

The trial court denied appellees' motion for new trial. Okpamen and Levy filed notices of appeal from the September 9, 1999 judgment. When Levy failed to pay her filing fee, this Court dismissed her appeal.[3]

DISCUSSION

In a single issue, Okpamen argues the trial court erred in not ordering the accounting which he requested and to which he contends he was entitled as a matter of law. We conclude Okpamen waived the issue he presents on appeal.

Nothing in the record shows Okpamen opposed the jury charge as submitted. *See Biggs v. First Nat. Bank of Lubbock*, 808 S.W.2d 232, 236-37 (Tex. App.—El Paso 1991, writ denied) (holding alleged error in court's not initially rendering a partnership accounting waived when partnership issues were submitted to jury and surviving partner (1) did not object to charge requiring jury to determine what would compensate deceased partner's estate to extent of his interest in partnership funds and assets for which surviving partner had failed to report and account and (2) did not request appropriate instructions); *Howell v. Bowden*, 368 S.W.2d 842, 845 (Tex. Civ. App.—Dallas 1963, writ ref'd n.r.e.) (holding appellant waived complaints there was no jury findings of partnership profits or how much appellant was to receive when appellant did not request submission of issue inquiring how much he was to receive).

Furthermore, it appears Okpamen requested rendition of the judgment about which he now complains. After the trial court rendered judgment that Okpamen take nothing, Okpamen filed a motion to correct judgment and, in the alternative, for a new trial in which he argued all questions of fact had been determined in the answers propounded to the jury and "[w]hen the Jury determined the net value of the business and the percentage interest owned by the respective owners, no issue of fact remained regarding the financial interest

[3] Levy's notice of appeal, filed December 9, 1999, was one day late. *See* TEX. R. APP. P. 26.1(a)(1) (requiring filing of notice of appeal within 90 days after judgment is signed when there has been timely filed motion for new trial).

that the Plaintiff had in the business." Okpamen then requested the court enter the judgment he tendered, and the record supports the inference that the "corrected" judgment rendered September 9, 1999, was the judgment Okpamen tendered. The September 9, 1999 judgment is virtually identical to the May 18, 1999 judgment, which Okpamen's counsel approved as to form. To the extent Okpamen requested the court to render a judgment which did not grant all of the relief he now claims, he has waived the right to complain about the omitted relief on appeal. *See Valentine v. Safeco Lloyds Ins. Co.*, 928 S.W.2d 639, 641 (Tex. App.—Houston [1st Dist.] 1996, writ denied) (holding, in appeal from summary judgment, that, because appellant moved for final judgment without alerting trial court to her outstanding claims, she waived right to complain about them on appeal).

Finally, Okpamen asserted the correctness of the judgment about which he now complains. In opposing appellees' motion for new trial, Okpamen affirmatively stated the "The decision of the Court to Correct the Judgment on September 9, 1999 regarding the Plaintiff's 33 1/3% interest in the net value of the business is correct. . . . Judgment for $33,333.33 plus interest and costs of court should stand as signed and rendered." *See Dickson v. J. Weingarten, Inc.*, 498 S.W.2d 388, 391 (Tex. Civ. App.—Houston [14th Dist.] 1973, no writ) (stating party may not secure reversal for claimed error that it invited).

We overrule Okpamen's sole issue.

We affirm the judgment of the trial court.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed October 18, 2001.
Panel consists of Justices Anderson, Hudson, and Frost.
Do Not Publish — TEX. R. APP. P. 47.3(b).