

RENDERED: April 15, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001652-MR

NORMA J. BEATTY; JIM BROWN;
LAVONNE CULVER; JOSEPH P. DUTTON;
GARRY FURROW; JAMES GIBSON;
MARY ANN HAHN; ROY LEE HAHN;
SHANNON HAHN; TIMMY HAHN;
JOSEPH HUTCHINS; MARNIE KEESY;
BILL LOFTON; SANDRA M. KETCHERSID;
JOSEPH MURCH; SADIE MURCH; JOHN R. NALLEY;
PAUL ROEHRIG; SCOTT SHOFNER;
GARY TABOR; AND BECKY WILLIS

APPELLANTS

APPEAL FROM NELSON CIRCUIT COURT
V. HONORABLE CHARLES C. SIMMS, III, JUDGE
CIVIL ACTION NO. 99-CI-00352

MELODY LAKE RANCH CLUB, INC. APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUIDUGLI AND MINTON; JUDGES; EMBERTON, SENIOR JUDGE.¹

MINTON, JUDGE: Norma Beatty and other members ("the members") of the Melody Lake Ranch Club, Inc. ("the Club") filed suit in the Nelson Circuit Court to dissolve the Club. The members

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

asserted the Club was a non-profit corporation and that KRS² 273.330 should govern the dissolution proceedings. The Club disagreed claiming instead that it was incorporated under KRS Chapter 271B. The circuit court agreed with the Club and the members appealed. We agree with the circuit court's assessment and affirm.

The Club's original articles of incorporation were filed on February 2, 1967. The stated purpose of the corporation was to "own and operate a lake, golf course, horseback riding, hunting, fishing, and all types of recreational facilities" The articles designated one class of no par common stock and stated that the corporation would begin with \$1,500 in capital.

The Club also enacted by-laws, which designated as "members" those persons who owned one or more parcels of land within the Club's boundaries. Members were to be assessed dues and fines for use and maintenance of the Club's roads and facilities. Each member was also made a shareholder in the Club receiving one share of stock for every \$100 of initial investment.

On July 23, 1999, several members of the Club filed a complaint in Nelson Circuit Court alleging that the Club was not fulfilling the purposes for which it was originally

² Kentucky Revised Statutes.

incorporated. Specifically, the members argued that because of "poor financial conditions," the Club was not providing the recreational facilities it was chartered to provide. The members also claimed that the Club failed to provide security and was not properly maintaining the roads within the Club. Therefore, the members asserted the Club was "insolvent" and should be dissolved and liquidated under KRS 273.330.

In response, the Club argued that it was not insolvent, that KRS 273.330 was not applicable, and that the court should evaluate any dissolution proceedings under KRS Chapter 271B.

The Nelson Circuit Court agreed with the Club; and on June 30, 2003, the court entered its findings of fact, conclusions of law, and order. The court found that any dissolution proceeding against the Club was controlled by KRS Chapter 271B for three reasons: first, because KRS 273.160, *et. seq.*, apply only to nonstock corporations; second, because the Kentucky Secretary of State had issued a Certificate of Existence noting that the corporation was organized and existed under KRS Chapter 271B; and, third, because the Club had filed federal income tax returns each year. So the court concluded that the Club was not a non-profit corporation; and because the dissolution proceedings were improper under KRS Chapter 271B,

the members were not entitled to a judicial dissolution.³ This appeal follows.

The issue before us on appeal is whether the Club is a corporation controlled by KRS Chapter 271B or KRS 273.160, *et. seq.*, for purposes of dissolution. We believe the Nelson Circuit Court was correct in holding that the Club is controlled by KRS Chapter 271B.

The statutes applicable to nonprofit corporations, KRS 273.160, *et. seq.*, are, by title, relevant only to "Nonstock, Nonprofit Corporations." A nonprofit corporation is defined as "a corporation no part of the income or profit of which is distributable to its members, directors or officers."⁴ On the other hand, KRS Chapter 271B controls private, for-profit corporations. The two statutes provide for very different means of dissolution.

The nonprofit corporation provisions in the Kentucky Revised Statutes were not enacted until June 1968, almost a year and a half after the Club's articles of incorporation were filed. The members claim that had the statutes been enacted before the Club's incorporation, the Club would have been incorporated as a nonprofit corporation. They also claim that

³ We note that although the court's initial order was labeled interlocutory, an amended judgment, entered on July 14, 2003, deemed the order final and appealable.

⁴ KRS 273.161(3).

because "the corporation has never paid shareholders a dividend" and because the corporation "was never intended to be a business entity that creates a profit," it should be considered a non-profit corporation by the courts for purposes of this dissolution action.

We disagree with the members' contentions. As the Nelson Circuit Court found, KRS 273.160, *et. seq.*, apply only to "nonstock" corporations. Clearly, the Club is a "stock" corporation. This is indicated in both the articles of incorporation and the by-laws. Moreover, the record reveals that the Club has filed federal income tax every year. And as reflected in the Certificate of Existence, the Secretary of State recognizes the Club as a corporation "duly organized and existing under Chapter 271B."

While it does appear from the record that the Club satisfies certain aspects of a non-profit corporation, it is a corporation controlled by the provisions of KRS Chapter 271B. Therefore, it cannot be considered a non-profit corporation for purposes of dissolution proceedings. The decision of the Nelson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Ben T. Haydon, Jr.
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BRIEF FOR APPELLEE:

John S. Kelley, Jr.
Bardstown, Kentucky