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IN THE
COURT OF APPEALS OF INDIANA

Charles Wolfe, et al.,
Appellants-Defendants,

v.

Robert Agro,
Appellee-Plaintiff.

February 4, 2021

Court of Appeals Case No.
20A-PL-1242

Appeal from the Randolph Superior
Court

The Honorable Peter D. Haviza,
Judge

Trial Court Cause No.
68D01-1609-PL-858

Bailey, Judge.

Case Summary

- [1] Charles and Rachel Wolfe (collectively, “the Wolfes”) appeal the trial court’s determination that they committed criminal conversion by knowingly exerting unauthorized control over Robert Agro’s (“Agro”) property. The only issue the Wolfes raise on appeal is whether that determination was clearly erroneous.¹ Because Agro’s proper remedy is through the Uniform Partnership Act, not the Crime Victims Relief Act, we reverse.

Facts and Procedural History

- [2] The Wolfes are a married couple who were acquainted with Agro through some web design work Charles Wolfe (“Charles”) did for Agro. Beginning in approximately 2011, Rachel Wolfe (“Rachel”) raised chickens which consisted mostly of rare birds, and Agro was aware of that fact. In early 2014, Rachel and Agro discussed certain rare birds (“Black Birds”), including their value. Agro informed Rachel that he was considering investing in Black Birds.
- [3] Beginning in March 2014, Agro purchased Black Birds to be delivered to and cared for by the Wolfes. Between March and December of 2014, Agro bought a total of eighteen such Black Birds at a cost of \$1500 per bird. He also purchased an electric egg hatcher and a chicken coop to be kept at the Wolfes’ property for the Black Birds. However, there was no written agreement or other

¹ Agro has filed a motion for appellate attorney fees and costs, which we deny by separate order.

document regarding the Wolfes keeping the Black Birds (“the Black Bird project”).

[4] On September 13, 2016,² Agro filed a lawsuit against the Wolfes in which he claimed the Wolfes committed fraud and conversion. Agro requested a money judgment including treble damages, interest, and attorney fees.

[5] On November 15 and 16 of 2018, the trial court conducted a bench trial at which the parties submitted joint stipulated exhibits and provided testimony. Agro testified that he had a “partnership” with the Wolfes and that the Wolfes never indicated otherwise. Tr. at 10-11, 17. Agro further testified that Charles told Agro in a telephone conversation that Agro and the Wolfes had a partnership. As evidence that the Wolfes believed a partnership existed, Agro pointed to Joint Stipulated Exhibit 2, an April 2, 2014, e-mail from Rachel to “Jenny” at Greenfire Farms, in which Rachel stated “...my husband and Robert Agro have a partnership in the [Black Birds].” *Id.* at 34; Ex. at 10. Rachel also testified that a partnership existed, “if you want to call it that.” *Id.* at 60. And Charles responded, “Yes, sir” to the question: “Mr. Wolfe[,] when you realized that this partnership was not going anywhere sometime in late 2015, you had chickens at the farm?” *Id.* at 149.

[6] Rachel testified that the Wolfes never sold the Black Birds purchased with Agro’s investment funds but that those birds died of natural causes after two to

² Both parties erroneously state in their briefs that the Complaint was filed on September 13, 2015.

three years. By the time of the hearing, there was only one of those Black Birds still alive at the Wolfes' property. Rachel testified that the Wolfes had sold some of the "pullet" eggs produced by the Black Birds purchased with Agro's investment funds, and, with Agro's permission, they applied the approximate \$1200 in proceeds from those sales to the cost of caring for the Black Birds. *Id.* at 108-09.

[7] Charles testified that Rachel received the letters that were contained in Plaintiff's Exhibit 1, which was admitted without objection. That Exhibit includes a September 28, 2015, letter from Agro's attorney to Charles Wolfe. That letter refers to the "poultry business" in which Wolfe and Agro are involved and states, "It is presently Mr. Agro's intention is [sic] to dissolve the company and be paid for his portion of the company. I would request that you contact me by October 1, 2015, to discuss this matter." Ex. at 133.

[8] At the conclusion of the trial, the court ordered the parties to submit written legal theories of the case by December 7, 2018. On that date, the parties filed their legal theories. Agro's submission, entitled Plaintiff's Final Argument and Conclusions of Law, stated that Agro's claims were for fraud, conversion, and violation of "Investment Statutes," i.e., Indiana Code Sections 24-5-8-1, *et seq.* App. at 63. With his legal theories document Agro also filed his supplemental affidavit to which he attached a three-page document entitled "SUMMERY [sic]: Rare Bird investment in Wolfe Rare Bird Investment Partnership made by Robert Agro in the Year 2014." *Id.* at 68. The latter document stated that Agro's total investment in the Black Bird project was \$23,066.94.

[9] On April 27, 2020, the trial court issued an order in this matter in which it made, sua sponte, extensive findings of fact and conclusions of law. In addition to the facts stated above, the trial court also found the following relevant facts:

II. FINDING[S] OF FACT

* * *

7. At some point in time in early 2014, Rachel started discussing rare birds ... with Robert. ... [Robert] was thinking of investing in the chicken business. Rachel told him that [the Black Birds] had a value of \$1,500.00 to \$3,000.00 for a pair of breeding birds. Charles reportedly did not know a great deal about the birds. The first pair of [Black Birds] Robert bought cost \$3,000.00. There was discussion about not selling eggs, but hatching them and selling grown chickens.

* * *

9. It is clear that no formal plans or agreements were ever drawn up and signed by the parties regarding the raising of and what would be done in marketing the birds. ... The venture plans were never really fleshed out.

* * *

11. ... Rachel was banned [from bidding on rare birds at Rare Bird Auctions (“RBA”)]. As a result, Robert was doing the bidding on RBA for himself and the [Wolfes]. Rachel would direct Robert about birds to bid on. In addition, birds were being purchased from Greenfire Farms (“GF”).

12. ... Robert ... indicated to Rachel that the birds were to go to Rachel's farm....

13. There are numerous references in the Joint Stipulation Exhibits ("JOINT EXHIBIT") about a partnership between Robert and Charles. However, the terms of this partnership were not specified.

14. What exactly was to be occurring is not totally clear. Supposedly, Robert and Charles were in a partnership, but Rachel was actively involved in the operations. In 2014, it would appear that Rachel was directing the operations. Robert and Charles were to be 50/50. Whenever Robert bought, the Defendants were to buy an equivalent pair of black birds at the same price. The Defendants' black birds were to be Rachel's birds. The Defendants were to transport the birds to their farm when the birds were delivered close to them.... Charles was to water and feed the black birds and occasionally clean their coops. Rachel was in contact with Jenny ("JENNY") at GFF [sic] and ordering black birds and having Jenny bill Robert for the birds.

15. There were discussions about breeding the birds, hatching the eggs and eventually selling some of the new birds and saving some for breeding stock. Additionally, there were discusses [sic] about Robert, through his son, Roland, who lives in France, importing a third line of birds to breed with the [Black Birds]....

16. The evidence presented only involves purchases or monies paid by Robert. All of these were in 2014. There was no evidence presented showing monies paid by the Defendants. Robert's first purchase was on or about March 26, 2014. Robert's last purchase was on or about December 18, 2014. In addition to rare birds, Robert also paid for an electric egg hatcher and a chicken coop. Robert submitted his Supplemental Affidavit ("AFFIDAVIT") on December 7, 2018.... A copy of

that List is attached hereto, and made a part hereof. The Court notes that the electric egg hatcher is listed but not the chicken coop. There was some testimony that the \$1,550.00 payment to Rachel on 8-29-14 was for the chicken coop. Robert contends that the total he paid was \$23,066.94 on the black bird project.

17. No objection has been made to the Supplemental Affidavit (“AFFIDAVIT”). Question was raised regarding whether the endeavor was a money[-]making project or a conservation of rare bird project. Affidavit Exhibit 12 page 2 covers e-mails from Rachel to Robert dated 4-2-2014 in which she indicates that there is a [Black Bird] pair on RBA that [they] need. She wants to know if Robert can list birds for sale for her on RBA since she is banned. They would be her birds which could be used for expenses for the project. She tells him he needs to set up a paypal account for “birds in black.” She ends[,] “Ok let’s make some money.[”] Affidavit Exhibit 4 page 4 involves e-mails between Rachel and Robert dated 4-4-2014. Rachel discusses a new “bio secure” facility for hatching eggs and raising chickens. Robert writes “BTW are we making money yet?” Rachel responds[,] “Not yet. LOL.” She then discusses an upcoming auction and bidding strategy. Affidavit Exhibit 10 page 3 involves additional e-mails between Rachel and Robert of April 7, 2014. Rachel indicates to Robert that [they] need to get those [Black Birds] tomorrow night as cheap as possible because Rachel can trade one of the [Black Bird] pairs she already bought from GFF for \$3,500.00 for 2 pairs of juveniles and chicks from the Toni-Marie line of [Black Birds], which is hard to get ahold of since she rarely lets her birds out. Rachel is estimating the trade is worth \$12,000 in birds to use for birds [she] paid \$3,500.00 for plus a few of [her] rare birds. Rachel informs Robert that she made \$1,000[.]00 in just 2 hours at a swap and believes that she can do the same [e]very Saturday. She discusses other opportunities available to her. The Court finds that the “project” was intended to be a money project from the beginning.

* * *

24. Stipulated Exhibit 8 shows that the [Wolfes] did not report business income or loss regarding rare birds on their 2014 income tax return to the IRS.

* * *

26. On or about December 17 and 18, 2014, Robert, Charles[,] and Rachel had an in[-]person meeting in Tallahassee, Florida.... Somewhere in conversation Rachel mentioned a \$300,000 spring sale of the black birds. Both men nearly fell off of their seats. Rachel, at trial, testified that this was a speculative figure for sometime in the future. In Joint Exhibit 15 of 4-18-2015, Robert expressed to Charles that “We’re far from the \$300,000 spring sales—we never believed that anyway.” ...

27. Joint Exhibits 9 through 24 are messages mainly between Charles and Robert which show the deterioration of the relationship between the parties. In Exhibit 9, 1-7-15 to 1-13-15, Robert indicates that he will be needing information about the black bird business for tax purposes. Also, they are discussing registration names and registration. In Exhibit 10, 1-28-15, Robert discusses using IRS Form Section C (1040) for tax purposes. This would show what information was needed. He tells Charles that his tax draft deadline is Sunday evening. Robert ends “we need to chat—long overdue in any case.”

28. In Exhibit 11, on or about February 28, 2015, on page 2, Robert indicates: As I suspected I am going to need some tax information on the Black Bird project. We have to decide how this is going to be handled for both Tax and Business purposes... hopefully later today I’ll have a better idea on how I am dealing with tax issues on this end and numbers I will need from you...

A bird up-date would be appreciated....

* * *

30. Joint Exhibit 13 is an e-mail of 3-25-2015 from Robert to Charles which reads, in part:

... Chicken thingy has caused me tax consequences as the \$23,000+/- spent on purchases is on the books but can't be accounted for as expenses or investment as we have real [sic] reportable business or plan with you. Feds get really cranky. We (you and I) have to discuss reality of this chicken business which at the moment I have a very black view of....

31. Joint Exhibit 14 is an e-mail from Robert to Charles, dated 3-26-2015.... Robert is discussing the need of preparing the business with tax forms in mind, specifically referring to Partnership Tax Forms. Robert is looking forward to getting all of the numbers and plans together so [they] can move ahead with the project.... Robert is looking forward to talking business of this with Charles. He states that the IRS forms are a good guide to how [they] have to organize the birds as a business....

* * *

34. Joint Exhibit 17 is an e-mail of May 17, 2015, from Robert to Charles. ... Robert states:

As I've heard and seen nothing about the Bird Project since our last conversation some three weeks ago, I think we need to sort out the bird business ASAP. A phone call could start the conversation. Let me know a time we can talk...

35. Joint Exhibit 18 involves e-mails between Robert and Charles on May 31, 2015, and June 3, 2015. Robert is expressing his irritation in not getting a response regarding tax concerns and no real business plan. This needs to be discussed ASAP. Robert then states:

On Rachel's request I've invested documented thousands on stock and equipment as a partner in a business we have been excluded from ... do the math and consider yourself in my position and how you would react.

...nor do I like going into a black hole after we made an investment—we can not [sic] throw away money and that is not going to happen—

... Frankly I feel as if you are forcing me to make a decision I don't want to make and given our past relationship this makes me feel rather uncomfortable....

* * *

38. Joint Exhibit 22 is an e-mail reportedly from Charles to Robert dated August 15, 2015.... It ... says: "I guess we need a business plan." ...

39. Joint Exhibit 23 is an e-mail from Robert to Charles dated August 19, 2015. A copy is attached hereto and made a part hereof. Robert informs Charles that he is unhappy about the rare chicken investment and loss. He further states: "You know we're a business and should know, after the income tax blow off, lack of response to questions etc[.,] etc[.], I've taken steps to protect this investment—nothing that can't be changed and would frankly gladly change. I like the idea of finally getting a

(BUSINESS PLAN and BUSINESS ORGANIZED)... Robert went on to say:

It is simply that the (BUSINESS) has been handled rather oddly and the obvious approach to the grand OPM (other people's money) is scary.

...

Let's talk ... you bring me to date and we'll get this unFUBARED [sic].

40. Joint Exhibit 24 is an e-mail from Robert to Charles dated August 21, 2015.... He wants to talk to Charles on the phone to un sort [sic] the [Black Birds] business. The investment there is causing undo [sic] anxiety. He wants a conversation to clarify this thinking.

41. Joint Exhibit 25 is a copy of the [Wolfe's] 2015 tax return. It shows no profit or loss regarding the Black Birds.

* * *

45. Rachel stood to get 2 things initially. First, since she was banned, she could get Robert to buy birds on RBA. Second, she proposed to Robert a partnership between Robert and Charles regarding the black birds. The key thing for her was that every time the "birds in black" partnership bought [Black Birds], then she (and Charles apparently) would make an equivalent purchase. The Court finds that Charles was to be involved with Rachel because Rachel had earlier indicated to Robert that she could not afford these birds on her own. As mentioned earlier, there was nothing in writing about the formation of a partnership. There was no written business structure. Robert

thought there was a partnership. The Defendants never said anything to the effect that there was no partnership....

* * *

47. There is some evidence that early on Rachel and Robert had a discussion about bringing in a third French line to cross breed. However, Robert contends that he never agreed to do so and that he would never agree to do so without a solid business plan. The Defendants contend that Robert breached the parties' agreement. The Court finds that this is not so. Rachel testified that this made the project not as valuable as what was discussed.

48. The evidence is clear that in 2015 Robert became very frustrated with the Defendants in their failure to provide to him an accounting regarding the Black Birds, to provide profit and loss figures and in failing to communicate with him regarding a business plan....

49. The [Wolfes] in testimony indicated that this had to be a long term project involving maturing the [Black Birds], laying full size eggs, hatching the eggs, [and] raising the product for sale or to keep for further breeding. If this was the case, then Robert certainly had not been informed of the same....

* * *

51. [Because bird sales were limited by] the H1N1 bird flu epidemic of 2015[,] ... [Rachel] decided that the birds would just be bred, eggs hatched[,] and the babies raised and held in 2015.

52. Rachel testified that she was waiting on Robert to bring in the third "French" line. Also, she said when Robert sued Defendants, they did not know what to do. As a result, if the

raising plan continued, the birds hatched the eggs and chicks were born. She stated that through attrition the Black Birds and their off-spring died. They had maybe one Black Bird at the time of the hearing.

53. Charles testified that he had nothing to do with purchasing the Black Birds and had nothing to do with the accounting or money aspect.... He'd pick up the birds, water and feed the birds[,] and occasionally clean the pens.... Charles testified that Robert never asked for any money back, until the lawsuit had been filed. He indicated that Robert owned the coop and the brooder [i.e., electric egg hatcher] and that he could have them.... Charles also said that one Black Bird remained. The rest had lived their lives and died. With the exception of the pullet eggs, Charles claimed that no Black Birds or Black Bird eggs of Robert's were sold by the Defendants. Charles realized that the partnership was going nowhere in late 2015....

Appealed Decision at 2-14.

[10] The trial court concluded that the Wolfes did not commit fraud or violate Indiana Code Sections 24-5-8-1, *et seq.* The court also concluded that, to the extent there was a partnership involving Agro, it was a partnership between Agro and the Wolfes. Specifically, the court concluded:

75. In 2014, the parties were in the process of acquiring the Black Birds. Breeding had started at the end of 2014 and into 2015. Pullet eggs were produced and sold with Robert's permission. The breeding was to continue until full size eggs were produced and then either sold or hatched to grow new breeding stock. However, the venture was starting to come apart. Robert was wanting information for 2014 tax purposes. The Defendants were either unable or unwilling to provide this information. This is a breach of [the] partner's obligation to

provide information and accounting.... The Court finds that the [Wolfes'] failure to provide information and to discuss a business structure brought their relationship to an end.

Appealed Decision at 19.

[11] The trial court further concluded that the Wolfes committed criminal conversion when they failed to return Agro's property to him when the relationship between Agro and the Wolfes ended. However, the trial court stated that it would not award Agro treble damages because "[b]oth the Plaintiff and the Defendants are responsible for creating a screwed up situation which ultimately lead to the Defendants converting the property." *Id.* at 20. The court determined that Agro was entitled to his attorney fees. The court ordered the Wolfes to pay Agro "the sum of \$23,066.94 plus the amount of \$15,082.50 in attorney fees and expense[s] ... making a total judgment of \$38,149.44 together with the costs of this action and interest on the judgment at 8% per annum." *Id.* at 21. This appeal ensued.

Discussion and Decision

Standard of Review

[12] The Wolfes appeal the trial court's decision that they are liable to Agro because they committed criminal conversion of Agro's property. Sua sponte, the trial court entered twenty-one pages of findings of fact and conclusions of law. "Where the trial court enters specific findings sua sponte, the findings control our review and the judgment only as to the issues those specific findings cover."

Sample v. Wilson, 12 N.E.3d 946, 949-50 (Ind. Ct. App. 2014). Where there are no specific findings, a general judgment standard applies and we may affirm on any legal theory supported by the evidence adduced at trial. *Id.*; Ind. Trial Rule 52(D).

[13] Moreover,

[i]n reviewing findings of fact and conclusions of law, we apply a two-tiered standard of review by first determining whether the evidence supports the findings and then whether the findings support the judgment. *Weigel v. Weigel*, 24 N.E.3d 1007, 1010 (Ind. Ct. App. 2015), *reh'g denied*. The trial court's findings and judgment will be set aside only if they are clearly erroneous. *Barton v. Barton*, 47 N.E.3d 368, 373 (Ind. Ct. App. 2015), *trans. denied*; *see also* Ind. Trial Rule 52(A) (“[T]he court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”). Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. *Campbell v. Campbell*, 993 N.E.2d 205, 209 (Ind. Ct. App. 2013), *trans. denied*. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Id.* To determine that a finding or conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made. *Id.*

Bayview Loan Servicing, LLC v. Golden Foods, Inc., 59 N.E.3d 1056, 1066-67 (Ind. Ct. App. 2016).

Analysis

[14] Agro asserted, and the trial court found, that the \$23,066 that Agro invested in the Black Birds was his property that the Wolfes criminally converted by failing

to return it to him when he expressed his intent to end their business relationship. The Indiana Crime Victims Relief Act, Indiana Code Section 34-24-3-1, allows a person who has suffered a pecuniary loss as a result of criminal conversion to bring a civil action to recover the loss. A person commits criminal conversion when he “knowingly or intentionally exerts unauthorized control over property of another person.” Ind. Code § 35-43-4-3(a). However, as we discuss in more detail below, the evidence establishes that Agro and the Wolfes were in a partnership. Therefore, Agro’s investment was the property of the partnership rather than his personal property, and his remedy for his losses from the partnership is governed by the Uniform Partnership Act, Indiana Code Sections 23-4-1-1 to 23-4-1-43, not the Crime Victims Relief Act.

[15] Indiana has adopted the Uniform Partnership Act, which provides the rules for determining the existence of a partnership and the remedies available to partners upon a dissolution of the partnership. *Id.* The existence of a partnership is generally a question of fact. *Weinig v. Weinig*, 674 N.E.2d 991, 994 (Ind. Ct. App. 1996).

[16] A partnership is defined as “an association of two (2) or more persons to carry on as co-owners a business for profit...” I.C. § 23-4-1-6. The elements essential to the creation of a partnership are (1) a voluntary contract of association for the purpose of sharing profits and losses which may arise from the use of capital, labor, or skill in a common enterprise, and (2) an intention on the part of the principals to form a partnership for that purpose. *Curves for Women Angola v. Flying Cat, LLC*, 983 N.E.2d 629, 632-33 (Ind. Ct. App. 2013)

(“For a partnership to exist, the parties must have joined together to carry on a trade or venture for their common benefit, each contributing property or services, and having a community of interest in the profits.”).

[17] The legal existence of a partnership may be shown by either an express or implied contract of the parties. *E.g.*, *Hansford v. Maplewood Station Bus. Park*, 621 N.E.2d 347, 350 (Ind. Ct. App. 1993). It is the substance, and not the name, of the arrangement between the parties that determines their legal relationship toward each other as partners. *Watson v. Watson*, 231 Ind. 385, 108 N.E.2d 893, 895 (1952). “[T]he intention to form a partnership must be determined by examining all the facts of the case, and the conduct of the parties reveals their true intentions and the construction they placed upon their own agreement.” *Curves for Women*, 983 N.E.2d at 633; *see also Moynahan Const. Co. v. Mohler*, 225 Ind. 379, 75 N.E.2d 540, 542 (1947) (stating that parties who agree to do that which in law creates a partnership are partners, notwithstanding their declaration that they are not forming a partnership).

[18] Where a person is to share in the profits of a business, that is evidence that the person is a partner in the business. *Soley v. VanKeppel*, 656 N.E.2d 508, 512 (Ind. Ct. App. 1995). That is true regardless of whether the person actually receives any profits, *id.*, and it is not necessary to show a correlating agreement to share losses, *Hansford*, 621 N.E.2d at 350. A partnership may be formed by the furnishing of capital by one or more of the partners and the furnishing of labor and skill by others. *Watson*, 108 N.E.2d at 392. A “lack of daily

involvement by one partner is not per se indicative of the absence of a partnership.” *Johnson v. Wiley*, 613 N.E.2d 446, 451 (Ind. Ct. App. 1993).

[19] Here, the undisputed findings support the trial court’s conclusion that Agro and the Wolfes had a partnership in the Black Bird business. Despite the lack of a written agreement, each party called it a partnership at some point, and each party stated a desire to create written documents regarding the partnership. Each party invested in the partnership with money, time, labor, and/or skill. Each party stood to gain from the partnership. And, most importantly, the e-mails between the parties and/or their testimony make it clear that each party intended to enter into the Black Bird business in order to share in the profits. For example, e-mails between Rachel and Agro in April of 2014 establish that they discussed the desire to “mak[e] money” from the Black Bird business. App. at 84. The parties also discussed potential profits from the partnership at their only in-person meeting in Florida in December of 2014. Rachel had the additional benefit of purchasing, through Agro, birds that she was banned from purchasing on her own. Thus, the conduct and the statements of the parties reveal their intentions to create, and their creation of, a partnership in the Black Bird business. The fact that that business never resulted in any profit is irrelevant to the existence of the partnership. *Soley*, 656 N.E.2d at 512.

[20] When Agro invested into the partnership, his money and/or the birds and equipment bought with that money became the property of the partnership. Indiana Code Section 23-4-1-8(1) provides, in relevant part:

(1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

Agro paid approximately \$23,066.00 into the partnership. With that money, the partnership purchased eighteen Black Birds, an electric egg hatcher, and a chicken coop, all of which was to be used by the partnership in order to generate a profit.

[21] Because Agro's investment in the partnership became partnership property rather than remaining his own personal property, the trial court clearly erred by applying the wrong law to properly-found facts when it held he was entitled to a return of that money through a civil action for criminal conversion. Rather, the Uniform Partnership Act makes specific provisions for the rights of partners to the application of partnership property and the rules for distribution of the assets after dissolution of the partnership. I.C. § 23-4-1-38 to 23-4-1-40. Under that Act, on application by a partner, a court must decree a dissolution of the partnership whenever, among other reasons:

(c) A partner has been guilty of conduct that tends to affect prejudicially the carrying on of the business.

(d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise acts in matters relating to the partnership business so that it is not reasonably practicable to carry on the business in partnership with that partner.

(e) The business of the partnership can only be carried on at a loss.

(f) Other circumstances render a dissolution equitable.

I.C. § 23-4-1-32(1). Absent previous settlement and agreement between partners, “the proper action to recover profits or losses based on partnership business is to sue in equity for an accounting and for a recovery of whatever may be found due upon a settlement of the partnership affairs.” *In re Rueth Dev. Co.*, 976 N.E.2d 42, 57 (Ind. Ct. App. 2012) (internal quotation and citation omitted), *trans. denied*; *Butler v. Forker*, 139 Ind. App. 602, 221 N.E.2d 570, 605 (1966).

Conclusion

[22] The evidence establishes that the Wolfes and Agro had a partnership related to the Black Bird business. Agro’s investment in that partnership was partnership property, not his own personal property. I.C. § 23-4-1-8. Therefore, the trial court clearly erred when it held that Agro was entitled to judgment from the Wolfes for their alleged criminal conversion of Agro’s property. Rather, Agro’s proper remedy for any losses from the partnership is an action for a decree of dissolution and an accounting and recovery under the Uniform Partnership Act, Indiana Code Sections 23-4-1-1 to 23-4-1-43.

[23] Reversed.

Robb, J., concurs.

Tavitas, J., dissents with opinion.

IN THE
COURT OF APPEALS OF INDIANA

Charles Wolfe, et al.,
Appellants-Defendants,

Court of Appeals Case No.
20A-PL-1242

v.

Robert Agro,
Appellee-Plaintiff.

Tavitas, Judge, dissenting.

[24] I respectfully dissent from the majority’s reversal of the trial court’s judgment in favor of Agro. I would affirm the trial court’s judgment.

[25] First, the trial court did not specifically find that a partnership existed between Agro and the Wolfes. The trial court correctly found that “[w]hat exactly was to be occurring is not totally clear.” Appellant’s App. Vol. II p. 22. The trial court then concluded:

70. From the facts in this case, the Court finds that Charles and Rachel [the Wolfes] were in a partnership regarding the Black Birds. Rachel early on indicated that she did not herself have sufficient money to be buying ACs. Yet, the agreement was apparently for Charles and Rachel to buy an equivalent amount of Black Birds when Charles and [Agro] bought. Additionally, there is evidence that Charles provided some of the monies for Rachel and Charles. If Charles and Rachel were not buying equivalent birds, then they were using [Agro’s] money to solely

finance the Black Birds venture. Rachel was directing the purchasing of the birds. Charles was transporting the birds when they were shipped close to Winchester. Charles was feeding the birds, watering the birds and occasionally cleaning the coops. Presumably, he was doing this for all the Black Birds; there was no evidence that Rachel was doing the same. They were co-tenants on the farm and split the profits of the farm.

71. If Charles was correct and the relationship with [Agro] was a buying relationship, then the birds purchased by [Agro] were [Agro's] birds. Charles acknowledged that the electric egg hatcher and the coop were [Agro's] property. Rachel stated that some of the rare birds purchased were for [Agro's] farm. The birds were being raised on [the Wolfes'] farm.

72. On the other hand, from the facts in the case, if there was some other sort of partnership, then the Court finds that it would be partnership between [Agro] and Charles/Rachel. Rachel was the guiding hand in this relationship. She was directing what and when to buy and that [Agro] was to pay. Charles was providing services. Buying was occurring in 2014. The parties met in Florida in December, 2014, to discuss the project. They all voluntarily agreed to associate for the purpose of the “birds in black” project and hoped to profit in one form or another.

Id. at 39-40. The trial court then concluded that the Wolfes “knowingly exerted unauthorized control over” Agro’s property. *Id.* at 41.

[26] The existence of a partnership is generally a question of fact. *Copenhaver v. Lister*, 852 N.E.2d 50, 58 (Ind. Ct. App. 2006). “The intention to form a partnership must be determined by examining all the facts of the case, and the conduct of the parties reveals their true intentions and the construction they

placed upon their own agreement.” *Id.* at 59. I agree with the trial court that the arrangement between the parties simply is not clear and fails to establish a partnership.

[27] Further, I note that the Wolfes appeal only the trial court’s finding that they committed conversion of Agro’s funds or property. The Wolfes make no argument that Agro’s investment was the property of the partnership rather than his personal property or that Agro’s remedy is governed by the Uniform Partnership Act, Indiana Code Sections 23-4-1-1 to 23-4-1-43, rather than the Crime Victims Relief Act. I would not address the Partnership Act provisions, and I would affirm the trial court’s finding that the Wolfes converted Agro’s property.

[28] Under these circumstances, I would affirm the trial court’s judgment in favor of Agro. Accordingly, I respectfully dissent.