

IN THE
Supreme Court
for the
State of South Dakota

RICHARD D. SLEEP and KAREN E. SLEEP, husband and wife; **JEFFREY E. SLEEP and JODI K. SLEEP**, husband and wife; **MATTHEW R. SLEEP; MELISSA A. DEAN; SLEEP RANCHES, LLC**, a South Dakota limited liability company; **SLEEP LAND AND LIVESTOCK COMPANY, LLC**, a South Dakota limited liability company; **IRON CREEK LAKE CAMPGROUND & STORE, LLC**, a South Dakota limited liability Company; and **IRON CREEK, LLC**, a South Dakota limited liability company,

Plaintiffs and Appellees,

vs.

GLORIA SLEEP STEELE, a/k/a Gloria G. Steele, and **STEELE REAL ESTATE, LLC**, a South Dakota limited liability company,

Defendants and Appellants.

On Appeal from the Circuit Court for the Fourth
Judicial Circuit, Lawrence County
Hon. Michelle Comer, Circuit Court Judge
Notice of Appeal filed June 11, 2025

APPELLANTS' BRIEF

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Summary of Argument

This case turns on whether Gloria Sleep was a partner in the Sleep Ranch. The undisputed facts show that she was: she co-owned all the business assets, shared profits for decades, received K-1s on partnership tax returns, and operated through a common account. Partnership law does not require subjective intent or equal management authority; it requires only an objective intention to associate to carry on a business for profit. By ignoring those objective indicia and treating tenancy in common as dispositive, the circuit court misapplied SDCL § 48-7A-202. No South Dakota case has denied partnership status on facts this strong. The judgment should be reversed.

Preliminary Statement

Given the overlap in the parties' surnames, Appellants will refer to themselves collectively as "Gloria." Appellants will refer to Appellees individually by their first names "Richard," "Karen," "Jeff," etc., and collectively as "Richard."

Gloria will refer to the settled record on Appeal as "SR1:" or "SR2:" followed by the page number(s) assigned by the Lawrence County Clerk of Courts. She will refer to Trial Exhibits as "Ex." followed by the applicable Trial Exhibit number. Gloria will refer to materials in her Appendix by "Appellants' Appx." followed by the page number(s).

Jurisdictional Statement

This appeal arises from the Fourth Judicial Circuit Court, Lawrence County. Following a court trial, the circuit court entered Findings of Fact and Conclusions of Law on March 30, 2021. (SR1: 2166-2185; Appellants' Appx. 3-22.) The circuit court entered a Final Judgment on May 2, 2025. (SR2: 859-860; Appellants' Appx. 1-2.) Notice of Entry of the Final Judgment was given on May 14, 2025. (SR2: 861-864.) Gloria timely filed a Notice of Appeal pursuant to SDCL 15-26A-3 on June 11, 2025. (SR2: 865-868) Therefore, the Court has jurisdiction to this appeal under SDCL § 15-26A-3(1).

Statement of Issues

1. Whether co-ownership of all business assets, sharing of profits, filing of partnership tax returns, and use of a common bank account establish a partnership by conduct.

The circuit court concluded that Gloria and Richard were not partners under SDCL § 48-7A-202, though they co-owned all the assets of the business, shared the profits of the business, filed partnership tax returns, and used a partnership bank account.

SDCL § 48-7A-202.

McGregor v. Crumley, 2009 S.D. 95, 775 N.W.2d 91.

Wilson v. King (In re KeyTronics), 477 N.W.2d 425 (Neb. 2008).

2. Whether parties must subjectively intend to be partners in order to form a partnership.

The circuit court concluded there was no partnership because the parties lacked the subjective intention to form one. (SR1: 2166-2185, Appellants' Appx. 3-22, FOF ¶12, 24-26, COL ¶8).

SDCL § 48-7A-202.

Wilson v. King (In re KeyTronics), 477 N.W.2d 425 (Neb. 2008).

3. Whether obtaining one's interest in property by inheriting it as tenants in common precludes using that inherited property in a manner that creates a partnership.

The trial court found that inheriting property as tenants in common precludes a partnership. (SR1: 2166-2185; Appellants' Appx. 3-22, FOF ¶8, COL ¶57).

SDCL § 48-7A-202.

Statement of the Case

This is an appeal from a declaratory judgment from the Fourth Judicial Circuit in Lawrence County, the Honorable Michelle Comer presiding. The action concerned ownership and operation of the Sleep Ranch. Gloria contended that she and her brother, Richard, were partners in the ranching business. The trial court found that the siblings were not partners, but merely tenants in common.

Statement of the Facts

Richard and Gloria are the only children of Eugene and Ruth Sleep. Before 1966, Eugene owned and operated the Sleep Ranch. (SR1: 1658:6-7; 1673:2-5.) From the time that Richard and Gloria were young, Eugene and Ruth involved the children in the ranching operation. (SR1: 1653:13-16.)

Richard grew up helping Eugene operate Sleep Ranch. (SR1: 1603:4-6.) Gloria also grew up working on Sleep Ranch and helping Ruth around the home and with operating the family's resort business at Iron Creek Lake. (SR1: 1653:4-1654:15.) After college, Richard worked as a W-2 employee for Sleep Ranch. (SR1: 1872:12-21.)

1. TRANSITIONING SLEEP RANCH FOLLOWING EUGENE'S DEATH

On November 12, 1967, Eugene died suddenly at 50-years-old, and without a will. (SR1: 1603:2-3.) Pursuant to the laws of intestacy at the time of Eugene's death, Gloria, Richard, and Ruth each received one-third of everything owned by Eugene – including real estate, cattle, ranching equipment, and residential property. (SR1: 190-195 (Ex. 1); SR1: 1605:6-22.)

At the time of his death, other than some cattle that Richard owned personally, Eugene had owned everything used to operate Sleep Ranch. (SR1: 1658:6-12.) During Eugene's lifetime, he operated the ranch and Iron Creek Lake as a single business. (SR1: 1943:24-1944:4.) Following Eugene's death, Richard, Gloria, and Ruth continued to operate as a

single business. (SR1: 1944:5-6.) Upon Eugene's death, Richard took over managing Sleep Ranch. (SR1: 1673:6-7.)

Ruth and Gloria jumped in to manage Iron Creek Lake, which operated as it always had. (SR1: 1638:5-14.) After Eugene died, Sleep Ranch continued to operate exactly as it always had, except Richard was then in charge. Richard continued to operate the same single business that his father had run. (SR1:1943:24-1944:6.) And he continued to be an employee of Eugene's estate. (SR1: 1872:19-21.)

Gloria Sleep and her husband, Robert Steele, were married in June 1969. (SR1: 1610:24-1611:3.) Gloria continued to work at the family's Iron Creek Lake Resort full-time from 1969 to 1973, and part-time from 1974 to 1975. Her husband helped Gloria in the earlier years. (SR1: 1638:5-19.) After the summer of 1975, Gloria and Robert were living in Rapid City and expecting their third child, and the process of monitoring Iron Creek Lake became unworkable. Gloria knew that Richard checked cattle in that area anyway and asked if he would be interested in checking in on operations at Iron Creek Lake. (SR1: 1638:20-1639:5; 1639:20-1640:8.) In the 1970s, the ranch would not have supported two families. (SR1: 1760:22-1761:3.) Therefore, Gloria and Robert committed to live and work in Rapid City to support their family. (SR1: 1637:23-1638:3.)

In 1975, Ruth sold her interest in Sleep Ranch Partnership to Richard and Karen under a contract for deed. (SR1: 473-498 (Ex. 29).)

Gloria was not involved in the transaction by which Ruth transferred her one-third interest in Sleep Ranch Partnership to Richard and Karen. (SR1: 1658:17-25.) Gloria was not consulted about, or informed of, the transfer until it was complete. (SR1: 1617:6-15.)

2. PARTNERSHIP ACCOUNTING

After Richard purchased Ruth's interest, he and his wife Karen owned two-thirds of Sleep Ranch, and Gloria owned one-third. They divided the profits in proportion to their ownership percentage—one-third to Gloria and two-thirds to Richard. (SR1: 1946:16-23; SR1: 352-405 (Exs. 18-21).) They also divided losses, though they did not fund those losses through capital calls because Sleep Ranch retained sufficient working capital to cover the losses. (SR1: 1896:1-21.)

Sleep Ranch Partnership has had its own checking account since Eugene's death. (SR1: 1854:7-16.) In 1975, Richard consulted Penny's Tax Service in Spearfish. Richard explained the business to Penny, and she instructed him that the proper return was a Form 1065 Partnership Return. (SR1: 1903:10-15; 1904:1-13.) In 2008, Richard consulted CPA Karen Simmons, who agreed that a partnership tax return was appropriate. (SR1: 1989:12-15.)

Richard has always filed a Partnership Tax Return for Sleep Ranch and has always issued a K-1 to Gloria as a partner. (SR1: 1976:7-11; see, e.g., SR1: 365-732 (Exs. 19-47).) Richard himself completed the K-1s

stating that Gloria is a one-third partner of Sleep Ranch Partnership. (SR1: 365-609 (Exs. 19-42).) Each year, Richard certified that Sleep Ranch was a domestic general partnership. (SR1: 631 (Ex. 45, p. 1, line 1(a)).) Richard further certified that Gloria Steele was a domestic, general partner. (SR1: 645 (Ex. 45, p. 15, lines G & H).) That continued until 2003, when Richard claimed to have purchased Gloria's interest in the partnership's cattle.

3. RICHARD'S CLAIMED CATTLE PURCHASE

Over the years, Richard sought to acquire Gloria's interest in Sleep Ranch Partnership. (SR1: 1643:10-25; 1864:15-19; 1893:19-1894:6.) During one of those discussions, they discussed the appropriate value of Gloria's interest. As part of those discussions, they agreed that the current value of one-third of the cattle herd was \$60,000. (SR1: 1675:15-1676:6.) Gloria and Richard never discussed Gloria selling her interest in the cattle apart from her interest in the land, equipment, and Iron Creek Lake Resort. (SR1: 1676:3-6; 1966:12-1967:8.)

In December of 2003, Richard left a check for \$60,000 to buy "80 mixed age cows" at Gloria's home. (SR1: 951 (Ex. 110, p. 6).) In January 2004, Gloria proposed terms for a sale of her interest in Sleep Ranch Partnership. Gloria did not cash Richard's check because they had not reached the necessary terms for a final agreement. (SR1: 1678:7-1679:2; SR1: 909 (Ex. 87, p. 2).) Richard agrees that Gloria never agreed to sell her cattle alone without an agreement for the entire operation.

(SR1: 1892:4-6.) He also agrees they have never reached an agreement on the land or equipment. (SR1: 1893:14-1894:6.) Richard did not respond to Gloria's January 2004 proposal, so Gloria returned Richard's check to him, because she was unwilling to sell just one part of her interest. (SR1: 196-198 (Ex. 2).)

Then, in December 2004, Richard sent Gloria a check for \$6,032.47 for "3 bulls & profit on calves," and also sent back the \$60,000 check that Gloria had refused. (SR1: 951 (Ex. 110, p. 6); SR1: 1679:1-1680:17.) Gloria did not cash the second check either. (SR1: 905-907 (Ex. 86).)

Nevertheless, on the position that he had purchased Gloria's interest in the cattle business, Richard stopped reporting ranching operations on the Sleep Ranch return and started reporting Sleep Ranch as merely a land rental agreement on Form 1040 Schedule E. Form 1040 Schedule F was omitted. (SR1: 214-225, 406-461, 576-593, 600-732 (Exs. 5, 22-26, 36, 42-47); SR1: 1970:3-10.)

Since 2004, Richard determines what he will pay Gloria on a "lease" each year without consulting her. (SR1: 1682:6-1683:6; 1763:10-16.)¹ In 2008, Richard informed Gloria, for the first time, that he had taken her out of the cattle operation in 2004. (SR1: 905-907 (Ex. 86); SR1: 1681:1-8.)

¹ In the subsequent partition phase of the litigation, Richard's appraiser valued Gloria's one-third interest in the land at about \$6,600,000. (SR1: 3397 (Ex. 228).) Between 2008 and 2016, Richard paid Gloria an average annual "rent" of \$6,475. (SR1: 1493-1503 (Ex. 207).) In 2015, it was \$598. *Id.* So, for owning one-third of the ranch, Gloria was earning an annual return of .0981%, or less than 1/10 of 1%.

In response, Gloria re-affirmed that she had not agreed to sell her interest in the cattle business. (SR1: 905-907 (Ex. 86).) At a meeting on January 29, 2009, Gloria suggested she would trade her interest in cattle for land. Richard said he would not trade real property for personal property, but he did not claim that she had no cattle interest left to bargain. (SR1: 930 (Ex. 93, p. 2).)

Argument

A partnership exists whenever two or more people associate “to carry on as co-owners a business for profit.” SDCL § 48-7A-202(a) (“Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.”) Gloria and Richard co-owned all the assets of Sleep Ranch—all real estate, all cattle, all ranching equipment, and all residential property. (SR1: 190-195 (Ex. 1); SR1: 1605:6-22.) The ranching operation was a single business, both before and after Eugene’s death. (SR1: 1943:24-1944:6.) And Sleep Ranch was operated for profit. (SR1: 1946:16-18.) The dispute between the parties is whether Gloria and Richard co-owned the ranching operation, or only the assets.

Parties can form a partnership by express agreement. But parties can also form partnerships by their conduct. “The existence and scope of a partnership may be evidenced by a written or an oral agreement, or implied by conduct of the parties.” *Temple v. Temple*, 365 N.W.2d 561, 566

(S.D. 1985) (citing, *Lewis v. Gallemore*, 113 N.W.2d 54 (Neb. 1962), and *Gangl v. Gangl*, 281 N.W.2d 574 (N.D. 1979)).

This appeal asks the Court whether Richard and Gloria, by their conduct, formed a partnership in the Sleep Ranch. The circuit court found they had not, and Gloria urges that the circuit court's judgment is error.

1. STANDARD OF REVIEW

Generally, “[t]he existence of a partnership is an issue of fact.” *McGregor v. Crumley*, 2009 S.D. 95, ¶ 20, 775 N.W.2d 91, 97, citing *Widdoss v. Donahue*, 331 N.W.2d 831, 833 (S.D. 1983); and, *Munce v. Munce*, 77 S.D. 594, 96 N.W.2d 661 (1959)). And this Court does not overturn a factual finding unless it is “left with a definite and firm conviction that a mistake has been made.” “[B]ut once those facts have been determined, the application of a legal standard to those facts is a question of law reviewed *de novo*.” *State v. Heney*, 2013 S.D. 77, ¶ 8, 839 N.W.2d 558, 561–62 (citations omitted).

Courts discuss the determination of partnership as factual because “there is no arbitrary test for determining the existence of a partnership, each case must be governed by its own peculiar facts.” *McGregor*, 2009 S.D. 95, ¶ 20, 775 N.W.2d at 97–98, quoting *Insurance Agents, Inc. v. Zimmerman*, 381 N.W.2d 218, 220 (S.D.1986). But, as will be the focus of all briefs and arguments in this appeal, there are criteria and rules for determining the existence of a partnership. If there is no dispute over the

facts on those indicia of partnership, then applying those facts to the legal standards should be a mixed question of law and fact.

A mixed question of law and fact is one in which “the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the rule of law as applied to the established facts is or is not favorably satisfied.” *In re Dorsey & Whitney Trust Co.*, L.L.C., 2001 S.D. 35, ¶ 6, 623 N.W.2d 468, 471 (quoting, *Permann v. S.D. Dep't of Labor*, 411 N.W.2d 113, 118 (S.D. 1987)). This Court’s standard of review for the circuit court’s conclusion about whether the rule of law was satisfied depends upon the nature of that decision. “If application of the rule of law to the facts requires an inquiry that is ‘essentially factual’—one that is founded ‘on the application of the fact-finding tribunal’s experience with the mainsprings of human conduct’” then the standard of review should be the clearly erroneous standard. *Stockwell v. Stockwell*, 2010 S.D. 79, ¶ 16, 790 N.W.2d 52, 59. But if the application of the rule of law to the facts requires the Court “to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles,” then the decision is reviewed *de novo*. *Id.*

In this case, almost all the facts are undisputed. The question is whether those facts establish the existence of a partnership. And that inquiry is an exercise of judgment “about the values that animate” the Revised Uniform Partnership Act and common law indicia of

partnerships. Gloria urges that this case presents a mixed question of law and fact that the Court should review *de novo*.

2. GLORIA CO-OWNED THE RANCHING BUSINESS WITH RICHARD.

“It is co-ownership that distinguishes partnerships from other commercial relationships such as creditor and debtor, employer and employee, franchisor and franchisee, and landlord and tenant.” *In re KeyTronics*, 744 N.W.2d 425, 441 (Neb. 2008). No one disputes that Gloria owned one-third of all the assets of the ranch. But being “co-owners of a business” refers to “the business intended to garner profits,” not just the assets. 59A Am. Jur. 2d Partnership § 14, *citing In re KeyTronics*, 744 N.W.2d at 441. Several factors can affect whether one is a co-owner of the business, and all of them weigh in favor of finding Gloria a partner.

A. If one shares profits then she is presumed to be a partner, but the circuit court refused to find whether profits were shared.

South Dakota law provides that “[a] person who receives a share of the profits of a business is presumed to be a partner in the business[.]” SDCL § 48-7A-202(c)(3). *See also, Temple v. Temple*, 365 N.W.2d 561, 566 (S.D. 1985) (“Receipt of a share of the profits of a business is prima facie evidence of partnership status.”) For many decades, Richard and Gloria divided the profits in proportion to their ownership percentage—one-third to Gloria and two-thirds to Richard. (SR1: 1946:16-23; SR1: 352-405 (Exs. 18-21).)

It is undisputed that Gloria and Richard shared profits, and that fact creates a presumptive partnership. But the circuit court did not make a Finding of Fact regarding division of profits. Gloria proposed the Finding² but the circuit court entered no finding on that issue one way or the other.³

B. The fact that Richard filed partnership tax returns and issued Gloria a K-1 as his partner indicates that she is a partner.

Filing partnership tax returns is evidence of co-ownership of the business as partners. *Coder v. Jones*, No. CIV 11-1007, 2012 U.S. Dist. LEXIS 33819, at *4 (D.S.D. Mar. 8, 2012), and *Tarnavsky v. Tarnavsky*, 147 F.3d 674, 677 (8th Cir. 1998); *See also, Insurance Agents v. Zimmerman*, 381 N.W.2d 218, 223 (S.D. 1986), and *Widdoss*, 331 N.W.2d at 833 (both finding that the lack of a partnership tax return was evidence of a lack of partnership).

Richard took over the books of Sleep Ranch after he and Karen acquired Ruth's interest in 1975 and has been responsible for all bookkeeping and tax returns since. (SR1: 1886:8-10; 1976:7-9.) Richard has always filed a Partnership Tax Return for Sleep Ranch and has always issued a K-1 to Gloria as a partner of Sleep Ranch Partnership. (SR1: 1976:7-11; see, e.g., SR1: 365-732 (Exs. 19-47).) Richard certified

² Def. Prop. FOF 42-44; SR1: 2032; Appellants' Appx. 29.

³ See, generally, Findings of Fact and Conclusions of Law, SR1: 2166-2185, Appellants' Appx: 3-22.

that Sleep Ranch was a domestic general partnership (SR1: 631 (Ex. 45, p. 1, line 1(a))), and that Gloria was a domestic, general partner. (SR1: 645 (Ex. 45, p. 15, lines G & H).)

Sharing profits, plus filing partnership tax returns, indicates that Gloria was a co-owner of the business, and not just a co-owner of the assets of the business.

C. Using a common bank account is evidence of co-ownership as a partnership.

Using a common bank account is evidence of co-ownership of the business as a partnership. *Widdoss*, 331 N.W.2d at 833 (S.D. 1983); *Coder*, 2012 U.S. Dist. LEXIS 33819 *4. “Intent can be found by filing partnership tax returns, 50/50 profit/loss allocation, joint bank accounts and equipment, and borrowing money together.” *Paystrup v. Doman Farms Logistics, LLC*, No. 1:18-CV-050, 2020 WL 1105102, at *3 (D.N.D. Mar. 6, 2020) (citing, *Tarnavsky*, 147 F.3d at 677; *Cochell*, 2010 WL 11627912 at *3-4; *Ziegler*, ¶19; *Gangl*, 281 N.W.2d at 581).

Sleep Ranch Partnership has had its own checking account since Eugene’s death. (SR1: 1854:7-16.) Sharing profits, plus filing partnership tax returns, plus using a common partnership checking account indicates that Gloria was a co-owner of the business, and not just a co-owner of the assets of the business.

D. The fact that Richard and Gloria considered forming other types of business entities for their operation is evidence of their partnership.

Richard and Gloria attempted to form business arrangements other than a partnership, including limited liability companies and corporations. In doing so, they demonstrated their intention to operate a common business for profit. Parties' actions expressing an intention to form a corporation or limited liability company can be the very evidence that demonstrates the necessary intent to form a partnership. *In re KeyTronics*, 744 N.W.2d at 440.

That intent is evidenced here. Over the years, Richard and Gloria discussed entity structures for Sleep Ranch. As early as 1974, Richard's attorney, Gary Richards, proposed incorporating Iron Creek Lake and Sleep Ranch, with Ruth, Richard, and Gloria each receiving one-third of the stock. (SR1: 236-237 (Ex. 8).) In 1992, Richard and Gloria actually incorporated Iron Creek Lake as Iron Creek, Inc. (SR1: 506-526 (Ex. 32); SR1: 1866:12-15.) In 1999, they consulted attorney Patrick Goetzinger about restructuring Sleep Ranch Partnership as a subchapter S corporation or limited liability company. (SR1: 1371-1398 (Ex. 197); SR1: 1865:21-1866:23.) Goetzinger discussed possibilities for ownership of Iron Creek Lake as one entity, and the ranch as a separate entity. (SR1: 1371-1398 (Ex. 197).) Based on those discussions, Goetzinger incorporated Iron Creek Lake, Inc. to operate the resort at Iron Creek. (SR1: 527-551 (Ex. 33).) Goetzinger formed Iron Creek Ranch, LLC to hold the ranch

land. (SR1: 238-254 (Ex. 9).) Both of those entities were administratively dissolved in 2006. (SR1: 238-254 & 527-551 (Exs. 9 & 33).)

Richard and Gloria's affirmative actions taken towards creating various corporate entities – spanning across both decades, and various pieces of the business – demonstrates the necessary intent to associate in a business for profit.

E. Gloria had a right of control, though she rarely tried to exercise that right, and was ignored when she did.

“Control is an indispensable component of co-ownership which, when combined with profit sharing, strongly suggests the existence of a partnership.” *Gangl*, 281 N.W.2d at 580. Control is a necessary element of partnership because it distinguishes partnerships from agency relationships. Unif. Partnership Act § 202, cmt 1 (co-ownership distinguishes a partnership from a mere agency relationship, and ownership involves the power of control). So, for example, an employee bonus that is based upon a percentage of the employer's profits does not make the employee a partner, in part, because the employer still has control. Or, a landlord might own the real estate on which a business operates, and might even be paid rent based on a percentage of profits or revenues, but that does not make them a partner – again, because they lack control over the business.

It is important to note, though, that the question is not whether each partner actually exercised control, but only whether they had the

right to exercise control. *Gangl*, 281 N.W.2d at 580 (“An important qualification to the control test is, however, that a person may be a partner even though he has entrusted control of the business exclusively to his associates. The question then becomes whether or not the participant had the right to exercise control in the management of the business.”) One partner can defer management to another partner without changing the fact that they are partners. *In re Bartenwerfer*, 596 B.R. 675, 682 n. 3 (Bankr. N.D. Cal. 2019), *aff’d*, No. 3:13-AP-03185, 2020 WL 1970506 (B.A.P. 9th Cir. Apr. 23, 2020) (“A partnership can exist as long as the parties have the right to manage the business, even though in practice one partner relinquishes the day-to-day management to the other partner.”)

Over the years, Gloria attempted to participate in management, including Iron Creek Lake improvements, consideration of nature conservancy, obtaining wildland fire suppression grants, historic preservation of the buildings, and assistance with bookkeeping, accounting, and taxes. (SR1: 1674:2-18.) But her efforts to participate in management were met with no success and generally received no response. (SR1: 1674:19-23.) Gloria asked for information about the operations and how Richard calculated the amounts he was paying her. (SR1: 2785:14-22.) Richard refused to provide them, admitting it was because he was stubborn. (SR1: 1907:16-1908:7.) Gloria believed that, as a

minority partner, she had little recourse to attempt to impose her ideas upon the partnership. (SR1: 1674:24-1675:3.)

Sharing profits, plus filing partnership tax returns, plus using a common partnership checking account, plus attempted participation in management indicates that Gloria was a co-owner of the business, and not just a co-owner of the assets of the business.

F. Richard and Gloria referred to one another as partners.

In considering whether the parties view themselves as part of a common enterprise, “it is generally considered relevant how the parties characterize their relationship or how they have previously referred to one another.” *In re KeyTronics*, 744 N.W.2d at 440. Both Richard and Gloria referred to Sleep Ranch as a partnership between the two of them.

The parties agree that Gloria and Richard never expressly discussed the status of their current legal relationship. They discussed that they might form corporations or limited liability companies, but did not discuss what it meant if they did not form them. However, Richard occasionally referred to Sleep Ranch Partnership as a partnership. For example, while making notes to complete the 2010 Partnership Tax Return, Richard noted that Sleep Ranch and Iron Creek Lake paid his personal limited liability companies’ income “from partnership.” (SR1: 1410 (Ex. 200, p. 6); SR1: 1456 (Ex. 202, p. 5).) And, in a letter to Gloria declining to provide her additional valuation information about Sleep

Ranch, Richard told her, “I would think that the appraisal you had completed would help you establish the majority of the value of the partnership.” (SR1: 234 (Ex. 7, p. 2); SR1: 1956:4-1959:3; SR1: 1410 (Ex. 200, p. 6); SR1: 1456 (Ex. 202, p. 5).)

Gloria likewise referred to Sleep Ranch Partnership as a partnership. In a 2008 letter to Richard, Gloria wrote: “I have always placed complete trust in you relative to ranch operations, including proper management and accounting practices and placed the same trust in your intentions to treat me fairly and equitably as your partner.” (SR1: 902 (Ex. 82); SR1: 1696:20-1697:2.) Richard did not respond to the letter or otherwise deny Gloria’s statement that they were partners. (SR1: 1672:21-1673:1; 1976:12-1977:4.)

Richard’s use of, and acquiescence in Gloria’s use of, the word “partner,” especially combined with the sharing of profits, the partnership tax returns, the partnership bank account, evaluating and setting up other forms of common business ownership, demonstrates an intention to operate as a single business.

3. THE CIRCUIT COURT MISAPPLIED SDCL 48-7A-202 BY REQUIRING SUBJECTIVE INTENT.

In determining whether a partnership is formed, the Court does not look at the parties’ subjective intent. Rather, “it will be ascertained objectively, rather than subjectively, from all the evidence and circumstances.” *In re KeyTronics*, 744 N.W.2d at 439-440. Where parties

act so as to operate a commonly owned business for profit, “then they may inadvertently create partnership despite their expressed subjective intention not to do so.” *Id.* at 439 (*quoting* Unif. Partnership Act (1997) § 202(a), cmt 1).

Yet the trial court stressed that the siblings never met to discuss partnership, and that no agreement existed (SR1: 2166-2185; Appellants’ Appx. 3-22, FOF ¶12, 24–26, COL ¶8, 30). That is not the test, and it is this distinction that explains how intent is both a necessary condition to form a partnership, and how people can become partners despite an express intention not to be partners. Intent to form a partnership is not the test. The test is the intent to do the things that, objectively, form an association to carry on a business for profit.

The Revised Uniform Partnership Act provides, “Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.” SDCL § 48-7A-202(a). Therefore, “[a] partnership is formed when two or more persons carry on as co-owners a business for profit, whether or not the persons intend to form a partnership.” *McGregor* 2009 S.D. 95, ¶ 18, 775 N.W.2d at 96, *quoting* SDCL 48–7A–202(a). “Indeed, [parties] may inadvertently create a partnership despite their expressed subjective intention not to do so. The new language [in the Revised Uniform Partnership Act] alerts

readers to this possibility.” § 202. Formation of Partnership, Rev. Uniform Partnership Act Section 202, cmt 1 (2020-2021 ed.).

Richard intended to share profits with Gloria. Richard intended to file partnership tax returns. Richard intended to use a common bank account. All of these indicate co-ownership of a business for profit. And that is the only test of intent that is at issue.

4. THE CIRCUIT COURT MISAPPLIED SDCL § 48-7A-202(C)(1) BY CONCLUDING THAT INHERITING PROPERTY AS TENANTS IN COMMON NEGATES A PARTNERSHIP.

While parties may involuntarily form a partnership, the conduct that gives rise to the partnership must be voluntary. “People do not become partners when they attain co-ownership of a business for profit through an involuntary act.” *In re KeyTronics*, 744 N.W.2d at 439.

The *KeyTronics* Court went on, though, to say that parties can take voluntary actions that lead to an inadvertent partnership.

But, if the parties' voluntary actions form a relationship in which they carry on as co-owners of a business for profit, then “they may inadvertently create a partnership despite their expressed subjective intention not to do so.” Intent, in such cases, is still of prime concern, but it will be ascertained objectively, rather than subjectively, from all the evidence and circumstances.

Id., at 439–40. Therefore, even if people acquire a business involuntarily, they can subsequently conduct that business in a manner that creates a partnership.

The circuit court relied on the tenancy-in-common language from the inheritance documents to find that Gloria and Richard were *merely* tenants in common. (SR1: 2166-2185; Appellants' Appx. 3-22, FOF ¶8, COL ¶57). But SDCL § 48-7A-202(c)(1) provides that tenancy in common does not preclude partnership; it merely does not establish it as a matter of law. Gloria agrees that merely having an interest in the property does not establish a partnership, but all the other indicia of partnership do.

Whatever their expectations for the future might have been, Richard and Gloria did not voluntarily inherit the ranch operation when they did. Eugene died unexpectedly and without a will. Ruth, Richard, and Gloria found themselves owners of the Sleep Ranch and Iron Creek Lake involuntarily. They inherited as tenants in common under the law. As a tenant in common, Gloria had an absolute right to partition at the time of her inheritance. SDCL § 21-45-1; *Wisner v. Pavlin*, 2006 S.D. 64, ¶ 17, 719 N.W.2d 770, 777. She could have demanded her one-third and left. She did not. It is not in their inheritance, itself, that Richard and Gloria voluntarily associated in the business of Sleep Ranch. It is in their decision to combine their independent inheritances to carry on the business for shared profit that they became partners.

5. PAYMENT OF "RENT" TO GLORIA WAS INAPPROPRIATE BECAUSE SHE HAD NOT AGREED TO SELL HER INTEREST IN THE CATTLE.

One of the exceptions to the general rule that sharing profits creates a partnership is where the profits are paid merely as rent. SDCL §

48-7A-202(c)(3)(iii). After 2003, when Richard claimed to have purchased Gloria's interest in the cattle, he stopped sharing profits with her and converted his payments to rent for her share of the land. Each year, Richard just unilaterally determines what he will pay Gloria as rent without consulting her. (SR1: 1682:6-1683:6; 1763:10-16.) At the same time, Richard also stopped reporting ranching operations on the Sleep Ranch return and started reporting Sleep Ranch as merely a land rental agreement on Form 1040 Schedule E. (SR1: 214-225, 406-461, 576-593, 600-732 (Exs. 5, 22-26, 36, 42-47); SR1: 1970:3-10.) But Gloria never agreed to sell her part of the cattle operation separate and apart from an agreement for her whole interest; therefore, there was no contract to sell the cattle. *Jacobson v. Gulbransen*, 2001 S.D. 33, ¶22, 623 N.W.2d 84, 90 (“To form a contract, there must be a meeting of the minds or mutual assent on all essential terms.”)

Over many years, Richard and Gloria had discussions about Richard purchasing Gloria's interest in Sleep Ranch. To reach a value on her interest, they discussed what each part of her interest might be worth—much like valuing a car dealership—by considering inventory, real estate, and goodwill. The only part they agreed upon was cattle, at \$60,000. So, Richard simply gave her a check for \$60,000 and took the cattle. Because they had never agreed to a piecemeal sale, Richard's attempt to buy Gloria's cattle was merely an offer to buy only her cattle. “The general rule is that an acceptance must not change, add to, or

qualify the terms of the offer if there is to be a contract.” *Advanced Recycling Sys., LLC v. Se. Properties Ltd. P’ship*, 2010 S.D. 70, ¶16, 787 N.W.2d 778, 784, quoting, *Rossum v. Wick*, 74 S.D. 554, 557, 56 N.W.2d 770, 771 (1953). “A reply to an offer, though purporting to accept it, which adds qualifications or requires performance of conditions, is not an acceptance, but is a counteroffer.” *Advanced Recycling*, at ¶16. Gloria never accepted that counteroffer.

“Consent is an essential element of a contract.” *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 21, 736 N.W.2d 824, 832. Consent “requires an offer by one party and an acceptance by the other.” *Advanced Recycling*, ¶ 16. Gloria rejected Richard’s offer and returned his proffered payment. When Richard would send her annual Schedule K-1 with a check that said “rent” in memo, Gloria protested to Richard that she had no rental agreement with anyone. When Richard claimed he had purchased her interest in the cattle operation, she reiterated that she had not sold it.

Because there was never an agreement by Gloria to sell her interest in the cattle operation, she remained, and remains, a full one-third owner in the entire cattle ranching operation. The circuit court’s FOF ¶¶44-51 (SR1: 2174; Appellants’ Appx. 11 ¶¶44-51) are clearly erroneous.⁴

⁴ Because the circuit court found there never was a partnership, it did not consider whether Richard terminated the partnership when he unilaterally stopped paying Gloria her share of the profits. While a partner may dissociate (SDCL § 48-7A-602), the partnership continues

Conclusion

Appellants have found no law where a party owned all the assets used in a business, received a proportionate share of the profits of the business, received K-1s as a partner with partnership tax returns, and was found not to be a partner.

After acquiring Sleep Ranch, Gloria had a choice. Should she take her one-third interest and leave, or should she throw in her interest with her brother in the family business? Richard also had a choice. Should he pull out his two-thirds and just go on without his sister, or should he keep her one-third in the business and operate as the family always had? Both had to make the same decision to commit their resources to the family business, or it would end. They stayed together to operate Sleep Ranch as partners.

Request for Oral Argument

Appellants respectfully request that the Court grant them oral argument on the issues presented in the appeal.

until it is wound up. *Jade, Inc. v. Bendewald*, 468 N.W.2d 138, 141 (S.D. 1991) (“After dissolution, the partnership continues and terminates only when the process of completing and settling all partnership business has taken place.”); SDCL § 48-7A-802. And, in any event, the dissolution would terminate Gloria’s right to share in partnership assets. *Jade, Inc.*, 468 N.W.2d at 142.

Respectfully submitted the 30th day of September 2025.

**BANGS, McCULLEN, BUTLER, FOYE
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Certificate of Compliance

This brief is submitted under SDCL § 15-26A-66(b). I certify that the brief complies with the type volume limitation. In reliance upon the document properties provided by Microsoft Word, in which this brief was prepared, the brief contains 6637 words and 34403 characters, including the table of contents, table of cases, jurisdictional statement, statement of legal issues, and any certificates of counsel, but excluding any addendum materials.

Certificate of Service

The undersigned hereby certifies that he electronically filed a copy of this legal document with the South Dakota Supreme Court and that the original of the same was filed by serving them upon:

Ms. Shirley A. Jameson-Fergel
South Dakota Supreme Court
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Pierre, SD 57501-5070

A true and correct copy of *Appellants' Brief* was provided by electronic means to:

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which addresses are the last addresses of the addressees known to the subscriber.

Dated this 30th day of September 2025.

/s/ Jeffrey G. Hurd

Jeffrey G. Hurd

Appendix

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STATE OF SOUTH DAKOTA)
) SS
COUNTY OF LAWRENCE)

IN CIRCUIT COURT

FOURTH JUDICIAL CIRCUIT

RICHARD D. SLEEP and KAREN E. SLEEP,
husband and wife; **JEFFERY E. SLEEP and**
JODI K. SLEEP, husband and wife;
MATTHEW R. SLEEP; MELISSA A. DEAN;
SLEEP RANCHES, LLC, a South Dakota
Limited Liability Company; **SLEEP LAND**
AND LIVESTOCK COMPANY, LLC, a South
Dakota Limited Liability Company; **IRON**
CREEK LAKE CAMPGROUND & STORE,
LLC, a South Dakota Limited Liability
Company; and **IRON CREEK, LLC**, a South
Dakota Limited Liability Company,

Plaintiffs,

vs.

GLORIA SLEEP STEELE, a/k/a **GLORIA G.**
STEELE, and **STEELE REAL ESTATE, LLC**,
a South Dakota Limited Liability Company,

Defendants.

40CIV18-000249

FINAL JUDGMENT
(TRIALS I AND II)

This matter comes before the Court at the conclusion of two bench trials, upon which the Court now enters its Final Judgment under the authority of SDCL §§ 15-6-52(a), 15-6-54(a), and 15-6-58(a) as follows:

TRIAL I (Partnership)

Both parties sought declaratory judgment on whether a partnership was formed between the parties. That issue was tried to the Court sitting without a jury on December 15 – 16, 2020, and the Court entered its Findings of Fact and Conclusions of Law on March 31, 2021. In doing so, **FINDS** that:

1. The parties are not, and have not been, partners as that term is defined under South Dakota law;

2. Rather, the parties are, and have been, tenants in common with regard to the assets each inherited from the Eugene Sleep Estate.

TRIAL II (Partition)

A second trial on the issue of partition of the Estate's real property was tried before the Court sitting without a jury on October 1 – 2, 2024, and the Court entered its Findings of Fact and Conclusions of Law on April 4, 2025, **FINDS** that:

3. The Estate Property shall be partitioned as follows:

a) Plaintiffs hereby own exclusive title to the following parcels legally described in the Court's Findings of Fact and Conclusions of Law: Armstrong, Wheeler, Homestead, Tinton North, Tinton South – Sleep, and Iron Creek Lake Campground.

a) Defendants hereby own exclusive title to the following parcels legally described in the Court's Findings of Fact and Conclusions of Law: Harding County, Gabe, Beaver Creek, Tinton South – Steele, and Iron Creek West.

4. The Court retains jurisdiction over this matter to enter further orders as may be necessary to effectuate this Judgment, including such matters as enforcement of any transfer documents and correction of legal descriptions.

JUDGMENT BE ENTERED ACCORDINGLY.

5/1/2025 11:37:31 AM

BY THE COURT:



Michelle Comer, Judge
Judge of Circuit Court

Attest: CAROL LATUSECK, CLERK
Nicolussi, Bree
Deputy



No objection as to form (Jeffrey G. Hurd/ Emily M. Smoragiewicz)

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF LAWRENCE)

IN CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT

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husband and wife; **JEFFERY E. SLEEP and
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a South Dakota Limited Liability Company,

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40CIV18-000249

**COURT'S FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Plaintiffs¹ offer their proposed Final Findings of Fact and Conclusions of Law under the authority of SDCL § 15-6-52(a) and the Court's Scheduling Order of January 25, 2021.

The trial was held on December 15-16, 2020 and the Court, having heard the testimony, considered the evidence and argument of counsel, finds, and concludes as follows:

¹ "Plaintiffs" will be referred to collectively as "Sleeps," or individually by their name, or as necessary, by the legal entity they own.

FINDINGS OF FACT

A. Relevant Factual Background

1. Any conclusion of law deemed to be a finding of fact or any finding of fact deemed to be a conclusion of law shall be appropriately incorporated in the findings of fact or conclusions of law as the case may be.

2. Plaintiff Richard Sleep and Defendant Gloria Steele are the only children of Eugene and Ruth Sleep.²

3. Richard has lived and worked his entire 77 years on the land his parents, grandparents and great-grandparents worked and homesteaded, except for the time he was attending college at SDSU.³

4. Upon his graduation from SDSU in 1965, Richard returned to the Sleep Ranch where he was employed as a ranch hand until 1975.⁴

5. Richard was joined on the Sleep Ranch by his wife Karen after they married in 1966.⁵ Richard and Karen have lived their entire married lives on the Sleep Ranch.⁶

6. While Eugene was alive, Richard was never a partner with him or his mother Ruth in the Sleep Ranch operations.⁷

a) Richard was paid as an employee and received a W-2.⁸

² Trial Ex. 1.

³ TT 267:8-268:24.

⁴ TT 269:7-21; TT 229:23-230:6.

⁵ TT 267:23-268:7, 269:25-270:1.

⁶ Id.

⁷ TT 27:20-28:1, 271:22-24

⁸ TT 27:14-19; TT 229:23-230:6.

- b) The cattle Richard, and later Karen, owned while working for the Sleep Ranch were owned and branded separately from those owned by his parents, Eugene, and Ruth.⁹
- c) Revenue, expenses, banking, records and bookkeeping for the Estate cattle operations and the Sleep cattle operations were kept separate.¹⁰
- d) From 1975 to 2004, Richard ran Gloria's share of the cattle, distributing her share of the operating income from them.¹¹
- e) The land upon which the Sleep Ranch operated was owned by Eugene, or Eugene and Ruth.¹²
- f) There is no evidence that Richard and Eugene or Richard and Ruth entered a partnership agreement, either written or oral.¹³
- g) Richard remained a W-2 employee of the ranch after Eugene died and until 1975.¹⁴
- h) There is no evidence Ruth and Richard, or Ruth Gloria and Richard formed a partnership after Eugene died.¹⁵
- i) After Eugene's death, the records for the Sleep Ranch remained separate from those of Richard and Karen.¹⁶ There is no evidence of co-mingling of revenue, or payment of expenses.¹⁷

⁹ TT 271:22-272:18.

¹⁰ Id.

¹¹ TT 303:24-304:5; Trial Ex. 78.

¹² Trial Ex. 1

¹³ TT 27:20-28:1; TT 51:1 – 52:1.

¹⁴ TT 27:2-19, 269:12-23, 229:23-230:6.

¹⁵ TT 51:1-3, 274:1-9, Ex. 1 (no reference to partnership but rather tenants in common)

¹⁶ TT 39:9-40:25, 251:10-252:12, 283:13-24, 329:17-19, 336:11-14.

¹⁷ Id.

7. Eugene died in 1967 without a will.¹⁸ His estate was distributed under the laws of intestacy to Ruth, Gloria, and Richard, each receiving one-third of the Estate's assets, comprised mostly of land, livestock, and equipment.¹⁹

B. A partnership was not formed in 1969 – or after.

8. The Estate land conveyed by the Decree to Ruth, Richard and Gloria was as tenants in common, not as partners or as joint tenants.²⁰

9. The Decree of Distribution for Eugene Sleep's Estate was entered on December 29, 1969.²¹

10. After Eugene's death, Richard and Karen took over the ranching operations for the Sleep Ranch. Richard continuing his role as ranch hand and was paid in the same manner he had been before Eugene's death.²²

11. Ruth assumed Eugene's role as bookkeeper for Sleep Ranch Operations and maintain the books and accounts separately from those of Richard and Karen.²³

12. Gloria testified that she, Ruth, and Richard did not meet after the Decree was entered to discuss forming a partnership, or how the assets of the estate would be operated or managed.²⁴

13. No partnership was formed or ever existed between Ruth, Gloria, and Richard.²⁵

¹⁸ TT 271:13-14; Trial Ex. 1.

¹⁹ Trial Ex. 1.

²⁰ Id.; TT 46:18-47:1.

²¹ Id.

²² TT 27:14-19, TT 269:7-21.

²³ TT 35:10-11, 39:9-40:25, 251:10-252:12, 273:8-11 283:13-24, 329:17-19, 336:11-14.

²⁴ TT 51:1-52:1, 94:7-9, 108:19-23.

²⁵ TT 27:20-28:1, 51:21-52:1, 94:7-9, 108:19-23.

14. Richard and Karen purchased Ruth's one-third interest in Sleep Ranch assets in 1976.²⁶
15. The Contract for Deed for the sale from Ruth to Richard and Karen describes the conveyance as a tenancy in common, the same manner in which she received it from the estate.²⁷
16. The written Contract for Deed expressed:
- (d) *Nothing herein is intended nor shall same be construed as creating any partnership between or among any of the parties hereto, provided, however, nothing herein shall prevent any parties hereto from effecting partnership agreements, one with another, by separate agreement(s).*²⁸
17. The Contract for Deed recognized Gloria's ownership as a tenant in common, not as a partner:
- All parties hereto are aware of the fact that Gloria Sleep Steele is not a party hereto and nothing herein is intended as attempting to usurp the *undivided ownership right, title and interest of said Gloria Sleep Steele in and to properties subject hereof.*²⁹
18. At the time the Contract for Deed was drafted, a Lease Agreement between Gloria and the Sleeps for Sleep's lease of Gloria's one-third interest was proposed.³⁰
19. Letters from the drafting attorney encouraged Gloria to contact him if she had questions or concerns.³¹
20. Gloria did not sign the Lease, claiming she did not know of it, but admitting it was sent to her correct address at the time the Lease and related correspondence were sent.³²

²⁶ Trial Ex. 29, Contract for Deed.

²⁷ Id.

²⁸ Trial Ex 29, at SR00445, 2(d).

²⁹ Id., at SR00446, 3(a) (emphasis added).

³⁰ Trial Ex. 61, Lease Agreement and Options to Purchase.

³¹ Trial Ex. 29 at 2, 16-18; TT 47:25-49:23; Trial Exs. 61 and 198.

³² TT 47:25-49:23, 50:2-15; Trial Ex. 198.

21. Gloria testified she was not asked, nor was she notified of Ruth's sale of her interest in the estate property to Richard and Karen.³³

22. The three Warranty Deeds conveying Ruth's one-third interest in the land to Richard and Karen did so as "tenants in common."³⁴

23. As a result of Ruth's sale to Richard and Karen, she withdrew from the 'partnership' if one was ever formed.³⁵

C. There is no evidence of 'intent' to 'associate 'for the purpose of forming a partnership.

24. Gloria testified that she and Richard never met after Richard and Karen purchased Ruth's interest to discuss a partnership or how the assets owned by Gloria and Richard would be managed or operated.³⁶

25. There is no dispute that neither Richard or Karen have proposed or considered a written partnership agreement.³⁷

26. There is no dispute that neither Richard or Karen have proposed or consider an oral partnership agreement.³⁸

27. Today, Richard and Karen's tenancy in common interest in the real estate from Eugene's estate is owned under the entities, "Sleep Land and Livestock, LLC" and "Iron Creek, LLC."³⁹ Gloria's one-third interest is owned by "Steele Real Estate, LLC."⁴⁰

³³ TT 41:6-15.

³⁴ Trial Ex 29, Warranty Deeds.

³⁵ SDCL § 48-7A-801(1).

³⁶ TT 51:1-52:1, TT 51:1-52:1, 94:7-9, 108:19-23.

³⁷ TT 50:23, 51:21-52:1, 94:7-9, 108:19-23, 109:2:8.

³⁸ Id.

³⁹ TT 356:15-18.

⁴⁰ TT 26:6-17; Trial Ex. 51.

28. Neither Richard nor Gloria required consent of the other when they transferred their interest in the Estate property to another entity for estate planning purposes⁴¹ Neither made that transfer as a partnership interest.⁴²

29. The tenancy in common between Richard and Gloria is referred to for internal bookkeeping purposes and Form 1065 filings as ‘Sleep Ranch.’⁴³

30. In the first season after Eugene’s death, 1968, Gloria and Ruth managed the Iron Creek operations together.⁴⁴

31. Beginning in 1969, Gloria and her late husband Robert Steele ran the Iron Creek Lake Store and Campground for the same six years Richard remained an employee of the Ranch—until 1975.⁴⁵

32. During this period between 1969 and 1975, Richard did not participate in the Iron Creek operation or management, and he received none of its profit.⁴⁶

33. The Sleeps, who began operating the store solely in 1976, report the net profits through “Iron Creek Lake Campground & Store, LLC.”⁴⁷

34. From 1969, when the Decree of Distribution for Eugene’s Estate was filed, until 1975 when Richard and Karen bought Ruth’s one-third interest, the proceeds for the sale of cattle were not distributed to either Gloria or Richard.⁴⁸

⁴¹ TT 73:15-25, 75:7-12.

⁴² *Id.*

⁴³ TT 300:22-301:4.

⁴⁴ TT 62:5-11.

⁴⁵ TT 62:12-63:5.

⁴⁶ TT 30:6-17, 31:19-24, 32:20-33:1, 56:2-9, 62:4-63:9, 240:10-241:18

⁴⁷ TT 170:19-171:4, 174:5-6, 241:21-243:16; Trial Ex. 210

⁴⁸ TT 35:12-19; 108:24-109:1, 343:24-344:2

35. Gloria did not receive income from the Ranch until after Richard took over responsibility of keeping the Sleep Ranch books.⁴⁹

36. The brand Richard and Karen owned at the time of Eugene's death was separately owned from Richard's parents, Eugene and Ruth.⁵⁰

37. The gross income, bookkeeping and profit Richard and Karen earned from their own cattle operation was kept separate from those of Eugene and Ruth.⁵¹

38. Gloria did not inquire about or participate in the management, contribution of capital, risk, day-to-day operations, or labor in either her or Richard's interest in the Estate assets.⁵²

39. Gloria began urging her assertion that a partnership existed in approximately 2003 at the suggestion of her attorney at the time.⁵³

40. Ruth sold her one-third interest in the Estate assets to Richard and Karen in 1975.⁵⁴

41. Gloria did not receive notice of Ruth's sale of her interest to Richard and Karen nor the price until after it occurred.⁵⁵

42. Richard and Karen's lawyer, Bill Anderson, referencing the relationship as a "tenancy in common" in the contract for deed and supporting documents, and sending Gloria a proposed lease with Sleeps that specifically disclaimed the formation of a partnership.⁵⁶

⁴⁹ TT 35:12-19; 108:24-109:1, 343:24-344:2

⁵⁰ TT 271:22-272:18

⁵¹ Id.

⁵² TT 39:3-23; 61:16-19, 98:2-5, 256:12-25, 281:5-13, 292:15-25, 374:24-375:2.

⁵³ TT 118:4-124:19, Trial Exs. 82, 86-87.

⁵⁴ Trial Ex 29.

⁵⁵ TT 47:25-49:23, 50:2-15; Trial Ex. 198.

⁵⁶ Trial Ex. 29 at pp. 2, 16-18; TT 47:25-49:23; Trial Exs. 61 and 198.

43. During the years the ranch operation lost money, Gloria was not asked to provide her share of the operational shortfall.⁵⁷

44. Since 2004, the payments to Gloria for her interest in the Estate property have been paid by Richard as “rent.”⁵⁸

45. Gloria sold her interests in the Estate livestock and thereafter, received ‘rent’ payments.⁵⁹

46. In 2003, Richard and Gloria negotiated the sale of Gloria’s interest in her 80 head of cows she received from the Decree.⁶⁰

47. Richard’s acceptance of Gloria’s offer is established in his delivery of the check for the agreed-upon amount.⁶¹

48. After the fact, Gloria disavowed that she had agreed to the sale of cattle.⁶²

49. In her May 10, 2004 letter, Gloria, admitted an agreement was reached but that it merely needed to be endorsed in writing.⁶³

50. Richard adapted the formula from her value of the calf crop to a rent payment after Gloria sold her 80 head of cows to him for \$60,000.⁶⁴

51. Richard delivered a second check to Gloria on December 30, 2004 representing the remaining interest in the cattle.⁶⁵

⁵⁷ Trial Ex. 78.

⁵⁸ TT 316:7-10; 325:13-326:3; Trial Ex. 22, p. 10, Trial Ex. 91, Trial Ex. 110, at p. 11.

⁵⁹ Id.

⁶⁰ TT 57:4-58:599:15-100:2, 288:20-290:18; Trial Ex. 2.

⁶¹ Id., TT 57:1-58:5.

⁶² TT 57:15-16, 100:3-6.

⁶³ Trial Ex. 2.

⁶⁴ TT 287:14-288:2, 316:7-11, 335:13-327:20; Trial Exs. 2, 110 at 6, Trial Ex. 22.

⁶⁵ Id.

52. Richard calculated a rental value for her portion of the Estate land, based on comparable rental rates the Sleeps paid to lease pasture, and the ag lease rates in neighboring counties in western South Dakota.⁶⁶

53. Gloria has never exercised 'control' or management over the 'Sleep Ranch' business.⁶⁷

54. Gloria has never been placed on the 'Sleep Ranch' operating bank account.⁶⁸

55. The check that Gloria receives annually from 'Sleep Ranch' operations includes deductions for typical carrying costs of land, such as weed control, taxes and insurance, however, Gloria never paid any bills, purchased equipment, materials, or supplies.⁶⁹

56. The only brand she ever owned was assigned to Richard.⁷⁰

57. She has never signed a lease, or a loan document for Sleep Ranch.⁷¹

58. Richard and Karen were careful to *exclude* Gloria's one-third interest in the Estate property as collateral on loans they obtained *in their names* for Sleep Ranch, and the loans were in their individual names.⁷²

59. Gloria received payments from third parties, for example timber sales, it was to her individually.⁷³

60. Over the course of time, most of the equipment has been replaced with more modern equipment purchased by the Sleeps with personal funds.⁷⁴

⁶⁶ Id.; TT 335:13-327:20; Trial Ex. 22.

⁶⁷ TT 14:15-16.

⁶⁸ TT 53:2-9, 137:8-20, Trial Ex. 110.

⁶⁹ TT 39:9-13, 40:11-41:5, 336:8-22; Trial Ex. 30, at SR00300; Trial Ex. 36, at SLEEP 002183, Trial Ex. 44, at SLEEP 002248-002251-002252.

⁷⁰ TT 97:20-98:1

⁷¹ TT 255:2-8.

⁷² TT 39:9-41:5, 331:8-10, 333:16-334:18; Trial Ex. 71.

⁷³ TT 295:1-20.

⁷⁴ TT 336:3-22.

61. Since taking over bookkeeping responsibilities in 1975, Richard has each year filed an IRS 1065 Partnership Returns for 'Sleep Ranch.'⁷⁵

62. Gloria has received a K-1 from Sleep Ranch since 1975.⁷⁶

63. Sleeps file a Form 1065 to report income for tax purposes for *all* their business entities, most of which are limited liability companies.⁷⁷

64. A Form 1065 is an appropriate method for multi-member limited liability companies to report income from the Estate Property.⁷⁸

65. Of the three choices of IRS forms to file, individual, corporate or partnership, the Form 1065 in Richard's judgment and upon advice he received in the 1970's, was the closest fit.⁷⁹

66. Over the last 53 years, since the Decree was issued, the Sleeps have acquired additional real estate that is referred to in this litigation as 'after-acquired property.'⁸⁰

67. The after-acquired property was purchased in the Sleeps' name, not in the name of Richard and Gloria.⁸¹

68. The Sleeps purchased the after-acquired property using their own personal funds.⁸²

69. In purchasing the after-acquired property, the Sleeps did not utilize or encumber Gloria's one-third interest.⁸³

⁷⁵ TT 252:7-12, Trial Exs. 5, 36, 51, 53-54, 200-202, 216.

⁷⁶ Trial Ex. 78.

⁷⁷ TT 309:17-310:17, TT; Trial Ex. 200.

⁷⁸ TT 392:22-393:8.

⁷⁹ TT 347:7-19.

⁸⁰ Trial Exs. 29, 62-64, 150-160, 165, 167, 172, 181; TT 31:3-18, 161:25-165:8, 166:9-167:6; 168:7-9.

⁸¹ TT 252:13-255:8, 328:12-330:13.

⁸² *Id.*; Trial Ex. 71.

⁸³ *Id.*

70. Gloria did not directly or indirectly provide capital or funds for Sleeps' acquisition of their after-acquired property.⁸⁴

71. There is no evidence that Gloria has ever referred to 'Sleep Ranch Partnership' in any document or to any third party.

CONCLUSIONS OF LAW

1. The Court has venue and jurisdiction of the subject matter and the parties in this action.

2. In South Dakota, whether a partnership has been formed is considered an issue of fact.⁸⁵

3. The burden of proof of establishing a partnership is upon the party who asserts that such a relationship exists.⁸⁶

4. Since there is no arbitrary test for determining the existence of a partnership, each case must be governed by its own peculiar facts and the existence of the relationship is a question for the trier of fact except in a case where the evidence is conclusive.⁸⁷

5. Several elements that may be weighed in considering whether a partnership exists including: (1) [U]se of the same business account; (2) existence of a partnership agreement; (3) sharing of profits; (4) intention to be partners; (5) representing themselves as partners to third

⁸⁴ *Id.*

⁸⁵ *McGregor v. Crumley*, 2009 S.D. 95, § 20, 775 N.W.2d 91, 98, citing *Widdoss v. Donahue*, 331 N.W.2d 831, 833 (S.D. 1983) (other citations omitted); *Munce v. Munce*, 77 S.D. 594, 96 N.W.2d 661 (1959).

⁸⁶ *In re KeyTronics*, 274 Neb. 936, (2008), 744 N.W.2d 425, 438, citing *In re Estate of Wells*, 221 Neb. 741, 380 N.W.2d 615 (1986).

⁸⁷ *Id.*, citing *Ins. Agents, Inc. v. Zimmerman*, 381 N.W.2d 218, 220 (S.D. 1986) (citing *Munce v. Munce*, 96 N.W.2d 661, 663 (S.D. 1959)).

parties; (6) filing a partnership tax return; (7) contributing capital to a partnership venture; and (8) joint management, administration, or control of the business.⁸⁸

6. The elements considered essential to the existence of a partnership are an association or an intention to be partners; co-ownership of, and community interest in, the business of the partnership; and the profit motive.⁸⁹

7. It is not necessary all factors need to be established, to either disprove or prove a partnership was formed.⁹⁰

8. It is the intent of the parties that controls whether a partnership was formed.⁹¹

9. Inheritance of property, without more, does not create a partnership because the requisite intent is absent.⁹²

10. Participants in a business must intend to be part of an association that includes all the essential elements of a partnership for that association to be a partnership.⁹³

11. A partnership may be formed unintentionally, but in that case, there must nevertheless be a voluntary association to conduct the actions that form a partnership.⁹⁴

⁸⁸ *Coder v. Jones*, 2012 W.L. 844732, *1 (D.S.D., Mar. 8, 2012), citing *Widdoss v. Donahue*, 331 N.W.2d 831, 833 (1983); see also *Ins. Agents, Inc.*, at 223; *MacArthur Co. v. Stein* 282 Mont. 85, 89, 934 P.2d 214, 217 (1997); Mont. Code Ann. § 35-10-202 (1991); *In re KeyTronics*.

⁸⁹ *Gangl v. Gangl*, 281 N.W.2d 574, 579 (N.D. 1979), citing *Haggard v. Rotzien*, 200 N.W.2d 112, 115 (N.D. 1972)

⁹⁰ *In re KeyTronics*, at 441.

⁹¹ *Reiners v. Sherard*, 89 S.D. 446, 451, 233 N.W.2d 579, 582 (1975), citing 60 Am. Jur. 2d, Partnership, § 93; 2005 ND 10, 691 N.W.2d 271, 275 citing 59A Am. Jur. 2d Partnership § 136 (2003).

⁹² SDCL §§ 43-2-17; 43-2-12; *Munce v. Munce*, 96 N.W.2d 661, 663 (SD 1959); See also, *Stephens v. Ainsworth*, 437 P3d 51, 56, 61-62 (Ka. 2019)

⁹³ *Ziegler*, at ¶ 14.

⁹⁴ *Gangl*, at 580.

12. A necessary element for the formation of a partnership is “co-ownership,” which means the sharing of profits and losses of the business, as well as the authority to control management of the business.⁹⁵

13. Control is the right to exercise control in the management of the business as opposed to actual control.⁹⁶

14. A closely related element of evidence of co-ownership in the context of a partnership is community of interest in the profits of the business, and an agreement or right to share profits, and an obligation to share losses as well.⁹⁷

15. In South Dakota, the ownership of property by several people is either:

- (1) Of joint interests;
- (2) Of partnership interests; or
- (3) Of *interests in common*.⁹⁸

16. For property to be jointly owned, or owned as partners, there must be an *expressed* intention conveying it in that manner.⁹⁹

17. An express intention of partnership applies to the inheritance of heirs, unless they collectively choose to organize their inherited interests as partners.

Every interest created in favor of several persons in their own right is an interest *in common, unless acquired by them in partnership, for partnership purposes*, or unless declared in its creation to be a joint interest, as provided in §§ 43-2-12 to 43-2-14, inclusive.¹⁰⁰

18. In determining whether a partnership is formed, *the following rule applies*:

⁹⁵ Ziegler, at ¶ 21.

⁹⁶ *Id.*

⁹⁷ *Id.* at 24.

⁹⁸ SDCL § 43-2-11 (emphasis added).

⁹⁹ SDCL §§ 43-2-11–43-2-17.

¹⁰⁰ SDCL § 43-2-17 (emphasis added).

(1) Joint tenancy, *tenancy in common*, tenancy by the entireties, joint property, common property, or part ownership *does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.* . . .¹⁰¹

19. For “co-ownership” to form a partnership, it is also generally required the parties assume the benefits, risks, and management of the enterprise.¹⁰²

20. Two subjective criteria have been applied by courts to answer the question whether a partnership was formed are whether the parties subjectively viewed themselves as a member of the business, rather than as an outsider ‘contracting’ with it and whether the person asserting a partnership is “[i]n a better position than others dealing with the firm to monitor and obtain information about the business.”¹⁰³

21. By statute, a “partnership at will” means “a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.”¹⁰⁴

22. A partnership formed without a time specified for its continuance, and not formed for a particular transaction or the completion of a particular enterprise, will be considered a partnership to *endure so long as* the parties continue their *mutual consent*. This type of partnership is *known as a partnership at will*.¹⁰⁵

23. Partnerships at will continue so long as there is mutual consent of the partners.¹⁰⁶

¹⁰¹ SDCL § 48-7A-202.

¹⁰² *In re KeyTronics*, at 958.

¹⁰³ *Id.*

¹⁰⁴ SDCL § 48-7A-101(8); *Mack v. Mack*, 2000 S.D. 92, 613 N.W.2d 64, 67.

¹⁰⁵ *Greely v. Walters*, 2014 W.L. 1330983, *10 (D.S.D., Mar. 30, 2014) (emphasis added), citing *Mack*, at ¶ 14.

¹⁰⁶ A partnership at will assumes “[e]ach partner has an equal right in the management and operation of the business of the partnership and the ultimate conclusion is based on the majority votes.” *Mack*, at ¶ 20.

24. Dissolution of the partnership can be sought by the *express* will of any partner at any time and for any reason.¹⁰⁷

25. A partner is dissociated from a partnership when, “(1) [t]he partnership’s having notice of the partner’s express will to withdraw as a partner.”¹⁰⁸

26. While a partnership may continue after a partner withdraws, it does so only after dissolution or waiver of dissolution by the partners.¹⁰⁹

27. A purchase price of assets of the withdrawing partner must be determined a withdrawal from the partnership.¹¹⁰

28. If a partnership was formed at the time the Decree was entered, Ruth withdrew from it when she sold her interest.¹¹¹

29. Participants in a business must intend to be part of an association that includes *all* the *essential elements* of a partnership for that association to be a partnership.¹¹²

30. The element of ‘intent’ focuses “on the intent of the participants to be a part of a relationship which includes the other essential elements of a partnership.”¹¹³

31. Intent means ‘*voluntariness*.’¹¹⁴

32. Tenancy in common does not by itself establish a partnership, *even if the co-owners share profits* made by the use of the property.¹¹⁵

¹⁰⁷ 59A Am. Jur. 2d Partnership § 89 (1987) (emphasis added).

¹⁰⁸ SDCL § 48-7A-601(1); *see also*, SDCL §48-7A-801(1): “In a partnership at will, the partnership’s having notice from a partner, other than a partner who is dissociated under subsections 48-7A-601(2) to (10), inclusive, of that partner’s express will to withdraw as a partner, or on a later date specified by the partner[.]”

¹⁰⁹ SDCL § 48-7A-802(a)(b)(1).

¹¹⁰ SDCL § 48-7A-701.

¹¹¹ SDCL § 48-7A-801.

¹¹² *Id.*, at ¶ 15 (emphasis original and added, respectively).

¹¹³ *Ziegler*, ¶ 14 citing *Gangl v. Gangl*, 281 N.W.2d 574, 580 (N.D. 1979) (other citation omitted).

¹¹⁴ *Id.*, citing *Gangl*, at 580.

¹¹⁵ SDCL §48-7A-202(c)(1).

33. The *sharing of gross returns* does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.¹¹⁶

34. A person who receives a share of the profits of a business is *presumed to be a partner* in the business, unless the profits were received in payment, including “rent.”¹¹⁷

35. Co-ownership includes the sharing of profits *and losses* as well as the power of control in the management of the business.¹¹⁸

36. Sharing of profit does not conclusively establish formation of partnership. If losses were not shared, then other factors of partnership formation must be given careful scrutiny, such as control.¹¹⁹

37. Being co-owners of a business for profit does not refer to the co-ownership of property, but to the co-ownership of *the business* intended to garner profits.¹²⁰

38. Co-ownership in the context of a partnership addresses whether the parties “[s]hare the benefits, risks, and management of the enterprise...”¹²¹

39. The right to control is generally also considered an essential element to the formation of a partnership.¹²²

40. “Control is an indispensable component of co-ownership which, when combined with profit sharing, strongly suggests the existence of a partnership.”¹²³

¹¹⁶ SDCL § 48-7A-202(c)(2) (emphasis added).

¹¹⁷ SDCL § 48-7A-202(c)(3)(iii) (emphasis added).

¹¹⁸ *Ziegler*, at ¶ 21, citing *Gangl*, at 580.

¹¹⁹ *Id.*

¹²⁰ *In re KeyTronics*, at 441.

¹²¹ *In re KeyTronics*, at 441.

¹²² *Ziegler*, at ¶ 22.

¹²³ *Gangl*, at 580; *In re KeyTronics* at 440, citing *Mardanlou v. Ghaffarian*, 135 P.3d 904 (Utah App. 2006).

41. Co-ownership is defined as “shared control in management and the sharing of profits and losses.”¹²⁴

42. Control is an essential element of finding the formation of a partnership; to state the partners are co-owners of a business is to state that they each have the power of ultimate control.”¹²⁵

43. The right to control is different from the actual exercise of control.¹²⁶

44. The conduct of the parties in terms of how control was actually exercised over time is important.¹²⁷

45. Tax forms used to report income to the IRS is not a controlling factor in deciding partnership issues.¹²⁸

46. Casual reference to one party or the other as ‘partner’ is not controlling of whether they are truly ‘partners’ in fact or law.¹²⁹

47. The terminology that parties give to their working arrangement is not determinative, “especially where the record indicates the parties did not intend to be a part of a relationship which included the other essential elements of a partnership.”¹³⁰

48. Conclusory statements and mere personal belief of a partnership “[a]re not probative when the parties never had a meeting of the minds on their respective rights to, or receipt of, a share of the profits.”¹³¹

¹²⁴ *Cochell v Pokorny Chiropractic Clinic*, 2010 WL 11627912 (D.N.D. 2010)

¹²⁵ *Gangl*, at 580, citing Official Comment to § 6, UPA.

¹²⁶ *Gangl*, at 580.

¹²⁷ *Gangl*, at 580.

¹²⁸ *Mack*, at 70-71.

¹²⁹ *Ziegler* at ¶ 18, citing *Gangl* at 580.

¹³⁰ *Ziegler* at ¶ 18, citing *Gangl* at 580.

¹³¹ *Torres v Kelley*, 2007 WL 528849, *3 (Tex. App.-Corpus Christi Feb., 22, 2007, no pet.)

49. Receiving property from the estate as tenants in common is not evidence of “intent” by Richard and Gloria to form a partnership, as a matter of law.¹³²

50. A partnership cannot be formed through an involuntary act.¹³³

51. That one of the *parties* considered themselves partners is not conclusive evidence of intent if one or more of the essential elements of a partnership is lacking from the arrangement.¹³⁴

52. Gloria is not a co-owner of the “business” of ranching as that phrase is defined under the UPA and SDCL §48-7A-202(a). “Being “co-owners” of a business for profit does not refer to the co-ownership of property, but to the co-ownership of the business intended to garner profits.¹³⁵

53. Legal title is prima facie evidence of actual ownership.¹³⁶

54. There is no evidence that the after-acquired property was acquired with partnership funds, or the use of partnership credit.¹³⁷

55. The use of partnership funds is a necessary element to find that an asset is partnership property.¹³⁸

56. Even the acquisition of land using partnership funds does not prove it is a partnership asset.¹³⁹

¹³² *In re KeyTronics*, at 955, citing 1 Alan R. Bromberg & Larry E. Ribstein, Bromberg and Ribstein on Partnership § 2.05(a)(2007)

¹³³ *Id.*

¹³⁴ *Hillman v. Cannon*, 810 NW2d 25, *3 (Ct of Appls, Ia., 2011).

¹³⁵ *In re KeyTronics*, at 958

¹³⁶ *Bachand v. Walker*, 455 N.W.2d 851, 855 (SD 1990), cited in *Nelson v. Mattson*, 2018 ND 99, ¶ 16, 910 N.W.2d 171.

¹³⁷ *Nelson v. Mattson*, at ¶ 16, 910 N.W.2d at 176, citing *Bachand v. Walker*, at 855.

¹³⁸ *Reiners v. Sherard*, 89 S.D. 446, 451,233 N.W.2d 579, 581-82 (1975); *Bachand*, at 854.

¹³⁹ *Reiners*, at 450.

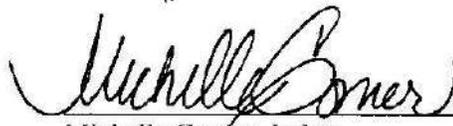
57. Because Richard and Gloria received their one-third interest of Eugene's estate as tenants in common, they were not partners.¹⁴⁰

58. As a matter of law, Gloria has failed to meet her burden of proving by a preponderance of the evidence that she and Richard formed a partnership under South Dakota law.

59. Instead, this Court concludes Sleeps have established as a matter of fact and law, no partnership between Richard Sleep and Gloria Steele was ever formed.

THEREFORE, IT IS ORDERED, ADJUDGED AND DEGREED that Declaratory Judgment shall be entered that the association between Richard Sleep and Gloria Steele was as a tenancy in common and not as 'partners' as that term is defined under SDCL § 48-7A-202.

BY THE COURT:

 3/29/21
Michelle Corner, Judge
Judge of Circuit Court

ATTEST: CAROL LATUSECK, CLERK

BY: KRISTIE GIBBENS, DEPUTY



¹⁴⁰ SDCL § 43-2-17.

STATE OF SOUTH DAKOTA)
)ss
LAWRENCE COUNTY) IN CIRCUIT COURT
 FOURTH JUDICIAL CIRCUIT

RICHARD D. SLEEP and KAREN E. SLEEP, husband and wife; **JEFFREY E. SLEEP and JODI K. SLEEP**, husband and wife; **MATTHEW R. SLEEP; MELISSA A. DEAN; SLEEP RANCHES, LLC**, a South Dakota Limited Liability Company; **SLEEP LAND AND LIVESTOCK COMPANY, LLC**, a South Dakota Limited Liability Company; **IRON CREEK LAKE CAMPGROUND & STORE, LLC**, a South Dakota Limited Liability Company; and **IRON CREEK, LLC**, a South Dakota Limited Liability Company,

Plaintiffs,

vs.

GLORIA SLEEP STEELE, a/k/a GLORIA G. STEELE, and **STEELE REAL ESTATE, LLC**, a South Dakota Limited Liability Company,

Defendants.

40Civ18-000249

Hon. Michelle Comer

Defendants' Proposed Findings of Fact and Conclusions of Law

This matter was tried to the Court, the Honorable Michelle Comer presiding without a jury, on December 15 and 16, 2020. Plaintiffs appeared personally and through counsel, Kenneth Barker and Barker Law Firm of Belle Fourche, South Dakota. Defendants appeared personally and through counsel, Jeffrey Hurd, Emily Smoragiewicz, and Bangs, McCullen, Butler, Foye & Simmons of Rapid City, South Dakota.

The Court has observed and considered the evidence, exhibits, testimony, and the arguments and authorities of the parties.

Pursuant to SDCL §15-6-52(a), the Court enters the following findings of fact and conclusions of law:

Findings of Fact

1. Background

1. Richard Sleep and Gloria Steele (f/k/a Gloria Sleep) are the only children of Eugene and Ruth Sleep.

2. Before 1966, Eugene owned (TT 82:6-7)¹ and operated (TT 97:2-5) the Sleep Ranch.

3. The real property upon which Eugene operated Sleep Ranch is largely located in Lawrence County, South Dakota, with additional property situated in Harding County, South Dakota. (Ex. 186: TT 161:19-24, 180:21-22.)

4. Sleep Ranch originated with land that was homesteaded by Eugene Sleep's grandfather and father. The original homestead is still part of Sleep Ranch today. (TT 284:4-15.)

5. Eugene also owned property around Iron Creek Lake, a recreational lake located in Lawrence County. (TT 31:25-32:16.) On that property he operated Iron Creek Lake Resort, which consists of three types of activities: 1) long term rentals for cabins and permanent mobile homes or campers, 2) short term camping sites; and 3) a convenience store and marina type shop. (TT 170:21-171:8.)

¹ We will refer to the trial transcript as TT page:line begin - line end.

6. From the time that Richard and Gloria were young, Eugene and Ruth involved the children in the ranching operation. (TT 77:13-16.) Richard grew up helping Eugene operate Sleep Ranch. (TT 27:4-6.)

7. Gloria also grew up working on Sleep Ranch and helping Ruth around the home and with operating Iron Creek Lake. (TT 77:4-78:15.) At some point, Gloria and Richard's roles on the ranching operation diverged somewhat. (TT 78:16-23.)

8. Richard went to college at South Dakota State University and graduated with a degree in animal science in 1965. (TT 267:18-20.) Richard married his wife, Karen Sleep, in 1966. (TT 269:24-270:1.)

9. After college, Richard returned to Sleep Ranch and resumed ranching alongside his family. (TT 269:7-11.)

10. When he returned to the family ranching operation after college, Richard was a W-2 employee of Sleep Ranch. (TT 269:12-21.)

11. On November 12, 1967, Eugene died suddenly at 50-years-old, and without a will. (TT 27:2-3.)

12. Pursuant to the laws of intestacy at the time of Eugene's death, Gloria, Richard, and Ruth each received one-third of everything owned by Eugene – including real estate, cattle, ranching equipment, and residential property. (Ex. 1; TT 29:6-22.)

13. The property was operated as part of the business entities, Sleep Ranch and Iron Creek Lake Resort. (TT 107:9-16.)

14. During Eugene's lifetime, he operated the ranching operation as a single business. (TT 341:3-4.)

15. Following Eugene's death, Richard, Gloria, and Ruth continued to operate Sleep Ranch and Iron Creek Lake as a single business. (TT 341:5-6.)

16. Upon Eugene's death, Richard took over managing Sleep Ranch. (TT 97:6-7.) Ruth and Gloria jumped in to manage Iron Creek Lake, which operated as it always had. (TT 62:5-14.)

17. After Eugene died, Sleep Ranch continued to operate exactly as it always had, except Richard was then in charge. Richard continued to operate the same single business that his father had run. (TT 340:24-341:6.)

18. At the time of Eugene's death in 1969, other than some cattle that Richard owned personally, Eugene had owned everything used to operate Sleep Ranch. (TT 82:6-12.)

19. Gloria Sleep and her husband, Robert Steele, were married in June 1969. (TT 34:24-35:8.)

20. Gloria continued to work at Iron Creek Lake full-time from 1969 to 1973, and part-time from 1974 to 1975. Her husband, Robert, helped her in the earlier years. (TT 62:5-19.)

21. In the 1970s, the ranch would not have supported two families. (TT 184:22-185:3.)

22. After the 1975 summer, Gloria and Robert were living in Rapid City and expecting their third child, and the process of monitoring Iron Creek Lake became unworkable. Gloria knew that Richard checked cattle in that area anyway and asked if he would be interested in checking in on operations at Iron Creek Lake. (TT 62:20-63:5; 63:20-64:8.)

23. On January 1, 1975, Ruth sold her interest in Sleep Ranch Partnership to Richard and Karen under a contract for deed. (Ex. 29.)

24. Gloria was not involved in the transaction by which Ruth transferred her one-third interest in Sleep Ranch Partnership to Richard and Karen. (TT 82:17-25.) Gloria was not aware of the contract for deed until after its execution. (TT 43:24-44:11.)

25. Gloria was not consulted about, or informed of, the transfer until it was complete. (TT 41:6-15.)

26. Ruth regretted having left Gloria out of the transfer because she recognized that "Gloria has put a lot into the ranch and has received very little." (Ex. 208, pp. 4-5.)

27. For the succeeding three decades, the status quo remained – that is, Richard operated Sleep Ranch, and Gloria and Robert made their living away from the ranching operation.

28. During these decades, Richard and/or Karen would occasionally comment to Gloria that they wanted to buy Gloria's one-third interest in Sleep Ranch. (TT 67:10-25; 261:15-22.)

29. Sometime in the late 1990s and early 2000s, Richard and Gloria began having discussions about settling up their interests in Sleep Ranch, which included the possibility of Richard purchasing Gloria's one-third interest in Sleep Ranch. (TT 99:15-24.)

30. In December of 2003, Richard gave Gloria a check for \$60,000. The memo line on the check read "80 mixed age cows." (Ex. 110, pp. 6.)

31. Gloria was surprised to receive the check, as she and Richard had not reached any kind of agreement on Richard buying out Gloria's interest in the cattle. Gloria did not accept this payment and returned the check to Richard via letter on May 10, 2004. (Ex. 110, p. 6; TT 101:15-104:17.)

32. From Gloria's perspective, she and Richard had not come to an agreement on everything they were working on. She was not willing to piecemeal a deal to settle only portions of Sleep Ranch. (TT 103:9-15.)

2. Partnership Facts

33. There are no written agreements reflecting Richard and Gloria's legal relationship.

A. Richard and Gloria are co-owners of the assets of the businesses, which they operate for profit.

34. Richard, Gloria, and their mother inherited undivided interests in everything Eugene Sleep owned at the time of his death. (Ex. 1.)

35. All property was jointly used in a single business, both before and after Eugene's death. (TT 341:3-6.)

36. After Eugene died, Sleep Ranch continued to operate exactly as it always had, except Richard was then in charge. (TT 340:24-341:6.)

37. Before Eugene's death, Richard had been an employee of Eugene. (TT 269:12-21.)

38. After Eugene's death, Richard continued to be an employee of the Eugene's estate. (TT 269:22-23.)

39. Richard testified that for some period, he continued to be a W-2 employee, but he could not recall who the employer was on his W-2. (TT 342:24-343:15.)

40. On January 1, 1975, Ruth sold her interest in Sleep Ranch Partnership to Richard and Karen pursuant to a contract for deed. (TT 42:4-6.)

41. Ruth forgave some of the payments Richard and Karen owed to her under the contract for deed. (TT 235:2-21.)

42. The parties operated Sleep Ranch and Iron Creek Lake for profit. (TT 343:16-18.)

43. From 1975 forward, Gloria and Richard divided the profits of the ranching operation one-third and two-thirds. (TT 343:16-23.)

44. They also divided losses, though they did not fund those losses through capital calls. Richard testified that losses were covered by working capital that had been retained in the partnership. (TT 293:1-21.)

B. Richard and Gloria intended to operate a single business.

45. As found above, both before and after Eugene's death, Sleep Ranch operated as a single business.

46. In 1974, Richard's attorney, Gary Richards, proposed incorporating Iron Creek Lake and Sleep Ranch, with Ruth, Richard, and Gloria each receiving one-third of the stock. Such a proposal recognizes that they were operating as a common business. (Ex. 8.)

47. In 1992, Richard, Karen Sleep, and Gloria incorporated Iron Creek Lake, as Iron Creek, Inc., which again demonstrates an intention to operate a common business. (Ex. 32; TT 263:12-15.)

48. In 1999, Gloria and Richard consulted attorney Patrick Goetzinger about restructuring Sleep Ranch Partnership as a subchapter S corporation or limited liability company. (Ex. 197; TT 262:21-263:23.)

49. Goetzinger discussed possibilities for ownership of Iron Creek Lake as one entity, and the ranch as a separate entity. (Ex. 197.)

50. Goetzinger incorporated Iron Creek Lake, Inc. to operate the campground and resort at Iron Creek. It existed until 2006. (Ex. 33.)

51. Goetzinger formed Iron Creek Ranch, LLC to hold the ranch land. (Ex. 9.)

52. Iron Creek Ranch, LLC and Iron Creek Lake, Inc. were administratively dissolved when Richard failed to renew the paperwork in 2006. (Exs. 9 & 33.)

53. Throughout their history, the parties exchanged proposed agreements—some prepared by themselves, some prepared by lawyers, and at least one was a county extension form. Some of the proposals contained no implied-partnership clauses. (See, e.g., Exs. 29, 123, & 198.)

54. Leases, contracts for deed, and similar agreements frequently contain no-implied-partnership clauses so that lessors and sellers do not become personally liable for acts of lessees and buyers under a theory that they are partners.

55. The Court finds that the parties did not enter into any agreement containing a no-implied-partnership clause.

56. The Court finds that the presence of those clauses in the draft proposals is probative of the parties' intent because neither Richard nor Gloria discussed those clauses in any proposal or discussed what they would mean to their existing relationship without regard to the proposal. Indeed, there is no evidence that Richard or Gloria were even aware of them until this action was commenced.

C. Gloria's Efforts to Participate in Management

57. Over the years, Gloria attempted to participate in non-livestock related management, including Iron Creek Lake improvements, consideration of nature conservancy, obtaining wildland fire suppression grants, historic preservation of the buildings, and assistance with bookkeeping, accounting, and taxes. (TT 98:2-18.)

58. Her efforts to participate in management was met with no success, and generally received no response. (TT 98:19-23.)

59. Gloria believed that, as a minority partner, she had little recourse to attempt to impose her ideas upon the partnership. (TT 98:24-99:3.)

D. Richard accounted for businesses as a partnership.

60. Richard took over the books of Sleep Ranch after he and Karen acquired Ruth's interest in 1975 and has been responsible for all books and tax returns since. (TT 283:8-10; 373:7-9.)

61. Sleep Ranch Partnership has had its own checking account since Eugene's death. (TT 251:7-16.)

62. At all times either Gloria or Richard can remember, the convenience store at Iron Creek Lake was run like a separate partnership, with those providing the labor receiving a percentage of the profits. (TT 237:13-242:17.)

63. Of the profit generating assets at Iron Creek Lake, only the cabins and permanent trailers were included in the Sleep Ranch Partnership tax return. (TT 237:19-24.)

64. In 1975, Richard consulted Penny's Tax Service in Spearfish. Richard explained the business to Penny, and she instructed him that the proper return was a Form 1065 Partnership Return. (TT 300:10-15; 301:1-13.)

65. In 2008, Richard consulted CPA Karen Simmons, who agreed that a partnership tax return was appropriate. (TT 386:12-15.)

66. Jeff Sleep testified that he files Form 1065 Partnership Returns for limited liability companies in which he is a member just because it is convenient. (TT 175:10-176:5.) But, Jeff admitted that he had nothing to do with the Sleep Ranch returns. (TT 185:20-186:4.) Also, Karen Simmons testified that a Form 1065 is the default return for multimember limited liability companies, unless they choose to be taxed as corporations. (TT 393:7-14.)

67. Since 1975, Richard has always filed a Partnership Tax Return for Sleep Ranch and has always issued a K-1 to Gloria as a partner. (373:7-11; see, e.g., Exs. 19-47.)

68. From 1967 through 2008, Richard reported the income from ranch operations as being conducted under Sleep Ranch Partnership as a partnership. (See, e.g., Exs. 19-21.)

69. Richard has always sent Gloria a K-1 from Sleep Ranch to include in filing her own personal tax return. Gloria's K-1 reflected her one-third share in Sleep Ranch. Richard would rarely include documentation showing how he calculated the numbers on Gloria's K-1. (TT 144:14-24.)

70. Gloria repeatedly asked Richard for the records supporting the K-1s Richard sent to her. (TT 145:6-17.)

71. Since 2007, Gloria has refused to cash any checks from Sleep Ranch because Richard did not provide the requested documentation. (TT 59:13-16.)

72. Richard refused to provide the documentation because Gloria would not cash the checks, and he was "stubborn." (TT 304:16-305:7.)

73. Richard himself completed the K-1s stating that Gloria is a partner of Sleep Ranch Partnership. (Exs. 19-42.)

74. In working on the taxes, Richard made notations referring to Sleep Ranch as a partnership. (Ex. 200, p. 6; Ex. 202, p. 5.)

75. Richard first had Simmons prepare the Sleep Ranch tax return in 2014. That year, he certified that the contents of the return were accurate.

Under penalties of perjury, I declare that I am a general partner or limited liability company member manager of the above partnership and that I have examined a copy of the partnership's 2014 electronic return of partnership income and accompanying schedules and statements and to the best of my knowledge and belief, it is true, correct, and complete.

(Ex. 45, p. 20; TT 393:15-394:5.)

76. Richard certified that Sleep Ranch was a domestic general partnership. (Ex. 45, p. 1, line 1(a).)

77. Richard certified that Gloria Steele was a domestic, general partner. (Ex. 45, p. 15, lines G & H.)

E. Richard and Gloria referred to Sleep Ranch as a partnership.

78. Gloria and Richard never discussed their legal relationship.

79. From the time Eugene's estate was distributed in 1969, Gloria believed they were partners because they were operating a business together as co-owners. (TT 49:24-50:1; 107:7-16.)

80. Richard referred to Sleep Ranch Partnership as a partnership, though it never had a formal partnership agreement. (Ex. 200, p. 6; Ex. 202, p. 5; Ex. 7, p. 2.)

81. At one point, he declined to provide Gloria information on the partnership, telling her, "I am not sure how any of that unfamiliar information could be used for your estate planning. I would think that the appraisal you had completed would help you establish the majority of the value of the partnership." (Ex. 7, p. 2.)

82. Gloria also referred to Sleep Ranch Partnership as a partnership. In a February 11, 2008 letter to Richard, Gloria wrote: "I have always placed complete trust in you relative to ranch operations, including proper management and accounting practices and placed the same trust in your intentions to treat me fairly and equitably as your partner." (Ex. 82, p. 1; TT 120:20-25 - 121:1-2.)

83. Richard did not respond to Gloria's 2008 letter, or otherwise deny Gloria's statement that they were partners. (TT 96:21-97:1; 373:12-374:4.)

84. In a note attached to Iron Creek, LLC's 2010 Form 1065, Richard refers to Sleep Ranch Partnership as a partnership. (Ex. 200, p. 6.)

85. In working on the 2010 tax return for Sleep Land & Livestock Company, LLC, Richard notes that Sleep Land & Livestock Company, LLC's income comes from "Rent from Partnership," referring to Sleep Ranch Partnership. (Ex. 202, p.5.)

86. Matt Sleep told Richard in 2004 that Gloria claimed she and Richard were partners. (TT 207:22-208:9).

87. In spite of being told expressly that Gloria believed they were partners, Richard never denied the existence of a partnership. (TT 373:12-374:4.)

88. Matt was concerned that Gloria was trying to "steal" Richard's property (TT 207:22-208:9), but Gloria had not asked for any property that Richard had claimed was his alone. (TT 143:25-144:13; Exs. 6, 82, 86, 87.)

3. Gloria did not sell her interest in the cattle operation to Richard.

89. Before 2004, Richard divided the profits of Sleep Ranch two-thirds to himself and one-third to Gloria. (Exs. 18-21.)

90. Starting in 2004, Richard stopped reporting ranching operations on the Sleep Ranch return and started reporting Sleep Ranch as merely a land partnership on Schedule E. Schedule F was omitted. (Exs. 5, 22-26, 36, 42-47; TT 387:8-10.)

91. Over the years, Richard has looked to acquire Gloria's interest in Sleep Ranch Partnership. (TT 67:10-25; 261:15-19; 290:19-291:6.)

92. During one of those discussions, they were discussing the appropriate value of Gloria's interest. As part of those discussions, they agreed that the current value of one-third of the cattle herd was \$60,000. (TT 99:15-100:6.)

93. Gloria and Richard never discussed Gloria selling her interest in the cattle separate and apart from her interest in the Sleep Ranch and Iron Creek Lake operations. (TT 100:3-6; 363:12-364:8.)

94. In December of 2003, Richard left a check \$60,000 to buy "80 mixed age cows" at Gloria's home. (Ex. 110, pp. 6.)

95. Gloria proposed potential terms for other parts of her interest in Sleep Ranch, and she held the check believing they would reach a final agreement. (TT 102:7-103:2; Ex. 87, p. 2.)

96. They never reached an agreement on the purchase of her interest in Sleep Ranch. So, on May 10, 2004, Gloria returned Richard's check to him because she was unwilling to sell just one part of her interest. Gloria never cashed the check. (Ex. 2.)

97. Richard agrees that Gloria never agreed to sell her cattle alone without an agreement for entire operation. (TT 289:4-6.)

98. Richard and Gloria never reached an agreement on the land or equipment. (TT 290:14-291:6.)

99. On December 30, 2004, Richard sent Gloria a check for \$6,032.47 for "3 bulls & profit on calves." (Ex. 110, p. 6.)

100. Gloria did not cash this check either. (Ex. 86.)

101. Since 2004, Richard just determines what he will pay Gloria on a "lease" each year without consulting her. (TT 106:6-107:6; 187:10-16.)

102. In 2008, Richard informed Gloria, for the first time, that he had taken her out of the cattle operation in 2004. (Ex. 86; TT 105:1-8.)

103. In 2008, Gloria first became aware that Richard had changed the ranch operation to a rental approach after he purported to purchase Gloria's cows. As soon as Gloria realized what he had done, Gloria re-affirmed via letter on February 11, 2008 that she had not, in fact, sold her interest in the cattle to Richard. (Ex. 86.)

104. At a meeting on January 29, 2009, Gloria suggested she would trade her interest in cattle for land. Richard said he would not trade real property for personal property. He did not deny she had any interest in cattle. (Ex. 93, p. 2.)

105. On December 11, 2009, Gloria wrote to Richard and Jeff Sleep, "In 2008 you indicated to me that you had shifted to a rental approach for ranch operations. It is unknown to me who the rental agreement is with or the terms and conditions of the agreement." (Ex. 11.)

106. Even though Richard asserted that he had purchased Gloria out of the cattle business, the costs he assessed to her on annual tax returns did not change substantially. Expenses were \$39,882 in 2001, (Ex. 19, p. 3.) and \$33,689 in 2004. (Ex. 22, p. 10.) (TT 348:23-350:3.)

107. Sleep Ranch Partnership lost money renting its land to Sleep Ranches, LLC in 9 of the 15 years from 2004 through 2019. (Ex. 216.)

108. Jeff Sleep could not think of situations where landowners agree to lease land at a loss year after year. (TT 201:10-12.)

4. Richard and Gloria are not merely tenants in common.

109. Generally, tenants in common in ranching land do not file a partnership tax return. Each tenant files a Schedule F, Income or Loss from Farming, reporting his or her share of income and expenses, which is what Richard did after 2003.

110. Richard and Gloria never divided actual expenses among themselves. Expenses were paid from the Sleep Ranch account. That is more consistent with a partnership than with tenants in common.

111. Gloria was never asked to contribute to expenses, or to deposit money into the Sleep Ranch Partnership account.

112. Richard and Gloria never divided actual revenues or income from operations. Rather, all revenues were received into the partnership account, and the net profits at the end of each year were divided. That is more consistent with a partnership than tenants in common.

113. Even when Sleep Ranch lost money, Richard did not ask Gloria to pay her share of the ranching expenses, which is what one would expect with tenants in common. Rather, the partnership simply carried the loss into the next year's operations.

114. To the extent any of the foregoing are improperly designated as findings of fact and are conclusions of law or mixed findings of fact and law, then the same are hereby incorporated by reference in the conclusions of law that appear herein.

Having found the foregoing facts, the Court concludes as follows:

Conclusions of Law

1. Richard Sleep and Gloria Steele are partners in Sleep Ranch.

1. "The existence of a partnership is an issue of fact." *McGregor v. Crumley*, 2009 S.D. 95, ¶ 20, 775 N.W.2d 91, 97, citing *Widdoss v. Donahue*, 331 N.W.2d 831, 833 (S.D. 1983); and, *Munce v. Munce*, 77 S.D. 594, 96 N.W.2d 661 (1959).

2. The party asserting the existence of a partnership bears the burden of proving the existence of the partnership by a preponderance of the evidence. *In re KeyTronics*, 744 N.W.2d 425, 438 (Neb. 2008) (claimant bears the burden); *Id.* at 954-55 (the burden of proof is preponderance).

3. There is not a hard and fast test for the existence of a partnership, so each case must be decided on its own particular facts. *McGregor v. Crumley*, 2009 S.D. 95, ¶ 20, 775 N.W.2d 91, 97-98 ("Since there is no arbitrary test for determining the existence of a partnership, each case must be governed by its own peculiar facts and the existence of the relationship is a question for the trier of fact except in a case where the evidence is conclusive.").

4. "A partnership is an association of two or more persons who carry on a business as co-owners." *Temple v. Temple*, 365 N.W.2d 561, 566 (S.D. 1985), citing *Fredrickson v. Kluever*, 82 S.D. 579, 152 N.W.2d 346 (1967).

5. A co-owner includes a tenant in common. OWNER, Black's Law Dictionary (11th ed. 2019).

6. Holding property as tenants-in-common is not, by itself, sufficient to create a partnership; but, partnerships may hold title to property through their partners taking title as tenants-in-common. *Walsh v. Ellingson Agency*, 613 P.2d 1381, 1384 (Mont. 1980).

7. Except in limited situations, "[a] person who receives a share of the profits of a business is presumed to be a partner in the business." SDCL § 48-7A-202(c)(3).

A. Richard and Gloria's conduct shows an intent to associate for a common business.

8. One need not have the specific intent to form a partnership. Two co-owners carrying on a business for profit form a partnership, whether they intended to or not. SDCL § 48-7A-202(a).

9. Indeed, parties can expressly disclaim an intention to form a partnership, and still be partners. *Nelson v. Seaboard Sur. Co.*, 269 F.2d 882, 887 (8th Cir. 1959).

10. The issue is not whether you intend a partnership, one need only intend the association in business, and act in a way that objectively indicates a partnership. *In re KeyTronics*, 744 N.W.2d 425, 439-40 (Neb. 2008).

11. While the association must be voluntary, it need not start that way. Eugene died intestate. So, that would not have formed a partnership, except that the parties voluntarily agreed to pool their inheritance and continue the business as Eugene had operated it.

12. Had Gloria sold her tenancy in common immediately after the decree, or had she used her right to exploit the common ownership by running

her own cattle on the land—as a tenant in common could do—that would be evidence that they had not associated for operating a common business.

13. Over the years, Richard and Gloria have formed other entities to hold the assets of Sleep Ranch Partnership, which is further evidence of their intention to operate a common business. *In re KeyTronics*, 744 N.W.2d 425, 440 (Neb. 2008).

14. Iron Creek, Inc. was an entity that Richard, Gloria, and Karen set up in 1992 to hold Sleep Ranch Partnership's land at Iron Creek Lake until 1999, when it was replaced by Iron Creek Lake, Inc.

15. Iron Creek Lake, Inc. is the entity that Richard, Gloria, and Karen created in 1999 to replace Iron Creek, Inc.

16. Iron Creek Ranch, LLC was established by Richard, Karen, and Gloria in 1999 to hold the ranching operation.

17. The formation of Iron Creek, Inc., Iron Creek Lake, Inc., and Iron Creek Ranch, LLC, are indicia of a partnership. The creation of these entities, whether they were actively used or not, shows an intention to jointly carry on a business together. *See, In re KeyTronics*, 744 N.W.2d 425, 440 (Neb. 2008) (The intent to form a corporation proves an intention to form the requisite association to find a partnership).

18. While Richard testified that the entities were never actually operated as such, he signed the formation documents (Exs. 9, 32, 33), and he continued to file the annual reports, and maintain their good standing for several years. (TT 148:10-12.)

19. How parties refer to their arrangement is relevant to whether there is a partnership. *In re KeyTronics*, 744 N.W.2d 425, 440 (Neb. 2008).

20. Richard's references to the partnership are sufficient to establish its existence. See, *McGregor v. Crumley*, 2009 S.D. 95, ¶ 20, 775 N.W.2d 91, 98 (citation omitted). ("A finding of the existence of a partnership may be supported by evidence of the direct admission of the parties.")

B. Control

21. "Control is an indispensable component of co-ownership which, when combined with profit sharing, strongly suggests the existence of a partnership." *Gangl v. Gangl*, 281 N.W.2d 574, 580 (N.D. 1979).

22. But, the question is not whether each partner actually exercised control, but whether they had the right to exercise control. *Id.* ("An important qualification to the control test is, however, that a person may be a partner even though he has entrusted control of the business exclusively to his associates. The question then becomes whether or not the participant had the right to exercise control in the management of the business.")

23. "That [Gloria] participated little in the project and delegated authority to [Richard] to manage it does not defeat the forming of a partnership. A partnership can exist as long as the parties have the right to manage the business, even though in practice one partner relinquishes the day-to-day management to the other partner." *In re Bartenworf*, 596 B.R. 675, 682 n. 3 (Bankr. N.D. Cal. 2019), *aff'd*, No. 3:19-AP-03185, 2020 WL 1970506 (B.A.P. 9th Cir. Apr. 23, 2020) (citations omitted).

24. Control can be established by joint accounts and tax returns. “[O]bjective evidence of control . . . usually focuses on acts such as holding licenses, assuming a firm name, keeping books that show a capital account for each party, or filing federal partnership tax returns.” *Hillman v. Cannon*, 2011 WL 6670657 *6 (Iowa Ct. App. December 21, 2011), quoting *Chariton Feed & Grain, Inc. v. Harder*, 369 N.W.2d 777, 788 (Iowa 1985).

25. Gloria testified that she permitted Richard to run the ranch because that is what she and Ruth believed was appropriate. She also testified that, as a one-third owner, if the majority ruled, then she did not have the ability to make any change in any event.

26. Because her efforts to offer limited suggestions about bookkeeping, accounting, improvements at Iron Creek Lake, and conservation matters met with little success, it was not unreasonable for her to refrain from further efforts to assert her influence as a partner. That does not mean she was not a partner.

27. The Court concludes that Richard and Gloria are partners in Sleep Ranch.

C. The partnership was not dissolved by Ruth's sale to Richard.

28. A partnership-at-will is usually dissolved by a member voluntarily dissociating, SDCL § 48-7A-801(1). But, even if a partner dissociates, the partnership can continue.

29. A partnership necessarily continues until it is wound up, SDCL § 48-7A-802(a) (“Subject to subsection (b), a partnership continues after

dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed." So, even if Ruth's dissociation had worked as a dissolution, the partnership still exists because it has not been wound up.

30. In this case, though, the Court concludes that the partnership was not dissolved at all because the partners waived the right to dissolution.

31. If partners to a dissolvable partnership waive the right to have it dissolved, then it continues. SDCL § 48-7A-802(b).

32. "A waiver exists where one in possession of any right, whether conferred by law or by contract, and of full knowledge of the material facts, does or forbears the doing of something inconsistent with the existence of the right or of his or her intention to rely upon it." *Wehrkamp v. Wehrkamp*, 2009 S.D. 84, ¶ 8, 773 N.W.2d 212, 215.

33. While Gloria did not know, Richard had full knowledge that he had purchased Ruth's interest. So, if that purchase worked a right to dissolution, then Richard waived the right to dissolve the partnership.

34. Where the partners waive the right to dissolve, then "[t]he partnership resumes carrying on its business as if dissolution had never occurred." SDCL § 48-7A-802(b)(1).

35. Richard and Karen's purchase of Ruth's interest in Sleep Ranch did not work a dissolution.

2. The Sleep Ranch partnership includes the cattle operation.

36. Richard's attempt to remove the ranching operation from the partnership starting in 2004 was ineffective.

37. Richard may not simply change the nature of the partnership by selling all of Gloria's interest in the cattle to himself. Matters outside the ordinary course of business require the consent of all partners. SDCL § 48-7A-401(j). ("A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.").

A. Because Gloria had not previously offered to sell her interest in the cattle ranch separate from a sale of her entire partnership interest, Richard's attempt to buy her interest in the cattle was merely an offer.

38. Because Gloria never offered to sell her interest in the cattle operation separate from selling her interest in everything, Richard's attempt to buy Gloria's cattle was an offer.

39. "The general rule is that an acceptance must not change, add to, or qualify the terms of the offer' if there is to be a contract." *Advanced Recycling Sys., LLC v Se. Properties Ltd. P'ship*, 2010 S.D. 70, ¶16, 787 N.W.2d 778, 784, quoting *Rossum v. Wick*, 74 S.D. 554, 557, 56 N.W.2d 770, 771 (1953) (citations omitted).

40. "A reply to an offer, though purporting to accept it, which adds qualifications or requires performance of conditions, is not an acceptance, but is a counteroffer." *Advanced Recycling Sys.*, at ¶ 16.

41. There can be no contract to sell cattle unless both Gloria and Richard agreed on the same thing. *Jacobson v. Gulbransen*, 2001 S.D. 33, ¶22, 623 N.W.2d 84, 90 ("To form a contract, there must be a meeting of the minds or mutual assent on all essential terms.").

42. To contract, the parties must agree on the same thing, and in the same sense. *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 21, 736 N.W.2d 824, 832, citing SDCL 53-3-3. ("Consent is not mutual unless the parties all agree upon the same thing in the same sense.").

43. While Gloria and Richard agreed that, if they could get a deal for Gloria's entire interest in Sleep Ranch Partnership, \$60,000 was reasonable price for her interest in the partnership's cattle, that was only one element of the entire agreement necessary for there to be any agreement.

44. The fact that Gloria assented only to a deal for all aspects of her interest, renders Richard's offer to purchase only her interest in cattle merely an offer.

B. Gloria rejected Richard's offer to purchase her interest in the cattle operation.

45. "Consent is an essential element of a contract. SDCL 53-1-2(2)." *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 21, 736 N.W.2d 824, 832.

46. "[T]he creation of a contract requires an offer by one party and an acceptance by the other." *Advanced Recycling Sys., LLC v. Se. Properties Ltd.*

P'ship, 2010 S.D. 70, ¶ 16, 787 N.W.2d 778, 784, *citing*, *Standard Cas. Co. v. Boyd*, 75 S.D. 617, 622, 71 N.W.2d 450, 453 (1955).

47. Gloria rejected Richard's offer, and returned his proffered payment.

48. That conclusion is not changed by the fact that she returned the check after a few months. A delay in acceptance does not create acceptance, it creates a rejection. *See, Stern v. Wesner*, 395 N.W.2d 585, 586 (S.D. 1986) ("When an offer does not specify a particular time for acceptance, as was the case in this situation, an offeree's power of acceptance is terminated at the end of a reasonable time.").

3. Richard and Gloria are not merely tenants in common.

49. "An interest in common is one owned by several persons not in joint ownership or partnership." SDCL § 43-2-16.

50. The partners in Sleep Ranch Partnership own the assets as tenants in common.

51. A partnership may own its assets in the names of its partners (or one of them) when held for the purpose of operating the partnership.

52. Sleep Ranch Partnership is the ranching partnership that was formed as a matter of law when Ruth, Gloria, and Richard inherited Sleep Ranch and Iron Creek Lake, and then continued operating them for profit.

53. Sleep Ranches, LLC, Iron Creek, LLC, Sleep Land & Livestock Company, LLC, Steele Real Estate, LLC were formed to allow Richard, Karen,

and Gloria to pass their interests in the partnership property onto their children. That would not be necessary if they were merely tenants in common.

54. Tenants in common can convey their interests in the jointly owned property. *Stevahn v. Meidinger*, 57 N.W.2d 1, 7 (N.D. 1952).

55. If Gloria and Richard were not partners, there would have been no need for the entities they formed because they could have passed their interests as they saw fit. *Stevahn v. Meidinger*, 57 N.W.2d 1, 7 (N.D. 1952).

56. In a tenancy in common, there is an equal right to possession of the common property. 20 Am. Jur. 2d Cotenancy and Joint Ownership § 32. There is no evidence that Richard would have permitted Gloria to run her own cattle on the partnership property.

57. Since the distribution of the assets from Eugene Sleep's estate, Richard and Gloria have been co-owners carrying on a business for profit, and therefore meet the presumptive definition of partnership.

58. To the extent any of the foregoing are improperly designated as conclusions of law and are findings of fact, then the same are hereby incorporated by reference in the findings of fact that appear herein.

Respectfully submitted the 15th day of March, 2021.

**BANGS, MCCULLEN, BUTLER, FOYE
& SIMMONS, L.L.P.**

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Certificate of Service

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S.D. Codified Laws § 48-7A-202

*** Current through the 2025 Regular Session of the 100th South Dakota Legislative Assembly. ***

LexisNexis® South Dakota Codified Laws Annotated > *Title 48 Partnerships*
(Chs. 48-1 — 48-7A) > *Chapter 48-7A Uniform Partnership Act (Arts. I — XII)* >
Article II. Nature of Partnership (§§ 48-7A-201 — 48-7A-204)

48-7A-202. Formation of partnership.

- (a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.
- (b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.
- (c) In determining whether a partnership is formed, the following rules apply:
- (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
 - (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
 - (3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
 - (i) Of a debt by installments or otherwise;
 - (ii) For services as an independent contractor or of wages or other compensation to an employee;
 - (iii) Of rent;
 - (iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
 - (v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
 - (vi) For the sale of the goodwill of a business or other property by installments or otherwise.

History

SL 2001, ch 249, § 202.

End of Document

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

Appeal No. 31120

RICHARD D. SLEEP and KAREN E. SLEEP, husband and wife;
JEFFERY E. SLEEP and JODI K. SLEEP, husband and wife;
MATTHEW R. SLEEP; MELISSA A. DEAN; SLEEP RANCHES, LLC, a
South Dakota Limited Liability Company; **SLEEP LAND AND
LIVESTOCK COMPANY, LLC**, a South Dakota Limited Liability
Company; **IRON CREEK LAKE CAMPGROUND & STORE, LLC**, a
South Dakota Limited Liability Company; and **IRON CREEK, LLC**,
a South Dakota Limited Liability Company,

Plaintiffs and Appellees,

vs.

GLORIA SLEEP STEELE, a/k/a **GLORIA G. STEELE**, and **STEELE
REAL ESTATE, LLC**, a South Dakota Limited Liability Company,

Defendants and Appellants.

Appeal from the Circuit Court
Fourth Judicial Circuit
Lawrence County, South Dakota

The Honorable Michelle K. Comer, Presiding

APPELLEES' BRIEF

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INTRODUCTION

Appellees/Plaintiffs are collectively referred to as “Sleeps,” or individually by first name, or as necessary, by the name of the applicable legal entity. Appellants/Defendants Gloria Sleep Steele and Steele Real Estate, LLC are collectively referred to as “Gloria.” The Clerk’s Register of Actions is denoted by “RA,” followed by the applicable page citation(s); the trial transcript for the December 15 and 16, 2020, court trial at which the issues presented in this appeal were heard is referenced as “TT,” followed by the appropriate page and line number(s) and/or exhibit number(s); and the trial court’s Findings of Fact and Conclusions of Law, which can be found in the Register of Actions at page 2166, is denoted by “FF” or “CL,” depending on which abbreviation is applicable, followed by the appropriate paragraph number(s).¹

JURISDICTIONAL STATEMENT

This matter is subject to this Court’s review under SDCL 15-26A-3(1). A court trial on the issues presented in this appeal was held before the Honorable Michelle K. Comer, Fourth Judicial Circuit, Lawrence County, on December 15 and 16, 2020. (TT, *supra*; RA, 1577-2022). Following this first court trial, on March 30, 2021, Findings of Fact and Conclusions of Law were entered. (RA, 2166). Notice of Entry of Court’s Order of Declaratory Judgment was filed and served on March 31, 2021. (Id., 2186). However, at that time, with additional issues remaining, a second court trial was held before Judge Comer on October 1

¹ Sleeps offer no separate Appendix.

and 2, 2024. (Id., 2346-2813). On April 4, 2025, after this second court trial, and after additional motion practice, Findings of Fact and Conclusions of Law (Trial II) were entered. (Id., 793). Notice of Entry of Court’s Findings of Fact and Conclusions of Law (Trial II) were filed and served on April 4, 2025. (Id., 826). A final judgment was entered on May 2, 2025, and Notice of Entry of that Judgment was filed and served on May 14, 2025. (Id., 859, 861). An appeal was timely filed on June 11, 2025 (Id., 865).

STATEMENT OF LEGAL ISSUES

1. Whether the trial court correctly concluded that Gloria failed to meet her burden of proving by a preponderance of the evidence that a partnership existed between her and Richard.²

Most Relevant Authorities:

- SDCL 48-7A-202;
- *Widdoss v. Donahue*, 331 N.W.2d 831 (S.D. 1983);
- *McGregor v. Crumley*, 2009 S.D. 95, 775 N.W.2d 91; and
- *Ins. Agents, Inc. v. Zimmerman*, 381 N.W.2d 218 (S.D. 1986).

2. Appellants/Defendants break their “Statement of Legal Issues” into various subparts regarding the role of intent and the inheritance of property. However, both of those issues are subsumed in the trial court’s analysis of the question whether a partnership existed between Richard and Gloria. (RA, 2166). As a result, these issues are also addressed in the “Argument” section below.

STATEMENT OF THE CASE

This case is a dispute whether two siblings who inherited property as tenants in common subsequently formed a partnership. On August 29, 2018, the Sleeps initiated this lawsuit seeking, among other things, declaratory relief that Richard Sleep and Gloria Steele had not formed a partnership with respect to assets of the estate. (RA, 3). A court trial on the question of the existence of a partnership between Richard and Gloria was held before the Honorable Michelle K. Comer in the Fourth Judicial Circuit, Lawrence County, on December 15 and 16, 2020. (TT, *supra*; RA, 1577-2022). After post-trial briefing, and after receiving competing proposals and objections from the parties, Judge Comer issued her Findings of Fact and Conclusions of Law on March 30, 2021. (RA, 2026, 2054, 2071, 2106, 2127, 2146, 2166). Notice of Entry of Court's Order of Declaratory Judgment was filed and served on March 31, 2021. (Id., 2186). After a second trial and decision on other issues, Judgment was entered on May 2, 2025, and Notice of Entry of that Judgment was filed and served on May 14, 2025. (Id., 859, 861). An appeal was timely filed on June 11, 2025 (Id., 865).

STATEMENT OF THE FACTS

The Sleep family has farmed and ranched in Lawrence County, South Dakota, since 1883. (TT, 75:24-76:4). Eugene and Ruth, Richard and Gloria's parents, married in 1939. (TT, 80:19). After living in Spearfish and working for Eugene's Father at the gasoline station for five years, they moved to the Sleep

Ranch, managing it for the rest of their lives, while raising their only children, Richard and Gloria. (TT, 76:19-77:14).

There is no evidence that Eugene and Richard entered into a partnership agreement, either written or oral, during Eugene's life. (FF,6, 6(f); TT, 27:20-John 28:1, 51:1-52:1;271:22-272:18) Upon his graduation from South Dakota State University in 1965 with a degree in animal science, Richard returned to the Sleep Ranch where Eugene employed Richard as a ranch hand. (FF, 4; TT, 269:7-21, 229:23-230:6). Richard was paid as an employee, receiving a W-2, and a small herd of cattle that Richard and his wife Karen owned and branded separately from the cattle that Eugene and Ruth owned. (FF, 6(a), 6(b); TT, 27:14-19, 229:23-230:6, 271:22-272:18). The books and accounts for Eugene and Ruth's operation and livestock were kept entirely separate from Richard and Karen's affairs. (FF, 6(c); 271:22-272:18).

In 1967, Eugene died suddenly without a will. (FF, 7; TT, 271:13-14). Under the intestacy laws at that time, Eugene's wife, Ruth, and their children, Richard and Gloria, each received a one-third interest as tenants in common in the real property, livestock, and equipment Eugene owned at the time of his death ("the Estate Property"). (FF, 7, 8; TT, 29:6-19, Ex. 1; RA, 190). After Eugene's death, Richard assumed responsibility for operating the Sleep Ranch and continued to be paid as an employee, receiving a W-2. (FF, 6(g), 10; TT, 27:2-19, 269:12-23, 229:23-230:6, 269:2-21). The Sleep Ranch initially included only the

Estate Property, but over the last 60 years land and livestock have been added as the opportunity and the Sleeps' personal finances permitted. (TT 330:10-13).

After Eugene's death, Ruth assumed Eugene's prior role as bookkeeper, maintaining the books and accounts of the Estate Property separately from those of Richard and Karen. (FF, 6(i), 11; TT, 35:10-11, 39:9-40:25, 251:10-252:12, 273:8-11, 283:13-24, 329:17-19, 336:11-14). There is no evidence of co-mingling of revenue or expenses. (FF, 6(i); TT, 39:9-40:25, 251:10-252:12, 283:13-24, 329:17-19, 336:11-14). Nor is there any evidence that Ruth and Richard or Ruth, Richard, and Gloria entered into a partnership agreement after Eugene died. (FF, 6(f), (h); TT, 27:20-28:1, 51:1-52:1, 274:1-9). In fact, Gloria testified that she, Ruth, and Richard did not meet after Eugene's death to discuss forming a partnership or how the Estate Property would be operated and managed. (FF, 12; TT, 51:1-52:1, 94:7-9, 108:19-23).

Gloria had minimal involvement with the Sleep Ranch and Iron Creek Lake, an asset the Sleep Family began acquiring in the 1930s. (TT, 32:14-19) When gold mining claims began becoming for sale, Richard and Gloria's grandfather began to accumulate mining claims, including the area around Iron Creek Lake. (TT, 80:11-14). By the time of Eugene's death in 1967, the Sleep family owned land around Iron Creek Lake on which permanent cabins, a small campground, and a small store were located. (TT, 80:21-81:18). In the first season after Eugene's death, in 1968, Ruth and Gloria managed the operations at Iron Creek Lake. (FF, 30; TT, 62:5-11). From 1969 to 1975, Gloria and her

husband, Bob Steele, ran the Iron Creek Lake Campground and Store during the summer months. (FF, 31; TT, 62:12-63:5). During this time, Richard did not participate in the management of the seasonal operations at Iron Creek Lake, and Gloria and Bob received all its profit. (FF, 32; TT, 30:6-17, 31:19-24, 32:20-33:1, 56:2-9, 62:4-63:9, 240:10-241:18). In 1975, Steeles chose to step away from managing Iron Creek Lake because they lived in Rapid City, had their third child on the way, and Bob had other expanding business interests. (TT 61:23-3, 61:20-62:23, 236:15-25). Richard and Karen then assumed responsibility for managing those operations, and, from that time forward, received all its profits. (TT 62:2-9, 241:13-242:2).

In late 1975, Richard and Karen purchased Ruth's one-third interest in the Estate Property on a contract for deed. (FF, 14, 40; TT, 42:4-6, 235:2-10, Ex, 29; RA, 473). The Contract for Deed specifically described the conveyance as tenancy in common and further expressed as follows:

Nothing herein is intended nor shall same be *construed as creating any partnership* between or among any of the parties hereto, provided, however, nothing herein shall prevent any parties hereto from effecting partnership agreements, one with another, by separate agreement(s).

(FF, 16, 42; TT, 44:17-23, Ex. 29, at SR00445, 2(d); RA, 473) (emphasis added).

The Contract for Deed further recognized that Gloria's ownership of the remaining one-third interest in the Estate Property as a tenant in common:

All parties hereto are aware of the fact that Gloria Sleep Steele is not a party hereto and nothing herein is intended as attempting to usurp

the undivided ownership right, title, and interest of said Gloria Sleep Steele in and to properties subject thereof.

(FF, 17, 42; TT, 43:24-44:2, Ex. 29, at SR00446, 3(a); RA, 473). The three warranty deeds conveying Ruth's one-third interest in the Estate Property to Richard and Karen did so as "tenants in common." (FF, 22; TT, 45:25-46:17, Exs. 62, 63, 167; RA, 849, 852 1278). Neither Ruth nor Richard provided Gloria notice of Ruth's sale of her one-third interest in the Estate Property to Richard. (FF, 21, 41; TT, 41:6-15, 50:2-15, Ex. 198; RA, 1399). When Gloria learned of the purchase, no discussion was held among Richard, Karen, and Gloria about the formation of a partnership or how the Estate Property would be managed or operated. (FF, 24; TT, 50:2-15, 51:1-52:1, 94:7-9, 108:19-23). When she did learn of the sale, Gloria did not object or assert her rights as a partner. (TT, 50:2-7).

Near that same time, Richard's attorney drafted and sent a proposed lease to Gloria addressing her one-third interest of the Estate Property. (FF, 42; TT, 47:6-49:23, Exs. 61, 198; RA, 833, 1399). In presenting the lease, Richard once again clarified that no partnership was intended. Gloria, however, did not sign this proposed lease agreement, testifying she did not recall any discussion with Richard and Karen about it. (TT, 47:9-10, 48:25-29:8, 49:21-23, Exs. 61, 198; RA, 833, 1399).

In 1975, after purchasing Ruth's one-third interest in the Estate Property, Richard began managing the books and accounts of the Sleep Ranch. (TT 185:14-

186-4, 283:8-10). Except for profits from the Iron Creek Lake Campground and Store from 1969 until 1975, Gloria had not received any income from the Estate Property until Richard took over the responsibility of keeping its books. (FF, 32, 35; TT, 30:6-17, 31:19-24, 32:20-33:1, 35:12-19, 56:2-9, 62:4-63:9, 108:24-109:1, 240:10-241:18, 343:24-344:2). From 1975 to 2004, Richard carefully distributed Gloria's one-third share in the proceeds generated from the sale of the Estate's cattle. (FF, 55; TT, 39:9-13, 40:11-41:5, 336:8-22, Ex. 30, at SR00300, Ex. 36, 002183, Ex. 44, at 002248-002252; RA, 499, 576, 620).

Since 1975, Richard has filed an IRS 1065 Partnership Return for the income that the Estate Property generated. (FF, 61; TT, 252:7-12, Exs. 5, 36, 51, 53-54, 200-202, 216; RA, 214, 576, 738, 776, 795, 1405, 1411, 1452, 1575). Gloria received a K-1 each year since 1975. (FF, 62; TT, Ex. 78; RA, 900). Sleeps file a Form 1065 for income tax purposes for all their business entities, most of which are limited liability companies. (FF, 63; TT, 309:17-310:17, Ex. 200; RA, 1405). Of the three choices of IRS forms to file – individual, corporate, or partnership, based on advice that Richard received from a tax professional in the 1970's, Richard felt that Form 1065 was the best fit for his and Gloria's ownership of Estate Property. (FF, 65; TT, 347:1-19).

Gloria did not participate in or exercise any control over the management and operation of the Estate Property. (FF, 53; TT, 374:24-375:5). While she would from time to time make suggestions about the operation of the Estate Property, she did not inquire about day-to-day management. (FF, 38; TT, 39:3-23,

61:16-19, 98:2-5, 256:12-25, 281:5-13, 292:15-25, 374:24-375:2). Nor did she contribute capital or labor to the operation and management of Estate Property. (Id.). Gloria's name was never placed on an operating bank account for the Estate Property. (FF, 54; TT, 53:2-9, 137:8-20, Ex. 110; RA, 946).

From 1975 through 2004, Richard and Gloria nonetheless shared the monies that the Estate Property generated. During that time, the check that Gloria received each year included deductions for typical carrying costs of land, such as weed control, taxes, and insurance, but one-third of the profits generated by the Estate Property were otherwise distributed to her. (FF, 55; TT, 39:9-13, 40:11-41:5, 336:8-22, Ex. 30, at SR00300, Ex. 36, 002183, Ex. 44, at 002248-002252; RA, 499, 576, 620). Gloria also directly received from payments for other revenues generated by the Estate Property, such as timber sales. (FF, 59; TT, 295:1-20). Importantly, in the years that the Estate Property operated at a loss, Richard did not ask Gloria to provide her share of the shortfall. (FF, 43; TT, 38:19-20, 293:1-7; Ex. 78; RA, 900).

In the late 1990's, Richard and Gloria began "serious discussions about ways to resolve" the Estate. (TT, 99:20-24). At one point, Gloria met with attorney Gary Richards in Spearfish, who was concerned about potential liability at Iron Creek Lake and suggested transferring that interest into a corporation. (TT, 69:14-24, 86:25-87:6, 110:5-15). Although Gary Richards filed articles of incorporation for an entity, Richard did not agree to its creation and later wrote a letter to the Secretary of State dissolving it. (TT, 110:18-111:13).

In approximately 1998 or 1999, Richard and Gloria met with attorney Pat Goetzinger in Rapid City. (TT, 70:7-17, 88:11-89:22, 112:2-9). Goetzinger was retained to assist with “organizing [the] entities” and estate planning. (TT, 88:11-89:22, 112:5-9, 140:24-141:11, Ex. 197; RA, 1371). Although he proposed Richard and Gloria form several limited liability companies, which were initially filed, they were later dissolved. (TT, 88:11-89:22, 112:10-113:2, 139:15-140:23, Ex. 9; RA, 238). No operating agreement was reached, no property was transferred into any of those entities, no meetings were held between Richard and Gloria for purposes of managing those entities, and no minutes were kept. (TT, 113:3-16, 140:5-23, Ex. 9; RA, 238). Importantly, Goetzinger characterized the purpose of these legal entities as “providing a mechanism to manage family assets under one umbrella organization,” intimating his understanding that they had not previously been operating in that way. (TT, 141:12-142:20, Ex. 197; RA, 1371).

In 2003, Gloria and Richard were able to come to at least a partial agreement. With Eugene having owned 240 head of cattle at the time of his death, Richard and Gloria eventually agreed on a price of \$60,000 for Gloria’s one-third share of the livestock – or eighty head of cattle. (FF, 46, 47; TT, 46, 55:20-56:1, 57:4-58:5, 99:15-11:2, 288:20-290:18, Ex. 2; RA, 196). In late 2003 and based upon the agreement reached with Gloria, Richard delivered a check to her for \$60,000. (FF, 47; TT, 57:1-58:5). But Gloria attempted to disavow any agreement to sell her one-third share of the cattle and did not cash the check. (FF, 48; TT, 57:15-16, 100:3-6). In a May 10, 2004, letter, Gloria admitted that she

and Richard had reached an agreement for the sale of the cattle but that the agreement merely needed to be committed to writing. (FF, 49; TT, Ex. 2; RA, 196).

Richard delivered a second check to Gloria on December 30, 2004, which she also did not cash. (FF, 51; TT, 287:14-288:2, 316:7-11, 335:13-327:20, Exs. 2, 22, 110; RA, 196, 406, 946). As a result, since 2004, payments to Gloria have been paid as “rent.” (FF, 44; TT, 316:7-10, 325:13-326:3, Exs. 22, 91, 110; RA, 406, 920, 946). Richard calculated a rental value for her portion of the Estate Property based on comparable rental rates that the Sleeps paid to lease pasture as well as prevailing agricultural lease rates in neighboring counties in western South Dakota. (FF, 52; TT, 287:14-288:2, 316:7-11, 335:13-327:20, Exs. 2, 22, 110; RA, 196, 406, 946).

Richard and Karen have always been careful to segregate their personal finances and ranching operations from those of the Estate Property. They owned a separate brand for their cattle, and the books, accounts, and profit Richard and Karen earned from their cattle operation is kept separate from the cattle that were considered Estate Property. (FF, 36, 37; TT, 271:22-272:18).

For more than fifty years, Richard and Karen and their children have acquired additional property that is operated as part of their ranching operation. (FF, 66; TT, 31:3-18, 161:25-165:8, 166:9-167:6, 168:7-9, Exs. 29, 62, 64, 150-160, 165, 167, 172, 181; RA, 473, 849, 852, 1209, 1228, 1238, 1257, 1258, 1259, 1266, 1267, 1268, 1269, 1270, 1276, 1278, 1293, 1308). This property was

purchased in the Sleep name, not in the name of Richard and Gloria, and with the Sleeps' personal funds. (FF, 67, 68; TT, 252:13-255:9, 328:12-330:13, Ex. 71; RA, 853). Richard and Karen were careful to exclude Gloria's one-third interest in the Estate Property as collateral for loans that they obtained in their names for the operation of the ranch. (FF, 58, 69; TT, 39:9-41:5, 331:8-10, 333:16-334:18, Ex. 71; RA, 853). Most of the equipment considered Estate Property has since become obsolete and replaced with more modern equipment Sleeps purchased with their personal funds. (FF, 60; TT, 336:3-22).

Also, in late 2003 or early 2004, at the suggestion of her attorney, Gloria began implying for the first time a partnership existed between her and Richard. (FF, 39; TT, 118:4-124:19, Exs. 82, 86-87; RA, 902, 905, 908). For example, in a December 23, 2004, letter to Richard, Gloria cryptically wrote, "I have always placed complete trust in you relative to ranch operations and management in your intentions to treat me fairly and equitably as your partner." (TT, 119:17-122:4, Ex. 82; RA, 902). Similarly, in a February 11, 2008, letter to Richard, Gloria once again used this same language and otherwise referenced her "partnership interest." (TT, 122:6-123:3, Ex. 86, RA, 905). Finally, in an April 16, 2008, letter, Gloria indicated that she trusted Richard "as [her] partner and [her brother]" and further referenced his "fiduciary responsibility as managing partner." (TT, 123:4-124:10, Ex. 87; RA, 908).

In late 2009, Gloria sent a series of letters to Richard to come to a further agreement regarding the Estate Property. (TT, 132:16-18, Exs. 11, 123; RA, 261,

1103). In a December 11, 2009, letter, Gloria proposed a partition of the Estate Property that included property the Sleeps hoped to acquire with their personal funds. (TT, 132:19-133:12, Ex. 11; RA, 261). She also wrote: “Specifically, I am not interested in being a part of a business entity with you or your family such as an LLC or a partnership.” (TT, 133:18-22, Ex. 11; RA, 261). Then, on December 18, 2010, she sent another letter to Richard to follow-up on a lease proposal that she had made approximately six months earlier. (TT, 134:22-135:12, Ex. 123; RA, 1103). She attached the proposed lease, which contained the following language, to her December 18, 2010, letter: “It is particularly understood and agreed that this lease shall not be deemed to be or intended to give rise to a partnership relation.” (TT, 135:13-136:22, Ex. 123; RA, 1103). Although Gloria testified that the proposed lease was merely a form that she had obtained from the county extension office, she admitted that she did read the form before she sent it to Richard. (TT,136:6-12).

Richard and Gloria were unable to resolve their differences regarding the division of the Estate Property. As a result, on August 29, 2018, Sleeps initiated this lawsuit seeking, among other things, declaratory relief that Richard and Gloria had not formed a partnership with respect to the assets of the estate. (RA, 3). A court trial on the question of the existence of a partnership between Richard and Gloria was held on December 15 and 16, 2020. (TT, *supra*; RA, 1577-2022). After post-trial briefing and receiving competing proposals and objections from the parties, Judge Comer issued her Findings of Fact and Conclusions of Law on

March 30, 2021, finding and concluding that no partnership had been formed between Richard and Gloria. (RA, 2026, 2054, 2071, 2106, 2127, 2146, 2166). Gloria now appeals.

STANDARD OF REVIEW

In South Dakota, it has been repeatedly recognized that “[t]he existence of a partnership is a question of fact.” *McGregor v. Crumley*, 2009 S.D. 95, ¶ 20, 775 N.W.2d 91, 97 (citing *Widdoss v. Donahue*, 331 N.W.2d 831, 833 (S.D. 1983) (citing *Weidner v. Lineback*, 82 S.D. 8, 140 N.W.2d 597 (1966); *Munce v. Munce*, 77 S.D. 594, 96 N.W.2d 661 (1959)). A circuit court’s findings of fact are reviewed under the “clearly erroneous” standard of review. *Id.* ¶ 15 (citing *In re Estate of Olson*, 2008 S.D. 4, ¶ 8, 744 N.W.2d 555, 558). “A trial court’s finding is clearly erroneous if, after reviewing the entire evidence, [this Court] is left with the definite and firm conviction that a mistake has been made.” *Id.* (quoting *In re Estate of Pringle*, 2008 S.D. 38, ¶ 18, 751 N.W.2d 277, 284). This Court resolves “all conflicts in the evidence in favor of the trial court’s determinations.” *Id.* Questions of law, by contrast, “are reviewed de novo with no deference given to the trial court.” *Id.* (citing *Adrian v. McKinnie*, 2004 S.D. 84, ¶ 6, 684 N.W.2d 91, 94). “The circuit court’s ‘findings of fact must be supported by the evidence and conclusions of law must in turn be supported by the findings of fact.’” *Id.* (quoting *In re J.D.M.C.*, 2007 S.D. 97, ¶ 18, 739 N.W.2d 796, 803).

Gloria, contrary to this clearly established precedent, argues that the question whether a partnership exists between her and Richard is a mixed question

of law and fact and should thus be reviewed de novo. In doing so, Gloria concedes that she does not dispute much, if any, of the trial court's findings of fact. (Appellants' Brief, 11). See *In re Dorsey & Whitney Trust Co., LLC*, 2001 S.D. 36, ¶ 6, 623 N.W.2d 468, 471 (defining a mixed question of law and fact as one in which "the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the rule of law as applied to the established facts is or is not favorably satisfied") (quoting *Permann v. S.D. Dep't of Labor*, 411 N.W.2d 113, 118 (S.D. 1987)). Thus, here, if a mixed question of law and fact is presented, this Court is asked to review not only the trial court's findings of historical fact concerning the existence of a partnership, but also the trial court's application of established legal standards to those facts. See *Stockwell v. Stockwell*, 2010 S.D. 79, ¶ 15, 790 N.W.2d 52, 58.

The standard of review for these two inquiries is separately determined. As for the first inquiry, as noted above, the trial court's findings of fact will not be set aside unless clearly erroneous. See *id.* ¶ 16 (citing SDCL 15-6-52(a)). "But in deciding a mixed question of law and fact, the standard of review of the second inquiry – the application of law to fact – depends on the nature of the inquiry." *Id.*

If application of the rule of law to the facts requires an inquiry that is 'essentially factual' – one that is founded 'on the fact-finding tribunal's experience with the mainsprings of human conduct' – the concerns of judicial administration will favor the [trial] court, and the [trial] court's determination should be classified as one of fact reviewable under the clearly erroneous standard. If, on the other hand, the question requires us to consider legal precepts in the mix of fact and law and to exercise judgment about the values that animate legal principles, then the concerns of judicial administration

will favor the appellate court, and the question should be classified as one of law and reviewed de novo.

Id. (quoting *Darling v. West River Masonry*, 2010 S.D. 4, ¶ 10, 777 N.W.2d 363, 366).

Here, in reviewing the question of the existence of a partnership, the concerns of judicial administration favor the trial court. After all, this Court has repeatedly recognized that the existence of a partnership is a non-technical inquiry that requires a trial court to examine the “peculiar facts” of each case, including the parties’ motivations and states of mind. *McGregor*, 2009 S.D. 95, ¶ 20, 775 N.W.2d at 97-98 (recognizing that “each case must be governed by its own peculiar facts, and the existence of [a partnership] is a question for the trier of fact, except in a case where the evidence is conclusive.”) (quoting *Ins. Agents v. Zimmerman*, 381 N.W.2d 218, 220 (S.D. 1986) (citing *Munce*, 77 S.D. at 597, 96 N.W.2d at 663)); *see also Stockwell*, 2010 S.D. 79, ¶ 16, 790 N.W.2d at 59. While it may be that the historical facts of this case are generally undisputed, the trial court’s factual findings on the mixed question of the existence of a partnership, as well as the application of any legal standard to those facts, should nonetheless be reviewed under the clearly erroneous standard of review.

ARGUMENT

“[T]he association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.” SDCL 48-7A-202(a). “The existence and scope of a partnership

may be evidenced by a written or an oral agreement or implied by conduct of the parties.” *Temple v. Temple*, 365 N.W.2d 561, 566 (S.D. 1985) (citing *Lewis v. Gallemore*, 173 Neb. 211, 213, 113 N.W.2d 54 (1962); *Gangl v. Gangl*, 281 N.W.2d 574, 579 (N.D. 1979)). The party asserting the existence of the partnership bears the burden of proof by a preponderance of the evidence. *See McGregor*, 2009 S.D. 95, ¶ 24, 775 N.W.2d at 98-99.

This Court has not articulated a definitive test for determining the existence of a partnership. Instead, it has said that “each case must be governed by its own peculiar facts, and the existence of the relationship is a question for the trier of fact, except in a case where the evidence is conclusive.” *McGregor*, 2009 S.D. 95, ¶ 20, 775 N.W.2d at 97-98 (quoting *Ins. Agents, Inc.*, 381 N.W.2d at 220 (citing *Munce*, 77 S.D. at 597, 96 N.W.2d at 663)). But, on at least one occasion, this Court enumerated various factors to be considered in determining whether a partnership has been formed – namely, whether the individuals used a common bank account, entered into a partnership agreement, shared profits, intended to be partners, held themselves out as partners to third-parties, filed a partnership tax return, individually contributed capital to the partnership venture, or jointly managed, administrated, or controlled the business. *Widdoss*, 331 N.W.2d at 833 (S.D. 1983) (affirming trial court’s finding that no partnership existed between broker and his father because they did not have a partnership agreement, did not share profits, did not intend to be partners, did not hold themselves out as partners, did not file a partnership tax return, did not individually contribute capital to the

venture, and did not jointly manage, administer, or control the business); *see also Coder v. Jones*, 2012 WL 844732, at *1 (D. S.D. March 8, 2012); *Ins. Agents, Inc.*, 381 N.W.2d at 223 (“In determining whether a partnership exists there are three requirements that must be met: (1) an intent to form a partnership; (2) sharing in the profits; and (3) authority of each party to run the business.”) (Hertz, Acting J., dissenting) (citations omitted).

Our neighboring states have articulated similar multi-factor tests. For example, in North Dakota, which likewise recognizes that “[t]he existence of a partnership is not governed by one conclusive criterion but by the facts and circumstances of each case,” the elements to be considered important, even critical, to the existence of a partnership are: “an association, or an intention to be partners; co-ownership of, and a community of interest in, the business of the partnership; and the profit motive.” *Gangl*, 281 N.W.2d at 579. Comparably, under Nebraska law, the objective factors to evaluate the existence of a partnership include intent and co-ownership, which is measured by “(1) profit sharing, (2) control sharing, (3) loss sharing, (4) contribution, and (5) co-ownership of property.” *In re KeyTronics*, 274 Neb. 936, 955-59, 744 N.W.2d 425, 439-441 (2008). Finally, the Montana Supreme Court has articulated the test for evaluating the existence of a partnership as follows:

- (1) The parties must clearly manifest their intent to associate themselves as a partnership;
- (2) each party must contribute something that promotes the enterprise;
- (3) each party must have a right of mutual control over the subject matter of the enterprise; and
- (4) the parties must agree to share the profits of the enterprise.

Bender v. Bender, 144 Mont. 470, 480, 397 P.2d 957, 962 (1965). Ultimately, for a partnership to exist, “[t]he law requires more than a loose working arrangement.” *Gangl*, 281 N.W.2d at 581.

Applying these factors to this case there is only one conclusion that can be reached. First, because Richard and Gloria received the Estate Property through an inheritance, rather than a voluntary act, they did not voluntarily associate and did not otherwise engage in conduct from which an intention to form a partnership can be ascertained. Second, Richard and Gloria own the Estate Property as tenants in common and merely share in the monies that the Property generates, which, by statute, does not render them partners. Third, Gloria has not exercised any control over the management, administration, or operations of the ranch. Fourth, Gloria did not make any contribution to the ranching enterprise, including not even contributing additional monies or capital to cover losses. For these reasons, on the “peculiar facts” of this case, which are largely undisputed and amply supported by the record, the trial court did not clearly err in its finding no partnership was formed.

1. Richard and Gloria did not intend to jointly carry on a business for profit.

A. Intent is a proper and necessary consideration in evaluating the existence of a partnership.

It is important to note that SDCL 48-7A-202(a) provides that “the association of two or more persons to carry on as co-owners a business for profit forms a partnership, *whether or not the persons intend to form a partnership.*”

(Emphasis added). Gloria predictably latches on to this language to argue that the question whether she and Richard subjectively intended to form a partnership is not a proper consideration. Not only does Gloria’s argument assign to this succeeding clause a meaning its drafters did not intend, but it also discounts the role of the parties’ intent in the analysis set down by the precedent of this Court and its sister states.

The meaning of the SDCL 48-7A-202(a)’s succeeding clause must be put in proper context. South Dakota adopted the Revised Uniform Partnership Act in 2001, which added the words “whether or not the persons intend to form a partnership” to the definition of a partnership. 2001 S.D. Sess. Laws. ch. 249, § 1205. The drafters of the uniform law did not intend any substantive changes in the current law when they added the additional phrase to the definition of a partnership. *Uniform Partnership Act*, § 202, cmt. 1 (1997).

The addition of the phrase, “whether or not the persons intend to form a partnership,” merely codifies the universal construction of UPA Section 6(1) that a partnership is created by the association of persons whose intent is to carry on as co-owners a business for profit, regardless of their subjective intention to be “partners.” Indeed, they may inadvertently create a partnership despite their expressed subjective intention not to do so. The new language alerts readers to this possibility.

Id. The National Conference of Commissioners on Uniform State Laws emphasized that “[n]o substantive change in the law” was intended by the amendment. *Id.* As a result, the proper question is not whether the individuals

subjectively intended to form a partnership but whether they intended to jointly carry on a business for profit.

This Court has yet to take up the meaning of SDCL 48-7A-202 (a)'s succeeding phrase. Before the enactment of the Uniform Partnership Act, this Court listed the parties' intent to be partners as one factor to be considered in its analysis. *See Widdoss*, 311 N.W.2d at 832. Based on identical language in their state statutes, even after the amendment of the Act, our neighboring states have made clear that "[t]he purpose of the phrase was to clarify that a partnership could be created regardless of the parties' subjective intent, making it possible for individuals to inadvertently create a partnership despite their expressed subjective intent not to do so." *Ziegler v. Dahl*, 2005 N.D. 10, ¶ 17, 691 N.W.2d 271, 276. "[P]articipants in a business 'must intend to be part of an association that includes all the essential elements of a partnership for that association to be a partnership.'" *Id.* ¶ 15 (quoting *Gangl*, 281 N.W.2d at 580; *Tarnavsky v. Tarnavsky*, 147 F.3d 674 (8th Cir. 1998) (recognizing that the actions of the parties evidence their intent to be partners)). "The existence of this element focuses 'on the intent of the participants to be part of a relationship which includes the other essential elements of [a] partnership.'" *Id.* "Intent does not need to 'be vocalized either in writing or orally, if it can be derived from the actions of the parties.'" *Id.* In the end, "[t]hat the parties considered themselves partners is persuasive, however, not necessarily conclusive evidence of intent as one or more of the essential elements of a

partnership may be lacking from the arrangement which they consider a partnership.” *Gangl*, 281 N.W.2d at 580.

B. Richard and Gloria did not voluntarily associate for the purposes of carrying on a business for profit.

SDCL 48-7A-202(a) explicitly describes a partnership as an “association of two or more persons.” As the North Dakota Supreme Court has explained, “association” means not only a group of two or more persons but also voluntariness. *Gangl*, 281 N.W.2d at 580; *see also In re KeyTronics*, 274 Neb. at 955, 744 N.W.2d at 439 (recognizing that “inherent to the term ‘association’ is the idea that the relationship between the ‘two or more persons’ be intentional, that “[i]n the domain of private law the term association necessarily involves the idea that the association is voluntary,” and that “[p]eople do not become partners when they attain co-ownership of a business for profit through an involuntary act”).

Inheritance of common property is not a voluntary act and therefore does not provide evidence of an intent to associate within the meaning of SDCL 48-7A-202(a). *See Gangl*, 281 N.W.2d at 580; *see also KeyTronics*, 274 Neb. at 955, 744 N.W.2d at 439. Accordingly, Richard and Gloria do not satisfy the initial requirement of a voluntary association of two or more persons.

C. Richard and Gloria’s other actions and conduct does not evince an intent to form a partnership.

In most ways, Richard and Gloria did not act as though they considered themselves partners. Gloria points to numerous facts to argue that she and Richard intended to associate as partners, but, in many of these instances, from the filing of

partnership returns to the formation and ultimate dissolution of corporate entities, when the evidence and testimony is viewed as a whole, the record in fact supports the trial court's finding the parties did not intend to form a partnership.

1) Richard and Gloria did not follow the formalities of a partnership.

Ruth, Richard, and Gloria did not conduct themselves as partners from the very beginning. In 1975, Richard and Karen purchased Ruth's one-third interest in the Estate Property on a contract for deed. (FF, 14, 40; TT, 42:4-6, 235:2-9, Ex, 29; RA, 473). When she did learn of the sale, Gloria did not object or assert her rights as a partner. (TT, 50:2-7).

2) The filing of partnership tax returns is not determinative.

Gloria categorically asserts that filing of partnership tax returns is evidence of co-ownership of the business as partners. (Appellants' Brief, 13-14). Case law on this question, however, as well as the facts to be applied, are more nuanced than her unqualified analysis allows. While it is true that several courts have considered the filing of partnership tax returns in their analysis, those courts, and others, have also recognized that this fact is by no means dispositive. *See Widdoss*, 331 N.W.2d at 833 (including the fact that broker and father did not file a partnership tax return in analysis of several factors); *Coder*, 2012 WL 844732, at *1 (listing "filing a partnership tax return" as one of seven factors to be considered the existence of a partnership); *Tarnavsky*, 147 F.3d at 677 (noting that individuals reported their farming activities on federal partnership income tax returns for over

twenty years but describing his fact as “not determinative”); *see also Ins. Agents, Inc.*, 381 N.W.2d at 223 (Hertz, Acting J., dissenting) (noting that husband and wife did not file partnership income tax returns in list of twenty considerations).

Furthermore, this Court and others have not given significant weight to the form used in deciding partnership issues. For example, in *Gangl*, the North Dakota Supreme Court found that an arrangement in which members of family farming operation who had long filed state and federal partnership income tax returns had not created a partnership. 281 N.W.2d at 581. In the end, the trial court properly found that Richard’s choice of filing a Form 1065 is not an admission or recognition of a partnership relationship and should not be afforded the weight that Gloria advocates. (CL, 45).

3) Richard and Gloria only rarely referred to one another as partners.

Gloria also relies upon her or Richard’s passing references to one another as partners. (Appellants’ Brief, 18-19). To begin, it cannot be ignored that both Richard and Gloria presented documents through the years that specifically disavowed the existence of a partnership. When Richard and Karen purchased Ruth’s one-third interest in the Estate Property on a contract for deed in 1975, the Contract for Deed specifically described the conveyance as tenancy in common and made clear that no partnership was created. (FF, 14, 40; TT, 44:16-23, Ex, 29, at SR00445, 2(d); RA, 473). Near that same time, Richard’s attorney drafted and sent a proposed lease to Gloria for her one-third interest of Estate Property, which

again confirmed that no partnership was intended. (FF, 42; TT, 47:6-49:23, Exs. 61, 198; RA, 833, 1399). Then, years later, in a December 11, 2009, letter to Richard, Gloria wrote: “Specifically, I am not interested in being a part of a business entity with you or your family such as an LLC or a partnership.” (TT, 132:19-133:12, 133:18-134:21, Ex. 11; RA, 261). Finally, in December 2010, she sent another letter to Richard and attached a proposed lease, which contained the following language: “It is particularly understood and agreed that this lease shall not be deemed to be or intended to give rise to a partnership relation.” (TT, 134:22-136:22, Ex. 123; RA, 1103).

It is nonetheless true that the parties did occasionally refer to one another as partners. In a series of letters from 2004 to 2008, Gloria reiterated the trust that she placed in Richard as “her partner,” referenced her “partnership interest,” and referenced his “fiduciary responsibility as managing partner.” (FF, 39; TT, 118:4-124:19, Exs. 82, 86-87; RA, 902, 905, 908). Similarly, in a letter Richard wrote to Gloria, he stated, “I would think that the appraisal you had completed would help you establish the majority of the value of the partnership.” (TT, 352:24-353:18, 354:21-356:3, Ex. 7; RA, 233). In Richard’s words, he and Gloria had never talked about forming a partnership, “[i]t just all of a sudden appeared in her vocabulary.” (TT, 363:5-11).

These transitory remarks over more than fifty years are not probative for two reasons. First, casual reference to one party or the other as “partner” does not control the question of whether they are truly “partners” in fact or law. *Ziegler*,

2005 N.D. 10, ¶ 18, 691 N.W.2d at 276 (citing *Gangl*, 281 N.W.2d at 580). “The terminology that parties give to their working arrangement is not determinative, ‘especially where the record indicates the parties did not intend to be part of a relationship which included the other essential elements of a partnership.’” *Id.* Second, there is no evidence that Richard or Gloria used the term “Sleep Ranch Partnership” in dealings with third parties, such as banks or creditors. (FF, 71). *See* SDCL 48-7A-408; *Snell v. Watts*, 77 S.D. 534, 539, 95 N.W.2d 453, 456 (1959). No bill, invoice, loan document, deed, account, or contract was introduced into evidence using the term “Sleep Ranch Partnership.” Indeed, Gloria admitted that she simply assumed that a partnership existed – and that she does not know whether she ever communicated that assumption to Richard – except the in the spectra of litigation. (TT, 50:24-52:3). The trial court therefore properly did not afford this evidence great weight.

4) The legal documents and corporate entities disavow the existence of a partnership.

Gloria similarly relies upon the fact that she and Richard discussed entity structures for the Estate Property. (Appellants’ Brief, 15-16). As with many of Gloria’s assertions, however, the story is far more involved than she relates, and, when told in full, again confirms they did not in fact intend to form a partnership. If anything, because all such entities were dissolved, the discussions and actions surrounding their formation and dissolution demonstrates Richard’s intent to not “associate” with Gloria in any business manner.

Gloria tells only one-half of the story—the creation, but not the dissolution, of the various corporate entities described earlier. The little to no weight their formation deserves is evidenced by Gloria’s concession there were no operating agreements, meetings, minutes, documents, or even an oral agreement to support her contention that Richard agreed to a “partnership.” (TT, 50:23, 109:2-8).

5) Richard and Gloria did not operate a “common account.”

Gloria also alleges use of a “common bank account” as evidence of the existence of a partnership, but she and Richard had no such thing. *Widdoss*, 331 N.W.2d at 833 (considering the fact that alleged partners used the same trust account and the same business checking account); *see also Coder*, 2012 WL 844732 (same); *Tarnavsky*, 147 F.3d at 677 (same). From the beginning, Ruth assumed Eugene’s prior role as bookkeeper, maintaining the books and accounts of the Estate Property separately from those of Richard and Karen. (FF, 6(i), 11; TT, 35:10-11, 37:3-5, 39:9-40:25, 251:10-252:12, 273:8-11, 283:13-24, 329:17-19, 336:11-14). There is no evidence of co-mingling of revenue or expenses. (FF, 6(i); TT, 39:9-40:25, 251:10-252:12, 283:13-24, 329:17-19, 336:11-14).

Gloria’s name was never placed on the “Sleep Ranch” operating bank account; and she did not have authority to write checks from it. (FF, 54; TT, 53:2-9, 137:8-20, Ex. 110; RA, 946). Her assertion otherwise is plain wrong. (Appellants’ Brief, 14). She never paid bills, purchased equipment, materials, supplies, or anything from the phantom account to which she refers. (TT, 39:9-13,

40:11-41:5, 336:8-22). Gloria's assertion that she and Richard had a "common bank account" is plainly not supported by the record evidence.

2. Richard and Gloria's joint ownership of the Estate Property and sharing of profits that the Property generated does not partners make.

A. Richard and Gloria jointly owned the Estate Property as tenants in common, not as partners.

Joint ownership of real property alone does not render individuals partners. SDCL 48-7A-202(c)(1) explicitly clarifies that tenancy in common and other forms of joint ownership of property "does not by itself establish a partnership, even if the co-owners share profits made by the use of the property." *See also* SDCL 48-7A-202(c)(2) ("The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived."); *Temple v. Temple*, 365 N.W.2d 561, 566 (S.D. 1985) (recognizing that mother and son who owned property in joint tenancy and shared the profits from the property had not establish a partnership); *see also In re KeyTronics*, 274 Neb. at 958, 744 N.W.2d at 441 ("Being 'co-owners' of a business for profit does not refer to the co-ownership of property, but to the co-ownership of the business intended to garner profits."); *but see Greeley v. Walters*, 2014 WL 1330983 (D. S.D. March 30, 2014) (concluding that once property was purchased in the parties' names they had a fiduciary duty to one another to report the results of income generated from the property).

Ownership of real property as tenants in common and ownership as partners are mutually exclusive concepts. In South Dakota, ownership of real property is either:

- (1) Of joint interests;
- (2) Of partnership interests; *or*
- (3) Of interests in common.

SDCL 43-2-11 (emphasis added). *See also* SDCL 43-2-15 (“A partnership interest is one owned by several persons, in partnership, for partnership purposes.”);

SDCL 43-2-16 (“An interest in common is one owned by several persons *not in joint ownership or partnership.*”) (emphasis added). Unless expressly conveyed as a partnership interest, real property is owned by individuals in their own right as an interest in common. SDCL 43-2-17 (“Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared to be a joint interest, as provided in §§ 43-2-12 to 43-2-14, inclusive.”).

The trial court found, and it is uncontroverted, that Richard and Gloria owned the Estate Property as tenants in common. Richard did not form a partnership with Eugene and Ruth, either written or oral, during Eugene’s life. (FF, 6, 6(f); TT, 27:20-28:1, 51:1-52:1, 271:22-24). When Eugene passed away in 1967, Eugene’s wife, Ruth, and their children, Richard and Gloria received their interests in the Estate Property as tenants in common, not as partners. (FF, 7, 8; TT, 46:18-47:1, Ex. 1; RA, 190). Indeed, at that time, Gloria did not receive any income from the Estate Property until 1975, and Richard remained a W-2

employee, as he had before Eugene's death. (TT, 35:12-19, 37:6-12, 108:24-109:1, 342:1-3, 342:24-343:3, 343:24-344:2). Gloria concedes that she, Ruth, and Richard received their interests in the Estate as tenants in common, not as partners, and that they did not meet after Eugene's death to discuss forming a partnership or how the Estate Property would be operated and managed. (FF, 12; TT, 51:1-52:1, 94:7-9, 108:19-23). In fact, following Richard's purchase of Ruth's interest, the Contract for Deed, warranty deeds, and proposed lease all make clear that the Estate Property is owned as tenants in common. (FF, 14, 16, 17, 22, 40, 42; TT, 47:6-49:23, Exs. 29, 61, 62, 63, 167, 198; RA, 473, 833, 849, 852, 1278, 1399). The trial court correctly concluded, because Richard and Gloria received their interest in the Estate Property as tenants in common, they were not partners. (CL, 57).

B. Richard and Gloria did not share in the profits and losses of the ranching enterprise.

South Dakota law is clear that the sharing of gross returns generated by common property does not establish the existence of a partnership. On the one hand, SDCL 48-7A-202 (c)(2) provides that "[t]he sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived." *See Ins. Agents, Inc.*, 381 N.W.2d at 220 ("In determining whether a partnership exists, the sharing of gross returns does not, of itself, establish a partnership, whether or not the persons sharing them have a joint or common right or interest

in any property from which the returns are derived.”). On the other hand, SDCL 48-7A-202(c)(3) goes on to provide that “[a] person who receives a share of profits of a business is presumed to be a partner in the business, unless the profits were received in payment” of, among other things, rent. *See Ins. Agents, Inc.*, 381 N.W.2d at 220 (“[R]eceipt by a person of a share of the profits of a business, with some exceptions . . . , prima facie evidence that he is a partner in the business.”). While the sharing of profits of a *business* creates a rebuttable presumption of partnership, the sharing of returns generated by common *property* does not.

Gloria therefore properly makes a distinction between co-ownership of the Estate Property and co-owners or partners of a *business*. (Appellants’ Brief, 12). “Being ‘co-owners’ of a business for profit does not refer to the co-ownership of property, but to the co-ownership of the business intended to garner profits.” *In re KeyTronics*, 274 Neb. at 958, 744 N.W.2d at 441; *see also* Revised Uniform Partnership Act, § 202, cmt. 2 (2013) (recognizing that “mere passive co-ownership of property, as distinguished from using the property to carry on a business, does not establish a partnership,” and that “merely sharing gross revenues is likely insufficient”). It is this co-ownership that distinguishes partnerships from other commercial relationships such as creditor and debtor, employer and employee, franchisor and franchisee, and landlord and tenant.” *In re KeyTronics*, 274 Neb. at 958, 744 N.W.2d at 441.

South Dakota, like its neighboring states, has recognized the importance of profit and loss sharing as indicium of partnership. *See Widdoss*, 331 N.W.2d at

833; *Coder*, 2020 WL 844732, at *1; *see also Bender*, 144 Mont. at 480, 397 P.57 at 962 (including, as one of the factors for determining the existence of a partnership, that “the parties must agree to share the profits of the enterprise”). North Dakota and Nebraska analyze profit and loss sharing as an element of co-ownership of a business. *In re KeyTronics*, 274 Neb. at 958, 744 N.W.2d at 441; *Ziegler*, 2005 N.D. 10, ¶ 21, 691 N.W.2d at 277 “co-ownership is the second necessary element to prove the existence of a partnership. . . . Co-ownership includes the ‘sharing of profits and losses as well as the power of control in the management of the business.’” Indeed, “[o]f the five indicia of co-ownership, profit sharing is possibly the most important, and the presence of profit sharing” creates a rebuttal presumption of partnership. *In re KeyTronics*, 274 Neb. at 960, 744 N.W.2d at 443; *see also Gangl*, 281 N.W.2d at 579 (“Although the presumption does not conclusively establish the existence of a partnership, profit-sharing is an essential element and a primary attribute of partnership.”).

As an initial matter, Richard and Gloria did not share in the profits that the Iron Creek Lake operation generated. From 1969 to 1975, Gloria and Bob ran the Iron Creek Lake Campground and Store. (FF, 31; TT, 62:12-63:5). During this time, Richard did not participate in the management of the operations at Iron Creek Lake, and Gloria and Bob received all its profit. (FF, 32; TT, 30:6-17, 31:19-24, 32:20-33:1, 56:2-9, 62:4-63:9, 240:10-241:18). After 1975, Richard and Karen assumed responsibility for managing those operations and, from that time forward, received all its profits. (63:2-9, 241:13-242:2). It is therefore manifest

that the Iron Creek Lake Campground and Store were not operated as a common enterprise.

Moreover, as for the ranching enterprise, Richard and Gloria merely shared gross returns generated by the Estate Property. First, it is uncontroverted that, in the initial years after Eugene's death, Gloria received no profits from the ranching enterprise. (FF, 32, 35; TT, 30:6-17, 31:19-24, 32:20-33:1, 35:12-19, 56:2-9, 62:4-63:9, 108:24-109:1, 240:10-241:18, 343:24-344:2). It is true that, from 1975 to 2004, Richard was careful to distribute Gloria one-third share in the proceeds from the Estate Property. (FF, 55; TT, 39:9-13, 40:11-41:5, 336:8-22, Ex. 30, at SR00300, Ex. 36, 002183, Ex. 44, at 002248-002252; RA, 499, 576, 620). During that time, the check that Gloria received each year included deductions for typical carrying costs of land, such as weed control, taxes, and insurance, but one-third of the profits generated by the Estate Property were otherwise distributed to her. (FF, 55; TT, 39:9-13, 40:11-41:5, 336:8-22, Ex. 30, at SR00300, Ex. 36, 002183, Ex. 44, at 002248-002252; RA, 499, 576, 620). Gloria also directly received payments for other revenues generated by the Estate Property, such as timber sales. (FF, 59; TT, 295:1-20). But, after Gloria's sale of her share of the cattle to Richard in 2004, payments to her have been paid as "rent." (FF, 44; TT, 316:7-10, 325:13-326:3, Exs. 22, 91, 110; RA, 406, 920, 946). *See* SDCL 48-7A-202(c)(3).

Importantly, it is undisputed that at no time did Gloria contribute capital to the ranching enterprise. While Richard's formula to compensate Gloria for her interest in the Estate Property included some costs of operation, other expenses

were not considered. For example, Richard did not consider the value of his and his family's significant contribution of labor and management. (TT, 39:3-23, 61:16-19, 98:2-5, 256:12-25, 281:5-13, 292:15-25, 374:24-375:2). In fact, even in years when the Estate Property lost money, Gloria was not asked to provide her share of the shortfall or otherwise make any capital contribution, and she concedes that she has never done so. (FF, 43; TT, 36:17-20, 293:1-7; Ex. 78; RA, 900). *See Widdoss*, 331 N.W.2d at 833 (affirming trial court's finding that no partnership existed because, among other things, broker and his father did not individually contribute capital to the venture). While Richard and Gloria were co-owners of the Estate Property, the trial court properly found that they were not co-owners or partners of a ranching business, within the meaning of SDCL 48-7A-202(a). (CL, 52).

Finally, even if Richard and Gloria did share profits in a true sense, this factor, without more, is insufficient to establish the formation of a partnership. While the sharing of a profits may be a prima facie indicium of the formation of a partnership, it by no means presents the end of the analysis. If the other elements of a partnership are absent, then the existence of a partnership is rebutted. *Gangl*, 281 N.W.2d at 580. In *Gangl*, the North Dakota Supreme Court concluded that an arrangement in which members of a decades-long family farming operation agreed to work under the direction and control of one family member and receive a share of profits, primarily in the form of land, cattle proceeds in proportion to the number of cattle owned by each individual, and an interest in any machinery

purchased, was not a partnership, because, among other things, it was undisputed that none of the other participants contributed their personal funds for the purposes of loss sharing. 281 N.W.2d at 580-81. Similarly, in this case, if Richard and Gloria did share profits, the other “peculiar facts” of this case ultimately sufficiently rebut any presumption of a partnership that may arise.

3. Gloria did not have, and did not exercise, any right of control over the management of the ranching enterprise.

The right to control the management and operation of the business is a recognized key component of a partnership relationship. *Widdoss*, 331 N.W.2d at 833 (S.D. 1983; *see also Coder*, 2012 WL 844732, at *1 (listing “joint management, administration, or control of the business” as one of the “factors that may indicate the existence of a partnership between two or more parties”). In fact, it has been said that, along with the sharing of profits and losses, “[c]ontrol is an indispensable component of co-ownership[.]” *Gangl*, 281 N.W.2d at 580; *see Ziegler*, 2005 N.D. 10, ¶ 21, 691 N.W.2d at 277 (“Co-ownership includes the ‘sharing of profits and losses as well as the power of control in the management of the business.’”); *In re KeyTronics*, 274 Neb. at 958, 744 N.W.2d at 441 (listing “control sharing” as one of the five “objective indicia of co-ownership”); *Antonick v. Jones*, 236 Mont. 279, 283, 769 P.2d 1240, 1242 (1989) (“There must be . . . a right of mutual control over the subject matter of the enterprise[.]”) (quoting *Bender*, 144 Mont. at 480, 397 P.2d at 962). As the draftsman of the Uniform

Partnership Act explained, “To state that partners are co-owners of a business is to state that they each have the power of ultimate control.” *Id.*

Gloria also seizes upon her right to control operations, rather than her actual exercise of control. It is true that “[a]n important qualification to the control test is, however, that a person may be a partner even though he has entrusted control of the business exclusively to his associates. The question then becomes whether . . . the participant had the right to exercise control in the management of the business.” *Gangl*, 281 N.W.2d at 580. But the parties’ conduct in the exercise of that control over time is also significant. Once again, in *Gangl*, the North Dakota Supreme Court, although recognizing the importance of the *right* of control, nonetheless found it significant that the history of decision making was exercised by one family member to the exclusion of the others who claimed a partnership. *See id.* at 581; *see also Ziegler*, 2005 S.D. 10, at ¶ 22, 691 N.W.2d at 277. The *Gangl* Court thus characterized the relationship, not as one of partners, but rather as one “assuming and acting as a surrogate father with tacit consent of the others.” 281 N.W.2d at 581.

So it is here. The evidence and testimony that Richard made all management and operational decisions regarding the ranching enterprise and Iron Creek Lake since 1976 is unchallenged. (TT, 39:3-23, 61:16-19, 98:2-5, 256:12-25, 281:5-13, 292:15-25, 374:24-375:2). By Gloria’s own admission, at no point has she participated in management decisions or exerted control regarding the ranching enterprise. (TT, 39:3-23, 61:16-19, 98:2-5, 256:12-25, 281:5-13, 292:15-

25, 374:24-375:2). While Gloria would from time to time make suggestions to Richard or his sons about the operation of the Estate Property, she did not inquire, nor was she informed, about the ongoing nature of business operations. (FF, 38; TT, 38:20-39:23, 61:16-19, 98:2-5, 256:12-25, 281:5-13, 292:15-25, 374:24-375:2). Instead, her complaints about the lack of information that she received concerned her compensation for her one-third interest in Estate Property, not the management of the ranching operation. (TT, 54:8-11, 95:17-96:23, 145:13-15, 304:20-22, 206:2-11; Ex. 13, 82; RA, 267, 902). Gloria's letters to Richard in 2004 were silent on topics such as the health of the cattle, calf crop outlook, land conditions, or infrastructure or improvements; she was only focused on gathering financial information for estate planning purposes. (Id).

4. Gloria did not contribute to the operation of the ranching enterprise.

Contribution is the final consideration in evaluating the existence of a partnership. *See Ins. Agents, Inc.*, 381 N.W.2d at 221 (affirming trial court's finding that prima facie evidence of a partnership was established where wife not only received a share of business profits but also labored for them); *see also In re KeyTronics*, 274 Neb. at 958, 744 N.W.2d at 441 (listing "contribution as one of the "objective indicia of co-ownership"); *Bender*, 144 Mont. at 480, 397 P.2d at 962 (articulating that "each party must contribute something that promotes the enterprise); *Antonick*, 236 Mont. at 283, 769 P.2d at 1242 ("There must be some contribution by each co-adventurer or partner of something promotive of the enterprise.").

There is no dispute, and the trial court therefore properly found, that Gloria has not contributed to the ranching enterprise conducted upon the Estate Property. (FF, 38). Even in years when the Estate Property lost money, Gloria was not asked to provide her share of the shortfall or otherwise make any capital contribution, and she concedes that she has never done so. (FF, 43; TT, 38:19-20; 293:1-7; Ex. 78; RA, 900). As this Court has previously recognized, in analyzing questions of intent or state of mind, actions often speak louder than words. *See, e.g., State v. Hoadley*, 2002 S.D. 109, ¶ 58, 651 N.W.2d 249, 262 (concluding that defendant's actions regarding his intent to kill spoke louder than his words); *Sioux Valley Hosp. Ass'n v. Kingsbury Cnty.*, 414 N.W.2d 816, 817 (S.D. 1987) (concluding that, "[i]n spite of a declaration of [an] intent to remain in South Dakota, [individual's] actions [spoke] louder than words"). Gloria's behavior is her most credible testimony.

5. Gloria's sale of her share of the Estate cattle is an enforceable contract.

It is fundamental that "[t]here must be mutual assent or a meeting of the minds on all essential elements or terms in order to form a binding contract." *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 20, 736 N.W.2d 824, 832 (quoting *Read v. McKennan Hosp.*, 2000 S.D. 66, ¶ 23, 610 N.W.2d 782, 786). But "[t]he existence of mutual assent is a fact question determined by the words and actions of the parties," and is therefore reviewed under the clearly erroneous standard of review. *Id.* ¶¶ 20-21 (quoting *Read*, 2000 S.D. 66, ¶ 25, 610 N.W.2d at 786; *In re Estate of Neiswender*, 2003 S.D. 50, ¶ 20, 660 N.W.2d 249, 253).

The trial court properly found that Richard and Gloria entered an enforceable contract for the sale of her share of the Estate cattle. With Eugene having owned 240 head of cattle at the time of his death, Richard and Gloria eventually agreed on a price of \$60,000 for Gloria's one-third share of the livestock – or eighty head of cattle. (FF, 46, 47; TT, 46, 55:20-56:1, 57:4-58:5, 99:15-11:2, 288:20-290:18, Ex. 2; RA, 196). It was at that price Gloria agreed to sell, and Richard agreed to buy. (Id.). Richard's acceptance of Gloria's offer is established by his delivery of a check in late 2003 for the agreed-upon amount of \$60,000. (FF, 47; TT, 57:1-58:5). Although Gloria attempted to disavow any agreement to sell her one-third share of the cattle and did not cash the check, in her May 10, 2004, letter, she admitted she and Richard had reached an agreement for the sale of the cattle but the agreement merely needed to be committed to writing. (FF, 48, 49; TT, TT, 57:15-16, 100:3-6, Ex. 2; RA, 196). Her later insistence on a writing does not change the fact that an enforceable contract had already been reached. While Gloria might advocate a different result, the question is merely whether, "after reviewing the entire evidence, [this Court] is left with the definite and firm conviction that a mistake has been made." *McGregor*, 2009 S.D. 95, ¶ 20, 775 N.W.2d at 97. Because the trial court's finding that an enforceable contract existed is amply supported by the evidence and testimony presented at trial, it committed no error and should be affirmed.

CONCLUSION

The trial court properly concluded that Gloria failed to meet her burden of proving beyond a preponderance of the evidence that a partnership existed between Gloria and Richard. Sleeps therefore respectfully request this Court affirm the Trial Court’s Order and Judgment.

Dated this 25th day of November, 2025.

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**THE APPELLEES RESPECTFULLY REQUESTS THE OPPORTUNITY
FOR ORAL ARGUMENT**

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief does not exceed the number of words permitted under SDCL 15-26A-66(b)(2) and (3), said briefing containing 9,983 words and 51,348 characters. I have relied on the word and character count

of the word-processing system used to draft this brief in preparing this certificate as permitted under SDCL 15-26A-66(b)(4).

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The undersigned certifies that he served a true and correct copy of
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CERTIFICATE OF FILING

I, Kenneth E. Barker, attorney for Appellees, certify that an electronic copy of this Appellees' Brief was filed with the South Dakota Supreme Court and that the original was served upon:

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An electronic version of Appellees' Brief was also electronically transmitted in Word format to the Clerk of the Supreme Court at scclerkbriefs@ujs.state.sd.us on the 25th day of November, 2025.

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IN THE
Supreme Court
for the
State of South Dakota

RICHARD D. SLEEP and KAREN E. SLEEP, husband and wife; **JEFFREY E. SLEEP and JODI K. SLEEP**, husband and wife; **MATTHEW R. SLEEP; MELISSA A. DEAN; SLEEP RANCHES, LLC**, a South Dakota limited liability company; **SLEEP LAND AND LIVESTOCK COMPANY, LLC**, a South Dakota limited liability company; **IRON CREEK LAKE CAMPGROUND & STORE, LLC**, a South Dakota limited liability Company; and **IRON CREEK, LLC**, a South Dakota limited liability company,

Plaintiffs and Appellees,

vs.

GLORIA SLEEP STEELE, a/k/a Gloria G. Steele, and **STEELE REAL ESTATE, LLC**, a South Dakota limited liability company,

Defendants and Appellants.

On Appeal from the Circuit Court for the Fourth
Judicial Circuit, Lawrence County
Hon. Michelle Comer, Circuit Court Judge
Notice of Appeal filed June 11, 2025

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In the Supreme Court of South Dakota

Appeal No. 31120

Richard Sleep, et al.

v.

Gloria Steele, et al.

*ON APPEAL FROM A FINAL JUDGMENT
IN THE FOURTH JUDICIAL CIRCUIT*

Reply Brief for Appellants

Introduction

Appellees' brief confirms that the circuit court's judgment rests on a legal error, not a disputed factual record. Rather than defending the application of SDCL § 48-7A-202 to the undisputed facts, Richard asks this Court to affirm by reintroducing requirements—subjective intent, equal control, labor contribution, and partnership “formalities”—that the statute expressly rejects.

The core facts are not contested. For decades, Gloria and Richard co-owned all the assets used in a single ranching enterprise; they divided profits in proportion to ownership; Richard filed partnership tax returns each year; and he issued Gloria K-1s

identifying her as a general partner. Richard does not dispute those facts. Instead, he argues that those facts are legally insufficient because he did not intend to be a partner, Gloria did not manage day-to-day operations, and they each inherited their interests as a tenant in common.

But that position cannot be reconciled with SDCL § 48-7A-202(a), which provides that a partnership is formed by association to carry on as co-owners of a business for profit, “whether or not the persons intend to form a partnership.” Nor does the statute transform tenancy in common into a safe harbor from partnership law. As Gloria explained in her opening brief, co-ownership of property does not preclude co-ownership of a business; it often supplies the foundation for it.

Richard also seeks to insulate the judgment from meaningful appellate review by characterizing this case as presenting only factual questions subject to clear-error review. But where, as here, the historical facts are undisputed and the dispute concerns whether those facts satisfy the statutory definition of a partnership, the

Court's task is to apply law to fact. That inquiry is not entitled to deference when it rests on an incorrect legal standard.

1. THE COURT REVIEWS THE APPLICATION OF LEGAL STANDARDS TO UNCONTESTED FACTS *DE NOVO*.

While “[t]he existence of a partnership is an issue of fact,” *McGregor v. Crumley*, 2009 S.D. 95, ¶ 20, 775 N.W.2d 91, 97, “once those facts have been determined, the ‘application of a legal standard to those facts is a question of law reviewed *de novo*.” *State v. Heney*, 2013 S.D. 77, ¶ 8, 839 N.W.2d 558, 561–62 (*quoting State v. Hess*, 2004 S.D. 60, ¶ 9, 680 N.W.2d 314, 319). *See also, Carmichael v. Wheat Collingwood*, 796 P.2d 1075 (Kan. Ct. App. 1990) (citations omitted) (“Whether a partnership exists between particular persons is a mixed question of law and fact. If there is no dispute as to the facts the question is one of law for the court to determine.”); *Tarnavsky v. Tarnavsky*, 147 F.3d 674, 677 (8th Cir. 1998) (applying North Dakota law) (Where there is no challenge to the district court's factual findings, the ultimate conclusion of whether a partnership existed is a question of law, reviewed *de novo*). Where, as here, “the historical facts are admitted or

established, the rule of law is undisputed, and the issue is whether the rule of law as applied to the established facts is or is not favorably satisfied.” *In re Dorsey & Whitney Trust Co., L.L.C.*, 2001 S.D. 35, ¶ 6, 623 N.W.2d 468, 471 (internal quotations omitted).

As is clear from the opening briefs, the gravamen of the dispute is whether the undisputed history of the ranch falls within, or falls without, the definition of a partnership. That decision must be based on the principles that animate partnership law. And where the application of the rule of law to the facts requires the Court “to consider legal concepts in the mix of fact and law and to exercise judgment about the values that animate legal principles,” then the decision is reviewed *de novo*. *Stockwell v. Stockwell*, 2010 S.D. 79, ¶ 16, 790 N.W.2d 52, 59.

2. RICHARD AGREES THAT THE COURT SHOULD DETERMINE INTENTION BASED ON THE OBJECTIVE INDICIA OF A BUSINESS ASSOCIATION.

Richard agrees that partnership does not turn on he and Gloria’s intention to be “partners.” (Appellee Br. 19-21.) Notably, Richard does not dispute most of the conduct that demonstrates a partnership. He concedes that he filed partnership tax returns for

decades.¹ He issued Gloria K-1s identifying her as a general partner. And he distributed one-third of the profits generated by the ranching operation to her. (Appellees' Br. at 8.) Those are objective manifestations of co-ownership of a business for profit.

A. Gloria contributed one-third of the capital of Sleep Ranch, constituting her entire inheritance, and that was a voluntary act to commit her resources to the business.

Richard argues that he and Gloria's association was the involuntary consequence of the sudden death of their father. Of course, Eugene Sleep's death was not desired, and Richard and Gloria's intestate inheritance was not voluntary. But their decision to maintain their now separate interests in the common business of Sleep Ranch was a voluntary association.

"People do not become partners when they attain co-ownership of a business for profit through an involuntary act." *In re*

¹ Richard argues that is also true for the limited liability companies in which he is involved. That seems to concede that it is appropriate for business association. As previously briefed, it is not how co-tenants report income.

KeyTronics, 744 N.W.2d 425, 439 (Neb. 2008). The *KeyTronics* Court went on, though, to say that parties can take voluntary actions that lead to an inadvertent partnership. *Id.*, at 439–40. Therefore, even if people acquire a business involuntarily, they can subsequently conduct that business in a manner that creates a partnership. Such is the case here.

Having inherited the property as tenants in common, Gloria, Richard, or Ruth, had an absolute right to have their interest partitioned, and take their inheritance and leave. SDCL § 21-45-1 (A cotenant is entitled, as a matter of law, to obtain a partition of jointly owned property.). Their voluntary decision to commit their inheritance to maintain the Sleep Ranch operation as a going business was a voluntary act of partnership.

B. Richard and Gloria shared profits and losses, and Gloria invested her entire inheritance in the business.

They shared profits for three decades.

Appellees' Brief is unclear about whether Richard agrees that he and Gloria divided profits according to their ownership interest

for 30 years. Richard seems to agree that from 1975 to 2004, they divided profits according to their ownership interests—one-third to Gloria and two-thirds to Richard.

It is true that, from 1975 to 2004, Richard was careful to distribute Gloria one-third share in the proceeds from the Estate Property. During that time, the check that Gloria received each year included deductions for typical carrying costs of land, such as weed control, taxes, and insurance, but one-third of the profits generated by the Estate Property were otherwise distributed to her.

(Appellees' Brief, p. 33 (citations to the record omitted).) Revenue less costs, is profit.² That appears to concede that they divided profits. And dividing profits creates a presumptive partnership. SDCL § 48-7A-202(c)(3) ("A person who receives a share of the profits of a business is presumed to be a partner in the business[.]"). *See also, Temple v. Temple*, 365 N.W.2d 561, 566 (S.D. 1985) ("Receipt of a share of the profits of a business is prima facie evidence of partnership status."). Even though that is undisputed, and the single most important fact in partnership determinations,

² <https://www.merriam-webster.com/dictionary/profit> ("the excess of returns over expenditure in a transaction or series of transactions especially: the excess of the selling price of goods over their cost").

the circuit court rejected Gloria's proposed Finding of Fact on that subject, and chose to make no Finding at all regarding division of profits.

Next Richard argues that they did not divide profits before 1975, but that argument is unavailing. First, there is no evidence that there was profit before 1975. The evidence was that they had to put money in to pay taxes. (SR1: 1611:20 – 1612:3) And everyone agrees that Richard and Gloria's mother, Ruth, handled the books before 1975. We know from Ex. 208, that Ruth believed the Ranch was short on money for several years after Eugene's death, and that Ruth was unwilling to distribute any money out of the Sleep Ranch checking account. (Ex. 208, SR00329, et seq., especially SR00330-33). Finally, Richard's argument proves too little, and it proves too much. It proves too little because Richard does not explain whether there were profits and what happened to the money or why; therefore, it does nothing to disprove a partnership. Richard's argument proves too much because it shows that, when he took over

the books, he acknowledged that Gloria was entitled to one-third of all ranch profits.³

Richard and Gloria also shared the losses.

Richard asserts Gloria did not share in the Sleep Ranch losses. There is no evidence to support that allegation. While it is true that Gloria did not infuse additional cash into the business after 1975, there is no evidence that Richard did either. Richard testified that in years where Sleep Ranch lost money, those losses were covered by retained working capital. (SR1: 1896:1-21.) One-third of that retained working capital belonged to Gloria.

**Richard does not address the legal issue
that invalidates his purported purchase of
Gloria's cattle interest.**

As Richard notes, he and Gloria were discussing a three-part agreement for cattle, equipment, and land. Yes, they agreed upon a price for cattle. But without agreement on the land and the

³ Richard notes that whoever is managing the convenience store retains the profits as their compensation. That was true for Gloria and her husband, and it is true for Richard and his wife. (Appellee Br. 32.)

equipment, Richard could not simply impose the cattle portion of the agreement upon Gloria.

Richard concedes that Gloria did not agree to sell her cattle alone without an agreement for the entire operation. (SR1: 1892:4-6.) He also agrees they have never reached an agreement on the land or equipment. (SR1: 1893:14-1894:6.) Richard did not respond to Gloria's January 2004 proposal, so Gloria returned Richard's check to him, because she was unwilling to sell just one part of her interest. (SR1: 196-198 (Ex. 2).) "To form a contract, there must be a meeting of the minds or mutual assent on all essential terms." *Jacobson v. Gulbransen*, 2001 S.D. 33, ¶ 22, 623 N.W.2d 84, 90. Richard never addresses this failure in the cattle purchase.

Because there was never an agreement by Gloria to sell her interest in the cattle operation, she remained, and remains, a full one-third owner in the entire cattle ranching operation. The circuit court's FOF ¶¶ 44-51 (SR1: 2174; Appellants' Appx. 11 ¶¶ 44-51) are clearly erroneous.

C. The fact that Gloria deferred management to Richard does not negate a partnership.

Richard relies heavily on *Gangl v. Gangl*, 281 N.W.2d 574 (N.D. 1979) to argue that Gloria did not have control sufficient enough to be a partner. But there are several key distinctions between *Gangl* and this case. Gangls were a ranching family with several siblings. The siblings purchased land in different combinations of two or three owners. They each owned their own cattle and their own land. They each received the profits from the sale of his or her individually owned cattle, and each individually absorbed the losses for any cattle who died. The Court found the individual ownership significant. “Neither is co-ownership demonstrated by the participants' ownership interests in the major assets of the partnership. The only major asset in which the partners recognized a mutual ownership interest was the machinery.” All the cattle were owned by individual family members, and the land was acquired and titled in the names of various combinations of family members. *Id.* at 580-81. That is the opposite of this case. Here, Gloria was a one-third owner of all land,

all cattle, and all equipment. She received one-third of the net profits and bore one-third of the net losses.

On the specific issue of control, *Gangl* is also distinguishable. One brother, John Gangl, controlled the operations of all the land and cattle. The lawsuit was between John and his brother Anton. The *Gangl* Court agreed “that a person may be a partner even though he has entrusted control of the business exclusively to his associates. The question then becomes whether or not the participant had the right to exercise control in the management of the business.” *Id.* at 580. In *Gangl*, however, Anton agreed that John had told Anton that he had no right to control anything. “Anton stated he was told if he did not like the way things were being managed he could withdraw from the arrangement.” *Id.* at 578.

Contrary to *Gangl*, the undisputed evidence is that Gloria and her mother chose to give Richard the ability to manage unhindered. Gloria testified that, when her father passed away, there was not enough money for Sleep Ranch to support both families, “so it was necessary for me to find employment other places. . . . Mother and I

both wanted to do whatever we could for Richard to be successful in the ranch management and so we didn't want to make it difficult by requiring him to involve us in a lot of the day-to-day decisions.”

(SR1: 1673:8-19) That is not contrary to partnership. One partner can defer management to another partner without changing the fact that they are partners. *In re Bartenwerfer*, 596 B.R. 675, 682 n.3 (Bankr. N.D. Cal. 2019), *aff'd*, No. 3:13-AP-03185, 2020 WL 1970506 (B.A.P. 9th Cir. Apr. 23, 2020) (“A partnership can exist as long as the parties have the right to manage the business, even though in practice one partner relinquishes the day-to-day management to the other partner.”).

3. THE FACT THAT RICHARD AND GLORIA OWNED THE ASSETS AS TENANTS IN COMMON IS NOT MATERIAL.

The co-ownership of a business for profit does not require any particular form of ownership of the assets. Nor does it foreclose any particular form of ownership. Being “co-owners of a business” refers to “the business intended to garner profits,” not the assets. 59A AM. JUR. 2D PARTNERSHIP § 14, *citing In re KeyTronics*, 744 N.W.2d at 441. There are specific types of associations that are excepted from

partnerships, e.g., corporations and limited liability companies, SDCL § 48-7A-202(b). But that is not related to how the business's assets are titled. It is just a recognition that, by choosing to associate in another statutory business form, the participants are not partners. And, if there is not an association as a business, then the form of asset ownership is irrelevant. *See*, SDCL § 48-7A-202(c)(1) (mere co-ownership of property, no matter how it is jointly owned, is insufficient).

Tenancy in common is not particularly incompatible with partnership. Richard suggests that owning assets as a tenant-in-common is mutually exclusive from being a partner. (Appellee Br., p. 29) There is no law that says tenants in common cannot form a partnership using the jointly owned assets. Indeed, all SDCL § 48-7A-202(c)(1) says that owning property as tenants in common is not sufficient to form a partnership. The concept of insufficiency is incompatible with exclusion—insufficient implies a thing exists “as part of,” but not the whole; whereas incompatible implies they cannot both exist at the same time in the same place. Richard notes

that there are several ways people can jointly own property. Tenancy in common is the default form of joint ownership in property. So, anytime property is “owned by several persons not in joint ownership or partnership,” then it is a tenancy in common. SDCL § 43-2-16. But Richard’s cause and effect are inverted. While it is true that if a partnership owns property in its own name, then it is not owned as tenants in common, there is no law that says the inverse is also true—if property is owned as tenant in common, it cannot be part of a partnership. And we know that is not what SDCL § 43-2-16 means from this Court’s decision in *Temple v. Temple*, 365 N.W.2d 561 (S.D. 1985).

In *Temple*, this Court found a partnership in a family ranching operation where a son and mother split the profits 25% and 75%, and where the son had no titled interest in the original property. *Temple*, 365 N.W.2d at 564. Thereafter, the son, who managed the ranch, continued to acquire property, and the Court held that the property that been acquired from the profits of the

25/75 ranching partnership were partnership assets, *Id.* at 566-67, even though they were held in joint tenancy. *Id.* at 564.

And Richard and Gloria did not behave as if they were only tenants in common. Before dispossessing her of her interest in the cattle, Richard split profits with Gloria equal to her one-third interest. Tenants in common do not divide profits. After dispossessing Gloria of her interest in the cattle, Richard paid her rent. A tenant in common has no obligation to pay rent to their co-owner. *Mysak v. Brady*, 885 N.W.2d 830 (Iowa Ct. App. 2016). Gloria could have leased the land to any other person she wished. *Rankin v. Iversen*, 338 N.W.2d 107, 108 (S.D. 1983) (quoting 20 AM.JUR.2D, COTENANCY AND JOINT OWNERSHIP § 101, p. 202 (1965)). (“As a general rule any of the cotenants may lease his undivided interest in the common property, either with or without the consent of the other cotenants, and by such lease, whether it be of the property generally, or specifically of his undivided interest, he will confer upon the lessee his full right to occupy and enjoy the premises.”).

The fact that Gloria neither leased her one-third to anyone else, nor did she seek partition, is evidence that she did not believe she was merely a tenant in common. The fact that Richard paid Gloria one-third of profits, and then continued to pay her rent after he dispossessed her of cattle, shows that he did not believe he was merely a tenant in common.

Conclusion

Gloria and Richard owned all the assets of Sleep Ranch. They divided the profits from the Ranch based upon their respective ownership interests for 30 years. Richard filed Sleep Ranch Partnership Tax Returns every year and issued Gloria a Form K-1 indicating her status as a partner. The Ranch's income and expenses were received into and paid from the Sleep Ranch checking account.

Caselaw and the Revised Uniform Partnership Act both make clear that sharing profits from a business creates a presumption of partnership. And yet, the circuit court refused all proposed findings of fact on the sharing of profits. That was error. This Court can reverse that error, acknowledge the undisputed evidence, and hold

that Richard and Gloria were partners. The Court should reverse the circuit court and hold that Gloria and Richard are partners in Sleep Ranch.

Respectfully submitted the 29th day of December 2025.

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This brief is submitted under SDCL § 15-26A-66(b). I certify that the brief complies with the type of volume limitation. In reliance upon the document properties provided by Microsoft Word, in which this brief was prepared, the brief contains 3775 words and 19223 characters, including the table of contents, table of cases, jurisdictional statement, statement of legal issues, and any certificates of counsel, but excluding any addendum materials.

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Dated this 29th day of December 2025.

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