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# SUPREME COURT OF ALABAMA

SPECIAL TERM, 2021

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Sandra Penney

v.

Michael Shay Penney and Emily Penney

Appeal from Marshall Circuit Court  
(CV-19-900053)

STEWART, Justice.

Sandra Penney appeals from a judgment of the Marshall Circuit Court ("the trial court"), entered after bench trial, concluding, among other things, that Sandra, Michael Shay Penney ("Shay"), and Emily

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Penney had been partners in an implied partnership to operate a poultry-farming business in Marshall County. For the reasons explained below, we affirm the trial court's judgment.

### Facts and Procedural History

Shay and Emily ("the plaintiffs") sued Sandra in the trial court asserting a claim of unjust enrichment and requesting injunctive relief. The plaintiffs sought title to certain farm property or, in the alternative, compensation from Sandra. Sandra is Shay's mother and Emily's mother-in-law. Thomas Penney, who died in 2017, was Sandra's husband and Shay's father.

In their complaint, the plaintiffs alleged the following facts. In 2002, Thomas, Sandra, Shay, and Emily (hereinafter referred to collectively as "the Penneys"), borrowed money from Alabama Farm Credit ("AFC") to purchase multiple parcels of farmland. The security agreement associated with that loan, and the mortgage on the purchased properties, were signed by the Penneys. In 2003, Thomas and Sandra purchased, in part with funds borrowed from AFC, a farm that would become known as the "Windmill Road farm." That property was deeded to Thomas and Sandra

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as joint tenants with the right of survivorship. However, soon after, that property was used as collateral to secure another loan to help finance the Penneys' poultry-farming operations. The promissory note and mortgage associated with the loan were signed by the Penneys. The Windmill Road farm is adjacent to a farm owned by the plaintiffs ("the plaintiffs' farm"). From the time they were purchased, both farms have been used to conduct poultry-farming operations.

In 2006, the Penneys signed an additional loan agreement. The funds from that loan were to be used to upgrade equipment on the farms. Over the next decade, the Penneys obtained a series of additional loans for similar purposes. Those loans were often secured by both the Windmill Road farm and the plaintiffs' farm. In 2017, the plaintiffs' residence was destroyed in a fire. Due to the priority of the Penneys' debt obligations to the AFC, the insurance proceeds paid out as a result of the fire, instead of being used to rebuild the residence, were largely applied toward Thomas and Sandra's debt on the Windmill Road farm. The plaintiffs later obtained a separate loan to rebuild their residence.

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According to the complaint, the Windmill Road farm, on which Thomas and Sandra resided, and the plaintiffs' farm, on which the plaintiffs resided, were operated as one poultry farm. The approximate value of the poultry-farming business was \$820,000, and the remaining balance on various loans associated with the poultry-farming business was approximately \$470,000. The plaintiffs had worked and maintained the poultry farm for the previous 15 years. The plaintiffs had made payments on the various loans and the property taxes on the farmland for over five years using the income from the poultry-farming business. Sandra contributed no labor to the poultry-farming business.

The complaint further alleged that Thomas had intended for the Windmill Road farm to pass to the plaintiffs upon his death. The complaint states that the Windmill Road farm was devised to the plaintiffs in Thomas's will. Thomas, however, did not seek legal counsel in drafting his will, and he was unaware that his desire to devise the Windmill Road farm could not be accomplished because the deed to that property listed Sandra as a co-owner with the right of survivorship.

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In the complaint, the plaintiffs requested an injunction to prevent Sandra from selling the Windmill Road farm. Additionally, the plaintiffs sought ownership of the Windmill Road farm. In the alternative, the complaint asked for damages in the amount required to compensate the plaintiffs for the money and labor they had invested in the Windmill Road farm. The plaintiffs also sought a restraining order to prevent Sandra from going onto the plaintiffs' farm. Sandra denied the averments in the complaint and made no counterclaims. On March 29, 2019, the trial court entered a temporary injunction that prevented Sandra from selling the Windmill Road farm until a final judgment was entered.

The trial court held a bench trial on January 30, 2020, at which it received testimony from a number of witnesses. Kristi Beavers testified that she had witnessed Thomas sign a document, which purported to be his will, expressing his intent to devise the Windmill Road farm to the plaintiffs upon his death. The document was admitted into evidence despite Sandra's objection. The trial court specified that it was making no findings regarding the validity of the purported will and that it would leave that matter to be decided in the probate court.

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Greg Copeland, an executive of AFC, testified that he had had dealings with the Penneys since the 1990s and that Thomas and Sandra had purchased the Windmill Road farm. He noted that the Windmill Road farm was adjacent to the plaintiffs' farm. Copeland testified that Thomas and Sandra had made a down payment of \$37,315 on the Windmill Road farm. Later, he said, Thomas, Sandra, and the plaintiffs entered into loans with AFC pursuant to which the Windmill Road farm and the plaintiffs' farm were used to secure the loans. Copeland testified that, "from a security standpoint," the Penneys "were tied together," although the deed to the Windmill Road farm was in the name of Thomas and Sandra only. Copeland also testified that money from the plaintiffs' insurance proceeds stemming from the house fire had been applied to AFC loans for the Windmill Road farm and that the plaintiffs had had to secure separate funding to rebuild their residence. Copeland further testified that the plaintiffs primarily ran the poultry-farming operations and that he primarily interacted with Emily. Copeland also explained that "farm-type" loans differed from traditional loans, noting that repayment of a "farm-type" loan is matched with the income stream of the farm operation

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and that payments are made directly from the "poultry assignment" -- i.e., when chicken purchasers make payment for chickens from the farm at regular intervals, a preset amount is paid directly to AFC. A record of the assignment account for the poultry-farming operations conducted on the Penneys' farms was admitted into evidence.

Lindsey Goodwin, an employee of AFC from 2012 to 2018, testified that, during her time of employment with AFC, Thomas and Sandra were in poor health and that the plaintiffs oversaw the poultry-farming operations conducted on the Windmill Road farm and the plaintiffs' farm.

Sandra testified that Thomas quit his job as a truck driver shortly after they had purchased the Windmill Road farm so he could focus on the farm. Sandra stated that, after her health and Thomas's health declined around 2013, they relied on several individuals, including Shay, Emily, and hired help, to perform labor on their farm. Sandra explained that, when she and Thomas purchased the Windmill Road farm, she paid \$40,000 as a down payment after placing \$10,000 to hold it. She testified that the mortgage on the Windmill Road farm was paid entirely through the "chicken house check" and that she and Thomas had paid their

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household bills themselves. Sandra testified that she had moved from the Windmill Road farm a few months after Thomas died and that she planned to sell the farm. She stated that she believed Shay wanted to sell the Windmill Road farm, based upon conversations she had had with him.

During cross-examination, Sandra confirmed that the deed to the Windmill Road farm listed her and Thomas as co-owners with the right of survivorship. The deed was admitted into evidence. Sandra testified that there were two chicken houses on the Windmill Road farm and two chicken houses on the plaintiffs' farm. She stated that Thomas had entered into his own contracts to sell chickens raised on their farm. Sandra further testified that the plaintiffs did not start operating the chicken houses on their farm until after Thomas was diagnosed with leukemia in 2014. At that point, according to Sandra, the plaintiffs began retaining all income from the poultry-farming operations.

Kenneth Gunnin, a family friend of the Penneys for about 30 years, testified that he had known Thomas when he was a truck driver and that Thomas had quit working as a truck driver shortly after the purchase of the Windmill Road farm because of his failing health. He testified that



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Thomas had been limited in what he could do physically and that the majority of the labor involved in the poultry-farming operations was performed by the plaintiffs and their children. That labor, according to Gunnin, was performed by the plaintiffs, "[f]rom day one, because it was their chicken houses."

Regarding the poultry-farming operations, Shay testified that he held "[a]ll responsibilities except for the paperwork," which, he said, was Emily's responsibility. Shay testified that, when he signed the mortgage relating to the Windmill Road farm, he believed that he and Emily would be put on the deed to that farm. He further testified that he would not have signed the mortgage if he thought otherwise. Shay stated that the Penneys had agreed that he and Emily would oversee the poultry-farming operations on the Windmill Road farm and on the plaintiffs' farm. He testified that, "from day one," he was told by Thomas that the Windmill Road farm would belong to him and Emily after Thomas died. When asked what was currently being held as collateral to secure the loans the Penneys had made with AFC, he replied: "Everything we own." Shay stated that he and Emily had paid household bills for Sandra until she

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had moved off the Windmill Road farm. Shay further testified that Sandra's only contribution to the poultry-farming operations was signing the various loan documents.

Lugenia Penney, Sandra's daughter, testified that Sandra and Thomas had paid their household bills and that Thomas had performed the daily operations on the Windmill Road farm until he became ill in 2013. After 2013, she said, Shay and his son performed those operations.

Emily testified that she and Shay had primarily overseen the poultry-farming operations on the Windmill Road farm since that farm was purchased in 2003. Thomas, she said, assisted when his health permitted. Emily stated that the Penneys had planned to run the adjacent farms as essentially one poultry-farming business. She further testified that she had believed she and Shay would be listed as co-owners on the deed to the Windmill Road farm when they signed the mortgage relating to that farm and that she did not realize they were not listed on the deed until around 2017.

Emily testified that she and Shay had paid the utility bills for Sandra's residence located on the Windmill Road farm starting around

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2013. Payment stubs from 2015, showing payments made by Emily for utilities for the Windmill Road farm, were entered into evidence over Sandra's objection. Sandra objected on the ground that some of those payments included utilities expenses for the poultry-farming operations conducted on the Windmill Road farm and that, since 2014, the plaintiffs had been retaining all the proceeds from those operations. Emily admitted in her testimony that, until 2013, contracts to sell chickens from the Windmill Road farm had been in Thomas's name. She explained that that had been done for income-reporting purposes. In 2013, she said, Thomas sought to claim disability benefits, so all the contracts were then put in Emily's name and the plaintiffs "absorb[ed] the income tax." Emily also testified that, when the plaintiffs' house was destroyed by fire in 2017, the plaintiffs' insurer paid them \$320,000. Emily explained, however, that \$271,000 of the insurance proceeds were applied to debt associated with the Windmill Road farm.

Emily testified regarding additional loans the Penneys obtained from AFC, which were secured by mortgages on the Windmill Road farm, the plaintiffs' farm, and a third farm that the plaintiffs had owned ("the

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Hebron Road farm"), which they sold in 2015. She stated that she and Shay remain obligated on those loans. According to Emily, the money received through those loans was used on upgrades to and maintenance of the three farms. She testified that the farms operated as one large farm and stated that chickens arrived at each farm at the same time and were sold from each farm at the same time. During cross-examination, Emily testified that she and Shay had been the direct recipients of proceeds derived from poultry-farming operations conducted on the Windmill Road farm and that they were also making all the payments related to the Windmill Road farm and the plaintiffs' farm. She also testified that Thomas had been unaware that she and Shay were not named on the deed to the Windmill Road farm.

The trial court entered a judgment stating that the loan entered into by the parties in 2002 was the first of a series of loans through AFC in a joint venture among the plaintiffs, Sandra, and Thomas. The trial court determined that the joint venture consisted of the poultry-farming operations conducted on the three farms, until the Hebron Road farm was sold in 2015. The trial court further determined that the Penneys had

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ultimately formed a general partnership in which the members shared in the profits and losses. Sandra's contribution to the partnership was found to be the \$37,315.14 down payment the trial court determined she had made on the Windmill Road farm. The trial court stated that a general partnership was implied through the Penneys' actions and that Sandra had communicated her intent to leave the partnership by moving off the Windmill Road farm and expressing an intent to sell it. The trial court gave the plaintiffs six months to buy Sandra's interest in the partnership, which it concluded amounted to \$37,315.14, at which point Sandra would be required to deed the Windmill Road farm to the plaintiffs. In the alternative, the trial court stated that the plaintiffs could dissolve the partnership, sell the partnership assets, pay all the partnership debts, and distribute any remaining proceeds to the partners according to their contributions.

#### Standard of Review

This case was heard by the trial court without a jury, and the *ore tenus* standard of review applies. "Under [the] ore tenus standard of review, the trial court's findings carry a presumption of correctness which

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will not be disturbed on appeal unless palpably wrong, without supporting evidence, or manifestly unjust." International Paper Co. v. Whilden, 469 So.2d 560, 564 (Ala. 1985).

### Discussion

On appeal, Sandra argues that the trial court erred in holding that the plaintiffs had proved that an implied general partnership existed.<sup>1</sup>

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<sup>1</sup>As noted earlier, the trial court, before concluding that the Penneys had formed an implied general partnership, found that the Penneys had initially entered into a joint venture. Specifically, the trial court determined that the 2002 loan was the first of a series of loans in a joint venture among the Penneys. On appeal, Sandra argues that no joint venture was proven to exist. Sandra points to the fact that, between 2003, when the Windmill Road farm was purchased, and 2013, when Thomas began receiving disability benefits, the parties held separate contracts for the sale of chickens. Sandra further asserts that there was no sharing of "joint profits" between the plaintiffs and Thomas or Sandra. Based upon our review of the record, we conclude that the trial court's factual finding that the Penneys entered into a joint venture in 2002 is supported by the evidence. See Charles J. Arndt, Inc. v. City of Birmingham, 547 So. 397, 399-400 (Ala. 1989)(holding that "[w]hat constitutes a joint venture is a question of law, but whether a joint venture exists has been held to be a question of fact," and setting forth the elements necessary for the creation of a joint venture). The trial court, however, made a subsequent determination that the Penneys' relationship evolved from a joint venture into an implied partnership. The trial court's conclusion that the Penneys eventually formed a general partnership renders moot, for purposes of this appeal, the trial court's determination that a joint venture existed at the outset. Thus, we see no basis to reverse the trial court's determination that, at one time, a joint venture existed.

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Sandra also asserts that the trial court erred when it treated the Windmill Road farm as partnership property and when it calculated her contribution to the partnership. Finally, Sandra argues that the judgment was inequitable and contrary to the Alabama Partnership Law, §10A-8A-1.01, et seq., Ala. Code 1975.<sup>2</sup>

### I. Implied General Partnership

Sandra argues that the plaintiffs failed to prove the existence of an implied general partnership. Sandra asserts that there was no implied or express agreement among the Penneys to establish a partnership. She further asserts that there was no sharing of the profits from the poultry-farming operations within the meaning of § 10A-8A-2.01, Ala. Code 1975. In its judgment, the trial court made findings that, beginning in 2002, the Penneys had signed various loan documents, including the mortgage on the Windmill Road farm, had entered into contracts to grow chickens for

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<sup>2</sup>Effective January 1, 2019, approximately one month before the plaintiffs filed their complaint, the legislature repealed the Alabama Uniform Partnership Law, former § 10A-8-1.01, Ala. Code 1975, and replaced it with the Alabama Partnership Law. We cite and quote from the applicable provisions of the Alabama Partnership Law in this opinion, but the corresponding provisions of the former Alabama Uniform Partnership Law were substantially the same.

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Koch Farms, LLC, and had operated a poultry-farming business with the intent to share in the profits and losses of the business. The trial court concluded that the Penneys' intent to form a general partnership was implied by those actions.

Formation of a partnership is governed by the provisions of § 10A-8A-2.01. A partnership is formed by the association of two or more persons "to carry on as co-owners of a business for profit ... whether or not the persons intend to form a partnership." § 10A-8A-2.01(a)(1). Much of the current law in Alabama governing business partnerships is originally derived from the Alabama Partnership Act of 1971. Act No. 1513, Ala. Acts 1971. Section 10A-8A-2.01(a)(1) closely tracks the language of § 6(1) of Act No. 1513, except that the phrase "whether or not the persons intend to form a partnership" is absent from § 6(1) of Act No. 1513.

This Court has stated that "[t]here is no arbitrary test as to whether a partnership exists." McCrary v. Butler, 540 So. 2d 736, 739 (Ala. 1989) (citing Adderhold v. Adderhold, 426 So. 2d 457 (Ala. Civ. App. 1983)). Instead, this Court looks to all the attendant circumstances in determining the existence of a partnership. Id. "A partnership arises only



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from an express or implied agreement among the parties and is never established by implication or by operation of law." Id. Indicia of the existence of a partnership can include intent and agreement to be partners, sharing of profits and losses, sharing management and community of interest, as well as other surrounding circumstances. See Adderhold, 426 So. 2d at 460.

Section 10A-8A-2.01(c)(3) states that "[a] person who receives a share of the profits of a business is presumed to be a partner in the business" but this presumption does not apply when profits are received in payment of, among other things, a debt, rent, or interest or other charge on a loan.

In Adderhold, *supra*, a case concerning the existence of an implied partnership, the Court of Civil Appeals explained:

"Where there is no written agreement between the parties, and the question is whether as between the two a partnership existed, the question is one of part law and part fact. Bailey v. Bailey, 345 So. 2d 304 (Ala. Civ. App. 1977). Where there is a conflict of evidence, the ore tenus rule applies in partnership cases as in all others. Bailey v. Bailey, *supra*. On appeal, the circuit court's judgment can only be disturbed if it is so unsupported by the evidence as to be clearly unjust and palpably wrong. Coffelt v. Coffelt, 390 So. 2d 652 (Ala. Civ. App. 1980)."

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426 So. 2d at 458. Ore tenus evidence regarding the existence of a partnership was presented at trial. This Court therefore presumes that the trial court's judgment is correct and will reverse the judgment "only if, after consideration of the evidence and all reasonable inferences to be drawn therefrom, the judgment is found to be plainly and palpably wrong." Robinson v. Hamilton, 496 So. 2d 8, 10 (Ala. 1986). Furthermore, the trial court is in a better position than this Court to make credibility determinations and to consider all the evidence. See Ex parte Patronas, 693 So.2d 473, 475 (Ala. 1997). It is not for this Court to reweigh the evidence. Id.

At trial, evidence was presented demonstrating that the Penneys had agreed to conduct a poultry-farming business for profit. Both plaintiffs testified that, around the time the Windmill Road farm was purchased, the Penneys orally agreed to operate a poultry-farming business together. Both plaintiffs also testified that they signed the mortgage on the Windmill Road farm believing that their names would be on the deed to that property and that they would not have done so if they had believed otherwise. Shay testified that he had had an agreement with Thomas to

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"take care of everything" relating to the poultry-farming operations on the Windmill Road farm. In return, Shay explained, that farm would become his and Emily's upon Thomas's death so that they could continue operating the poultry-farming business. Shay also testified that the Windmill Road farm and the plaintiffs' farm were run as one large farm. Emily testified that it was her understanding that there was an agreement with Thomas and Sandra that they would all conduct the poultry-farming operations together, with her and Shay as the primary managers of the operation. She also claimed that she and Shay were not aware that they were not named on the deed to the Windmill Road farm until around 2017. Emily testified that the Penneys' plan was to combine the two adjacent farms. She explained in her testimony that, before 2013, separate poultry-sale contracts existed for each farm for tax purposes. The trial court apparently found the plaintiffs' testimony to be credible, although it conflicted with the Sandra's testimony. As noted earlier, because the trial court was in a better position to evaluate the witnesses' credibility, this Court will not disturb its determination. See Ex parte Patronas, 693 So. 2d at 475.

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The circumstances surrounding the Penneys' relationship also support the trial court's finding of the existence of an implied general partnership. The testimony of Greg Copeland, Kenneth Gunnin, and the plaintiffs indicated that, after acquiring the farms, the poultry-farming operations on the farms, including performing labor and administrative duties and negotiating contracts, were primarily overseen by the plaintiffs. Copeland testified that he dealt primarily with Emily regarding the AFC loans associated with the Windmill Road farm. Gunnin, a family friend, testified that the plaintiffs had worked on the Windmill Road farm "[f]rom day one." In further testimony, Gunnin indicated that he had understood that the chicken houses on the Windmill Road farm belonged to the Penneys jointly. This Court has previously indicated that testimony indicating that parties are perceived to be in a partnership can constitute evidence of "surrounding circumstances" indicating the existence of an implied partnership. See Adderhold, 426 So. 2d at 460.

The evidence in the record also supports the finding that the Penneys shared in losses resulting from the poultry-farming operations. Testimony and other evidence revealed that the documents evidencing

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and securing the 2002 loan were signed by all four individuals. Documents evidencing and securing additional loans, including the mortgage on the Windmill Road farm used to secure funding for upgrades and maintenance of the farms, were also signed by all four. Because each individual signed the pertinent loan documents, they were each liable for the debts. Moreover, the loans were secured not just by the Windmill Road farm but also by property deeded to Shay and Emily. As Copeland testified, "from a security standpoint," the Penneys were "tied together." In fact, insurance proceeds from the plaintiffs' burned-down house were applied to debts secured by the Windmill Road farm, according to lien priority. Failure to continue making payments on the loans could have resulted in foreclosures on both the Windmill Road farm and the plaintiffs' farm. Copeland testified that the money owed to AFC was paid directly from the proceeds derived from the poultry-farming operations. Consequently, the evidence indicated that losses from the poultry-farming operations would have been shared by all.

Additionally, evidence in the record supports the finding that Sandra shared in the profits derived from the poultry-farming operations. Her

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residence on the Windmill Road farm was paid for through the proceeds derived from the poultry-farming operations. And, although Sandra disputed such evidence, testimony and pay stubs revealed that the plaintiffs had paid many of the ordinary bills associated with Sandra's residence, at least from 2013 on. The sharing of profits, alone, creates a presumption that the Penneys were part of a partnership. § 10A-8A-2.01.

Sandra argues that any payment she received from the poultry-farming operations did not make her a partner because such payments fell under one of the exceptions listed in § 10A-8A-2.01(c)(3)(i)-(vi). Specifically, she asserts that, because proceeds from the poultry-farming operations were used to pay the mortgage on the Windmill Road farm, any payment of such proceeds should be considered the payment of a "debt." Sandra appears to misinterpret § 10A-8A-2.01(c)(3)(i). The "debt" exception refers to use of profits to make debt payments in a lender-borrower relationship when the lender and the borrower are alleged to be in a partnership together. Sandra, however, is not in a lender-borrower relationship with the plaintiffs. Instead, Sandra and the plaintiffs are co-borrowers, each obligated to pay the lender, AFC, for shared business

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loans. AFC is not alleged to be a partner in the poultry-farming business. Proceeds from the poultry-farming operations were received by Sandra, which were then used to pay off loans from AFC. As between Sandra and the plaintiffs, the debt exception is irrelevant.

Sandra also argues that any proceeds from the poultry-farming operations used to pay off the mortgage on the Windmill Road farm should be excluded under the "rent" exception. See § 10A-8A-2.01(c)(3)(iii). She appears to contend that the payments she received from the poultry-farming operations could be characterized as rent due to her from the plaintiffs for their use of the Windmill Road farm. This argument is also unpersuasive. The trial court, aided by sufficient testimony and evidence in the record, found that the plaintiffs' use of the Windmill Road farm was for the purpose of operating the poultry-farming business. The evidence supports the conclusion that such use of the Windmill Road farm was necessary to the success of the poultry-farming business, from which Sandra and plaintiffs both benefited by being able to maintain their loan payments. Sandra points to nothing in the record to indicate that a rental agreement between herself and the plaintiffs existed and that she was

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acting as a landlord by allowing the plaintiffs to use the Windmill Road farm for the poultry-farming operations.

Finally, Sandra asserts that any proceeds she received from the poultry-farming operations should not give rise to the presumption of a partnership because they were payments intended to "increase the value derived from loan collateral." See § 10A-8A-2.01(c)(3)(v). Sandra does not expand upon this assertion in her appellate brief, and the relevance of this provision to the facts of this case is unclear. Therefore, we will not address this argument further. See Rule 28, Ala. R. App. P.

There is sufficient evidence in the record to support the trial court's finding that an implied general partnership existed. Specifically, the record contains evidence of an agreement to operate in a partnership, the sharing of profits and losses, and other surrounding circumstances indicative of a partnership. Although some of that evidence was disputed by Sandra, the trial court was in a better position than this Court to determine the credibility of the witnesses. We hold that the trial court's judgment, insofar as it determined that a partnership did in fact exist, was not "plainly and palpably wrong." Robinson, 496 So. 2d at 10.



## II. Partnership Property

Sandra next argues that, even if there was an implied general partnership, the trial court erred in treating the Windmill Road farm as partnership property. Sandra notes that she and Thomas were the sole contributors to the down payment, are the only individuals named on the deed, and that she holds the right of survivorship. She further asserts that mere use by a partnership of property does not make it partnership property.

The trial court found that the Windmill Road farm was partnership property that was originally shared by the Penneys. The plaintiffs argue that this finding is correct because the purchase of the Windmill Road farm was financed using the credit of all four, subsequent loans to the four were used to repair and upgrade the farm, and the plaintiffs had regularly worked the farm. In addition, the plaintiffs point out that, after their residence burned down, the resulting insurance proceeds were used to pay the balance owed on the Windmill Road farm rather than to rebuild their residence.

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Section 10A-8A-2.04 states that "[p]roperty acquired by a partnership is property of the partnership and not of the partners individually." Section 10A-8A-2.05 elaborates on when property is to be considered partnership property rather than property owned by an individual partner. Of relevance here, § 10A-8A-2.05(c) provides:

"Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership."

This Court has noted that, "generally, in order to make land partnership property its acquisition must have been with partnership funds or on partnership credit for the uses of the partnership." Cooper v. Cooper, 289 Ala. 263, 270-71, 266 So. 2d 871, 878-79 (1972). Although the purchase of property with partnership assets creates the presumption that the property belongs to the partnership, the mere use of partnership assets to purchase the property, alone, does not make the property partnership property. See, e.g., Reed v. Crow, 496 So. 2d 15, 17-18 (Ala. 1986). Resolving whether property belongs to an individual or a partnership that the individual is a member of depends upon the intention of the parties at

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the time the property was purchased. Id. The intention of the parties is a question of fact and is determined by the circumstances attending the transaction. See Strother v. Strother, 436 So. 2d 847, 849-850 (Ala. 1983). Evidence of the parties' intention can come in the form of testimony. See Cooper, 289 Ala. at 271, 266 So. 2d at 879.

Additionally, the fact that title to property is in the name of an individual, and not the partnership, does not preclude the property from being treated as partnership property. See Norman v. Bozeman, 605 So. 2d 1210, 1213 (Ala. 1992). If, in viewing the surrounding circumstances of the transaction, it appears to be the intention of the parties that the property was purchased for and treated as partnership property, then "that presumption of ownership arising from the face of the deed will be overcome, and the property will be treated as belonging to the partnership." Strother, 436 So. 2d at 849 (quoting Goldthwaite v. Janney, 102 Ala. 431, 438, 15 So. 560, 562 (1894)).

In briefing this issue, Sandra relies principally upon this Court's decision in Strother, supra, to assert that the plaintiffs have no interest in the Windmill Road farm as members of a partnership. In Strother, a

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mother asserted that she was entitled to a portion of certain lands. The deeds to the lands all named the mother's three sons, either as individuals or as members of a partnership, as grantees. None of the deeds named the mother as a grantee. In affirming the trial court's judgment denying the mother's request to establish a constructive trust in her favor as to a portion of the lands, this Court held that the mother was not entitled to any interest in the lands. Id. at 850. The Court explained that "no detailed factual presentation was made to support the contention that [the mother] was an equal partner with her sons and that the land was partnership property bought with partnership funds or on partnership credit." Id. at 849-50.

In contrast to Strother, the plaintiffs in this case offered extensive evidence to support their contention that they had contributed to the acquisition of the Windmill Road farm. The plaintiffs do not deny that Sandra and Thomas alone made the down payment on the Windmill Road farm. It is undisputed, however, that all four individuals signed the loan documents, including the mortgage on the Windmill Road farm, making each one liable for the debt secured by that farm. The testimony of several

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witnesses regarding the mortgage was corroborated by the terms of the mortgage. Thus, the evidence supported the finding that the credit of all four was used to obtain the Windmill Road farm.

In addition, testimony by multiple witnesses, including disinterested witnesses, indicated that the plaintiffs routinely had worked on the Windmill Road farm in connection with the poultry-farming operations. Use of partnership credit to obtain property that is then used for partnership purposes creates the presumption that the property belongs to the partnership -- not the individual partners. § 10A-8A-2.05(c); see also Cooper, 289 Ala. at 270-71, 266 So. 2d at 878-79.

That presumption can be overcome when the surrounding circumstances show that it was not the intention of the parties to make the property that of the partnership. See Reed, 496 So. 2d at 17-18. The trial court heard testimony regarding the intentions of the Penneys when the Windmill Road farm was purchased. Specifically, the plaintiffs each testified that he or she believed that, after signing the mortgage, their names were to be placed on the deed to the Windmill Road farm.

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There was ample evidence on which the trial court could have relied to determine that the Penneys had intended that the Windmill Road farm be partnership property. Under the ore tenus standard of review, this Court will not disturb the trial court's findings unless they are palpably wrong, without supporting evidence, or manifestly unjust. Applying that standard, this Court holds that there is no basis for reversing the trial court's conclusion that the Windmill Road farm was partnership property.

In the alternative, Sandra asserts that, if the Windmill Road farm is in fact partnership property, she retains widow's rights to claim a one-third elective share of Thomas's estate, which, she asserts, includes his interest in the Windmill Road farm. She asserts this right under § 43-8-70(a), Ala. Code 1975, which gives a surviving spouse the right of election to take the lesser of either "[a]ll of the estate of the deceased reduced by the value of the surviving spouse's separate estate" or "[o]ne-third of the estate of the deceased."

Section 10A-8A-2.04, Ala. Code 1975, states that "[p]roperty acquired by a partnership is property of the partnership and not of the partners individually." Therefore, Sandra's elective-share rights apply only to

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property owned exclusively by Thomas, not to the Windmill Road farm which belongs to the partnership. See Peden v. Peden, 972 So. 2d 102 (Ala. Civ. App. 2007)(concluding that a former husband had no individual interest in property owned by his partnership). This conclusion is further supported by the Alabama Comment to § 10A-8A-2.04, which explicitly provides that "[t]he ... rights of a partner's spouse ... inure to the property of the partners, and not to partnership property, as no ... partner's spouse ... [has] any right to the property of the partnership itself." Thus, Sandra's claim to an elective share of Thomas's estate does not include a right to share in the ownership of the Windmill Road farm.

### III. Partner Contribution

Sandra argues that the trial court's calculation of her contribution to the partnership is plainly and palpably wrong. The trial court declared that Sandra's interest in the partnership was \$37,315.14, an amount equivalent to the down payment on the Windmill Road farm. Sandra puts forth a number of arguments as to why her contribution to the partnership was in fact greater than \$37,315.14., including that her credit was used to help secure loans that benefited the partnership, that she remains liable

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on those loans, that the property has appreciated since she made the down payment, and that Thomas performed poultry-farming work until 2013.

To comply with Rule 28, Ala. R. App. P., an appellant is required to cite supporting authority. Reciting a mere general proposition of law is not sufficient to comply with Rule 28. See Unger v. Wal-Mart Stores East, L.P., 279 So. 3d 546, 552 (Ala. 2018); see also S.B. v. Saint James Sch., 959 So. 2d 72, 89 (Ala. 2006) ("It is well established that general propositions of law are not considered 'supporting authority' for purposes of Rule 28."). "Further, it is well settled that "[w]here an appellant fails to cite any authority for an argument, this Court may affirm the judgment as to those issues ...." " Id. (quoting Spradlin v. Birmingham Airport Auth., 613 So. 2d 347, 348 (Ala. 1993), quoting in turn Sea Calm Shipping Co., S.A. v. Cooks, 565 So. 2d 212, 216 (Ala. 1990)).

In support of this contention, Sandra cites only to this Court's decision in Deloney v. Chappell, 570 So. 2d 622 (Ala. 1990). Relying on Deloney, Sandra asserts the general proposition that "[a]n order purporting to dissolve a partnership must be fair." She fails to cite



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authority applicable to her specific arguments. This argument is therefore waived.

#### IV. Conformity With the Alabama Partnership Law

Sandra last argues that the trial court's judgment was inequitable and contrary to the Alabama Partnership Law. See note 2, supra. She asserts, again, that her calculated partnership interest of \$37,315.14 is inadequate considering the overall value of the Windmill Road farm. Sandra also notes that the trial court's judgment does not require the plaintiffs to hold Sandra harmless from payment of debts secured by the Windmill Road farm after the deed to that property is transferred to them. Sandra contends that her partnership share must be determined and paid pursuant to § 10A-8A-7.01, which she says entitles her to the fair value of her interest in the partnership at the date of her dissociation. In addition to additional payment, she asserts that she is entitled to a statement of partnership assets and liabilities, the latest available partnership balance sheet and income statement, an explanation of how the amount of any payment to her is calculated, and written notice that any payment to her is in full satisfaction of her partnership interest.

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Aside from her reference to § 10A-8A-7.01, Sandra again fails to cite supporting authority for her contentions. It is not clear why she believes the cited statute applies here, and her briefing of this issue does not comply with Rule 28(a)(10), Ala. R. App. P. (requiring an appellant to support an argument on appeal with appropriate citations to legal authority).

Regarding her assertion involving § 10A-8A-7.01, Sandra appears to be claiming the benefit of § 10A-8A-7.01(g). That subsection however, refers only to payments made in accordance with § 10A-8A-7.01(e) and § 10A-8A-7.01(f). Neither of those subsections apply in this case. Section 10A-8A-7.01(e) applies when a dissociated partner makes a written demand for payment. No such demand can be found in the record. § 10A-8A-7.01(f) is applicable only when a partner is wrongfully dissociated and a deferred payment is authorized. The trial court's judgment, however, states that Sandra left the partnership voluntarily when she moved from the Windmill Road farm with the intention of selling it. Moreover, she makes no claims that she was wrongfully dissociated.

### Conclusion

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Based on the foregoing, the trial court's judgment is affirmed.

**AFFIRMED.**

Parker, C.J., concurs.

Bolin, Wise, and Sellers, JJ., concur in the result.