

CARROLL HARPER

v.

SHERMAN F. STANLEY

Argued October 4, 2000
Decided October 20, 2000

Panel: WATHEN, C.J., and CLIFFORD, RUDMAN, DANA, SAUFLEY,
ALEXANDER, and CALKINS, JJ.

MEMORANDUM OF DECISION

Carroll Harper appeals from (1) a judgment entered in Superior Court (Hancock County, *Marsano, J.*) on a jury verdict finding that the parties had been partners in the business known as Coastlines Insurance Agency; and (2) a judgment (*Pierson, J.*) entered on a referee's decision in a subsequent accounting, in which the referee determined that Harper owed Stanley the sum of \$115,882.50 for the dissolution of the partnership. Contrary to Harper's contentions: (1) he was not entitled to a jury instruction that intent to establish a partnership is necessary for a finding of the existence of a partnership, *see Lupien v. Malsbenden*, 477 A.2d 746, 748 (Me. 1984); (2) the court did not err in instructing the jury that the burden of proof is a preponderance of the evidence, *see Petit v. Key Bank of Maine*, 688 A.2d 427, 431-33 (Me. 1996); *Taylor v. Comm'r of Mental Health and Mental Retardation*, 481 A.2d 139, 149-50 (Me. 1984); and (3) the court did not err in denying his motion for judgment as a matter of law because there was

sufficient evidence from which the jury could find the existence of a partnership agreement. Furthermore, any error by the court in submitting a special jury question on the breach of a certain insurance contract by Stanley was harmless because the issue was made irrelevant once the jury found the existence of a partnership. Although Harper is correct that a witness's testimony regarding his own failure to file partnership tax returns was irrelevant, the admission of that testimony did not affect a substantial right of Harper. *See* M.R. Evid. 103(a). Harper's remaining evidentiary issues and other points of appeal concerning jury misconduct, improper closing argument, and calculation of expenses by the referee are without merit.

The entry is:

Judgment affirmed.

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