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ESTATE OF ALICE I. DONAHUE, BY AND THROUGH VICKI L. BROWN, SPECIAL ADMINISTRATOR, APPELLANT, V. WEL-LIFE AT PAPILLION, INC., AND LANTIS ENTERPRISES, INC., APPELLEES.

810 N.W.2d 418

Filed August 30, 2011. No. A-10-135.

1. **Summary Judgment.** Summary judgment is proper if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law.
2. **Summary Judgment: Appeal and Error.** In reviewing a summary judgment, the court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence.
3. **Jury Instructions: Appeal and Error.** Whether a jury instruction is correct is a question of law, which an appellate court independently decides.
4. **Jury Instructions: Proof: Appeal and Error.** In an appeal based on a claim of an erroneous jury instruction, the appellant has the burden to show that the questioned instruction was prejudicial or otherwise adversely affected a substantial right of the appellant.
5. **Summary Judgment.** On a motion for summary judgment, the question is not how a factual issue is to be decided, but whether any real issue of material fact exists.
6. ____. Where reasonable minds differ as to whether an inference supporting the ultimate conclusion can be drawn, summary judgment should not be granted.
7. **Summary Judgment: Proof.** A party moving for summary judgment must make a prima facie case by producing enough evidence to demonstrate that the movant is entitled to judgment if the evidence were uncontroverted at trial.
8. ____: ____. Once a party moving for summary judgment makes a prima facie case, the burden to produce evidence showing the existence of a material issue of fact that prevents judgment as a matter of law shifts to the party opposing the motion.
9. **Joint Ventures.** Whether a joint or common enterprise exists is generally a question of fact.
10. ____. The elements essential to a joint enterprise are (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control.
11. **Joint Ventures: Proof.** To establish a joint venture or enterprise, the burden is on the plaintiff to show its existence by clear and convincing evidence.
12. **Words and Phrases.** A pecuniary interest is also termed a financial interest.
13. **Joint Ventures: Summary Judgment.** A broad reading of the pecuniary interest requirement for the existence of a joint venture or enterprise is the most appropriate and logical, especially in a summary judgment proceeding.

Appeal from the District Court for Douglas County: GARY B. RANDALL, Judge. Reversed and remanded for a new trial.

Richard F. Hitz, of Hauptman, O'Brien, Wolf & Lathrop, P.C., for appellant.

Thomas J. Culhane, Matthew V. Rusch, and Heather B. Veik, of Erickson & Sederstrom, P.C., and Edward C. Prieto, of Quintairos, Prieto, Wood & Boyer, P.A., for appellees.

INBODY, Chief Judge, and SIEVERS and MOORE, Judges.

SIEVERS, Judge.

I. INTRODUCTION

The estate of Alice I. Donahue, by and through Vicki L. Brown, special administrator (the Estate), sued WEL-Life at Papillion, Inc. (WEL-Life), and Lantis Enterprises, Inc. (Lantis), for negligence and wrongful death relating to the care of Donahue. During summary judgment proceedings, the district court for Douglas County found that the Estate failed to prove that WEL-Life and Lantis were involved in a joint enterprise. However, at the conclusion of the trial, the district court instructed the jury that if it found in favor of WEL-Life, then it must also find in favor of Lantis—thereby linking the fates of the two companies. The jury did find in favor of WEL-Life on both causes of action, and in accordance with the instructions, it also found in favor of Lantis. The district court accepted the jury's verdict and entered judgment in favor of WEL-Life and Lantis.

II. FACTUAL BACKGROUND

We begin with a brief recitation of facts. Donahue was hospitalized from June 15 through 25, 2004, for treatment of upper gastrointestinal bleeding, blockage of her colon, a rectovaginal fistula, and a urinary tract infection. After her release from the hospital, Donahue was admitted into a nursing home for rehabilitation. She remained there until July 10. From July 10 through September 7, Donahue was a resident of WEL-Life, an assisted living facility. While a resident at WEL-Life, Donahue continued to suffer numerous health problems. She developed

pressure ulcers, including a significant pressure ulcer on her sacral area which became infected, and she became increasingly malnourished and dehydrated. On September 7, Donahue left WEL-Life and was hospitalized due to pressure ulcers and "'excruciating pain.'" On September 14, Donahue was discharged to another nursing home, where she died on November 2. The Estate alleges that Donahue's death was the result of negligent care that she received while a resident at WEL-Life from July 10 through September 7. During Donahue's stay at WEL-Life, Lantis was the "manager" of WEL-Life's facility pursuant to a management agreement signed on October 1, 2002. A more detailed factual background is not necessary given our disposition of this case, except as may be contained within our analysis.

III. PROCEDURAL BACKGROUND

On September 12, 2008, the Estate filed its second amended complaint against WEL-Life and Lantis, seeking damages for negligence and wrongful death. The Estate alleged that WEL-Life and Lantis were engaged in a "joint (common) venture/enterprise" during Donahue's residency at WEL-Life from July 10 through September 7, 2004. The Estate alleged that WEL-Life and Lantis were negligent in their care of Donahue. The Estate alleged that as a result of such negligence, Donahue developed pressure ulcers and urinary tract infections and was severely malnourished and dehydrated. The Estate alleged that the negligence of WEL-Life and Lantis led Donahue to suffer injuries that ultimately caused her death on November 2.

WEL-Life and Lantis filed a motion for partial summary judgment alleging that there was no genuine issue of material fact as to the liability of Lantis and that Lantis was entitled to judgment as a matter of law. We point out that at the hearing on the motion, it was made clear that the basis of Lantis' motion was that it was not engaged in a joint enterprise with WEL-Life. This was the basis for the district court's ruling and our discussion of joint enterprise which follows.

After a summary judgment hearing, the district court filed its order on July 28, 2009, denying Lantis' motion for summary

judgment in part, and in part granting such motion. The district court held that there were genuine issues of material fact as to the Estate's "'direct participation'" allegations and that therefore, Lantis was not entitled to judgment as a matter of law on that theory. However, the district court held that the Estate had not met its burden in proving that WEL-Life and Lantis were engaged in a joint venture, which would make Lantis responsible for any alleged liability of WEL-Life. Accordingly, the district court held that there were no genuine issues of material fact as to the Estate's joint enterprise allegations. The matter then proceeded to trial.

After a 2-week trial on the merits of the negligence and wrongful death claims, the case was submitted to the jury upon instructions—some of which are at issue in this appeal. Despite having found during summary judgment that WEL-Life and Lantis were not engaged in a joint venture or enterprise, the district court instructed the jury that if it found in favor of WEL-Life, then it must also find in favor of Lantis—thereby linking the fates of the two companies for purposes of a verdict. The jury returned a nonunanimous verdict of 10 to 2 in favor of "the Defendants" on the claim of negligence. The jury returned a unanimous verdict in favor of "the Defendants" on the claim of wrongful death. In an order filed on December 14, 2009, the district court accepted the verdict of the jury and entered judgment in favor of WEL-Life and Lantis.

On January 26, 2010, the district court entered an order overruling the Estate's motion for new trial. The Estate has perfected this timely appeal.

IV. ASSIGNMENTS OF ERROR

The Estate assigns, summarized and restated, that the district court erred in (1) finding there was insufficient evidence prior to trial to show the essential elements of a joint enterprise between WEL-Life and Lantis, in short, assigning error to the order of summary judgment; (2) failing to allow the jury to determine if there was a joint or common enterprise between WEL-Life and Lantis; (3) giving conflicting jury instructions; and (4) rejecting the Estate's proposed jury

instruction No. 1, which provided that the jury could find against WEL-Life or Lantis for the personal injury and wrongful death of Donahue.

V. STANDARD OF REVIEW

[1,2] Summary judgment is proper if the pleadings and admissible evidence offered at the hearing show that there is no genuine issue as to any material facts or as to the ultimate inferences that may be drawn from those facts and that the moving party is entitled to judgment as a matter of law. *Bamford v. Bamford, Inc.*, 279 Neb. 259, 777 N.W.2d 573 (2010). In reviewing a summary judgment, the court views the evidence in the light most favorable to the party against whom the judgment was granted, and gives that party the benefit of all reasonable inferences deducible from the evidence. *Id.*

[3,4] Whether a jury instruction is correct is a question of law, which an appellate court independently decides. *Gary's Implement v. Bridgeport Tractor Parts*, 281 Neb. 281, 799 N.W.2d 249 (2011). In an appeal based on a claim of an erroneous jury instruction, the appellant has the burden to show that the questioned instruction was prejudicial or otherwise adversely affected a substantial right of the appellant. *Karel v. Nebraska Health Sys.*, 274 Neb. 175, 738 N.W.2d 831 (2007).

VI. ANALYSIS

1. Summary Judgment—Joint Enterprise

The Estate argues that the district court erred in finding as a matter of law that WEL-Life and Lantis were not engaged in a joint venture or enterprise. The Estate argues that material issues of fact existed and that a jury should have determined whether WEL-Life and Lantis were engaged in a joint venture or enterprise.

[5-8] On a motion for summary judgment, the question is not how a factual issue is to be decided, but whether any real issue of material fact exists. *Kotlarz v. Olson Bros., Inc.*, 16 Neb. App. 1, 740 N.W.2d 807 (2007). Where reasonable minds differ as to whether an inference supporting the ultimate

conclusion can be drawn, summary judgment should not be granted. *Id*. Moreover, a party moving for summary judgment must make a prima facie case by producing enough evidence to demonstrate that the movant is entitled to judgment if the evidence were uncontroverted at trial. *Id*. Once the moving party makes a prima facie case, the burden to produce evidence showing the existence of a material issue of fact that prevents judgment as a matter of law shifts to the party opposing the motion. *Id*.

At the hearing on the motion for summary judgment, WEL-Life and Lantis offered into evidence (1) the affidavit of Lantis' chief financial officer, with a copy of the management agreement between WEL-Life and Lantis attached, and (2) the deposition of Lantis' vice president of operations, Larry Klarenbeek. The Estate offered into evidence (1) the management agreement between WEL-Life and Lantis, (2) the deposition of Lantis' chief financial officer, and (3) the deposition of Lantis' chief operations officer. These five exhibits were received into evidence.

(a) Were WEL-Life and Lantis Engaged in Joint Enterprise?

[9-11] We begin with the fact that we have previously held that whether a joint or common enterprise exists is generally a question of fact. *Bahrs v. R M B R Wheels, Inc.*, 6 Neb. App. 354, 574 N.W.2d 524 (1998). In 1995, the Nebraska Supreme Court adopted the definition of joint enterprise set forth in the Restatement (Second) of Torts § 491, comment *c*. (1965). See *Winslow v. Hammer*, 247 Neb. 418, 527 N.W.2d 631 (1995). As a result, the elements essential to a joint enterprise are (1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control. See *id*. To establish a joint venture or enterprise, the burden is on the plaintiff to show its existence by clear and convincing evidence. *Lackman v. Rousselle*, 257 Neb. 87, 596 N.W.2d 15 (1999).

(i) Was There an Agreement?

The first element essential to a joint enterprise is that there be an agreement, express or implied, among the members of the group. The evidence showed that WEL-Life and Lantis entered into a "management agreement," whereby Lantis agreed to manage WEL-Life, "a 48 bed assisted living facility." Pursuant to the agreement, Lantis' duties included, but were not limited to, "the overall supervision of the facility, supervision of the administration, assisting with the financial management of the facility, maintaining all accounting records of the facility and preparation of financial reports for the facility." Certainly, this management agreement satisfies the first element of a joint venture or enterprise, as a matter of law.

(ii) Was There Common Purpose?

The second element essential to a joint enterprise is that there be a common purpose to be carried out by the group. The common purpose between WEL-Life and Lantis is rather obviously the effective and presumably profitable operation of WEL-Life's assisted living facility. Accordingly, the second element of a joint venture or enterprise is satisfied as a matter of law.

(iii) Was There Common Pecuniary Interest?

[12] The third element essential to a joint enterprise is that there be a common pecuniary interest. A pecuniary interest is also termed a financial interest. See Black's Law Dictionary 829 (8th ed. 2004). See, also, *Haynes v. Dover*, 17 Neb. App. 640, 768 N.W.2d 140 (2009). The management agreement states that each month, Lantis "shall receive[,] as compensation for [its] services as manager, an amount equal to 6.5 percent of gross revenue derived by the [WEL-Life] facility." Obviously, Lantis has a pecuniary, or financial, interest in WEL-Life.

In finding that WEL-Life and Lantis did not have a common pecuniary interest, the district court relied on this court's opinion in *Bahrs v. R M B R Wheels, Inc.*, 6 Neb. App. 354, 574 N.W.2d 524 (1998). In *Bahrs*, we said:

> Regarding the common pecuniary interest requirement for a joint venture, the Restatement, *supra*, provides that

> it entails participants' having a financial stake in the endeavor. Other authorities explain the common pecuniary interest requirement for a joint venture includes an agreement to share in profits and losses. . . . In the context of the landlord and tenant relationship, even an agreement between landlord and tenant that the landlord will receive as rent a stipulated portion of the income or net profits derived by the lessee through its business conducted on the premises does not create a joint enterprise.

6 Neb. App. at 361, 574 N.W.2d at 529.

However, we believe that reading *Bahrs* as standing for the proposition that whether there is an agreement to share both profits and losses is conclusive on whether a joint enterprise exists is incorrect for a number of reasons. What the Nebraska Supreme Court had said prior to *Winslow v. Hammer*, 247 Neb. 418, 527 N.W.2d 631 (1995), was: "The absence of *mutual interest* in the profits or benefits is conclusive that a partnership or joint venture does not exist." *Global Credit Servs. v. AMISUB*, 244 Neb. 681, 691, 508 N.W.2d 836, 844 (1993) (emphasis supplied), citing *Frisch v. Svoboda*, 182 Neb. 825, 157 N.W.2d 774 (1968). Thus, it was the mutual interest in the profits or benefits, not the presence or absence of an agreement to share such, that was key. And, when *Bahrs* is closely read, we note that the trial court therein decided sua sponte that the property-owner lessor and the bar-operator lessee were in a joint enterprise as a matter of law. In reversing the trial court's decision, our conclusion in *Bahrs* was that "[t]here was no evidence to support a finding of joint enterprise, let alone to find as a matter of law the existence of joint enterprise." 6 Neb. App. at 362, 574 N.W.2d at 529. Finally, what *Winslow, supra*, spoke of was a community of pecuniary interest in the common purpose being carried out by the group. Thus, this is the concept we apply in the case before us.

[13] The Restatement (Second) of Torts § 491, comment *c*. at 548 (1965), adopted by the Supreme Court in *Winslow*, simply states that for a joint enterprise to exist, there must be "a community of pecuniary interest in that purpose, among the members." And, as stated previously, "pecuniary interest" is

also termed "financial interest." Neither the Restatement nor *Winslow* further defined pecuniary interest. Thus, we find that a broad reading of the pecuniary interest requirement is the most appropriate and logical, especially in a summary judgment proceeding, where the plaintiff—here, the Estate—is to have the evidence viewed most favorably to it. Thus, because Lantis received 6½ percent of WEL-Life's gross revenues, it did have a common pecuniary interest with WEL-Life, satisfying the third element required for a joint venture or enterprise. Moreover, in the case before us, the agreement, for all practical purposes, eliminates profit as a part of the calculus for determining Lantis' compensation. This is simply because Lantis gets 6½ percent of the gross revenues. Thus, whether WEL-Life makes a profit (revenues exceeding the costs of doing business) is essentially immaterial. But both parties obviously have a community of pecuniary interest—that there be a continuing stream of revenue, irrespective of whether a profit is made by WEL-Life. Thus, the district court erred in not concluding that this third element of joint enterprise was established as a matter of law.

(iv) Did Parties Have Equal Right of Control?

The fourth element essential to a joint enterprise is that the parties have an equal right of control. The management agreement itself gives rise to a question of fact regarding Lantis' right of control at WEL-Life. Initially, we note with interest that the management agreement between WEL-Life and Lantis was signed by "Will Lantis, President [of Lantis]," and "Will Lantis, President [of WEL-Life]." Above those signatures, under "Description of Services," the management agreement states that Lantis "shall manage WEL-Life" and that Lantis' management duties included, but were not limited to, "the overall supervision of the facility, supervision of the administration, assisting with the financial management of the facility, maintaining all accounting records of the facility and preparation of financial reports for the facility." Thus, because Lantis provided the overall supervision of the WEL-Life facility and the same person was the president of both entities, there clearly exists a material question of fact

regarding whether Lantis had an equal right to control at the WEL-Life facility.

Furthermore, in his deposition, Klarenbeek testified that as the vice president of operations at Lantis, he oversees nine assisted living facilities and two nursing homes operated by Lantis, including WEL-Life's facility. Klarenbeek testified that he does the hiring and firing for the program director position at WEL-Life and that the program director reports directly to him. The program director's responsibilities include overseeing the building and the day-to-day operations of the facility.

When presented with discovery evidence that WEL-Life's service coordinator had signed a Lantis confidentiality agreement—and that such document had also been signed by the program director as a "Lantis employee, witness"—Klarenbeek acknowledged that the document had Lantis' company name on it, but denied knowing who generated such document. If the service coordinator and the program director, who are actively involved in the day-to-day operations and decisions at WEL-Life, are in fact Lantis employees, then this would bolster the Estate's argument that Lantis had equal control at WEL-Life. Viewing the evidence in the light most favorable to the Estate, we determine there is clearly a material issue of fact, regarding control, which prevents summary judgment.

Furthermore, in his deposition, Klarenbeek seems to admit that both WEL-Life and Lantis were responsible for meeting the regulation and licensing standards for WEL-Life as an assisted living facility:

> Q. [(by the Estate's counsel)] I'm going to make this Exhibit 9 to the deposition, and it is the State of Nebraska — a copy of the State of Nebraska Health and Human Services Regulation and Licensure for assisted living facilities.
>
> . . . [I]f you could flip over to Page 19, down in the right-hand corner . . . [i]t's got a thing there for staff requirements, 4-006.03; do you see that sir?
>
> A. [(by Klarenbeek)] Yes.
>
> Q. Can you read that to us, please, sir?

> A. The facility must maintain a sufficient number of staff with the required training and skills necessary to meet the resident population's requirements for assistance or provision of personal care, activities of daily living, health maintenance activities, supervision and other support services, as directed in the resident service agreements.
>
> Q. So do you take that to mean that it was the responsibility of Lantis and WEL-Life . . . to make sure there was enough personal service aides and certified medication aides there to meet the needs of the resident population in terms of what they needed in terms of personal care, ADLs, health maintenance, et cetera?
>
> A. That would be correct, within the scope of assisted living —
>
> Q. Yes, sir.
>
> A. — needs.
>
> . . . .
>
> A. . . . And this doesn't speak to a third-party need for home health; this would strictly be our component of the care.

(Emphasis omitted.) Again, Klarenbeek's deposition testimony gives rise to a material question of fact regarding Lantis' control at WEL-Life, since he seemingly admits that one of Lantis' responsibilities is to ensure sufficient staffing at WEL-Life.

There was also ample evidence offered at the summary judgment hearing regarding Lantis' control over WEL-Life's finances. WEL-Life deposited residents' payments into a WEL-Life account. However, all of WEL-Life's account funds were then swept into a central account owned by Lantis—although Lantis' chief financial officer testified that the money still belonged to WEL-Life. All of WEL-Life's bills, including payroll, were paid out of the central account by Lantis' accounting department. Lantis' chief financial officer testified that no employees at WEL-Life had a checking account from which they could write their own checks. Furthermore, WEL-Life's budget was ultimately approved by Lantis' chief executive officer and president. Again, given Lantis' apparent control over

WEL-Life's finances, a material issue of fact exists, regarding the fourth element of joint venture, which prevents summary judgment as a matter of law.

(v) Summary

Whether a joint or common enterprise exists is generally a question of fact. *Bahrs v. R M B R Wheels, Inc.*, 6 Neb. App. 354, 574 N.W.2d 524 (1998). We have found that three of the four elements required to establish a joint venture or enterprise have been satisfied and that there are material issues of fact regarding the fourth element, equal control. Thus, the district court erred in finding as a matter of law that WEL-Life and Lantis were not engaged in a joint venture or enterprise. The matter should have proceeded to trial for a factual determination by a jury as to the element of control for establishment of a joint enterprise.

(b) Was the Estate Prejudiced by Grant of Summary Judgment?

The Estate was most certainly prejudiced by the district court's grant of summary judgment in favor of WEL-Life and Lantis, as evidenced by the confusing and conflicting instructions given to the jury at the end of trial as discussed below.

2. Jury Instructions

The jury was given 24 instructions by the district court. Of particular importance in this appeal are instructions Nos. 2 and 4. The relevant portions of instruction No. 2 were given as follows:

INSTRUCTION NO. 2
STATEMENT OF THE CASE—NEGLIGENCE
A. ISSUES

. . . .

The Defendants are Wel-Life . . . and Lantis . . . . The Court has determined as a matter of law that Lantis . . . is the manager and consultant to Wel-Life providing oversight and ensuring Wel-Life does its job properly. But Wel-Life and Lantis are two separate corporate entities.

. . . .

> **EFFECT OF FINDINGS—Negligence Against Wel-Life** . . .
>
> If the [Estate] *has not* met [its] burden of proof, then your verdict must be for . . . Wel-Life . . . on [the Estate's] claim for Negligence and you should record your verdict on Verdict Form No. 1. If the [Estate] *has not* met [its] burden of proof in regard to Wel-Life . . . then your verdict must also be in favor of . . . Lantis . . . as to [the Estate's] claim for Negligence against Lantis . . . .
>
> . . . .
>
> **EFFECT OF FINDINGS—Wrongful Death Against Wel-Life** . . .
>
> If the [Estate] *has not* met [its] burden of proof, then your verdict must be for . . . Wel-Life . . . on [the Estate's] claim for Wrongful Death and you should record your verdict on Verdict Form No. 3. If the [Estate] *has not* met [its] burden of proof in regard to Wel-Life . . . then your verdict must also be in favor of . . . Lantis . . . as to [the Estate's] claim for Wrongful Death against Lantis . . . .
>
> . . . .
>
> **EFFECT OF FINDINGS—Negligence Against Lantis** . . .
>
> If the [Estate] *has not* met [its] burden of proof, then your verdict must be for . . . Lantis . . . on [the Estate's] claim for Negligence and you should record your verdict on Verdict Form No. 1. . . .
>
> . . . .
>
> **EFFECT OF FINDINGS—Wrongful Death Against Lantis** . . .
>
> If the [Estate] *has not* met [its] burden of proof, then your verdict must be for . . . Lantis . . . on [the Estate's] claim for Wrongful Death and you shall record your verdict on Verdict Form No. 3.

The jury instructions were conflicting in more ways than one. First, despite finding during summary judgment that WEL-Life and Lantis were not engaged in a joint venture or enterprise, the district court's instructions tied the fates of the two companies together, by stating that if the jury finds in favor of WEL-Life, then it must also find in favor of Lantis

(see sections of instruction No. 2 entitled "**EFFECT OF FINDINGS—Negligence Against Wel-Life**" and "**EFFECT OF FINDINGS—Wrongful Death Against Wel-Life**"). Second, despite tying the fates of the two companies together, the district court initially instructed the jury that WEL-Life and Lantis are two separate corporate entities (see last sentence of instruction No. 2's subheading entitled "**A. ISSUES**"). And in instruction No. 4, the district court again instructed the jury to consider each defendant separately. Instruction No. 4 was given as follows:

> **INSTRUCTION NO.** 4
>
> There are two Defendants in this lawsuit.
>
> You should decide the case of each Defendant separately as if they were separate lawsuits. Unless a specific Instruction states that it applies to a specific Defendant, the Instructions apply to each Defendant.

Certainly, these instructions were prejudicial to the Estate, because the jury was told that the two defendants were separate but in the next breath was told that if it found in favor of WEL-Life, it had to also decide in favor of Lantis—even if the jury may have thought that Lantis was separately negligent for Donahue's alleged injuries and resulting death. The jury instructions were certainly prejudicial or otherwise adversely affected a substantial right of the Estate, and thus, a reversal is warranted. See *Karel v. Nebraska Health Sys.*, 274 Neb. 175, 738 N.W.2d 831 (2007).

Because we have already found that the district court erred in granting summary judgment in favor of Lantis and in its instructions to the jury—both of which require a reversal and remand for new trial—we need not discuss the Estate's assignment of error regarding its proposed jury instruction. See *Concrete Indus. v. Nebraska Dept. of Rev.*, 277 Neb. 897, 766 N.W.2d 103 (2009) (appellate court is not obligated to engage in analysis which is not needed to adjudicate controversy before it).

VII. CONCLUSION

Viewing the evidence in the light most favorable to the Estate, we find that genuine issues of material fact existed

regarding whether or not WEL-Life and Lantis were engaged in a joint venture or enterprise, although three of the four elements of joint enterprise should have been determined to have been established as a matter of law. Therefore, the issue of control should have proceeded to trial to be decided by a jury.

We further find that the Estate was prejudiced by the decision on summary judgment and by the jury instructions given at trial, because, despite having found via summary judgment that WEL-Life and Lantis were not engaged in a joint venture, the district court instructed the jury that if it found in favor of WEL-Life, then it must also find in favor of Lantis—thereby linking the fates of the two companies. Clearly, this was prejudicial to the Estate, because the jury was not allowed to find that only Lantis was liable, bearing in mind that there was evidence from which a jury could find by reasonable inference that Lantis had not properly carried out its oversight duties with respect to WEL-Life's operations. We therefore reverse, and remand the matter for a new trial.

REVERSED AND REMANDED FOR A NEW TRIAL.