

Gerald D. BARNES *v.* PEARSON
TERMITE AND PEST CONTROL,
INC. and Elmer T. PEARSON,
Individually

80-164

608 S.W. 2d 19

Supreme Court of Arkansas
Opinion delivered December 1, 1980

CORPORATIONS — DISSOLUTION OF — DIVISION OF ASSETS — CON-
TESTED ACCOUNTS ARE FACTUAL MATTERS TO BE DETERMINED. —
Where parties had been in business together and appellee ter-
minated the corporation and started his own business and
appellant sued for his share of the profits, the chancellor found

attorneys merely arguing the cause to the court. At that hearing the chancellor had before him some 83 accounts introduced by the appellee, who observes that the chancellor, after looking at them, apparently decided no further testimony was necessary. These exhibits are not abstracted. It appears the report of the master was not considered. The chancellor indicated the basis for his dismissal of appellant's petition was our decision which recognized the chancellor's determination that the corporation terminated on November 1 was final. However, the chancellor made no finding on the record presented that the accounts arose prior or subsequent to that date. He merely stated the court was ruling the assets or accounts receivable, which were in existence as of November 1, 1976, would be subject of an equitable division between the parties; any accounts arising thereafter would be the individual accounts of the parties.

Appellant contends the chancellor erred in failing to receive the report from the master; in rendering a decision, contrary to his apparent finding that the dates of the accounts were a matter to be determined; in dismissing the petition without any proof on the matter; and in holding this court's decision precluded appellant from receiving the requested relief.

In the first appeal, we upheld, *inter alia*, the chancellor's determination that the corporation was terminated on November 1, 1976. Therefore, unless the accounts contested here arose prior to that date and were not discoverable by appellant, his petition was properly dismissed. However, we cannot determine from the record if that was, indeed, the basis upon which the chancellor dismissed appellant's petition. Appellant's argument, as we understand it, is that he is entitled to a hearing for the purpose of enforcing the chancellor's decree; i.e., to an equal division of the assets, not discoverable by him, which existed on November 1, 1976. Appellee's argument is that all assets on that date were properly and equally divided.

We remand the cause with directions to determine this disputed factual issue.

Reversed and remanded.