

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL WILLIHNGANZ, d/b/a M.S.W.
TECHNICAL SERVICES,

UNPUBLISHED
July 9, 1996

Plaintiff-Appellee,

v

No. 183548
LC No. 94-404049

TRANS ELECTRIC COMPANY, INC.,

Defendant-Appellant.

Before: Cavanagh, P.J., Hood and J.J. McDonald*, JJ.

PER CURIAM.

Defendant appeals by leave granted from the order appointing a receiver to collect, lease or liquidate defendant's assets to satisfy a judgment in the amount of \$6,986 plus interest in this contract action. We remand for amendment of the order appointing the receiver.

Plaintiff brought an action in the 36th District Court alleging that defendant failed to pay amounts owed under a contract between the parties. A judgment in the amount of \$9,976 was entered in the district court. Defendant appealed to the circuit court and the judgment was reduced to \$6,986 plus interest. Thereafter, plaintiff brought a motion in the circuit court for appointment of a receiver because defendant was in arrears by \$8,378.20. Defendant contended that the circuit court did not have jurisdiction over the matter because jurisdiction over post-judgment matters was again vested with the district court. The circuit court exercised jurisdiction and held that defendant had thirty days to pay the judgment or a receiver would be appointed. The trial court also determined that if the receiver was an attorney, then no security or bond was required.

Defendant first contends that the circuit court abused its discretion by appointing a receiver. We disagree. This Court reviews the lower court's decision of whether to appoint a receiver under an abuse of discretion standard. *Jail Inmates v Wayne County Executive*, 178 Mich App 634, 651; 444 NW2d 549 (1989). The appointment of a receiver is a harsh remedy and should only be resorted

* Circuit judge, sitting on the Court of Appeals by assignment.

to in extreme cases. If less intrusive means are available, a receiver should not be appointed. *Band v Livonia Associates*, 176 Mich App 95, 104; 439 NW2d 285 (1989). Defendant contends that less intrusive means such as a creditor's exam, garnishing accounts, or installment payments were available. However, evidence was presented that alternative methods had not worked or would not be effective. Moreover, there was a previous attempt to execute on the judgment which was unsuccessful. Finally, the trial court gave defendant an additional thirty days to pay the judgment before the receiver would be appointed. The trial court did not abuse its discretion by appointing a receiver.

Defendant also contends that the trial court erred in failing to hold an evidentiary hearing. We disagree. Although an evidentiary hearing is often necessary, if the facts are totally uncontroverted and the actual conditions were established a hearing may not be required. *Id.*, p 106. Here, the facts such as the amount of the outstanding judgment and the fact that defendant failed to pay, were uncontroverted. Moreover, defendant had the opportunity to present and have considered all of its arguments in opposition to appointment of a receiver. Finally, the trial court stated the specific facts upon which it relied when appointing the receiver. The trial court did not err in failing to hold an evidentiary hearing.

Next, defendant argues that the circuit court did not have jurisdiction to appoint a receiver because at the time of the hearing, jurisdiction was again vested with the district court. The issue of subject matter jurisdiction is a question of law which is reviewed de novo on appeal. *W.A. Foote Memorial Hospital v Public Health Department*, 210 Mich App 516, 522; 534 NW2d 206 (1995). A court has the basic responsibility of enforcing its own orders and has considerable discretion in choosing the means to be employed. *Weathervane v White Lake Construction Co*, 192 Mich App 316, 322; 480 NW2d 337 (1991). Moreover, Michigan statutes vest the circuit court with the power to appoint receivers in cases involving corporations and when a case is pending and the appointment of a receiver is allowed by law. MCL 600.3610(1); MSA 27A.2610(1); MCL 600.2926; MSA 27A.2926. Defendant in this case is a corporation and the circuit court was enforcing its own judgment. We find that the circuit court was properly vested with jurisdiction to appoint a receiver.

Defendant also argues that the circuit court abused its discretion by including in the order appointing a receiver a requirement that defendant indemnify the receiver against any causes of action. However, defendant failed to cite authority in support of its argument. This Court will not search for authority to sustain or reject a party's position. *Ramsey v Michigan Underground Storage Tank Financial Assurance Policy Board*, 210 Mich App 267, 271; 533 NW2d 4 (1995). Nonetheless, we note that even though defendant phrases its argument to appear as if defendant was solely required to indemnify the receiver, the order indicates that both the parties were required to indemnify the receiver. We therefore conclude that the trial court did not abuse its discretion by requiring the parties to indemnify the receiver.

Finally, defendant argues that the circuit court abused its discretion by failing to order the receiver to provide security as required under MCR 2.622(A)(7). We agree. In waiving the requirement of security, the trial court stated that no bond is required when the receiver is an attorney.

Both MCL 600.2926; MSA 27A.2926 and MCR 2.622(A)(7) require that a bond or security be posted when a receiver is appointed. There are no exceptions to this rule. However, the trial court's failure to require a bond can be remedied by entering a *nunc pro tunc* order to correct the error. *Band, supra*, p 107. We remand to the trial court to correct this error.

Plaintiff argues that this appeal was vexatious and the appeal to the circuit court was procedurally improper because defendant failed to file full transcripts and therefore sanctions should be awarded. The circuit court remedied the failure to file full transcripts by ordering that they be filed within fourteen days and by awarding \$300 in sanctions. Therefore, there is no issue left for this court to determine. With regard to plaintiff's additional claims, it appears that plaintiff is challenging the circuit court's order which reduced the judgment. Plaintiff did not file a cross appeal on this issue and therefore appellate review is precluded. *Barnell v Taubman Co, Inc*, 203 Mich App 110, 123; 512 NW2d 13 (1993); MCR 7.207.

The decision of the trial court is affirmed, except that part excusing the receiver from posting security.

Remanded for entry of a *nunc pro tunc* order to amend the order appointing a receiver. We do not retain jurisdiction.

/s/ Mark J. Cavanagh

/s/ Harold Hood

/s/ John J. McDonald