STATE OF MICHIGAN

COURT OF APPEALS

THOMAS A. SUSZEK,

Plaintiff-Appellant,

v

GAIL L. SUSZEK,

Defendant-Appellee.

UNPUBLISHED
February 28, 2012

No. 299167
Wayne Circuit Court
LC No. 07-712702-DM

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

In this divorce suit, plaintiff Thomas A. Suszek appeals by right the trial court's judgment of divorce entered after binding arbitration. On appeal, plaintiff argues that the trial court erred when it denied his motion to vacate the arbitration award, erred when it appointed a receiver, and erred with respect to its order for child support. Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant were married in 1991. In May 2007, plaintiff sued defendant for divorce and custody of their two minor children. The children were 10 and 12 years of age at the time. Later that same month, defendant counter-sued for divorce and sole custody of the children. She also moved for temporary custody of the children along with child support and the exclusive use of the marital home.

The trial court entered a temporary order granting joint physical and legal custody to the parties in September 2007. The court provided that the parties would have alternating weekly use of the marital home to exercise their custody. During the off weeks, the non-custodial parent had to vacate the home. In addition, the court ordered the parties to continue to pay the marital expenses that each traditionally paid.

At a hearing in December 2008, the parties told the trial court that they wanted to submit all the issues raised by the divorce, except custody, to binding arbitration. As for the custody issues, the parties stated that they would adopt the psychologist's report. After determining that the parties had freely decided to submit the matter to binding arbitration, the trial court ordered the parties to enter into arbitration.

Plaintiff and defendant signed a binding arbitration agreement and order in January 2009. The parties agreed that the arbitrator would be guided by Michigan law, but gave the arbitrator the discretion to apply or relax the rules of evidence. The parties agreed that the arbitrator would resolve the following issues: child support, property, debt, spousal support and COBRA, attorney fees, and fault.

The arbitrator issued an initial report and award in August 2009. The parties submitted requests to correct errors in the arbitration and the arbitrator responded to the requests in October 2009. The arbitrator addressed each allegation of error, paragraph by paragraph, and amended the award to reflect several corrections. Also in October 2009, plaintiff moved to have the trial court vacate the arbitrator's award. He argued that the award was invalid, in relevant part, because the arbitrator permitted defendant to leave the arbitration early and ceased taking evidence even though he had not completed his testimony.

In April 2010, the trial court entered an order denying plaintiff's motion to vacate the arbitration award. The court explained that it could not vacate the award because it found no evidence that the award was procured through fraud, duress, misconduct or other error. Accordingly, in that same month, the trial court entered judgment consistent with the arbitrator's amended award. Plaintiff moved for reconsideration of the trial court's decision to deny his motion to vacate in May 2010, which the trial court denied in June 2010.

This appeal followed.

II. JURISDICTION

A. STANDARD OF REVIEW

We shall first address defendant's argument that plaintiff's appeal should be dismissed as untimely. Whether this Court has jurisdiction is a question of law that we review de novo. *Chen v Wayne State University*, 284 Mich App 172, 191; 771 NW2d 820 (2009).

B. FINAL ORDER OR JUDGMENT

Defendant argues that the April 22, 2010 judgment of divorce was not the first final order because the trial court entered an order on April 2, 2010 in which it adopted the arbitrator's award and indicated that the award was enforceable as an order of the court. We do not agree that the April 2 order constituted the final order under MCR 7.202(6)(a)(*i*). The April 2 order did not contain a provision for the dissolution of the marriage, which provision is essential to conclude a divorce. See *Dep't of Social Services v Brewer*, 180 Mich App 82, 85; 446 NW2d 593 (1989) (stating that the "primary purpose of the divorce statute is not to provide support but to dissolve the marital relationship."). Moreover, the trial court's judgment altered the arbitrator's award; as such, the judgment qualified as a final judgment entered after reversal of an earlier final judgment. See MCR 7.202(6)(a)(*i*). Because the judgment was the final order and plaintiff appealed within 21 days of his motion for reconsideration of that judgment, his appeal was timely. MCR 7.204(A)(1)(b).

III. MOTION TO VACATE THE ARBITRATION AWARD

A. STANDARDS OF REVIEW

Plaintiff argues that the trial court should have determined that the arbitrator's award was unlawful and, for that reason, should have granted plaintiff's motion to vacate the award. This Court reviews de novo the proper interpretation and application of statutes, such as the Domestic Relations Arbitration Act (DRAA), MCL 600.5070 *et seq*. See *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003). The scope of an arbitrator's authority under an arbitration agreement is a matter of contract interpretation that this Court reviews de novo. See *Miller v Miller*, 474 Mich 27, 30; 707 NW2d 341 (2005) (noting that arbitrators draw their authority from the arbitration agreement and that courts review de novo whether the arbitrator exceeded his or her authority). This Court also reviews de novo whether the arbitrator's award is contrary to law. *Id.*, citing *Detroit Automobile Inter-Ins Exchange v Gavin*, 416 Mich 407, 433-434; 331 NW2d 418 (1982). Similarly, this Court reviews de novo a trial court's decision on a motion to vacate or modify an arbitration award. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009).

B. VACATING AN ARBITRATION AWARD

Although courts have the power to review an arbitrator's award, in order to ensure efficiency and finality, Michigan courts have recognized that the power should be limited. See *Huntington Woods v Ajax Paving Industries, Inc*, 177 Mich App 351, 356; 441 NW2d 99 (1989). Indeed, after an arbitrator issues an award and the award is filed with the clerk, a trial court must enter a judgment that gives effect to the award. MCL 600.5079(1); MCR 3.602(L). And the Legislature specifically limited a trial court's power to modify or vacate an arbitration award. See MCL 600.5081(1), (2); MCL 600.5080(1); MCR 3.602(K); *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991).

1. IMPROPERLY PRECLUDING TESTIMONY

At the hearing on plaintiff's motion to vacate the arbitration award, plaintiff's lawyer explained to the trial court that the arbitrator cut short the arbitration hearing after defendant ran from the hearing:

> During the course of Mr. Suszek's testimony, he was—he was testifying with the arbitrator referring to a binder of—of photographs. He was approximately half way through his testimony. Mrs. Suszek, at that point and time, pulled out a bottle that she professed or—or stated at that time was Zanax and—and—and put [it] on the table and opened up a bottle of something cold to drink and said, something to the effect of, you know, "It's Zany time. I think it's time for a Zany." Mr. Suszek ignored that and continued with his testimony. Mrs. Suszek ultimately stood up, ran from the—the arbitration room screaming.
>
> At that point and time, [the arbitrator] decided to conclude testimony and issue her arbitration award, despite the fact that Mr. Suszek, again was only approximately half way through his testimony at that point. . . .

In response to this, defendant's lawyer stated that defendant did not run from the room screaming, but left because plaintiff's testimony had become abusive. Defendant's lawyer also noted that plaintiff did not object when the arbitrator stated that she was terminating the hearing and that she had "heard enough testimony" to "make my decision." And, ultimately, the trial court determined that the arbitrator's decision to terminate the hearing did not warrant relief.

On appeal, plaintiff argues that the arbitrator's decision to end the arbitration before plaintiff had finished presenting his case violated the arbitrator's obligation to "hear" the issues to be arbitrated under MCL 600.5074(1). Although the parties have the right to be heard under MCL 600.5074(1), the Legislature did not define what constitutes a hearing and did not impose specific procedural requirements. See, e.g., *Miller*, 474 Mich at 31-32 (noting that the DRAA does not define the terms "hear" or "hearing" and stating that the Legislature "intended not to require specific procedures in arbitration proceedings."). Absent more concrete guidance, we conclude that the Legislature's requirement that the arbitrator "hear" the issues requires nothing more than that the arbitrator act consistent with due process—that is, that the arbitrator give each party a meaningful opportunity to be heard on the issues. See *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 459; 688 NW2d 523 (2004). It does not give them an absolute right to present any and all evidence that they desire, nor does it give them the right to a hearing of unlimited duration.

The record shows that the arbitrator conducted an arbitration hearing that spanned two days and at which both parties were permitted to offer evidence and testimony. The record also shows that parties were able to submit supplemental evidence and written closing statements after the arbitrator concluded taking testimony.[1] Finally, the arbitrator made an award on each of the issues raised by the parties and authorized by the arbitration agreement. This minimally satisfied the requirements that the arbitrator "hear and make an award on each issue submitted for arbitration . . . ." MCL 600.5074(1).

Moreover, as our Supreme Court has explained, the procedures attendant to arbitration hearings can be informal and the parties themselves can shape the parameters and procedures for the proceeding. See *Miller*, 474 Mich at 32. Indeed, nothing within the DRAA requires an arbitrator to conduct the hearing as a "traditional court hearing." *Id.* at 33. Here, the parties agreed that the arbitration would be guided by Michigan law and that the arbitrator would have the discretion to apply or relax the rules of evidence as she saw fit. Under the rules of evidence, the arbitrator had the authority to control the order and mode of interrogating the witnesses.

[1] Relying on *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362; 775 NW2d 618 (2009), plaintiff contends that his ability to submit documentary evidence could not satisfy this hearing requirement because the arbitrator was under no obligation to review the documents unless he points out its relevance—presumably at the hearing. We do not agree that *Barnard Mfg* stands for the proposition that an arbitrator can ignore evidentiary submissions that were not discussed at the hearing. The Court in *Barnard Mfg* discussed the burden of production for summary disposition; it did not involve a trial or hearing. See *Barnard Mfg*, 285 Mich App at 375-381.

MRE 611(a). Likewise, she could determine whether particular testimony was relevant, MRE 402, or should be excluded because it is unduly repetitive or prejudicial, see MRE 403. Thus, it cannot be said that the arbitrator exceeded the scope of her authority by terminating the hearing because the parties themselves gave her the authority to limit the span of the hearing and the evidence that could be presented.

Plaintiff also argues that the arbitrator's decision to preclude him from offering more testimony at the hearing constituted just cause to vacate the award under MCL 600.5081(2)(d). That statute provides that a trial court shall vacate an arbitrator's award if the "Arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights." MCL 600.5081(2)(d).

Here, plaintiff did not ask the arbitrator to postpone the hearing; and the arbitrator cannot be faulted for failing to do something that was never requested. Likewise, although the arbitrator did terminate the hearing, plaintiff did not object to the termination at that time or anytime before the arbitrator issued her award. Indeed, plaintiff did not even raise the issue in his written closing statement to the arbitrator.[2] Further, it is undisputed that plaintiff submitted numerous exhibits to the arbitrator and that he had the opportunity to submit updated exhibits after the termination of the hearing. Because plaintiff acquiesced to the arbitrator's decision to terminate the hearing and did not ask for permission to submit additional oral testimony, it cannot be said that the arbitrator "refused to hear evidence" within the meaning of MCL 600.5080(2)(d). For the same reason, we cannot conclude that the arbitrator's decision to cease taking testimony substantially prejudiced plaintiff's rights; plaintiff was apparently satisfied with his proofs prior to the arbitrator's award and any shortcomings in those proofs cannot be attributed to the arbitrator's decision to cease taking testimony on the second day of the hearing. MCL 600.5080(2)(d); see also *American Motorists Ins Co v Llanes*, 396 Mich 113, 114-115; 240 NW2d 203 (1976) (explaining that a party to an arbitration cannot, after the arbitrator issues his or her award, raise for the first time a claim of error to which the party acquiesced during the arbitration).

Plaintiff also argues that the arbitrator actions were unlawful because she effectively precluded him from offering testimony and evidence concerning the effect that defendant's bankruptcy had on the marital assets. As already noted, the arbitrator's decision to end testimony on the second day did not amount to a violation of plaintiff's right to a hearing on all the issues under MCL 600.5074(1) and did not involve an improper refusal to postpone the hearing, refusal to hear evidence, or improper conduct resulting in prejudice to plaintiff under MCL 600.5081(2)(d). Moreover, the record belies plaintiff's claim that the arbitrator's acts deprived him of the ability to raise the bankruptcy issue. In her award, the arbitrator specifically mentioned defendant's bankruptcy and noted that it would be finalized. She also concluded that

[2] At an August 12, 2010 hearing, defendant's lawyer represented to the court that the arbitrator only closed the hearing after she and the parties' lawyers all agreed that there had been sufficient testimony.

there was "little joint debt remaining"—presumably as a result of defendant's bankruptcy.[3] Indeed, the arbitrator provided that each party was responsible for the remaining debt in their own name. Finally, the judgment ultimately provided that any property awarded to defendant that was not exempt from bankruptcy would become property of the bankruptcy trustee. Thus, the arbitrator clearly considered the bankruptcy in determining the award.

Plaintiff also raised defendant's bankruptcy in his motion to correct errors and submitted additional evidence to support his allegations. Specifically, in paragraphs 8, 9 and 23 of his motion, plaintiff argued that it was error for the arbitrator to require him to reimburse defendant for expenses that she had discharged in bankruptcy. In paragraph 25, he also stated that it was error for the arbitrator to conclude that there was little joint debt; rather, he argued, defendant should be forced to share in that portion of the marital debt that remained in plaintiff's name. In response, the arbitrator partially granted plaintiff's request for relief and amended the award to provide that plaintiff could reduce the amount he owed to defendant for medical expenses by presenting "proof of the discharge of the specific expenses in bankruptcy", but denied his request for relief in all other respects. Because none of the remaining payments ordered in the award otherwise involved a reimbursement, defendant's bankruptcy discharge could not have affected those payments.[4]

On the whole record, it is clear that plaintiff had ample opportunity to present evidence concerning defendant's bankruptcy and actually obtained a modification of the award on the basis of that evidence. When understood in this context, plaintiff's real argument is that the arbitrator's award is inequitable given that defendant has discharged a significant portion of her debt in bankruptcy. But, as the trial court properly recognized, in reviewing an arbitrator's award, courts are not permitted to speculate as to the mental process used to reach the division of marital property. See *Washington*, 283 Mich App at 672.

The trial court did not err when it refused to vacate the arbitrator's award. The arbitrator did not violate plaintiff's right to have the issues heard under MCL 600.5074(1) and did not improperly refuse to postpone the hearing or hear material evidence and the arbitrator did not conduct the hearing in a way to substantially prejudice plaintiff's rights. See MCL 600.5080(2)(d).

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[3] In his first report to the trial court, the court-appointed receiver indicated that defendant argued that the credit card debt she held was incurred for marital purposes and plaintiff should be responsible for half the debt. The receiver advised the court that he had recommended that defendant file for bankruptcy because all the parties' credit card debt was in defendant's name and resolution of the credit card debt would "help resolve other issues and permit the marriage to be dissolved and the estate divided." Thus, there is evidence that plaintiff might have benefited from defendant's decision to file for bankruptcy.

[4] The amount awarded as spousal support in gross represented defendant's share of certain marital assets.

2. UNTIMELY AWARD

Plaintiff also argues that the trial court erred when it failed to vacate the arbitrator's award on the ground that it was untimely. Specifically, plaintiff argues that the arbitrator did not issue the award until more than 60 days after the end of the hearing. See MCL 600.5078(1). Although the arbitrator held hearings in April 2009, the parties did not submit their written closing arguments until June 2009 and plaintiff last submitted evidence for the arbitrator's consideration in July 2009. On this record, we cannot conclude that the arbitrator's award was untimely. MCL 600.5078(1).

3. CONCLUSION

The trial court did not err when it determined that plaintiff had not demonstrated grounds to vacate the arbitrator's award.

IV. THE APPOINTMENT OF A RECEIVER

A. STANDARD OF REVIEW

Plaintiff next argues that the trial court erred when it appointed a receiver to handle the parties' marital property. This Court reviews a trial court's decision to appoint a receiver for an abuse of discretion. *Shouneyia v Shouneyia*, 291 Mich App 318, 325; ___ NW2d ___ (2011). A trial court abuses its discretion when it selects an outcome that is outside the range of reasonable and principled outcomes. *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007).

B. THE FIRST APPOINTMENT

1. BACKGROUND FACTS

In his complaint for divorce, plaintiff alleged that defendant deliberately wasted marital assets, that she was a compulsive shopper, and that she might liquidate "mass amounts of property, like collectibles and items of value, increase debt, or take a loan against her retirement accounts." For that reason, plaintiff argued that the trial court would have to issue an order to restrain defendant from transferring marital assets and, in addition, would have to issue an order to "separate and identify payment of household expenses." In response to plaintiff's complaint, defendant alleged that plaintiff was the one who was dissipating the marital estate. She also accused him of hiding assets. In May 2007, the trial court issued an order restricting the parties' ability to dissipate the marital estate.

After the court's May 2007 order, both parties filed motions alleging various improprieties by the other spouse and asking the court to intervene. Specifically, plaintiff alleged that defendant interfered with his attempts to parent and tried to manipulate the children against him and even went so far as to fabricate a domestic incident. He also asked that the court order her to pay half the marital expenses. In her motion, defendant alleged that plaintiff engaged in a variety of inappropriate acts in front of the children and was hiding or dissipating assets in violation of the court's order.

The record shows that the parties continued to make allegations of inappropriate conduct on the part of the opposing spouse in various motions submitted to the court. Indeed, in August 2007, plaintiff moved for a show cause hearing. He alleged that defendant had violated the court's order by—among a variety of things—discussing the divorce in front of the children, by refusing to feed them, by refusing to remove a privacy flag from the children's health insurer, and by hiding marital assets in a storage unit. And, in October 2007, defendant again alleged that plaintiff had unilaterally withdrawn tens of thousands of dollars from the marital estate and refused to account for the funds. As such, she asked the court to order that various assets be placed in escrow and to order an accounting.

In March 2008, the trial court had to issue an order to provide the parties with guidance on a variety of issues, which made it obvious that the parties could not cooperate on the simplest of things: the court instructed them to provide an accounting, gave them permission to put locks on the doors to their bedrooms, ordered defendant to identify the location of her storage facility and provided for how plaintiff would be able to view the contents of the storage locker—complete with provision for third-party witnesses, ordered that both parents had the right to be present at the children's doctor's appointments, ordered that the parties not interfere with each others' mail, and provided for the disposition of tape recordings that defendant made of telephone calls.

In June 2008, defendant moved for the appointment of a guardian ad litem (GAL) for the children because "the parties continue to be unable to agree upon issues concerning the Minor Children." In response, the trial court ordered the appointment of a parenting coordinator, Christina Vadino.

In September 2008, the court ordered that Vadino be appointed the children's GAL and ordered the appointment of a receiver for the parties' property issues. Neither party objected to the appointment of the receiver.

2. ANALYSIS

This Court has long recognized that trial courts have the inherent authority to appoint a receiver where the "facts and circumstances render the appointment of a receiver an appropriate exercise of the circuit court's equitable jurisdiction." *Petitpren v Taylor School Dist*, 104 Mich App 283, 294; 304 NW2d 553 (1981). Nevertheless, the appointment of a receiver is an extreme remedy that should normally be employed only after the trial court has resorted to less intrusive remedies. *Id.* at 295. A trial court should only resort to a receiver where the appointment is necessary to ensure compliance with the court's orders. *Id.*

Here, there is no indication in the record explaining how it came to be that the trial court appointed a receiver to handle the parties' property issues. However, the record is replete with allegations by both parties that the other spouse was misusing marital assets, violating the trial court's orders, and deliberately refusing to meet their financial and property obligations. Such allegations could support a trial court's decision to appoint a receiver. See *Shouneyia*, 291 Mich App 331-332 (stating that a court may be justified in appointing a receiver where a party has demonstrated past poor performance in making payments ordered by the court, or where there is a danger that property might be lost through waste, neglect, or misconduct). And, given the

parties' propensity for challenging every act taken by the other spouse with regard to property issues, the trial court might very well have been justified in appointing a receiver in order to ensure compliance with its orders and to address the parties' complete inability to cooperate on any matter related to their divorce. See *id.* at 326. Although we agree that the trial court should have made a record disclosing the grounds for appointing a receiver, we simply do not agree that plaintiff is entitled to any relief.

In order to properly preserve an issue for appellate review, a party must normally raise the claim of error before the trial court. See *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008) (explaining that Michigan courts generally follow the "raise or waive" rule of appellate review—that is, "a litigant must preserve an issue for appellate review by raising it in the trial court.") This rule has its origins in judicial efficiency and fundamental fairness to the opposing party:

> By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually. This practice also avoids the untenable result of permitting an unsuccessful litigant to prevail by avoiding its tactical decisions that proved unsuccessful. Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention. Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute. [*Id.* at 388.]

As such, this Court does not have an obligation to review improperly preserved claims of error in a civil case. Rather, the claims are waived unless we exercise our discretion to overlook the preservation requirements. *Id.* at 387; see also *Smith v Foerster-Bolser Constr*, 269 Mich App 424, 427; 711 NW2d 421 (2006) ("[T]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented."). And this Court will exercise that discretion sparingly and only where exceptional circumstances warrant review. *Booth v University of Michigan Board of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993).

Plaintiff did not object to the trial court's decision to appoint a receiver. Had plaintiff objected, the trial court would have been able to create a record of the reasons for the appointment and the parties could have presented evidence to either support or refute those reasons at an appropriate hearing. Thus, plaintiff's failure to object has contributed to the very problem about which he now complains—namely, that the record contains no basis for the trial court's original decision to appoint a receiver. Further, there is evidence in the record that the receiver successfully served as an intermediary between the parties and enabled the litigation to move forward. Given this record, we decline to exercise our discretion to review this claim of error. *Foerster-Bolser Constr*, 269 Mich App at 427.

C. THE SECOND APPOINTMENT

In December 2009, after the arbitrator issued its amended award, defendant moved for the appointment of a receiver to secure the parties' marital home and asked the trial court to compel plaintiff to pay the child support ordered in November 2009. Defendant alleged that she moved out of the marital home in September 2009 and cannot afford to maintain it. She further alleged that, although the home and its possessions were awarded to plaintiff, he refused to take possession of the home. Finally, defendant alleged that plaintiff has refused to pay child support, as ordered by the court.

After a hearing on December 18, 2009, the trial court apparently discussed whether to appoint a receiver. Plaintiff's trial lawyer objected to the appointment of the receiver at that hearing, because the expense would not be warranted solely to secure plaintiff's coin collection. However, the parties noted on the record that the court wanted plaintiff to make the interim child support payments through the receiver and, on the same day, the trial court entered an order to that effect. According to the order, the receiver was—in relevant part—to ensure that plaintiff received credit for any child support that he paid.

In June 2010, defendant moved for a show cause hearing. In her motion, she alleged that plaintiff had not complied with the judgment of divorce. Specifically, she alleged, in part, that he had not paid spousal support, failed to transfer property, failed to pay for the qualified domestic relations orders, and failed to pay the ordered attorney fees. In July 2010, the trial court entered an order appointing the receiver to enforce the judgment of divorce.

The trial court again failed to state on the record or in writing the reasoning behind its decision to appoint a receiver to handle the coin collection and the payment of child support. Nevertheless, it is apparent from the record that plaintiff was not complying with the trial court's orders. Likewise, as already noted above, the parties had demonstrated a continuing inability to resolve disputes without the intervention of the court or other third parties, such as the GAL and the receiver. Accordingly, on this record, we cannot conclude that the trial court abused its discretion when it appointed the receiver to ensure the safety of plaintiff's coin collection and to serve as the intermediary for the payment of child support pending final resolution of the divorce.[5] See *Shouneyia*, 291 Mich App 331-332.

[5] Plaintiff also alleges that the trial court erred by failing to order the receiver to serve with a bond. See MCL 600.2926. However, the trial court's original order governing the receiver provided for a bond and the trial court later ordered the receiver to serve using his "normal" order, which presumably contains the same bond requirement. As such, we conclude that plaintiff has failed to demonstrate that the receiver has served without bond.

V. CHILD SUPPORT

A. STANDARD OF REVIEW

Finally, plaintiff argues that the trial court erred when it ordered him to pay child support retroactive to October 1, 2009 without accounting for child support payments that he already made from October 1, 2009 to the point of the judgment. He also argues that the trial court erred when it determined that child support should be calculated by assigning zero overnight stays to plaintiff. This Court reviews a trial court's grant of child support for an abuse of discretion. *Fisher v Fisher*, 276 Mich App 424, 427; 741 NW2d 68 (2007). However, this Court reviews de novo whether the trial court properly applied the law governing child support to the facts. *Borowsky*, 273 Mich App at 672.

B. ANALYSIS

In September 2007, the trial court entered a temporary order governing the parties' marital estate. In the order, the trial court provided that plaintiff and defendant should each continue to pay those marital expenses that each traditionally paid. As such, plaintiff had to continue to pay the mortgage on the marital home. In addition, the trial court specifically ordered that "no interim child support shall be ordered until the further order of the Court." Thus, plaintiff's obligations under the September 2007 order did not include any child support.

In November 2009, the trial court held a hearing. At that hearing, defendant moved for an immediate order of child support. Defendant asked the trial court to order the $1400 per month child support stated in the arbitrator's award. Plaintiff objected to the amount on the ground that his income had changed since the arbitrator issued the award. The trial court stated that it would order the child support as stated in the award, but indicated that the amount would be adjusted after referral to the Friend of the Court. The trial court signed a child support order providing that plaintiff would pay $1400 per month in child support.

At a December 2009 hearing, plaintiff objected to the November 2009 order requiring him to pay child support. He argued, in part, that he should receive a credit for payments that he made under the September 2007 order, but that occurred after the retroactive date for child support, which was October 1, 2009. The trial court entered an order on December 8, 2009 that vacated the November 2009 child support order, but also signed an order requiring plaintiff to pay $1400 in child support retroactive to October 1, 2009.

The trial court entered a judgment on April 22, 2010, which included an order that plaintiff pay $1400 per month in child support, which was retroactive to October 1, 2009. After plaintiff moved for reconsideration, the trial court entered another order concerning child support on June 22, 2010. That ordered provided that the April 2010 judgment providing for child support should be continued, but that the amount should be modified on the basis of the parties' actual incomes retroactive to October 1, 2009.

The record plainly shows that plaintiff did not pay any child support prior to the orders requiring him to pay child support retroactive to October 1, 2009. Although plaintiff tries to characterize the September 2007 order as an order for child support, the trial court clearly stated that it *was not* ordering child support in that order; rather, it ordered the parties to pay those marital expenses—regardless of whether the expenses were incurred for the benefit of the children—that the parties traditionally paid. As such, any payments that plaintiff made under the September 2007 order and after October 1, 2009, were not payments for child support. Accordingly, he is not entitled to a credit for those payments against the child support that the trial court ordered retroactive to October 1, 2009. For that reason, the trial court did not err by failing to account for the payments that plaintiff made under the September 2007 order. Moreover, it is plain from the trial court's order of June 22, 2010, that plaintiff will receive credit for any overpayments that he might have made as a result of the changes to his income after the arbitrator's award.

Plaintiff also argues that the trial court erred when it ordered that the child support be calculated by assigning him zero overnight stays with the children. Specifically, plaintiff contends that there is no "record" evidence that he has not exercised his parenting time, and, given that the trial court did not conduct a hearing on the parenting arrangements and that the judgment provided him with parenting time, it was error for the trial court to conclude that he had zero overnights with the children.

In August 2008, defendant submitted her trial brief to the court. In that brief, she alleged that the evidence would show that plaintiff unilaterally ceased exercising any parenting time with the children in June 2008. In addition, in September 2008, the trial court ordered that Vadino be appointed the children's GAL. As part of that order, the trial court provided that it would review Vadino's reports and recommendations and that those reports would, in the absence of an objection, be evidence.

On appeal, defendant has attached several letters from Vadino to the trial court, the parties, and the arbitrator. In these letters, Vadino reports on the issues confronting the children and makes recommendations. These letters, which are evidence under the trial court's order concerning the GAL, clearly show that plaintiff abruptly and voluntarily ceased exercising parenting time with the children in June 2008. Moreover, Vadino reports that, as of January 2011, she was trying to implement a four-step plan for plaintiff to reestablish contact with the children. Finally, in his brief in response to defendant's motion to appoint a receiver, plaintiff admitted that he had not exercised any parenting time since June 2008, but claimed that it was defendant's fault. Thus, contrary to plaintiff's contention, there is record evidence that he has not exercised his parenting time and, as such, would not be entitled to have any overnight stays assigned to him for purposes of calculating child support. See *Ewald v Ewald*, ___ Mich App ___, ___; ___ NW2d ___ (2011) (stating that the overnight offset provided for under the Michigan Child Support Formula must be calculated on the basis of "*actual* overnights even if that is contrary to an existing order regarding parenting time.").

The trial court did not abuse its discretion when it ordered that plaintiff's child support be calculated using zero actual overnights for plaintiff and did not abuse its discretion by failing to account for plaintiff's payments under the 2007 order.

There were no errors warranting relief.

Affirmed. As the prevailing party, defendant max tax her costs. MCR 7.219(A).

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly