

DA 19-0124

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 265N

ADAM PUMMILL, as an individual, and ADAM
PUMMILL and KURTIS ROBERTSON, as members of
Black Gold Enterprises, LLC, members of, and on behalf of,
BLACK GOLD ENTERPRISES, LLC,

Plaintiffs and Appellees,

v.

JOSHUA T. PATTERSON a/k/a JOSH PATTERSON, as an
individual and d/b/a PATTERSON ENTERPRISES, INC.,
also d/b/a ROCKY MOUNTAIN EQUIPMENT, INC., p/k/a
ROCKY MOUNTAIN JCB, INC., also d/b/a ROCKY
MOUNTAIN RENTAL SPECIALISTS, LLC, also d/b/a
ROCKY MOUNTAIN EQUIPMENT, also d/b/a ROCKY
MOUNTAIN RENTAL, also d/b/a ROCKY MOUNTAIN
EQUIPMENT OF MISSOULA MONTANA,

Defendants and Appellants.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-18-1450
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brian J. West, West Law Firm, P.C., Missoula, Montana

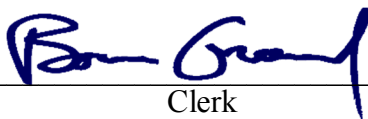
For Appellee:

James P. O'Brien, O'Brien Law Office, P.C., Missoula, Montana

Submitted on Briefs: August 28, 2019

Decided: November 5, 2019

Filed:


Clerk

Justice James Jeremiah Shea delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion, shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Joshua T. Patterson, individually and in his official capacity as owner of various business entities, appeals from the Order of the Fourth Judicial District Court, Missoula County, appointing a receiver to operate Black Gold Enterprises, LLC, of which Patterson is a member. We affirm.

¶3 Black Gold Enterprises, LLC (BGE) is a limited liability company that primarily operates as a landlord, renting its real property to various commercial tenants. BGE was formed in March 2013 as a member-managed limited liability company with each member having an equal interest. Patterson and Appellees Adam Pummill and Kurtis Robertson are the only members of BGE.

¶4 Patterson is also the owner and operator of various business entities which are commercial tenants of BGE. These entities include Patterson Enterprises, Inc.; Rocky Mountain Equipment, Inc.; Rocky Mountain Rental Specialists, LLC; Devil Dog Firearms, LLC; Riley Auto, LLC; and Rocky Mountain JCB, Inc. No formal rental agreement has ever existed between these entities and BGE. Instead, Patterson paid amounts he deemed reasonable based on what his business entities could afford and the needs of BGE.

¶5 In 2018, Pummill and Robertson called several meetings of the BGE members to change certain procedures related to operating the business. The BGE members passed several resolutions over Patterson's objection; specifically, a resolution allowing BGE to retain legal counsel to execute rental agreements to ensure timely and consistent rental payments from all BGE tenants, including Patterson's business entities. At the time, Patterson's business entities owed BGE rent arrears of approximately \$68,719.55. Patterson ignored the resolution and refused to pay his business entities' past-due rent. Patterson also refused to enter into rental agreements on behalf of his business entities with BGE to establish payment terms for future rent.

¶6 BGE members also passed a resolution to sell certain BGE real property, but Patterson refused Pummill and Robertson access to the property to prepare it for sale. Patterson also failed to maintain the property while it was in his possession.

¶7 During this time, BGE struggled to pay its mortgage and other bills. At one point, BGE's checking account was overdrawn. BGE had to negotiate with its mortgage lender to avoid default.

¶8 On November 6, 2018, Pummill and Robertson filed derivative claims against Patterson, asserting that Patterson and his business entities' actions were harming BGE's business interests. Pummill and Robertson later filed a Motion for Preliminary Injunction and Appointment of Receiver. After a hearing, the District Court found Patterson harmed BGE by refusing to pay his business entities' past-due rent and refusing to enter into a written rental agreement with BGE to establish payment terms for future rent. The

District Court granted the preliminary injunction and directed the appointment of a receiver to operate BGE. Patterson appeals the District Court's appointment of the receiver.

¶9 We review for an abuse of discretion a district court's appointment of a receiver, which is a provisional remedy imposed by a district court to preserve and manage property while litigation is pending. *See Sandrock v. DeTienne*, 2010 MT 237, ¶ 25, 358 Mont. 175, 243 P.3d 1123; *Crowley v. Valley W. Water Co.*, 267 Mont. 144, 151, 882 P.2d 1022, 1026 (1994) (citing *Stoner v. Hannan*, 113 Mont. 210, 223, 127 P.2d 233, 236—37 (1942)). An abuse of discretion occurs when a district court “acts arbitrarily, without employment of conscientious judgment, or in excess of the bounds of reason resulting in substantial injustice.” *Johnson v. Booth*, 2008 MT 155, ¶ 12, 343 Mont. 268, 184 P.3d 289 (citing *Kuhr v. City of Billings*, 2007 MT 201, ¶ 14, 338 Mont. 402, 168 P.3d 615).

¶10 Section 27-20-102, MCA, delineates the instances in which a district court may appoint a receiver, including in actions “between partners or others jointly owning or interested in any property or fund, . . . when it is shown that the property or fund is in danger of being lost, removed, or materially injured” Section 27-20-102(3), MCA. The plaintiff or “any party whose right to or interest in the property or fund or the proceeds of the property or fund is probable” may apply to the district court to appoint a receiver. Section 27-20-102(3), MCA. The party seeking the appointment of a receiver bears the burden of showing the property “is in danger of loss from neglect, waste, misconduct, or insolvency.” *Sandrock*, ¶ 25 (quoting *Crowley*, 267 Mont. at 151, 882 P.2d at 1026).

¶11 “[T]he power to appoint a receiver is to be exercised sparingly and not as a matter of course. Further, a strong showing must be made and even then, that power is to be exercised with conservation and caution.” *Sandrock*, ¶ 25 (quoting *Crowley*, 267 Mont. at 150, 882 P.2d at 1026). “Generally, a receiver will not be appointed if there is another way to protect the property in question or otherwise achieve the desired outcome.” *Sandrock*, ¶ 25 (quoting *Crowley*, 267 Mont. at 151, 882 P.2d at 1026).

¶12 Patterson argues on appeal that the District Court erred when it directed the appointment of a receiver because BGE was properly functioning as a business despite Patterson’s conduct. We disagree.

¶13 The District Court was presented with substantial evidence that Patterson’s conduct threatened the property of BGE, and an appointment of a receiver was necessary to stabilize the business, preserve its assets, and keep it operating. The District Court found the unstructured and unpredictable rental agreement previously existing between Patterson’s business entities and BGE harmed BGE’s ability to meet its financial obligations. The District Court found that Patterson’s refusal to pay past-due rent or agree to establish terms for the payment of future rent threatened removal or disposal of BGE’s funds by endangering BGE’s continued operation and resulting in a loss of the BGE members’ investment. These findings satisfy the requirement of § 27-20-102(3), MCA, that the jointly-owned property or fund is in danger of being lost or materially injured. Additionally, Patterson’s unilateral disregard of BGE’s resolutions, and his refusal to cooperate with the other BGE members, support the District Court’s order directing the

appointment of a receiver to execute commercial rental agreements with BGE tenants, access BGE's financial books, decide whether to sell certain BGE property, and negotiate with BGE's mortgage lender to avoid default. The District Court acted within its discretion and did not err when directing the appointment of a receiver.

¶14 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's ruling was not an abuse of discretion.

/S/ JAMES JEREMIAH SHEA

We Concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR