

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

WILLIAM M. KOEBLITZ, :
 :
 Plaintiff, :
 : No. 110106
 v. :
 :
 VICKI K. KOEBLITZ, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 1, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-04-301704

Appearances:

The Albert Law Firm, Steven W. Albert, Andrew S. Peterson, and Nicholas J.M. Holland, *for appellant*.

Whitmer & Ehrman, L.L.C., Mary K. Whitmer, James W. Ehrman, and Robert M. Stefancin, *for receiver Mark E. Dottore*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Vicki Koeblitz, now known as Vicki Kennedy (“Kennedy”), appeals the imposition of Mark Dottore’s costs and fees as a receiver who was appointed in the

separation agreement incorporated into the final entry of divorce entered in 2007. For the following reasons, we affirm.

{¶ 2} Kennedy and William Koeblitz were divorced in 2007. The parties entered into a separation agreement incorporated as part of that final divorce decree. Koeblitz owned an interest in a business startup at the time, and one of the issues was the parties' rights to any proceeds from a future sale or liquidation of Koeblitz's interest in that business, WMK, Inc. These post-resolution rights were referred to as Kennedy's "tag-along rights." Under Section 8(e)(i) of the separation agreement, the "purpose of these tag-along rights is to allow [Kennedy] to share in a declining percentage of net after tax proceeds in excess of \$579,000 realized by [Koeblitz] in the event he sells most or all of his interest" in WMK. All disputes regarding the proceeds from any sale or liquidation were to be mediated through binding mediation conducted by the receiver. Dottore was appointed receiver through the separation agreement. As part of the separation agreement, Section 8(e)(iv), Koeblitz was required to annually provide audited financial statements for the business to enable Dottore to determine whether a liquidation event occurred.

{¶ 3} In August 2018, Koeblitz informed Dottore that a liquidation event occurred as defined under the separation agreement, triggering the tag-along provision. Dottore contacted Kennedy to inform her of the triggering event and application of the tag-along provision.

{¶ 4} In light of the liquidating event, and pursuant to an unambiguous reading of Section 8(e)(iii) of the separation agreement, Kennedy would be entitled

to an 8 percent share in the aggregate net proceeds following Koeblitz's initial receipt of \$579,000 of those net proceeds from the sale. Under that provision, the parties agreed to Kennedy receiving a declining aggregate share of the net proceeds of the liquidating event subject to a phase-out provision, ranging from 20 percent if the sale occurred by August 31, 2012, to 2 percent if the sale occurred by that date in 2021. After that time, Kennedy received nothing from the sale. As it stands, according to Dottore at the hearing on his application for fees and costs, Kennedy stands to receive "multiple millions of dollars" based on the tag-along provision, an amount that is yet to have been determined because of Kennedy's efforts to invalidate that particular provision of the separation agreement.

{¶ 5} Immediately upon receiving that information from Dottore, Kennedy "filed a complaint in the Cuyahoga County Common Pleas, General Division, seeking a declaratory judgment that the provisions of the Agreement granting authority to Dottore are void due to fraud, unconscionability, and as against public policy." *Kennedy v. Dottore*, 8th Dist. Cuyahoga No. 108562, 2020-Ohio-3451, ¶ 8. The allegations of fraud apparently pertained to Dottore's business relationship with Koeblitz's attorney of record at the time the parties negotiated the separation agreement. *Id.* at ¶ 9. Koeblitz and Kennedy, through their counsel of record, negotiated and executed the separation agreement. *Id.* at ¶ 3.

{¶ 6} In that common pleas action, Kennedy alleged the existence of parol evidence demonstrating that Dottore was "significantly involved" in negotiating the tag-along provision, and in light of the undisclosed conflict, that provision should be

deemed void. *Id.* According to Kennedy, this amounted to a claim of fraud in the formation of the agreement as opposed to fraud in the execution. *Id.* In this appeal, Kennedy does not elaborate on Dottore's alleged involvement in negotiating the tag-along provision. Although the action was directed against the receiver personally, it was actually an attempt to invalidate the separation agreement incorporated into the divorce decree. There was no claim that the receiver engaged in any fraud in the performance of his subsequent duties. In fact, at oral argument, Kennedy conceded that Dottore had not committed any misconduct in undertaking his receivership responsibilities after executing the separation agreement.

{¶ 7} It is undisputed that Kennedy failed to seek leave to initiate the lawsuit against Dottore in the general division court. *Huntington Natl. Bank v. Weldon F. Stump & Co.*, 6th Dist. Lucas No. L-06-1398, 2008-Ohio-2096, ¶ 20, citing *Barton v. Barbour*, 104 U.S. 126, 136, 26 L.Ed. 672 (1881), *Murphy v. Holbrook*, 20 Ohio St. 137, 145 (1870), and *Bank One v. The Oaks of Medina*, 9th Dist. Medina No. 04CA0080-M, 2005-Ohio-3546 (known as the Barton Doctrine, leave of the appointing court is required in order for parties to file suit against a receiver for actions taken regarding the receivership). Even though Kennedy named Dottore individually, the leave requirement remained, especially in consideration of the fact that Kennedy challenged Dottore's status as the receiver appointed by the domestic relations court in response to his attempt to carry out his obligations under the appointment. *Ettayem v. Ramsey*, 10th Dist. Franklin No. 17AP-155, 2019-Ohio-675, ¶ 15. In light of the fact that Kennedy initiated legal proceedings against

Dottore personally in an attempt to declare the separation agreement and Dottore's appointment as receiver void, he hired counsel.

{¶ 8} It is unclear why Kennedy failed to petition the domestic relations court for a review of Dottore's status and the circumstances underlying his appointment as receiver once she learned of the purported relationship between Dottore and Koebnitz's then legal counsel. There is no indication Kennedy sought the removal of Dottore in the domestic relations court before filing the action in the general division.

{¶ 9} Kennedy's common pleas action was dismissed for the want of jurisdiction and the failure to plead common law fraud with particularity. *See generally Kennedy*, 8th Dist. Cuyahoga No. 108562, 2020-Ohio-3451. The general division court determined that it lacked jurisdiction to remove a receiver appointed by another court and also declared that Kennedy's common law fraud claims were not pleaded with particularity as required under Ohio law. *Id.* After the common pleas action became final, Dottore submitted an application for fees and costs based on his time spent defending against the collateral attack on the separation agreement and the attorney fees incurred as a result of his need to hire counsel to represent the receiver in another court.

{¶ 10} After the initial application for fees had been pending for approximately a year, Kennedy filed a motion to compel discovery under Civ.R. 26 and 30(B) seeking to depose Dottore, a nonparty to the domestic relations court action. Under Civ.R. 30(A), a witness may be compelled to deposition only by the

use of subpoena as provided by Civ.R. 45, as contrasted with the attendance of a party who may be compelled by the use of notice of examination under Civ.R. 30(B). *State ex rel. V Cos. v. Marshall*, 81 Ohio St.3d 467, 469, 1998-Ohio-329, 692 N.E.2d 198. In this case, it appears Kennedy attempted to notice Dottore's deposition under Civ.R. 30(B), a rule not applicable to nonparties.

{¶ 11} The trial court, after conducting a hearing on Dottore's request for fees and costs, determined that Dottore's action in hiring counsel to preserve the receivership in the general division action was authorized under his appointment. On this point, the trial court primarily relied on *Carr v. Acacia Country Club Co.*, 8th Dist. Cuyahoga No. 97989, 2012-Ohio-4723, ¶ 29, in which the panel reiterated that "[t]he primary purpose of a receiver is to carry out the orders of the * * * court, which has the power 'to exercise its sound discretion to limit *or expand a receiver's powers as it deems appropriate.*'" (Emphasis added.) *Id.*, quoting *Natl. City Bank v. Semco, Inc.*, 183 Ohio App.3d 229, 2009-Ohio-3319, 916 N.E.2d 857, ¶ 8 (3d Dist.), and *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 74, 573 N.E.2d 62 (1991). The domestic relations court noted that Kennedy's stated goal in the ancillary action was to vacate the tag-along provision of the separation agreement, which directly impacted Dottore's appointment as receiver to oversee the continuing obligation of the parties as it pertained to the separation agreement. It was then concluded that Dottore's participation in the ancillary litigation was necessary to fulfilling his obligations to the domestic relations court through the appointment to maintain the receivership.

{¶ 12} The domestic relations court expressed concern that should the attorney fees not be awarded, parties would freely challenge a receiver in a separate court to discourage that receiver from fulfilling the responsibilities of the receivership by forcing a duly appointed receiver to choose between hiring counsel to adequately defend the claims challenging the appointment out-of-pocket — potentially subsuming the fees earned in faithful execution of their court appointment. Accordingly, the domestic relations court entered judgment against Kennedy in the amount of \$48,232.50, representing the attorney fees Dottore, as the receiver, incurred in defending the improper action to declare the separation agreement void, and another judgment against Kennedy and Koeblitz in the amount of \$10,740, representing Dottore’s fees for appearing in the general division action. Koeblitz did not appeal the imposition of the fees.

{¶ 13} In this appeal, the parties agree that a final appealable order exists based on the judgment entered against Kennedy for the receiver’s fees and costs. We do not disagree. The judgment entering judgment upon the costs taxed to Kennedy is not contingent on further proceedings and was issued in a post-dispositive proceeding. We need not dwell on the jurisdictional question. The trial court entered judgment against Kennedy subject to immediate execution. Although Dottore undoubtedly has not completed his obligations under the court’s appointment, that does not deprive us of a final appealable order on the limited issue presented in this appeal. The issue of Dottore’s fees and costs stemming from Kennedy’s attempt to circumvent the domestic relations court’s authority over the

separation agreement has been resolved and is not subject to further litigation. Under R.C. 2505.02(B), an order is final when it affects a substantial right in the action that determines the action, leaving nothing for determination by the court. *Hamilton Cty. Bd. of Mental Retardation Dev. Disabilities v. Professional Guild of Ohio*, 46 Ohio St.3d 147, 153, 545 N.E.2d 1260 (1989). Since the judgment entered against Kennedy resulted in a judgment being immediately rendered, the order is final for appellate purposes.

{¶ 14} In the first assignment of error, Kennedy claims that the domestic relations court erred in ordering her to pay the receiver's fees and costs for the work performed in the general division action. According to Kennedy, her suit against Dottore was outside the scope of the receivership and against Dottore in his individual capacity, despite the fact that the claimed relief was to void the separation agreement, in which she agreed to the court appointing Dottore to monitor Koeblitz's business for a liquidation event.

{¶ 15} On this point, we note that Kennedy filed the general division action within days of being advised of the liquidation event and the percentage of the net proceeds to which Kennedy was entitled, which was solely determined from the date of the liquidating event under the express terms of the separation agreement. Although Kennedy goes to great lengths to claim that there was no dispute for Dottore to resolve regarding the liquidation event and Kennedy's tag-along rights, her lawsuit seeking to invalidate the tag-along provision of the separation agreement that included Koeblitz as a defendant is undoubtedly a "dispute" between her and

Koeblitz over the tag-along provision by any definition of the word. That Kennedy sued Dottore personally over the matter does not alter this conclusion. Her general division lawsuit unequivocally demonstrated that she did not desire to accept the amount she was to receive under the tag-along provision as written and that the lawsuit was filed immediately after Dottore notified Kennedy of the triggering event for the tag-along provision.

{¶ 16} Although the underlying details involved in the creation of the separation agreement have not been discussed in this appeal, we agree with the trial court that the general division lawsuit designed to undo that agreement placed Dottore in a position where he had to defend his role as receiver. As a receiver duly appointed by the domestic relations court, he was obligated to fulfill his responsibility to the court based on the triggering event of the separation agreement that was incorporated into the final divorce decree and the source of Dottore's appointment as receiver. It has long been settled that a "trial court has the authority to appoint receivers pursuant to R.C. 2735.01 [and that the] primary purpose of a receiver is to carry out orders of the court." *Hummer v. Hummer*, 8th Dist. Cuyahoga No. 96132, 2011-Ohio-3767, ¶ 16, citing *Park Natl. Bank v. Cattani*, 187 Ohio App.3d 186, 2010-Ohio-1291, 931 N.E.2d 623, ¶ 10 (12th Dist.). A receiver is in part defined as a "fiduciary of the court, appointed as an incident to other proceedings wherein certain ultimate relief is prayed. He is a trustee or ministerial officer representing the [appointing] court * * *." *State ex rel. Celebrezze*, 60 Ohio St.3d at 73, 573 N.E.2d 62, fn. 4, quoting *Black's Law Dictionary* 1268 (6th

Ed.1990). The domestic relations court recognized this after the fact by ratifying Dottore's decision to defend his receivership by seeking legal counsel.

{¶ 17} Just as Kennedy should have sought leave of court to pursue a separate action against Dottore in another forum, it arguably would have been a better practice for the receiver to formally seek permission from the domestic relations court before undertaking actions that were not contemplated at the time of the receiver's appointment, but the failure to adhere to a best-practices approach does not limit the trial court's authority after the fact to authorize the fees and bills. We must recognize that the domestic relations court has discretion to "to exercise its sound discretion to limit *or expand* a receiver's powers as it deems appropriate." (Emphasis added.) *Semco*, 183 Ohio App.3d 229, 2009-Ohio-3319, 916 N.E.2d 857, at ¶ 8, quoting *Celebrezze* at 74. In undertaking a review of the receiver's exercising his powers, the domestic relations court enjoys discretion to declare that the receiver is entitled to reasonable compensation for his services. *Id.* at ¶ 11. Further,

[p]arties who invoke the jurisdiction and process of a court for the appointment of a receiver by sufficient allegations and showing of necessity therefor, resulting in such appointment, do not become personally liable for the compensation of the receiver and the expenses of administration of an insolvent concern, in the absence of special circumstances calling for the application of equitable principles creating such liability.

Richey v. Brett, 112 Ohio St. 582, 148 N.E. 92 (1925), syllabus.

{¶ 18} In this case, the domestic relations court invoked its authority to determine that the defense of the common pleas action was justified and the receiver's fees and costs were compensable in light of the fact that the action was a

collateral attack on the separation agreement and the receiver's authority. Had the lawsuit involved a claim solely asserting fraud against the receiver in the execution of his duties and not one contemporaneously trying to undo a judgment of another court, the receiver's defense to the lawsuit could be viewed in a different light. We, however, cannot conclude that the trial court abused its discretion in deeming Dottore's defense of the integrity of the receivership to distribute the net proceeds from the sale of Koeblitz's interest in WMK as being integral to the receiver's continued commitment to his appointment. Dottore, as receiver, was responsible to the domestic relations court and both Koeblitz and Kennedy with respect to the net proceeds and the potential distribution of the large sum of money to both parties.

{¶ 19} Further, the domestic relations court invoked equitable principles in deeming Kennedy solely liable for the amount of attorney fees expended in Dottore's pursuit since Koeblitz bore no fault in initiating the general division action. As Kennedy recognizes, in Ohio, "receivers generally may recover fees and expenses only to the extent they are 'necessary to produce, preserve, or protect a fund which has, or may be, brought into the hands of the receiver,' and when the reimbursement would be 'to the interest of the receivership[,]'" and that "the same test applies to fees for a receiver's legal counsel." Appellant's brief, p. 11-12, quoting *Carr*, 8th Dist. Cuyahoga No 97989, 2012-Ohio-4723, at ¶ 34, and *Natl. City Bank v. Semco, Inc.*, 3d Dist. Marion No. 9-10-42, 2011-Ohio-172, ¶ 21.

{¶ 20} Thus, the only issue for resolution in this first assignment of error is whether the trial court abused its discretion in deeming Dottore's defense of the

receivership in the general division action as necessary to preserve or protect a fund brought into the hands of the receiver. “An abuse of discretion connotes an attitude on the part of the court that is unreasonable, unconscionable, or arbitrary.” *Cleveland v. Alrefaei*, 2020-Ohio-5009, 161 N.E.3d 53, ¶ 27 (8th Dist.), citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 21} Kennedy has not demonstrated that the trial court abused its discretion in deeming the receiver’s action in the general division action as being necessary to maintaining the receivership funds. It is undisputed that in August 2018, Koebnitz sold an interest in his business that triggered the tag-along provision, necessarily meaning that the net proceeds of that sale became a potential asset of the receivership subject to the express terms of the separation agreement. Kennedy’s general division lawsuit sought to remove Dottore as receiver in an effort to nullify the tag-along provision. Since Kennedy circumvented the domestic relations court’s authority over the final divorce decree and Dottore as receiver in the attempt to thwart Dottore’s responsibility over the net proceeds of the sale, it cannot be determined that the trial court abused its discretion in finding that the receiver’s defense of the general division action, even though he was individually named, was necessary to preserving the receivership and an asset under the receiver’s control or direction.

{¶ 22} As was recognized in *Kennedy*, 8th Dist. Cuyahoga No. 108562, 2020-Ohio-3451, at ¶ 8, had Kennedy been afforded her requested relief in the general division action, Dottore would have been removed as the duly appointed

receiver, and the tag-along provision declared void. That necessarily would have resulted in the dissolution of the receivership's sole continuing purpose and would have been contrary to Dottore's oath to the domestic relations court to carry out his obligation to monitor Koebnitz's business for a liquidation event. R.C. 2735.03 (the receiver "must be sworn to perform his duties faithfully * * * to the effect that such receiver will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein"). Dottore's action defending against Kennedy's collateral attack on the separation agreement and the receivership was essential to the preservation of the fund created by the sale of Koebnitz's interest in WMK. The first assignment of error is overruled.

{¶ 23} Our review of these proceedings is limited to the determination of whether the trial court's authorization of payment of the fees and bills was proper. From a review of the domestic relations court's docket during the pendency of this appeal, it appears that Kennedy is availing herself of the opportunity to challenge the receivership through the domestic relations court's ongoing jurisdiction over the receivership. After filing this appeal, Kennedy filed a motion to remove and replace Dottore as the receiver. We cannot voice any view over whether the underlying receiver appointment was fraudulently procured. Just like the general division was limited in its review, so are we. The question of the receivership status and actions at this point is a matter for the domestic relations court in its ongoing authority over the receiver and the assets maintained by the receiver.

{¶ 24} We further note, however, that nothing in the foregoing decision impacts the general rule in Ohio that receivers may be personally held liable should they act in contravention of their obligations under the appointment order, so long as the preliminary procedural mechanisms are satisfied. *Hummer*, 8th Dist. Cuyahoga No. 96132, 2011-Ohio-3767; *Ramsey*, 10th Dist. Franklin No. 17AP-155, 2019-Ohio-675, at ¶ 15; *Weldon F. Stump & Co.*, 6th Dist. Lucas No. L-06-1398, 2008-Ohio-2096, at ¶ 20. As we continue to recognize, a receiver owes a duty to discharge his or her duties and to obey the orders of the court. “The receiver acts in a fiduciary capacity and must use ordinary care in administering the assets of the corporation. If the receiver exceeds the authority granted by the court or fails to use ordinary care, the general rule is that he or she may be sued in a personal capacity.” *INF Ent., Inc. v. Donnellon*, 133 Ohio App.3d 787, 788-789, 729 N.E.2d 1221 (1st Dist.1999). Nothing herein seeks to modify that black-letter law.

{¶ 25} Although Kennedy attempted to deflect the discussion into one regarding her ability to hold a receiver personally liable, that issue was not the basis of the trial court’s decision and is well outside the scope of our current review. The sole issue in this case is whether the domestic relations court abused its discretion in the post hoc review of the receiver’s conduct to include compensation for the receiver’s efforts in defending the collateral attack Kennedy attempted in the general division after the tag-along provision triggering event occurred, which created a potential receivership asset in the net proceeds of the sale.

{¶ 26} In the second assignment of error, Kennedy claims the trial court abused its discretion by denying her the ability to conduct discovery under Civ.R. 26 and depose Dottore in advance of the hearing on his application for fees and costs.

{¶ 27} Dottore first filed his application for costs and fees expended in defending the general division action on August 13, 2019, and supplemented that request on July 6, 2020, based on the continuing nature of the general division proceedings. Kennedy, therefore, was on notice as early as August 2019 of Dottore's position that his defense of the collateral attack was undertaken as part of his receivership responsibilities, including the cost of the attorney hired in that pursuit. Despite the pending applications, Kennedy took no steps to conduct discovery or depose Dottore until late September 2020, after the domestic relations court belatedly set the matter for hearing to occur on October 1. Further, Kennedy attempted to notice Dottore's deposition under Civ.R. 30(B), also despite the fact that the receiver is not a party in the domestic relations proceedings.

{¶ 28} "[A]bsent an abuse of discretion, an appellate court must affirm a trial court's disposition of discovery issues." *Marshall*, 81 Ohio St.3d at 469, 1998-Ohio-329, 692 N.E.2d 198, citing *Carpenter v. Reis*, 109 Ohio App.3d 499, 507, 672 N.E.2d 702 (6th Dist.1996), and *Toney v. Berkemer*, 6 Ohio St.3d 455, 458, 453 N.E.2d 700 (1983). As previously alluded to, under Civ.R. 30(A), a nonparty witness may only be compelled to sit for a deposition or otherwise provide discovery materials by the use of a subpoena as provided by Civ.R. 45, as contrasted with the attendance of a party to the proceeding who may be compelled to sit for deposition

by the use of a notice of examination under Civ.R. 30(B). *Id.*, citing Civ.R. 30(A). A court may properly exercise its discretion to deny a motion to compel discovery that is not made in accordance with the Ohio Civil Rules. *Id.*; *see also Yidi, L.L.C. v. JHB Hotel, L.L.C.*, 2016-Ohio-6955, 70 N.E.3d 1231, ¶ 10 (8th Dist.) (trial court cannot compel discovery from a nonparty when no subpoena under Civ.R. 45 has been issued).

{¶ 29} In this case, nothing in the record indicates that Kennedy ever issued a subpoena or otherwise attempted to properly seek the receiver's deposition in the domestic relations action despite having over a year to do so following the receiver's application for fees and costs and her objections. *See, e.g., Sultaana v. Barkia Ents.*, 8th Dist. Cuyahoga No. 109122, 2020-Ohio-4468, ¶ 12 (trial court does not abuse its discretion denying an extension of time to conduct discovery when the party seeking the discovery fails to timely pursue the request). Instead, Kennedy waited until the trial court set the matter for hearing to first seek discovery, which would have further delayed the proceedings. Kennedy has not explained a basis for her delay in seeking discovery on the pending application.

{¶ 30} Further, the receiver is a nonparty to the domestic relations case, and even if a deposition of the receiver was to occur, the deposition could not be compelled after Kennedy simply noticed the deposition under Civ.R. 30(B). Under R.C. 2735.02, the receiver is not a party to the action. Civ.R. 30(B), which provides for authority to notice a deposition without subpoena, is limited to the exchange of discovery as between parties to the litigation. Even if we were inclined to agree with

Kennedy's position that the deposition of the receiver was necessary in advance of the hearing on the application of receiver fees and costs, we cannot conclude that the trial court abused its discretion in denying Kennedy's motion to compel a deposition of a nonparty through Civ.R. 30(B). As a matter of procedure, Kennedy failed to properly initiate the discovery request against a nonparty under Civ.R. 45 in order to substantiate the motion to compel discovery depositions. As a nonparty to the action, Dottore was under no obligation to appear for a deposition under Civ.R. 30(B) and without a properly issued subpoena, the domestic relations court lacked authority to compel his deposition. *Marshall* at 469. As a result, we cannot conclude that the trial court abused its discretion in denying a motion to compel the noticed deposition of a nonparty. The second assignment of error is overruled.

{¶ 31} In the third and final assignment of error, Kennedy claims the trial court erred by requiring her to bear the cost of the receiver's attorney fees because the separation agreement expressly provides that the parties shall share the cost of past and future services rendered under the terms of the separation agreement.

{¶ 32} Our review of the final assignment of error is hampered by the lack of authority and analysis provided. App.R. 16(A)(7). Kennedy provides no citations or authority to support her claim that a trial court abuses its discretion in ordering a party to bear the costs of the receivership born from services rendered solely as a product of that party's conduct. Kennedy concedes that under special circumstances, a party who invoked the jurisdiction of the court to appoint a receiver may be personally held liable for the fees and costs of that receivership under

principles of equity. *Brett*, 112 Ohio St. 582, 148 N.E. 92. Accordingly, we cannot conclude that the domestic relations court abused its discretion by holding Kennedy solely liable for the attorney fees caused by her failed attempt to circumvent the domestic relations court's continuing jurisdiction over the separation agreement that was incorporated into the final decree of divorce.

{¶ 33} Although the separation agreement provides that both parties shall bear the receiver's fees and costs equally, Kennedy cannot hide behind the terms of the separation agreement she sought to invalidate through the collateral attack in the general division case. As a general principle, parties are not permitted to pick and choose which provisions of a contract they choose to enforce. *McInnis v. Spin Cycle-Euclid, L.L.C.*, 8th Dist. Cuyahoga No. 91905, 2009-Ohio-2370, ¶ 20. Had Kennedy adhered to the terms of the separation agreement, the general division action would not have occurred. Since she sought to invalidate the agreement, she cannot hide behind the provisions setting out the parties' agreements as to the fee sharing that were directly incurred as a result of her improper attempt to invalidate the agreement altogether. If the fee sharing agreement is enforceable, then so, too, is the tag-along provision. Kennedy cannot have it both ways. Kennedy is not entitled to invalidate portions of the agreement she deems unfavorable while forcing Koebnitz to abide by the terms more favorable to her. As a matter of equity, Koebnitz cannot be deemed liable for causing the fees at issue caused by Kennedy's unilateral attempt to invalidate the separation agreement through an impermissible collateral attack.

{¶ 34} Inasmuch as Koeblitz was held responsible for half of Dottore's fees and not the costs, he conceded the issue by not appealing the trial court's decision. As it stands, Kennedy's third assignment of error is overruled.

{¶ 35} We affirm.

It is ordered that appellant pay costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, domestic relations division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, PRESIDING JUDGE

LARRY A. JONES, SR., J., and
EILEEN T. GALLAGHER, J., CONCUR