

[Cite as *Hartley v. Hartley*, 2004-Ohio-4956.]

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

DIANNA HARTLEY

Appellant

v.

JOSEPH HARTLEY

Appellee

C.A. No. 03CA0094-M

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 02DR0004

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

CARR, Presiding Judge.

{¶1} Appellant, Dianna Hartley, appeals from the judgment of the Medina County Court of Common Pleas, Domestic Relations Division, issuing findings of fact and conclusions of law regarding the actions of the receiver appointed in the action. This Court affirms.

I.

{¶2} Appellant and appellee, Joseph Hartley, filed for divorce in the Medina County Court of Common Pleas, Domestic Relations Division. The marital assets of the parties included in part Heartland Homes and Auction

Company. As a result of the proceedings, a receiver, Robert Turner, was appointed to manage the assets and operations of the company on July 11, 2002.

{¶3} On April 10, 2003, a journal entry for divorce was entered by the trial court, but the court failed to obtain the approval and signature of the receiver. As a result, the receiver filed a motion for relief from judgment. Subsequently, the parties settled a number of outstanding issues and executed a memorialization of settlement. The settlement provided that the receiver's request for relief from judgment would be dismissed and the parties would amend the April 10, 2003 order to incorporate new terms. On May 12, 2003, the trial court incorporated the memorialization of settlement into its order and granted the receiver's request for findings of fact and conclusions of law. The receiver complied with the trial court's request for proposed findings of fact and conclusions of law by filing such on May 19, 2003.

{¶4} In turn, the parties jointly filed a "Nunc Pro Tunc Journal Entry of Divorce, No Children, Separation and Property Settlement Agreement" on May 21, 2003. This agreement purported to resolve all outstanding issues between the parties and dismiss all pending motions in the proceedings. On June 26, 2003, the trial court adopted the receiver's findings of facts and conclusions of law. Appellant timely appealed from the trial court's findings of fact and conclusions of law, raising two assignments of error.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT’S FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE IMPROPER.”

{¶5} In her first assignment of error, appellant contends that the receiver waived his request for findings of fact and conclusions of law. As such, appellant argues that it was error for the trial court to issue them. This Court disagrees.

{¶6} Civ.R. 52 provides that a party may request that a trial court issue findings of fact and conclusions of law. The record reflects that the court granted the receiver’s request for findings of fact and conclusions of law on May 12, 2003. The order also required that the receiver submit proposed findings by May 20, 2003, which the receiver did. Appellant contends that by agreeing to the journal entry of divorce, entered May 21, 2003, the receiver waived his request for these findings. Further, appellant contends that the receiver waived his request because the journal entry for divorce stated that all parties agreed that “all pending motions are dismissed.”

{¶7} However, the receiver’s request for findings of fact and conclusions of law was granted in the trial court’s May 12, 2003 order. As such, it was not a pending motion and was not dismissed by the journal entry for divorce. Further, on June 3, 2003, appellant submitted her own proposed findings of fact and conclusions of law, clearly contemplating that the trial court would issue findings

of fact and conclusions of law. Additionally, the receiver amended his proposed conclusions of law on June 3, 2003.

{¶8} Waiver entails the voluntary relinquishment of a known right or intentionally doing an act inconsistent with claiming that right. *Mondl v. Mondl* (Dec. 5, 2001), 9th Dist. No. 20570. Given the above facts, this Court cannot conclude that the receiver waived his request for findings of fact and conclusions of law. The journal entry for divorce only dismissed pending motions, and the receiver's request for findings had been granted prior to the journal entry. Further, the receiver amended his conclusions of law subsequent to the journal entry for divorce, consistent with not waiving his request.

{¶9} Appellant has not demonstrated that the receiver waived his request. As such, the trial court committed no error in issuing findings of fact and conclusions of law. Accordingly, appellant's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

“THE FINDINGS OF FACT AND CONCLUSIONS OF LAW ARE NOT SUPPORTED BY THE RECORD.”

{¶10} In her final assignment of error, appellant contends that even if the trial court properly issued findings of fact and conclusions of law, they are not supported by the record. This Court disagrees.

{¶11} This Court will not reverse the trial court's findings of fact if they are supported by some competent and credible evidence in the record. *Jaroch v. Madalin*, 9th Dist. No. 21681, 2004-Ohio-1982, at ¶8.

{¶12} Appellant first contends that the receiver had no authority to act because R.C. 2735.03 requires that the receiver post a bond. However, an order challenging the appointment of a receiver must be appealed within thirty days of its issuance. *Jamestown Village Condominium Assn. v. Mkt. Media Research, Inc.* (1996), 96 Ohio App.3d 678, 689. A receiver was appointed in the instant case on July 11, 2002. As such, appellant did not timely challenge that appointment and cannot now challenge that appointment or the authority it granted the receiver.

{¶13} Appellant also asserts that the trial court erred in finding that the receiver had properly acted within the scope of his powers granted by the court. This conclusion was based upon the trial court's finding of fact that the receiver had fully and faithfully discharged his duties. Appellant asserts that because no hearing was held on the matter, the record contains no evidence that the receiver fully and faithfully discharged his duties. However, the record shows otherwise.

{¶14} Upon appointment, the trial court ordered as follows:

“[a]ll business income shall be collected by the Receiver and any business expenses shall be approved by the Receiver before payment. The Receiver shall provide reports both to the Court and counsel for Plaintiff and Defendant.”

{¶15} The record reflects that the receiver filed reports with the trial court on three separate occasions. No objection was ever raised to these reports.

Additionally, appellant has failed to identify a single instance in which the receiver failed to fulfill his duties. As such, this Court cannot say that the trial court erred in finding that the receiver had fully and faithfully discharged his duties.

{¶16} Appellant also asserts that the trial court's conclusion that the receiver was entitled to absolute immunity is erroneous. Generally, a party appointed by the court to fulfill a quasi-judicial function is entitled to absolute immunity. *McCleery v. Leach*, 11th Dist. No. 2001-L-195, 2003-Ohio-1875, at ¶8. However, a receiver may be held personally liable if he exceeds the authority granted to him by the court. *INF Enterprise, Inc. v. Donnellon* (1999), 133 Ohio App.3d 787, 788. Therefore, it was error for the trial court to conclude that a receiver is entitled to absolute immunity. However, appellant has made no claim that the receiver exceeded the authority granted by the court. Further, the record gives no indication that the receiver acted beyond his authority granted by the court. As such, any error by the trial court in its conclusion that the receiver has absolute immunity is harmless.

{¶17} Accordingly, appellant's second assignment of error is overruled.

III.

{¶18} Appellant's assignments of error are overruled, and the judgment of the Medina County Court of Common Pleas, Domestic Relations Division is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

Exceptions.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
BATCHELDER, J.,
CONCUR

APPEARANCES:

JENNIFER L. HENSAL, Attorney at Law, 39 Public Square, Suite 201, P. O. Box 220, Medina, Ohio 44256, for appellant.

JAMES B. PALMQUIST, III, Attorney at Law, 52 Public Square, Medina, Ohio 44256, for appellee.

JOHN E. REDECKER, Attorney at Law, 925 Euclid Avenue, Suite 2020, Cleveland, Ohio 44115-1441, for receiver.