

Affirm and Opinion Filed February 18, 2025



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-23-00738-CV

STEWART PHILLIP MCCRAY, Appellant

V.

HOWARD SPECTOR AND NIKKI SLAUGHTER MCCRAY, Appellees

**On Appeal from the 255th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-09-02559**

MEMORANDUM OPINION

Before Justices Breedlove, Kennedy, and Lee¹
Opinion by Justice Lee

Appellant Stewart Phillip McCray appeals the trial court's order terminating the receivership, discharging appellee Howard Spector (hereinafter "Spector" or "the receiver") as receiver, and granting turnover relief for appellee Nikki Slaughter McCray (hereinafter "Nikki"). In two issues, appellant challenges the sufficiency of the evidence supporting certain findings made by the trial court in terminating the

¹ The Honorable Justice Mike Lee succeeded the Honorable Justice Ken Molberg, who was a member of this panel when this case was submitted.

receivership and argues the trial court abused its discretion in granting turnover relief. We affirm in this memorandum opinion.

Background²

In 2009, appellant petitioned for divorce from Nikki. In 2011, during the pendency of appellant's petition for divorce, the trial court appointed Howard Spector as receiver. According to the trial court's order, Spector was to take any actions necessary to secure payments and to manage, control, and dispose of appellant's property, including taking control, custody, and possession of appellant's assets; take possession of and receive any money on deposit from any banks with which appellant had accounts; authorize the stopping of payment on any checks drawn on appellant's accounts; and take possession and control of each item of property described in the order. The trial court further ordered that Spector was appointed appellant's attorney-in-fact, with powers to execute and deliver any documents necessary or helpful to the performance of his activities with respect to appellant's assets, to sign appellant's name on any such documents, and to indorse appellant's name with respect to any of appellant's assets that may come into the possession or control of the receiver. Spector was also authorized to pay appellant's court-ordered obligations, his reasonable and necessary living expenses, and his reasonable and necessary legal fees and expenses.

² Because the facts of this case are well-known to the parties, we will include only those necessary to resolve the issues raised by appellant. *See* TEX. R. APP. P. 47.1.

In 2014, the trial court entered another order relating to the receivership. Among other things, the receiver was ordered to take possession and control of certain assets owned by appellant, including any property included within appellant's bankruptcy estate and any and all exempt retirement accounts owned by appellant. The receiver was authorized and instructed to pay appellant's monthly living expenses of \$5,000; all obligations to Nikki, the minor children, and any third parties ordered by the trial court; and unexpected expenses of appellant or Nikki of up to \$1,500, but not to exceed \$6,000 during any four-month period without further order of the court.

On April 29, 2015, the trial court signed a final decree of divorce. Among other things, Nikki was awarded appellant's Gilder Gagnon securities accounts and, for two claims for fraud against the community, judgment against appellant for \$1,199,874. Gilder Gagnon was never informed of appellant's divestment of any ownership interest in the accounts. Appellant was awarded, among other things, one-hundred percent of the parties' interest in Managed Futures Premier Warrington, LP. The decree did not include any provisions relating to the payment of taxes for 2015. Spector was continued as receiver and maintained all rights, powers, and duties as set forth in the previously entered receivership orders.

In 2021, Nikki filed a motion to dissolve the receivership, for release of funds, and for turnover relief. As to the receivership, Nikki argued that the purpose for the appointment of a receiver had been satisfied and that it would be in the best interest

of the proceeding to dissolve the receivership and release the involved property. She applied for turnover relief pursuant to Texas Civil Practice & Remedies Code § 31.002, arguing appellant had non-exempt property under the receiver's control that should be turned over to satisfy her judgment against appellant.

In November 2021, Spector filed a motion requesting an order from the court confirming the receiver's activities; approving accounting, expenditures, and compensation; terminating the receivership; and discharging the receiver. Attached to the motion was Spector's accounting of all funds he had received and disbursed as receiver. Among other things, he disclosed for the first time the existence of a Morgan Stanley account owned by appellant relating to the Warrington limited partnership interest.

On December 15, 2021, the associate judge conducted a hearing on Nikki's motion to terminate the receivership and discharge the receiver. Appellant announced at the hearing that he was not opposed to discharging the receiver but was opposed to turning over to Nikki cash and the Morgan Stanley account. Appellant also opposed discharging the receiver from liability because he thought the receiver was responsible for the failure to pay appellant's federal income taxes for years 2015 and 2016.

Nikki testified at the hearing that she had gains in 2015 on her assets that were initially reported to appellant, and when she learned this, she determined her new

tax liability. She said all the parties agreed to a process to determine the liability, and she filed an amended 2015 income tax return in October or November 2021.

Nikki also testified she had judgments against appellant, which she said he had made no efforts to pay. After obtaining some money through out-of-state collection efforts, Nikki said she was still owed \$1.5 million. She said she was asking the court to turn over certain assets of appellant to satisfy the judgments. She also sought any cause of action appellant had against the receiver. She said she would only pursue any claims against the receiver if she determined there was a good faith basis for the claim. She had no complaints about the receiver's conduct during the case and was asking the court to terminate the receivership and approve the receiver's actions. She also testified that there was never any order for the receiver to file or pay taxes on her behalf or on behalf of appellant.

Spector testified that appellant raised the question of appellant's tax liability sometime in 2018. Spector said he responded to appellant once, spoke to appellant's lawyer once, and Spector's counsel communicated with appellant's lawyer at least once on the subject. In those communications, Spector expressed to appellant that he did not believe the decree authorized him to use money allocated to appellant without court authority. He said that he made it clear he was not opposed to paying appellant's taxes, but "he would need to get court approval." Spector said appellant had filed a similar motion in 2016 to remove money from an account under Spector's control, which Spector did not oppose, but that appellant had never filed a motion to

withdraw money from any account to pay income taxes. Spector explained that he did not believe he was authorized to pay taxes because money in the receivership had to be divided at the end of the receivership. Nikki had a judgment against appellant, he said, “so if I just take money out of Mr. McCray’s side of the bank account, use it for things that are not authorized, I am diminishing the amount of money that could otherwise go to Mrs. McCray to satisfy Mr. McCray’s liability to her.” He said it would be one thing to do it with notice to Nikki—i.e., by going through the court—but that it would be another to do so without notice. Spector additionally testified that the decree was clear about what he was allowed to pay, “and the word taxes does not appear.” Further, there were dollar limitations on the expenses he could expend for appellant, and the taxes owed were far in excess of the \$6,000-per-four-month-period limit. Thus, he said, he needed a court order to pay appellant’s taxes.

Spector said he never liquidated any holdings at Gilder Gagnon; he requested cash from the Gilder Gagnon accounts because they had “sufficient cash.” He was unaware of any tax liability associated with the transfers from the accounts because he “did not know what the basis of the assets were that [appellant] had purchased.” Spector said Gilder Gagnon “would not communicate with [him] about anything other than sending [him] money,” and therefore, he had no way of knowing whether the Gilder account was associated with appellant’s social security number rather than Nikki’s. He did not expect any tax liability from the accounts because “withdrawals

from the account are not a taxable event.” Any time he inquired about withdrawing cash from the account, Gilder informed him there was sufficient cash for the withdrawal.

Spector received a number of payments from McCray Lumber on appellant’s behalf, which he expected were pretax moneys, but Spector said he did not receive any tax documents from McCray Lumber during the 2015–2017 timeframe. When asked whether he took any steps to ensure appellant had the information he needed to file federal income tax returns, Spector said that if he received any tax documents, he immediately forwarded them to appellant; but, he said, he received very few such documents. He also sent appellant or his lawyers “accountings, which are simply earlier versions of this very document to show the amounts of money that [he] had received” for appellant. In his experience, divorce lawyers allocated taxes in their divorce decree, “and for some reason that just got overlooked in this case.” After it became clear appellant had a tax issue, Spector did not do anything to resolve the situation because, he said, appellant “had competent counsel to help him.”

When questioned about why he failed to disclose the Morgan Stanley account until his November 17, 2021 final report, Spector explained that the account had not been delineated in the divorce decree as such an account, but as a partnership interest. Spector thus initially believed the interest was illiquid, like many other partnership interests enumerated in the decree. He said he “did not list every single asset in the divorce decree in [his] report because from [his] perspective, they’re

partnership assets” and “not things that have an accounting associated with them.” He said he listed the Morgan Stanley account after he discovered that the partnership interest was “a liquid security rather than an illiquid partnership.” Spector said he never took any money from the account, nor had there been any deposits to the account: the money was “still sitting in Morgan Stanley exactly the way it was when the decree was entered.”

On January 20, 2022, the associate judge entered an order finding that the receiver’s duties in this case were discharged in accordance with the orders of the court with reasonable care and prudence as required by law; the receiver had fully complied with the orders of the court regarding receivership; the receiver performed his fiduciary obligations to the parties with due care, prudence, and in satisfaction of the orders of the court as required by law; and there was no longer need to continue the receivership. The judge also ordered that certain assets and funds allocated to appellant be turned over to Nikki in partial satisfaction of her judgments against appellant.

Appellant appealed the associate judge’s ruling to the district court. The transcript and exhibits from the associate judge’s hearing were presented and admitted for purposes of the district court’s hearing. Additionally, appellant testified that his understanding of the receivership was that Spector, as receiver and attorney-in-fact, was “in control of all my finances, income, and accounts.” Appellant was concerned when the receivership was continued in the final decree of divorce

because “there wasn’t anything left to do,” yet Spector still had control over his primary source of income, which was distributions from McCray Lumber. Appellant said that he learned in 2017 that the receiver had not filed appellant’s taxes in 2011 or 2012. His accountant, however, informed him that the bankruptcy trustee had filed his taxes for the two years the estate was in bankruptcy, in 2013 and 2014. On cross-examination, appellant said he first asked Spector to file his taxes in 2018 when he found out nothing had been filed for 2011. When asked whether Spector or Spector’s lawyer instructed him to file a motion with the court, appellant responded, “Well, it was in 2018 and I did not have a lawyer at that time.”

On June 26, 2023, the trial court entered an order generally affirming the associate judge’s ruling and adopted the ruling as its order. On August 3, 2023, the court rendered an additional order restating the associate judge’s ruling. The trial court found that, among other things, the receiver’s duties in the case were discharged in accordance with the orders of the court with reasonable care and prudence as required by law; the receiver fully complied with the orders of the court regarding the receivership; the receiver performed his fiduciary obligations to the parties with due care, prudence, and in satisfaction of the orders of the court as required by law; the receiver’s accounting is affirmed and approved by the court; and there was no longer need to continue the receivership. The trial court also ordered that certain assets and funds remaining within control of the receiver and allocated to appellant were to be turned over to Nikki in partial satisfaction of

outstanding judgments granted in her favor in the final decree of divorce. The court ordered the receivership terminated effective with the full distribution of the receivership estate pursuant to the court's ruling. This appeal followed.

Discussion

Findings relating to receiver

Appellant argues the trial court abused its discretion in affirming the associate judge's report and granting the receiver's motion to confirm his activities, approve accounting, expenditures, and compensation, and terminate and discharge the receiver. He contends the evidence is legally or factually insufficient to support the trial court's findings of fact or conclusions of law that (1) the receiver's duties were discharged in accordance with the trial court's orders with reasonable care and prudence; (2) the receiver performed his fiduciary obligations to the parties with due care, prudence, and in satisfaction of the trial court's orders; and (3) the receiver's accounting is affirmed and approved by the trial court.

We review a trial court's findings for legal and factual sufficiency of the evidence supporting them by the same standards we apply in reviewing evidence supporting a jury's answer. *Moroch v. Collins*, 174 S.W.3d 849, 857 (Tex. App.—Dallas 2005, pet. denied). In family law cases, the abuse of discretion standard of review overlaps with the traditional sufficiency standard of review: legal and factual insufficiency are not independent grounds of reversible error, but instead constitute factors relevant to our assessment of whether the trial court abused its discretion. *Id.*

Accordingly, to determine whether the trial court abused its discretion because the evidence is legally or factually insufficient to support the trial court's decision, we ask two questions: (1) did the trial court have sufficient evidence upon which to exercise its discretion, and (2) did the trial court err in its application of that discretion? *Id.* We conduct the applicable sufficiency review in considering the first question, and then determine whether, based on the elicited evidence, the trial court made a reasonable decision. *In re Marriage of C.A.S. & D.P.S.*, 405 S.W.3d 373, 383 (Tex. App.—Dallas 2013, no pet.). A trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support its decision. *Id.*

While a suit for dissolution of a marriage is pending and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order appointing a receiver for the preservation and protection of the property of the parties. *See* TEX. FAM. CODE § 6.502(a)(5). Under this provision, "the trial court has broad discretionary powers to act as necessary for the preservation and protection of the parties' property toward its goal of dividing the community property in a just and right manner." *Norem v. Norem*, 105 S.W.3d 213, 216 (Tex. App.—Dallas 2003, no pet.). The Family Code, which governs the appointment of a receiver in a divorce suit, does not set out a predicate to support a receivership order. *Id.* A receiver is not appointed for the benefit of the applicant, but to receive and preserve the property for the benefit of all interested parties.

Readhimer v. Readhimer, 728 S.W.2d 872, 873 (Tex. App.—Houston [1st Dist.] 1987, no writ). A receiver must exercise “the same degree of discretion in the discharge of his duties as an ordinarily prudent man of business would exercise in the management of his own affairs.” *Morrow v. De Vitt*, 160 S.W.2d 977, 985 (Tex. App.—Amarillo 1942, writ ref’d w.o.m.).

A receiver is an officer of the court and “the medium through which the court acts.” *Gilbreath v. Horan*, 682 S.W.3d 454, 552 (Tex. App.—Houston [1st Dist.] 2023, pet. denied). The receiver is a “disinterested party, the representative and protector of the interests of all persons, including creditors, shareholders and others, in the property in receivership.” *Id.* (quoting *Akin, Gump, Strauss, Hauer and Feld, L.L.P. v. E-Court, Inc.*, No. 03-02-00714-CV, 2003 WL 21025030, at *4 (Tex. App.—Austin May 8, 2003, no pet.) (mem. op.)). “A receiver derives her authority from the appointing court and has only the powers conferred upon her by such court.” *White Nile Software, Inc. v. Travis*, No. 05-20-00354-CV, 2022 WL 3714497, at *4 (Tex. App.—Dallas Aug. 29, 2022, pet. denied) (mem. op.).

Based on the record before us, we cannot conclude the trial court abused its discretion in making the complained-of findings when it discharged the receiver. Evidence at the hearings reflected that Spector generally used ordinary care in fulfilling his duties as receiver. As to the question of filing a tax return or paying taxes, testimony at the hearing before the associate judge reflected that Spector received few of appellant’s tax documents and forwarded those he did receive to

appellant or appellant's lawyers. To the extent appellant complains of Spector's failure to file appellant's tax returns, we note that appellant directs us to no authority indicating the receiver should have, of his own initiative, filed appellant's personal income tax returns. As appellant acknowledged at the hearing, "the receivership order does not address taxes." The trial court could have reasonably concluded appellant had the responsibility to file his own taxes or at least communicate with the receiver to clarify their respective responsibilities. Further, the record reflects that, when the question of the payment of taxes arose, Spector encouraged appellant to file a motion with the trial court given the decree's limits on the amounts Spector could disburse from the property under his control.

As to the failure of the parties to ensure the Gilder Gagnon accounts were associated with Nikki's social security number, testimony at the hearings reflected that Spector was unaware any taxable event involving the accounts had taken place; as far as he was concerned, he had only withdrawn cash from the accounts. Spector testified he had no way of knowing which party's social security number was associated with the accounts and struggled to get information from Gilder, which was generally uncooperative with him because it did not believe "the receivership order was binding on [it] because [it was] not subject to Texas rule." When the oversight was brought to light, the record reflects that Spector and the parties determined the correct tax liabilities and filed amended returns.

Appellant also complains that Spector failed to exercise ordinary care by failing to include the Morgan Stanley account in his initial report to the trial court. But the hearing testimony reflected that Spector disclosed the account once he discovered its existence, having previously believed the partnership interest to be a passive interest rather than a liquid security. Further, the evidence before the trial court was uncontradicted that the account had been untouched over the course of the receivership.

Given all of the above, we conclude that the trial court had sufficient evidence upon which to exercise its discretion and did not err in its application of that discretion in making the complained-of findings here. *See Moroch*, 174 S.W.3d at 857. We overrule appellant's first issue.

Turnover relief

In his second issue, appellant contends the trial court improperly ordered the turnover of his assets to satisfy Nikki's judgments against him. He appears to make two arguments: first, that Nikki does not have a lien on appellant's assets or the Morgan Stanley account; and second, that the property in question was not in appellant's possession at the time of the order.

The turnover statute is a purely procedural device by which creditors may reach nonexempt assets of debtors that are otherwise difficult to attach or levy on by ordinary legal process. *Burns v. Miller, Hiersche, Martens & Hayward, P.C.*, 948 S.W.2d 317, 321 (Tex. App.—Dallas 1997, writ denied). Under the statute, a

judgment creditor can apply to a court for an injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities. TEX. CIV. PRAC. & REM. CODE § 31.002(a). The court may, among other things, appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment. *Id.* § 31.002(b)(3). We review the trial court’s turnover order under an abuse of discretion standard. *Criswell v. Ginsberg & Foreman*, 843 S.W.2d 304, 306 (Tex. App.—Dallas 1992, no writ).

We reject appellant’s two complaints with the turnover order. First, as Nikki argues, a judgment creditor need not pursue other forms of relief before seeking a turnover order. “Under current law, there is no requirement that the judgment creditor demonstrate that other methods of collecting the judgment have failed. A judgment creditor need not first exhaust other legal remedies prior to seeking relief under the turnover statute if the statutory requirements are met.” *Universe Life Ins. Co. v. Giles*, 982 S.W.2d 488, 492–93 (Tex. App.—Texarkana 1998, pet. denied); *see also Childre v. Great Sw. Life Ins. Co.*, 700 S.W.2d 284, 288 (Tex. App.—Dallas 1985, no writ) (rejecting argument that unsuccessful writ of execution was required before turnover statute could be utilized).

We also reject appellant's second argument. The trial court's order here, in distributing the receivership estate, allocated to appellant the assets in question. They were thus owned by appellant and subject to the turnover statute. *Cf. Burns*, 948 S.W.2d at 324 (noting that trial court may order judgment debtor to turn over shares of stock he owns "even if they are in the hands of a third party"). We overrule appellant's second issue.

Conclusion

We affirm the trial court's order.

/Mike Lee/

MIKE LEE
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

STEWART PHILLIP MCCRAY,
Appellant

No. 05-23-00738-CV V.

HOWARD SPECTOR AND NIKKI
SLAUGHTER MCCRAY, Appellees

On Appeal from the 255th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DF-09-02559.
Opinion delivered by Justice Lee.
Justices Breedlove and Kennedy
participating.

In accordance with this Court's opinion of this date, the order of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees HOWARD SPECTOR AND NIKKI SLAUGHTER MCCRAY recover their costs of this appeal from appellant STEWART PHILLIP MCCRAY.

Judgment entered this 18th day of February, 2025.