Opinion issued October 2, 2008.

In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00273-CV

DIANA FITE, M.D. AND PATRICK G. WOODS, M.D., Appellants

V.

EMTEL, INC. AND JOSEPH DEGIOANNI, M.D., Appellees

On Appeal from the 152nd District Court
Harris County, Texas
Trial Court Cause No. 2003-69942

MEMORANDUM OPINION ON REHEARING

We grant appellant's motion for rehearing. *See* TEX. R. APP. P. 49.3. We withdraw our January 17, 2008 opinion, substitute this opinion in its place, and vacate our prior judgment.

In this interlocutory appeal,[1] appellants, Diana Fite, M.D. and Patrick G. Woods, M.D., appeal the trial court's order reappointing James Raymond as receiver for Brazos Emergency Physicians Association, P.A. ("BEPA"), arguing that (1) no valid basis was established for placing BEPA into receivership; (2) James Raymond is disqualified from serving as receiver; and (3) the bond provisions of the reappointment order rendered the order *per se* invalid and the amount of bond ordered was "impermissibly low." Appellees, however, contend that the original receivership never expired and that we lack subject matter jurisdiction to consider the appeal of the trial court's order of reappointment. We affirm.

BACKGROUND

The parties to this cause and its numerous related lawsuits, who have spent nearly four years battling each other in court, all share a connection to BEPA, a professional association formed in 1997 to provide hospitals with physicians for their emergency care facilities. In 1999, BEPA entered into an agreement for billing, marketing, and management services with appellee, Emtel, Inc., wherein Emtel would receive 30% from all fees collected on behalf of BEPA that are not associated with telemedicine contracts. Joseph Degioanni, M.D., was the sole director of Emtel.

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[1] TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(1) (Vernon 2008).

In 2003, appellant, Patrick G. Woods, M.D., a member of BEPA, filed a derivative suit against appellee, Degioanni, who, at the time, was also BEPA's president and treasurer. Woods alleged that Degioanni had misappropriated funds to benefit Emtel. Shortly thereafter, following a "secret board meeting" that was conducted by cell phone in a parking garage, Degioanni was ousted as president of BEPA, and Degioanni's and Emtel's access to the bank accounts and lock boxes was limited. Degioanni, along with Emtel, filed individual and derivative actions seeking injunctive relief against two members of the BEPA board of directors, appellant, Diana Fite, M.D. and Medford Cashion, M.D. The second derivative suit is the suit before us.

In this second derivative suit, Emtel and Degioanni, individually and on behalf of BEPA, applied for a temporary restraining order, temporary injunction, and motion to compel arbitration, asserting that "the harm caused by preventing Emtel from access to BEPA bank accounts and lock boxes is irreparable and imminent. The recent actions by Dr. Cashion on behalf of BEPA have caused BEPA to be in clear breach of the Agreement. . . ." Emtel and Degioanni sought a temporary injunction and restraining order requiring Cashion and Fite to "restore the status quo with regard to BEPA's bank accounts and lock boxes." On December 30, 2003, the trial court

issued an ex parte temporary restraining order[2] to "maintain status quo pending resolution of this case."

Almost two weeks later, the trial court heard Emtel and Degioanni's application for temporary injunction. On January 20, 2004, the parties agreed to and the trial court appointed a receiver, James Raymond, to act as BEPA's sole director and president and to take charge and conduct the affairs of BEPA. The trial court also ordered that the "receivership [] continue in effect until further order of this court."

The parties continued to litigate. Among other courses of action, Raymond negotiated, through his counsel, a series of agreements that, subject to the trial court's approval, would settle some of the litigation involving BEPA.[3] On February 20, 2007, Raymond moved for approval of numerous settlement agreements releasing BEPA's claims against Degioanni and several other parties. Fite and Woods contested the motion and, relying on the Texas Civil Practice and Remedies Code's

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[2] The court referred to the order as "ex parte" because Cashion's and Fite's counsel "apparently chose not to appear" at the hearing.

[3] These agreements constituted: (1) a settlement agreement to settle BEPA's claims against Drs. Fite and Woods; (2) an allocation agreement to settle cross-claims between BEPA and Emtel, Inc. over potential proceeds from claims against The Methodist Hospital, Neptune, and the Neptune physicians ("Allocation Agreement"); and (3) a settlement agreement to settle BEPA's claims against Drs. Eric Schroeder and Dan Burian.

("CPRC") receivership provisions, argued that Raymond lacked the power to act on BEPA's behalf because his status as receiver had expired on January 20, 2007—three years after his appointment. In response, Degioanni and Emtel argued that Raymond was appointed pursuant to the Business Corporations Act; therefore, his appointment did not terminate until "the condition necessitating the appointment of a receiver has been remedied." Degioanni and Emtel then enumerated several reasons why the receiver was still necessary. The trial court again appointed Raymond "under the same terms and conditions as in the [2004] original order" to continue until "90 days after the completion of the litigation that has been initiated by [Raymond] including any appeals which may arise from that litigation and the distribution of any funds obtained thereby." Fite and Woods, who joined the underlying suit as intervenors, appeal the order appointing Raymond as receiver.

JURISDICTION

Expiration of the Original Receivership

Because Degioanni and Emtel contend that we have no jurisdiction to consider this appeal, the first issue we address is whether the original receivership created on January 20, 2004 expired after three years. Citing to the language of Articles 7.05 and 7.06 of the Texas Business Corporation Act (the "Act"), Degioanni and Emtel argue that (1) the original receivership was created under the Act and (2) the term of

receiverships created under the Act do not expire. Thus, they argue that it was "unnecessary" for the trial court to issue an order "reappointing" Raymond as the receiver and that we do not have subject matter jurisdiction to consider the merits of this appeal,[4] because no interlocutory appeal will lie from the trial court's "unnecessary" order. Thus we turn to the issue of whether the receivership had expired.[5]

To determine when a corporate receivership expires, we look to both the Texas Civil Practice and Remedies Code and the Act. The CPRC expressly provides that corporate receiverships expire three years after the receiver is appointed. *See* TEX.

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[4] Fite and Woods argue that Degioanni and Emtel cannot assert cross-issues because they did not file a notice of appeal. Although referenced by Degioanni and Emtel as a "cross-issue," this issue does not attempt to alter the trial court's judgment. *See* TEX. R. APP. P. 25.1 (setting forth the requirements of a cross appeal). Degioanni and Emtel agree that Raymond should remain as the receiver either by way of the original appointment or under the recent re-appointment. Rather this "cross-issue" attempts to establish that we do not have subject matter jurisdiction to consider the merits of Drs. Fite and Woods' appeal under TEX. CIV. PRAC. & REM. CODE ANN. § 51.014 (Vernon 2008) and is, in effect, a motion to dismiss the appeal for want of jurisdiction. Accordingly, we address this issue.

[5] We note that no interlocutory appeal will lie from an order appointing a successor receiver. *See Swate v. Johnston*, 981 S.W.2d 923, 925 (Tex. App.—Houston [1st Dist.] 1998, orig. proceeding). If we determine that the receivership expired, this case would not involve the appointment of a successor receiver, but would involve the creation of a new receivership and would be appealable pursuant to CPRC § 54.014(a)(1).

CIV. PRAC. & REM. CODE ANN. § 64.072 (Vernon 2008). Section 64.072(a) specifically provides as follows:

Limited Duration

> (a) Except as provided by this section, a court may not administer a corporation in receivership for more than three years after the date the receiver is appointed, and the court shall wind up the affairs of the corporation within that period.

Id.

The statute also provides that, under certain circumstances and upon the application of a party and after a hearing, the receivership may be extended for no more than five years beyond the original three year term. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 64.072(d) (Vernon 2008).

Articles 7.05 and 7.06 of the Act also address the term of a corporate receivership. They provide that a receivership created under the Act shall be terminated by the trial court when the condition necessitating the appointment of a receiver is remedied. *See* TEX. BUS. CORP. ACT ANN. art. 7.05, § B, art. 7.06, § B (Vernon 2003). Both Articles 7.05 and 7.06 contain the following provision:

> B. In the event that the condition of the corporation necessitating such an appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and officers . . . .

Id.

The Bar Committee's comments accompanying the Act explain the relationship between the Act's receivership provisions and the CPRC. The provisions of the Act and CPRC are to be read together unless they are inconsistent with one another:

> Heretofore receiverships for corporations or their assets have not been the subject of separate treatment in the statutes but have been governed by Articles 2293 et seq., Tex.R.C.S. (1925),[6] relating generally to receiverships. These general provisions will continue to be applicable to receiverships other than those for corporations subject to the Act or their assets and *will also continue to be applicable to receiverships for corporations or their assets with respect to such matters as qualifications, powers, duties and administrative procedures of receivers which are not inconsistent with the specific provisions of the Act.*

TEX. BUS. CORP. ACT ANN. art. 7.04 cmt. (Vernon Supp. 2003) (emphasis added).

In this case, the original order does not state whether the receivership was created under the Act or the CPRC. Nevertheless, contrary to the arguments of Degioanni and Emtel, receiverships created under the Act do not have terms that never expire. The provisions of the Act and the CPRC regarding the termination of a receiver's powers are not inconsistent with one another. The CPRC's provisions sets forth the maximum term for a corporate receivership and the Act sets forth the circumstances under which the receivership must be terminated before the term of the

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[6] The referenced provisions were the statutory predecessors to Chapter 64 of the CPRC. Former Article 2317 of the Revised Civil Statutes became § 64.072 in 1985. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 64.072 historical note (Vernon 2008).

receivership expires. Reading the CPRC and the Act together we hold that, in the absence of a timely motion to extend, a corporate receivership expires three years after it is created and that when the conditions necessitating the creation of the receivership have been remedied, the receivership shall be terminated before the term of the receivership expires. Here, since no motion to extend was granted by the trial court, the original receivership expired on January 20, 2007—three years after it was created. Accordingly, for a receivership to exist regarding BEPA after this date, the trial court was required issue a new order appointing a receiver, and we have jurisdiction over the appeal of this order. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 54.014(a) (Vernon 2008).

APPOINTMENT OF THE RECEIVER

In their first issues on appeal, Fite and Woods argue that the trial court erred in appointing Raymond as receiver because (1) no valid basis was established for placing BEPA into receivership and (2) Raymond is disqualified from serving as a receiver of BEPA. We examine each of these issues in turn.

Standard of Review

Because a receivership is an equitable remedy within the sound discretion of the court, an appointment of a receiver will not be disturbed on appeal unless the record reveals an abuse of discretion. *Alert Synteks, Inc. v. Jerry Spencer, L.P.*, 151

S.W.3d 246, 251 (Tex. App.—Tyler 2004, no pet.) (citing *Abella v. Knight Oil Tools*, 945 S.W.2d 847, 849 (Tex. App.—Houston [1st Dist.] 1997, no writ). We will reverse for abuse of discretion only when we conclude that the trial court acted in an unreasonable or arbitrary manner. *Id.* (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 242 (Tex. 1985)). A trial court abuses its discretion when it acts without reference to guiding rules and principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). An abuse of discretion does not occur if the trial court bases its decision on conflicting evidence. *Davis v. Huey*, 571 S.W.2d 859, 862 (Tex. 1978). If the decision was within the trial court's discretionary authority, we may not reverse simply because we might have reached a different decision. *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991); *Downer*, 701 S.W.2d at 242.

The remedy of receivership is an extraordinary remedy that must be cautiously applied. It has been described as a drastic, far-reaching, and harsh remedy. *See Balias v. Balias, Inc.*, 748 S.W.2d 253, 257 (Tex. App.—Houston [14th Dist.] 1988, writ denied). Accordingly, a receiver will not be appointed if another remedy exists at law or in equity that is adequate and complete. TEX. BUS. CORP. ACT ANN. art. 7.05, § A (Vernon Supp. 2003).

Statutory Basis for Receivership

Fite and Woods argue that Degioanni and Emtel have not established any circumstances that could warrant placing BEPA back into receivership under the Act. We disagree. Article 7.05 of the Act governs appointment of a rehabilitative receiver "for the assets and business of a corporation." *Id*. The Act provides that the district court of the county where a corporation's registered office is located may appoint a receiver to conserve the assets and business of the corporation and to avoid damage to the parties at interest, if all other requirements of law are complied with and there are no other legal or equitable remedies available, including the appointment of a receiver for specific corporate assets. *Id.* Article 7.05, section A sets forth the preliminary prerequisites for appointment of the receiver:

> A receiver may be appointed for the assets and business of a corporation by the district court for the county in which the registered office of the corporation is located, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve the assets and business of the corporation and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver for specific assets of the corporation, are determined by the court to be inadequate . . . . *Id*.

Article 7.05, section A then lists the specific circumstances that may warrant the appointment of a rehabilitative receivership.[7]

In this case, the evidence in the record supports the trial court's reappointment of Raymond under Article 7.05, section (A)(1)(b) of the Act.[8] Under this provision, the trial court may appoint a receiver in an action by a shareholder when it is established that "the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable

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[7] Article 7.05(A) provides for the appointment of a receiver where:
(1) In an action by a shareholder when it is established:
(a) that the corporation is insolvent or in imminent danger of insolvency; or
(b) that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
(c) that the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
(d) that the corporate assets are being misapplied or wasted; or
(e) that the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors.

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(3) In any other actions where receivers have heretofore been appointed by the usages of the court of equity. *See* TEX. BUS. CORP. ACT ANN. art. 7.05 § (A)(1), (3).

[8] Because of our disposition on this issue, we need not address Degioanni and Emtel's additional arguments that the receivership was also warranted under Article 7.05 section (A)(1)(c) (illegal, oppressive, or fraudulent acts of directors or those in control of the corporation) or Article 7.05 section (A)(3) (in any other actions where receivers have heretofore been appointed by the usages of the court of equity). *See* TEX. BUS. CORP. ACT ANN. art. 7.05 §§ (A)(1)(c), (A)(1)(3).

injury to the corporation is being suffered or is threatened by reason thereof." *See* TEX. BUS. CORP. ACT. ANN. art. 7.05 § (A)(1)(b). The record reflects that the trial court was well aware, through the proceedings, of the level of dysfunction of BEPA's Board of Directors that (1) prevented the directors and shareholders from lawfully meeting and making decisions about BEPA's affairs and (2) necessitated the creation of the original receivership. The trial court also heard evidence from which it was reasonable to conclude that, in the absence of a receivership, the directors and shareholders could not meet to lawfully move forward in the conduct of BEPA's business and the lack of a receiver would cause irreparable damage to the corporation. Raymond testified that, without a receiver in place, the board could not move forward to manage BEPA's principal asset, the ongoing litigation in the 334th District Court in Harris County. He testified that issues as fundamental as the identity and voting authority of the directors and shareholders of BEPA are in dispute and that under these circumstances any action to move the corporation's business forward by the directors and shareholders would spawn even more litigation between the parties.

Appellee's Counsel:	Okay. And the principal asset of BEPA is it or is it not the litigation that is going on in the 334th?
Raymond:	Correct.

Appellee's Counsel: Why can't—just in your view—just a board of directors just handle that litigation?

Raymond: I can't imagine someone standing in my shoes without the protection of the receivership code in the middle of this litigation. This is a very—this has become a very hostile litigation. I don't know what that make up would be. I think there [are] disputes as to who the shareholders are. I don't know how you can have a shareholders' meeting when there [are] disputes as to that. I think there are disputes as to who the directors are. I can't imagine what the outcome would be if the shareholders elected a BEPA board and the BEPA board appointed Dr. Degioanni as the president of BEPA to carry forward. I think there would be quite a bit of litigation following that.

Nevertheless, Fite and Woods argue that the trial court erred in placing BEPA into receivership because a receivership would jeopardize BEPA's existing business relationships and BEPA's ongoing efforts to obtain new emergency room contracts. However, contrary to their argument of the "stigma" attached to a receivership, the court heard testimony from Raymond that BEPA has not lost any business contracts and First Community Bank did not consider BEPA's note in default during the course of the original receivership. Likewise there is no evidence in the record that the lack of new contracts during term of the original receivership was a result of the receivership itself rather the contentious and public litigation involving the parties

and BEPA. Accordingly, we hold that the trial court did not err in rejecting this argument against the appointment of a receiver.

Fite and Woods also argue that a receivership is unnecessary because there is another remedy available to the court to insure the protection of BEPA's interest in the ongoing state litigation in 334th District Court in Harris County. They argue that BEPA can prosecute the litigation at the direction of management or through shareholder derivative claims and that no basis exists for requiring BEPA to incur the substantial expense of having a receiver oversee litigation on its behalf. In light of the evidence presented regarding the past dysfunction of BEPA's management and the current disputes as to the identity and voting authority of the directors and shareholders, we hold that the trial court did not err in rejecting this argument against the appointment of a receiver. Accordingly, we hold that the trial court did not abuse it discretion in placing BEPA in receivership under Article 7.05, section (A)(1)(b) of the Act.

RAYMOND'S QUALIFICATIONS AS RECEIVER

In their third and fourth issues on appeal, Fite and Woods argue that even if the trial court did not err in placing BEPA in receivership, Raymond is not qualified to serve as the receiver of BEPA because (1) he is not a physician, (2) during the original receivership he "abdicated" his receiver powers to Degioanni, an interested

party to this litigation and (3) during the original receivership he committed acts that reflect that he is not a disinterested person to this lawsuit.

Raymond's Status as a Non-Physician

Fite and Woods argue that Raymond is not qualified to serve as a receiver of BEPA because he is not a licensed physician. They argue that the appointment of a non-physician as receiver of BEPA, a professional association of physicians, violates the corporate practice of medicine doctrine embodied in the Texas Medical Practice Act and the mandates of the Texas Professional Associations Act ("TPAA"). Fite and Woods argue these statutes require that only a licensed physician may serve as a receiver for a professional association of physicians.

Under the "corporate practice of medicine" doctrine codified in the Texas Medical Practice Act, the practice of medicine is restricted to licensed physicians. *See* TEX. OCC. CODE ANN. § 164.052(a)(17) (Vernon Supp. 2008). Specifically, the doctrine prohibits a corporation comprised of lay persons, which employs licensed physicians to treat patients, from receiving a fee. *Gupta v. Eastern Idaho Tumor Inst., Inc.*, 140 S.W.3d 747, 752 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). "The purpose of [the prohibition on the corporate practice of medicine] is to preserve the vitally important doctor-patient relationship and prevent possible abuses resulting

from lay control of corporations employing licensed physicians to practice medicine." *Gupta*, 140 S.W.3d at 752.

The TPAA allows for physicians to practice together through a limited liability entity without violating the Medical Practice Act's prohibition against the corporate practice of medicine. Specifically, the TPAA provides that "all members of an association shall be licensed to perform the type of professional service for which the association is formed." *See* TEX. REV. CIV. STAT. ANN. art. 1528f, § 2(B) (Vernon Supp. 2008). The TPAA also requires that all officers and members of the Board of Directors or Executive Committee [of a professional association] shall be members of the professional association." *Id.*, § 9(c).

Neither the Medical Practice Act or the TPAA provide a blanket prohibition on the appointment of a non-physician as the receiver of a professional association of physicians. The Medical Practice Act and the TPAA do not even mention receiverships. While the TPAA provides the requirements for the *officers and members of the board of directors* of a functional association, it does not purport to mandate the qualifications, powers, and duties of a *receiver* of the association appointed under the Texas Business Corporations Act.

Furthermore, we hold that Raymond's appointment does not violate the corporate practice of medicine doctrine embodied in the Medical Practices Act or the

TPAA. In its appointment order, the trial court authorized Raymond, as the receiver, to take control of only the *business* operations of the association. He is neither directed nor empowered to take any steps involving the dispensing of medical services. The court has not authorized Raymond to employ personnel to perform medical services or receive an income for those services. The court heard testimony that Raymond understands that the court's order only empowers him to oversee the business operations of BEPA and that matters concerning the practice of medicine, such as the filing of regulatory statements with the appropriate state medical authorities, are handled by Degioanni, a licensed physician and the president of BEPA.[9] Accordingly we hold that the trial court did not err in appointing Raymond, a non-physician, as the receiver of BEPA.

Degioanni's Role in BEPA under the Original Receivership

Fite and Woods also argue that the court erred in finding that Raymond was qualified to serve as a receiver because, under the original receivership order, he

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[9] The appointment of a non-physician receiver to handle the business portion of the operations of a professional association is not contrary to the purposes behind the corporate practice of the medicine doctrine. Under a receivership, the receiver is specifically empowered by and answerable to the court for all of his actions and thus, there is no danger of the abuse of the doctor-patient relationship or a non-physician controlling the practice of medical services to the public that the doctrine is designed to protect against. *Gupta v. Eastern Idaho Tumor Inst., Inc.*, 140 S.W.3d 747, 752 (Tex. App.—Houston [14th Dist.] 2004, pet. denied).

unlawfully "abdicated his receivership authority" to Degioanni, who Fite and Woods allege has engaged in "egregious breaches of fiduciary duty to BEPA." However, there is evidence in the record contradicting these allegations that the trial court could have reasonably considered in favor of Raymond's appointment. The court's order itself was evidence that Raymond never "abdicated" his authority to Degioanni. As noted above, the appointment order empowered Raymond to take charge of only the *business* operations of BEPA, not matters pertaining to the provision of medical services. These matters remained subject to the control of Degioanni as a licensed physician and the president of BEPA. Furthermore, Raymond testified that after investigation, he concluded that Degioanni had not engaged in the wrongful conduct alleged by Fite and Woods. Accordingly, we hold that the trial court did not abuse its discretion in appointing Raymond despite the allegations concerning Raymond's abdication of his authority to Degioanni.

Raymond's Conduct under the Original Receivership

Fite and Woods also assert that, under the original receivership, Raymond engaged in the following acts that establish that he is not a disinterested person to this lawsuit and that disqualify him from serving as BEPA's receiver: (1) purporting to redeem Woods' and Fite's BEPA stock in an effort to deprive them of standing to pursue claims on BEPA's behalf, (2) attempting to settle the derivative claims asserted

by Fite and Woods on inadequate investigation and for inadequate consideration, (3) accepting as part of the Allocation Agreement, a contingent interest in the claims he has asserted on BEPA's behalf, thereby creating an incentive to pursue the litigation of those claims even if it threatens other business or claims of BEPA, and (4) moving the trial court to extend his own receivership. Nevertheless, there is evidence in the record contradicting these allegations that the trial court could have reasonably considered as credible and in favor of Raymond's appointment.

The record reflects that Raymond has served as a receiver in the Harris County courts for about 17 years. Prior to his appointment in this case, Raymond served as the receiver of a hospital for two and one-half years. At the time of the hearing for his reappointment, Raymond had spent over 1000 hours reviewing BEPA's records and running its business operations as the receiver. During Raymond's tenure as receiver, despite the ongoing hostilities between the parties, BEPA has remained an ongoing concern, has not lost any existing contracts, and the bank has not declared it in default of its loan. Although Fite and Woods allege that the purported buyback of their stock in BEPA was for wrongful purposes, the court heard contradictory testimony that the purchase offers were in accordance with BEPA's bylaws and the receivership order and there was no evidence before the trial court that the amount offered was not reasonably supported by Raymond's research.

With respect to Fite and Woods' allegations of impropriety regarding the negotiation of various settlement agreements, Raymond testified as to research he did to satisfy himself that the settlement with Degioanni and Emtel was reasonable and for adequate consideration, and that Degioanni had not participated in the wrongful conduct alleged by Fite and Woods. While Fite and Woods fault Raymond for not reviewing any of Emtel's corporate records during this process, Raymond testified that it was his understanding that he did not have the authority under the receivership order to access these records. Raymond also testified that his review of Emtel's records was not necessary because his careful inspection of BEPA's corporate records was sufficient to allow him to determine if there had been any unlawful transfers between BEPA and Emtel. Fite and Woods also criticize Raymond for not reading the report of their own expert, Warren Cole, regarding his investigation into the finances of BEPA and Emtel before entering into the settlement agreements. However, the trial court heard testimony from Cole that this was only a preliminary report, subject to revision.[10] Raymond testified that, pursuant to the warranty in the agreement, if Cole's report ultimately established any misconduct by Degioanni unknown to Raymond at the time of settlement, Raymond would be entitled to pursue claims for that conduct against Degioanni.

[10] The report is not in the record before us on appeal.

With respect to Fite's and Woods' allegations regarding the Allocation Agreement, Raymond testified regarding the research that he performed leading up to this agreement. The record reflects that Fite and Woods simply disagree with Raymond's conclusions. While Fite and Woods also argue that Raymond's fee arrangement from the Allocation Agreement demonstrates his interest in the outcome of this litigation, the record does not reflect that Raymond's actions violated the terms of the receivership order, and the ultimate method of payment and amount of Raymond's fee is subject to the trial court's review and approval. Finally, we hold that it was not unreasonable for the trial court to reject Fite's and Woods' argument that a receiver's actions to extend the receivership so that he could complete the tasks entrusted to him disqualifies him from continuing to serve as a receiver. In light of the conflicting evidence before the trial court, we hold that the trial court did not abuse its discretion in finding that Raymond was qualified to serve as the receiver of BEPA.

THE BOND PROVISIONS OF THE REAPPOINTMENT ORDER

In their fifth issue on appeal, Fite and Woods argue that the receivership order is *per se* invalid because the trial court did not require Degioanni and Emtel, the parties requesting appointment of a receiver, to post an appropriate bond. Additionally, in their sixth issue on appeal, Fite and Woods argue that the $500 bond posted by the receiver is "impermissibly low."

A court may not appoint a receiver until two bonds have been filed. Both the party applying for a receivership and the receiver must file a bond with the clerk of the court payable to the defendant in an amount fixed by the court. *See* TEX. R. CIV. P. 695a; *Ahmad v. Ahmed*, 199 S.W.3d 573, 575 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (mandating the bond to be filed by the applicant); TEX. CIV. PRAC. & REM. CODE ANN. § 64.023 (Vernon 2008) (mandating the bond to filed by the receiver). The purpose of these bonds is to ensure that the defendant can be reimbursed for any damages caused by the appointment of the receiver in the event that the receiver was wrongfully appointed. *Id*. These bonds are a prerequisite to the appointment of a receiver, and the trial court's failure to require that both of the bonds be filed necessitates reversal of the order appointing the receiver. *Ahmad v. Ahmed*, 199 S.W.3d at 575. The filing of a bond by the receiver will not satisfy the bond requirement for the applicant. *Id.*

Applicant's Bond

Fite and Woods have waived any issue on appeal regarding the trial court's failure to require an applicant's bond. Pursuant to Rule 33.1(a) of the Texas Rules of Appellate Procedure, as a prerequisite to presenting a complaint for appellate review, the record must show that the complaint was made to the trial court by a timely request, objection, or motion that "stated the grounds for the ruling that the

complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context." TEX. R. APP. P. 33.1(a)(1)(A).

Here, upon review of the record, and especially in light of the fact that Fite did not object to absence of an applicant's bond in the original receivership order, we hold that Fite's objection before the trial court to the entry of the receivership order was not stated with sufficient specificity to put the trial court on notice that she was complaining of the lack of an applicant's bond rather than the lack or inadequacy of the receiver's bond in the order. Consequently, Fite and Woods have not properly preserved this complaint for appellate review. *Id.*

Receiver's Bond

Finally, Fite and Woods argue that that the $500 bond posted by Raymond as the receiver is impermissibly low and is insufficient "to protect a going concern such as BEPA." However, this is exactly the same amount that they agreed was sufficient under the original receivership and they presented no facts before the trial court as to what circumstances had changed warranting a greater bond. Accordingly, we hold that the trial court did not abuse its discretion in setting the receiver's bond amount.

CONCLUSION

We affirm the order of the trial court.

George C. Hanks, Jr.
Justice

Panel consists of Justices Taft, Hanks, and Higley.