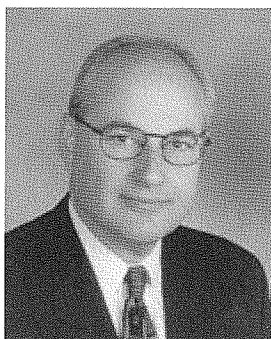


PROFESSOR LEX

BY HARVEY I. HAUER



Dear Professor Lex:

We have a post judgment case in our office where we are unable to collect funds owed to our client pursuant to a judgment of divorce. My client's former husband, the judgment debtor, owns a small business. My client believes he is playing games with his finances through that business interest. We were thinking of requesting that the court appoint a receiver of the business. Do you have any opinion as to whether such a request is advisable?

Practitioner

Dear Practitioner:

A significant case that appears to relate to your inquiry is *Shouneyia v Shouneyia*, ---NW2d ---, 2011 WL 148783 (Mich App, Jan 18, 2011) (No. 297007). In *Shouneyia*, plaintiff/wife sought to have the court appoint a receiver to collect monies owed to her by her former spouse pursuant to the judgment. The trial court indicated that prior to appointing a receiver, a creditor's examination should be conducted of the judgment debtor. Subsequent to the creditor's examination, plaintiff renewed her motion and also requested that the receiver have powers over her former husband's business that he co-owned with his brother. The motion was granted in accordance with MCL 600.2926. It is important to note that the judgment debtor's brother never objected to the appointment of the receiver of the business interest.

An issue on appeal made by defendant is that the business was not named as a party in the lawsuit and, therefore, the court had no authority to appoint a receiver over it. The

Court of Appeals held:

...*"Misjoinder of parties is not a ground for dismissal of an action. Parties may be added or dropped by order of the court on motion of a party or on the court's own initiative at any stage of the action and on terms that are just."* See also *Henkel v Henkel*, 282 Mich 473, 488; 276 NW 522 (1937) (explaining that ordinarily "if the proper parties plaintiff are not joined, this court will direct the joinder of the proper parties plaintiff on appeal"). Except in circumscribed circumstances, "the jurisdiction of a divorce court is strictly statutory and limited to determining the rights and obligations between the husband and wife, to the exclusion of third parties." *Estes*, 481 Mich at 582-583 (internal quotation omitted). "Third persons may be made defendants in an action for divorce where it is charged that such persons have conspired with the husband with intent to defraud the wife out of her interest in property." *Berg v Berg*, 336 Mich 284, 288; 57 NW2d 889 (1953). Because plaintiff here has alleged in multiple receivership motions that defendant sought to conceal income and assets in the market operated by *Shouneyia Brothers*, which plaintiff has a claim to as a judgment debtor, this divorce matter presents an appropriate case for joinder of the third party purportedly engaged in fraud. Consequently, we direct the circuit court on remand to add *Shouneyia Brothers* as a necessary party to this action. MCR 2205(A) ("[P]ersons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties"); MCR 2.207.

The Court of Appeals next addressed the issue of the propriety of the circuit court's order imposing a receivership over the former husband's business. The Court of Appeals stated:



[MCL 600.2926] has been interpreted as authorizing a circuit court to appoint a receiver when specifically allowed by statute and also when no specific statute applies but the facts and circumstances render the appointment of a receiver an appropriate exercise of the circuit court's equitable jurisdiction. The purpose of appointing a receiver is to preserve property and to dispose of it under the order of the court. In general, a receiver should only be appointed in extreme cases. But a party's past unimpressive performance may justify the trial court in appointing a receiver. [Reed v Reed, 265 Mich App 131, 161-162; 693 NW2d 825 (2005) (internal quotation omitted).]

See also *Cohen v Cohen*, 125 Mich App 206, 214; 335 NW2d 661 (1983) (noting that "[t]he appointment of a receiver may be appropriate when other approaches have failed to bring about compliance with the court's orders").

The pertinent facts appear undisputed. Pursuant to the parties' agreement, the circuit court incorporated into the October 2008 judgment of divorce the property settlement of \$50,000. Defendant made no payments toward either this amount or the circuit court's award of attorney fees to plaintiff over the course of the 1-1/2 years between entry of the judgment of divorce and the March 2010 order appointing the receiver, from which defendant now appeals. In this 1-1/2 year period, plaintiff made unsuccessful efforts to collect the judgment owed from defendant: (1) plaintiff's counsel questioned defendant under oath at a creditor's examination, at which the court expressly found that defendant had given evasive and false answers; and (2) the court nonetheless subsequently afforded defendant the opportunity to negotiate a settlement with plaintiff, but defendant thereafter declined to enter a settlement. At the creditor's examination, defendant acknowledged when shown market bank records that the business had consistently

deposited between \$440,000 and \$669,000 over the course of several months in the first half of 2009, but denied earning any appreciable income from these deposits. And, as Niremberg advised the court, the business practices at the market, the multiple daily acts of zeroing out cash registers, left in doubt the source of the money coming into the store. Under these circumstances, which substantiated defendant's prolonged avoidance of his divorce judgment obligations to plaintiff, the circuit court did not abuse its discretion when it appointed Niremberg to investigate the state of business income and hold assets to satisfy plaintiff's divorce judgment debt—at least provided that the court joins Shouneyia Brothers as a party in the case...

Not knowing what, if any, collection attempts have been made on behalf of your client, short of seeking a receivership, and not knowing the basis of your client's beliefs that her former spouse is playing games, I can only urge you to read Shouneyia and the cases cited therein to assist you in determining your next course of action.

**Answer respectfully submitted by
Harvey I. Hauer, Hauer & Snover.**

Please send questions for Professor Lex to Hhauer@hauersnover.com. Include "Professor Lex" in the e-mail's subject line.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

