

**BODYPOWER INC., Plaintiff-Appellee, v. JOSEPH MANSOUR, L.M., INC., and
I.N.F. ENTERPRISES, INC., Defendants-Appellants.**

APPEAL No. C-970796

**COURT OF APPEALS OF OHIO, FIRST APPELLATE DISTRICT, HAMILTON
COUNTY**

1998 Ohio App. LEXIS 3696

August 14, 1998, Decided

NOTICE: [*1] THESE ARE NOT OFFICIAL HEADNOTES OR SYLLABI AND ARE NEITHER APPROVED IN ADVANCE NOR ENDORSED BY THE COURT. PLEASE REVIEW THE CASE IN FULL.

PRIOR HISTORY: TRIAL NO. A-9308903.

DISPOSITION: Judgment affirmed in part, and reversed in part, and cause remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff corporation sued defendants individual and his companies, alleging fraudulent transfer of assets to thwart the corporation's ability to recover on a judgment. The trial court (Ohio) appointed a receiver to take control of the assets of the companies. After the trial court entered summary judgment for the individual and the companies, it ordered them to pay a portion of the receiver's fees. The individual and the companies appealed.

OVERVIEW: The trial court appointed the receiver at the corporation's request. Following the entry of summary judgment, the trial court originally ordered the corporation to pay all of the costs of the case. The corporation appealed that summary judgment, but the appeal was dismissed. Thereafter, the trial court, through a different judge, entered the order allocating the receiver's costs among the parties. The appellate court held that compensation of a receiver was taxed as a cost in the case, and the trial court was fully aware of the existence of the receivership at the time the entry was docketed. The earlier decision assessing all costs against the corporation was res judicata, and the later allocation of responsibility for the fees was not to be given effect against the individual and the companies.

OUTCOME: The part of the judgment terminating the receivership was affirmed, the part of the judgment requiring the individual and the companies to pay receiver's fees was reversed, and the case was remanded.

LexisNexis(R) Headnotes

Civil Procedure > Judicial Officers > Judges > General Overview

Civil Procedure > Remedies > Receiverships > General Overview

[HN1] Ohio Rev. Code Ann. § 2337.27 states that a judge may allow to receivers such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and by order, shall enforce their collection from such parties as ought to pay them.

HEADNOTES: CIVIL MISCELLANEOUS

SYLLABUS:

The trial court erred in assessing a share of a receiver's fees against the defendants at the termination of the receivership when a previous order of the court had already taxed all costs against the plaintiff, who was the losing party; the

assessment of fees against the defendants was also erroneous when the receiver failed to submit any evidence demonstrating the work performed or the reasonableness of the fees.

COUNSEL: Robert T. Butler, for Plaintiff-Appellee.

Paul Croushore, for Defendants-Appellants.

JUDGES: SUNDERMANN, P.J., HILDEBRANDT and PAINTER, JJ.

OPINION: *MEMORANDUM DECISION AND JUDGMENT ENTRY.*

Per Curiam.

Defendants-appellants appeal from the judgment of the trial court entered on August 22, 1997, ordering appellants to pay one-third of the fees requested by a receiver appointed in this case. For the following reasons, we find that the assignment of error is well taken, and we reverse [*2] that part of the trial court's order requiring appellants to pay any part of the receiver's fees.

The long and tortuous history of the dispute between these parties is largely irrelevant for purposes of addressing the assignment of error in this case, but some background is necessary. BodyPower sued L.M., Inc., for breach of contract, and it obtained a favorable verdict. BodyPower then sued Joseph Mansour in his individual capacity, and L.M., Inc., and INF Enterprises, Inc., companies owned by Mansour. The basis of the suit was BodyPower's allegation that Mansour had fraudulently transferred assets between his companies to thwart BodyPower's ability to recover on its judgment against L.M. At BodyPower's request, the court appointed a receiver to take control of the assets of the companies and to run the companies during the pendency of the lawsuit.

Following a bench trial to Judge Niehaus, judgment was entered in favor of BodyPower, but that judgment was vacated by this court and the case was remanded to the court. On remand, the judge (now Judge Winkler) considered a motion for summary judgment filed by appellants and subsequently entered summary judgment in favor of appellants. [*3] The court specifically ordered BodyPower to pay all of the costs in the case.

BodyPower appealed the entry of summary judgment, but the appeal was dismissed. BodyPower and the receiver appointed by the court attempted to reopen the summary judgment entered against them, but the trial court, through Judge Davis, the third judge who had been assigned to the case, denied their motions. The receiver then moved for termination of the receivership and for payment of his fees. Although no hearing was held or evidence taken on the matter, the court ordered BodyPower, appellants collectively, and a third-party intervenor to share the responsibility for payment of the entire amount of fees requested. Mansour, INF, and L.M. have timely appealed that order.

R.C. 2337.27 [HN1] states that a judge may allow to "receivers *** such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and by order, shall enforce their collection from such parties as ought to pay them." Judge Winkler, in the entry granting summary judgment in favor of appellants, stated clearly that "all costs" were to be paid by BodyPower. The compensation of a receiver is taxed as a cost in the [*4] case, and the court in this case was fully aware of the existence of the receivership at the time the entry was docketed.

We hold, therefore, that the earlier decision by Judge Winkler assessing all costs against BodyPower was *res judicata* and that Judge Davis's later allocation of responsibility for the fees cannot be given effect against appellants here.

Even if the decision of Judge Winkler did not have *res judicata* effect, we would still reverse that portion of Judge Davis's judgment allocating one-third of the requested fees to appellants, since there was no evidence submitted to support the receiver's request for fees. The receiver filed one document entitled "Accounting," in which he described the value and disposition of various equipment and property of INF, and L.M, and one document entitled "Motion for Determination of Fees," which stated the total amount of the fees requested but which provided no itemization or documentation of expenses incurred or time spent as receiver of the two corporations. n1

n1 Cf. *The Press & Plate Co. v. The Cincinnati Freie Presse Co.* (1943), 72 Ohio App. 35, 48 N.E.2d 870 (when trial court is fully informed as to the amount and character of the services performed by the receiver, there is no abuse of discretion in allowance of costs and fees); *Miller v. Estill* (1856), 5 Ohio St. 508 (same).

[*5]

We hold, therefore, that the trial court erred in assessing receiver's fees against appellants. We affirm that part of the court's judgment terminating the receivership, reverse that part of the judgment requiring appellants to pay receiver's fees, and remand the case to the trial court to enter an order consistent with this court's decision.

And the Court, being of the opinion that there were reasonable grounds for this appeal, allows no penalty. It is further Ordered that costs be taxed to appellee that a copy of this Memorandum Decision and Judgment Entry shall constitute the mandate, and that said mandate shall be sent to the trial court for execution pursuant to *App.R. 27*.

Judgment affirmed in part, and reversed in part, and cause remanded.

SUNDERMANN, P.J., HILDEBRANDT and PAINTER, JJ.