

6 of 33 DOCUMENTS

**INF ENTERPRISE, INC., and JOSEPH B. MANSOUR Plaintiffs-Appellants, v.
TERRENCE M. DONNELLON, Defendant-Appellee.**

APPEAL No. C-980581

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

133 Ohio App. 3d 787; 729 N.E.2d 1221; 1999 Ohio App. LEXIS 2286

May 21, 1999, Date of Judgment Entry on Appeal

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: Civil Appeal From: Hamilton County Court of Common Pleas. TRIAL NO. A-9702088.

DISPOSITION: Judgment Appealed From Is: Reversed and Cause Remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiffs, a corporation and its sole shareholder, appealed from the Hamilton County Court of Common Pleas (Ohio), which granted summary judgment in favor of defendant receiver. Plaintiff asserted that, in certain circumstances, receivers could be sued in their personal capacities.

OVERVIEW: Plaintiff corporation operated a health club, nutrition center, and sunbathing center. Defendant was appointed receiver by the lower court to act as receiver for plaintiff corporation's assets. Plaintiffs, the corporation and its sole shareholder, filed suit against defendant and claimed that he negligently and maliciously wasted their assets. Defendant then moved for summary judgment and claimed that court-appointed receivers were quasi-judicial officers who had absolute immunity for actions that arose out of the performance of their duties as court representatives. The motion was granted and plaintiffs appealed. On review the court held that if a receiver exceeded the authority granted by the court or failed to use ordinary care, the receiver could be sued in a personal capacity. The court reversed accordingly.

OUTCOME: The court reversed the lower court's grant of summary judgment for defendant receiver because in certain circumstances receivers could be sued in their personal capacities when they exceed the authority granted by the court or fail to use ordinary care.

LexisNexis(R) Headnotes

*Civil Procedure > Remedies > Receiverships > Receivers > Appointments
Civil Procedure > Remedies > Receiverships > Receivers > Powers
Torts > Public Entity Liability > Immunity > Judicial Immunity*

[HN1] In certain circumstances, receivers can be sued in their personal capacities. As court-appointed officers, receivers enjoy protections when following courts' orders. Some courts have classified receivers' functions as being quasi-judicial in nature and have granted receivers immunity for performing acts in obedience to courts' orders: Court appointed receivers act as arms of the court and are entitled to share the appointing judge's absolute immunity provided that the challenged actions are taken in good faith and within the scope of the authority granted to the receiver. Other courts, including the Ohio Supreme Court, have held that a receiver can only be sued in his or her official capacity for actions taken under a court's order.

*Business & Corporate Law > Corporations > Dissolution & Receivership > Receiverships > Causes of Action & Remedies
Civil Procedure > Remedies > Receiverships > Receivers > Powers
Governments > Courts > Authority to Adjudicate*

133 Ohio App. 3d 787, *, 729 N.E.2d 1221, **;
1999 Ohio App. LEXIS 2286, ***

[HN2] A receiver has a personal duty to faithfully discharge his or her duties and to obey the orders of the court. The receiver acts in a fiduciary capacity and must use ordinary care in administering the assets of the corporation. If the receiver exceeds the authority granted by the court or fails to use ordinary care, the general rule is that he or she may be sued in a personal capacity.

HEADNOTES: CORP./PARTNERSHIP/JT.ADV. - CIVIL MISCELLANEOUS

SYLLABUS: A court-appointed receiver for a corporation may be held liable in his personal capacity for actions that exceed the authority granted by the court or for failure to use ordinary care in administering the corporation's assets.

COUNSEL: Paul Croushore, for Plaintiff-Appellant INF Enterprise, Inc.

Joseph B. Mansour, pro se,

Thomas S. Shore, Jr., and Jeffery S. Routh, for Defendant-Appellee.

JUDGES: PAINTER, Presiding Judge. SUNDERMANN and SHANNON, JJ., concur. RAYMOND E. SHANNON, retired, of the First Appellate District, sitting by assignment.

OPINIONBY: PAINTER

OPINION: [**1221] OPINION.

Please note: we have *sua sponte* removed this case from the accelerated calendar.

PAINTER, Presiding Judge.

[*788] The origins of this case began several years ago. A lengthy discussion of the facts is not necessary, however, because this appeal involves a relatively straightforward legal issue: whether a [***2] court-appointed receiver for a corporation can be sued by that corporation and its sole shareholder and officer. [**1222]

Defendant-appellee Terrence M. Donnellon, Esq., is the receiver. He was appointed by the Hamilton County Court of Common Pleas as the receiver for plaintiff-appellant INF Enterprise, Inc., a corporation that operated a health club, nutrition center, and sunbathing center and whose sole shareholder and officer was plaintiff-appellant Joseph B. Mansour.

INF and Mansour filed suit against Donnellon. They alleged that Donnellon had negligently performed his duties as receiver and that he had negligently and maliciously wasted the assets of INF. Donnellon moved for summary judgment. He argued that court-appointed receivers are quasi-judicial officers who have absolute immunity for actions arising out of their performance of duties as court representatives. The trial court granted Donnellon's motion.

INF and Mansour now appeal. In their sole assignment of error, they assert that the court erred in granting summary judgment for Donnellon. They argue that, [HN1] in certain circumstances, receivers can be sued in their personal capacities. We agree.

As court-appointed officers, receivers [***3] enjoy protections when following courts' orders. Some courts have classified receivers' functions as being quasi-judicial in nature and have granted receivers immunity for performing acts in obedience to courts' orders: n1 "Court appointed receivers act as arms of the court and are entitled to share the appointing judge's absolute immunity provided that [*789] the challenged actions are taken in good faith and within the scope of the authority granted to the receiver." n2 Other courts, including the Ohio Supreme Court, have held that a receiver can only be sued in his or her official capacity for actions taken under a court's order: n3 "His capacity *** of *** being sued 'as receiver,' *** is plainly distinguishable from that of a personal character. *** Satisfaction of judgments against him can be obtained only from the fund in his hands as receiver as directed by the court appointing him." n4

n1 See, e.g., *Davis v. Bayless* (C.A.5, 1995), 70 F.3d 367, 373; *Smith v. Martin* (C.A.6, 1975), 542 F.2d 688, 690-691; *T&W Invest. Co. v. Kurtz* (C.A.10, 1978), 588 F.2d 801, 802; *Bradford Auo Corp. v. Pious* (C.A.2, 1968), 392 F.2d 67, 72-73.

[***4]

n2 *Davis* at 373.

n3 See, e.g., *Murphy v. Holbrook* (1870), 20 Ohio St. 137, 142-143.

n4 *Id.*

But [HN2] a receiver also has a personal duty to faithfully discharge his or her duties and to obey the orders of the court. n5 The receiver acts in a fiduciary capacity and must use ordinary care in administering the

133 Ohio App. 3d 787, *, 729 N.E.2d 1221, **;
1999 Ohio App. LEXIS 2286, ***

assets of the corporation. If the receiver exceeds the authority granted by the court or fails to use ordinary care, the general rule is that he or she may be sued in a personal capacity. This proposition, which surprisingly has not received much attention in Ohio, is general, horn-book law. n6

n5 *R.C. 2735.03*.

n6 See, *e.g.*, 66 American Jurisprudence 2d (1973) 184-185, Receivers, Section 367; 75 Corpus Juris Secundum (1952) 837-839, Receivers, Section 190; Annotation, Receiver's Personal Liability for Negligence in Failing to Care for or Maintain Property in Receivership (1968), 20 *A.L.R.3d* 967.

[***5]

Here, the trial court apparently did not consider this latter proposition of law: that personal liability can be imposed on a receiver in certain circumstances. We therefore reverse the court's judgment and remand this case so that the court can determine whether Donnellon has any personal liability to INF and Mansour. To arrive at this conclusion, the court should make findings regarding the period of time that Donnellon was the receiver for INF. For that period of time, the court should address INF's and Mansour's allegations and make findings regarding whether Donnellon exceeded the court's authority or failed to use ordinary care. [**1223]

Judgment reversed and cause remanded.

SUNDERMANN and **SHANNON, JJ.**, concur.

RAYMOND E. SHANNON, retired, of the First Appellate District, sitting by assignment.