

# Receivers in Divorce Cases

## An Underutilized Tool

By Scott H. Hogan and Leslie A. Dickinson

**B**ob and Jane Jones are separated and have filed for divorce. The temporary order provided for weekly support of four minor children and support of Jane. The order also provided for the payment of an arrearage in temporary alimony and support. The support provisions constituted a lien on the real and personal property of Bob, who is retired and receives a generous pension. He has not paid alimony or support to Jane.

The couple's marital property also included a family business, Jones, Inc., that Bob managed after retiring. Jane has no involvement with the business, yet she learned

after their separation that Bob has been concealing some of the business's assets from her. At Jane's request, the circuit court appointed a receiver to collect Bob's pension, apply it to the alimony and child support owed, and take management and control of Jones, Inc. and its assets.

### What is a receiver?

Situations like this are not uncommon in divorces when a spouse conceals assets or fails to comply with court orders. In some cases, appointing a receiver is the most reasonable way to safeguard marital assets and



enforce temporary orders, separation agreements, and judgments of divorce and separate maintenance.

The appointment of a receiver is an equitable remedy used in many different matters. A receiver is an officer of the court who takes custody and control of real or personal property with the primary purpose of preserving and disposing of the property under a court order.<sup>1</sup> Receiverships can be made on the motion of a party or on the court's own initiative "in all cases pending where appointment is allowed by law."<sup>2</sup> The receiver is considered a fiduciary for the benefit of all persons appearing in the action.<sup>3</sup>

Typically, courts appoint receivers only in unusual circumstances, such as when a business becomes insolvent because of mismanagement or fraud by an officer or director. To protect the shareholders, a court may appoint a receiver to dissolve the insolvent business or manage and protect the business's assets from those who might exploit them for personal gain.<sup>4</sup>

Receivers may also be appointed when parties are dishonest during litigation, complex property disputes are involved, or if there are no less intrusive means available to enforce justice. This happens often in divorce cases. Receiverships can therefore be an extremely effective tool in domestic disputes, although they are often underutilized.

### Receiver's role in divorce cases

#### Enforce a judgment

In divorce actions, receivers can be appointed to enforce a court order or carry out the terms of a judgment.<sup>5</sup> As in the previously discussed Jones case, in *McDonald v McDonald*,<sup>6</sup> a wife was awarded separation from her husband. During the separation proceedings, the husband

moved to Canada and failed to pay alimony and child support. The trial court granted the wife's petition for the appointment of a receiver to collect the husband's pension to apply to the alimony and child support he owed. The Michigan Supreme Court affirmed the trial court's right to appoint the receiver to enforce its judgment.<sup>7</sup>

Similarly, in *Shouneyia v Shouneyia*,<sup>8</sup> a wife moved for the appointment of a receiver over assets or income possessed by her husband for the amount he owed her on a property settlement in a judgment of divorce. The Michigan Court of Appeals affirmed the trial court's appointment of the receiver to enforce the judgment of divorce and preserve the funds that could satisfy the ex-husband's judgment debt.<sup>9</sup>

#### Preserve marital property pending a property division

A receiver may be used to preserve marital property until a property division is ordered.<sup>10</sup> This is often the case when a family business is involved and the management or control of the business is unclear. A receiver may be appointed to manage the business in the interim. The decision to appoint a receiver for these purposes is within the broad discretion of the trial court.<sup>11</sup>

In *Boucher v Boucher*,<sup>12</sup> the ex-husband defaulted on a property settlement and the Court of Appeals affirmed the trial court's authority to appoint a receiver to take possession and charge of real and personal assets of the ex-husband and hold them until further order.

#### Protect property from fraud or concealment

When divorces become volatile, some spouses may begin fraudulently transferring or concealing assets. If this occurs, or there is a real threat it might occur, the

## Fast Facts

In some cases, appointing a receiver is the most reasonable way to safeguard marital assets and enforce temporary orders, separation agreements, and judgments of divorce and separate maintenance.

Under the new Michigan Court Rules on receiverships, judges may take a more hands-on approach in appointing receivers in particularly hostile divorce cases in which the parties cannot agree on whether to appoint a receiver or whom to appoint.

appointment of a receiver may be appropriate to protect the other spouse. In *Westgate v Drake*,<sup>13</sup> the ex-wife was awarded a judgment of divorce with provisions of alimony granting her a one-half interest in all her husband's rights in an oil business. She filed a petition in the divorce proceedings, stating that her husband was engaged in a conspiracy to defraud her by concealing property rights and ownership in the business and that he had covered up those interests under the names of others. To conserve and protect the business assets, the circuit court appointed a receiver.<sup>14</sup>

This can be a useful tool not only after the entry of a divorce judgment, but also before the entry of a judgment. In a recent Kent County case, the parties were unable to agree on the value or disposition of 10 parcels of commercial, residential, and multi-family real property. The husband managed the properties and shared little information about them with his wife. He collected rents on the properties and disposed of the rents in an

unknown manner. He also frequently failed to make mortgage payments. The court appointed a receiver to manage and sell the properties for the benefit of both parties. The receiver also provided monthly reports so all parties were kept fully informed.

#### Sell or dispose of property pursuant to a judgment

Not only may a receiver protect and preserve property when a spouse has defaulted on a judgment, he or she may also sell property to effectuate that judgment. Additionally, in some cases, the sale of the property might be the only way to preserve the value of marital property and protect the rights of the parties.<sup>15</sup> For example, when marital property or a business cannot be administered by a receiver without a loss, a court may stop the loss by ordering the receiver to sell the property or business assets.<sup>16</sup> Courts have the discretion of directing or refusing such sales. However, the power is limited to in-state property.<sup>17</sup>

#### Recent changes to receivership rules

In May 2014, the Michigan Supreme Court adopted new rules that significantly changed how receiverships are administered. Michigan Court Rules 2.621 and 2.622 were intended to expand the receivership process and may affect the use of receiverships in divorce cases.

Among other amendments, the rules established a more concrete procedure for appointing receivers. Courts now have more discretion to determine if a receiver will be appointed even if both parties have stipulated to the appointment. The court also has the final say over who will be appointed as receiver.

The rules also set forth criteria that prospective receivers must meet, including experience in the operation of the types of assets to be administered and relevant business, legal, and receivership knowledge. The rule lists several provisions addressing when a proposed receiver is disqualified from serving (e.g., if the receiver holds any interest in the security of the receivership estate or has a relationship to the proceeding that will interfere with the impartial discharge of the receiver's duties).

MCR 2.622 also delineates specific receiver duties, including:

- Filing an acceptance of the receivership within seven days of the order of appointment
- Serving a notice of the entry of the order of appointment within 28 days after filing the acceptance to



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all persons having a recorded interest in the receivership estate

- Filing an inventory of property of the receivership estate within 35 days after entry of the order of appointment
- Accounting for all receipts, disbursements, and distributions of property of the estate
- If there are sufficient funds for a distribution, requesting creditors file proofs of claim with the court
- Furnishing information concerning the estate to any party after a reasonable request
- Filing with the court a final written report and final accounting of the administration of the estate

The rule permits receivers to sell personal property without court orders, but requires separate court orders for the sale of real property.

It is still too early to tell what effect the new rules will have on domestic cases. However, courts may use the rules to take a more hands-on approach in appointing receivers in particularly hostile divorce cases in which the parties cannot agree on whether to appoint a receiver or whom to appoint. The rules might also result in appointments of receivers who are more specialized and knowledgeable in the complexities of domestic disputes.

### Bottom line: Why appoint a receiver in a divorce case?

Using a receiver can be an effective remedy in divorce cases and is usually much less expensive than going

through extended litigation between hostile spouses. It may also speed up divorce proceedings. Often, the threat of filing a motion for a receiver can lead parties toward a settlement. A receivership is a tool every family law attorney should consider in the appropriate case. ■



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### ENDNOTES

1. See MCL 600.2926; MCR 2.622(D) and (E).
2. *Id.* The appointment of a receiver does not require statutory authority. Receivers may be appointed in any cases in which the facts render the appointment an appropriate exercise of the circuit court's equitable discretion. *Cohen v Cohen*, 125 Mich App 206, 214; 335 NW2d 661 (1983).
3. MCR 2.622(A)
4. MCL 600.3505; *Van Wie v Storm*, 278 Mich 632; 270 NW 814 (1937).
5. MCL 552.27(c).
6. *McDonald v McDonald*, 351 Mich 568; 88 NW2d 398 (1958).
7. *Id.* at 578.
8. *Shouneyia v Shouneyia*, 291 Mich App 318; 807 NW2d 48 (2011).
9. *Id.* at 331-332.
10. MCL 600.6104(4).
11. *Cosher v Cosher*, 356 Mich 567, 573-574; 96 NW2d 754 (1959); *Petitpren v Taylor Sch Dist*, 104 Mich App 283, 292-296; 304 NW2d 553 (1981).
12. *Boucher v Boucher*, 34 Mich App 213; 191 NW2d 85 (1971).
13. *Westgate v Drake*, 294 Mich 116; 292 NW 573 (1940).
14. *Id.*; see also *Westgate v Westgate*, 294 Mich 88; 292 NW 569 (1940).
15. See *Gauss v Central West Cas Co*, 289 Mich 15; 286 NW 139 (1939).
16. See *Webber v Genesee Circuit Judge*, 184 Mich 112; 150 NW 305 (1915).
17. *Emmons v Emmons*, 136 Mich App 157, 166; 355 NW2d 898 (1984).