

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Carolina Casualty Insurance
Company,
Appellant-Plaintiff,

v.

JWS NE Corp. d/b/a Fort
Wayne Roofing and Sheet Metal
Corp.,
Appellee-Defendant,

August 10, 2022

Court of Appeals Case No.
22A-CC-268

Appeal from the Marion Superior
Court

The Honorable Therese Hannah,
Magistrate

Trial Court Cause No.
49D13-1905-CC-021298

Robb, Judge.

Case Summary and Issue

- [1] In September 2021, the trial court entered summary judgment in favor of Carolina Casualty Insurance Company (“Carolina Casualty”) against JWS NE Corp. d/b/a Fort Wayne Roofing and Sheet Metal Corp. (“Fort Wayne Roofing”). The trial court awarded Carolina Casualty a monetary judgment. Carolina Casualty then filed a Motion for the Immediate Appointment of a Receiver which the trial court denied without holding a hearing. Carolina Casualty now appeals, raising one issue for our review which we restate as whether the trial court erred by denying Carolina Casualty’s Motion for the Immediate Appointment of a Receiver without holding a hearing. Concluding the trial court did not err, we affirm.

Facts and Procedural History

- [2] On May 28, 2019, Carolina Casualty filed a complaint against Fort Wayne Roofing. Carolina Casualty had provided workers compensation insurance coverage to Fort Wayne Roofing from January 1, 2017 to January 1, 2018 and claimed it was owed money. Carolina Casualty then moved for summary judgment. On September 24, 2021, the trial court issued an order granting summary judgment to Carolina Casualty “in the principal amount of \$103,792.00 plus interest of \$27,622.70 for a total judgment of \$131,454.70 plus costs of \$191.01.” Appellant’s Appendix, Volume 2 at 67.

[3] On January 15, 2022, Carolina Casualty filed a Motion for the Immediate Appointment of a Receiver.¹ Carolina Casualty argued:

4. The appointment of a receiver is necessary to protect the rights of [Carolina Casualty].

5. [Fort Wayne Roofing] is unable to pay its obligations in the ordinary course of business and is in imminent danger of insolvency. [Fort Wayne Roofing] has been sold to a third party.

Id. at 68. Subsequently, Fort Wayne Roofing filed a response to Carolina Casualty’s motion stating that it had been sold to a third party in 2018, had been “legally and voluntarily dissolved” as of June 14, 2019, and there is no need for a receiver because

there is no business for a receiver to wind up, nor assets to liquidate, nor officer, employee, or agent responsible for providing non-existent services to a non-existent business, nor funds from which to reimburse a receiver for expenses, nor funds to compensate a receiver for services rendered, nor danger of a non-existent [Fort Wayne Roofing] being insolvent.

Id. at 70-71.²

¹ Carolina Casualty had previously filed another Motion for the Immediate Appointment of a Receiver in 2020 that was denied. *See* Appellant’s Appendix, Volume 2 at 14.

² Carolina Casualty asserted in its reply that Fort Wayne Roofing was sold for \$3,398,685.20 and that no explanation was provided as to how those funds were distributed. Appellant’s App., Vol. 2 at 77.

[4] The trial court then issued the following order denying Carolina Casualty’s motion:

COMES now Defendant, [Fort Wayne Roofing], by counsel, and having filed its Response to [Carolina Casualty’s] second Motion for Immediate Appointment of Receiver. *Hearing held*. The Court having being [sic] duly advised in the premises, now DENIES [Carolina Casualty’s] second Motion for Immediate Appointment of Receiver.

Id. at 20 (emphasis added).

[5] Carolina Casualty then filed a notice of appeal. Subsequently, the trial court issued an order correcting error in the record admitting that it “erroneously stated a hearing was held on the motion” and clarifying that it had denied the motion without a hearing “after considering the pleadings[.]” *Id.* at 3.

Discussion and Decision³

[6] The appointment of a receiver is within the sound discretion of the trial court and our review is limited to determining if the trial court has abused that discretion. *Towne & Terrace Corp. v. City of Indianapolis*, 122 N.E.3d 846, 854 (Ind. Ct. App. 2019). We will not reweigh the evidence and we must construe the evidence and all reasonable inferences in favor of the trial court’s decision. *Id.* However, statutory interpretation is a question of law reserved for

³ Fort Wayne Roofing has not filed an appellee’s brief.

the court and is reviewed de novo. *Shaffer v. State*, 795 N.E.2d 1072, 1076 (Ind. Ct. App. 2003).

[7] Indiana’s general receivership statute is found in Indiana Code chapter 32-30-5. Proper statutory grounds for the appointment of a receiver must be sufficiently shown. *Schrenker v. State*, 919 N.E.2d 1188, 1192 (Ind. Ct. App. 2010), *trans. denied*. “[T]he appointment of a receiver is an extraordinary and drastic remedy to be exercised with great caution.” *Id.* at 1191 (quotation omitted). A receiver should only be appointed when no other remedy exists to effect justice between the parties and prevent a wrong. *Id.* at 1192.

[8] Here, Carolina Casualty filed a Motion for the Immediate Appointment of a Receiver claiming that Fort Wayne Roofing “is unable to pay its obligations in the ordinary course of business and is in immediate danger of insolvency.” Appellant’s App., Vol. 2 at 68. Pursuant to Indiana Code section 32-30-5-1(5), a receiver may be appointed by the court when a corporation: (A) has been dissolved; (B) is insolvent; (C) is in imminent danger of insolvency; or (D) has forfeited its corporate rights.

[9] Carolina Casualty contends the trial court erred by denying its Motion for the Immediate Appointment of a Receiver without holding an evidentiary hearing. However, Indiana Code section 32-30-5-1 does not state that a hearing is required prior to ruling on a motion for the appointment of a receiver. The lack of an express hearing requirement in the statute is significant given that Indiana Code section 23-1-47-3, which governs the appointment of receivers in judicial

proceedings to dissolve a corporation, expressly states that in such cases, “[t]he court *shall* hold a hearing[.]” (Emphasis added.) This is a stark contrast to Indiana Code section 32-30-5-1 which includes no such language. *See Perry-Worth Concerned Citizens v. Bd. Of Comm’rs of Boone Cnty.*, 723 N.E.2d 457, 459 (Ind. Ct. App. 2000) (stating a court may not read into a statute that which is not the expressed intent of the legislature), *trans. denied*. Further, Carolina Casualty cites to no case law to support its argument that the trial court should have conducted a hearing prior to ruling on the motion.

[10] Therefore, we conclude the trial court did not abuse its discretion by denying Carolina Casualty’s motion without a hearing.

Conclusion

[11] We conclude the trial court did not err by denying Carolina Casualty’s Motion for the Immediate Appointment of a Receiver without a hearing. Accordingly, we affirm the judgment of the trial court.

[12] Affirmed.

Pyle, J., and Weissmann, J., concur.