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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-441

Filed 4 June 2024

Halifax County, No. 21-CVS-159

IN RE:

WHITE OAK MISSIONARY BAPTIST CHURCH,
AN UNINCORPORATED NORTH CAROLINA
ASSOCIATION AND WHITE OAK MISSIONARY
BAPTIST CHURCH OF ENFIELD, NORTH
CAROLINA, INC.

Legal Entities Requesting Receivership,

PARTIES IN INTEREST:

ARNELL HEDGEPEETH, in his stated capacity as Deacon of White Oak Missionary Baptist Church (“WOMBC”), HORACE HEDGEPEETH in his stated capacity as Deacon of WOMBC, DELANO MILLER in his stated capacity as Pastor of WOMBC, FLOYD PITCHFORD, in his stated capacity as Trustee of WOMBC, WILLIAM SOLOMON, in his stated capacity as Trustee of WOMBC, DONALD LEE, in his stated capacity as Trustee of WOMBC, STEVEN BATTLE, in his stated capacity as Deacon of WOMBC, HERBERT DANIEL, in his stated capacity as Deacon of WOMBC, an ALVIN WEST in his stated capacity as Deacon and Trustee of WOMBC

Appeal by petitioners from order entered 7 November 2022 by Judge Eula E.

Reid in Halifax County Superior Court. Heard in the Court of Appeals 3 April 2024.

Buckmiller, Boyette & Frost, PLLC, by Matthew W. Buckmiller and Joseph Z. Frost, for petitioners-appellants.

Ferguson Chambers & Sumter, P.A., by Geraldine Sumter, and Wooden Bowers Vinson PLLC, by Walter Bowers, for interested parties-appellees Floyd Pitchford, William Soloman, Donald Lee, Steven Battle, Herbert Daniel, and Alvin West.

DILLON, Chief Judge.

As a result of internal conflict regarding the financial affairs and administrative authority of Church leadership, the Church filed a Petition for Receivership and moved for the appointment of a receiver. The trial court denied the motion. The Church appeals.

I. Background

Petitioners are the two organizations that make up what is colloquially known as White Oak Missionary Baptist Church (the “Church”). The Church manages its internal affairs based on the terms of its governing constitution. This dispute arises largely out of the actions of former deacons, trustees, and the pastor of the Church.

In 2018, the pastor and two deacons of the Church began implementing accountability measures regarding the Church’s financial affairs and business dealings. This effort was met with opposition by some Church leaders, including another Church deacon and two Church trustees. The conflict divided the Church membership and the others in Church leadership.

An audit of the Church’s stewardship over a donation fund of \$51,000.00 called the “Kingdom Building Plan” revealed that most of the money collected was untraceably spent or reallocated.

On 25 February 2021, the Church filed a Petition for Receivership, pursuant

Opinion of the Court

to N.C. Gen. Stat. §§ 1-501 *et seq.* and 1-507.20, against all interested parties (the “Interested Parties”¹). The Interested Parties claimed control and authority over the spiritual leadership, governance, property, and assets of the Church. The Church, though, claims that it owes \$379,055.86 in debts, some of which are allegedly owed to certain Interested Parties.

On account of the ongoing internal dispute between competing factions of the Church’s leadership, on or about 3 March 2021, the Church’s bank filed a motion to interplead the funds that were in the Church’s accounts at the bank, totaling \$150,646.47, with the Halifax County Clerk of Superior Court.

On 2 June 2022, the Church filed a motion seeking appointment of a certain individual as general receiver over the Church, submitting affidavits and verified materials in support thereof.

On 7 November 2022, after a hearing on the matter, the trial court entered its order denying the Church’s motion for the appointment of a receiver, finding “insufficient evidence that the church is insolvent and unable to pay undisputed debts.” The Church appealed.

II. Grounds for Appellate Review

This appeal is interlocutory because it does not dispose of all pending matters before the trial court. Appellate review of an interlocutory order is permissible if the

¹ The Interested Parties included nine members holding (or who have held) positions of leadership in the Church.

trial court's decision deprives a party of a substantial right that will be lost absent immediate review. *See* N.C. Gen. Stat. §§ 1-277(a), 7A-27(b)(3).

The Church argues that the order denying the appointment of a receiver affects a substantial right that will be lost, specifically that the assets of the Church will not be preserved during this litigation. We disagree.

In 1879, our Supreme Court held that the “granting or refusing an order for...the appointment of a receiver is not a mere matter of discretion in the judge, and either party dissatisfied with a ruling may have it reviewed [immediately].” *Jones v. Thorne*, 80 N.C. 72, 75 (1879). However, in 2006, our Court held that the analysis in *Jones* no longer applies, as we now deem such orders as interlocutory and review a trial court's decision whether to appoint a receiver for an abuse of discretion. *See Barnes v. Kochhar*, 178 N.C. App. 489, 495–96, 633 S.E.2d 474, 478–79 (2006). In that case, we ultimately held that the denial of the appointment of a receiver affected a substantial right and, therefore, there was a right to an immediate appeal. *Id.* at 498, 633 S.E.2d at 480.

We conclude that the Church in this case has adequately stated grounds for immediate review of the interlocutory order denying the appointment of a receiver and, therefore, consider the appeal.

III. Analysis

The Church brings essentially two issues on appeal, which we address in turn.

A. Appointment of a Receiver

Opinion of the Court

The Church argues that the trial court abused its discretion in denying the appointment of a receiver for the following reasons: (1) the criteria under N.C. Gen. Stat. § 1-507.24(e) were satisfied; (2) the existence of the ongoing dispute between competing leadership factions within the Church, each of whom claim complete and utter control over the Church's affairs; and (3) evidence of fraud, gross mismanagement, neglect, misappropriation, and diversion of the Church's assets and property.

A trial court may appoint a receiver when the entity or an individual business debtor is (1) insolvent; or (2) not paying its debts, unless those debts are the subject of a bona fide dispute; or (3) unable to pay its debts as they become due; or (4) in imminent danger of insolvency. N.C. Gen. Stat. § 1-507.24(e). *See also Sinclair v. Moore Cent. R.R. Co.*, 228 N.C. 389, 395, 45 S.E.2d 555, 560 (1947) (recognizing the most common instance warranting appointment of a receiver is where it is necessary "to preserve, pendente lite, specific property which is the subject of litigation.").

Here, the court declined to exercise its discretion to appoint a receiver based upon "insufficient evidence that the [C]hurch is insolvent and unable to pay its disputed debts."

Nevertheless, the Church argues that the trial court should have granted the appointment of a receiver, based on evidence that the Church was in imminent danger of becoming insolvent. At trial, the Church presented evidence that they now allege showed that the outstanding balance of their debts and obligations exceeded

Opinion of the Court

the value of their assets and that the Church building needed maintenance. However, as Interested Parties point out, there is also evidence in the record that the Church had over \$150,000.00 currently held by the clerk of the court, that the Church owns over sixty-five acres of land in Halifax County, and that the Church building was insured.

Our Supreme Court has instructed that a receiver may be appointed where it is necessary to preserve the assets which are the subject of the litigation but that “[a]ppointing a receiver for a going, solvent [entity] is an especially rare and drastic remedy.” *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 576–77, 273 S.E.2d 247, 256 (1981).

We have reviewed the trial court’s order and conclude that its decision not to appoint a receiver in this case was not an abuse of discretion. There is sufficient evidence in the record for the trial court to determine that the Church was not in imminent danger of becoming insolvent or was unable to pay its bills *or otherwise* not to be persuaded that the Church was in such imminent danger.

B. Affidavit

The Church also argues that the trial court erred in considering, and refusing to exclude, an untimely affidavit and declaration by Church member, Mr. Battle, that was submitted and served during the hearing. After careful consideration, we disagree for the reasons set forth below.

Rule 6(d) of our Rules of Civil Procedure generally requires affidavits to be

Opinion of the Court

served before a hearing, specifically providing as follows:

A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. . . . When a motion is supported by affidavit, the affidavit shall be served with the motion; and except as otherwise provided in Rule 59(c), opposing affidavits shall be served at least two days before the hearing. If the opposing affidavit is not served on the other parties at least two days before the hearing on the motion, the court may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served affidavit, *or take such other action as the ends of justice required.*

N.C. Gen. Stat. § 1A-1, Rule 6(d) (emphasis added).

Here, the Interested Parties submitted the challenged affidavit on the day of the hearing. The Church initially objected but then asked the court for time to file a response. The record shows that the Church was given a week to file an affidavit in response, which the Church did.

We conclude that the Church has failed to show that it was prejudiced by any error by the trial court to consider the challenged affidavit.

IV. Conclusion

The trial court did not abuse its discretion in denying the appointment of a receiver or otherwise err in allowing Mr. Battle's affidavit to be considered.

AFFIRMED.

IN RE: WHITE OAK MISSIONARY BAPTIST CHURCH

Opinion of the Court

Judges COLLINS and STADING concur.

Report per Rule 30(e).