[Cite as *Gemmell v. Anthony*, 2016-Ohio-2686.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

KARRY GEMMELL, ET AL.,	:	
Plaintiffs-Appellees,	:	Case No. 14CA11
v.	:	
MARK ANTHONY, ET AL.,	:	DECISION & JUDGMENT ENTRY
Defendants-Appellants.	:	

APPEARANCES:

Scott E. North and Christen M. Blend, Porter, Wright, Morris & Arthur, L.L.P., Columbus, Ohio 43215, for appellants.

Michael L. Close, Dale D. Cook, and Timothy E. Miller, Isaac Wiles Burkholder & Teetor, L.L.C., Columbus, Ohio 43215, for appellees.

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 4-4-16
ABELE, J.

{¶ 1} Appellants, Mark Anthony, M & T Property Investments, LTD (M & T), and Hocking Peaks Adventure Park, LLC (Hocking Peaks Adventure Park), appeal from a Hocking County Common Pleas Court judgment that granted the motion of appellees, Karry Gemmell, Hocking Peaks, LLC (Hocking Peaks), Gem Coating, LLC, Clare Aitken, and Ohio ATV World, LLC, to appoint a receiver for Hocking Peaks Adventure Park in appellees' action alleging that appellants had misappropriated Hocking Peaks assets and funds and converted them for their use.

{¶ 2} In their first assignment of error, appellants assert that the trial court abused its discretion by appointing a receiver for Hocking Peaks Adventure Park. Appellants first argue

that appellees lacked standing to appoint a receiver for Hocking Peaks Adventure Park because they have no ownership or other joint interest in it, i.e., Anthony is the sole member of Hocking Peaks Adventure Park. We, however, believe that appellants' first contention is meritless because standing was conferred on appellants by the applicable version of R.C. 2735.01(A), now R.C. 2735.01(A)(1)—their evidence established that they were interested in Hocking Peaks Adventure Park's property because Anthony improperly took Hocking Peaks's assets and transferred them to his new business, Hocking Peaks Adventure Park.

{¶ 3} Appellants next contend that the trial court abused its discretion by appointing a receiver for Hocking Peaks Adventure Park because it did not rely on any evidence that the company's property was in danger of being lost, removed, or materially injured. We reject appellants' contention because the trial court specified that it considered the evidence adduced at prior hearings in the case, which included two preliminary-injunction hearings, as well as the arguments of the parties in their filings concerning appellants' motion for the appointment of a receiver. This evidence included Anthony's failure to maintain accurate and complete books, failure to file income tax returns and withhold payroll taxes, participation in self-dealing by using company funds to pay non-company expenses in addition to his misappropriation of Hocking Peaks assets and transfer of them to his solely owned company, Hocking Peaks Adventure Park.

{¶ 4} Appellants finally argue in their first assignment of error that the trial court abused its discretion by appointing a receiver for Hocking Peaks Adventure Park because appellees' underlying action is for money damages and they have adequate remedies available at law. Because the trial court's appointment was not based on equity or the equitable catch-all provision of former R.C. 2735.01(E), now R.C. 2735.01(A)(7), but based on former R.C. 2735.01(A), we

reject appellants' argument. There was no requirement under that provision for movants for a receiver to establish that they lack a full and adequate remedy at law. We thus overrule appellants' first assignment of error.

{¶ 5} In their second assignment of error, appellants assert that the trial court's decision to appoint a receiver for Hocking Peaks Adventure Park violated their due-process rights under the federal and state constitutions. They first contend that their due-process rights were violated by the trial court's reliance on evidence that was adduced at hearings on appellees' requests for preliminary injunctive relief held before appellees moved for the appointment of a receiver for Hocking Peaks Adventure Park. Appellants also contend that the trial court's receivership order violated Anthony and M & T's due-process rights by depriving them of their property.

{¶ 6} We believe that appellants' contentions are meritless because due process required only that appellants receive notice and an opportunity to be heard on appellees' motion for the appointment of a receiver. Here, they received notice of the motion and responded with a memorandum in opposition. The trial court had no duty to conduct an evidentiary hearing on the request for the appointment of a receiver under R.C. 2735.01, and it acted reasonably in relying on the existing evidence adduced in the case, including prior hearings that were relevant to its determination. The receivership order also did not violate appellants' due-process rights based on the evidence before the trial court, which indicated that Anthony had misappropriated Hocking Peaks' property and that he owned Hocking Peaks Adventure Park and M & T.

{¶ 7} Appellants next claim that the trial court violated their due-process rights by selecting the individual for receiver without affording them notice and opportunity to be heard on that selection. The trial court, however, did not have any duty under the due-process provisions

of the United States and Ohio Constitutions or R.C. 2735.01 to afford appellants with notice and an opportunity to be heard on the court's selection of a specific individual as receiver.

{¶ 8} Finally, appellants argue that the receivership order is impermissibly vague because it did not set forth the receiver's powers and duties. However, the applicable version of R.C. 2735.04 did not require the trial court's entry appointing a receiver to set forth the receiver's powers and duties. Some of the receiver's duties were set forth in the statute, and other powers and duties could be clarified by the trial court upon application by the receiver or the parties. We thus overrule appellants' second assignment of error.

{¶ 9} Therefore, because appellants have not met their burden on appeal to establish that the trial court acted unreasonably, arbitrarily, or unconscionably or committed a constitutional error by granting appellees' motion for the appointment of a receiver in the case, we overrule their assignments of error and affirm the trial court's judgment.

I. FACTS

{¶ 10} This case involves a dispute between two members of a limited liability company concerning the misappropriation of corporate assets and funds. In March 2013, appellees Gemmell, Hocking Peaks, and others filed a complaint in the Hocking County Court of Common Pleas against several defendants, including appellants Anthony and M & T, alleging that they had misappropriated Hocking Peaks assets, breached their fiduciary duties to Hocking Peaks, and converted Hocking Peaks property. Although appellees initially requested the appointment of a receiver for Hocking Peaks in their complaint, they later withdrew the request to avoid M & T, the owner of the land on which Hocking Peaks operated, to terminate the lease and claim all of the improvements made by Hocking Peaks on the property.

{¶ 11} In April 2013, the trial court held an evidentiary hearing on appellees' motion for a preliminary injunction regarding Hocking Peaks. In June 2013, the trial court granted a preliminary injunction requiring that a single bank account be established for Hocking Peaks, that all checks, cash, and money received for Hocking Peaks be deposited and withdrawn through that account, and that both Gemmell and Anthony be required to sign any withdrawal of over $2,000 from the Hocking Peaks account. The trial court further specified that the injunctive relief did not extend to the competing business created by Anthony—Hocking Peaks Adventure Park—because it had not been made a party to the action. The trial court later amended its order to allow Gemmell to access the operating account of Hocking Peaks Adventure Park at Fifth Third Bank.

{¶ 12} In July 2013, the trial court granted appellees' motion for leave to file an amended complaint to add Hocking Peaks Adventure Park as a defendant. The court then granted a temporary restraining order against the new defendant, and held a hearing in October 2013 on whether to extend its prior preliminary injunction to it.

{¶ 13} The April and October 2013 hearings provided the following pertinent evidence. In February 2010, Gemmell and Anthony formed Hocking Peaks as a limited liability company under R.C. Chapter 1705. Gemmell and Anthony each owned a 47.5% share of Hocking Peaks, with the remaining 5% owned by Timber Creek, a company owned by Gemmell's father. Through a company he owns, and although the Hocking Peaks operating agreement did not require him to make a capital contribution, Gemmell contracted with Acrobranche U.S. Inc. to construct zip lines at the business site used by Hocking Peaks for $385,000. Gemmell attempted to pay this expense through lines of credit from another company he owned, but he ended up

defaulting on the loan and a judgment of over $208,000 was entered against him. Issues concerning whether the zip lines constituted a capital contribution by Gemmell and who would pay for them was an ongoing area of dispute between Gemmell and Anthony.

{¶ 14} Sometime in 2010, Hocking Peaks opened for business as an outdoor adventure park, and featured several attractions, including zip lines, paintball, a slide, and a mud bog. In the 2010 season, Hocking Peaks had gross receipts of about $237,947, with 18.78% of this amount constituting cash receipts. In the 2011 season, Hocking Peaks had gross receipts of about $609,260, with 23.9% of this amount in cash receipts. In the 2012 season, Hocking Peaks had gross receipts of about $421,000, with 22.49% of this amount in cash receipts.

{¶ 15} Hocking Peaks had originally maintained only one business bank account—with the Ohio University Credit Union. In March 2012, without notifying Gemmell, Anthony opened up a new bank account for Hocking Peaks at the Vinton County National Bank. Anthony claimed that he created the account to pay payroll and FICA (Federal Insurance Contribution Act) taxes, but he never used the account to pay these expenses. When Vinton County National Bank officials called Gemmell to request his signature for the account, he signed the necessary documents and used the account to pay some of Hocking Peaks's expenses. Anthony became angry at Gemmell for using the new account to pay their company's expenses.

{¶ 16} In August 2012, Anthony wrote a check from Hocking Peaks to himself for $35,000, and specified on the memo line of the check that the check constituted a "partial rent payment." M & T, which is owned and operated by Anthony, leased the property to Hocking Peaks to operate the outdoor adventure park for $500 per month. Gemmell did not pay the rent to M & T, but neither did Anthony, even though he had access to the Hocking Peaks checkbook.

By the date that Anthony drew the $35,000 check to M & T, Hocking Peaks would have owed M & T at most only $14,500 in rent.

{¶ 17} After the check was returned to Anthony for insufficient funds, he withdrew the $16,378.48 balance of the checking account remaining in the Vinton County National Bank account and opened a new account in the name of the new company that he was starting—Hocking Peaks Adventure Park—with the money at Fifth Third Bank. Just before he did so, Anthony had formed the new limited liability company under the name of Hocking Peaks Adventure Perk, LLC. He subsequently requested the cancellation of the certificate because of the misspelling, and a new certificate was issued under the name Hocking Peaks Adventure Park. The money withdrawn by Anthony from the Hocking Peaks account was used to start up his new Hocking Peaks Adventure Park limited liability company, and Anthony did not tell Gemmell that he had created the new account from Hocking Peaks funds. Groupon checks earned by Hocking Peaks were also deposited by Anthony into the Hocking Peaks Adventure Park account that he had opened at Fifth Third Bank. Hocking Peaks Adventure Park operated on the same property that Hocking Peaks did, with many of the same attractions, and with the same generally recognized park name.

{¶ 18} From 2010 to 2012, Hocking Peaks often used the name Hocking Peaks Adventure Park for its business, with that name appearing on its operating agreement, insurance forms, a Groupon discount-coupon contract, and advertisements. In addition, Anthony's girlfriend created a logo for Anthony's new company that looked like the logo for Hocking Peaks. In 2013, Hocking Peaks Adventure Park used Hocking Peaks's internet domain name and telephone number. Anthony, however, did not pay Hocking Peaks to use the Hocking Peaks

Adventure Park name it had in part been known by since 2010.

{¶ 19} In July 2013, the trial court's preliminary-injunction decision found that Anthony had engaged in self-dealing and damaged the Hocking Peaks business by withdrawing funds purportedly for rental payments and removing funds from a Hocking Peaks account to create an account for his Hocking Peaks Adventure Park business.

{¶ 20} The trial court's April 2014 preliminary-injunction decision also concluded that Anthony had continued to engage in questionable financial practices. Following the April 2013 hearing, Anthony dissolved Hocking Peaks. In April through September 2013, Hocking Peaks Adventure had approximately $265,000 in gross revenues, but only about 5% of the deposits were cash deposits although the zip-line business historically had roughly 20% in cash sales. In addition, Anthony made numerous payments from the Fifth Third Bank account to pay the following expenses that were not related to either Hocking Peaks or Hocking Peaks Adventure Park: (1) over $8,600 for improvements and maintenance for Anthony's mobile-home parks; (2) $1,000 for a down payment to purchase real estate for use in a separate business owned by Anthony; (3) payment of $20,755.76 in real estate taxes by Hocking Peaks that were the responsibility of M & T; and (4) $1,366.20 of expenses paid by Hocking Peaks for real estate taxes owed by Anthony. Anthony admitted that he had never paid or withheld payroll or income taxes for Hocking Peaks. In its April 2014 preliminary-injunction decision, the trial court determined that Anthony took the assets of Hocking Peaks and transferred them to a business of which he is the sole owner—Hocking Peaks Adventure Park—and thus the injunction regarding Hocking Peaks should be extended to apply to Hocking Peaks Adventure Park as well. The court rejected Anthony's claim that he is permitted under the Hocking Peaks operating agreement

to take the company assets and transfer them to his new competing business because Anthony was prohibited by R.C. Chapter 1705 and the operating agreement from distributing assets to himself without first paying the debts of the company, winding up the affairs of the dissolved company, liquidating the assets, satisfying the claims of creditors, and distributing any remaining assets to the members in accordance with their ownership interest.

{¶ 21} In April 2014, the appellees filed a motion for the appointment of a receiver for Hocking Peaks Adventure Park. Appellants filed a memorandum in opposition. In June 2014, the trial court granted appellees' motion, and found that they had established their entitlement to a receiver under R.C. 2735.01 because the case involved partners or others jointly owning or interested in property when it was shown that the property was in danger of being lost, removed, or materially injured. The trial court determined that Anthony had engaged in a great deal of self-dealing, and that if the receivership was not ordered, the court believed "based on the testimony and the material presented, that the involved businesses would fail and the investments made would be misappropriated." The trial court also stated that its decision was "[b]ased on the motion for the appointment of a receiver, the memorandum contra and the evidence which this court has heard in the prior hearings in this case." The court appointed Reg Martin of Martin Management Service, Inc. as receiver for Hocking Peaks Adventure Park and an attorney for the receiver. This appeal followed.

II. ASSIGNMENTS OF ERROR

{¶ 22} Appellants assign the following errors for our review:

> 1. THE TRIAL COURT ABUSED ITS DISCRETION IN APPOINTING A RECEIVER FOR HOCKING PEAKS ADVENTURE PARK, LLC.

2. THE TRIAL COURT'S DECISION TO APPOINT A RECEIVER FOR HOCKING PEAKS ADVENTURE PARK, LLC VIOLATES APPELLANTS' DUE PROCESS RIGHTS UNDER ARTICLE 1 SECTION 16 OF THE OHIO CONSTITUTION AND THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

III. STANDARDS OF REVIEW

{¶ 23} Historically, the appointment of a receiver was an equitable remedy. *See, e.g., Whitaker v. Paru Selvam, L.L.C.*, 2d Dist. Montgomery No. 26555, 2015-Ohio-3166, ¶ 28, quoting *Crawford v. Hawes*, 2d Dist. Montgomery No. 23209, 2010-Ohio-952, ¶ 33 ("The authority to appoint a receiver is 'an extraordinary, drastic and sometimes harsh power which equity possesses' "). As an equitable remedy, the appointment of a receiver was committed to the discretion of the court and " 'in exercising its discretion to appoint or refuse to appoint a receiver [the court] must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, the ends of justice, the rights of all the parties interested in the controversy and subject matter, and the adequacy and effectiveness of other remedies.' " *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 73, 573 N.E.2d 62, fn. 3 (1991), quoting 65 American Jurisprudence 2d, Receivers, Sections 19-20, at 873-874 (1972).

{¶ 24} Appellants' first assignment of error asserts that the trial court's decision to grant appellees' motion to appoint a receiver is erroneous. In Ohio, the appointment of a receiver is also a legal remedy that is vested in the discretion of the court or judge under R.C. 2735.01 in the specified circumstances. Here, in the applicable version of R.C. 2735.01 in effect when the trial

court appointed the receiver, the introductory language, largely reproduced in the current version of R.C. 2735.01(A), provided that "[a] receiver *may be appointed* by the supreme court or a judge thereof, the court of appeals or a judge thereof in his district, the court of common pleas or a judge thereof in his county, or the probate court, in causes pending in such courts respectively, in the following cases" and then set forth five different subsections. (Emphasis added.)

{¶ 25} Therefore, under R.C. 2735.01, the decision to appoint a receiver is within the discretion of the court, and the appointment will not be disturbed on appeal unless there is a clear abuse of sound judicial discretion. *Celebrezze*, 60 Ohio St.2d at 73, 573 N.E.2d 62; *Century Natl. Bank v. Hines*, 4th Dist. Athens No. 13CA35, 2014-Ohio-3901, ¶ 10 ("the appointment of a receiver is a matter left to the trial court's sound discretion and its decision will not be reversed on appeal absent an abuse of that discretion"); *Cawley JV, L.L.C. v. Wall St. Recycling L.L.C.*, 2015-Ohio-1846, 35 N.E.3d 30, ¶ 7 (8th Dist.) ("This court reviews the appointment [of a receiver] for an abuse of discretion"); *TD Ltd., L.L.C. v. Dudley*, 12th Dist. Butler No. CA2014-01-009, 2014-Ohio-3996, ¶ 25 ('we review a trial court's decision regarding the appointment of a receiver for an abuse of that discretion"); *Walsh v. Smith*, 2d Dist. Montgomery No. 25879, 2014-Ohio-1451, ¶ 7 ("Absent an abuse of discretion, an appellate court will not reverse a decision on whether to appoint a receiver"); *Harold Pollock Co., L.P.A. v. Bishop*, 9th Dist. Lorain No. 12CA010233, 2014-Ohio-1132, ¶ 15 ("We review a trial court's decision regarding the appointment of a receiver for an abuse of discretion").

{¶ 26} Generally, a trial court abuses its discretion if its decision is unreasonable, arbitrary, or unconscionable, i.e. an action that no conscientious judge could honestly have taken. *See, e.g., State v. Keenan*, 143 Ohio St.3d 397, 2015-Ohio-2484, 38 N.E.3d 870, ¶ 7; *S.R. v.*

T.A.R., 4th Dist. Highland No. 15CA9, 2015-Ohio-5322, ¶ 6. An abuse of discretion includes a situation in which a trial court did not engage in a " 'sound reasoning process.' " *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). "Abuse-of-discretion review is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court." *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34. This limited, deferential standard of review guides our analysis of appellants' first assignment of error.

{¶ 27} Appellants' second assignment of error asserts that the trial court's receivership order violated his federal and state constitutional due-process rights. We use a de novo standard of review to assess errors based upon violations of constitutional law. *See generally State v. Neal*, 2016-Ohio-64, __ N.E.3d __, ¶ 36 (4th Dist.); *see also Buckmaster v. Buckmaster*, 4th Dist. Highland No. 13CA13, 2014-Ohio-793, ¶ 6. We thus apply this de novo standard of review for appellants' constitutional claims in their second assignment of error.

IV. LAW AND ANALYSIS

A. Appointment of Receiver

{¶ 28} In their first assignment of error, appellants assert that the trial court abused its discretion by appointing a receiver for Hocking Peaks Adventure Park, LLC. Appellants claim that the trial court abused its discretion for the following reasons: (1) appellees lacked standing to obtain a receiver for Hocking Peaks Adventure Park because they had no interest in that company, which is wholly owned by Anthony; (2) no evidence indicated that the company's property was in danger of being lost, removed, or materially injured; and (3) appellees'

underlying action is for monetary damages and adequate remedies are available at law.

1. Standing

{¶ 29} Appellants initially assert that the trial court abused its discretion to appoint a receiver because appellees lacked standing to obtain one. They claim that there was no authority to authorize the court to appoint a receiver for Hocking Peaks Adventure Park because that company is owned solely by Anthony, and is not owned by appellants.

{¶ 30} The trial court held that the appointment of a receiver is warranted under R.C. 2735.01 because the case involved partners or others jointly owning or interested in any property when it is shown that the property is in danger of being lost, removed, or materially injured. The court determined that based on the testimony and material presented, the businesses involved would fail and the investments made would be misappropriated.

{¶ 31} Appellants' challenge to appellees' standing to invoke the common pleas court's jurisdiction to appoint a receiver in the case "speaks to jurisdiction over a particular case, not subject-matter jurisdiction." *See Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 22. "A determination of standing necessarily looks to the rights of individual parties to bring the action, as they must assert a *personal* stake in the outcome of the action in order to establish standing." (Emphasis sic.) *Id.* at ¶ 23. It is well settled that "[i]n addition to standing authorized by common law, standing may also be conferred by statute." *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶ 17.

{¶ 32} Under former R.C. 2735.01(A), now R.C. 2735.01(A)(1), a common pleas court may appoint a receiver in causes pending in the court "[i]n any action * * * between partners or

others jointly owning or interested in any property, on the application of the plaintiff * * * when it is shown that the property * * * is in danger of being lost, removed, or materially injured." Standing was conferred on appellees to invoke the common pleas court's jurisdiction to appoint a receiver for Hocking Peaks Adventure Park in their underlying case because the evidence established that Anthony had misappropriated assets belonging to appellees and used them to engage in self-dealing for himself and his companies, including Hocking Peaks Adventure Park, and absent the appointment, appellees' property was in danger of being lost, removed, or materially injured. We reject appellants' first contention.

2. Evidence

{¶ 33} Appellants next contend in their first assignment of error that the trial court abused its discretion by appointing a receiver without holding an evidentiary hearing on appellees' motion, and without considering any evidence that the company's property was in danger of being lost, removed, or materially injured.

{¶ 34} Notwithstanding appellants' argument to the contrary, "R.C. 2735.01 et seq. does not mandate an evidentiary hearing prior to ruling on a motion seeking an order for the appointment of a receiver." *Citizens Banking Co. v. Real America, Inc.*, 6th Dist. Ottawa No. OT-11-044, 2013-Ohio-1710, ¶ 12; *see also Cawley JV*, 2015-Ohio-1846, 35 N.E.3d 30, at ¶ 8 ("an evidentiary hearing is not necessary in all cases").

{¶ 35} Moreover, the trial court specified that it considered the evidence submitted by the parties in the prior hearings in the case, which included the two hearings that it held on appellees' requests for preliminary injunctive relief. These hearings provided evidence relevant to the court's determination of whether the appointment of a receiver was warranted under former R.C.

2735.01(A). The evidence included Anthony's failure to maintain accurate and complete books, failure to file income tax returns and withhold payroll taxes, participation in self-dealing by using company funds to pay non-company expenses, and his misappropriation of Hocking Peaks assets and transfer of them to his solely owned company, Hocking Peaks Adventure Park.

{¶ 36} Notably, in their memorandum in opposition to appellees' motion for the appointment of a receiver, appellants themselves relied on evidence from one of the preliminary-injunction hearings. Consequently, it appears that appellees invited any error in the trial court's reliance on this evidence to determine appellees' motion. *See Martin v. Jones,* 2015-Ohio-3168, __ N.E.3d __, ¶ 2 (4th Dist.), quoting *State ex rel. Kline v. Carroll*, 96 Ohio St.3d 494, 2002-Ohio-4849, 775 N.E.2d 517, ¶ 27 (" 'Under [the invited-error] doctrine, a party is not entitled to take advantage of an error that he himself invited or induced the court to make' ").

{¶ 37} Appellants' reliance on *Poindexter v. Grantham,* 8th Dist. Cuyahoga No. 95413, 2011-Ohio-2915, is also misplaced because in that case, no supporting evidence was furnished in support of the motion for a receiver. By contrast, appellees' motion was supported by evidence that had already been submitted to the trial court. As discussed, appellees themselves cited evidence from one of the prior hearings to support their memorandum in opposition. Thus, we reject appellants' contention.

3. Adequate Remedies at Law

{¶ 38} Appellants finally claim in their first assignment of error that the trial court abused its discretion by appointing a receiver because the underlying action is for monetary damages and adequate remedies are available at law. Appellants rely on cases that have emphasized the

equitable nature of the remedy. *See, e.g., Equity Centers Dev. Co. v. S. Coast Centers, Inc.*, 83 Ohio App.3d 643, 652, 615 N.E.2d 662 (8th Dist.1992), citing *Hoiles v. Watkins*, 117 Ohio St. 165, 183, 157 N.E. 557 (1927) ("appellants argue that the appointment of a receiver for a going, solvent concern is a last-resort remedy and should not be employed where other adequate remedies are available").

{¶ 39} We believe, however, that appellants' argument fails to recognize that the trial court granted appellees' motion for the appointment of a receiver based on law, specifically the provision in former R.C. 2735.01(A), now R.C. 2735.01(A)(1), that authorized the court to appoint a receiver based on appellees' interest in the property that was in danger of being lost, removed, or materially injured, rather than the equitable catch-all provision in former R.C. 2735.01(E), now R.C. 2735.01(A)(7), which authorized the court to appoint a receiver "[i]n all other cases in which receivers have been appointed by the usages of equity."

{¶ 40} Notably, in *Hoiles*, the case courts often loosely cite for a purported lack-of-an-adequate-remedy requirement for the appointment of a receiver, the Supreme Court of Ohio emphasized that the similarly worded predecessor statutory provision that authorized the appointment of receivers in cases based on "the usages of equity," required that the movant not have a full and adequate remedy at law. *Hoiles*, 117 Ohio St. 165, 157 N.E. 557, at paragraph two of the syllabus ("To justify the appointment of a receiver within the purview of the sixth paragraph of section 11894, General Code, in 'cases in which receivers heretofore have been appointed by the usages of equity,' it must appear that the same is ancillary to some final relief in equity between the parties, and not the sole object sought; nor should such appointment be made if the plaintiff has a full and adequate remedy at law in respect to his alleged rights, or where the

court can find another and less stringent means for protecting the rights of the parties"). The *Hoiles* holding is consistent with the general precedent that equitable relief is appropriate only if the movant demonstrates that no adequate remedy at law exists. *See, e.g., Byers DiPaola Castle, L.L.C. v. Portage Cty. Bd. of Commrs.*, 2015-Ohio-3089, 41 N.E.3d 89, ¶ 67 (11th Dist. 2015); *Barilla v. Keaton*, 9th Dist. Lorain No. 14CA010659, 2015-Ohio-1244, ¶ 9.

{¶ 41} However, the equitable catch-all provision in former R.C. 2735.01(E) is not applicable here because the trial court appointed the receiver under R.C. 2735.01(A). Having an available remedy at law thus does not bar the appointment of a receiver because this pertinent subsection provides a legal rather than an equitable remedy. *See, e.g., Victory White Metal Co. v. N.P. Motel Sys., Inc.*, 7th Dist. Mahoning No. 04 MA 245, 2005-Ohio-2706, ¶ 74-75 (distinguishing *Hoiles* and holding that having an adequate remedy at law did not bar the appointment of a receiver under former R.C. 2735.01(A)).

{¶ 42} Finally, the trial court determined that based upon the evidence before it, the businesses would fail and the investments made would be misappropriated without the appointment of a receiver. That is, the presence of appellees' underlying monetary action would not constitute an adequate remedy because in the absence of a receiver, there might be no assets or money left for them to recover if they ultimately prevail in the underlying action. *See Victory White Metal* at ¶ 75 ("The remedy at law through the contract action may only become adequate upon appointment of the receiver. * * * If no receiver is appointed, there may be no remedy left").

{¶ 43} Therefore, we do not believe that the trial court acted unreasonably, arbitrarily, or unconscionably by granting appellees' motion for the appointment of a receiver for Hocking

Peaks Adventure Park in the case. Thus, we overrule appellants' first assignment of error.

B. Due Process

{¶ 44} In their second assignment of error, appellants contend that the trial court's decision to appoint a receiver for Hocking Peaks Adventure Park violated their due-process rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 16 of the Ohio Constitution. Appellants claim that their due-process rights were violated because: (1) the trial court relied on hearings held six months to a year before appellees filed their motion for the appointment of a receiver for Hocking Peaks Adventure Park; (2) the receivership deprived Anthony and M & T of their property; (3) the trial court selected the individual to serve as a receiver through an ex parte proceeding; and (4) the receivership order is impermissibly vague because it does not set forth the receiver's powers and duties.

{¶ 45} [T]he due-process rights provided by the Fourteenth Amendment and those provided by Article I, Section 16 of the Ohio Constitution are coextensive." *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 17. " '[T]he basic requirements of procedural process are notice and an opportunity to be heard.' " *Fairfield Cty. Bd. of Commrs. v. Nally*, 143 Ohio St.3d 93, 2015-Ohio-991, 34 N.E.3d 873, ¶ 42, quoting *State v. Hudson*, 2013-Ohio-647, 986 N.E.2d 1128, ¶ 48 (3d Dist.).

{¶ 46} Appellants initially argue that the trial court violated their due-process rights by relying on hearings held six months to a year before appellees filed their motion for the appointment of a receiver for Hocking Peaks Adventure Park and that the receivership deprived Anthony and M & T of their property.

{¶ 47} However, appellants' contentions are meritless because due process required only

that appellants receive notice and an opportunity to be heard on appellees' motion for the appointment of a receiver. They received notice of the motion and responded with a memorandum in opposition. As detailed in our discussion of appellants' first assignment of error, (1) the trial court had no duty to conduct an evidentiary hearing on the request for the appointment of a receiver under R.C. 2735.01; (2) the trial court acted reasonably by relying on the existing evidence adduced in the case, including prior hearings that were relevant to its determination, and (3) appellants invited any error by the trial court by relying on this evidence in their memorandum in opposition to the motion. The receivership order also did not violate appellants' due-process rights based on the evidence before the trial court, which indicated that Anthony had misappropriated Hocking Peaks' property and that he solely owned Hocking Peaks Adventure Park and M & T. If this were not so, appellants would be able to profit from their misconduct.

{¶ 48} Appellants next argue that the trial court violated their due-process rights by selecting the individual for the receiver without affording them notice and opportunity to be heard on that selection. In *Cawley JV*, 2015-Ohio-1846, 35 N.E.3d 30, at ¶ 15, the Eighth District Court of Appeals recently rejected a comparable claim that the appellants therein had their due-process rights violated when the court appointed a receiver that the court had chosen, rather than by the parties, by noting that R.C. 2735.02 sets the qualifications for a receiver broadly as a person not interested in the action who resides in the state and the appellants had offered no evidence or argument that the receiver was not so qualified. Similarly, in the case sub judice the appellants presented no evidence or argument that the receiver that the trial court appointed is not qualified under R.C. 2735.02. The trial court had no duty under the due-process

provisions of the United States and Ohio Constitutions or R.C. Chapter 2735 to permit the parties to be given notice and the opportunity to respond to the court's selection of a qualified receiver after being afforded notice and the opportunity to respond to a party's request for the appointment of a receiver.

{¶ 49} Appellants finally argue that the receivership order is impermissibly vague because it did not set forth the receiver's powers and duties. Appellants rely on former R.C. 2735.04, and cases from other jurisdictions, to support their argument. The applicable version of former R.C. 2735.04 provides that "[u]nder the control of the court which appointed him, as provided in section 2735.01 of the Revised Code, a receiver may bring and defend actions in his own name as receiver, take and keep possession of property, receive rents, collect, compound for, and compromise demands, make transfers, and generally do such acts respecting the property as the court authorizes." This statute enabled the trial court to "exercise its sound judicial discretion to limit or expand a receiver's powers as it deems appropriate." *State ex rel. Celebrezze*, 60 Ohio St.3d at 74, 573 N.E.2d 62. R.C. 2735.04 "places virtually no limitation on the power that can be extended" to a receiver. *See, e.g., Century Natl. Bank*, 2015-Ohio-2901, at ¶ 20.

{¶ 50} Although the current version of R.C. 2735.04(A) requires that the powers of a receiver be set forth in the court order appointing the receiver, the applicable version of the statute when the trial court issued its appointment order did not. Because some of the receiver's duties were specified in the applicable version of R.C. 2735.04, and other powers and duties could and have since been clarified by the trial court upon application by the receiver, the court receivership order is not impermissibly vague so as to render it violative of appellants'

due-process rights. The cases from foreign jurisdictions appellants cite do not interpret applicable Ohio law and are not persuasive.

{¶ 51} Therefore, after our de novo consideration of appellants' due-process claims, we find them meritless and overrule their second assignment of error.

V. CONCLUSION

{¶ 52} In the case sub judice, the trial court did not abuse its considerable discretion by granting appellees' motion and appointing a receiver for Hocking Peaks Adventure Park and did not violate appellants' due-process rights in doing so. Having overruled appellants' assignments of error, we hereby affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment is affirmed and that appellants shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE OF COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.