[Cite as *Mehwald v. Atlantic Tool & Die Co.*, 2023-Ohio-2778.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

MICHAEL MEHWALD,	:	
Plaintiff-Appellee,	:	Nos. 111692, 111901 and 111904
v.	:	
ATLANTIC TOOL & DIE COMPANY, ET AL.,	:	
Defendants-Appellants.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED AND REMANDED
RELEASED AND JOURNALIZED: August 10, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-20-931014

Appearances:

Schneider Smeltz Spieth Bell LLP, and Thomas J. Connick, Mark M. Mikhaiel, and Jenna R. Bird*, for appelle*e.

Gallagher Sharp LLP, Monica A. Sansalone, and Maia E. Jerin, *for appellants* Walter Haverfield LLP, Mark S. Fusco, Sara Ravas Cooper, and Kirk W. Roessler.

Wickens Herzer Pana, Matthew W. Nakon, Rachelle Kuznicki Zidar, and Matthew N. Danese; Milano Attorneys at Law, Jay Milano, and Katelyn Pruchnicki, *for appellant* Atlantic Tool & Die Company.

MARY J. BOYLE, J.:

{¶ 1} In this consolidated appeal, defendants-appellants, Atlantic Tool & Die Company ("ATD"), and Walter Haverfield LLP, Mark S. Fusco, Sara Ravas Cooper, and Kirk W. Roessler (collectively referred to as "WH"), appeal three different journal entries.[1] ATD appeals an order appointing a receiver sua sponte and an order to produce documents that it claims to be protected by the work-product doctrine and consulting-expert privilege. WH appeals an order to produce documents that they claim to be protected by the attorney-client privilege. Because the trial court appointed a receiver in an unwarranted way and improperly ordered the disclosure of purportedly privileged documents on the basis of privity and shared privilege, we vacate the trial court's July 1, 2022, August 22, 2022, and August 25, 2022 journal entries and remand for further proceedings.

I. Relevant Facts and Procedural History

{¶ 2} Our recitation of the facts is limited to those relevant to the issues raised in this interlocutory appeal. Plaintiff-appellee, Michael Mehwald ("Son"), Frank Mehwald ("Father"), and Mary Mehwald ("Stepmother") have been involved in multiple legal actions that appear to be motivated by the family's closely held company, ATD. ATD was founded in 1937 by Father's father, along with three other

[1] In *Mehwald v. Atlantic Tool & Die Co.*, 8th Dist. Cuyahoga No. 111692, ATD appeals the trial court's July 1, 2022 journal entry appointing a receiver sua sponte. In *Mehwald v. Atlantic Tool & Die Co.*, 8th Dist. Cuyahoga No. 111901, ATD appeals the trial court's August 22, 2022 journal entry ordering the production of all Technology Concepts & Design Inc. documents. In *Mehwald v. Atlantic Tool & Die Co.*, 8th Dist. Cuyahoga No. 111904, WH appeals the trial court's August 25, 2022 journal entry ordering the production of all documents from WH.

partners, and became solely owned by the Mehwald family in 1958. ATD is a supplier of parts in the auto industry with locations in Ohio, Texas, Costa Rica, China, and Mexico and is "a global 100 Million Dollar Plus company." (Amended Complaint, 05/25/22.) Per the amended complaint, Father is the CEO, president, and majority shareholder of ATD. Son is a minority shareholder and the former executive vice president and director of ATD's board. WH previously represented Father and Stepmother individually and Father in his capacity as a majority shareholder. WH currently represents ATD in another pending lawsuit.

{¶ 3} The underlying lawsuit was filed by Son, in his individual capacity, in March 2020 after he was terminated from ATD in April 2019. In May 2022, Son filed an amended complaint asserting the following claims for relief against ATD, Father, Stepmother, WH, and two members of ATD's board of directors: wrongful termination; retaliation; legal malpractice; breach of fiduciary duty; tortious interference with Son's business relations and economic advantage; fraud in the concealment; constructive fraud; tortious interference with Son's employment relationship; civil conspiracy; promissory estoppel; and vicarious liability/respondeat superior. The amended complaint also included a petition for receivership and a request for the accounting or inspection of corporate books and records, the allegations of which are denied in the answer and counterclaim of ATD, Father, and Stepmother.

{¶ 4} From the onset of Son's lawsuit, the parties engaged in extensive motion practice on various issues and discovery matters. Son propounded

interrogatories, requests for production of documents, and requests for admissions to WH. Son also served a subpoena upon Technology Concepts & Design Inc. ("TCDI") commanding the production of the following: engagement letters, agreements or contracts, and letters, emails, text messages, documents, or electronically stored information ("ESI") relating to communications between TCDI and ATD, Father, Stepmother, and WH; electronic, audio, or video recordings; forensic images, copies, or duplicates of a laptop and cell phone belonging to ATD; and chain of custody forms, notes, reports, spreadsheets, summaries of findings, supporting materials, printouts, file listing inventories, directories, internet history reports, keyword lists, results from keyword searches, file carving utilities, unallocated or slack space, deleted files, native files, metadata, documents, or ESI relating to the analysis of the laptop and cell phone, a certain project, Son, or other specified individuals.

{¶ 5} In response, ATD filed a motion for protective order or, in the alternative, to quash the subpoena issued to TCDI. Therein, ATD claimed that TCDI was "a non-testifying/consulting-expert that was retained by ATD in early 2019 in connection with Cuyahoga County Case No. 18CV908866 * * *, which was dismissed" with prejudice. (Motion, 04/06/22.) ATD further noted that the trial court in Case No. 18CV908866, a prior lawsuit filed by Father and Stepmother against Son and other parties, issued a protective order after "a nearly identical" subpoena was served upon TCDI in that case. Son filed a brief in opposition, and ATD filed a reply in support. A pretrial hearing was then held to discuss a number

of pending matters, including ATD's motion regarding the TCDI subpoena. The trial judge commented that "everybody wants arguing over this business, which is apparently a successful business, but there are some issues about how it's being run or financed." (05/10/22, tr. 8). Following the hearing, the trial court issued a journal entry denying ATD's motion for protective order or to quash the subpoena issued to TCDI.

{¶ 6} About two weeks later, Son filed a motion to compel and show cause for contempt, along with subsequent replies in support, claiming ATD and TCDI failed to comply with the trial court's order by "asserting objections, privilege among them, as the basis for effusing full, complete, and unredacted production of the documents requested." (Motion, 05/23/22.) The trial court subsequently issued an order inviting the parties to file all grievance motions, briefs in opposition, and replies in support; set deadlines; and scheduled a motion hearing.

{¶ 7} ATD filed a brief in opposition and requested clarification of the trial court's order denying ATD's motion for protective order because it was unclear whether the trial court ordered the production of privileged materials to Son or directed ATD to submit the materials with a privilege log to the court for in camera inspection. Nonparty TCDI also filed a brief in opposition. Therein, TCDI explained its role as follows:

> TCDI is a technology and cybersecurity firm specifically retained as an independent consulting-expert for [ATD] pursuant to an Electronic Discovery and Computer Forensics Agreement * * * between the parties. TCDI has no control over disposition of any documents or data under the agreement. TCDI acts merely as a custodial expert. * * * The

> written engagement agreement between TCDI and ATD confirmed and acknowledged that TCDI's consulting-expert services were confidential and privileged, that ATD and its attorneys hold the privilege as to TCDI's consulting-expert engagement, and TCDI would not produce information or documents it held or developed for ATD and its attorneys without their written consent.

(Brief, 06/06/22.)

{¶ 8} Son also filed a motion to compel discovery from WH alleging that WH failed to provide full, accurate, and sufficient discovery responses to which Son was entitled based on his "third-party attorney-client relationship" with WH. (Motion, 06/10/22.) WH filed a brief in opposition asserting that WH never represented Son, rather, "[Son] has at all times been adverse to [WH] relative to the representation of [Father], [Stepmother], and/or ATD." (Brief, 06/22/22.) Son filed a reply in support, and a pretrial hearing was held on June 30, 2022.

{¶ 9} Without motion, notice, or prior argument of counsel, the trial court advised the parties at the beginning of the hearing that a receiver, who appeared via Zoom, was to be appointed. The trial court judge stated, "So I'll tell you, in the best interest of the company here, due to the multiple lawsuits and allegations by all the parties that the other parties are pilfering from the company and/or looting the company, I am appointing a receiver. At this point, I think that is best for the company." (06/30/22, tr. 42.) ATD's counsel immediately objected and requested an evidentiary hearing prior the receiver's appointment, explaining:

> [ATD] is a hundred[-]million[-]dollar company. [Son] no longer works there. It is being run fine. There [are] no problems going on with the company. This will affect their banking. This will affect their international business.

* * *

> [T]here are no facts before you. There are merely allegations. * * * This is a relatively simple case, and it is not necessary under those circumstances, without having some evidence before you, that you appoint this receiver, because what will happen here is this will affect the banks. This will affect their relationship. They deal with foreign companies, mostly in Japan, and by doing all this, you'll be sending a message to the market that this company is in trouble, and it's not. The company is in fine shape right now. It's running just fine.
>
> * * *
>
> Without evidence that this company is somehow being damaged, based only on allegations in the pleadings, not even depositions, just allegations in the pleadings, you are putting a very clear risk — if this hits the business community, this company will have severe damage to it. I think at least we should have the ability to brief this, to present evidence to you. Nothing is happening wrong with this company right now. There is no reason to do this right now.

(06/30/22, tr. 43-46.)

{¶ 10} The trial court rejected ATD's arguments and stated:

> I think it's in the best interest of the company to have a neutral person running this enterprise, which is a healthy enterprise to my knowledge, except for all of the claims everybody is self-dealing. [Son] is not there now, but there is plenty of lawsuits going on. It really doesn't matter. I want somebody independent running this business so that the business doesn't suffer while you all go and file lawsuit after lawsuit after lawsuit and litigate it for years. We'll have him sworn in.

(06/30/22, tr. 47-48.)

{¶ 11} After sua sponte appointing a receiver, the trial court went on to hear the parties' arguments surrounding Son's motion to compel discovery from WH. Counsel for WH maintained:

> There is no privity here. There is no alignment of interest, as you know, by five lawsuits. [Son] and [Stepmother] are clearly at odds. So if you took [Son's counsel's] logic to its extreme, no way would ever a majority shareholder and a corporation be ever able to hire its own lawyer adverse to an employee who happens to be a shareholder, because then that shareholder would be entitled to that attorney/client communication. It's an absurd idea that [Son] can get his opponent's legal files in this situation by claiming some sort of privity.

(06/30/22, tr. 54.)

{¶ 12} Lastly, a discussion was had regarding trial court's order denying ATD's motion for protective order or to quash the subpoena issued to TCDI. Counsel for TCDI explained that "TCDI is an external expert on computer forensics" that provided "direct work product for the attorneys" akin to consulting physician experts "that are educating the lawyers, working with the lawyers, that falls under work[-]product privilege." (06/30/22, tr. 59-60.) It was further noted by ATD's counsel that TCDI did produce items following the trial court's ruling and the only documents not produced were those deemed privileged. Those documents, along with a privilege log, were given to the court for review that same day, June 30, 2022. The trial court advised it would review the documents and privilege log prior to making a ruling regarding its production.

{¶ 13} On July 1, 2022, the day after the hearing, ATD filed an objection to the sua sponte appointment of a receiver. ATD again requested an evidentiary hearing be held, indicating substantial credible evidence would be presented regarding ATD's profitability and financial well-being and the irreparable harm the appointment of a receiver would have on the thriving business. Also on July 1, after

the filing of ATD's objection, the trial court issued a journal entry ordering the sua sponte appointment of a receiver and scheduling a pretrial on July 12, 2022, for the receiver to be sworn in. The journal entry contained no findings of fact or conclusions of law regarding its ruling. The journal entry also denied in part Son's motion to compel discovery from WH, ordered WH to submit a privilege log and all documents alleged to be privileged to the court, and denied, subject to reconsideration, Son's motion to compel and show cause for contempt against ATD and TCDI.

{¶ 14} On July 4, 2022, ATD filed a notice of appeal of the trial court's sua sponte order for the prejudgment appointment of a receiver.[2] ATD also filed a motion to stay the judgment appointing a receiver pending the disposition of the appeal, which was granted on August 22, 2022, over Son's objection and despite Son's subsequent motion requesting the trial court swear in the receiver, which was denied. On July 5, 2022, after ATD's appeal was filed, Son filed a brief in support of the trial court's sua sponte appointment of a receiver over ATD.

{¶ 15} On July 11, 2022, WH submitted its privilege log with documents for in camera review, and in August 2022, the trial court issued two journal entries regarding the production of documents from TCDI and WH. In the first journal entry, issued August 22, 2022, the trial court "order[ed] TCDI to produce all documents reviewed by the court as [Son] shares in the privilege of [ATD] as a

[2] The notice of appeal appears on this court's docket on July 5, 2022.

shareholder." (Journal Entry, 08/22/22.) In the second journal entry, issued August 25, 2022, the trial court stated:

> The court has concluded the in camera inspection of documents withheld by [WH] from discovery production to [Son.] * * * The court finds that because [Son] was in privity with ATD, the attorney-client relationship extends to him as a minority shareholder and he is entitled to any communications, records, or files of ATD from [WH] as if he were ATD. [Son] does not share in privity with [Father] and [Stepmother] with respect to their personal representation by [WH]. And he thus is not entitled to any records relating to [Father] or [Stepmother's] personal legal advice.
>
> In accordance with the foregoing, the court orders all documents from the in camera review and any other documents that would qualify to be produced to [Son] by 09/02/2022.

(Journal Entry, 08/25/22.)

{¶ 16} On September 2, 2022, ATD appealed the journal entry ordering TCDI to produce discovery that amounted to privileged work product. That same day, WH appealed the journal entry ordering the production of privileged attorney-client communications.

{¶ 17} Accordingly, we review the following three assignments of error in this consolidated appeal:

> **Assignment of Error I**: [ATD] contends that the [trial court] erred when it sua sponte ordered the prejudgment appointment of a receiver over [ATD] absent a motion requesting such relief or an evidentiary hearing.
>
> **Assignment of Error II:** [WH] contends that the [trial court] erred when it issued an Order compelling the production of materials that are privileged from disclosure by virtue of the attorney-client privilege.
>
> **Assignment of Error III:** [ATD] contends that the [trial court] erred when it issued an Order compelling the production of materials

that are privileged from disclosure by virtue of the work-product doctrine.

II. Law and Argument

A. On Its Own Motion, Trial Court Appoints Receiver

{¶ 18} In the first assigned error, ATD claims that trial court abused its discretion when it sua sponte ordered the prejudgment appointment of a receiver without notice, briefing, hearing, or consideration of any credible evidence.

{¶ 19} R.C. 2735.01 authorizes courts to appoint receivers in certain limited circumstances:

> (A) A receiver may be appointed by the supreme court or a judge thereof, the court of appeals or a judge thereof in the judge's district, the court of common pleas or a judge thereof in the judge's county, or the probate court, in causes pending in such courts respectively, in the following cases:
>
> > (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject property or a fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of a party whose right to or interest in the property or fund, or the proceeds of the property or fund, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;
> >
> > (2) In an action by a mortgagee, for the foreclosure of the mortgagee's mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, materially injured, diminished in value, or squandered, or that the condition of the mortgage has not been performed, and either of the following applies:
> >
> > > (a) The property is probably insufficient to discharge the mortgage debt.

> (b) The mortgagor has consented in writing to the appointment of a receiver.
>
> (3) To enforce a contractual assignment of rents and leases;
>
> (4) After judgment, to carry the judgment into effect;
>
> (5) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment;
>
> (6) When a corporation, limited liability company, partnership, limited partnership, or other entity has been dissolved, is insolvent, is in imminent danger of insolvency, or has forfeited its corporate, limited liability company, partnership, limited partnership, or other entity rights;
>
> (7) In all other cases in which receivers have been appointed by the usages of equity.

"[T]he appointment of a receiver is a procedure that 'is the exercise of an extraordinary, drastic, and sometimes harsh power which equity possesses and is only to be exercised where the failure to do so would place the petitioning party in danger of suffering irreparable loss or injury'" *Solomon v. Solomon*, 8th Dist. Cuyahoga No. 110415, 2022-Ohio-2262, ¶ 15, quoting *Malloy v. Malloy Color Lab, Inc.*, 63 Ohio App.3d 434, 437, 579 N.E.2d 248 (10th Dist.1989). Typically, the appointment of a receiver occurs after a motion for receivership is filed. "Because the appointment of a receiver is an extraordinary remedy, the party seeking the receivership must show by clear and convincing evidence that the appointment is necessary for the preservation of the complainant's rights." *Equity Ctrs. Dev. Co. v.*

S. Coast Ctrs. Inc., 83 Ohio App.3d 643, 649-650, 615 N.E.2d 662 (1992), citing *Malloy* at 437.

{¶ 20} "The appointment of a receiver necessarily requires dispossessing the owner of his or her property, and therefore, courts have generally required that notice be given before the appointment of a receiver." *Leight v. Osteosymbionics, L.L.C.*, 2017-Ohio-5749, 94 N.E.3d 995, ¶ 31 (8th Dist.). However, a trial court may appoint a receiver without notice "'if the facts and situation warrant such an appointment'" or the delay required to give such notice would result in "irreparable harm." *Id.*, quoting *United States Bank, N.A. v. Gotham King Fee Owner, L.L.C.,* 8th Dist. Cuyahoga No. 98618, 2013-Ohio-1983, ¶ 12, and citing *Mfrs. Life Ins. Co. v. Patterson*, 51 Ohio App.3d 99, 100, 554 N.E.2d 134 (8th Dist.1988). Moreover, "an evidentiary hearing is not required in order to appoint a receiver where the court is sufficiently convinced that the property is in danger from review of the affidavits, attachments to those affidavits, admissions, and the inferences that can rationally be drawn from these materials and from any arguments presented." *Victory White Metal Co. v. N.P. Motel Sys.*, 7th Dist. Mahoning No. 04 MA 245, 2005-Ohio-2706, ¶ 53.

{¶ 21} The decision to appoint a receiver lies within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion. *State ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 73, 573 N.E.2d 62 (1991). An abuse of discretion occurs when a court exercises "its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority." *Johnson v. Abdullah*,

166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463, ¶ 35. In other words, "[a] trial court abuses its discretion when a legal rule entrusts a decision to a judge's discretion and the judge's exercise of that discretion is outside of the legally permissible range of choices." *State v. Hackett*, 164 Ohio St.3d 74, 2020-Ohio-6699, 172 N.E.3d 75, ¶ 19. An abuse of discretion may be found where a trial court "'applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact.'" *State v. McFarland*, 8th Dist. Cuyahoga No. 111390, 2022-Ohio-4638, ¶ 21, quoting *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, 892 N.E.2d 454, ¶ 15 (8th Dist.).

{¶ 22} "A court in exercising its discretion to appoint or refuse to appoint a receiver 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." *Gibbs* at 73; *Poindexter v. Grantham*, 8th Dist. Cuyahoga No. 95413, 2011-Ohio-2915 (finding it "imperative" that the trial court consider the *Gibbs* factors "[b]ecause appointment of a receiver is an extraordinary measure"). "Appellate review of an order appointing a receiver is confined to 'the purpose of determining whether there is clear and convincing evidence tending to prove the facts essential to sustain the order.'" *Neece v. Natl. Premier Protective Servs.*, 8th Dist. Cuyahoga No. 89643, 2007-Ohio-5960, ¶ 11, quoting *Malloy* at 436. Although the trial court is not obligated by statute to conduct a hearing or make findings of fact or conclusions of law, this court has held that the

trial court abuses its discretion in failing to (1) consider evidentiary material prior to appointing a receiver and (2) set forth its rationale in making its decision. *Poindexter* at ¶ 16; *Neece* at ¶ 12.

{¶ 23} Here, the trial court sua sponte appointed a receiver prior to judgment and absent any receivership motions or briefings by the parties, notices to the parties, or evidentiary hearings. ATD argues that there was no evidence to support that any party would suffer irreparable harm in the absence of receivership or that ATD was at risk of insolvency or material injury. ATD further argues that the trial court did not provide the requisite notice, hear any testimony, indicate what evidence it relied upon, or make any findings in its journal entry. In response, Son claims that clear, convincing, and sufficient evidence was at the trial court's disposal to convince it that the appointment of a receiver was not only necessary, but in the best interest of ATD, its employees, shareholders, and customers.

{¶ 24} Our review of the record indicates a petition for receivership was first raised in Son's amended complaint and the allegations contained therein were denied by ATD, Father, and Stepmother in a responsive pleading. Thereafter, neither party filed a motion requesting the appointment of a receiver or requested a hearing on the matter. However, unbeknownst to the parties when they appeared at the June 2022 pretrial hearing, which was originally scheduled to discuss outstanding motions and unrelated issues, the trial court appointed a receiver on its own motion. Neither party was notified that the issue of receivership was to be discussed and no evidence was presented. Nor were the parties in this highly

contested case given an opportunity to brief or otherwise present arguments and evidence directly related to the appointment of a receiver under R.C. 2735.01. *Compare Haber Polk Kabat, L.L.P. v. Condominiums at Stonebridge Owners' Assn.*, 2017-Ohio-8069, 98 N.E.3d 1172 (8th Dist.) (sua sponte appointment of receiver was not an abuse of discretion where the facts and circumstances supporting appointment of a receiver were established by the admitted facts and circumstances of the case); *Pal v. Strachan*, 8th Dist. Cuyahoga No. 91808, 2009-Ohio-730 (sua sponte appointment of receiver was not an abuse of discretion where the parties fully briefed and submitted evidence regarding whether a company should cease operations and be dissolved).

{¶ 25} The transcript from the June 2022 hearing reveals that the trial court's belief that the sua sponte appointment of a receiver was "in the best interest of the company" was premised on "claims that everybody is self-dealing" and the filing of "plenty of lawsuits" amongst the parties. However, ATD argued both at the June 2022 hearing and in its objection that the sua sponte appointment of a receiver would negatively impact ATD's international business relations and severely damage its value. Even so, the trial court subsequently issued a journal entry appointing a receiver on its own motion. In its journal entry, the trial court did not mention or relate any of its findings of fact from the hearing to the conclusion that a receiver was necessary under R.C. 2735.01. Nor does the record or the journal entry contain any reference to (1) the evidence that the trial court considered in

making its ruling and (2) the section of R.C. 2735.01 that it determined to be relevant in this case.

{¶ 26} Our independent review of the record in light of R.C. 2735.01, which authorizes courts to appoint receivers in certain limited circumstances, does not provide any support for the trial court's findings or ruling. From the outset, we note that five of the seven circumstances delineated in R.C. 2735.01 are inapplicable to the underlying action. This is not an action by a mortgagee pursuant to R.C. 2735.01(A)(2), and Son's lawsuit does not involve the contractual assignment of rents and leases as prescribed by R.C. 2735.01(A)(3). Nor did the trial court's appointment of receiver, on its own motion, occur after judgment or otherwise in accordance with R.C. 2735.01(A)(4) and (5). Moreover, we find no evidence within the record that ATD is presently insolvent, in imminent danger of insolvency, or forfeited its rights as required by R.C. 2735.01(A)(6). In fact, the record reveals that the trial court acknowledged that ATD was "apparently a successful business" and "a healthy enterprise." (05/10/20, tr. 8; 06/30/22, tr. 47.) Indeed, both parties agree that ATD is "a global 100 Million Dollar Plus company." (Amended Complaint, 05/25/22.)

{¶ 27} Son argues on appeal that R.C. 2735.01(A)(1) and (7) are the source of the trial court's authority to appoint a receiver in this case. R.C. 2735.01(A)(1) provides that a receiver may be appointed "when it is shown that the property or fund is in danger of being lost, removed, or materially injured" based on certain statuses of the parties, including "partners or others jointly owning or interested in

any property or fund" and "a party whose right to or interest in the property or fund, or the proceeds of the property or fund, is probable * * *." Based on our reading of the plain language of the statute and our analysis in the following assignments of error, we decline to find that minority shareholders of close corporations are "partners or others jointly owning or interested in any property or fund." Without determining whether Son is "a party whose right to or interest in the property or fund, or the proceeds of the property or fund, is probable" based on the claims raised in his amended complaint, we find there is no clear and convincing evidence within the record to suggest ATD is currently in danger of "being lost, removed, or materially injured." The record is devoid of any evidence of ATD's current financial status, and any claims of self-dealing are based on stale affidavits from 2019. At this stage, such claims are mere unsubstantiated allegations. Upon further review, we note that the parties were involved in half-a-dozen other cases in the court of common pleas; however, the majority of them were dismissed at the time of the hearing.

{¶ 28} R.C. 2735.01(A)(7) is a catchall provision that authorizes the court to appoint a receiver "[i]n all other cases in which receivers have been appointed by the usages of equity." "'Equity' encompasses concepts such as 'fairness; impartiality; evenhanded dealing' and '[t]he body of principles constituting what is fair and right.'" *Haber Polk Kabat, L.L.P.,* at ¶ 27, citing *Black's Law Dictionary* 656 (10th Ed.2014), and *TD Ltd., LLC v. Dudley*, 12th Dist. Butler No. CA2014-01-009, 2014-Ohio-3996, ¶ 28. While few cases contemplate R.C. 2735.01(A)(7), this court has

upheld the equitable appointment of receiver in domestic relations cases to maintain and administer marital property during pendency of a divorce. *Jardine v. Jardine*, 8th Dist. Cuyahoga No. 110670, 2022-Ohio-1754, ¶ 13-14. This court has also found that a suit for an accounting is an equitable proceeding that supports the appointment of a receiver under R.C. 2735.01(A)(7). *Haber Polk Kabat, L.L.P.,* at ¶ 27. Son cites no authority to support his contention that the appointment of a receiver over "a global 100 Million Dollar Plus company" that is "apparently a successful business" and "a healthy enterprise" is equitable at this stage of the litigation or appropriate in an action largely based on wrongful termination and legal malpractice claims. As discussed above, the record does not contain any evidence of ATD's current financial status and Son's allegations regarding the dissipation of ATD's assets are based entirely on stale affidavits. Absent clear and convincing evidence, we decline to find that usages of equity required the appointment of a receiver over ATD at the present time. *See Solomon*, 8th Dist. Cuyahoga No. 110415, 2022-Ohio-2262, at ¶ 28-29 (under R.C. 2735.01(A)(7), a court may appoint a receiver to prevent the concealment or dissipation of assets, but allegations absent evidence are insufficient; clear and convincing evidence must be presented that receivership is a necessary equitable remedy).

{¶ 29} Based on our review of the record before us, we cannot say that the circumstances warranted the trial court's appointment of a receiver without (1) the parties briefing the issue and addressing whether an appointment over ATD was necessary, (2) the trial court holding a hearing where arguments and evidence could

be presented, or (3) the trial court indicating what evidence it considered and which of the limited circumstance prescribed by R.C. 2735.01 were applicable based on its findings of fact. In light of the foregoing, we find that the trial court abused its discretion by appointing a receiver, sustain the first assignment of error, and vacate the July 1, 2022 order appointing a receiver.

B. Attorney-Client Privilege

{¶ 30} In the second assignment of error, WH, a law firm and the individual attorneys who previously represented Father and Stepmother and currently represent ATD, claims the trial court erred when it issued an order compelling WH to produce materials to Son protected by ATD's attorney-client privilege.

{¶ 31} Civ.R. 26(B)(1) provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case * * *." At issue in this assignment of error is the discovery of alleged protected attorney-client privileged materials. R.C. 2317.02 establishes the parameters of privileged communication. The statute provides that an attorney shall not testify regarding "a communication made to the attorney by a client in that relation or concerning the attorney's advice to a client" unless any of four scenarios occur: (1) "express consent" is received from the client; (2) "the client voluntarily reveals the substance of attorney-client communications in a nonprivileged context"; (3) the client is deemed to have waived any testimonial privilege according to a statute concerning the reporting of child abuse or neglect; or (4) the "communications made by the client to the attorney or by the attorney to

the client * * * are related to the attorney's aiding or furthering an ongoing or future commission of bad faith by the client, if the party seeking disclosure of the communication has made a prima-facie showing of bad faith, fraud, or criminal misconduct by the client." R.C. 2317.02(A)(1)-(2). As the Ohio Supreme Court recognized in *Squire, Sanders & Dempsey, L.L.P. v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 2010-Ohio-4469, 937 N.E.2d 533:

> "The attorney-client privilege is one of the oldest recognized privileges for confidential communications." *Swidler & Berlin v. United States* (1998), 524 U.S. 399, 403, 118 S.Ct. 2081, 141 L.Ed.2d 379. As we explained in *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 105 Ohio St.3d 261, 2005-Ohio-1508, 824 N.E.2d 990, "'Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves the public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client.' *Upjohn Co. v. United States* (1981), 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed.2d 584; *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 155 Ohio App.3d 653, 2003-Ohio-7257, 802 N.E.2d 732, ¶ 7."

Id. at ¶ 16.

> **{¶ 32}** The attorney-client privilege arises
>
> "'(1) [w]here legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection is waived.'"

State ex rel. Lanham v. DeWine, 135 Ohio St.3d 191, 2013-Ohio-199, 985 N.E.2d 467, ¶ 27, quoting *Leslie* at ¶ 21, quoting *Reed v. Baxter*, 134 F.3d 351, 355-356 (6th Cir.1998); *see Perfection Corp. v. Travelers Cas. & Sur.*, 153 Ohio App.3d 28, 2003-Ohio-3358, 790 N.E.2d 817, ¶ 12 (8th Dist.). R.C. 2317.02(A) provides the exclusive

means by which privileged attorney-client communications can be waived by the client. *State v. McDermott*, 72 Ohio St.3d 570, 651 N.E.2d 985 (1995). "Although a lawyer may assert the privilege on behalf of a client, the privilege belongs to the client, and unless waived or an exception to the privilege applies, 'it offers full protection from discovery.'" *Pales v. Fedor*, 2018-Ohio-2056, 113 N.E.3d 1019, ¶ 21 (8th Dist.), quoting *Burnham v. Cleveland Clinic*, 151 Ohio St.3d 356, 2016-Ohio-8000, 89 N.E.3d 536, ¶ 17.

{¶ 33} But the privilege is not absolute. *Moskovitz v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638, 660, 635 N.E.2d 331 (1994). "That is to say, the mere relation of attorney and client does not raise a presumption of confidentiality of all communications made between them." *Id.* at 660-661, citing 8 Wigmore, Evidence (McNaughton Rev.1961), Section 2311. The privilege "applies only where necessary to achieve its purpose and protects only those communications necessary to obtain legal advice." *Perfection Corp.* at ¶ 26. While discovery orders are generally reviewed under an abuse-of-discretion standard, "whether the information sought is confidential and privileged from disclosure is a question of law that is reviewed de novo" and "[w]hen a court's judgment is based on an erroneous interpretation of the law, an abuse-of-discretion standard is not appropriate." *Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St.3d 181, 2009-Ohio-2496, 909 N.E.2d 1237, ¶ 13.

{¶ 34} Our review of the record indicates that it is undisputed that Son was not a direct client of WH and privilege has not been waived by ATD. Instead, the trial court found that "because [Son] was in privity with ATD, the attorney-client

relationship extends to him as a minority shareholder and he is entitled to any communications, records, or files of ATD from [WH] as if he were ATD." (Journal Entry, 08/25/22). The trial court also found that "[Son] does not share in privity with [Father] and [Stepmother] with respect to their personal representation by [WH]."

{¶ 35} WH argues that the trial court improperly determined that Son was in privity with ATD and, thus, shared in ATD's privilege by virtue of his status as a minority shareholder. Son argues that his privity with ATD "establishes the substitute for the attorney-client relationship, thus entitling [him] to the documents, records, communications, etc. requested." Ultimately, WH contends that Son's argument and the trial court's journal entry "erroneously conflate[-] privity with privilege" explaining that "privity relates to a non-client's standing to assert claims against a third-party attorney, while privilege protects confidential attorney-client communications from disclosure to third parties."

{¶ 36} In our de novo review, we note that both Son and the trial court heavily rely on Ohio caselaw concerning third-party legal malpractice causes of action to establish Son's shared privilege with ATD. For example, the trial court cited *LeRoy v. Allen, Yurasek & Merklin*, 114 Ohio St.3d 323, 2007-Ohio-3608, 872 N.E.2d 254, ¶ 7, for the proposition that "a third party may bring suit against an attorney for whom he was not a client if 'the third party is in privity with the client for whom the legal services were performed, or [if] the attorney acts with malice.'" (Journal Entry, 08/25/22.) However, the legal standard establishing a third party's

right to sue an attorney does not entitle that third party to privileged materials by way of "a substitute for the traditional attorney-client relationship" as alleged in Son's brief. Since this interlocutory appeal does not contemplate whether Son has standing to sue WH, we decline to address the trial court's findings and Son's arguments based in legal malpractice law. Rather, we review only whether ATD and WH's attorney-client relationship extends to Son because he is a minority shareholder in a close corporation.

{¶ 37} Son relies on *Arpadi v. First Msp Corp.*, 68 Ohio St.3d 453, 628 N.E.2d 1335 (1994), and *Crosby v. Beam*, 47 Ohio St.3d 105, 548 N.E.2d 217 (1989), to support the trial court's ruling in this appeal. In *Arpadi*, the Ohio Supreme Court found that "in a limited partnership, the general partner owes a fiduciary duty to the limited partners of the enterprise" and "those persons to whom a fiduciary duty is owed are in privity with the fiduciary such that an attorney-client relationship established with the fiduciary extends to those in privity therewith regarding matters to which the fiduciary duty arises" *Id.* at 458. In so finding, the *Arpadi* court held that "the duty owed by an attorney to a partnership extends to the individual partners thereof * * *." *Id.*

{¶ 38} In *Crosby*, the Ohio Supreme Court held that "claims of a breach of fiduciary duty alleged by minority shareholders against shareholders who control a majority of shares in a close corporation, and use their control to deprive minority shareholders of the benefits of their investments, may be brought as individual or direct actions * * *." *Id.* at 110. In dicta, the *Crosby* Court noted:

> Close corporations bear a striking resemblance to a partnership. In essence, the ownership of a close corporation is limited to a small number of people who are dependent on each other for the enterprise to succeed. Just like a partnership, the relationship between the shareholders must be one of trust, confidence and loyalty if the close corporation is to thrive. While a close corporation provides the same benefits as do other corporations, such as limited liability and perpetuity, the close corporation structure also gives majority or controlling shareholders opportunities to oppress minority shareholders.

Id. at 107-108. In essence, Son combines *Crosby* and *Apardi* and maintains that, because Ohio courts have recognized that limited partnerships are similar to close corporations, the *Arpadi* rule extending the attorney-client relationship to partners in a limited partnership also applies to close corporations and their minority shareholders.

{¶ 39} However, Ohio courts have declined to extend the attorney-client relationship to minority shareholders in close corporations and we also decline to do so. *See Fornshell v. Roetzel & Andress, L.P.A.*, 8th Dist. Cuyahoga Nos. 92132 and 92161, 2009-Ohio-2728, ¶ 54 (finding the *Arpadi* rule was not applied to corporations and was abrogated by statutory changes); *LeRoy* at ¶ 30 (declining to address whether the court of appeals erroneously used *Crosby*'s discussion of close corporations to extend *Arpadi*'s holding regarding fiduciary duties in limited partnerships to also cover close corporations)*; Thompson v. Karr*, 6th Cir. No. 98-3544, 1999 U.S. App. LEXIS 16846, 25-26 (July 15, 1999) (noting that, in the underlying matter, the Northern District of Ohio declined to extend the rule of *Arpadi* to the attorney-client relationship in close corporations and finding "it is the

place of Ohio courts, if not the Ohio legislature * * * to extend the fiduciary and professional duties of attorneys of close corporations to the corporation's minority shareholders"). Rather, "Ohio law has consistently held that 'an attorney's representation of a corporation does not make that attorney counsel to the corporate officers and directors as individuals.'" *Stuffleben v. Cowden*, 8th Dist. Cuyahoga No. 82537, 2003-Ohio-6334, ¶ 26 (refusing to extend general holdings applicable to disqualification of counsel in the context of a shareholder, director, or officer asserting a right to privileged information, especially when its assertion may be adverse to the close corporation that undoubtedly holds the privilege), citing *Nilavar v. Mercy Health System W. Ohio*, 143 F.Supp.2d 909, 913 (S.D. Ohio 2001), and *Hile v. Firmin, Sprague & Huffman Co., L.P.A.*, 71 Ohio App.3d 838, 595 N.E.2d 1023 (3d Dist.1991); R.C. 1701.92 ("Absent an express agreement to the contrary, a person * * * performing services for a domestic or foreign corporation * * * is not in privity with the shareholders * * * of the corporation by reason of * * * performing services for the corporation.").

{¶ 40} Accordingly, we find that the trial court erred by extending the attorney-client relationship to Son on the basis of privity, entitling him to any and all communications, records, or files, privileged or otherwise, between WH and ATD. Therefore, we sustain the second assignment of error and vacate the August 25, 2022 journal entry ordering the production of all WH documents to Son.

C. Work-Product Doctrine

{¶ 41} In the third assignment of error, ATD claims that the trial court abused its discretion when it ordered the production of work-product-privileged materials from TCDI, a forensic company ATD claims was retained as a consulting-expert by WH on behalf of ATD.

1. Jurisdiction

{¶ 42} As an initial matter, we must address Son's argument that this court lacks jurisdiction to consider ATD's third assignment of error.

{¶ 43} Our appellate jurisdiction is limited to reviewing judgments and orders that are final. "If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and the appeal must be dismissed." *Assn. of Cleveland Firefighters, # 93 v. Campbell*, 8th Dist. Cuyahoga No. 84148, 2005-Ohio-1841, ¶ 6, citing *McKenzie v. Payne*, 8th Dist. Cuyahoga No. 83610, 2004-Ohio-2341. For a provisional remedy, such as the discovery of privileged or protected materials, to constitute a final appealable order, we apply the three-part test set forth in *Davis v. Yuspeh*, 8th Dist. Cuyahoga No. 111575, 2023-Ohio-219. That test requires "(1) a 'colorable claim' that the order at issue requires the production of material covered by privilege; (2) a showing that the order at issue determines the action and prevents a judgment favorable to the appellant on the issue; and (3) a demonstration that review after final judgment does not constitute an adequate remedy." *Id.* at ¶ 20, citing *Blue Technologies Smart Solutions, LLC v. Ohio Collaborative Learning Solutions, Inc.*, 8th Dist. Cuyahoga No. 110501, 2022-Ohio-1935, ¶ 26, 27, 31, and 32; *see also Burnham*, 151 Ohio St.3d 356, 2016-Ohio-

8000, 89 N.E.3d 536, at ¶ 20, citing R.C. 2505.02(B)(4)(a) and (b). "[E]ach case requires an individualized analysis where an appellant must demonstrate that the factors of the test for a final order regarding a provisional remedy found in R.C. 2505.02(B)(4) are satisfied." *Blue Technologies* at ¶ 26, citing *State v. Glenn*, 165 Ohio St.3d 432, 2021-Ohio-3369, 179 N.E.3d 1205, ¶ 28, and *Smith v. Chen*, 142 Ohio St.3d 411, 2015-Ohio-1480, 31 N.E.3d 633, ¶ 8. "A party is not required to conclusively prove the existence of privileged or protected information as a precondition to appellate review under R.C. 2505.02(B)(4)." *DMS Constr. Ents., L.L.C. v. Homick*, 8th Dist. Cuyahoga No. 109343, 2020-Ohio-4919, ¶ 43, citing *Byrd v. U.S. Xpress, Inc.*, 2014-Ohio-5733, 26 N.E.3d 858, ¶ 12 (1st Dist.).

{¶ 44} Here, Son argues that ATD failed to establish why an immediate appeal of the order compelling TCDI materials is necessary. ATD argues that the trial court's TCDI journal entry is a final appealable order because a later appeal could not meaningfully or effectively remedy the harm and prejudice inherently created by the trial court finding that Son "shares in the privilege" of ATD.

{¶ 45} We begin our review of Son's jurisdictional argument by determining whether ATD presented a "colorable claim" that the journal entry ordering the disclosure of TCDI documents required the production of materials covered by privilege. Here, ATD claims that "TCDI was retained as an agent of WH and on behalf of ATD in connection with Case No. CV-18-908866, *Frank Mehald v. Michael Mehwald*." Despite arguments to the contrary, Son also recognized that "TCDI was retained by ATD in early 2019 in related litigation, wherein [Father] filed suit against

[Son]." (Opposition, 04/19/22.) TCDI's counsel further explained that "TCDI is an external expert on computer forensics" providing "direct work product for the attorneys" akin to consulting physician experts. (06/30/22, tr. 59-60.) Consequently, ATD presents a "colorable claim" that the order requires the production of documents covered by work-product privilege.

{¶ 46} Next, we must determine whether ATD demonstrated that the order commanding production of the TCDI documents determines the action and prevents a judgment favorable to the appellant on the issue. The record reveals that TCDI produced nonprivileged materials to Son and ATD subsequently submitted a privilege log with purportedly work-product-privileged documents to the court for in camera inspection. After review, the trial court ordered TCDI to produce all of the documents to Son on the basis that he "shares in the privilege." Therefore, the order "determines the privilege issue" because the trial court ordered the disclosure of documents and the matter is not subject to further order or in camera inspection.

{¶ 47} Finally, we consider whether ATD established that review following final judgment constitutes an inadequate remedy. Our review of the record and this consolidated appeal reveals that Son has attempted to invade ATD and WH's privilege on numerous fronts. The record further reveals that the trial court is persuaded by Son's argument, that he shares these privileges as a minority shareholder, despite its erroneous foundation in law and continues to order the disclosure of documents. Therefore, we agree with ATD and find we have jurisdiction to review the appeal — a postjudgment appeal would be truly

meaningless and ineffective because the trial court's basis for production, Son's shared privilege with ATD, goes beyond the disclosure of information in this instance and "produces a chilling effect by providing [Son] with continued [means of] improperly invad[ing] ATD and [WH's] privileges."

2. Consulting-Expert Privilege and R.C. 1701.37

{¶ 48} We now consider the merits of ATD's the third assignment of error: whether the trial court erred when it issued an order compelling the production of TCDI materials, which ATD claims to be privileged consulting-expert work product.

{¶ 49} This court provided a thorough analysis of the work-product doctrine and the consulting-expert privilege in *Homick*:

> The work[-]product doctrine precludes discovery of the mental impressions, conclusions, opinions, strategies and legal theories, both tangible and intangible, generated or commissioned by counsel in anticipation of litigation or preparation for trial. *Squire, Sanders & Dempsey, L.L.P., v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 2010-Ohio-4469, 937 N.E.2d 533, ¶ 56-60. The consulting-expert "privilege" is a subset of the work[-]product doctrine. An expert consultant's work product — the expert consultant's knowledge of the facts, opinions and conclusions — are part of the work product of the attorney who retained the expert. As a part of its limits on discovery, Rule 26(B) sets forth protections from discovery for both attorney work product and the work product of experts. "In Ohio, protection for an attorney's work product is codified in Civ.R. 26, which notably recognizes work product as separate from privileged matters." *Burnham v. Cleveland Clinic*, 151 Ohio St.3d 356, 2016-Ohio-8000, 89 N.E.3d 536, ¶ 18.

Id., 8th Dist. Cuyahoga No. 109343, 2020-Ohio-4919, at ¶ 29. This court further explained that, ultimately, the purpose of the consulting-expert privilege within the work-product doctrine is "'to prevent the "unfairness that could result from allowing an opposing party to reap the benefits of another party's efforts and expense."'" *Id.*

at 35, quoting *Nunley v. Nationwide Children's Hosp.*, 10th Dist. Franklin No. 13AP-425, 2013-Ohio-5330, ¶ 16, quoting *Plymovent Corp. v. Air Technology Solutions, Inc.*, 243 F.R.D. 139 (D.N.J. 2007).

{¶ 50} "Unlike the attorney-client privilege, which belongs to the client and can only be waived by the client, work product protection belongs to the attorney and an attorney's actions can waive work product protection, including by voluntary disclosure of information to an adverse party." (Citations omitted.) *Id.* at ¶ 30. Work product protection may also be removed by an opposing party's demonstration of sufficient need for protected materials or information pursuant to Civ.R. 26(B). *Id.* at ¶ 31.

{¶ 51} While this court typically reviews the assertion of an alleged privilege de novo, the Ohio Supreme Court explained that "the determination of whether materials are protected by the work-product doctrine and the determination of 'good cause' under Civ.R. 26(B)(3), are 'discretionary determinations to be made by the trial court.'" *Sutton v. Stevens Painton Corp.*, 193 Ohio App.3d 68, 2011-Ohio-841, 951 N.E.2d 91, ¶ 12 (8th Dist.), quoting *State ex rel. Greater Cleveland Regional Transit Auth. v. Guzzo*, 6 Ohio St.3d 270, 271, 452 N.E.2d 1314 (1983). Discretionary decisions are reviewed under an abuse-of-discretion standard of review. *Id.*

{¶ 52} Here, Son does not claim WH or ATD waived its privilege. Nor did the trial court find that Son demonstrated "good cause" for the production of materials protected by the work-product doctrine. Rather, the trial court "order[ed] TCDI to produce all documents reviewed by the court as [Son] shares in the privilege

of [ATD] as a shareholder." (Journal Entry, 08/22/22.) ATD argues that the TCDI records sought by Son are not "corporate records" in the context of R.C. 1701.37, but rather work product protected by "the consulting-expert privilege." ATD further argues that Son, as a minority shareholder of ATD, does not share in the privileges of ATD or WH and can only discover materials protected by the work-product privilege upon a showing of good cause pursuant to Civ.R. 26. Son argues that the TCDI documents are not work product; he is entitled to inspect corporate records as a minority shareholder pursuant to R.C. 1701.37; and good cause for production of the materials exists, although Son does not tell us specifically why that is.

{¶ 53} As discussed in our analysis of the second assignment of error, we decline to find that WH or ATD's privilege extends to Son based on his status as a minority shareholder in a close corporation. However, in order to complete our analysis, we must also address whether Son is statutorily entitled to the TCDI materials pursuant to R.C. 1701.37. R.C. 1701.37 relates to a corporation's keeping of books and records of account, minutes of proceedings, and records of its shareholders. R.C. 1701.37(C) provides:

> Any shareholder of the corporation, upon written demand stating the specific purpose thereof, shall have the right to examine in person or by agent or attorney at any reasonable time and for any reasonable and proper purpose, the articles of the corporation, its regulations, its books and records of account, minutes, and records of shareholders aforesaid, and voting trust agreements, if any, on file with the corporation, and to make copies or extracts thereof. Any written demand by an acquiring person to examine the records of shareholders for the purpose of communicating with shareholders of the issuing public corporation in connection with a meeting of shareholders called pursuant to section 1701.831 of the Revised Code shall be deemed to have been made by a

> shareholder of the issuing public corporation for a reasonable and proper purpose.

Notably, R.C. 1701.37(A) requires that records of a corporation's shareholders must "show[ ] their names and addresses and the number and class of shares issued or transferred of record to or by them from time to time." Thus, the plain language of the statute suggests that records contemplated therein are corporate records relating to accounting, minutes, the issuance or transfer of shares, and voting trust agreements.

{¶ 54} In his subpoena, which sought materials from TCDI as opposed to corporate records "on file with the corporation" and failed to state a "specific purpose" as required by R.C. 1701.37(C), Son requested engagement letters, agreements or contracts, and letters, emails, text messages, documents, or electronically stored information ("ESI") relating to communications between TCDI and ATD, Father, Stepmother, and WH; electronic, audio, or video recordings; forensic images, copies, or duplicates of laptop and cell phone belonging to ATD; and chain of custody forms, notes, reports, spreadsheets, summaries of findings, supporting materials, printouts, file listing inventories, directories, internet history reports, keyword lists, results from keyword searches, file carving utilities, unallocated or slack space, deleted files, native files, metadata, documents, or ESI relating to the analysis of the laptop and cell phone, a certain project, Son, or other specified individuals. It is unclear how any, if not all, of these requests fit into the categories of records contemplated by R.C. 1701.37. Son does not cite any authority

suggesting R.C. 1701.37 should be extended beyond the enumerated categories contained therein, especially to include materials and communications protected by attorney-client or work-product privileges.[3] Therefore, we decline to find that Son properly requested records pursuant to R.C. 1701.37 or was otherwise statutorily entitled to any of the documents requested falling outside of the specific categories of records contemplated therein.

{¶ 55} Accordingly, we find that the trial court abused its discretion and exercised its judgment in an unwarranted way when it ordered the production of all TCDI documents that ATD claimed to be privileged on the basis of Son's status as a minority shareholder alone. Based on our review of the record, caselaw, and statutes, we find no support for the trial court's ruling that Son is entitled to privileged documents because he shares in ATD and WH's privilege as a minority shareholder. Consequently, we sustain the third assignment of error and vacate the August 22, 2022 journal entry ordering the production of all TCDI documents to Son.

---

[3] Son claims *No-Burn, Inc. v. Murati*, 9th Dist. Summit No. 25495, 2011-Ohio-5635, supports his position that he is entitled to the TCDI documents ATD claims to be protected by work-product privilege. However, the *No-Burn* Court declined to address the meaning and scope of the phrase "books and records of account" because the issue was not properly raised before the trial court. *Id.* at ¶ 8. The court went on to find that the categories of corporate information requested were not overly broad for the purpose of "purely financially-motivated concerns" because the records "would reasonably allow a shareholder to ascertain the general condition and state of affairs of the business in a manner calculated to allow him to intelligently ascertain the status of his investment." *Id.* at ¶ 24. Therefore, we agree with ATD and find that *No-Burn* provides no authority for Son's claim that R.C. 1701.37 contemplates the inclusion privileged materials beyond the specific categories of corporate records enumerated therein.

III. Conclusion

{¶ 56} After reviewing the record before us and analyzing the unique facts and circumstances of this case, we conclude that the trial court (1) abused its discretion by appointing a receiver; (2) erred in extending the attorney-client relationship to Son on the basis of privity, entitling him to any and all communications, records, or files, privileged or otherwise, between ATD and its attorney, WH; and (3) abused its discretion by ordering the disclosure of all TCDI documents that ATD claimed to be protected by the work-product doctrine and consulting-expert privilege on the basis that Son shares in those privileges as a minority shareholder.

{¶ 57} Accordingly, the trial court's July 1, 2022 journal entry appointing a receiver, August 25, 2022 journal entry ordering the production of all WH materials, and August 22, 2022 journal entry ordering the production of all TCDI materials are vacated and the matter is remanded for further proceedings.

It is ordered that appellants recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

_____
MARY J. BOYLE, JUDGE

MICHELLE J. SHEEHAN, P.J., and
EMANUELLA D. GROVES, J., CONCUR