

OHIO COURT OF APPEALS, SIXTH APPELLATE DISTRICT, OTTAWA
COUNTY

Harbor Island Assn., Inc. v. Stecks Buckeye Storage Units, L.L.C.

2021 Ohio 2969 (Ohio Ct. App. 2021) · No. OT-20-012 · Decided August 27, 2021

SUMMARY

The Sixth District Court of Appeals of Ohio reversed the Ottawa County Court of Common Pleas' appointment of a receiver without a hearing in a dispute concerning replacement and cost allocation for the Harbor Island bridge. The appellate court held that unresolved claims remained pending and that the trial court failed to provide adequate notice and an opportunity to be heard. The case was remanded for further proceedings.

CASE DETAILS

COURT	Ohio Court of Appeals, Sixth Appellate District, Ottawa County
WRITING FOR THE COURT	Thomas J. Osowik; Christine E. Mayle; Myron C. Duhart
JURISDICTION	Ohio
DECIDED	August 27, 2021
DOCKET	OT-20-012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed the Ottawa County Court of Common Pleas' order appointing a receiver without a hearing during a pending action concerning the repair or replacement of the Harbor Island bridge.
STANDARD OF REVIEW	A trial court's decision to appoint a receiver is reviewed for abuse of discretion. An abuse of discretion is more than an error of law or judgment and implies an unreasonable, arbitrary, or unconscionable attitude.
PRECEDENTIAL VALUE	precedential
PARTIES	Stecks Buckeye Storage Units, LLC, Rick J. Stechschulte, et al. v. Harbor Island Association, Inc.

TOPICS

appellate procedure

civil procedure

standard of review

remedies

real estate

PRACTICE AREAS

civil procedure

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real estate

remedies

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QUESTIONS PRESENTED

1. Whether the trial court could appoint a receiver under R.C. 2735.01(A)(4) before entry of a final judgment when claims remained pending.
2. Whether the trial court violated procedural due process by appointing a receiver without notice, a hearing, or an opportunity for appellants to respond.
3. Whether the trial court abused its discretion by appointing a receiver without clear and convincing evidence of the need for a receiver and by resolving the Association's authority to replace the bridge without notice.

HOLDINGS

1. Because Counts Three, Four, and Five remained pending, the January 2020 judgment did not dispose of the whole merits of the action or a separate and distinct branch of it and therefore was not a final, appealable order under R.C. 2505.02(B)(1).
2. An order appointing a receiver is a final order affecting a substantial right in a special proceeding, but when additional claims remain pending it is appealable only if the trial court makes an express Civ.R. 54(B) determination that there is no just reason for delay.
3. A receiver may not lawfully be appointed without notice unless the delay required to give notice would result in irreparable loss. The trial court abused its discretion by granting the emergency motion without a hearing or an opportunity for appellants to respond.
4. The trial court erred by finding that the Association had the right to replace the bridge when that disputed claim had not been presented for decision and appellants had no opportunity to respond.

KEY QUOTATIONS

*“The appointment of a receiver * * *, cannot be lawfully made without notice, unless the delay required to give such notice will result in irreparable loss.” (¶ 27)*

“The Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution, require that every party to an action must be afforded “a reasonable opportunity to be heard after a reasonable notice of such hearing.”” (¶ 33)

“Accordingly, we find that the trial court abused its discretion in granting the emergency motion for an appointment of a receiver without a hearing.” (¶ 35)

FACTUAL BACKGROUND

The Harbor Island bridge, located on property owned by Stecks Buckeye Storage Units, was the sole means of ingress and egress to Harbor Island and was alleged to be near the end of its useful life. The Association sought declarations concerning the parties' obligations and authority to replace the bridge, allocation of replacement costs, and appointment of a receiver. Although the trial court found replacement necessary and apportioned

costs, it appointed a receiver without resolving the disputed authority-to-replace claim and without giving appellants notice or an opportunity to respond.

PROCEDURAL HISTORY

Harbor Island Association sued Stecks Buckeye Storage Units, LLC, Rick J. Stechschulte, and other defendants for declaratory relief, a mandatory injunction, money damages, and appointment of a receiver concerning a bridge located on Stecks' property. The trial court granted partial summary judgment regarding the landowners' equitable obligation to contribute to bridge costs, later determined after an evidentiary hearing that replacement was necessary and apportioned costs, and then appointed a receiver without notice or a hearing while claims concerning authority to replace the bridge and payment scheduling remained pending. The appellate court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for proceedings consistent with the appellate decision, including proceedings that comply with notice, hearing, and due-process requirements.

CASES CITED

- State ex rel. O'Malley v. Russo, 156 Ohio St.3d 548, 2019-Ohio-1698, 130 N.E.3d 256, ¶¶ 17-18
- Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio, 46 Ohio St.3d 147, 153, 545 N.E.2d 1260 (1989)
- State ex rel. Celebrezze v. Gibbs, 60 Ohio St.3d 69, 73, 573 N.E.2d 62 (1991)
- Blakemore v. Blakemore, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983)
- State v. Adams, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980)
- Debartolo v. Dussault Moving, Inc., 8th Dist. Cuyahoga No. 96667, 2011-Ohio-6282, ¶ 8
- Hummer v. Hummer, 8th Dist. Cuyahoga No. 96132, 2011-Ohio-3767, ¶ 8
- McCarthy v. Anderson, 5th Dist. Licking No. 17 CA 33, 2018-Ohio-1994, ¶ 23
- Koehler Bros. v. Swihart, 3d Dist. Hancock No. 5-78-16, 1979 WL 207934 (May 1, 1979)
- Railway Co. v. Jewett, 37 Ohio St. 649 (1882), paragraph two of the syllabus
- Ohio Valley Radiology Assoc., Inc. v. Ohio Valley Hosp. Ass'n, 28 Ohio St.3d 118, 124-125 (1986)
- State ex rel. Allstate Ins. Co. (1936), 130 Ohio St. 347, paragraph five of the syllabus
- Nalbach v. Cacioppo, 11th Dist. Trumbull No. 2001-T-0062, 2002-Ohio-53, ¶ 24
- Grice v. Herbert Laronge, Inc., 8th Dist. Cuyahoga Nos. 55333, 55359 (May 25, 1989)
- Fahey v. Eschrich, 6th Dist. Ottawa No. OT-06-012, 2006-Ohio-5619, ¶ 9

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