

OHIO COURT OF APPEALS, SIXTH DISTRICT

Kunkle v. Kunkle

2008-Ohio-5804 (Ohio Ct. App. Nov. 7, 2008) · No. F-07-034 · Decided November 7, 2008

SUMMARY

The Ohio Sixth District Court of Appeals affirmed an order appointing a receiver over disputed farming operations known as Kunkle Farms. The court held that the evidence, including tax filings suggesting a partnership and competing allegations concerning the disposition of partnership assets, supported a finding that the property or funds were in danger of being lost, removed, or materially injured. The court concluded that the trial court did not abuse its discretion in appointing the receiver.

CASE DETAILS

|                       |                                                                                                                                                                                                                                               |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Ohio Court of Appeals, Sixth District                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Peter M. Handwork, J.; Mark L. Pietrykowski, P.J.; Arlene Singer, J.                                                                                                                                                                          |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                          |
| DECIDED               | November 7, 2008                                                                                                                                                                                                                              |
| DOCKET                | F-07-034                                                                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Appellants appealed an order of the Fulton County Court of Common Pleas appointing a receiver for disputed farming operations.                                                                                                                |
| STANDARD OF REVIEW    | An order appointing a receiver is reviewed for abuse of discretion. An abuse of discretion requires more than a mistake of law or lapse of judgment and occurs when the trial court's attitude is arbitrary, unreasonable, or unconscionable. |
| PRECEDENTIAL VALUE    | Published Ohio Court of Appeals opinion                                                                                                                                                                                                       |
| PARTIES               | Dewey Kunkle, Alan Kunkle, Ivy Kunkle v. Roy Kunkle, Barbara Kunkle                                                                                                                                                                           |

TOPICS

- equitable relief
- commercial litigation
- accounting
- standard of review
- appellate procedure

PRACTICE AREAS

- civil procedure
- commercial litigation
- equitable remedies
- partnerships

## QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by appointing a receiver without clear and convincing evidence establishing the statutory grounds for receivership.
2. Whether the evidence showed that the disputed farming partnership's property or funds were in danger of being lost, removed, or materially injured.

## HOLDINGS

1. The trial court did not abuse its discretion in appointing a receiver for the disputed farming operations.
2. The court did not need to reconcile the parties' competing formulations because the evidence was sufficient under either standard.

## KEY QUOTATIONS

*“The question of whether or not to appoint a receiver is within the sound discretion of the court and will not be reversed absent an abuse of that discretion.”* (at 4)

*“These competing allegations certainly present clear and convincing evidence that Kunkle Farms property or funds were in danger of being lost, removed, or materially injured.”* (at 5)

## FACTUAL BACKGROUND

The Kunkle family operated a farming enterprise involving nearly 3,000 acres on 33 parcels in northwest Ohio and southeast Michigan. Roy Kunkle alleged that the family operated as a farming partnership and that his father and brothers engaged in self-dealing, unpaid loans, and unusual spending after Roy's departure from the operation. The record also contained competing allegations that Roy had improperly disposed of farm property for his own benefit. The trial court appointed a receiver after finding the motion supported by sufficient evidence.

## PROCEDURAL HISTORY

Gahlon Kunkle sued Roy Kunkle seeking quiet title and an accounting. Roy asserted counterclaims concerning an alleged farming partnership, fiduciary breaches, accounting, dissolution, and distribution of partnership assets, and moved for appointment of a receiver. After a hearing, the trial court appointed a receiver for the disputed farming operation. The Ohio Court of Appeals affirmed.

## DISPOSITION

affirmed

## CASES CITED

- State ex rel. Celebrezze v. Gibbs, 60 Ohio St. 3d 69, 73 (1991)
- Berk v. Matthews, 53 Ohio St. 3d 161, 168-169 (1990)
- Equity Centers Dev. v. South Coast Centers, 83 Ohio App. 3d 643, 649 (1992)

- Hoiles v. Watkins, 117 Ohio St. 165, 174 (1927)
- Malloy v. Malloy Color Lab, Inc., 63 Ohio App. 3d 434, 437 (1989)
- Collins v. Collins, 8th Dist. No. 87986, 2007-Ohio-283, ¶¶ 9-10

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