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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ROBERT SICLAIR and LEA SICLAIR, and their marital community, Appellants, v. WASHINGTON OUTPATIENT REHABILITATION, LLC, a Washington limited liability company, Respondent, JULIANNE E. ALFORD and SCOTT ALFORD, and their marital community; and PETE TEEPLE, et ux., and their marital community, Defendants.	)	No. 39556-1-III UNPUBLISHED OPINION

PENNELL, J. — Robert and Lea Siclair petitioned for the judicial dissolution of Washington Outpatient Rehabilitation, LLC (WOR), a physical therapy company co-owned by Mr. Siclair. Eventually, the trial court appointed a general receiver for the purpose of winding up the company. The Siclairs appeal from an order approving the receiver's final report and final accounting, winding up the receivership estate, and discharging the receiver. We affirm.

FACTS

After a 2013 merger, Robert Siclair, Julianne Alford, and Pete Teeple co-owned WOR, a manager-managed LLC, as equal members. Ms. Alford's husband, Scott Alford, managed WOR.

In 2019, the Siclairs petitioned for a judicial dissolution of WOR and a winding up of its activities. The petition named WOR, Mr. Teeple, and the Alfords as respondents. The Siclairs also made claims—which have since been settled—that the Alfords took improper distributions from WOR. After nearly 16 months of acrimonious litigation, WOR, Mr. Teeple and the Alfords moved in the trial court for appointment of a general receiver. The trial court granted the motion and appointed John Munding as general receiver for the purpose of winding up the company. The trial court later sustained an objection by the receiver to a proof of claim submitted by the Siclairs, and imposed CR 11 sanctions on the Siclairs and their counsel. The Siclairs also appealed from that order. We address that appeal in a separate opinion.

The receiver moved to dismiss that appeal, arguing it was untimely and frivolous. A commissioner of this court rejected those arguments, but raised another question: whether the appeal was premature given that the receivership was still proceeding in the

trial court. After considering additional briefing, our commissioner ruled the matter was appealable as a matter of right under RAP 2.2(a)(3).

While the appealability proceedings were pending in this court, the receiver moved in the trial court, "seek[ing] the approval of the Receiver's Final Report and Accounting, the discharge of the Receiver, and a final order declaring that the Receivership is terminated in accordance with RCW 7.60.290." Clerk's Papers at 26. In a sworn declaration, the receiver explained he had completed his task of winding up the company and that the receivership estate was "administratively insolvent." *Id.* at 20.

The Siclairs opposed the motion, arguing the trial court lacked authority to rule on it in light of the pending appeal. *See id.* at 39-41 (citing RAP 7.2). The trial court granted the receiver's motion over the Siclairs' objection, reasoning that the order previously appealed by the Siclairs "ha[d] not been stayed." *Id.* at 84. The court found that "[t]he continuation of an administratively insolvent receivership at this juncture would be wasteful and inefficient." *Id.* at 85.

The Siclairs timely appealed from the trial court's order ending the receivership. The receiver moved to dismiss this appeal as moot. A commissioner of this court referred the motion to this panel pursuant to RAP 17.2(b) to be considered concurrently with the appeal.

ANALYSIS

The Siclairs contend the trial court flouted applicable rules of appellate procedure. The interpretation and application of court rules are questions of law we review de novo. *See In re Det. of McHatton*, 197 Wn.2d 565, 569, 485 P.3d 322 (2021); *State v. Carlyle*, 84 Wn. App. 33, 35, 925 P.2d 635 (1996).

RAP 7.2 places limits on a trial court's ability to enter certain orders in a case once this court accepts review. Here, we "'accept[ed] review'" upon the filing of the Siclairs' initial notice of appeal, given that our commissioner concluded that the Siclairs' first appeal was as a matter of right. RAP 6.1. The receiver argues that RAP 7.2 is nevertheless irrelevant because the Siclairs did not seek a stay. To be clear, there is no automatic stay pending an appeal in Washington. *See, e.g.*, RAP 7.2(c); *State ex rel. W.G. Platts, Inc. v. Superior Ct. for Thurston County*, 55 Wn.2d 714, 717, 349 P.2d 1087 (1960) (noting "the filing of a notice of appeal does not by itself stay . . . the effect . . . [of] the trial court's judgment"). But whether or not a stay has been granted is a separate question from whether a postappeal trial court order was proper under RAP 7.2, which limits the trial court's authority independent of our authority to stay the effect of a trial court order.

Trial courts are generally prohibited from entering further orders in a case when an appeal is pending, unless an exception described in RAP 7.2 applies. *See* RAP 7.2(a)

("After review is accepted by the appellate court, the trial court has authority to act in a case *only* to the extent provided in this rule . . . ." (emphasis added)). Therefore, we start with a presumption that the trial court lacked authority to enter the order discharging the receiver. And none of the exceptions listed in RAP 7.2 obviously apply.[1]

However, even if the trial court lacked authority to discharge the receiver, it would make little sense for us to vacate the order appealed here, given that we reject the Siclairs' contentions in their primary appeal. The only argument advanced by the Siclairs in opposition to the receiver's discharge is that the trial court lacked authority because of RAP 7.2. The Siclairs do not dispute that the receivership estate was insolvent at the time it was wound up. Thus, if we vacated the order discharging the receiver, the superior court would merely be tasked with reentering an identical order on remand. This would waste the time and resources of both the trial court and the parties. We may "waive or alter" our procedural rules to "serve the ends of justice." *City of Seattle v. Holifield*,

[1] The closest exception might be RAP 7.2(e), which allows trial courts to decide "postjudgment motions" and "actions to change or modify" a prior decision. Under this rule, our permission is not required for the trial court to enter such an order if the postappeal order will not "change a decision then being reviewed by" this court. RAP 7.2(e)(2). The receiver's discharge did not "change a decision" we were tasked with reviewing in the Siclairs' primary appeal. *Id.* However, we are skeptical that the receiver's motion to approve his final accounting and final report and wind up the receivership estate qualifies as a "postjudgment motion" or an "action to change or modify" a prior trial court decision. *Id*.

150 Wn. App. 213, 224-25, 208 P.3d 24 (2009) (citing RAP 1.2(a), (c)), *rev'd on other grounds*, 170 Wn.2d 230, 240 P.3d 1162 (2010). The ends of justice would not be served by pointlessly prolonging this litigation. We therefore affirm.[2]

APPELLATE ATTORNEY FEES

The receiver seeks an award of attorney fees on appeal, arguing the Siclairs "file[d] a frivolous appeal." RAP 18.9(a). An appeal is sanctionable as frivolous if: (1) "there are no debatable issues upon which reasonable minds might differ," and (2) the appeal was "so totally devoid of merit that there was no reasonable possibility of reversal." *Fay v. Nw. Airlines, Inc.*, 115 Wn.2d 194, 200-01, 796 P.2d 412 (1990).

The issue of whether the trial court lacked authority to enter its order under RAP 7.2 was at least debatable. We decline to grant the Siclairs a pointless reversal. But we resolve "'all doubts as to whether an appeal is frivolous . . . in favor of the

[2] We decline to rule on the Siclairs' motion to find the receiver in contempt or the receiver's motion to dismiss this appeal as moot. As to the former motion, we note that the Siclairs raised it in their reply brief. Parties are prohibited from raising nondispositive motions in their briefing, excepting a request for attorney fees and expenses. *See* RAP 17.4(d), 18.1(b). Thus, the Siclairs' motion is not properly before us. As to the latter motion, the receiver contended this appeal is moot because we are incapable of ordering effective relief. But at the time of the receiver's motion, the Siclairs' opening brief had not been filed, so it was not known which issues they would raise. We refrain from opining on whether, in the abstract, we could order effective relief in this matter given that we reject the Siclairs' argument for the foregoing reasons.

appellant.'" *Tiffany Fam. Tr. Corp. v. City of Kent*, 155 Wn.2d 225, 241, 119 P.3d 325 (2005) (quoting *Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 442-43, 730 P.2d 653 (1986)). We therefore deny the receiver's request for attorney fees.

CONCLUSION

The order approving the receiver's final report and final accounting, winding up the receivership estate, and discharging the receiver is affirmed. The receiver's request for attorney fees is denied.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, J.

WE CONCUR:

Lawrence-Berrey, C.J.

Staab, J.