

The Roles Receivers Play in Family Law Matters

By: Edward Kautzer & Matthew Wildes*

Ann and Allen Anderson were happily married for many years. But late in their marriage when things started to fall apart, they decided to get divorced. A judgment and decree was entered to dissolve their marriage on June 12, 1978. Initially, the aftermath of the divorce went smoothly. But as time went on, conditions changed and Ann wished to revise the amount of child support she received and to add spousal maintenance. The family court ruled in favor of Ann Anderson to increase Allen's child support and established an award of spousal maintenance. However, Allen was not willing to cooperate with the new changes and continued to pay the previously established support. Due to his failure to comply, on September 17, 1982 the family court ordered the appointment of a receiver to sequester Allen's airplane and Mercedes automobile to assure a source for arrearage payments of child support and maintenance.

In the case of the Andersons, as in most cases requiring a receiver, there is usually an unwillingness of one party to cooperate on a judgment issued by the family court. The appointment of a receiver is an extremely effective tool in domestic disputes, although they are often underutilized.ⁱ The underutilization of receivers may be due to the lack of knowledge about receivers. The first section of this article will describe who receivers are and what exactly they do. The following sections will give information about when to seek a receiver and the process of getting a receiver appointed. Lastly, this article will discuss the difference between a receiver and a trustee.

I. WHO ARE RECEIVERS

According to Black's Law Dictionary, a receiver is "an indifferent person between the parties appointed by the court to collect and receive the rents, issues, and profits of land, or produce personal estate, or other things which it does not seem reasonable to the court that either party should do, or where a party is incompetent to do so."ⁱⁱ This definition does not explain exactly who the receivers are besides an indifferent person between parties. Minnesota law has laid out general guidelines regarding who serve as receivers, but in the end, the court has the final say on if that indifferent party can be the receiver in the case. Minnesota Statute Section 576.26, Subdivision 1 states that any person, whether or not a resident of Minnesota, can serve as a receiver if the court finds that that person is both qualified and independent.ⁱⁱⁱ

To understand the role of a receiver, it is first important to know who is eligible to be one. Minnesota Law lays out the considerations used to decide who is qualified to be a receiver.^{iv} The court considers aspects such as past experiences as a receiver, knowledge of being a receiver, and any criminal or civil suits against the potential receiver.^v This is to protect the represented parties from having an incompetent or unfit receiver. The court also investigates any disqualifications that the proposed receiver has had in any previous cases.^{vi} However, if the receiver was disqualified for an independence infraction in the past, they will not be turned down from any current receiver position they are requested for because of the disqualification.^{vii}

The next condition that the court requires is the independence of the proposed receiver. It is important that the receiver does not have an affiliation with either party. Under Minnesota Law, the court will look at the nature and extent of any relationship that the proposed receiver has to the parties.^{viii} The court will also check to see if the proposed receiver might have any financial or nonfinancial interest in the outcome of the matter.^{ix} In essence, the proposed receiver can have had no previous knowledge of either party or the current dispute or be connected in any way. The only exception would be that the proposed receiver acted as receiver for either party in the past in connection with an unrelated matter.^x

Despite all of the necessary conditions to become a receiver, the court is given final discretion in the selection of the receiver as they see fit. Minnesota Law states that “the court may exercise its discretion and need not consider any single item of information to be determinative of independence.”^{xi} This expands the court’s freedom in selecting an applicant beyond just the pool of candidates proposed by the represented parties. In *Minnesota Hotel Co., Inc. v. ROSA Development, Co.*, the court held that neither party has a right to have a specific person appointed as a receiver.^{xii} The choice of the receiver is completely up to the court and the court can agree or disagree with whomever the parties would propose.^{xiii}

II. DUTIES OF THE RECEIVER

After understanding who can become a receiver, it is important to recognize the powers of the receiver. Minnesota statutes provide a list of different powers that the receiver has. All receivers, whether limited or general, have the power to collect, control, manage, conserve, and protect receivership property.^{xiv} On top of this, both general and limited receivers can pay and incur expenses, assert rights and claims of receivership property, and seek any further instructions from the court about how to handle the receivership property.^{xv} The difference between a general receiver and a limited receiver is that a general receiver is approved by the court and a limited receiver is appointed due to emergency circumstances.

Powers only prescribed to general receivers include: the ability to enforce any cause of action, intervene in any action, pursue any claim that may be asserted by a creditor, compel any person to give testimony, or to produce any tangible object relating to receivership property. Furthermore, receivers may operate any business constituting receivership property in the ordinary course of the business, including the use, sale, or lease of property of the business and (following notice and hearing) to use, improve, sell, or lease receivership property other than in the ordinary course of business, and to exercise all of the powers provided by the order of the court.^{xvi} With that said, it is important to note that the court is given the authority to modify the powers and duties of limited and general receivers as it sees fit.^{xvii}

Receivers are usually given a generous amount of discretion in the tasks that they can perform. The court has stated that a receiver's powers are defined by both the orders of the court and any task that may be reasonably or necessarily implied by such orders.^{xviii} Though a receiver possesses all of these powers, they are not obligated to perform them all. Minnesota court has held that just because a bill has been incurred by the receivership property, the receiver does not have to pay the bill if it is not connected directly to the property’s continued operation.^{xix}

III. WHEN SHOULD A RECEIVER BE APPOINTED

There are several situations when a receiver can be appointed. The most common is when there is neglect or refusal to pay maintenance or support by an obligor.^{xx} A receiver then may be appointed to sequester the obligor's personal estate and the rents and profits of real estate.^{xxi} A judge may also appoint a receiver to take control of a debtor's non-exempt property due to a judgment debt in order to be applied toward the satisfaction of a judgment.^{xxii} Otherwise, a court can appoint a receiver in other cases as provided by law, or in accord with existing practice.^{xxiii}

There are two separate occasions on which a receiver can be appointed; before a judgment or during and after a judgment. Before judgment, except a judgment for failure to answer, a limited receiver may be appointed to protect any party with an apparent right to property that is in the possession of an adverse party.^{xxiv} After judgment, a limited or general receiver may be appointed to carry the judgment into effect or to preserve property pending an appeal. Furthermore, one may be appointed when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment.^{xxv}

Minnesota courts have found that the statutory provisions for appointing receivers are not exclusive.^{xxvi} The goal of receivers is to be an equitable remedy for the parties at the discretion of the court.^{xxvii} But just because a court can appoint a receiver does not necessarily mean that the court will. The courts are aware that the appointment of a receiver is a very drastic and expensive proceeding that frequently absorbs the greater part of the estate.^{xxviii} Therefore, the court will deny any appointment if they see another solution more fitting for the case. The court will only appoint a receiver when there is no adequate remedy at law or when there will be serious loss or injury if receiver is not appointed.^{xxix}

PROCESS OF APPOINTING A RECEIVER

The court may appoint a receiver upon motion for appointment of a receiver. Minnesota Law says that the motion must be presented with notice to the respondent, to all other parties in the action, and to parties in interest and other persons as the court may require.^{xxx} This notice includes any judgment creditor who is seeking the appointment of a receiver in any other action.^{xxxi} If the party is seeking a general receiver, the motion will be treated as a dispositive motion.^{xxxii} In the event of an emergency appointment of a receiver, the court will set a hearing as soon as practicable. At the subsequent hearing, the burdens of proof will be presented as to the motion made on notice that is not expedited.^{xxxiii}

A motion for appointment of receiver can be issued whether or not the motion for appointment of a receiver is combined with an action seeking a money judgment.^{xxxiv} In this motion, the court must be provided with the proposed receiver, the parties, and prospective parties in interest, and the information relevant to the qualifications, independence, and the selection of the receiver.^{xxxv} The motion must also describe the receivership property with particularity appropriate to the circumstances.^{xxxvi} If the motion fails to describe the receivership property, the receiver will have control over all of the respondent's nonexempt property until further order of the court.^{xxxvii} Exempt property is described under Minnesota Statute Section 550.37 in which property of a debtor is protected from seizure by a receiver.^{xxxviii}

In preparing a motion for appointment of receiver, American Jurisprudence published a general form that can be used to fit into individual cases in need of a receiver.^{xxxix} When attempting to locate a receiver, the parties and their attorneys can search for receivers for themselves; otherwise, the court usually has a prepared list of suitable receivers that the parties can contact. Judges have the final say of who is appointed as receiver, and are often more willing to accept a receiver from the court's list of suitable receivers.

RECEIVERS COMPARED TO TRUSTEES

One of the most important sections of the receiver statutes is also one of the smallest. Minnesota Statute Section 576.25, Subdivision 9 states that the order appointing the receiver does not create a trust. This clause establishes the difference between a receiver, and a trustee. The difference is that a trustee must work in accordance with the trust agreements terms and purposes in the interests of the beneficiaries.^{xi} This is compared to the role of receivers whose marching orders are dictated by court orders.

Trustees have a more limited scope of powers than receivers. Trustees have any powers appropriate to achieve the proper investment, management, and distribution of the trust property.^{xii} This excludes providing trustees with the power of selling the trust property. This gives trustee the role of a manger compared to the role of a receiver as the owner and manager.

As mentioned before, receivers have the power to use receiver property to pay spousal maintenance and child support. But in the case of trusts, trust property cannot be used to pay spousal maintenance and child support.^{xiii} In fact, trust property cannot be used to pay any debt unless there is an explicit provision in the trust agreement to do so.^{xiii} Due to this fact, some people try to use trusts to avoid judgments instead of enforcing judgments.

Trusts have trust agreements the parties sign onto. The parties cooperate to lay out the terms of the trust agreement, unlike receiverships where usually one party does not cooperate. This is why the parties generally are the ones who appoint trustees, compared to the courts who appoints receivers.^{xiv} This also means that trustees have more freedom with trust agreements; their appointment does not need to be confirmed by the District Court.^{xv} The trust agreement is a contract formed by the parties that the court enforces if problems arise, but the court does not need to affirm anything in the agreement.

CONCLUSION

Like in the case of Ann Anderson, receivers can be useful tools when there is an uncooperative party. Receivers can be appointed with a motion for appointment of receiver, and they must be an indifferent party qualified to take control over receivership property. Receivers will follow through with the judgment of the court and see to equitable relief for the parties. A limited receiver can be called in emergency situation where property is at risk; however, the courts want receivers to be a last resort when there are other equitable remedies. Furthermore, receivers are different than trustees in many aspects. Trustees are limited to trust agreements and do not need to be confirmed by the court, because trust property is not like receivership property and cannot be used in the same way.

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Edward F. Kautzer is the president of Ruvelson & Kautzer, Ltd. in St. Paul, Minnesota. His area of concentration is ethics defense for attorneys and other professionals. He has been court appointed as a receiver in family law cases.

Matthew Wildes is in the final semester of his pre-law program at Hamline University. His expected J.D. is June 2019.

ⁱ Scott H. Hogan & Leslie A. Dickinson, *Receivers in Divorce Cases: An Underutilized Tool*, 94(7) Mich. Bar Journal 26, 26 (2015).

ⁱⁱ Black's Law Dictionary, <http://thelawdictionary.org/> (last visited Feb. 19, 2016).

ⁱⁱⁱ Minn. Stat. § 576.26, Subd. 1 (2015).

^{iv} Minn. Stat. § 576.26, Subd. 2 (2015).

^v *Id.*

^{vi} *Id.*

^{vii} *See id.*

^{viii} Minn. Stat. § 576.26, Subd. 3 (2015).

^{ix} *Id.*

^x Minn. Stat. § 576.26, Subd. 3(b) (2015).

^{xi} *Id.*

^{xii} *Minn. Hotel Co., Inc. v. ROSA Development, Co.*, 495 N.W.2d 888, 894 (Minn. Ct. App. 1993).

^{xiii} *Id.*

^{xiv} Minn. Stat. § 576.29, Subd. 1(a)(1) (2015).

^{xv} Minn. Stat. § 576.29, Subd. 1 (2015).

^{xvi} *Id.*

^{xvii} Minn. Stat. § 576.29, Subd. 3 (2015).

^{xviii} *Hancock–Nelson Mercantile Co. v. Weisman*, 340 N.W.2d 866, 869 (Minn.App.1983).

^{xix} *State Bank of Delano v. CenterPoint Energy Resources Corp.*, 779 N.W.2d 582, 588 (Minn. App. 2010).

^{xx} Minn. Stat. § 518A.71 (2015).

^{xxi} *Id.*

^{xxii} Minn. Stat. § 575.05 (2015).

^{xxiii} Minn. Stat. § 576.25, Subd. 6 (2015).

^{xxiv} Minn. Stat. § 576.25, Subd. 2 (2015).

^{xxv} Minn. Stat. § 576.25, Subd. 3 (2015).

^{xxvi} *Asleson v. Allison*, 247 N.W. 579, 580 (Minn. 1933).

^{xxvii} *Mutual Benefit Life Insurance Co. v. Frantz Klodt & Son, Inc.*, 237 N.W.2d 350, 352 (1975).

^{xxviii} *Asleson v. Allison*, 247 N.W. 579, 580 (Minn. 1933).

^{xxix} *Seward v. Schrieber*, 62 N.W.2d 48, 52 (Minn. 1953).

^{xxx} Minn. Stat. § 576.25, Subd. 7 (2015).

^{xxxi} *Id.*

^{xxxii} *Id.*

^{xxxiii} *Id.*

^{xxxiv} Minn. Stat. § 576.25, Subd. 1 (2015).

^{xxxv} Minn. Stat. § 576.26, Subd. 4 (2015).

^{xxxvi} Minn. Stat. § 576.25, Subd. 8 (2015).

^{xxxvii} *Id.*

^{xxxviii} Minn. Stat. § 550.37 (2015).

^{xxxix} 21 Am. Jur. Pl. & Pr. Forms Receivers § 10.

^{xl} Minn. Stat. § 501C.0801 (2015).

^{xli} Minn. Stat. § 501C.0815 (2015).

^{xlii} *In Matter of Campbell's Trusts*, 258 N.W.2d 856, 861 (Minn. 1977).

xliii *Id.*

xliv Minn. Stat. § 501C.0815(a)(1). (2015).

xlv *Kirsch v. Kahn*, 149 N.W.2d 676, 681 (Minn. 1967).