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ELIZABETH A. BROWN
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARC E. RADOW,
Appellant,
vs.
RYAN C. DOTSON, AS TRUSTEE OF DOTSON 2017 FAMILY TRUST, AND BLAKE E. ANDROS, AS TRUSTEE OF THE BLAKE EDWARD ANDROS REVOCABLE TRUST,
Respondents.

No. 89814

ORDER OF AFFIRMANCE

This is an appeal from a district court order appointing a receiver and issuing a permanent injunction in a shareholder dispute. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

FACTS AND PROCEDURAL HISTORY

Appellant Marc Radow founded BattleBorn Futbol Club (BattleBorn) to operate a youth soccer program and a professional soccer club. He later founded SportLogic Northern Nevada (SportLogic) with the goal of acquiring real estate to build a soccer stadium that would house a professional team. Radow served as SportLogic's president, secretary, treasurer, and director, and secured $2,622,028 in investments for SportLogic. Respondents Ryan Dotson and Blake Andros invested $555,994 and $1,111,888 respectively, and each owned more than ten percent of SportLogic stock.

SportLogic's private offering memorandum gave Radow "unlimited authority to administer the business activities of the Company" and stated that "[t]he Shareholders shall have no authority to make decisions or to exercise business discretion on behalf of the Company." The memorandum also provided that "[t]he Company will pay (or reimburse the President) for: (a) any reasonable legal . . . fees and . . . any extraordinary expenses such as litigation expenses . . . as determined by the President." Additionally, it represented that "[t]he President is not aware of any past, present or pending material relevant litigation, threats of litigation, or complaints against the President or its management in the past 10 years." Undisclosed and not known by Dotson and Andros, however, Radow's home had been entangled in protracted foreclosure proceedings. Further, a land seller had received a judgment against Radow twelve years earlier for fraud in connection with a multimillion-dollar land sale contract in Reno. Three years later, and within the ten-year litigation-free period referenced in the private offering memorandum, a court affirmed the discharge of the judgment against Radow through bankruptcy proceedings. *Spigot Res., Inc. v. Radow (In re Radow)*, No. NV-12-1037-KiDJu, 2013 WL 1397342, at *1 (B.A.P. 9th Cir. Apr. 2, 2013).

In 2023, SportLogic bought land for the stadium for $4 million. It paid $2 million in cash and executed a promissory note for the remaining $2 million. Under that promissory note, SportLogic owed 24 monthly interest-only payments of $11,666.67 followed by the $2 million balloon payment in April 2025. The purchase left SportLogic with $588,057.19 in its Bank of America account—more than double what was needed to make the 24 interest-only payments. Radow obtained several permits necessary for the stadium construction. But the construction hit a roadblock when the anticipated land development partner—who was to do the grading and site development in exchange for 15 percent equity—backed out.

A year passed without Radow raising additional outside capital. When Andros heard of "chaos erupting within [BattleBorn], including mass resignations of coaches for not being paid and loss of team revenues from parents of youth soccer players," he sent Radow a letter demanding SportLogic's financial statements. In response, Radow provided Andros and Dotson with some of BattleBorn's and SportLogic's bank statements. The statements revealed that SportLogic had made payments on BattleBorn's behalf totaling $139,868.16, to pay for BattleBorn's soccer coaches, equipment purchases, and the like. A management report confirmed—and Radow purportedly admitted—that BattleBorn was insolvent and that SportLogic had cash on hand of only $75,000.

Dotson expressed interest in selling the stadium property to recoup his investment or in selling his interest in SportLogic. Deciding that finding a willing buyer was unlikely and that SportLogic was facing ongoing harm, Dotson and Andros filed an application for the appointment of a receiver and injunction under NRS 78.650, seeking to have Dotson appointed. The following day, Radow began transferring money from SportLogic to himself using the Zelle instant payment app: $7,000 that first day, another $7,000 the next day, and $3,000 ten days later. The district court held a hearing to determine whether to enter a preliminary injunction against Radow. During the recess of that hearing, Radow drained SportLogic's U.S. Bank account to $0.01 by transferring $46,806 to his personal bank account. A few days later, he paid $25,000 of that money to a local law firm.

The district court granted a temporary restraining order and appointed Dotson temporary receiver. SportLogic had approximately $400 in its other bank account at the time the court appointed Dotson temporary receiver. Dotson also discovered as receiver that Radow had allowed the stadium property's insurance policy to lapse. Following evidentiary hearings, the district court issued a permanent injunction against Radow, ordered him to repay $46,806 to SportLogic, and appointed Dotson permanent receiver.

Radow appeals. He contends that the district court erred in finding that SportLogic faced irreparable injury, that he had engaged in fraud and gross mismanagement, and that SportLogic's assets were in danger of waste or loss. He further contends that other remedies were available that made the receivership inappropriate, and that the district court erred in appointing Dotson because Dotson had a conflict of interest.

DISCUSSION

NRS 78.650 allows any stockholder who holds at least one-tenth of the corporation's stock to ask the court to appoint a receiver and to enjoin the corporation from operating except through that receiver. NRS 78.650(1). The stockholder must show both that "irreparable injury to the corporation is threatened or being suffered" and either that:

> (b) [The corporation's] trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs and any presumption established by subsection 3 has been rebutted with respect to such conduct or control; [or]
>
> (c) The assets of the corporation are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or otherwise[.]

NRS 78.650(1).

Statutory authorization to appoint a receiver presents a question of law to which de novo review applies. *See Fed. Nat'l Mortg. Ass'n v. JKM Servs., LLC*, 256 So.3d 961, 966 (Fla. Ct. App. 2018). Application of the statute authorizing "[t]he appointment of a receiver," however, "is an action within the trial court's sound discretion and will not be disturbed absent a clear abuse." *Nishon's, Inc. v. Kendigian*, 91 Nev. 504, 505, 538 P.2d 580, 581 (1975). Likewise, the decision to issue a permanent injunction is reviewed for an abuse of discretion. *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 108, 294 P.3d 427, 433 (2013). Credibility determinations are left to the trier of fact, as is the weighing of evidence. *Grosjean v. Imperial Palace, Inc.*, 125 Nev. 349, 365-66, 212 P.3d 1068, 1080 (2009). Factual determinations are reviewed for clear error and will not be reversed if supported by substantial evidence. *Sowers*, 129 Nev. at 105, 294 P.3d at 432.

The district court did not clearly err by finding that Radow threatened irreparable injury to SportLogic

NRS 78.650(1) requires as a condition precedent to appointing a receiver that "irreparable injury to the corporation is threatened or being suffered." The district court found that, by depleting SportLogic's cash assets and allowing the insurance on the stadium property to lapse, Radow threatened and caused an "[i]rreparable injury to SportLogic" in part "due to the tangible threat of foreclosure on its primary asset, the Stadium Property." Radow contends it was *Dotson and Andros* who created any threat of foreclosure by filing the receivership application, and that the district court should not have considered the depletion of cash assets because that occurred after they filed the receivership application. He also argues that he did not create a threat of foreclosure because the lender did not testify that the lender was pursuing foreclosure based on the lapse in insurance, Radow believed another policy existed, and Dotson remedied the lapse after being appointed receiver.

"Irreparable harm is an injury 'for which compensatory damage is an inadequate remedy.'" *Excellence Cmty. Mgmt., LLC v. Gilmore*, 131

Nev. 347, 353, 351 P.3d 720, 723-24 (2015), *quoting Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987). "[L]oss of real property rights generally results in irreparable harm," as real property is considered unique. *Dixon*, 103 Nev. at 416, 742 P.2d at 1030.

Substantial evidence supports the district court's finding that Radow created a risk of foreclosure on the stadium property which threatened SportLogic with irreparable injury. First, Radow depleted SportLogic's cash to the point it could not make the monthly interest-only payments on the note secured by the stadium property. SportLogic made a net $109,936.76 in payments to or on behalf of BattleBorn. In the time shortly before Dotson and Andros filed the receivership application, SportLogic had enough cash to make only four of its approximately nine remaining interest payments. Radow argues that SportLogic could take out a line of credit or make a capital call to acquire the money to make the payments. It is possible foreclosure could have been averted via those means, but NRS 78.650(1) only requires that irreparable injury be "threatened," not that it be unavoidable.

Second, pursuant to the stadium property's deed of trust, the lapse in insurance constituted a default that allowed the noteholder to set a date by which the default would have had to be cured. If the default went uncured, the noteholder would be entitled to accelerate the note and commence foreclosure. Radow's point that the noteholder did not threaten foreclosure until Dotson and Andros filed the receivership application is not dispositive, and the record shows the district court weighed that evidence alongside the rest. *See Grosjean*, 125 Nev. at 365-66, 212 P.3d at 1080 (leaving weighing of evidence to the trier of fact); *Threat*, *Black's Law*

Dictionary (11th ed. 2019) ("An indication of an approaching menace; the suggestion of an impending detriment <the threat of bankruptcy>.").

Radow also argues that only the facts as they existed at the time Dotson and Andros filed the receivership application may be considered in evaluating whether to appoint a receiver. More specifically, he contends that he only began to transfer SportLogic's funds to himself after Dotson and Andros sought to appoint a receiver, and so the district court erred by considering this post-application conduct in support of the receivership application. Dotson and Andros respond that Radow failed to object below to the consideration of post-application evidence. Radow does not respond to their contention in his reply brief, nor does he support his position with authority beyond his reading of NRS 78.650(1). But the statute's wording does not plainly prevent the district court from considering facts that arise while the application for receivership is pending, and we therefore do not consider this unpreserved, unsupported argument further. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 562-63, 216 P.3d 788, 793 (2009) (treating failure to respond to respondent's arguments as a concession); *Allum v. Valley Bank of Nev.*, 114 Nev. 1313, 1324, 970 P.2d 1062, 1069 (1998) (explaining that unpreserved arguments will not be addressed).

The district court did not clearly err by finding at least two of the NRS 78.650(1) subfactors were met, either of which supports the appointment of a receiver

Once the district court finds an irreparable injury, it must additionally find at least one of NRS 78.650(1)'s four subfactors exist before appointing a receiver. NRS 78.650(1). For the reasons that follow, the district court did not clearly err by finding that at least two of the subfactors had been met in this case.

The district court did not clearly err by finding that Radow had placed SportLogic's assets in danger of waste or loss

A district court may appoint a receiver under NRS 78.650(1)(c) when "[t]he assets of the corporation are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or otherwise." As previously discussed, the district court did not clearly err by finding that Radow's actions had put the stadium property at risk of foreclosure. Further, Radow's transfers of SportLogic funds to pay BattleBorn's costs "otherwise" put SportLogic's assets in danger of loss regardless of the possibility of foreclosure, because the record shows BattleBorn could not repay SportLogic. Because the stadium property was "in danger of . . . loss through . . . foreclosure, . . . or otherwise," the district court did not clearly err by finding this criterion satisfied. NRS 78.650(1)(c).

The district court did not clearly err by finding that Radow had also been guilty of gross mismanagement in the conduct or control of SportLogic's affairs

A district court may appoint a receiver under NRS 78.650(1)(b) when the corporation's "trustees or directors have been guilty of . . . gross mismanagement in the conduct or control of its affairs and any presumption established by subsection 3 has been rebutted with respect to such conduct or control."[1] NRS 78.650(1)(b). The district court found that Radow had been guilty of gross mismanagement in the conduct or control of SportLogic's affairs by spending SportLogic funds on BattleBorn's costs and leaving SportLogic unable to meet its financial obligations, transferring most of SportLogic's remaining funds to his personal account, and failing to provide shareholders with timely or accurate financial reports.

"Gross mismanagement suggests some extreme ineptitude on the part of management to the detriment of the organization. But it must rise above simple mismanagement . . . ." *In re Mako, Inc.*, 102 B.R. 809, 812 (Bankr. E.D. Okla. 1988) (citation omitted). Diversion of substantial corporate funds by its officers may evince gross mismanagement justifying appointing a receiver. 16 *Mismanagement*, *Fletcher Cyclopedia of the Law of Corp.* § 7714, Westlaw (database updated Sep. 2025). But the diversion of corporate funds "must be substantial and not a mere technicality; a receiver will not be appointed where the misappropriation is trivial." *Id.* (footnote omitted); *see also Fall v. Farmers & Merchs. State Bank*, Nos. 3:08CV3012, 3:09CV304, 2009 WL 974538, at *2 (N.D. Ohio Apr. 9, 2009)

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[1]Though facially this subsection references NRS 78.*650*(3), that appears to be a mistake. *See* NRS 78.650(3) ("In any such application for a receivership, it is sufficient for a temporary appointment if notice of the same is given to the corporation alone, by process as in the case of an application for a temporary restraining order or injunction, and the hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties."). While NRS 78.650(3) does not speak to presumptions, other portions of NRS Chapter 78 do so while referring to NRS 78.138(3)'s good-faith presumption. *See* NRS 78.138(7)(a) ("The presumption established by subsection 3 had been rebutted . . . ."); NRS 78.139(1) ("[D]irectors and officers have the benefit of the presumption established by subsection 3 of NRS 78.138."). Radow does not cite NRS 78.138(3) in his briefing, so it need not be determined whether it applies and how it would affect the analysis if it does.

(affirming bankruptcy court's finding of gross mismanagement in part due to diversion of funds that should have been used for another purpose).

Radow's diversion of funds to BattleBorn went beyond "a mere technicality"; it amounted to over $100,000, a substantial portion of SportLogic's assets. 16 *Mismanagement*, *Fletcher Cyclopedia of the Law of Corp.* § 7714, Westlaw (database updated Sep. 2025). The shareholder agreement requires that the board of directors approve any loans by SportLogic or any guarantee of the debts or obligations of any other corporation. Another provision of the shareholder agreement requires approval from the board for "the approval of any contracts or transactions outside the normal course of business." Dotson and Andros produced evidence that at least some of the BattleBorn payments were made unilaterally, and Radow purportedly admitted that the payments should have been handled differently.

Radow attempts to treat SportLogic and BattleBorn as inseparable and codependent. Though affiliated to a degree, they are still separate companies with different purposes. Affidavits from SportLogic shareholders Bruce Barker and Robert Rupp further declare that it was their understanding that their respective investments were "solely in SportLogic for the purpose of developing real property." Dotson testified to the same effect. Even assuming that Radow had the authority to make the BattleBorn payments from SportLogic's account, that an action is "legally possible" does not mean that it is proper. *See Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 96-97 (Del. 2021) (explaining that a director's legal authorization does not equate to permissibility or to the equitable exercise of that authority). And here, the transfers to BattleBorn critically depleted SportLogic's accounts to where it no longer had the funds to make its interest payments for more than a few months. Radow should have followed corporate formalities in making the transfers to BattleBorn, and it was not improper for the district court to scrutinize Radow's actions for how they disadvantaged SportLogic.

Nor did the district court err by finding that Radow should not have used SportLogic funds to pay for his personal legal expenses. The private offering memorandum states that "[t]he Company will pay (or reimburse the President) for: . . . any extraordinary expenses such as litigation expenses . . . *of the Company* as determined by the President." (emphasis added). Radow's counsel acknowledged that he represented Radow personally and not SportLogic. Radow's mid-hearing transfer of funds to his personal accounts to pay for his personal legal expenses was therefore not expressly authorized in the private offering memorandum. And where, as here, the receivership application plausibly alleges improper director action, it can be inappropriate for that director to defend himself or herself using corporate funds. *See Hollander v. Breeze Corps.*, 26 A.2d 507, 520-21 (N.J. Ch. 1941) ("Such expenditures [to defend against a receivership action] were unlawfully made for defense of a suit brought by stockholders for the benefit of their corporation, against directors charged with dereliction of duty which resulted in waste of corporate funds, which . . . have been substantiated."). The district court did not err by finding that Radow's transfers to his personal account were improper and a factor weighing in favor of finding gross mismanagement.

Finally, substantial evidence supports the district court's findings that Radow failed to timely provide company records on request, and when he did provide those records, they contained "obvious errors." Failing to properly maintain or timely produce company records may not alone be enough to support a finding of gross mismanagement justifying a receivership appointment. *See Hall v. John S. Isaacs & Sons Farms, Inc.*, 146 A.2d 602, 609-10 (Del. Ch. 1958) (rejecting attempt to appoint receiver for gross mismanagement in failing to disclose company records partly because mandamus is an adequate alternative remedy to obtain the company records); *Kinnebrew v. La. Ice Co.*, 43 So.2d 798, 805 (La. 1949) ("[T]he fact that a corporation fails to keep a complete set of books and records was not ipso facto such gross mismanagement as to require the appointment of a receiver."). But considered in conjunction with the other facts, they further support the district court's finding that Radow had been guilty of "gross mismanagement in the conduct or control of" SportLogic's affairs. NRS 78.650(1)(b); *see also Tansey v. Oil Producing Royalties, Inc.*, 133 A.2d 141, 147 (Del. Ch. 1957) (considering "[t]he cumulative effect" of the facts in appointing a receiver). Taken together, substantial evidence supports the district court's finding of gross mismanagement.

The district court did not abuse its discretion in appointing a receiver

Radow contends that the district court should not have appointed a receiver because Dotson and Andros had other ways to recover their investments. They could, he says, sell their shares, bring civil claims against him, or convene a shareholder meeting to vote on a sale of SportLogic. He adds that SportLogic could have raised the capital needed to keep up the interest payments on the stadium property through capital calls, loans, or refinancing.

"[T]he appointment of a receiver . . . is 'a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it,'" so even when the statutory threshold is met, a district court must still exercise appropriate discretion before appointing one. *Bedore v. Familian*, 122 Nev. 5, 11, 125 P.3d 1168, 1172 (2006) *(quoting*

Hines v. Plante, 99 Nev. 259, 261, 661 P.2d 880, 881-82 (1983). "Thus, if another remedy is available to achieve the same outcome, the district court should not resort to . . . the appointment of a receiver." *Id.*, *citing Hines*, 99 Nev. at 261, 661 P.2d at 882. Injunctive relief, for example, may suffice and obviate the need to appoint a receiver. *Hines*, 99 Nev. at 261-62, 661 P.2d at 882.

The dispositive question, then, is whether the alternative remedy would achieve the same outcome as a receivership. *Bedore*, 122 Nev. at 11, 125 P.3d at 1172. In this case, that outcome includes protecting the stadium property from foreclosure, and on that score, Radow's proposed remedies fall short. His proposals—capital calls, loans, and refinancing—are all of uncertain viability: each relies on the cooperation of third parties, and even if one succeeded, it might only be a temporary fix to a problem that Radow created. Radow's failure to disclose his litigation history to prospective investors undermines his trustworthiness and also counsels against a less drastic remedy. He represented that he was "not aware of any past, present or pending material relevant litigation, threats of litigation, or complaints against the President or its management in the past 10 years." However, he *had* been engaged in property-related litigation of the sort that would be material and relevant to prospective SportLogic investors. Regardless of whether his fraud was technically "in the conduct or control of [SportLogic's] affairs" as would be required to be an independent basis for appointing a receiver under NRS 78.650(1)(b), Radow should have disclosed his bankruptcy and foreclosure, and his failure to do so raises serious questions about his credibility and forthrightness.

The concentration of SportLogic's authority in Radow reinforces the conclusion that a receivership was appropriate. When a corporation like

SportLogic vests authority so heavily in a single individual—here, Radow, who served as its president, secretary, treasurer, and a director—that individual's misdeeds can carry greater significance than they would were control more widely dispersed. A receivership may be appropriate where there is "a pattern of conduct by the dominant stockholders, and a disposition on their part to continue the pattern, which was seriously prejudicial to the rights and interests of the minority." *Bellevue Gardens, Inc. v. Hill*, 297 F.2d 185, 187 (D.C. Cir. 1961) (Burger, J.). Radow was not SportLogic's dominant stockholder, but he exercised disproportionate authority in a corporation which purported to grant him "unlimited authority" and to grant stockholders "no authority." Before filing the receivership application, Andros had understandably raised concerns with Radow about the opacity of SportLogic's operations and the uncertainty surrounding its management and accountability, further demonstrating why a receivership was a reasonable course of action.

On this record, Radow has failed to show that the district court abused its discretion in appointing a receiver.

The district court did not abuse its discretion in appointing Dotson as permanent receiver

Radow argues that even if a receiver were appropriate, the district court abused its discretion in appointing Dotson because Dotson had a conflict of interest. Specifically, Radow expresses concern that Dotson acknowledged Dotson would likely sell the stadium property and that doing so would be in Dotson's own best interest.

NRS 78.650(4) provides that "in all cases directors or trustees who have been guilty of no negligence nor active breach of duty must be preferred in making the appointment." This provision does not support Radow's challenge. *See* 1 *Nev. Civ. Prac. Manual* § 34.03(1)(c), LexisNexis (database updated Nov. 2025) (noting that Nevada's corporate law provides "an exception to the general rule that a receiver must be neutral" by allowing arguably interested parties to be receivers). Dotson's acknowledgment that he would likely sell the stadium property and dissolve SportLogic as receiver do not necessarily overcome the NRS 78.650(4) presumption. For one, Dotson also stated that he would consult with the other shareholders to determine whether there were other options. And although dissolution remains likely, a receiver is not obligated to forge ahead with a corporation at all costs. The district court's order recognizes such, expressly authorizing Dotson to sell the stadium property. Under the circumstances of this case, it would not be objectively unreasonable for Dotson to dissolve SportLogic. When a corporate purpose has failed and "ruin will inevitably follow continuance of the management," dissolution may be appropriate. *Stott Realty Co. v. Orloff*, 247 N.W. 698, 699 (Mich. 1933) (addressing court-ordered dissolution). Because the stadium property was SportLogic's primary asset, it was important that it be protected from loss, even if it were only being protected so that an eventual sale could take place. In conclusion, Radow has not shown that Dotson was such a poor choice for a receiver that the district court abused its discretion by applying NRS 78.650(4) and appointing Dotson.

Radow has failed to demonstrate an abuse of discretion. Based on the foregoing analysis, we need not address any other issues raised.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Pickering

Pickering, J.

Parraguirre, J. Bell, J.

cc: Hon. Kathleen M. Drakulich, District Judge
David Wasick, Settlement Judge
Silver State Law LLC
Maupin, Cox & LeGoy
Washoe District Court Clerk