Appellee's Motion for Rehearing Granted; Majority and Dissenting Opinions of August 22, 2024, Withdrawn. Judgment Vacated. Affirmed and Opinion on Rehearing filed April 29, 2025.

In The

Fourteenth Court of Appeals

NO. 14-22-00764-CV

WC 4TH AND COLORADO, LP, Appellant

V.

COLORADO THIRD STREET, LLC, Appellee

On Appeal from the 261st District Court
Travis County, Texas
Trial Court Cause No. D-1-GN-20-002781

OPINION ON REHEARING

This appeal arises from actions taken by a receiver acting pursuant to a receivership order issued in a separate Harris County suit. The receiver appeared on behalf of appellant WC 4th and Colorado, LP ("WC 4th") in the present suit and claimed to be replacing WC 4th's prior counsel. Along with appellee Colorado Third Street, LLC ("Third Street"), the receiver filed a joint motion to dismiss WC 4th's claims against Third Street, which the trial court granted. In two issues that

we construe as one, WC 4th argues the receiver lacked authority to replace its counsel and dismiss the case. Since our original opinion issued the parties clarified facts in the record important to our decision. Today, we withdraw the August 22, 2024 majority and dissenting opinions and judgment, grant appellee's subsequently-filed motion for rehearing, and affirm the trial court's judgment.

I. BACKGROUND

Nate Paul is a real estate investor who does business through a network of entities that include "WC" or "World Class" in their names.[1] *WC 1st & Trinity, LP v. Roy F. & JoAnn Cole Mitte Found.*, No. 03-19-00799-CV, 2021 WL 4465995, at *1 (Tex. App.—Austin Sept. 30, 2021, pet. denied) (mem. op.). His principal entity is World Class Capital Group ("WCCG"), of which he is the sole member and manager. Financial statements and affidavits from Paul acknowledge that WCCG "is the manager of WORLD CLASS REAL ESTATE, LLC, which is the Manager of WC 4th AND COLORADO GP, LLC, which is the General Partner of WC 4TH AND COLORADO, LP, a Texas limited Partnership."

WC 4th defaulted on a loan held by Third Street. When Third Street began exercising its contractual right to foreclose on the property secured by the loan, WC 4th sought to enjoin the sale in a Travis County district court. WC 4th also filed several counterclaims, including tortious interference with contract. WC 4th subsequently declared bankruptcy, which stayed the foreclosure sale and the pending Travis County suit. *See* 11 U.S.C. § 362 (automatic stay).

[1] The Supreme Court of Texas ordered the Court of Appeals for the Third District of Texas to transfer this appeal (No. 03-22-00575-CV) to this court. Misc. Docket No. 22-9083 (Tex. Sept. 27, 2022); *see* Tex. Gov't Code Ann. §§ 73.001, -.002. Because of the transfer, we decide the case in accordance with the precedent of the transferor court under principles of stare decisis if our decision otherwise would have been inconsistent with the transferor court's precedent. *See* Tex. R. App. 41.3.

While the Travis County suit was pending, a Harris County court in a separate suit ordered WCCG, Paul, and Great Value[2] to pay over $9.7 million in damages to a different lender—Princeton Capital—for failure to pay amounts owed under an unrelated note purchase agreement. *See Great Value Storage, LLC v. Princeton Cap. Corp.*, No. 01-21-00284-CV, 2023 WL 3010773, at *6 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, pet. granted) (mem. op.), *vacated as moot by*, No. 23-0722 (Tex. Mar. 8, 2024). Because WCCG and Paul did not pay the judgment, the trial court appointed a receiver over WCCG and granted the receiver broad authority to seize, manage, and operate entities in which WCCG had an ownership interest. *Id.* at *6 (the "Receivership Order"). The Harris County court also granted the receiver the express authority to take possession of "all real property . . . causes of action . . . [and] contract rights" owned by WCCG. Acting pursuant to the Receivership Order—and after the bankruptcy stay was lifted and Third Street had foreclosed on the property—the receiver appeared in the underlying Travis County suit on WC 4th's behalf. The receiver then settled the underlying litigation and moved to dismiss with prejudice all of WC 4th's claims and counterclaims in the Travis County suit.

WC 4th challenged the receiver's authority through a Rule 12 motion. *See* Tex. R. Civ. P. 12 ("A party in a suit or proceeding pending in a court of this state may, by sworn written motion stating that he believes the suit or proceeding is being prosecuted or defended without authority, cause the attorney to be cited to appear before the court and show his authority to act. . . . Upon his failure to show such authority, the court shall refuse to permit the attorney to appear in the cause . . . ."). The trial court held an evidentiary hearing on the Rule 12 motion, denied the motion, granted the joint motion to dismiss, and signed a final judgment. WC

[2] Great Value is another entity of which WCCG is the sole member and manager.

4th filed a timely notice of appeal challenging the trial court's denial of its motion to show authority and the trial court's dismissal.

II. ANALYSIS

A. Collateral attack

As a preliminary matter, we address Third Street's contention that WC 4th's current appeal constitutes an impermissible collateral attack of the Receivership Order. In support of its argument, Third Street cites a series of cases in which courts have held that a party to a judgment, as well as the party's successors in interest, may only challenge the validity of a judgment in the court in which the judgment issued and may not collaterally attack the judgment in a separate proceeding in another court.

A similar argument was made in *WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, No. 08-22-00073-CV, 2024 WL 1138568, at *7 (Tex. App.—El Paso Mar. 15, 2024, no pet. h.) (substitute mem. op.). *La Zona Rio* is another case from an Austin district court involving entities related to Paul and the authority of this receiver, but the case was transferred to the El Paso Court of Appeals instead of our court.[3]

The underlying procedural history of *La Zona Rio* is nearly identical to the present case; *La Zona Rio* stems from the same Receivership Order involving WCCG as the present case. Similar to our case, Rio Grande—another business entity related to Paul—was not a party to the Harris County suit in which the Receivership Order was entered. In *La Zona Rio*, Rio Grande filed suit against La

[3] The court in *La Zona Rio* was also required to apply precedent from the Austin court of appeals to the extent it conflicted with El Paso precedent. *See* Tex. R. App. 41.3. However, there was no indication of a conflict of precedents in *La Zona Rio* and often the court there applied El Paso precedent. Thus, while we are not obligated to follow *La Zona Rio*, we are certainly free to consider it persuasive authority.

Zona Rio, but a receiver appeared purportedly on behalf of Rio Grande, replaced Rio Grande's counsel, and filed a motion to dismiss Rio Grande's claims against La Zona Rio. *See id.* at *1. Just as in this case, Rio Grande challenged the authority of the receiver, contending that Rio Grande's arguments amounted to an impermissible collateral attack of the same Receivership Order citing the same cases that Third Street cites in this case. The El Paso Court of Appeals rejected this argument, reasoning as follows:

> [W]e note that turnover orders—and receivership orders in particular—are unique in nature, and while some portions of such an order may be considered final and appealable, other provisions may not. *See Alexander Dubose*, 540 S.W.3d at 586-88. As the Texas Supreme Court has recognized, a turnover order is considered final and appealable when it serves as a mandatory injunction ordering a judgment debtor to turn over assets. *Id.* at 596. However, "other provisions of the same order can be interlocutory and unreviewable because they do not resemble injunctive relief." *Id.* at 587. Thus, in *Alexander Dubose*, the Court held that a provision in a turnover order requiring disputed funds to be deposited in the court's registry did not function as a mandatory injunction and therefore could not be considered a final appealable order, as there had been no adjudication of the ownership of the funds in the turnover order. Instead, the court held that a subsequently issued "release order," which adjudicated ownership of the funds, was the first and only order that could be considered final with respect to ownership of the funds. *Id.*
>
> Here, the Receivership Order contained various provisions authorizing Kretzer to obtain property held by third parties, i.e., the various entities that WCCG purportedly had an interest in, but the order did not adjudicate the substantive rights of those third parties to the extent that they sought to dispute that they held property belonging to WCCG. And as such, those provisions cannot be considered "final" with respect to any third parties affected thereby who have not had their substantive rights adjudicated. *See Mitchell v. Turbine Res. Unlimited, Inc.*, 523 S.W.3d 189, 196 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (holding that a turnover order that authorized a receiver to sell property "subject to third parties' rights" could not

> be considered a final order, and was instead considered "interlocutory and not appealable").

Id. at 13. We agree with the El Paso court's reasoning and conclude that WC 4th is not making a collateral attack and had the right to challenge the Receivership Order in this case to the extent the Receiver was "attempting to enforce the order against it and deprive it of partnership assets that it claims WCCG did not own or control." *Id*.

B. The Rule 12 Motion

WC 4th next argues that the trial court abused its discretion by denying its Rule 12 motion to show authority. Rule 12 provides that "[a] party in a suit or proceeding pending in a court of this state may, by sworn written motion stating that he believes the suit or proceeding is being prosecuted or defended without authority, cause the attorney to be cited to appear before the court and show his authority to act." Tex. R. Civ. P. 12. The purpose of Rule 12 is to allow a party to challenge the right of an attorney to represent the *other party* in the litigation. *See* Tex. R. Civ. P. 12 ("At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to prosecute or defend the suit on behalf of the other party."); *see also In re Sassin*, 511 S.W.3d 121, 125 (Tex. App.—El Paso 2014, orig. proceeding) (recognizing that Rule 12's "primary purpose is to enforce a party's right to know who authorized the suit"). Here, WC 4th's motion did not challenge the receiver's authority to represent *another* party in the *Princeton* suit; rather, it challenged the receiver's authority to appear on its own behalf.

However, in interpreting the nature of a motion or other pleading, we look to its substance, not merely at the form of title given to it. *See* Tex. R. Civ. P. 71 ("When a party has mistakenly designated any plea or pleading, the court, if justice

so requires, shall treat the plea or pleading as if it had been properly designated."). Given the substance of WC 4th's arguments that the receiver lacked the authority he claimed to have, we decline to treat it as a Rule 12 motion. Instead, WC 4th's Rule 12 motion should be treated the same as its second issue on appeal, which is simply a challenge to the receiver's authority. For these reasons, we proceed to address WC 4th's issue regarding the receiver's authority.

C. Did the Receiver have the authority to act on behalf of WC 4th?

1. Standard of review and applicable law

We review a trial court's ruling on a motion to dismiss for an abuse of discretion; however, pure questions of law that lead to the trial court's ruling are reviewed de novo. *See Gonzalez v. Momentum Design & Constr., Inc.*, 633 S.W.3d 678, 684 (Tex. App.—El Paso 2021, pet. denied).

"A receiver has only that authority conferred by the Court's order appointing him." *Ex parte Hodges*, 625 S.W.2d 304, 306 (Tex. 1981).

2. Application

WC 4th argues that the Receiver lacked the authority to manage or control it or settle its lawsuit for two reasons. First, WC 4th argues that it is not a subsidiary of WCCG and thus the Receivership Order did not give the Receiver, Kretzer, the authority to take control of WC 4th and dismiss its lawsuit. In support of this, WC 4th points to the Nate Paul declaration where he states that WC 4th "is not a direct or indirect subsidiary" of World Class, "[World Class] is not a direct or indirect owner" of any partnership or membership interests of WC 4th, and "[the receiver] does not have the authority to appear on behalf of WC 4th." In response, Appellee Third Street argues that Nate Paul's declaration is conclusory and there is considerable evidence for the trial court to conclude that WCCG was the owner or

manager of WC 4th and thus the Receiver was well within its rights to take control of WC 4th. The trial court could have reasonably concluded from the evidence before it that WCCG was the owner or manager of WC 4th. Moreover, multiple provisions within the Receivership Order make clear that the Receiver was acting within the Receivership Order's plain-language grant of authority when he took control of WC 4th and settled its lawsuit with Colorado Third.

Second, WC 4th argues that the Receiver had no authority to seize a judgment debtor's interest in a partnership or limited liability company, but rather the Receiver could only obtain a "charging order" to receive the debtor's profits or distributions in the partnership. In *Pajooh v. Royal West Investments LLC, Series E.*, 518 S.W.3d 557 (Tex. App.—Houston [1st Dist.] 2017, no pet.), our sister court held that an individual partner has no ownership interest in the specific property belonging to the partnership and that the partner's interests are limited to his share of profits and losses. *Id*. at 562; *see also* Tex. Bus. Orgs. Code Ann. § 152.101 and 101.106(b) (partnership property is "not property of the partners" and a member of a limited liability company "does not have an interest in any specific property of the company"). As a result, "the entry of a charging order is the exclusive remedy by which a judgment creditor" of a partner, Tex. Bus. Orgs. Code Ann. § 152.101, or a member, Tex. Bus. Orgs. Code Ann. § 101.112(d), may satisfy a judgment. This court has similarly held that a charging order is the exclusive remedy afforded a judgment creditor. *See Klinek v. LuxeYard, Inc.*, 672 S.W.3d 830, 839 (Tex. App.—Houston [14th Dist.] 2023, no pet.); *Bran v. Spectrum MH, LLC*, No. 14-22-00479-CV, 2023 WL 5487421, at *6 (Tex. App.—Houston [14th Dist.] Aug. 24, 2023, pet. filed) (mem. op.).

The charging order procedure was developed to prevent a judgment creditor's disruption of an entity's business by forcing an execution sale of the

partner's or member's entity interest to satisfy a debt of the individual partner or member. *See Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 757 (Tex. App.—Houston [14th Dist.] 2017, no pet.); *Stanley v. Reef Sec., Inc.*, 314 S.W.3d 659, 664 (Tex. App.—Dallas 2010, no pet.). In *Gillet*, this court acknowledged that in situations where the purpose of the charging order exclusivity rule is lost, exception could be taken. *Gillet v. ZUPT, LLC*, 523 S.W.3d at 757-58. In *Gillet*, we held the reasoning for the charging order exclusivity rule "inapposite when the judgment creditor seeking the membership interest *is* the entity from which the membership interest derives." *Id.* at 758 (emphasis added). Later in *Klinek*, we acknowledged but did not adopt additional exceptional situations where the purpose of the charging order exclusivity rule was frustrated. *Klinek*, 672 S.W.3d at 839–40. Specifically, we observed that in *Heckert v. Heckert*, the Fort Worth court found no error in the turnover of a member's interest in a limited liability company "because the company was not operating any business and no party's interest would have been disrupted by granting turnover relief." *Klinek*, 672 S.W.3d at 840, citing *Heckert v. Heckert*, No. 02-16-00213-CV, 2017 WL 5184840 (Tex. App.—Fort Worth Nov. 9, 2017, no pet.) (mem. op.). We agree with the rationale in *Heckert*, and consider whether the facts of this case are similarly exceptional to obviate the purpose of the rule—whether WC 4th was an operating business, and whether any party's interest would have been disrupted by granting turnover relief.

Appellee Third Street argues that the *Heckert* exception applies since WC 4th is a non-operating, single purpose business with no partners. Thus, argues appellee, there can be no disruption of the business. First, we note that fact that WC 4th is a *single*-purpose business that had been engaged in renting commercial property to third parties is not dispositive as some of the parties' briefing suggested. What does matter is the status of the business operations. WC 4th

originally asserted that the record shows that it rents its property to third parties, but on rehearing has corrected the assertion, explaining that despite a long history of active business prior to the litigation, "WC 4th has not been able to operate the real estate since 2021 to due to this litigation."

Whether any party's interest would be disrupted in part involves consideration of related entities. Were it properly before the trial court, WC 4th's Limited Partnership Agreement—which comes to us from WC 4th in its reply brief with its judicial-notice request—shows that WC 4th and Colorado GP, LLC are the general partners and Sangreal Investments, LLC and Independence Holdings I, LLC are the limited partners. At best, we could only speculate that WC 4th consists of third-party partners seemingly unrelated to Nate Paul. There is no evidence in the record that Sangreal Investments, LLC and Independence Holdings I, LLC are unrelated to Nate Paul. Moreover, WC 4th has not established that the Agreement was properly before the trial court at the time of the hearing or that WC 4th argued that Sangreal and Independence were unrelated third-parties. *See Samlowski v. Wooten*, 332 S.W.3d 404, 413 (Tex. 2011)(Guzman, J. concurring) (citing *Univ. of Tex. v. Morris*, 162 Tex. 60, 344 S.W.2d 426, 429 (1961)).[4] Thus, we cannot conclude any party's interest would be disrupted.

WC 4th suggests that we follow the *La Zona Rio* decision, but the facts here do not lend us to do so. There, La Zona Rio argued the *Heckert* exception applied since "Rio Grande, LP was admittedly a 'single purpose entity holding commercial property,' and its business would therefore not be disrupted by ordering a turnover of the property." *La Zona Rio*, 2024 WL 1138568, at *15. The El Paso court concluded that *Heckert* was inapplicable because "the evidence reflected that the

[4] Yet still, even were the agreement properly before the court, the Agreement provided for the settlement this litigation as the general partner, regardless of whether WC 4th had other limited partners.

partnership was an operating business which had been leasing its building space to tenants, and the partnership had three limited partners whose interests were at stake in the La Zona Rio Lawsuit." In this case however, no real property was transferred because the property had already been sold and WC 4th has not satisfied its burden of establishing that there are other parties whose interests were at stake. Thus, unlike *La Zona Rio*, the Receiver here did not "utiliz[e] the Receivership Order to allow the partnership's only asset to be alienated" to Colorado Third. *See La Zona Rio*, 2024 WL 1138568, at *15.

We agree that the exception announced in *Heckert* applies. The record reflects that WC 4th is not an operating business and no party's interest would have been disrupted by granting turnover relief. A charging order is not the receiver's exclusive remedy, and the trial court did not abuse its discretion in granting the receiver's motion to dismiss with prejudice.

We overrule WC 4th's sole issue.

III. CONCLUSION

WC 4th's appeal is not a collateral attack of the Receivership Order, and the trial court did not abuse its discretion in granting the receiver's motion to dismiss WC 4th's claims against Third Street with prejudice. We affirm.

/s/ Randy Wilson
Justice

Panel consists of Justices Jewell and Wilson.