

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of DARRYL HOUSTON PRICE.

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NASTASSIA PRICE and ERIN PRICE-DUFFY,  
Personal Representatives of the ESTATE OF  
DARRYL HOUSTON PRICE,

Plaintiffs/Counter Defendants-  
Appellees/Cross-Appellants,

v

LORI JEAN KOSMALSKI, ESTATE OF  
RUDAFORD R. STERRETT, JR., and TRADE  
WORLD CORPORATION, INC., d/b/a TRADE  
DEVELOPMENT COMPANY,

Defendants/Counter Plaintiffs,

and

DART BANK,

Intervening Defendant-  
Appellee/Cross-Appellee,

and

JOHN L. NOUD and ALIX JENKINS, Personal  
Representative of the ESTATE OF JON K.  
JENKINS,

Appellees/Cross-Appellees,

and

THOMAS E. WOODS, Receiver,

Appellant/Cross-Appellee.

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UNPUBLISHED  
July 31, 2014

No. 314992  
Ingham Circuit Court  
LC No. 06-000228-NZ

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

O'CONNELL, J. (*concurring in part and dissenting in part*).

In this appeal, the majority affirms the portion of the trial court's order that relieved the Estate's counsel of liability for the receiver's expenses. The majority also affirms the trial court's refusal to hold Dart Bank liable for the receiver's expenses. I concur that these two decisions of the trial court should be affirmed.

However, the majority reverses the portion of the trial court's order that held the Estate liable for the receiver's expenses. I dissent from this portion of the majority opinion. In my view, the trial court was within its discretion to hold the Estate liable for the receiver's expenses.

In *In re Receivership of 11910 South Francis Rd (Price v Kosmalski)*, 492 Mich 208; 821 NW2d 503 (2012), our Supreme Court remanded this case to the trial court "for entry of an order in Dart's favor consistent with this opinion." *Id.* at 233. However, in dicta, the Supreme Court suggested:

By application of MCR 2.622(D), the receiver might nonetheless have received compensation for the expenses incurred in his administration of the receivership despite the order of priorities, potentially avoiding a situation like that here. That is, had the circuit court exercised its discretion under the court rule, [the personal representatives], as the parties requesting the receivership, might have been liable for payment of the receivership expenses out of their own funds and the receiver might not have been deprived of any compensation. [*Id.* at 232.]

On remand the trial court exercised its discretion, applied MCR 2.622(D)<sup>1</sup> to the facts of this case, and held plaintiffs accountable for the receiver's expenses. I find no abuse of discretion in the trial court's order, nor do I conclude that *res judicata* bars recovery.

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<sup>1</sup> MCR 2.622(D) was amended effective May 1, 2014. In its *Price* decision, our Supreme Court was referring to the prior version of the rule, which was in effect during the times relevant to this case. The prior version read as follows:

**(D) Expenses in Certain Cases.** When there are no funds in the hands of the receiver at the termination of the receivership, the court, on application of the receiver, may set the receiver's compensation and the fees of the receiver's attorney for the services rendered, and may direct the party who moved for the appointment of the receiver to pay these sums in addition to the necessary expenditures of the receiver. If more than one creditor sought the appointment of a receiver, the court may allocate the costs among them. [MCR 2.622(D) (2013).]

I would affirm the trial court's decisions in full.

/s/ Peter D. O'Connell

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The new rule requires that the order appointing a receiver specify the source and method of compensation of the receiver. MCR 2.622(F), as amended March 26, 2014, 495 Mich \_\_\_\_ (2014).