

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

MIKAYLA ZEIGLER AND DANIELLE
KING

: IN THE SUPERIOR COURT OF
:
: PENNSYLVANIA

Appellants

V.

RAMARAO NAIDU AND GLOBAL
DOCTORS US, LLC

No. 1125 EDA 2023

Appeal from the Order Entered April 20, 2023
In the Court of Common Pleas of Chester County
Civil Division at No: 2021-07894-TT

BEFORE: STABILE, J., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY STABILE, J.:

FILED JANUARY 23, 2024

Mikayla Zeigler (“Zeigler”) and Danielle King (“King”) (collectively “Appellants”) appeal from the April 20, 2023 order entered in the Court of Common Pleas of Chester County, denying their Motion to Stay Proceedings in their civil action against Ramarao Naidu (“Naidu”) and Global Doctors US, LLC (collectively “Appellees”). Appellants contend that the trial court abused its discretion when it denied their motion, effectively requiring that they provide testimony in their civil action despite an ongoing investigation and indictment in criminal proceedings “based upon the same operative alleged facts that form the basis of Appellees’ civil counterclaims.” Appellants’ Brief at 8. Following review, we vacate the order and remand.

Details of the facts underlying this action are not necessary for our disposition of the legal issue before us. Suffice it to say, Appellants brought a civil action against Appellees by writ of summons filed on October 8, 2021. In their complaint filed on August 5, 2022, Appellants asserted claims of assault and battery against Naidu related to events that occurred during Appellants' employment with Appellees.

On September 9, 2021, Appellees filed their answer and new matter. In addition, Appellees asserted counterclaims in which they alleged, *inter alia*, conversion, unjust enrichment, fraud, and civil conspiracy against Appellants. Appellants filed a reply to matter and an answer to the counterclaims on December 2, 2022 and December 13, 2022, respectively.

On March 16, 2023, Appellants filed their Motion to Stay Proceedings. They asserted that the criminal complaint initiated against them, as well as the subsequent pending criminal investigation, is based on the same facts alleged against Appellants in Appellees' counterclaim. Motion to Stay, 3/16/23, at ¶ 8. Appellants claimed that the criminal investigation has made the instant litigation more challenging and that, "at this time, [Appellants] do not have the opportunity to set forth a full defense to [Appellees'] counterclaims, as setting forth such a defense is incompatible with the Fifth Amendment privilege." ***Id.*** at ¶¶ 9-10. Appellants claimed that "mental health related conditions," from which both Appellants are suffering, have rendered them unable to participate meaningfully in discovery. ***Id.*** at ¶ 11.

They contended that Appellees failed to accommodate their health issues and instead insisted that Appellants respond to discovery requests and schedule depositions. ***Id.*** at ¶ 12. Appellants requested the trial court to stay the proceedings until the criminal proceedings were concluded and/or Appellants were medically able to participate meaningfully in discovery. ***Id.*** at ¶ 13.

In response, Appellees denied that they initiated a criminal complaint *after* Appellants filed their writ of summons on October 10, 2021. They point to a September 15, 2021 letter from their then-counsel, Attorney Samuel C. Stretton, to the District Attorney reporting “significant theft and fraud” committed against Appellees by Appellants. Answer to Motion to Stay, 4/5/23, at ¶ 8. They further suggested that the existence of a criminal investigation was not a basis for staying the civil action and that it was Appellants’ behavior “involving criminal activity, to wit, theft and fraud of assets and monies of [Appellees], which has created the alleged challenge for [Appellant’s] counsel.” ***Id.*** at ¶ 9. Appellees concluded by indicating that Appellants were aware as early as September 2021 that Appellees were investigating Appellants’ activities; that no criminal charges had been filed (as of the date Appellees filed their Answer to the Motion to Stay); and that delay “only gives [Appellants] more opportunity to hide or dissipate the assets and monies they misappropriated by [Appellants].” ***Id.*** at ¶ 13.

The trial court did not conduct a hearing on the motion. Instead, by order entered April 20, 2023, the court denied the motion based on the motion

and the response thereto. Order, 4/20/23.¹ This timely appeal followed. Appellants and the trial court complied with Pa.R.A.P. 1925.²

In their docketing statement filed with this Court on May 24, 2023, Appellants contended that April 20, 2023 order was appealable pursuant to Pa.R.A.P. 313. By order entered on July 10, 2023, we issued a rule upon Appellants to show cause why the April 20, 2023 order satisfies the collateral order doctrine. Order, 7/10/23, at 1. By letter filed on July 24, 2023, Appellants' counsel suggested that ***Keesee v. Dougherty***, 230 A.3d 1128 (Pa. Super. 2020), was instructive to the analysis. In ***Keesee***, this Court explained:

¹ By footnote, the court indicated that Appellants had not submitted any documentation to evidence that they were medically unable to participate meaningfully in discovery. "Further, [Appellants] may elect to invoke their Fifth Amendment privilege at trial, if appropriate." Order, 4/20/23, at 1 n. 1.

² In its Rule 1925(a) opinion, the trial court acknowledged that when it entered the April 20, 2023 order denying the motion to stay, it was unaware that criminal charges had been filed against Appellants on April 12, 2023. ***See*** Rule 1925(a) Opinion, 6/7/23, at 1 n. 2. In addition, the court stated that Appellants' counsel did not properly present facts of record from which the court could conduct any meaningful ***Keesee*** analysis. The court noted a plaintiff's obligation to create a complete record and suggested that this Court should not entertain counsel's attempt to extend ***Keesee*** to situations in which someone may simply believe that he or she is the subject of a criminal investigation. ***Id.*** at 2. Finally, the court attempted to distinguish ***Keesee*** and this Court's more recent unpublished opinion, ***Curry v. Paradox Limited Liability Co.***, 293 A.3d 606 (Pa. Super. 2023) (unpublished memorandum), because it was the defendants in those civil cases who faced criminal charges. By contrast, here it is the Appellants, plaintiffs in the civil case, who are facing criminal charges based on the operative facts that Appellees have asserted in their counterclaims.

An order denying a motion to stay generally is considered interlocutory and not appealable unless it satisfies the collateral order doctrine. ***Spanier v. Freeh***, 95 A.3d 342, 345 (Pa. Super. 2014). Our Supreme Court held,

Pennsylvania Rule of Appellate Procedure 313(b) permits a party to take an immediate appeal as of right from an otherwise unappealable interlocutory order if the order meets three requirements: (1) the order must be separable from, and collateral to, the main cause of action; (2) the right involved must be too important to be denied review; and (3) the question presented must be such that if review is postponed until after final judgment, the claim will be irreparably lost. All three prongs of Rule 313(b) must be met before an order may be subject to a collateral appeal; otherwise, the appellate court lacks jurisdiction over the appeal.

Commonwealth v. Harris, 612 Pa. 576, 32 A.3d 243, 248 (2011); **see also** Pa.R.A.P. 313(b) (defining a collateral order as “an order separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case, the claim will be irreparably lost”).

With regard to the first prong of the collateral order doctrine, an order is separable from the main cause of action if it is entirely distinct from the underlying issue in the case and if it can be resolved without an analysis of the merits of the underlying dispute. With regard to the second prong, a right is important if the interests that would go unprotected without immediate appeal are significant relative to the efficiency interests served by the final order rule. Notably, the rights must be deeply rooted in public policy going beyond the particular litigation at hand. With regard to the third prong, a right sought to be asserted on appeal will be “irreparably lost” if, as a practical matter, forcing the putative appellant to wait until final judgment before obtaining appellate review will deprive the appellant of a meaningful remedy.

Commonwealth v. Magee, 177 A.3d 315, 319-320 (Pa. Super. 2017) (citations, ellipsis, and some quotation marks omitted).

Keesee, 230 A.3d at 1131-32.

Counsel noted that the facts of the instant appeal are “virtually identical to those in **Keesee**.” Response to Rule to Show Cause, 7/24/23, at 3. Counsel argued that the April 20, 2023 order satisfies the collateral order doctrine. As explained in Appellants’ response:

First, the trial court’s denial of Appellants’ Motion to Stay Proceedings can be decided without reaching the merits of the underlying litigation, which involves affirmative claims of employment discrimination, sexual harassment, and retaliation, and counterclaims of conversion, unjust enrichment, fraud, and civil conspiracy. Second, denial of the Motion to Stay Proceedings implicates Appellants’ Fifth Amendment rights against self-incrimination, which courts in the Commonwealth have consistently held is the type of privilege that is deeply rooted in public policy and too important to be denied review. Third, Appellants’ rights against self-incrimination would be irreparably lost if review was postponed until final judgment, as Appellants would either need to forgo testifying on their behalf in the civil action or risk providing answers that might incriminate them in the pending criminal proceedings. As such the trial court’s Order denying Appellants’ Motion to Stay Proceedings satisfies the collateral order doctrine and this Court has jurisdiction over the appeal.

Id.

By order entered on August 2, 2023, this Court acknowledged counsel’s response to our July 10, 2023 rule to show cause and noted, “[a]ccordingly, the rule is discharged and this appeal shall proceed.” Order, 8/2/23, at 1. However, the parties were advised that the ruling “is not binding on this Court, as a final determination as to the propriety of the appeal.” ***Id.*** The parties were advised that the issue could be revisited by this merits panel and that

the parties should be prepared to address the issue in their briefs or at the time of oral argument. ***Id.***³

We agree with Appellants and their ***Keesee*** analysis, ***see*** Appellants' Response to Rule to Show Cause, 7/24/23, at 3, and conclude that the April 20, 2023 order is appealable under Pa.R.A.P. 313. First, the trial court's order denying the motion to stay is separable from the main cause of action and can be resolved without reaching the merits of the underlying litigation. Second, denial of the motion to stay implicates deeply-rooted Fifth Amendment rights. Third, Appellants' rights against self-incrimination would be irreparably lost if review were postponed until final judgment. Having determined that Appellants satisfied all three prongs of the collateral order doctrine, we have jurisdiction over this appeal and shall address the merits of Appellants' claim.

Appellants ask us to consider one question in this appeal: "Whether the trial court erred by entering an Order denying Appellants' Motion to Stay Proceedings, thereby requiring that Appellants provide testimony in the civil action, despite the ongoing criminal investigation and criminal indictment of Appellants." Appellants' Brief at 4.

³ Appellants filed a brief with this Court in which they repeated their collateral order doctrine argument. Appellants' Brief at 10-16. Appellees did not file a brief. The case, originally scheduled for oral argument, was removed from the argument list by order entered November 1, 2023 in response to Appellants' Emergency Motion for Continuance, which we accepted as a motion to submit on briefs. Accordingly, Appellees have not presented any challenge to the motions panel's order discharging the rule to show cause.

As this Court has recognized:

The decision to grant or deny a motion to stay is within the sound discretion of the trial court, and we will review that decision for abuse of discretion. **See generally *In re Upset Sale, Tax Claim Bureau of Berks County***, 505 Pa. 327, 479 A.2d 940, 946 (1984). “An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will, as shown by the evidence or the record, discretion is abused.” ***Cigna Corp. v. Executive Risk Indem., Inc.***, 111 A.3d 204, 211 (Pa. Super. 2015), *appeal denied*, 633 Pa. 773, 126 A.3d 1281 (2015).

Keesee, 230 A.3d at 1133.

In ***Keesee***, this Court addressed, as a matter of first impression, “the appropriate balancing test or factors” a trial court should consider when entertaining a motion to stay a civil case pending resolution of a related criminal case. ***Id.*** at 1133. The Court explained:

We are guided by this Court’s acknowledgment in ***Spanier[v. Freeh]***, 95 A.3d 342 (Pa. Super. 2014)] of the six-factor balancing test set forth in ***In re Adelphia Communications Sec. Litig.***, No. 02-1781, 2003 WL 22358819 (E.D. Pa. May 13, 2003), although we find no adoption of this specific balancing test by our Supreme Court. **See *Spanier***, 95 A.3d at 345.

In ***Adelphia***, the United States District Court for the Eastern District of Pennsylvania held,

In deciding whether to stay a civil case pending the resolution of a related criminal case, courts consider many factors, including: (1) the extent to which the issues in the civil and criminal cases overlap; (2) the status of the criminal proceedings, including whether any defendants have been indicted; (3) the plaintiff’s interests in expeditious civil proceedings weighed against the prejudice to the plaintiff caused by the delay; (4) the burden on the defendants; (5) the interests of the court; and (6) the public interest.

Adelphia, 2003 WL 22358819 at *3. The **Adelphia** court considered all six of the factors in a balancing test to determine whether the grant of the stay was appropriate. **Id.** at *3-*7, **see also Spanier**, 95 A.3d at 345 (noting the appropriate test is a six-factor balancing test).

Consideration of these six factors in deciding whether to grant or deny a motion to stay a civil proceeding pending the resolution of a related criminal matter is further supported by the four factors our Supreme Court considered when determining whether to grant or deny a motion to stay a case pending an appeal. **See Pa. Pub. Util. Comm'n v. Process Gas Consumers**, 502 Pa. 545, 467 A.2d 805, 809 (1983) (stating, "the standards established by the [court in **Virginia Petroleum Jobbers Ass'n v. Fed. Power Comm'n**, 259 F.2d 921 (D.C. Cir. 1958)] as refined by the [**Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.**, 559 F.2d 841 (D.C. Cir. 1977)] decision provide a rational basis for the issuance of a **stay pending appeal** and are the criteria to be followed by the courts of this Commonwealth" (emphasis added)). In **Process Gas**, our Supreme Court held the grant of a motion to stay pending appeal is warranted if:

1. The petitioner makes a strong showing that he is likely to prevail on the merits.
2. The petitioner has shown that without the requested relief, he will suffer irreparable injury.
3. The issuance of a stay will not substantially harm other interested parties in the proceedings.
4. The issuance of a stay will not adversely affect the public interest.

Process Gas Consumers, 467 A.2d at 808. The **Process Gas** four-factors test served as a template employed by the **Adelphia** court to assess the propriety of staying a civil proceeding pending the resolution of a related criminal case. Therefore, the factors identified in **Process Gas**, as augmented by the district court in **Adelphia**, are the appropriate factors for a court to consider, at a minimum, when deciding to grant or deny such a motion to stay.

Id. at 1133-34.

In their brief, Appellants address each of the six **Adelphia** factors recognized in **Keese** as appropriate factors to be considered. Appellants' Brief at 16-22. They aptly explain why weighing those factors under the circumstances of this case supports the conclusion that a stay of proceedings is warranted.⁴

We reject the trial court's attempt to distinguish this case from **Keese** based on the fact that Appellants are plaintiffs below facing counterclaims rather than, as in **Keese**, being defendants facing criminal charges. **See** n. 2, **supra**. We find that to be a distinction without a difference. The fact remains that the allegations raised in those counterclaims relate to criminal matters facing the parties whose interests are at stake.

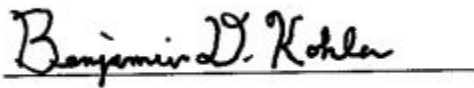
Here, we find it was an abuse of discretion on the part of the trial court to deny the motion to stay without conducting the six-part analysis outlined in **Keese**. While the trial court asks us to quash the appeal as interlocutory, the court—to its credit—appears to recognize that the appeal satisfies the collateral order doctrine and that the **Keese** analysis should be undertaken. **See** Rule 1925(a) Opinion, 6/7/23, at 4 n. 1 ("If, after remand, [Appellants] seek a stay based upon the existence of court records as they currently exist, the trial court will engage in the required analysis as set forth in footnote 1." In footnote 1, the trial court acknowledged the **Process Gas, Adelphia**, and

⁴ Appellants concede that the sixth factor, *i.e.*, public interest does not come into play under the facts of the case.

Spanier cases forming the **Keese** analysis). Therefore, we vacate the April 20, 2023 order denying Appellants' motion to stay and remand for further proceedings consistent with this Memorandum. On remand, the trial court shall consider that indictments now have been filed against Appellants, as well as all additional facts and arguments offered by the parties in accordance with this Court's decision in **Keese**. **See Keese**, 230 A.2d at 1133-34.

Order vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/23/2024