

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARTHOLOMEW MAHONEY
Appellant,

vs.

BONNIE MAHONEY
Respondent.

Supreme Court No. 82412/82413
Electronically Filed
May 04 2021 12:17 p.m.
District Court No. D-13-477883-D
Elizabeth A. Brown
Clerk of Supreme Court

MOTION FOR STAY OF ORDER

COMES NOW Appellant, Bartholomew Mahoney, by and through his attorney, Aaron D. Grigsby, Esq. of The Grigsby Law Group, APC, and respectfully petitions this Honorable Court to stay the Orders entered on entered on December 24, 2020 and January 11, 2021 in case D-13-477883-D until such time as this Court issues a decision on the appeal.

RELIEF SOUGHT FROM THE NEVADA SUPREME COURT

An Order directing the District Court to stay the Order entered on December 24, 2020 and January 11, 2021 until a decision is made on Appellant's appeal.

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

The parties were divorced by stipulated Decree on February 3, 2016. At the time of the divorce there were two minor children born the issue of the marriage: Brigitte Mahoney born October 29, 2001 and Sophia Mahoney born June 12, 2004.

The Decree provided that the parties' share joint legal custody with Defendant having primary physical custody of the parties' minor children.

On May 9, 2019, Defendant filed a Motion to adjudicate arrears and for modification of alimony and child support. Mr. Mahoney filed an Opposition and Countermotion on August 21, 2019. The matter was set for an Evidentiary Hearing on May 7, 2020. Mr. Mahoney's attorney withdrew and filed a Notice of Entry of Order on April 28, 2020 after his Motion to Withdraw was granted.

On May 4, 2020 a Stipulation and Order was filed by Plaintiff, in Proper Person, and Respondent's Counsel to continue the Evidentiary Hearing. The Evidentiary Hearing was set for October 29, 2020. On September 17, 2020, the Court sent out a Notice of Rescheduling of Hearing moving the Evidentiary Hearing. The Notice was neither addressed to nor served on Mr. Mahoney. In 2020, Mr. Mahoney moved his residence. Respondent came to his residence in September 2020 to help their daughter move. She was aware that he was no longer residing at the address listed with the Court. She continued to serve him at an address she knew he was not residing and would not receive any pleadings.

It is unclear if the Order Setting Evidentiary Hearing filed on October 4, 2020 was served on Mr. Mahoney as the Certificate of Service does not indicate how it was served. Mr. Mahoney was never contacted by Court regarding

appearance for the December 3, 2020 Evidentiary Hearing. The Court contacted Mr. Mahoney's former counsel who had withdrawn from the case.

The District Court went forward with the Evidentiary Hearing without Appellant. At the Evidentiary Hearing, it is unclear what evidence was taken as the minutes do not match the order that was issued. There are many errors in the Order on its face. First, the Schedule of Arrears lumped together spousal support and child support and assessed interest and penalties for both in violation of Nevada Law. Second, the Court modified child support retroactively to June 1, 2019 but applied the child support calculation statute that went into effect on February 1, 2020. Lastly, the District Court awarded Ms. Mahoney bonuses that were outside the time periods and types allowed in the Decree of Divorce and calculated interest on the bonuses when the Decree is silent on when the bonuses need to be paid.

The Order of Attorney's Fees also contains gross miscalculations. The Memorandum of Costs and Disbursements contains fees and costs that predate the filing of the motion by years. The District Court Judge granted all costs including those that predated the filing of the motion by years. Although, the District Court Judge reduced the amount of requested attorney's fees, it appears that some of the fees granted included years prior to filing of the motion.

ARGUMENT

A. Standard

Pursuant to NRAP 8(a), an application for a stay must ordinarily be made in the district court¹. NRAP 8(c) provides the list of factors to be considered in determining whether a stay pending appeal should be issued in a civil case that does not involve child custody². NRAP 8(c) contains the factors for consideration in deciding whether to issue a stay:

In deciding whether to issue a stay or injunction, the Supreme Court will generally consider the following factors: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition³.

These factors mandate a stay in the present case. Mr. Mahoney filed a Motion for Stay in the District Court. The District Court temporarily

¹ Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982 (2000)

² Fritz, at 657

³ NRAP 8(2)(c)

granted the Stay until the Settlement Conference. The stay expired on April 30, 2021.

THE OBJECT OF THE APPEAL WILL BE DEFEATED IF A STAY IS DENIED

The first factor is whether the object of the appeal will be defeated if the stay is denied⁴. The object of the appeal concerns money. If the stay is not granted to maintain the status quo, Mr. Mahoney would unnecessarily be deprived of a substantial portion of his assets. The stay will avoid serious harm that will result to Mr. Mahoney and further avoid needless litigation. Accordingly, this factor weighs in favor of issuing the stay.

MR. MAHONEY WILL SUFFER IRREPARABLE OR SERIOUS INJURY IF

THE STAY IS DENIED

The second factor under Rule 8 is whether appellant will suffer irreparable or serious harm if the stay is denied⁵. Without a stay in this case, Mr. Mahoney will suffer irreparable injury. Mr. Mahoney would be deprived of his interest in his assets if he is forced to satisfy an erroneous judgement against him.

Additionally, it is unlikely that Respondent would be able to reimburse Mr. Mahoney if he is forced to satisfy the judgment but is ultimately successful on his appeal. Accordingly, this factor also weights in favor of issuing the stay.

⁴ NRAP 8(c)(1)

⁵ NRAP 8(c)(2)

BONNIE MAHONEY WILL NOT SUFFER IRREPARABLE OR SERIOUS
INJURY IF THE STAY IS GRANTED

The third factor under Rule 8 is whether the other party will suffer irreparable or serious injury if the stay is granted⁶. No irreparable or even serious harm will be suffered by Ms. Mahoney if the stay is granted. Ms. Mahoney was less than candid in her representation of the arrears. The arrears that were reduced to judgement without Mr. Mahoney's presence were not accurate. Ms. Mahoney will not be harmed by an additional delay for the appeal. As such, she would not suffer any harm from awaiting judgment from the appellate court. This factor also weights in favor of issuing the stay.

MR. MAHONEY IS LIKELY TO PREVAIL ON THE MERITS OF THE
APPEAL

The final factor under Rule 8 is whether the Mr. Mahoney is likely to prevail on the merits of the appeal⁷. In order to satisfy this factor, Mr. Mahoney does not have to show that it is certain he will prevail on appeal. Rather he must show a probability of success on the merits, or present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay⁸. While the appellate process holds

⁶ NRAP 8(c)(3)

⁷ NRAP 8(c)(4)

⁸ Fritz, at 659

many uncertainties, there are a number of legal issues raised by the District Court's order, which must be resolved in favor of reversing the decision.

The district court denied Mr. Mahoney due process. Mr. Mahoney is likely to prevail on the appeal because the district court denied him notice and an opportunity to be heard.

The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property. Procedural due process limits the exercise of power by the state and federal governments, by requiring that they follow certain procedures in criminal and civil matters. In cases where an individual has claimed a violation of due process rights, the courts must determine whether a citizen is being deprived of "life, liberty, or property," and what procedural protections are "due" that individual.

The most fundamental requirement of procedural due process is the opportunity to be heard. Notice must be both timely and sufficiently clear so that affected individuals will be able to appear and contest issues in a meaningful way. A fundamental, constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property.

Under the rules of civil procedure⁹, the District court must analyze whether the movant: (1) promptly applied to remove the judgment; (2) lacked intent to delay the proceedings; (3) demonstrated good faith; (4) lacked knowledge of procedural requirements; and (5) tendered a meritorious defense to the claim for relief¹⁰.

Mr. Mahoney has promptly objected to the ruling by filing his motion in the District Court and his appeal. The record does not reflect any attempts by Mr. Mahoney to unnecessarily delay the proceedings. The procedural rules are in place to protect the rights of litigants. Here, Mr. Mahoney was deprived of his day in Court. As an individual representing himself, the Court should have ensured that he received proper notice of the Evidentiary Hearing. Ms. Mahoney was aware of his new address and was aware that he was not receiving anything that she was sending him to his prior address.

The Orders rendered by the District Court have substantial errors. It appears that Ms. Mahoney took full advantage of Mr. Mahoney not being present. Mr. Mahoney believes that if the matter was heard on the merits, his arrears would be \$28,000.00, which represents the two bonuses that Ms. Mahoney was entitled to under the terms of the Decree of Divorce. One of their daughters came to live with

⁹ NRCP 60(b)

¹⁰ Kahn v. Orme, 108 Nev. 510, 835 P.2d 790 (1992)

Mr. Mahoney during the pendency of the case. At the Evidentiary Hearing, Ms. Mahoney requested an increased amount of support for a child who was not in her custody, this request was granted.

However, even without the merits being considered, the District Court order has many errors that are not discretionary. First, the Schedule of Arrears lumped together spousal support and child support and assessed interest and penalties for both. Second, the Court modified child support retroactively to June 1, 2019 but applied the child support calculation statute that went into effect on February 1, 2020. Lastly, the District Court awarded Ms. Mahoney bonuses that were outside the time periods and types allowed in the Decree of Divorce and calculated interest on the bonuses when the Decree is silent on when the bonuses need to be paid.

The Order of Attorney's Fees also contains gross miscalculations. The Memorandum of Costs and Disbursements contains fees and costs that predate the filing of the motion by years. The District Court Judge granted all costs including those that predated the filing of the motion by years. Although, the District Court Judge reduced the amount of requested attorney's fees, it appears that some of the fees granted included years prior to filing of the motion.

CONCLUSION

A stay is needed in this matter otherwise Mr. Mahoney will face serious and irreparable harm. A stay will maintain the status quo and prevent serious and

necessary injury to Mr. Mahoney. The factors relevant to a stay pending resolution of an appeal justify an issuance of a stay in this case.

Based on the foregoing, Mr. Mahoney respectfully requests that this Honorable Court grant a stay of the Orders entered on December 24, 2020 and January 11, 2021.

DATED this 4th day of May, 2021.

RESPECTFULLY SUBMITTED

THE GRIGSBY LAW GROUP
A PROFESSIONAL CORPORATION

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 4th day of May, 2021 a copy of the foregoing Motion for Stay was served as follows:

BY ELECTRONIC FILING TO

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/s/ Aaron Grigsby
An employee of the Grigsby Law Group