

IN THE SUPREME COURT OF OHIO

City of Worthington,	:	
	:	
Plaintiff-Appellee,	:	Case No. 2023-1564
	:	
vs.	:	
	:	
Mark R. Gideon,	:	
	:	
Defendant-Appellant.	:	

EMERGENCY MOTION FOR STAY OF EXECUTION PENDING APPEAL

Appellant Mark R. Gideon (appellant in Franklin County Court of Appeals, Case No. 23AP-475, filed August 5, 2023) hereby moves the Court, pursuant to Civ. R. 62(D),¹ for an order staying this action, including execution of the trial court's decision on July 6, 2023, pending the final outcome of the appellate process including a separate original writ of prohibition action (Franklin County Court of Appeals, Case No. 23AP-492, filed August 15, 2023) which is also currently pending.

A stay is necessary to prevent execution of the trial court's July 6, 2023, Entry and the trial court's Order filed on December 6, 2023 (attached), in which the trial court states its intention to conduct an evidentiary hearing to enforce a settlement on December 12, 2023, at 8:30 a.m., or any further proceedings to enforce the judgment.

Mr. Gideon filed a motion for stay of execution on December 4, 2023 (attached) in the trial court after learning of the trial court's intention to conduct an evidentiary hearing before the conclusion of appellate proceedings including this appeal. He filed a similar

¹ Power of appellate court not limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

motion in the court of appeals' writ of prohibition action (Case # 23AP-492) on December 6, 2023, which was denied on December 8, 2023.

Mr. Gideon received the trial court Order on December 6 for the hearing. Since then, Mr. Gideon has attempted to obtain a ruling from the trial court on the pending emergency motion for stay of execution filed in the trial court, but was advised as recently as several hours ago today, December 11, that the motion for stay would be addressed prior to the evidentiary hearing tomorrow morning.

The appeal arises from the trial court decision filed July 6, 2023, in which it granted the appellee City's combined motion to vacate an unconditional dismissal entry (filed January 10, 2023) and enforce a settlement agreement. The trial court lost jurisdiction once the unconditional dismissal entry was filed, and thus may not conduct any further proceedings as a result. The trial court disagrees, and now intends to proceed with a hearing to enforce the settlement even though the trial court action was unconditionally dismissed on January 10, 2023, and these appellate proceedings are not yet concluded.

The court of appeals upheld dismissal of the appeal for lack of a final appealable order on October 26, 2023, by Journal Entry (which is now the subject of this further appeal). Mr. Gideon respectfully disputes the trial court's re-assertion of jurisdiction and has as of this morning, December 11, filed this further appeal to this Court.

Mr. Gideon also filed an original action in the court of appeals (Franklin County Court of Appeals, Case No. 23AP-492, filed August 15, 2023) for a writ of prohibition to prevent this Court from continuing to exercise jurisdiction in this action, including

enforcement of its July 6, 2023, decision. That action is also currently pending and has not yet been concluded.

Appellant Mr. Gideon respectfully submits that it is appropriate under the circumstances to grant a stay of all proceedings in this action, including a stay of enforcement of the July 6, 2023, (trial court) Entry, without requiring that defendant post a supersedeas monetary bond for the appeal (and writ action) since the July 6, 2023, Entry merely permits the City to proceed with a hearing to enforce the settlement. There is nothing monetary at stake for the City as it concerns the appeal. In fact, the City agreed to pay defendant \$92,500 pursuant to the settlement agreement but has never paid those funds to Mr. Gideon. Not only has it failed to pay those funds to Mr. Gideon, but the City has repudiated the agreement. Thus, there being no monetary element of the issue on appeal, it makes sense to permit the appeal to proceed without requiring a monetary supersedeas bond.

The issue on appeal arises from a decision and entry filed July 6, 2023, which vacated the January 10, 2023, Entry of Dismissal to enforce the settlement. Nothing has changed in terms of the situation since then, so there is no apparent need for a hearing to take place at all, let alone tomorrow morning.

There is no emergency which might give rise to a need to conduct a hearing now as opposed to any time over the last five months since the trial court entry was filed, and it lacks jurisdiction in any event. The City started and completed Phase I of the Northbrook Relief Sewer Project in 1991, by installing a new sewer in the public right of way, but since then has dragged its feet for many years with respect to Phase II, the current dispute.

The issue with overflows in the Chaucer Subdivision results from a broken sewer line in two locations on the lot (109 Chaucer Court) immediately adjacent to Mr. Gideon's lot.

An Ohio EPA report on overflows dated March 7, 2011, shows that there are two pipe cracks in the sewer line on the lot next door to Mr. Gideon which have caused overflows on occasion in the lot next door to Mr. Gideon. *See Exhibit A*, p. 1 (109 Chaucer Ct. San. Line 04-0044;04-0043). The Ohio EPA recommends continuing regular maintenance as needed to deal with the overflows caused by the sewer line breaks and has not experienced any issues with this policy since then. The map accompanying the Ohio EPA report shows the location of the pipe cracks on the sewer line as being on Lot 109. *See Exhibit B*. The City has not elected to do anything about the sewer line breaks since then even though the sewer lines remains cracked in the same two places and experiences overflows from time to time.

The Ohio EPA and City entered into Final Findings and Orders relative to the sewer system in 2008-2009. *See Exhibit D*. The City passed Ordinance 42-2008 authorizing its City Manager to sign off on the agreement with the Ohio EPA Final Findings and Orders on October 20, 2008. *See Exhibit E*. The City has had years of opportunities to repair the sewer to prevent overflows in the Chaucer Subdivision but has elected not to do anything, which demonstrates the lack of an emergency situation with respect to the sewer system at this time or any time since 2008.

As recently as October 2022, the Ohio EPA further reports no issues or problems with the sewer line from its end, and certainly no emergencies or other requirements from the EPA for any immediate action relative to the sewer line at issue. *See Exhibit C*.

In short, there is no indication in this case that a monetary supersedeas bond is necessary. Should Mr. Gideon not prevail in the further appeal, the case would be remanded for a hearing in any event. Thus, all he now seeks is to maintain the status quo pending the outcome of the appellate process. To that end, a relatively short time period to see the appellate proceedings through to a conclusion would not have any adverse effect on the City.

Civ. R. 62 does not require that a bond be posted, and it is well within the Court's discretion not to require a bond, especially under these circumstances. Appellant respectfully submits that no bond is necessary or warranted under the circumstances.

Ohio law provides discretion to the trial court to stay the action pending the outcome of the appeal. Ohio does not require that a bond be imposed. "The Irvinnes cite no authority that construes Civ. R. 62(B) as mandating a bond before a stay can be granted. An 'adequate supersedeas bond' could reasonably be construed to mean no bond at all, if the trial court felt that none was necessary, as in this case. See *Lomas & Nettleton Co. v. Warren* (June 29, 1990), Geauga App. No. 89-G-1519, unreported, 1990 Ohio App. LEXIS 2720, at *3 (construing 'sufficient sureties' language of R.C. 2505.09 to encompass no sureties in certain cases). This court has held that 'under appropriate circumstances, the trial court may exercise its discretion and stay the execution of judgment without requiring the appellant to post a supersedeas bond.' *Whitlatch & Co. v. Stern* (Aug. 19, 1992), Summit App. No. 15345, unreported, at 21; see, also, *Lomas & Nettleton Co. v. Warren*, 1990 Ohio App. LEXIS 2720, at *5 (holding that '[t]he posting of a supersedeas bond is not mandatory to stay an execution in all cases[.]').

The trial court gave a reasonable explanation for its decision that an ‘adequate’ bond to secure the Irvines’ interests in this case was no bond at all. In its journal entry granting the stay, the trial court indicated its finding ‘that the Plaintiffs are adequately secured by the Defendant’s solvency and well-established ties to Akron, Ohio and that, therefore, the Defendants are not required to post a bond at this time.’ This court finds no abuse of discretion by the trial court. The cross-assignment of error is overruled.” *Geneva Irvine v. Akron Beacon Journal*, 2002-Ohio-83, 010902 OHCA9, Case No. 20450, Ninth District, Summit Co. (January 9, 2002).

For these reasons, appellant Mark R. Gideon respectfully submits that this motion should be granted in full and that this Court should grant a stay of execution on the July 6, 2023, Entry, without a monetary bond or alternatively, a de minimis supersedeas bond, and that a stay of execution should be imposed until the appellate proceedings are concluded.

Respectfully submitted,

/s/ James P. Connors
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served upon counsel for plaintiff via ECF this 11th day of December, 2023.

/s/ James P. Connors
Counsel for Appellant Mark Gideon