

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN RE: PETER NAJAWICZ, AMOS W.
CARTY, JR., and RODNEY E. MILLER,
SR.,

Petitioners.

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) S. Ct. Crim. Nos. 2008-098, 099
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) Re: Super. Ct. Misc. No. 08/2008
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On Appeal from the Superior Court of the Virgin Islands
Considered and Filed: January 8, 2009

BEFORE: RHYS S. HODGE, Chief Justice; MARIA M. CABRET, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

ATTORNEYS:

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Attorneys for Respondent People of the Virgin Islands

ORDER OF THE COURT

PER CURIAM.

THIS MATTER is before the Court on the December 4, 2008 Emergency Petition for Stay Pending Appeal filed by Rodney E. Miller, Sr., (hereafter “Miller”) and the December 5, 2008 Emergency Petition for Stay of Order Pending Appeal filed by Attorneys William J. Glore

(hereafter “Glore”) and Charles J. Grant (hereafter “Grant”).¹ Petitioners seek a stay of the Superior Court’s November 26, 2008 order holding Petitioner Miller in civil contempt and requiring him and his attorneys to pay a combined \$1.1 million into the court’s registry by December 9 and December 10, 2008 respectively. As required by Supreme Court Rule 8(b), Petitioner Miller filed a stay pending appeal with the Superior Court on December 1, 2008, and Petitioners Glore and Grant also requested a stay from the trial court by a joint motion dated December 3, 2008. In a December 8, 2008 order, this Court granted Petitioners a partial, temporary stay of the Superior Court’s November 26, 2008 order until such time as we ruled upon Petitioners’ respective emergency petitions. In an order entered on December 9, 2008, the Superior Court denied Petitioners’ request for a stay pending appeal.² The Respondent, the People of the Virgin Islands (hereafter “People”) submitted an opposition to Petitioners’ motions on December 9, 2008, and a supplemental opposition on December 10, 2008, and Petitioners Glore and Grant filed a reply on December 22, 2008.

In its December 9, 2008 opposition, the People describe Petitioners’ motions as “grossly procedurally defective” because Petitioners purportedly failed to comply with Supreme Court Rule 8(b), which requires that litigants seeking a stay pending appeal must “show that application to the Superior Court for the relief sought is not practicable, or that the Superior Court has denied an application, or has failed to afford the relief which the applicant requested,”

¹ Rodney E. Miller, Sr., William J. Glore, Esq., and Charles J. Grant, Esq., will be collectively referred to as “Petitioners” herein.

² In its December 9, 2008 order, the Superior Court denied Petitioners’ request for a stay as moot because this Court had issued a partial, temporary stay in its December 8, 2008 order. However, this Court granted this temporary stay because the Superior Court’s November 26, 2008 order had required compliance prior to the end of the ten-day period within which the People were allowed to submit an opposition brief pursuant to Supreme Court Rule 22 and before this Court could consider the merits of the parties’ arguments. Accordingly, the issuance of this Court’s December 8, 2008 order did not render Petitioners’ motions for a stay pending appeal before the Superior Court moot.

We disagree with the People's characterization. In their initial filings, Petitioners informed this Court that they had filed a motion for a stay pending appeal with the Superior Court. Furthermore, both this Court and the parties are aware that the Superior Court subsequently denied Petitioners' applications for a stay pending appeal on December 9, 2008.³

Likewise, the People argue that Petitioners' motions are procedurally defective because Rule 8(b) demands that "if facts are subject to dispute, the motion shall be supported by affidavits, other sworn statements or copies thereof . . ." V.I.S.CT.R. 8(b). Although the People contend that they "strongly oppose[] everything that the Petitioners have stated in their petitions to this court, and [Petitioners] are aware of this fact," and note that "[t]he Petitioners' version of events in this case and the law that they rely on are wildly different from the [People]'s," it is necessary to differentiate between the facts of the underlying criminal case—which is not before us—and the facts pertinent to evaluating the instant appeal and motion for a stay of the November 26, 2008 order pending appeal. Likewise, it is necessary to distinguish between legal arguments and factual assertions. While the parties possess different interpretations of the law and do not agree as to the facts in the underlying criminal litigation, nothing in any of the parties' filings indicate that any facts relevant to Petitioners' motion for a stay are in dispute.⁴ Accordingly, Petitioners' motions do not warrant denial due to non-compliance with Rule 8(b).

To determine whether a litigant is entitled to a stay pending appeal, this Court considers:

(1) whether the litigant has made a strong showing that he is likely to succeed on the merits; (2)

³ This Court entered this temporary stay on the eve of the execution date because the trial court had not acted on the Petitioners' motions for a stay.

⁴ This Court notes that Petitioner Miller's Emergency Petition for Stay Pending Appeal contains a ten page section titled "Factual and Procedural Background of the Request to Stay" which contains a lengthy discussion of Petitioner Miller's role, accomplishments, and compensation as Chief Executive Officer of the Schneider Regional Medical Center. Such issues are wholly irrelevant to the question of whether an appellate stay of the Superior Court's November 26, 2008 order is warranted, and this Court reminds Petitioner's counsel that the facts contained in a statement of facts should be limited only to those relevant to the issues before the Court. *Cf.* V.I.S.CT.R. 22.

whether the litigant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies. *See Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S.Ct. 2113, 2119, 95 L.Ed.2d 724 (1987). The first of these factors is ordinarily the most important. *See Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986). However, a movant may also have his motion granted upon a showing of a “substantial case on the merits” when “the balance of equities, as determined by the other three factors, clearly favors a stay.” *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). In particular, an appellate stay maintaining the status quo “is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant.” *Id.* at 844.

We find that the balance of the equities clearly favors an appellate stay of the Superior Court’s November 26, 2008 order. Petitioners have raised issues of first impression before this Court, including a non-frivolous challenge of the Superior Court’s jurisdiction to issue the underlying orders. Thus, Petitioners have presented a “serious legal question.” *Id.*

Likewise, the Petitioners have shown that irreparable injury may occur absent an appellate stay. Petitioner Grant, a Pennsylvania attorney admitted *pro hac vice* in this jurisdiction, has argued that requiring compliance with the November 26, 2008 order would require him to violate Pennsylvania Rule of Disciplinary Enforcement 221, which precludes a Pennsylvania attorney from transferring or depositing attorney trust account funds into a financial institution that has not been approved by the Supreme Court of Pennsylvania. Petitioners Grant and Glore have also argued that complying with the November 26, 2008 order would require them to violate a November 18, 2008 order issued by a different Superior Court

judge, which requires that all of Petitioner Miller's funds remaining in their law firm trust accounts be restrained and that "all bank account activities, including but not limited to the withdrawing or depositing of funds, are hereby suspended." The People argue that these orders are not in conflict, since Petitioners Grant and Glore may comply with the November 26, 2008 order by drawing on their own funds rather than the restrained assets in their firms' trust accounts. However, compelling Petitioners Grant and Glore—who were not held in contempt—to pay \$260,000.00 of their own personal funds to the Superior Court registry, where they would remain for an undetermined period of time, in itself represents a potentially irreparable injury in the event that Petitioners were to prevail on appeal.

Similarly, Petitioner Miller has demonstrated the potential for irreparable injury. The November 26, 2008 order states that if Petitioners Grant and Glore are unable to pay the \$260,000.00 into the court's registry, Petitioner Miller "will be responsible for payment of said sum into the [Superior] Court's registry," and should he fail to make this payment, "Miller shall be committed to the custody of the Virgin Islands Bureau of Corrections to be there incarcerated until the said sum of money is paid into the [Superior] Court's registry. . . ." Given that, like Petitioners Grant and Glore, Petitioner Miller may not access the restrained assets in his attorneys' trust accounts, and the Superior Court's order requires Miller's incarceration if Petitioners Grant and Glore do not comply with that court's order and Miller is unable to submit \$260,000.00 from his unrestrained personal funds into the Superior Court's registry, Petitioner Miller likewise faces the potential for irreparable harm if a stay is not granted and he were to ultimately prevail on appeal.

We also find that the third factor—whether issuance of a stay will substantially injure other parties—strongly favors Petitioners. As the People concede in their supplemental

opposition, “no substantial injury can be contemplated” because “[t]he funds are currently restrained, and have been so for months. . . .” Accordingly, issuing a stay pending appeal will not substantially injure the People or any third parties.

Likewise, the People’s argument that “[t]he public definitely has an interest in having the lower court take possession of the funds in question, and to hold onto such funds, until the criminal case has been adjudicated” fails in that these funds have already been restrained and requiring a transfer of the restrained funds into the Superior Court’s registry is unnecessary to secure them in the event Petitioner Miller is convicted.⁵ Furthermore, it is noteworthy that Petitioners have asserted non-frivolous arguments that the trial court lacked jurisdiction to issue the underlying orders and that the Superior Court’s August 5, 2008 Temporary Restraining Order, which—in part—restrained assets located in Virginia, was a nullity due to the trial court allegedly over-reaching its jurisdiction. While the public certainly has a strong interest in recovering unlawfully obtained funds, the public also has an interest in ensuring that courts do not over-reach their jurisdiction. *See S.E.C. v. Lines Overseas Management, Ltd.*, No. 04-302, 2005 WL 3579139, at *5 (D.D.C. 2005). According, after consideration of the competing interests, it is hereby

ORDERED that Petitioners’ motions for a stay pending appeal of the trial court’s November 26, 2008 order are **GRANTED**; and it is further

⁵ Furthermore, this argument is not consistent with the People’s contention that the Superior Court’s November 26, 2008 order does not contradict its November 18, 2008 order. According to the People, because the November 26, 2008 order did not specify Petitioners must transfer the restrained funds into the Superior Court’s registry, “[t]he funds can come from an account in *Timbuktu*, as long as they are transferred into the court’s registry on the dated [sic] stated in the order.” However, were the Petitioners to deposit funds other than the restrained assets, the People would have secured the \$1.1 million that is currently restrained as well as an *additional* \$1.1 million deposited in the Superior Court’s registry.

ORDERED that the November 26, 2008 judgment entered by the Superior Court in Crim. Misc. No. ST-08-ML-03 be and is hereby **STAYED** pending further order of this Court; and it is further

ORDERED that copies of this Order be served on the Clerk of the Superior Court and the parties' counsel.

SO ORDERED this 8th day of January, 2009.

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court