

2012 IL App (2d) 111134-U
No. 2-11-1134
Order filed February 24, 2012

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CHERI RAZIM,)	Appeal from the Circuit Court
)	of Winnebago County.
Petitioner-Appellant,)	
)	
v.)	
)	
AETNA LIFE INSURANCE CO.,)	No. 08-L-351
)	
Respondent-Appellee)	
)	
(Cheri Razim and John Razim, plaintiffs v.)	Honorable
Steven R. Erickson and Zachary Stewart,)	J. Edward Prochaska,
defendants).)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Bowman and Schostok concurred in the judgment.

ORDER

Held: By failing to request an evidentiary hearing or to request the opportunity to submit evidence, plaintiff forfeits review of whether the stay should be reversed solely because no evidentiary hearing was held; the trial court did not abuse its discretion by granting the stay; affirmed.

¶ 1 Plaintiff, Cheri Razim, brought this interlocutory appeal, contending that the trial court abused its discretion by granting the motion of Aetna Life Insurance Co. (Aetna) to stay plaintiff's

petition for adjudication of rights and liens pending resolution of its claim in the federal court. We affirm.

¶ 2

BACKGROUND

¶ 3 Plaintiff was injured in an automobile accident and recovered a tort judgment in the trial court against the at-fault party, defendant Steven R. Erickson. The total verdict was \$1,989,568, of which \$435,943 was awarded as compensation for past medical bills incurred by plaintiff to treat the injuries sustained in the accident.

¶ 4 Aetna is the third-party claims administrator of self-funded employee benefit plans, two of which provided health insurance reimbursement for medical expenses paid on behalf of plaintiff on the judgment plaintiff obtained against defendant. The health plans are an Employment Retirement Income Security Act of 1974 (ERISA) self-funded plan of HCR Manorcare, which paid \$262,430 in claims, and the ERISA self-funded health plan of Unisource, which paid \$2,271 in claims.

¶ 5 Plaintiff filed a petition for adjudication of rights and liens requesting the trial court enter an order that Aetna was not entitled to assert any claim against the proceeds of her judgment, and in any event, any repayment to the plans was subjected to her attorney fees either under the State Attorney Lien Act or the “common fund doctrine.” Aetna moved for a stay of the petition proceedings because the Manorcare Plan had filed suit in the federal court under ERISA (29 U.S.C. §1132(a) (2009)), seeking to enforce its rights under the plan, including its rights to the proceeds identified in the petition for adjudication of rights and liens. As part of the federal suit, the Manorcare Plan requested the federal court to issue a temporary restraining order (TRO) and a preliminary injunction enjoining plaintiff from disposing of any of the disputed funds.

¶ 6 Aetna's motion set forth the following arguments: (1) since both the federal and state actions seek to adjudicate the rights to the same proceeds, by going forward in the state court, the possibility of conflicting judgments may exist thereby eroding the principal of *stare decisis*; (2) any order entered by the state court might conflict with the outcome of the TRO; (3) the appropriate parties to the issues are already named in the federal court action; (4) further proceedings to obtain the appropriate parties would be a waste of time and judicial resources; (5) the request for relief would determine the complete rights and liabilities of the parties to the proceeds and further proceedings in the state court would also be a waste of time and judicial resources; and (6) Illinois law is completely preempted by ERISA and thus, the federal court is the more appropriate forum to adjudicate such rights. Aetna further argued that, under the trial court's inherent powers to control the disposition of its docket, a stay of plaintiff's petition was appropriate.

¶ 7 After hearing arguments from counsel, the trial court granted the stay until the ERISA matter was resolved in federal court. Plaintiff timely appeals.

¶ 8 ANALYSIS

¶ 9 Plaintiff initially contends that the stay should be reversed for the sole reason that no evidentiary hearing was held. Although no evidentiary hearing was held, neither party requested one and plaintiff never objected to the procedure employed by the trial court. After the trial court heard argument from both parties and granted the stay, plaintiff never asked for a continuance for an evidentiary hearing on the motion, never requested an opportunity to present evidence on the issue, did not object to the court's ruling on the basis that no evidentiary hearing had been held, and made no motion for reconsideration of the court's ruling. Because plaintiff did not request the opportunity to submit evidence and did not object to the trial court's failure to hold an evidentiary hearing,

review of this issue has been forfeited on appeal, and we need not address whether the stay should be reversed based on the trial court's failure to hold an evidentiary hearing. See *Village of South Holland v. Calumet Auto Truck Plaza*, 197 Ill. App.3d 49, 51-52 (1990).

¶ 10 Regardless, we do not find the failure to hold an evidentiary hearing alone requires this court to reverse the trial court's decision. No stay is generally granted without an evidentiary hearing at which the movant establishes its entitlement to relief (*Goodwin v. McHenry County Sheriff's Office Merit Com'n*, 306 Ill. App. 3d 251, 257 (1999)). However, in this case there was no dispute that plaintiff filed her petition seeking to eliminate or reduce the plans' rights to the proceeds from the tort judgment and there was no dispute that a fiduciary of one of the plans filed an ERISA action in federal court regarding the issue of reimbursement to the plan from the proceeds of the tort judgment. Thus, the issues before the court were legal issues, and no material facts would have aided the court at an evidentiary hearing. We also observe that plaintiff fails to set forth any material facts which would have assisted the court, requiring an evidentiary hearing.

¶ 11 Although the trial court granted the motion to stay without much articulated reasoning other than to agree with Aetna's counsel that it would be best for the federal court to hear and resolve these issues, the trial court has the ability to manage its docket as it sees fit. *Couri v. Korn*, 203 Ill. App. 3d 1091, 1094 (1990). The power of the trial court to stay proceedings is an attribute of its inherent power to control the disposition of the cases before it. *Vasa North Atlantic Ins. Co. v. Selcke*, 261 Ill. App. 3d 626, 628 (1994). Thus, trial courts are afforded discretion in issuing stay orders. *Vasa North Atlantic Ins. Co.*, 261 Ill. App. 3d at 628. Our review of an interlocutory appeal from an order granting a motion to stay proceedings is also limited to a determination of whether the trial court abused its discretion in granting the stay. *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill.

App. 3d 591, 594 (1991). Accordingly, we must analyze whether the trial court, in the exercise of its discretion, acted arbitrarily without conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial injustice resulted. *In re Marriage of Baniak*, 2011 IL App (1st) 092017, ¶ 9.

¶ 12 A party seeking a stay bears the burden of proving adequate justification for it, and must justify it by clear and convincing circumstances outweighing potential harm to the party against whom it is operative. See *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 595 (1995). Plaintiff argues that Aetna did not prove adequate justification for the stay by failing to: (1) attach the federal pleadings; (2) present evidence to justify a stay; (3) give a valid reason; and (4) cite any hardship or inequity if the state court resolves the issues.

¶ 13 We observe first that during the hearing on the motion, plaintiff never challenged Aetna's failure to attach the federal pleadings to its motion for stay. In fact, plaintiff never disputed the validity of the federal court proceeding. In all other respects, plaintiff's argument is closely related to those factors a court considers in determining the propriety of the stay: (1) comity; (2) the prevention of multiplicity, vexation, and harassment; (3) the likelihood of obtaining complete relief in the foreign jurisdiction; and (4) the *res judicata* effect of a foreign judgment in the local forum. *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 616 (1994).

¶ 14 In its motion to grant the stay, Aetna articulated its reasons for asking the court to stay the proceedings, raising the issues of comity, multiplicity of litigation, *stare decisis*, judicial economy, and obtaining complete relief in the federal action. Although the trial court decided to grant the stay, without much articulated reasoning, the trial court read the motion and then heard argument at the hearing on the motion before granting the stay. We therefore presume that the trial court properly

considered the appropriate factors and whether Aetna met its burden of proof prior to granting the stay.

¶ 15 During the argument on the motion, it became clear that there were legal issues surrounding whether the federal court had subject matter jurisdiction and, most importantly, whether or not the ERISA claims preempted the state claims. Aetna argued a scenario where the ERISA plans would be seeking full reimbursement from plaintiff even if plaintiff did not collect her full judgment. Plaintiff's petition claimed that the plan had no right to any recovery. As these issues could be resolved in either federal or state court, litigating the issues in more than one forum would not be the best use of judicial resources. Also, the rights and obligations of the parties arise out of the same core of operative facts: plaintiff's state court judgment and the parties' relative rights to the proceeds from that judgment. Moreover, if the stay had not been granted, the parties could be faced with contradictory orders from two separate jurisdictions on the same issues. In addition, Illinois courts owe a degree of deference to federal cases interpreting federal statutes such as ERISA. See *Barrett v. Fonorow*, 343 Ill. App. 3d 1184, 1195 (2003); *Donovan v. Beloit Corp.*, 275 Ill. App. 3d 25, 29 (1995).

¶ 16 Plaintiff argues that comity with the federal court is not applicable because her petition was filed first. This argument promotes a policy of a "race to the court house," which has been rejected as a determinative factor on this issue. See *Kaden*, 263 Ill. App. 3d at 617 (time of filing is not determinative).

¶ 17 Plaintiff also contends that the federal court does not have jurisdiction over her attorney's claim and therefore complete relief could not be obtained in that proceeding. Should plaintiff's attorney's involvement in the federal action be considered a matter of state law, the federal court has

pendent jurisdiction to adjudicate that claim. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966). Furthermore, should plaintiff be correct in her assertion regarding lack of subject matter jurisdiction, which she most likely will assert in federal court, the federal action can be dismissed and the stay, by its own terms, will no longer be in effect. Regardless, appellate review of the propriety of the stay order is not a review of which party is correct on the merits of the underlying proceeding but whether the trial court, in the exercise of its discretion ignored recognized principles of law. *Kaden*, 263 Ill. App. 3d at 615 (a stay order seeks only to preserve the status *quo* existing on the date of its entry and does not address in any way the merits of the underlying dispute).

¶ 18 In addition to weighing the factors set forth in Aetna's motion, the trial court considered its unfamiliarity with the applicable federal law before deferring to the federal forum. The factors determinative of a motion to stay are not all inclusive and do not limit a trial court from considering other factors which bear on exercising its discretion. *Kaden*, 263 Ill. App. 3d at 617. Weighing the relevant criteria and given the abuse of discretion standard, it is difficult to find that the trial court's ruling to stay the proceeding was arbitrary or fanciful. Accordingly, we conclude that the trial court properly exercised its discretion in determining that a stay was justified.

¶ 19 Affirmed.