2015 IL App (1st) 131724-U

Nos. 1-13-1724, 1-13-1725 (cons.)

Fifth Division
June 12, 2015

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MOTOROLA SOLUTIONS, INC., Plaintiff-Appellee, v. CONTINENTAL CASUALTY COMPANY; NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGS, PENNSYLVANIA; ZURICH INSURANCE COMPANY; and ASSOCIATED INDEMNITY CORPORATION, Defendants-Appellees (National Fire Insurance Company of Hartford; Transportation Insurance Company; American Casualty Company of Reading, Pennsylvania; Liberty Mutual Fire Insurance Company; and Liberty Insurance Company; Defendants; Joseph Erwin Jr., a Minor, by His Mother and Next Friend Tina Erwin, and Andrew Garrison, a Minor, by His Mother and Next Friend, Leslie Garrison, Petitioners-Appellants).	Appeal from the Circuit Court of Cook County. No. 11 L 1902 The Honorable Margaret Brennan, Judge Presiding.

JUSTICE GORDON delivered the judgment of the court.
Presiding Justice Palmer and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held:* Where the trial court issued a stay of all matters pending appellate review of certain insurance coverage issues, the appeal of the trial court's refusal to consider petitioners' motions to intervene due to the stay is dismissed as moot where this court has since issued its decision on the coverage issues.

¶ 2 Plaintiff Motorola Solutions, Inc. (Motorola), is currently litigating insurance coverage issues relating to four underlying personal injury actions in which claims were asserted against Motorola. As part of the coverage litigation, defendants Zurich Insurance Company and Associated Indemnity Corporation (the insurers) filed counterclaims alleging that releases executed by Motorola and the insurers operated to release the insurers from providing insurance coverage for the claims asserted in the underlying actions. The parties filed cross-motions for summary judgment, which were denied, and the issue proceeded to a bench trial, where the trial court found that Motorola's claims had not been released. The issues relating to the releases are considered in the insurers' appeals in *Motorola Solutions, Inc. v. Zurich Insurance Co.*, 2015 IL App (1st) 131529. During the pendency of the appeals, the trial court stayed all action in the coverage litigation.

¶ 3 During the litigation between Motorola and the insurers, the parties were permitted to file a number of documents under seal pursuant to a protective order entered by the trial court. Petitioners, plaintiffs in one of the underlying cases (the Erwins), sought to intervene in order to seek a modification of the protective order. The trial court declined to assert jurisdiction on the Erwins' motion to intervene in light of the order staying the proceedings. The Erwins appeal, and we dismiss the appeal as moot.

¶ 4 BACKGROUND

¶ 5 As an initial matter, we note that there is some confusion as to the identities of the appellants in the instant appeal. In its brief, Motorola states that the Erwins are parties in one of the four underlying cases, but in their reply brief, petitioners claim that "Petitioners-Appellants refer to 'the Erwins' collectively to include all 39 injured plaintiffs in the four underlying actions, as well as their parents to the extent they make associated claims." This confusion arises because petitioners chose not to individually name the parties bringing the motions at issue in the instant case but only to name Joseph Erwin, Jr., followed by an "*et al.*" designation; this form of naming the parties continues to the notices of appeal in the instant cases, where the notices of appeal merely refer to "Joseph Erwin *et al.*" without specifying further. While this would not usually cause problems, here, it leads to confusion because there are four separate underlying cases. This issue is further muddled by the fact that sometimes, the motions at issue refer to "Petitioners" as the parties in the Erwin case while later in the same motion referring to "Petitioners" as the parties in all four of the underlying cases. In our recitation of the facts, we carefully set out the identification of the parties in order to resolve this issue.[1]

¶ 6 In order to understand the parties' claims and the procedural posture of the instant case, it is necessary to begin with some background as to the lawsuits underlying the instant appeal.

[1] We note that insurer Associated filed its appearance listing itself as an appellant. However, that appears to be an error, likely caused by the fact that Associated is an appellant in the related appeals concerning the interpretation of the releases.

¶ 7 I. Clean Room[2] Cases

¶ 8 On September 30, 2008, minor plaintiffs Joseph Erwin, Jr., age 11, through his mother, and Andrew Garrison, age 10, through his mother (collectively, the Erwin plaintiffs), filed a three-count complaint in the circuit court of Cook County against Motorola (the Erwin complaint), alleging negligence, "abnormally dangerous and ultra hazardous activity," and "willful and wanton misconduct." The complaint alleged that from 1993 through the present, "Motorola determined policy and procedure at its Schaumburg headquarters, including a decision to utilize teratogenic and reproductively toxic compounds in 'clean' rooms used to assemble and manufacture its products at its various facilities." Motorola did so despite having notice of the reproductive hazards of the chemicals and other toxic substances used in the "clean rooms."

¶ 9 The Erwin complaint alleged that the plaintiffs' parents were Motorola employees who worked in Motorola's "clean rooms," "where [they] worked with and [were] exposed to chemicals and substances that were utilized in the process of manufacturing semiconductor devices." The plaintiffs' mothers continued working in the "clean rooms" while pregnant with the plaintiffs. As a result of the exposure to the chemicals in the "clean rooms," both child plaintiffs alleged that they "were severely and permanently injured, and sustained medical bills, severe physical, psychological, and emotional injury and distress, were forced to endure extensive pain, were deprived of a fair and reasonable opportunity to discover the cause of their injuries any sooner, and moreover, were subjected to permanent and debilitating injuries."

[2] According to Motorola's complaint, from the 1960s through 2003, Motorola operated facilities that manufactured, among other things, semiconductor products. These facilities included certain rooms that were designated as "clean rooms" in which the semiconductor products were manufactured, which "were designed to prevent dust and other similar materials from contacting semiconductor components during the manufacturing process."

¶ 10 After the Erwin complaint was filed, similar complaints were filed in three additional cases: LeDeaux v. Motorola, Inc., No. 10-L-008503 (Cir. Ct. Cook Co.) (the LeDeaux complaint), Johnson v. Motorola, Inc., No. 10-L-007695 (Cir. Ct. Cook Co.) (the Johnson complaint), and Lopez v. Motorola, Inc., No. 11-L-8529 (Cir. Ct. Cook Co.) (the Lopez complaint). These four cases are collectively referred to by the parties as the "clean room" cases.

¶ 11 II. Coverage Case

¶ 12 On February 18, 2011, Motorola filed a complaint for declaratory judgment and breach of contract against a number of insurance companies, including Zurich and Associated (the coverage case); the complaint was amended on July 1, 2011, and again on February 22, 2013. Motorola sought for the defendants to provide it legal representation to defend Motorola and/or coverage for defense costs under insurance policies issued by each of the defendants for the "clean room" cases.

¶ 13 Both Zurich and Associated filed affirmative defenses and counterclaims in which they alleged that separate settlement agreements entered into between the insurers and Motorola in 2003 operated to release coverage for the "clean room" cases. As noted, the issues relating to the releases are considered in the insurers' appeals in *Motorola Solutions, Inc. v. Zurich Insurance Co.*, 2015 IL App (1st) 131529.

¶ 14 III. Procedural Posture

¶ 15 On October 7, 2011, Motorola, Zurich, and Associated all filed motions for summary judgment in the coverage case concerning the scope of the releases. On April 13, 2012, the trial court issued an order denying all of the motions for summary judgment, finding the releases between Motorola and the insurers to be ambiguous.

¶ 16 On July 25, 2012, the trial court entered an agreed protective order in the coverage case with respect to discovery concerning the releases between Motorola and the insurers, permitting Motorola and the insurers to file any confidential information under seal.

¶ 17 Trial on the issue of the scope of the releases in the coverage case proceeded from December 11, 2012, through December 14, 2012. On January 31, 2013, the trial court issued a memorandum and judgment order finding that Motorola had not released the claims in the clean room cases.

¶ 18 On February 13, 2013, the insurers filed a motion before the trial court in the coverage case, for a finding under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010). On March 14, 2013, the insurers also filed a motion to stay the proceedings pending resolution of an appeal on the release issue.

¶ 19 On April 2, 2013,[3] before the trial court in the Erwin case, "Plaintiffs" filed a motion to modify the order of protection in the coverage case; the motion does not list "Plaintiffs" by name. The caption of the motion states: "JOSEPH ERWIN JR., a minor, by his mother And next friend TINA ERWIN and ANDREW Garrison, a minor, by his mother and next Friend LESLIE GARRISON, Plaintiffs," followed by "Jonathan Johnson, et al[;] Marcus Ledeaux, et al[;] Emanuel Lopez, et al[;] Plaintiffs." The caption lists the case number as "11 L 7612" and then lists: "Reassigned for Discovery: 10 L 7695[;] 10 L 8503[;] 11 L 8529." The motion requested that the court enter an order decertifying the records under seal and permit "Plaintiffs" to view the records. In the motion's prayer for relief, the motion asks the court to order Motorola to produce all discovery and trial exhibits from the coverage case "to Plaintiffs, JONATHAN JOHNSON, et al."

[3] The motion in the record is not file-stamped, so it is not clear when it was filed. However, the certificate of service attached to the motion states that it was emailed to opposing counsel on April 2, 2013.

¶ 20 On April 4, 2013, the trial court in the Erwin case entered an order that "Plaintiffs' Motion to Modify Order of Protection in case 2011-L-001902 is to be brought before" the trial court in the coverage case.

¶ 21 On April 8, 2013, before the trial court in the coverage case, "the Plaintiffs, JONATHAN JOHNSON, et al.," filed a motion to modify the order of protection in the coverage case. The substance of the motion was identical to that previously filed on April 2. The record indicates that the parties came before the trial court on the motion, where the insurers argued that there was no standing because the petitioners were not parties to the coverage case. [4]

¶ 22 On May 2, 2013, "the Petitioners, JOSEPH ERWIN JR., et al.," filed a motion to intervene in the coverage case. The motion stated that on September 30, 2008, "Petitioners filed their initial complaint against Motorola Incorporated, *Joseph Erwin Jr. et al., v. Motorola Inc.*, No. 2008 L 010824, renumbered 2011 L 7612 following appeal." The motion further stated that three other complaints had since been filed containing substantially similar allegations, and that all four of the cases were currently pending. Only the complaint in the Erwin case was attached to the motion to intervene as an exhibit. The motion also stated that "Petitioners are the plaintiffs referenced in paragraph 2 of the complaint filed by Motorola"; paragraph 2 of Motorola's complaint identifies the plaintiffs as "(i) the children of former Motorola employees and contractors who worked at Motorola facilities; and, in some instances, (ii) one or both of the parents of the children."

¶ 23 The motion stated that the coverage case was "an insurance coverage dispute arising from the Petitioners' personal injury causes of action. Therefore, there are questions of both law and fact in common with *Joseph Erwin Jr. et al., v. Motorola Inc.*, 2011 L 7612 such that

[4] This information comes from the transcript of the hearing on the motion to stay, which contains a recitation of the history of the case.

intervention is appropriate." Additionally, the motion stated that "[d]iscovery conducted, pleadings, documents, and trial exhibits produced" in the coverage case "may be relevant to or lead to relevant evidence in Petitioners' case, *Joseph Erwin Jr. et al., v. Motorola Inc.*, 2011 L 7612." Specifically, the motion stated that "[d]iscovery [r]esponses, pleadings, documents, and trial exhibits in this action would likely contain facts probative of the following: Motorola's actions; Petitioners' parents' exposure to chemicals; Motorola's notice and knowledge of the health risks posed by such chemical exposure; Motorola's possession of chemicals, including location of chemicals; exposure to Motorola employees; complaints by employees and governmental entities; other various Motorola locations; movement and handling of chemicals; and causal connection between chemical exposure and injury, among other issues." The motion asked for leave to intervene "in order to bring a Motion to Modify the Order of Protection."

¶ 24 The motion to modify the order of protection was filed[5] by "Petitioners, JOSEPH ERWIN JR et al.," and described the "Petitioners" as: "Petitioners, JOSEPH ERWIN JR. et al, are Plaintiffs in the underlying personal injury action alleging birth defects resulting from their parents' exposure to various chemicals in clean rooms in Motorola semiconductor manufacturing facilities." The motion states that "[d]iscovery conducted, pleadings, documents, and trial exhibits produced in *Motorola Solutions Inc. v. Continental Casualty Co.*, No. 2011-L-001902 may be relevant to or lead to relevant evidence in Petitioners' case, *Joseph Erwin Jr. et al., v. Motorola Inc.*, 2011 L 7612." The motion requested the trial court "to de-certify and unseal the records under seal pursuant to the July 25, 2012 protective order

[5] While the motion to intervene states that the proposed motion to modify the order of protection would be attached to the motion to intervene as "Exhibit 4," no "Exhibit 4" is included in the record on appeal. Instead, there is a file-stamped copy of a "Motion to Modify Order of Protection in Motorola v. Continental Casualty Co., Case No. 2011-L-001902," dated May 2, 2013, the same day as the motion to intervene.

in *Motorola Solutions, Inc. v. Continental Casualty Co.*, No. 2011-L-001902, including discovery documents and trial exhibits and order Defendant, MOTOROLA, to produce all discovery and trial exhibits from *Motorola Solutions, Inc. v. Continental Casualty Co.*, No. 2011-L-001902 to Petitioners, JOSEPH ERWIN JR., et al."

¶ 25 On May 6, 2013, in the coverage case, the trial court granted the insurers' motions and found that there was no just reason to delay enforcement of or appeal from three of the court's orders concerning the releases, and also entered an order granting the insurers' motion to stay "as to all parties, for the reasons stated on the record," and ordered that "no further proceedings of any nature shall take place in this Court, pending the resolution of Zurich's and Associated's appeal to the First District Appellate Court and further order of this Court." After granting the motion to stay orally in court, the trial court noted that "[i]ncluded in the order or at least for your understanding, I know that Cooney & Conway's motion [to intervene] is up on the 13th. Because this will now be transferred to the Appellate calendar, I won't be doing anything concerning that."

¶ 26 On May 10, 2013, "Petitioners, JOSEPH ERWIN JR., et al.," filed another motion to intervene in the coverage case, which was substantively identical to the motion filed on May 2, 2013.[6] However, the motion states that "*Motorola Solutions, Inc. v. Continental Casualty Co.*, 2011-L-0001902 [*sic*] is an insurance coverage dispute arising from the Petitioners' personal injury causes of action. Therefore, there are questions of both law and fact in common with *Joseph Erwin Jr. et al., v. Motorola Inc.*, 2011 L 7612, and the other underlying cases, such that intervention is appropriate." The motion also stated that "[d]iscovery conducted, pleadings, documents, and trial exhibits produced in *Motorola*

[6] The May 10 motion states that the May 2 motion to intervene had been set to be heard on May 13, 2013. However, no notice of motion is included in the record on appeal.

Solutions Inc. v. Continental Casualty Co., No. 2011-L-001902 may be relevant to or lead to relevant evidence in Petitioners' case, *Joseph Erwin Jr. et al., v. Motorola Inc.*, 2011 L 7612, and the other underlying cases." The motion then stated that "Petitioners seek to intervene in order to bring a Motion to Modify the Order of Protection to allow the Petitioners, Plaintiffs in the underlying cases, to obtain copies of discovery and trial exhibits filed in the instant case, for purposes of prosecuting those underlying actions."

¶ 27 Additionally, the motion to intervene stated that petitioners were not given notice of the motion to stay proceedings in the coverage case prior to the entry of the court's May 6 order granting the stay, and that "[t]his court retains jurisdiction as to matters collateral or incidental to the judgment orders on appeal," which they argued would include modifying the order of protection.

¶ 28 The proposed motion to modify the order of protection named as petitioners "JOSEPH ERWIN JR. et al." and stated that "Petitioners, JOSEPH ERWIN JR. et al, are Plaintiffs in the underlying personal injury action alleging birth defects resulting from their parents' exposure to various chemicals in clean rooms in Motorola semiconductor manufacturing facilities, and Intervenors in the instant case." The proposed motion further stated that "[d]iscovery conducted, pleadings, documents, and trial exhibits produced in *Motorola Solutions Inc. v. Continental Casualty Co.*, No. 2011-L-001902 may be relevant to or lead to relevant evidence in Petitioners' case, *Joseph Erwin Jr. et al., v. Motorola Inc.*, 2011 L 7612." The proposed motion requested that the trial court "de-certify and unseal the records under seal pursuant to the July 25, 2012 protective order in *Motorola Solutions, Inc v. Continental Casualty Co.*, No. 2011-L-001902, including discovery documents and trial exhibits and order Defendant, MOTOROLA, to produce all discovery and trial exhibits from

Motorola Solutions, Inc. v. Continental Casualty Co., No. 2011-L-001902 to counsel for Petitioners, JOSEPH ERWIN JR., et al."

¶ 29 As with their previous attempt to intervene, petitioners filed a "Motion to Modify Order of Protection in Motorola v. Continental Casualty Co., Case No. 2011-L-001902" on the same day as their motion to intervene. The contents of the motion are identical to the proposed motion attached to the motion to intervene.

¶ 30 On June 3, 2013, the trial court entered an order stating:

> "THIS MATTER coming on the Petition to Intervene of Joseph Erwin, Jr. and the Plaintiffs in the Underlying Cases, all parties having notice and the court being advised:
>
> It is ordered: the Court declines jurisdiction over Petitioner's [*sic*] Petition to Intervene based on the Order of 5/6/13 staying proceedings."

The first paragraph of the order was prepared by petitioners' counsel, while the second paragraph was handwritten.

¶ 31 ANALYSIS

¶ 32 As an initial matter, as noted, the parties do not agree as to the identities of the appellants in the instant appeals. After examining the record on appeal, we agree with Motorola that the appellants are solely the plaintiffs in the Erwin case, not the plaintiffs in all four underlying cases. The notices of appeal list the appellants as "JOSEPH ERWIN, JR., et al," and do not further specify the identities of the appellants. Throughout the record on appeal, whenever petitioners have referred solely to the Erwin case, they have similarly used the "JOSEPH ERWIN, JR., et al" terminology. Nowhere in the record on appeal has "JOSEPH ERWIN,

JR., et al" been used to include all of the plaintiffs in all four underlying cases. Accordingly, our decision in the instant appeals applies only to the plaintiffs in the Erwin case.

¶ 33 Turning to the merits of the Erwins' arguments, on appeal, the Erwins challenge the trial court's refusal to decide both their May 2, 2013, and their May 10, 2013, motions to intervene. The trial court did not decide either of petitioners' motions due to the imposition of a stay on May 6, 2013. On that day, the trial court entered an order granting the insurers' motion to stay "as to all parties, for the reasons stated on the record," and ordered that "no further proceedings of any nature shall take place in this Court, pending the resolution of Zurich's and Associated's appeal to the First District Appellate Court and further order of this Court." During the hearing, the court noted that "for efficiency purposes, it's stayed as to all the defendants because there's no reason for any action to be taken here that might in any way prejudice or create difficulties for everyone while you're up in the Appellate Court." The court then stated that "[i]ncluded in the order or at least for your understanding, I know that Cooney & Conway's motion [to intervene] is up on the 13th. Because this will now be transferred to the Appellate calendar, I won't be doing anything concerning that."

¶ 34 However, during the pendency of the instant appeals, we issued a decision in the case serving as the basis for the stay, *Motorola Solutions, Inc. v. Zurich Insurance Co.*, 2015 IL App (1st) 131529. This decision renders the instant appeals moot. "An appeal is moot if 'no actual controversy exists or if events have occurred that make it impossible for the reviewing court to grant the complaining party effectual relief.' " *In re Marriage of Eckersall*, 2015 IL 117922, ¶ 9 (quoting *In re Marriage of Peters-Farrell*, 216 Ill. 2d 287, 291 (2005)). " 'The fact that a case is pending on appeal when the events which render an issue moot occur does

not alter this conclusion.' " *Felzak v. Hruby*, 226 Ill. 2d 382, 392 (2007) (quoting *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 116-17 (1992)).

¶ 35 "The mootness doctrine stems from the concern that parties to a resolved dispute lack a sufficient personal stake in the outcome to assure the adversarial relationship that sharpens the presentation of issues upon which the court so largely depends for illumination of difficult *** questions." (Internal quotation marks omitted.) *In re Marriage of Peters-Farrell*, 216 Ill. 2d at 291. "The existence of a real dispute is not a mere technicality but, rather, is a prerequisite to the exercise of this court's jurisdiction." *In re Marriage of Peters-Farrell*, 216 Ill. 2d at 291.

¶ 36 An issue in an otherwise moot appeal may nevertheless be addressed "[1] where the magnitude or immediacy of the interests involved warrant[s] action by the court or [2] where the issue is likely to recur but unlikely to last long enough to allow appellate review to take place because of the intrinsically short-lived nature of the controversies." (Internal quotation marks omitted.) *Felzak*, 226 Ill. 2d at 392. The first exception is known as the public interest exception and is applicable "only if there is a clear showing that: (1) the question at issue is of a substantial public nature; (2) an authoritative determination is needed for future guidance; and (3) the circumstances are likely to recur." *Felzak*, 226 Ill. 2d at 393 (citing *In re J.B.*, 204 Ill. 2d 382, 387 (2003)). The public interest exception "is narrowly construed and requires a clear showing of each criterion." *In re Marriage of Eckersall*, 2015 IL 117922, ¶ 11. For the second exception to apply, " 'there must be a reasonable expectation that the same complaining party would be subject to the same action again and the action challenged must be of such short duration that it cannot be fully litigated prior to its cessation.' " *Felzak*, 226 Ill. 2d at 393 (quoting *In re J.T.*, 221 Ill. 2d 338, 350 (2006)).

¶ 37 In the case at bar, the Erwins are essentially challenging the trial court's refusal to rule on their motions to intervene due to the stay. However, since the appeal forming the basis of the stay has been decided, the stay will no longer be in effect and the trial court will have the opportunity to consider their motions. Consequently, there is no actual controversy for this court to resolve, rendering the appeals moot.

¶ 38 Furthermore, neither of the exceptions to the mootness doctrine is applicable. The Erwins' issues concerning the court's refusal to rule on their motions would not fall within the second exception since they are not likely to recur and would not last such a short time that they could not be fully litigated. Additionally, the Erwins' issues would not fall within the public interest exception since, as Motorola pointed out during oral argument, the circumstances surrounding the trial court's decision are fact-specific and would not be likely to recur, nor are they of a substantial public nature as they are limited to the specific circumstances of the coverage cases below. At oral argument, the Erwins argued that we could provide guidance to trial courts about the scope of a stay following a Rule 304(a) finding, but there is no indication that courts are in need of such guidance from this court.

¶ 39 Even though their appeals are moot, the Erwins ask us to nevertheless remand the case to the trial court with instructions to grant their motions to intervene and motions to modify the protective order. However, as the trial court has not yet had the opportunity to consider these issues on their merits, we would be usurping the trial court's place were we to do as the Erwins suggest. Accordingly, we dismiss the Erwins' appeals as moot.

¶ 40 CONCLUSION

¶ 41 Since the appeal serving as the basis for the trial court's issuance of the stay has been decided, the Erwins' arguments concerning the propriety of the trial court's refusal to decide their motions to intervene are rendered moot.

¶ 42 Appeals dismissed as moot.