

No. 1-14-2193

**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).

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IN THE APPELLATE  
COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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TERRY ENADEGHE,	)	Appeal from the
	)	Circuit Court of
Plaintiff/Counter-Defendant-Appellee,	)	Cook County.
	)	
v.	)	No. 12 L 011436
	)	
CHARLES DAHMS,	)	The Honorable
	)	Kathy M. Flanagan,
Defendant/Counter-Plaintiff-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.  
Justices Howse and Epstein concurred in the judgment.

**ORDER**

*HELD:* Trial court did not abuse its discretion in denying party's motion to stay tort action in light of pending declaratory judgment action where the causes have no bearing on each other and where the factors relevant to a consideration of imposing such a stay were not met.

¶ 1 Following the trial court's denial of his motion to stay, defendant/counter-plaintiff-appellant Charles Dahms (Dahms) filed the instant interlocutory appeal against plaintiff/counter-

No. 1-14-2193

defendant-appellee Terry Enadeghe (Enadeghe). He contends that the trial court erred in denying his motion and asks that we enter an order reversing the trial court's decision and remanding the matter with instructions that the court enter an order staying this cause until the resolution of two other specified legal matters, which are pending. For the following reasons, we affirm.

¶ 2

## BACKGROUND

¶ 3 On October 10, 2011, Enadeghe, a taxi driver, and Dahms, a pedestrian, were involved in an altercation near 310 South Clinton Street in Chicago. Enadeghe's first amended complaint at law asserted negligence and battery against Dahms, claiming that Dahms damaged the windshield of his taxi and that, after Enadeghe got out and asked Dahms to pay for the damage, Dahms refused and then physically struck Enadeghe with his briefcase, knocking him unconscious and causing him to fall to the ground. After answering the first amended complaint, Dahms filed his own counter-complaint at law against Enadeghe also asserting negligence and battery, claiming that Enadeghe entered a crosswalk with his taxi while Dahms and others were crossing, that Enadeghe's taxi came in contact with Dahms' briefcase, and that subsequently, Enadeghe got out and grabbed Dahms and his briefcase.

¶ 4 During the pendency of this tort action, Dahms' homeowner's insurance company, Country Mutual Insurance Company, filed a declaratory judgment action seeking determination of whether it owned a duty to defend and indemnify Dahms in relation to the altercation with Enadeghe. Country Mutual and Dahms filed cross motions for summary judgment. The trial court granted Dahms' motion, awarding him partial summary judgment with respect to the duty

No. 1-14-2193

to defend. A notice of appeal was filed in this Court in May 2014, and that cause is pending.<sup>1</sup>

¶ 5 In addition, criminal charges were also filed against Dahms in relation to this incident, namely, three counts of aggravated battery in violation of 720 ILCS 5/12-3.05(d)(8), (a)(1), and (c) (West 2010). In March 2013, a jury found Dahms guilty of violating subsection (c), and Dahms was sentenced to 18 months of probation and 14 days of incarceration as a condition thereof, time considered served. A notice of appeal was filed in this Court in May 2014, and that cause is also pending.<sup>2</sup>

¶ 6 With the pendency of these appeals, Dahms filed a motion to stay the instant tort matter until after resolution of the declaratory judgment action in chancery. The trial court, however, found that he had failed to establish that a stay was warranted. The court noted that while the chancery action is related to the tort action in that they both arose from the same altercation, they are “not the same cause of action.” The court explained that “[t]he only issue that will be resolved in the appeal of the declaratory judgment action is whether Mr. Dahms[’] insurance policy will provide coverage for the instant claim against him,” whereas in the tort action, “Dahms’ liability for Enadeghe’s injuries, as well as Enadeghe’s liability for Dahms’ injuries on the counterclaim, are at issue.” Thus, concluded the court, since “the resolution of Dahms’ insurance coverage for the claim against him does not affect the outcome of the instant” tort action, “there is no necessity of a stay in this matter and the interests of justice would not be served by imposing a stay on the instant case.” Accordingly, the trial court denied Dahms’

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<sup>1</sup>That cause is docketed as No. 1-14-1392.

<sup>2</sup>That cause is docketed as No. 1-13-3301.

No. 1-14-2193

motion for stay.

¶ 7

#### ANALYSIS

¶ 8 On appeal, Dahms contends that the trial court erred in denying his motion to stay. He asserts that hardship and equities weigh in favor of a stay being placed on the instant cause until the resolution of both the chancery and criminal actions now pending in our Court. With respect to the chancery case, he states that the resolution of the insurance dispute "has the potential of being completely dispositive of the entire case" because, if the decision below is affirmed, then he has the ability to direct his insurer to settle the negligence claim with Enadeghe. With respect to the criminal case, he states that going forward in this matter "without a final disposition on the alleged unconstitutionally-obtained conviction" may affect his credibility at a subsequent civil trial and may collaterally estop him from contesting certain facts and issues therein otherwise decided in the criminal proceeding. Based on all this, Dahms insists that the posture of the other proceedings favors a stay, that his interests and the burdens he would suffer favor a stay, that any purported interests of Enadeghe do not preclude a stay, that the actions involve the same subject matter, and that a stay would conserve judicial resources. We disagree.

¶ 9 As the parties note, the applicable standard of review here is clear. Axiomatically, the entry of a stay maintains a cause in its current state without ruling on the dispute between the parties. See *Davies ex rel. Harris v. Pasamba*, 2014 IL App (1st) 133551, ¶ 36. A trial court may stay proceedings as part of its inherent authority to manage its docket and control the disposition of the cases before it, examining factors such as the orderly administration of justice and judicial economy. See *Kenny v. Kenny Industries, Inc.*, 406 Ill. App. 3d 56, 65 (2010);

No. 1-14-2193

accord *Cullinan v. Fehrenbacher*, 2012 IL App (3d) 120005, ¶ 10. However, the burden is on the party moving for the stay, who "must justify it by clear and convincing circumstances outweighing potential harm to the party against whom it is operative." *Zurich Insurance Co. v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 595 (1991); see *Kenny*, 406 Ill. App. 3d at 65, citing *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615-16 (1994) (party seeking stay bears burden of proving adequate justification for it). In other words, the party seeking the stay " 'must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else.' " *Zurich*, 213 Ill. App. 3d at 595, quoting *Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936).

Ultimately, the decision whether to grant a stay is within the trial court's discretion, and we will not disturb the denial of a motion to stay unless it constituted an abuse of that discretion. See *Kenny*, 406 Ill. App. 3d at 65; *CHB Uptown Properties, LLC v. Financial Place Apartments, LLC*, 378 Ill. App. 3d 105, 107 (2007) (trial court's denial of motion to stay is reviewed under abuse of discretion standard); see also *Cullinan*, 2012 IL App (3d) 120005, ¶ 10. An abuse of discretion occurs only if the trial court " 'acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted.' " *Zurich*, 213 Ill. App. 3d at 595, quoting *In re Marriage of Aud*, 142 Ill. App. 3d 320, 326 (1986); accord *Kenny*, 406 Ill. App. 3d at 65, citing *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (an abuse occurs only where the trial court's ruling is arbitrary, fanciful, unreasonable or where no reasonable person would take the view adopted by it).

No. 1-14-2193

¶ 10 Based on the circumstances presented in the instant cause, we do not find that the trial court abused its discretion in denying Dahms' motion to stay.

¶ 11 First, with respect to his argument that the criminal case against him mandates stay, we note, as Enadeghe does in his brief on appeal, that this is the first time Dahms argues this point. That is, in the court below, the only basis Dahms raised for a stay in the tort case was the pendency of the declaratory judgment action with his insurer; he never mentioned the criminal case against him. Since a party cannot raise new issues for the first time on appeal, any assertion by Dahms that the tort case must be stayed in light of his pending appeal in the criminal action is waived. See *Bowman v. Chicago Park District*, 2014 IL App (1st) 132122, ¶ 59, citing *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996); accord *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 58 ("[t]his rule applies to interlocutory appeals").

¶ 12 Turning, then, to Dahms' argument that the chancery case involving his insurer mandates stay of the instant tort case, we find that his assertions of hardship and equities have no merit. Simply put, the resolution of the chancery case has absolutely no bearing on the resolution of the tort case here. Again, the chancery case is a declaratory judgment action involving Dahms and his insurer, Country Mutual. The key issue in that case focuses on a determination of coverage, namely, whether Country Mutual is required to cover Dahms for what occurred based on the homeowner's insurance policy he holds with Country Mutual. The result of that appeal will answer the question of who will have to pay Enadeghe, should he prevail in the tort action—Country Mutual via the policy or Dahms via his own pocket. This has nothing to do with Enadeghe and his rights in the tort action. Rather, in the instant suit, the key issue is whether

No. 1-14-2193

Dahms is liable for Enadeghe's injuries, and the result of that cause will answer the question of whether Enadeghe is entitled to compensation. Thus, regardless of what occurs in the declaratory judgment action, Enadeghe's rights will remain the same—either he will be awarded the right to compensation or he will not. And, regardless of what occurs in the tort action, Dahms rights will remain the same—either he will be covered by Country Mutual should he be found liable to Enadeghe or he will not. Thus, while the tort case will determine whether Enadeghe should receive an award, the chancery case determines only by whom that award will be paid.

Accordingly, as the trial court noted, while both causes may have arisen from the same initial altercation between Dahms and Enadeghe on South Clinton, they are not the same cause of action and have no affect on each other which would otherwise require the stay of either case while the other is pending.

¶ 13 Moreover, we note that "[a] motion for stay need not be automatically granted simply because the same cause involving the same parties is pending in another jurisdiction." *May v. Smithline Beecham Clinical Laboratories, Inc.*, 304 Ill. App. 3d 242, 247 (1999) (it was not intent of motions to stay to always prevent two separate actions concerning the same subject matter from proceeding simultaneously); accord *Marzouki v. Najjar-Marzouki*, 2014 IL App (1st) 132841, ¶ 18. Instead, the primary issue in determining whether to grant a stay is first determining whether the pending actions involve the "same parties" and the "same cause." *May*, 304 Ill. App. 3d at 247; see *Marzouki*, 2014 IL App (1st) 132841, ¶ 18. The former factor is satisfied not if the parties to the matters are identical, but when the litigants' interests are similar; the latter factor is satisfied not if the same cause of action or legal theories are involved, but

No. 1-14-2193

when the relief sought is based on the same set of facts. See *May*, 304 Ill. App. 3d at 247.

¶ 14 In the instant matter, neither the "same parties" factor nor the "same cause" factor are met. The parties involved in the tort case and the chancery case are different. While Dahms is the defendant in both action, the plaintiff in the declaratory judgment action is Country Mutual and the plaintiff in the tort action is Enadeghe. Country Mutual has no involvement in the tort action and is only concerned with Dahms' liability under its insurance policy. Meanwhile, Enadeghe has no involvement in the declaratory judgment action and is only concerned with Dahms' liability to him for negligence and battery. Thus, while Dahms may be a common party, Country Mutual and Enadeghe do not share any similar interest in these cases.

¶ 15 Likewise, while at first blush it may appear that the same operative facts give rise to both suits, the truth is that they really do not. That is, clearly, both the tort case and the chancery case arise from the fact that there was an altercation between Dahms and Enadeghe. However, the operative facts necessary for the resolution of these two cases are quite different. For the tort action, the only relevant facts are those that happened on the date of the altercation. But, for the declaratory judgment action, what is relevant is the set of facts surrounding the rights and obligations of Country Mutual and Dahms as determined on the day they signed the insurance policy, which occurred long before the altercation between Dahms and Enadeghe. Then only real relation here between these two cases is a nominal one: the occurrence of the tort case triggered the question of insurance coverage which became the issue of the chancery case. Therefore, without the "same parties" or "same cause" factors satisfied, we find that there was no reason for the trial court to grant a stay here.

No. 1-14-2193

¶ 16 Finally, Enadeghe points to the *Peppers* doctrine, which we find to be quite relevant to this appeal. That doctrine states that " 'it is generally inappropriate for a court considering a declaratory judgment action to decide issues of ultimate fact that could bind the parties to the underlying litigation.' " *Landmark American Insurance Co. v. NIP Group, Inc.*, 2011 IL App (1st) 101155, ¶ 59, quoting *Allstate Insurance Co. v. Kovar*, 363 Ill. App. 3d 493, 501 (2006) (citing *Maryland Casualty Co. v. Peppers*, 64 Ill. 2d 187, 197 (1976)). "This proscription specifically precludes determination of any ultimate facts upon which liability or recovery might be predicated in the underlying case." *Landmark*, 2011 IL App (1st) 101155, ¶ 59, citing *Fidelity & Casualty Co. of New York v. Envirodyne Engineers, Inc.*, 122 Ill. App. 3d 301, 306-07 (citing *Peppers*, 64 Ill. 2d 187). Applying the *Peppers* doctrine to the instant cause, it become clear that the tort case between Dahms and Enadeghe should most definitely not be stayed. This is because the declaratory judgment action cannot proceed until the tort action—which underlies it—is resolved. What occurs in the tort case, that final decision of whether Dahms is even liable to Enadeghe for negligence and battery, must necessarily be determined first before the declaratory judgment action can be resolved. In fact, if Dahms prevails in the tort action, the declaratory judgment action will become wholly irrelevant, as the question of coverage with specific respect to what occurred on the day of the altercation will no longer matter. Accordingly, pursuant to the *Peppers* doctrine, if any of Dahms' cases should potentially be stayed, it should be the declaratory judgment action, not the tort action, as the former necessarily is waiting on the latter.

¶ 17 Ultimately, as the trial court found here, there is no valid reason to grant Dahms' motion to stay the instant appeal in light of his pending appeal of his chancery case. Not only do the tort

No. 1-14-2193

and declaratory judgment actions have absolutely no bearing on each other, but Dahms fails to satisfy the primary requirements of "same parties" and "same cause" in order to merit a stay.

Therefore, we find that the trial court did not abuse its discretion in any way by denying Dahms' motion to stay.

¶ 18

#### CONCLUSION

¶ 19 Accordingly, for all the foregoing reasons, we affirm the judgment of the trial court.

¶ 20 Affirmed.