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FIRST DIVISION
March 23, 2016

No. 1-15-0423
2016 IL App (1st) 150423-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GARY TREPINA, JACOB L. WEGLARZ,)	
MICHAEL CARALANO, ELLEN J. REIDY,)	
MICHAEL S. TAYLOR, MARCOS REYES,)	Appeal from the
CHARLES B. CONNOLLY, JOEL ROTONDO,)	Circuit Court of
JAMES P. HUGHES, SR., JAMES P. HUGHES,)	Cook County.
JR., PAUL MCNAUGHTON, MARTIN A.)	
DARVIN, STEVEN J. DARVIN, VICTOR)	
SHARP, MICHAEL J. TAYLOR, PHILIP)	
SALVADOR, GARY NICKERSON, ROBERT)	No. 11 L 5667
D. GOLDSTINE, ANDREW MCCORMICK,)	
PETER MCCORMICK and JOHN KULCZEWSKI,)	
)	Honorable
Plaintiffs-Appellants,)	Raymond Mitchell,
)	Judge Presiding.
v.)	
)	
CHUHAK & TECSON, P.C., an Illinois)	
professional corporation,)	
)	
Defendant-Appellee.)	

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion when it granted motions for stay brought by defendant and a non-party; the court did not abuse its discretion by applying the relevant factors to both defendant's and non-party's motions to stay a civil case while parallel criminal litigation is pending; affirmed.

¶ 2 Plaintiffs, who are 21 clients of a certified public accountant (CPA) firm (plaintiffs), appeal the trial court's order that granted the motions for a stay brought by defendant law firm, Chuhak & Tecson, P.C. (defendant) and non-party Gary Stern. The sole issue on appeal is whether the circuit court abused its discretion in granting the motions for a stay where one of the movants was a non-party to the case. We affirm the trial court's granting of the motions for a stay because regardless of Stern's position as a non-party, defendant also moved for a stay and the court did not abuse its discretion in applying the relevant factors and weighing their impact on defendant.

¶ 3 **BACKGROUND**

¶ 4 This is a legal malpractice case brought by plaintiffs against defendant. The litigation stems from information that plaintiffs received from their CPA firm regarding an opportunity to reduce their personal income tax liability by investing in gas partnerships and receiving nonconventional source fuel (NSF) credits. On October 3, 2012, plaintiffs filed their second amended complaint, the operative complaint in this matter, and alleged that in 2005, lawyers from defendant law firm informed plaintiffs' CPA firm about various gas credit partnership investment opportunities, which were conveyed to plaintiffs. Plaintiffs' complaint also stated that an attorney-client relationship existed with defendant when defendant solicited and induced plaintiffs to invest in gas partnerships, gave legal advice, rendered legal opinions, and promised to defend plaintiffs if any problems arose. Plaintiffs asserted that defendant authorized the CPA firm to communicate with plaintiffs that "these were not tax shelters, but were instead tax credits provided by Congress to encourage taxpayers to provide funding to convert methane gas from landfills to usable energy." Plaintiffs then invested in partnerships, consisting of the Green Gas Delaware Statutory Trust, the Pontiac Statutory Trust, and other partnerships. The partnerships

were structured and organized by defendant after defendant represented through plaintiffs' CPA firm that "said investments were appropriate investment vehicles and tax credit opportunities under the [IRS] and were suitable for plaintiffs to invest in." Plaintiffs further alleged that defendant created the legal structure for and represented the syndicators in the creation of the gas partnerships and investments that were supposed to allow plaintiffs to receive a tax benefit in the form of tax credits. Specifically, plaintiffs' complaint stated that to receive the tax credits at issue, plaintiffs invested in entities that sold biomass gas produced from landfills.

¶ 5 Plaintiffs' complaint further alleged that defendant did not perform its due diligence to determine whether the entities it formed satisfied statutory criteria. Ultimately, the Internal Revenue Service (IRS) disallowed the tax credits because: "(a) the gas was not fuel grade; (b) there was excessive 'flaring' or burning off of gas as opposed to converting to electricity; and (c) the gas was sold to related entities and only sales to unrelated entities qualify." In April 2009, plaintiffs began receiving examination notices from the IRS regarding the gas investment partnerships. The notices were then sent to defendant and power of attorney forms were completed so that defendant could represent plaintiffs in the federal tax litigation (tax court case). On April 29, 2010, defendant sent a letter to some of the plaintiffs stating that it could no longer represent any individual plaintiff due to a conflict of interest. In May 2010, defendant terminated its representation of plaintiffs in the tax court case and revoked the powers of attorney.

¶ 6 Plaintiffs' complaint stated that the attorneys from defendant law firm owed plaintiffs a duty to perform their job in the same manner as attorneys in the field of gas investments and tax law under the same or similar circumstances and that defendant, through Stern and other attorneys, breached that duty, *inter alia*, when it erroneously advised plaintiffs that the tax credits

would be available, failed to advise plaintiffs that there was a significant risk they would not receive the tax credits, and failed to properly structure the investment entities. The complaint alleged that as a result of defendant's negligence, plaintiffs were harmed based on the following: plaintiffs had or would be notified of assessments made and demanded by the IRS for assessed taxes, interest, and penalties as a result of defendant's negligent conduct; plaintiffs were forced to hire attorneys to represent them and have incurred costs as a result; and plaintiffs lost their gas investments after investing millions of dollars.

¶ 7 The case proceeded with discovery. On July 14, 2014, defendant filed its first motion for a stay, asserting that the case should be stayed until the tax court case was resolved because it was unclear what, if any, damages plaintiffs were going to suffer and the tax court case directly and significantly affected the legal malpractice action. Plaintiffs objected to the motion for a stay and on July 21, 2014, the court denied the motion without prejudice in a written order, stating that "[d]efendant has not convinced the [c]ourt that a stay is proper pending the resolution of the tax proceedings."

¶ 8 On October 14, 2014, Stern was indicted by a grand jury on federal criminal charges that alleged he devised and organized a series of investments that were designed to allow his clients to generate fraudulent tax credits. In January 2015, plaintiffs moved to compel written discovery responses and to take certain depositions in chambers. Plaintiffs' motion stated that they had noticed the depositions of Stern and two other former partners of defendant law firm, Albert Grasso and Jeanne Kerkstra, for various dates in February 2015, and sought to have those three depositions taken in the court's chambers or jury room so that the court "could immediately rule upon the many objections expected to be raised by those *** deponents, including but not limited to 'pleading the [fifth amendment right against self-incrimination].'" Sometime

thereafter¹, Stern filed a motion to stay this case. On February 2, 2015, defendant filed a motion to join Stern's motion for a stay and its own motion to stay this civil proceeding during the pendency of Stern's criminal trial. Also on February 2, 2015, plaintiffs filed their response to Stern's motion for a stay. It is unclear whether plaintiffs ever filed a response to defendant's motion for a stay because no such response appears in the record. On February 5, 2015, the court held a hearing in which the parties presented oral argument on the motions for a stay.

¶ 9 The court delivered its decision to grant Stern's and defendant's motions for stay in a written order dated February 6, 2015. In its order, the court recognized that "the [f]ifth [a]mendment does not mandate a stay of civil proceedings pending the outcome of parallel criminal proceedings. *Davies v. Pasamba*, 2014 IL App (1st) 133551[, ¶ 39]." The court then cited six factors that a court may consider in determining whether a stay of a civil action is appropriate, and found that "the factors weigh heavily in favor of a stay." The court based its determination on its application of the factors to defendant, not Stern. For example, the court found that this case and Stern's federal criminal indictment for tax fraud concerned nearly identical tax credit schemes. Additionally, the court acknowledged that much of the evidence will overlap between the two cases, most significantly, the testimony from Stern and other witnesses who will invoke their fifth amendment privilege. The court found,

"All this puts our [d]efendant in an impossible situation. Mr. Stern and other important witnesses are not going to participate in civil discovery that puts them in criminal jeopardy. Stern and other Chuhak partners designed the tax credit schemes at issue. Without testimony and other discovery from these lawyers, the defendant law firm is unfairly prejudiced in defending this civil case. This unfairness is not mitigated

¹ It is unclear upon what date Stern filed his motion for a stay because a copy of said motion is not included in the record on appeal.

because of the defendant's corporate form: a corporation acts through its agents, and the actions of Mr. Stern and the other Chuhak partners that place them in criminal jeopardy are the *same* actions that expose [defendant] to potential civil liability for legal malpractice.

Without a stay, there is a real harm to defendant law firm. Conversely, the harm to [p]laintiffs in granting a stay is relatively modest. Plaintiffs *** express frustration with the pace at which the case has progressed. While the [c]ourt has expressed its own frustration with delays in the case, a desire for a prompt resolution of a claim is present in every case. Here that concern pales in comparison to the very real harm to [d]efendant and its ability to present a defense in the absence of a stay. ***" (Emphasis in original.)

¶ 10 In addition, the court acknowledged that plaintiffs' tax liability, if any, was yet to be determined in the tax case. The court stated, "[i]ndeed, the [c]ourt's view has always been that this case should not proceed to trial until the [t]ax [c]ourt proceeding is resolved. *** So this case was never going to be tried before the conclusion of the [t]ax [c]ourt proceeding, and the pendency of that litigation on its own could justify a stay of this case."

¶ 11 Plaintiffs filed their notice of an interlocutory appeal on February 11, 2015. On May 4, 2015, this case was consolidated with two other related cases on appeal after plaintiffs filed a motion to consolidate and no party objected. As stated in a separate order entered on March 21, 2016, this case was thereafter severed from the other consolidated matters.

¶ 12 ANALYSIS

¶ 13 We have jurisdiction to review this interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). This court will not overturn a trial court's decision to

grant or deny a stay unless the trial court abused its discretion in making the decision.² *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 39. An abuse of discretion is the most deferential standard of review recognized by law. *Id.* "In determining whether the circuit court abused its discretion, this court should not decide whether it agrees with the circuit court's decision; but rather, should determine whether the circuit 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." (Internal quotation marks omitted.) *Zurich Insurance v. Raymark Industries, Inc.*, 213 Ill. App. 3d 591, 594-95 (1991).

¶ 14 As an initial matter, we note that Stern's motion for stay is not included in the record on appeal. Any doubts that may arise from incompleteness of the record will be resolved against appellant. *Foutch v. O'Bryant*, 99 Ill.2d 389, 392 (1984). While Stern's motion to stay is missing, the record includes defendant's motion for a stay, plaintiffs' response to Stern's motion, a transcript of the hearing on the motions for a stay, and the court's February 6, 2015, written order, all of which provide ample bases for conducting our analysis.

¶ 15 On appeal, plaintiffs argue that the circuit court erred in granting the motions for a stay because Stern is not a party to this lawsuit. Plaintiffs alternatively contend that even if the court did not err in applying the stay factors for parties to a non-party, the balance of the factors do not weigh in favor of a stay. Plaintiffs further argue that the court erred because defendant did not meet the established criteria for a preliminary injunction. Defendant responds that the trial court did not abuse its discretion when it granted a stay and there was no requirement to demonstrate

² We note that in their brief plaintiffs asserted, "[t]he granting or denying of a preliminary injunction is reviewed for an abuse of discretion. [See] *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. []2d 52, 62-63 *** (2006)." However, for reasons that are more fully discussed later in this order, we do not agree that a preliminary injunction is at issue here. Thus, although we agree that the standard of review is an abuse of discretion, we do not agree with plaintiffs' characterization of this issue.

the criteria for a preliminary injunction. Also in response to plaintiffs, Stern argues that he had standing to bring the motion to stay and that there is no requirement that a criminal defendant also be a party to the civil case.

¶ 16 We first address plaintiff's contention that the court erred in granting the stay because Stern is not a party to this lawsuit. Plaintiffs assert that a stay in this context can only be granted when parties to civil litigation, who are facing criminal charges, assert their fifth amendment right against self-incrimination and then move for a stay. According to plaintiffs, because Stern is not a party and corporate defendants do not have fifth amendment rights, the court erred in granting their motions for stay.

¶ 17 Defendant and Stern each filed their own responses to this appeal. In its response, defendant stresses that plaintiffs ignore the fact that defendant joined in Stern's motion for a stay and filed its own motion for a stay. Defendant asserts that it is clear from the court's ruling that the court considered Stern's status as a non-party and made its decision viewing the factors as applied to defendant. Finally, defendant argues that notwithstanding the issue regarding Stern's fifth amendment rights, the court consistently stated throughout the case that there would not be a trial until the tax court case was resolved. Similar to defendant, Stern argues that there is no requirement that a criminal defendant also be a party to the civil case in order to seek a stay. Stern contends that in *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334 (2008), although the court ultimately found that a stay was not warranted, the court's decision was not based on the deponent's status as a non-party.

¶ 18 The fifth amendment provides that "[n]o person *** shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. "The right against self-incrimination is one of the most fundamental rights under the Constitution of the United States."

CHB Uptown Properties, LLC v. Financial Place Apartments, LLC, 378 Ill. App. 3d 105, 108 (2007). In *Cordeck*, five subcontractors and one construction manager filed mechanics lien claims. *Id.* at 337. The bank that held a valid mortgage lien on the subject property also filed a claim to foreclose its lien. *Id.* During discovery, the owner of two companies involved in the project at issue, who was not named as a party to the lawsuit, invoked his fifth amendment right against self-incrimination. *Id.* The bank moved to continue the proceedings until the companies' owner could testify and the court denied the bank's motion. *Id.* On appeal, the court reviewed, *inter alia*, whether the trial court properly denied the bank's motion to continue the proceedings, which it viewed and analyzed as a motion to stay. *Id.* at 348-49.

¶ 19 In determining whether to grant a stay, the factors a court may consider are: (1) the procedural posture of the criminal case; (2) whether the criminal case involves the same subject matter as the civil case; (3) whether the government is a party to both cases; (4) the interests of the party invoking his fifth amendment privilege; (5) the interest of the public; (6) the prejudice to the plaintiff in not proceeding with the case; and (7) the interest of the court in managing its docket. *Id.* at 349 (citing *CHB Uptown Properties, LLC*, 378 Ill. App. 3d at 108-09; *Jacksonville Savings Bank v. Kovack*, 326 Ill. App. 3d 1131, 1136 (2002)).

¶ 20 The *Cordeck* court noted that the movant did not cite and failed to discuss any of the "aforementioned relevant factors used to review a motion to continue trial court proceedings." *Id.* at 349. As a result, the appellate court found that the trial court did not err in denying the stay. *Id.*

¶ 21 Notwithstanding Stern's position as a non-party³ in this case, we find that the court did not abuse its discretion in applying the aforementioned factors here. The deponent in *Cordeck*,

³ There seems to be some disagreement as to the language that applies to describe Stern's position as a non-party. Defendant points out, as it did during the February 5, 2015, hearing on the motions, that Stern is not a

like Stern, was not a party to the case. Rather, he owned the companies that were involved in the litigation. *Cordeck*, 382 Ill. App. 3d at 337. Despite the fact that he was not a party to that lawsuit, the court still viewed the factors as being "relevant" to their discussion. *Id.* at 349. The court did not examine or even mention the deponent's status as a non-party as a relevant issue in determining whether those factors applied. Therefore, we find that the trial court did not abuse its discretion when it applied the factors to this matter even though Stern is a non-party.

¶ 22 Even if we found the court had abused its discretion in applying the factors to Stern, which we have not, the court still would not have abused its discretion in applying the factors to defendant's motion. Defendant not only joined in Stern's motion for a stay, but also independently filed its own motion. Plaintiffs argue that the court should not have applied the factors to defendant because it does not possess a fifth amendment right against self-incrimination. We recognize that it is well-established that corporations are not protected by the fifth amendment. See *Braswell v. United States*, 487 U.S. 99, 102 (1988). However, in this case, defendant did not move for a stay based on its own intention to assert a fifth amendment privilege. Rather, defendant moved for a stay based on Stern's and others' representations that they would be invoking their individual rights against self-incrimination. We have not found and the parties have not provided any case law that suggests that a motion to stay based on an individual's assertion, or anticipated assertion, of his fifth amendment right can only be brought by the same person who is the subject of the pending criminal matter, rather than by a party in the related civil case. In order to examine defendant's motion for a stay, the court applied the relevant factors. Although plaintiffs argue against the application of the factors, plaintiffs have

"traditional non-party," because his personal assets are potentially on the line here due to his status as one of defendant's principals during the relevant time period. Defendant also argues that plaintiffs' suggestion that they are only suing for negligence, which would likely be limited to any available insurance policy, is irrelevant. While we agree that plaintiffs' assertion regarding policy limitations is unconvincing, we also are not swayed to create a distinction between an "untraditional non-party" and a "traditional non-party."

not proposed what analysis the court should have undertaken if applying the factors was erroneous. Similarly, we are unaware of any alternative analysis that a court is required to undertake in this situation; therefore, we find that the court did not abuse its discretion in applying the factors to defendant's motion for a stay.

¶ 23 Plaintiffs further assert the trial court erred when it allowed the stay even though Stern and others had not actually sat for their depositions and invoked their fifth amendment rights, and cite to *Cordeck* as support for their position. In *Cordeck*, after the non-party witness invoked his fifth amendment right against self-incrimination, the attorneys conducting the deposition did not continue to ask him specific questions. *Cordeck*, 382 Ill. App. 3d at 346. Instead, they merely asked the non-party deponent if he intended to assert the privilege to every question concerning the project at issue. *Id.* Finding that the parties could not challenge the court's failure to review the deposition on a question-by-question basis when the attorneys conducting the deposition did not ask individual questions, but merely asked if the deponent intended to assert the privilege broadly, the *Cordeck* court held "the propriety of invoking the privilege must be determined by the court when the question is presented to it in an appropriate fashion." *Id.*

¶ 24 Here, the issue is not whether Stern's and others' indication that they would invoke the fifth amendment privilege was proper based on the subject matter of the questions as it was in *Cordeck*, but rather whether the trial court abused its discretion when it granted a stay based on the representation that Stern and others would invoke the privilege. Unlike *Cordeck*, the case here does not involve a challenge to the court's determination regarding whether the privilege against self-incrimination was properly invoked. Currently, the only issue on appeal is whether the trial court abused its discretion when it stayed this case. If we were faced with examining the propriety of the court's determination of a specific question during a deposition, then the context

and manner in which the deponent invoked his privilege, like in *Cordeck*, would be relevant.

Here, however, we do not find that the court abused its discretion in granting a stay even though Stern and the others had not yet actually sat for their depositions.

¶ 25 Before addressing plaintiff's contention that even if it was not error for the court to apply the factors, the court still erred because the factors weigh in favor of denying the motions for stay, we reiterate and emphasize that our standard of review here is an abuse of discretion, which is highly deferential to the trial court's ruling. *Cholipski*, 2014 IL App (1st) 132842, ¶ 39. Our review is limited to examining whether "the circuit 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." (Internal quotation marks omitted.) *Zurich Insurance*, 213 Ill. App. 3d at 594-95.

¶ 26 "As a general rule, the fact that a party involved in a civil proceeding invokes his fifth amendment privilege against self-incrimination does not mandate a stay of the civil proceeding pending the outcome of similar or parallel criminal proceedings. [Citations.]" (Internal quotation marks omitted.) *Cordeck*, 382 Ill. App. 3d at 348-49. The party seeking to stay the civil proceeding in which the fifth amendment has been invoked bears the burden of proving that a stay is warranted. *Id.* at 349. As recognized by the trial court, in determining whether a stay is appropriate, a court may consider factors including, but not limited to, the following: (1) the posture of the criminal proceeding; (2) the interests and burdens on defendant; (3) the effect on the public interests at stake if a stay were issued; (4) the plaintiff's interest in expeditious resolution of the civil case and any prejudice to the plaintiff in not proceeding; (5) whether the criminal and civil actions involve the same subject matter; and (6) whether both actions were

brought by the government. *Id.* (citing *CHB Uptown Properties, LLC*, 378 Ill. App. 3d at 108-09.)

¶ 27 We disagree with plaintiffs' contention that even if the court should have applied the factors, they weigh in favor of denying a stay. The court's order reflects that after weighing the factors, the court determined "the factors weigh heavily in favor of a stay." Specifically, the court found:

"Most significantly, the civil complaint for legal malpractice (against Mr. Stern's former law firm) and the federal indictment for tax fraud (against Mr. Stern) concern substantially identical tax credit schemes. *** Much of the evidence will overlap including testimony from witnesses who, like Mr. Stern, will invoke their [f]ifth [a]mendment privilege. Indeed, [p]laintiffs anticipate that Mr. Stern and other witnesses will invoke and have sought to take their depositions in chambers to that the [c]ourt could promptly rule on the contours of any claim of privilege."

The court recognized, "[a]ll this puts our [d]efendant in an impossible situation" and specifically found that, "[w]ithout testimony and other discovery from these lawyers, the defendant law firm is unfairly prejudiced in defending this civil case." The court noted that the unfairness was not mitigated by the fact that defendant is a corporation because "a corporation acts through its agents, and the actions of Mr. Stern and the other Chuhak partners that place them in criminal jeopardy are the *same* actions that expose [defendant] to potential civil liability for legal malpractice." (Emphasis in original.)

¶ 28 In its order, the court articulated a well-reasoned, thoughtful analysis of why the factors weighed in favor of a stay. Plaintiffs argue that the court abused its discretion in its analysis of certain factors. We address each in turn.

¶ 29 As to plaintiff's interest in expeditious resolution of this case, plaintiffs contend that "the [c]ircuit [c]ourt discounted plaintiffs' arguments about how any potential appeal would further delay matters." Defendant responds that plaintiffs waived this argument because they made contrary representations during the hearing on the motions. In its order, the trial court noted all parties' and the court's "frustration with the pace at which this case has progressed" but noted said frustration "pales in comparison to the very real harm to [d]efendant and its ability to present a defense in the absence of a stay." We find that the trial court did not abuse its discretion in examining this factor. The court weighed this factor, in light of the past history of this case, and determined it to be of little importance compared to defendant's inability to present a complete defense. Also, we find convincing defendant's assertion that plaintiffs' delay argument is disingenuous. At the February 5, 2015, hearing, plaintiffs' counsel stated, "I am not making a delay argument here. The [c]ourt, I'm sure knows, that I probably [could not] stand here with a straight face and make a delay argument, so I am not going to talk about that." Thus, even though plaintiffs waived any argument regarding potential delay that may result from a stay, we still find the court did not abuse its discretion when analyzing this factor.

¶ 30 Plaintiffs further assert that the court erred in examining the public's interest in allowing the plaintiffs in all cases to seek redress in the court system without obstruction or delay. We do not see any way in which the right to pursue their case of plaintiffs in this matter, or plaintiffs in general, has been prejudiced by the court's decision to stay this matter. In fact, it is unclear to this court how plaintiffs here could fully pursue their claims until the tax court case is resolved. Until then, plaintiffs will not know what financial harm, if any, they have incurred. The court expressly stated, "this case was never going to be tried before the conclusion of the [t]ax [c]ourt proceeding, and the pendency of that litigation on its own could justify a stay of this case." We

find that it was entirely reasonable and not an abuse of discretion for the court to consider the posture of the tax case in deciding to stay this matter and its decision to do so has neither prejudiced nor obstructed either plaintiffs' or the public's ability to seek redress in court.

¶ 31 It is clear to us that the trial court engaged in a careful analysis of the factors as applied to defendant. We agree with the court's conclusion that without Stern's and others' deposition testimony, defendant would be denied access to potentially exculpatory information upon which it could defend the claims being made against it. As plaintiffs readily agree, Stern is alleged to be the architect of the alleged tax schemes at issue here. Thus, his testimony is crucial in determining what role, if any, and therefore what liability, if any, defendant may have. We find nothing within the court's February 6, 2015, order that shows the court acted arbitrarily without the employment of conscientious judgment, or exceeded the bounds of reason and ignored recognized principles of law. We also find that no substantial prejudice has resulted. Therefore, we find that the court did not abuse its discretion in granting a stay.

¶ 32 As a final matter, we turn to plaintiffs' assertion that the court erred because defendant failed to satisfy the elements of a preliminary injunction. Defendant responds that such a showing is not required and that no case has ever held that all stays must meet the requirements for a preliminary injunction. We agree with defendant. Illinois courts recognize an order granting a stay of proceedings is a preliminary injunction, and is appealable under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010). *Khan v. BDO Seidman, LLP*, 2012 IL App (4th) 120359, ¶ 47. However, plaintiffs have not cited and we have not found any case where a stay was sought based on the invocation of the fifth amendment privilege due to pending criminal litigation, and the court applied the requirements for a preliminary injunction in addition to the factors discussed previously. Rather, when a stay is sought in a similar context as here, the

court looks to the factors discussed above, not the requirements for a preliminary injunction. See *Davies ex rel. Harris v. Pasamba*, 2014 IL App (1st) 133551, ¶ 52; *Cordeck*, 382 Ill. App. 3d at 349; *CHB*, 378 Ill. App. 3d at 108-09. Accordingly, the trial court here correctly only looked to the stay factors and ignored plaintiffs' argument that the requirements of a preliminary injunction were improperly absent.

¶ 33

CONCLUSION

¶ 34 Based on the foregoing, we find that the trial court did not abuse its discretion when it granted defendant's and Stern's motions for stay. We, therefore, affirm the judgment of the circuit court.

¶ 35 Affirmed.