

No. 1-13-0211

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
FIRST JUDICIAL DISTRICT

FRANCK MAUVAIS-JARVIS, M.D., PH. D.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
v.)	
)	No. 10 CH 31064
NORTHWESTERN UNIVERSITY,)	
)	
Defendant-Appellee.)	Honorable Sophia H. Hall
)	Judge Presiding.

JUSTICE SIMON delivered the judgment of the court.
Justices Harris and Pierce concurred in the judgment.

ORDER

¶ 1 *HELD:* The circuit court did not abuse its discretion by staying all discovery in this case because plaintiff's claims were not ripe for adjudication, as the issue of whether plaintiff is entitled to indemnification is not fit for judicial decision at this time and plaintiff has not established that he will be harmed by the stay.

¶ 2 Plaintiff, Dr. Franck Mauvais-Jarvis, an associate professor of medicine at the Feinberg School of Medicine of defendant, Northwestern University, has filed an interlocutory appeal from an order of the circuit court of Cook County staying all discovery in this case. On appeal,

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plaintiff contends that the court abused its discretion by granting a stay of discovery because his claims are ripe for adjudication, defendant has not established that it will suffer any harm if discovery is allowed to proceed, and plaintiff will suffer substantial prejudice as a result of the stay. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 On July 20, 2010, plaintiff filed a three-count complaint against defendant in which he alleged that defendant violated its indemnification policy by failing to indemnify him for costs and expenses incurred in defending himself from allegations of research misconduct during investigatory proceedings conducted by defendant. In count one, plaintiff requested a temporary restraining order, a preliminary injunction, and a permanent injunction requiring defendant to advance him funds to pay for the costs and expenses he had incurred and would continue to incur in defending himself in the research misconduct proceedings and the costs and expenses of this lawsuit. In count two, plaintiff requested an order requiring defendant to specifically perform its obligations under the indemnification policy by paying for the costs he incurred in the research misconduct proceedings and in bringing this lawsuit. In count three, plaintiff asserted a claim of breach of contract and requested a damages award to cover the costs he incurred in the research misconduct proceedings and in bringing this lawsuit.

¶ 5 Plaintiff attached a copy of the indemnification policy to his complaint. Under the policy, defendant was required to indemnify any employee involved in an action, whether civil, criminal, administrative, or investigative, "except for liabilities arising out of (a) the breach of such person's duty of loyalty to [defendant], (b) acts or omissions not in good faith or which involve

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intentional misconduct or a knowing violation of law, or (c) a transaction from which such person derived an improper personal benefit." Defendant was also required to indemnify any employee who was successful in the defense of such an action or was determined by defendant to have acted in good faith and in a manner he or she believed was in, or not opposed to, defendant's best interests. The policy provided that an employee's right to indemnification included the right to be paid the expenses incurred in defending a proceeding in advance of its final disposition on the condition that the employee repay defendant all funds if it is ultimately determined that the employee was not entitled to indemnification.

¶ 6 On January 11, 2011, plaintiff filed a motion for a preliminary injunction requesting the advancement of funds to cover his legal expenses by defendant and asserting that he was entitled to such funds under defendant's indemnification policy. Defendant responded that plaintiff was not entitled to any funds because the indemnification policy did not apply to internal inquiries of research misconduct. On May 19, 2011, the court granted the motion and ordered defendant to advance payments for plaintiff's legal expenses on condition that plaintiff repay those funds if it was ultimately determined that he was not entitled to indemnification by defendant. In doing so, the court determined that defendant's indemnification policy applied to the research misconduct proceedings at issue.

¶ 7 During discovery, plaintiff issued subpoenas to Winifred Wong, a former employee of defendant who worked in plaintiff's lab, provided testimony during the investigation of plaintiff, and brought additional charges of research misconduct against plaintiff. Plaintiff sought Wong's testimony and the production of various documents, and defendant filed a motion for a protective

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order to quash the subpoenas in which it asserted that the evidence being sought was irrelevant to the issues raised in this case and that the subpoenas were being used for the improper purposes of harassing Wong and gaining information relevant to the research misconduct inquiry. On June 24, 2011, the court raised concerns regarding the ripeness of plaintiff's claims for indemnification and directed the parties to provide briefing on that issue.

¶ 8 In response to the court's directive, plaintiff filed a memorandum in which he asserted that the issue of indemnification was sufficiently ripe to permit discovery to proceed because defendant had maintained that plaintiff was not entitled to indemnification regardless of the outcome of the research misconduct proceedings. Defendant responded that the issue was not ripe because a determination as to whether plaintiff was entitled to indemnification could not be made until after the research misconduct proceedings had concluded because the indemnification policy provided that plaintiff would only be entitled to indemnification if he prevailed in those proceedings or, if he was determined to have engaged in misconduct, defendant determined that he had acted in good faith. On August 18, 2011, the court found that the issue of indemnification was not ripe and granted defendant's motion for a protective order without prejudice to plaintiff's renewal of the subpoenas upon the conclusion of the research misconduct proceedings.

¶ 9 On September 26, 2011, defendant filed a motion to stay all discovery until the research misconduct proceedings had concluded because the issue of whether it must indemnify plaintiff was not ripe for discovery. On September 30, 2011, the court entered an order directing the parties to inquire into whether plaintiff would suffer prejudice if the deposition of Wong was delayed until after the conclusion of those proceedings. Defendant filed a response to the court's

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order in which it asserted that Wong would be available for a deposition upon the conclusion of the research misconduct proceedings because she intended to remain in the country, was under contract with her current employer through August 15, 2012, expected to be renewed for another year, was applying for another visa in the coming months, and would notify defendant if her visa was not converted or renewed. Plaintiff also filed a response in which he asserted that he would suffer prejudice if he could not promptly obtain discovery from Wong because her continued presence in the country was not assured. On December 14, 2011, the court entered an order denying defendant's motion to stay discovery and directing that the parties could proceed with all potential discovery, including discovery as to Wong. In doing so, the court found that defendant had not presented clear and convincing evidence that it would be harmed by the continuation of discovery proceedings and that any hardship was outweighed by the potential prejudice plaintiff would suffer from being unable to obtain discovery from Wong.

¶ 10 On January 30, 2012, plaintiff issued an amended deposition and document subpoena on Wong. On February 15, 2012, Wong filed a third-party emergency motion for a protective order to limit the scope of discovery to matters covered in her testimony in the research misconduct proceedings, asserting that plaintiff was seeking discovery regarding matters outside of the scope of this lawsuit. On April 19, 2012, Wong filed a supplemental memorandum in support of her motion for a protective order in which she asserted that there was no reasonable risk that she would not be available to have her deposition taken at a later date because she had been granted a new H-1B work status and I-94 card valid through October 31, 2014, she was engaged to marry a permanent resident of the United States, and she intended to become a permanent resident and

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apply for a green card after the wedding. Wong attached various documents to her supplemental memorandum, including her own signed affidavit and a certified notice of approval of her H-1B work status and I-94 card. On May 8, 2012, the court entered an order granting the motion for a protective order and staying discovery as to Wong. Plaintiff filed an interlocutory appeal from the court's order and, on November 21, 2012, this court dismissed the appeal upon a joint motion to dismiss filed by defendant and Wong.

¶ 11 On January 11, 2013, the court conducted a hearing at which the parties indicated that they believed the court's order from May 8, 2012, granting Wong's motion for a protective order had the effect of staying all discovery in the case and requested the court enter an order reflecting that state of affairs. That same day, the court entered an order staying all discovery until after the research misconduct proceedings have concluded and defendant has made a final decision as to whether it will indemnify plaintiff under its indemnification policy. Plaintiff now appeals from this order.

¶ 12 ANALYSIS

¶ 13 Plaintiff asserts that this court has jurisdiction over his appeal because the order from which he is appealing amounts to a complete stay of proceedings, and defendant responds that this court should dismiss the appeal because plaintiff is appealing from a discovery order, which is not subject to interlocutory appeal. Pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010), an appeal may be taken from an interlocutory order of the circuit court "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." An order of the court staying proceedings pending the resolution of a related matter is injunctive in nature and

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reviewable under Rule 307(a)(1). *TIG Insurance Co. v. Canel*, 389 Ill. App. 3d 366, 371 (2009). Here, the circuit court's order staying all discovery until the research misconduct proceedings are concluded and defendant has made a decision regarding whether to indemnify plaintiff had the effect of entirely staying the proceedings and this court, therefore, has jurisdiction over plaintiff's appeal under Rule 307(a)(1).

¶ 14 Plaintiff contends that the court abused its discretion by granting a stay of discovery because the issue of indemnification is ripe for adjudication, defendant has not established that it will suffer any hardship if discovery is allowed to proceed, and plaintiff will suffer substantial prejudice as a result of the stay. On interlocutory appeal from an order staying proceedings, the applicable standard of review is whether the circuit court abused its discretion by granting the stay. *Hastings Mutual Insurance Co. v. Ultimate Backyard, LLC*, 2012 IL App (1st) 101751, ¶ 29. A court abuses its discretion when no reasonable person would take the position adopted by the court. *Fennell v. Illinois Central R.R. Co.*, 2012 IL 113812, ¶ 21. On interlocutory appeal, the reviewing court only determines whether a sufficient showing has been made to sustain the circuit court's order and does not determine controverted rights or decide the merits of the case. *Certain Underwriters at Lloyd's, London v. Boeing Co.*, 385 Ill. App. 3d 23, 36 (2008).

¶ 15 An order staying proceedings preserves the status quo existing on the date of its entry and does not address the merits of the underlying dispute. *Kaden v. Pucinski*, 263 Ill. App. 3d 611, 615 (1994). The circuit court may stay proceedings as part of its inherent authority to control the disposition of cases and may consider factors such as the orderly administration of justice and judicial economy in deciding whether to grant a stay. *Kenny v. Kenny Industries, Inc.*, 406 Ill.

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App. 3d 56, 65 (2010). The party requesting a stay bears the burden of showing that the benefits of a stay outweigh any potential harm that may accrue to the party against whom it is operative and, if there is a fair possibility that the stay will work damage to the opposing party, the party seeking the stay must make a clear showing of hardship or inequity from being required to go forward with the case. *Boeing*, 385 Ill. App. 3d at 36. A court does not abuse its discretion when it stays proceedings because the claims before it are not ripe for adjudication. *Id.* at 44.

¶ 16 Plaintiff asserts that the circuit court abused its discretion by granting a stay of discovery because its decision to do so was based on the erroneous determination that the issue of whether he was entitled to indemnification was not ripe for adjudication. The purpose of the ripeness doctrine is to prevent courts, through the avoidance of premature adjudication, from becoming entangled in abstract disagreements. *National Marine, Inc. v. Illinois Environmental Protection Agency*, 159 Ill. 2d 381, 388 (1994). In evaluating the ripeness of a claim, a court will consider whether the issues involved are fit for judicial decision and whether the parties would suffer any hardship from withholding judicial consideration. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 490-91 (2008). An evaluation of whether a claim is premature and not ripe for adjudication is based on the fitness of the issue for judicial decision at that point in time. *Weber v. St. Paul Fire & Marine Insurance Co.*, 251 Ill. App. 3d 371, 372-73 (1993).

¶ 17 While plaintiff maintains that the issue of whether defendant must indemnify him is fit for judicial decision because it presents a purely legal question of whether the indemnification policy applies to the research misconduct proceedings at issue, answering that legal question will not resolve the indemnification issue. Under the indemnification policy, defendant is required to

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indemnify an employee who is successful in the defense of an action for intentional misconduct or an employee who is not successful in the defense of such an action but who is determined by defendant to have acted in good faith and in a manner he or she believed to be in or not opposed to defendant's best interests. As such, even if the indemnification policy applies to the research misconduct proceedings, as the circuit court found in granting the preliminary injunction, a court could not determine whether defendant must indemnify plaintiff until the research misconduct proceedings have ended because defendant's responsibility to indemnify plaintiff is conditioned on the outcome of those proceedings and a possible additional determination regarding the nature of plaintiff's actions if he is found to have committed research misconduct. As a decision as to indemnification cannot be made until after the research misconduct proceedings have concluded, that issue is not fit for judicial decision at this time because any attempt to render such a decision would be premature. To the extent plaintiff maintains that he will suffer hardship if we do not resolve the indemnification issue now due to "the specter of non-indemnification and repayment of sums already advanced," plaintiff faces the same risk of non-indemnification regardless of whether that issue is resolved now or after the research misconduct proceedings have concluded. Accordingly, the issue of whether plaintiff is entitled to indemnification is not ripe and the circuit court did not abuse its discretion by granting a stay of discovery on that basis.

¶ 18 Plaintiff maintains that the stay of discovery was nonetheless inappropriate because he will suffer substantial prejudice as a result of the stay and defendant did not make a showing that it would suffer hardship or inequity from proceeding with discovery. Plaintiff claims that the stay will cause him substantial prejudice because he will likely be unable to obtain discovery

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from Wong following the resolution of the research misconduct proceedings because she will no longer be in the country at that time. However, the court was presented with evidence, through the signed affidavit of Wong and a certified notice of approval of Wong's H1-B status, showing that Wong had been granted H1-B work status and an I-94 card valid through October 31, 2014, was engaged to be married to a permanent resident of the United States, and intended to become a permanent resident and apply for a green card after her wedding. In addition, in deciding whether to grant a stay, a court may consider factors such as the orderly administration of justice and judicial economy (*Kenny*, 406 Ill. App. 3d at 65), and such considerations support a stay in this case because it is unclear at this time if plaintiff will ultimately be entitled to indemnification and if defendant will then refuse to indemnify plaintiff such that plaintiff's claims will become ripe for adjudication. As such, we conclude that the circuit court did not abuse its discretion by granting a stay of discovery.

¶ 19

CONCLUSION

¶ 20 Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.