

Brandt


IN THE FRANKLIN COUNTY MUNICIPAL COURT
CIVIL DIVISION
FRANKLIN COUNTY, OHIO

Veronica Wagner Covatch, *et al.*, :
Plaintiffs : CASE NO.: 2014-CVF-024571
-vs.- : Judge: Brandt
Central Ohio Sheltie Rescue, Inc., *et al.*, :
Defendants :

DEFENDANTS' MOTION TO STAY FURTHER PROCEEDINGS PENDING APPEAL

Now come the Defendants in the above-captioned action, Central Ohio Sheltie Rescue, Inc., hereinafter referred to individually as, "Defendant COSR," and Penny Sanderbeck, hereinafter referred to individually as, "Defendant Sanderbeck," collectively hereinafter referred to as, "these Answering Defendants," and by and through their undersigned attorney, they respectfully MOVE this Honorable Court for an Order to stay further proceedings in the Municipal Court, including but not limited to the trial scheduled for August 27, 2015, until the resolution of the Defendants' appeal to the Court of Appeals of Ohio for the Tenth Appellate Judicial District, from the "Final Order of Possession" entered in this action on July 23, 2015, and the related orders made that date, which appeal is assigned case number 15AP000699.

Respectfully submitted,



John A. Bell, Esq. 0025853
Trial Counsel for the Defendants
2700 East Main Street - Suite 207
P. O. Box 091022
Bexley, Ohio 43209-1022
Telephone: (614)-266-2961
Facsimile: (614)-239-0543
E-mail: JohnLegal@aol.com

FILED
2015 AUG -6 PM 12:05
FRANKLIN COUNTY
MUNICIPAL COURT
LORI M. TYLER

MEMORANDUM IN SUPPORT

FACTS

On July 23, 2015, this Honorable Court entered a “Final Order of Possession” in favor of the Plaintiffs herein, and indicated that it would file an Entry to embody its other rulings incident to the hearing on the “Final Order of Possession.” Although the promised Entry to embody the Court’s other orders has not yet been filed, the Court did journalize the “Final Order of Possession.”

On the same afternoon, these Defendants filed a Notice of Appeal of the July 23, 2015, Order to the Court of Appeals of Ohio for the Tenth Appellate Judicial District for Franklin County. The appeal was assigned case number 15AP000699 and remains pending at this time.

Notwithstanding the filing of the Notice of Appeal, the Trial Court subsequently issued a hearing notice for a trial on what it describes as “the remaining issues,” to be conducted on August 27, 2015, while the case will still be pending in the Court of Appeals.

LAW AND ARGUMENT

When the Defendants in this action perfected their appeal of the July 23, 2015, “Final Order of Possession,” this Honorable Court was divested of jurisdiction except to act in aid of the appeal.

In *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97, 378 N.E.2d 162, 9 O.O.3d 88 (Ohio, 1978), the Ohio Supreme Court stated that, “The general rule of law is that the trial court loses jurisdiction to take action in a cause after an appeal has been taken and decided. *State ex rel. Continental Cas. Co. v. Birrell* (1955), 164 Ohio St. 390, 131 N.E.2d 388; *In re Mahoning Valley Sanitary District* (1954), 161 Ohio St. 259, 119 N.E.2d 61; *Majnaric v. Majnaric* (1975), 46 Ohio App.2d 157, 347 N.E.2d 552; *Vavrina v. Greczanik* (1974), 40 Ohio App.2d [378 N.E.2d 165] 129, 318 N.E.2d 408; *Sullivan v. Cloud* (1939), 62 Ohio App. 462, 24 N.E.2d 625. See, also, 7 Moore's Federal Practice (2 Ed.) 419, Paragraph 60.30(2), wherein it is stated:

““But, the general rule is that when an appeal is taken from the district court the latter court is divested of jurisdiction, except to take action in aid of the appeal, until the case is remanded to it by the appellate court.””

The Supreme Court in *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, continued, “The trial court does retain jurisdiction over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment, such as the collateral issues like contempt, appointment of a receiver and injunction.” *In re Kurtzhalz* (1943), 141 Ohio St. 432, 48 N.E.2d 657; *Goode v. Wiggins* (1861), 12 Ohio St. 341; *Fawick Airflex Co. v. United Electrical Radio & Machine Workers* (1951), 90 Ohio App. 24, 103 N.E.2d 283.”

“Once a case has been appealed, " the trial court is divested of jurisdiction except 'over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment, such as the collateral issues like contempt * * *.' ”” *Huntington Nat'l Bank v. Payson*, 2015 Ohio 1976 (Montgomery County App., 2015) (*internal citations omitted*).

“[T]he determination as to the appropriateness of an appeal lies solely with the appellate court,” and a trial court judge's opinion that the order appealed from is not a final, appealable order does not alter the fact that the filing of the notice of appeal divests the trial court of jurisdiction to proceed with the adjudication during the pendency of the appeal. *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶ 10–11; *see also In re Terrance P.* (1997), 124 Ohio App.3d 487, 489, 706 N.E.2d 801 (“the trial court does not have any jurisdiction to consider whether the person has validly invoked the jurisdiction of the appellate court”). [*State ex rel. Electronic Classroom [of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626, 950 N.E.2d 149,] at ¶ 15–16.” *Horvath v. Packo*, 985 N.E.2d 966, 975 (Lucas County App., 2013)

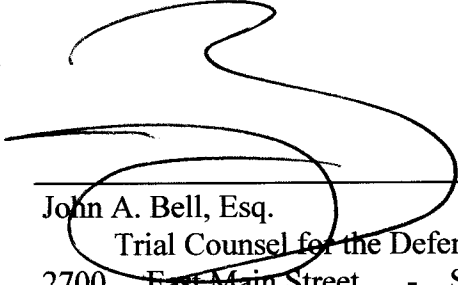
“Once the court of appeals assumes jurisdiction after the filing of the notice of appeal, the trial court loses jurisdiction to take any further action which would conflict or materially affect that part or portion of the proceeding which is pending on appeal.” *Smith v. Bond*, 2015 Ohio 2585 (Belmont County App., 2015) at p. 6, ¶ 10, citing, *Vavrina v. Greczanik*, 40 Ohio App.2d 129, 318 N.E.2d 408 (8th Dist.1974).

Following the July 23, 2015 “Final Order of Possession,” this Court issued a notice for trial on the remaining claims in this action, to be held on August 27, 2015. This is far more than a “collateral issue.” The Court’s proposed procedure presents a real likelihood of inconsistent and conflicting results when the Court of Appeals decides the dispositive issue of ownership of the dog.

In this case, the Court of Appeals has assumed jurisdiction pursuant to the Notice of Appeal filed on July 23, 2015. At that point, this Honorable Court lost jurisdiction to take any further action which would conflict or materially affect that part or portion of the proceeding which is pending on appeal. Trial on August 27, 2015, would conflict or materially affect the part of the proceeding which is now pending on appeal: the “Final Order of Possession” and the other rulings that the Trial Court stated it would embody in a separate Entry.

Therefore, this Honorable Court should stay all further proceedings in the Municipal Court, including but not limited to the trial which is scheduled for August 27, 2015, pending resolution of the appeal in the Tenth District Court of Appeals.

Respectfully submitted,




John A. Bell, Esq. 0025853
Trial Counsel for the Defendants
2700 East Main Street - Suite 207
P. O. Box 091022
Bexley, Ohio 43209-1022
Telephone: (614)-266-2961
Facsimile: (614)-239-0543
E-mail: JohnLegal@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on this sixth (6th) day of August 2015, I have served a true copy of the foregoing DEFENDANTS' MOTION TO STAY FURTHER PROCEEDINGS PENDING APPEAL upon all parties or counsel entitled to such service, by hand delivery, or by placing it in regular U.S. Mail, first class postage fully prepaid, addressed to:

Mr. James H. Banks, Esq., and
Ms. Nina M. Najjar, Esq.,
P. O. Box 40
Dublin, Ohio 43017-0040

Mr. Scott Sheets, Esq.
Assistant Franklin County Prosecuting Attorney
373 South High Street
Fourteenth Floor
Columbus, Ohio 43215-4591



John A. Bell, Esq. 0025853
Trial Counsel for the Defendants
2700 East Main Street - Suite 207
P. O. Box 091022
Bexley, Ohio 43209-1022
Telephone: (614)-266-2961
Facsimile: (614)-239-0543
E-mail: JohnLegal@aol.com