2016 IL App (2d) 160429-U
Nos. 2-16-0429 & 2-16-0431 cons.
Order filed November 7, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

YUSEF HAKEEM,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-L-729
	)	
TRAVON ALLEN,	)	
	)	
Defendant,	)	
	)	Honorable
(Michael G. Nerheim, State's Attorney of	)	Mitchell Hoffman
Lake County, Illinois, Intervenor-Appellee).	)	Judge, Presiding.

YUSEF HAKEEM,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-L-730
	)	
H.W.,	)	
	)	
Defendant,	)	
	)	Honorable
(Michael G. Nerheim, State's Attorney of	)	Mitchell Hoffman
Lake County, Illinois, Intervenor-Appellee).	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in granting the State's petition to intervene and motion to stay the proceedings in two defamation actions that plaintiff filed against victims in his criminal prosecutions.

¶ 2 Plaintiff, Yusef Hakeem, a *pro se* inmate awaiting trial on three charges, filed defamation actions against two victims involved in those prosecutions. In criminal case No. 14-CF-3017, plaintiff is accused of sexually assaulting his cellmate, defendant Travon Allen. Plaintiff has sued Allen for defamation in civil case No. 15-L-729 for the detailed statement that Allen gave to the police about the alleged attack. In criminal case No. 14-CF-2857, plaintiff is accused of making child pornography, and in criminal case No. 14-CM-3675, plaintiff is accused of battery. Defendant H.W., who was 17 years old at the time, is the victim in the pornography case and a witness in the battery prosecution. Plaintiff has sued H.W. for defamation in civil case No. 15-L-730 for her statement to the police that plaintiff attempted to run over her with his van.

¶ 3 Michael G. Nerheim, the State's Attorney of Lake County (the State), petitioned to intervene and for a stay in the two defamation actions until the corresponding criminal prosecutions are resolved. The State argued that it has an interest in the civil proceedings to protect the victims in the pending criminal cases. The court granted the State's petition to intervene and the motion for a stay in both cases, and plaintiff appeals. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Case No. 15-L-729

¶ 6 On October 13, 2015, plaintiff filed a complaint for defamation against Allen and attached to the complaint a police report from criminal case No. 14-CF-3017. Plaintiff drew two arrows pointing to portions of the report in which Allen told the police that plaintiff threatened and forced Allen to perform oral sex in their cell on the night of October 28, 2014. Allen

recounted to the police how plaintiff expected sex in exchange for food that he had given Allen. Plaintiff told Allen to perform oral sex. Plaintiff, who Allen described as much larger than he was, threatened to "whoop his ass" if Allen did not satisfy him. Allen told the police that he did not have a choice and described the contact in graphic detail.

¶ 7 Plaintiff's defamation claim alleges that Allen said " 'If [Allen] didn't suck my dick[,] I would "whoop" his ass' and that I used some type of force on him." Plaintiff alleges that "the entire statement is [a] fabrication [and] patently untrue." Seeking $200,000 in damages, plaintiff claims the defamation caused "harassment by inmates, guards, humiliation, loss of privileges, a year in ASU [Administrative Segregation Unit], mental anguish, loss of relationship, estrangement from kids and the mothers, loss of sleep, standing in the community, etc., etc."

¶ 8 B. Case No. 15-L-730

¶ 9 Also on October 13, 2015, plaintiff filed a complaint for defamation against H.W. and attached to the complaint two pages of testimony by an unidentified witness in criminal case No. 14-CM-3675, which charged plaintiff with battery. The transcript indicates that H.W. is a witness in criminal case No. 14-CF-2857, which charged plaintiff with making child pornography. According to the unidentified witness, H.W. said that, on October 10, 2014, she and her friend were walking along a street in Zion and observed a gray van drive directly at them. Plaintiff underlined an exchange in which the witness said that "[H.W.] indicated that the driver of the van was *** Yusef Hakeem."

¶ 10 The defamation claim alleges that H.W. said "[plaintiff] was driving a van and tried to run her over." The complaint denies the allegation. Seeking an additional $200,000 in damages, plaintiff claims the defamation caused "incarceration, harassment, loss of wages, humiliation, loss of relationship, loss of standing in the community."

¶ 11 C. Petition to Intervene

¶ 12 On February 23, 2016, the State filed a combined petition to intervene and motion to stay the proceedings in the two defamation actions. See 735 ILCS 5/2-408(b) (West 2014). The petition identified the three pending criminal charges and noted that plaintiff had 10 civil actions pending, including the two defamation proceedings at issue.

¶ 13 The State argued that permissive intervention was warranted because the defamation actions "target the victims or witnesses" in the criminal cases, and thus, the related civil cases share a common question of fact or law. The State claimed an interest in protecting the victims and witnesses in the criminal prosecutions from intimidation and harassment by plaintiff in the defamation actions. First, the sexual assault case involves Allen's testimony about what occurred in the jail cell. The truthfulness of his allegations, which underlies the criminal charge, would serve as a complete defense to the defamation complaint. Second, the State identified H.W. as the victim in the child pornography case and a witness in the battery case. The State argued that "[a]s in the cases involving [Allen], the truthfulness of H.W. are [*sic*] at the core of both the criminal and civil proceedings."

¶ 14 The motion for a stay asserted that the civil complaints share common issues of fact with the criminal proceedings, and allowing them to proceed at the same time would be judicially inefficient. The State also suggested that the judgments in the criminal and civil proceedings could be "diametrically opposed" depending on whether Allen or H.W. appear in the civil cases against them. The State pointed out that Allen already had failed to appear in civil case No. 15-L-729, resulting in a default against him. Citing the rule of absolute privilege against defamation actions for anything relevant or pertinent that is said or written in a legal proceeding, the State

also argued that the defamation complaints were barred by the pending judicial proceedings that involved related facts.

¶ 15 Plaintiff filed a timely response to the petition, and the court scheduled a hearing for April 20, 2016. However, at a status hearing on March 31, 2016, the court struck the hearing date and stated that it would base its ruling on the petition and the response. Plaintiff was present and apparently did not object.

¶ 16 D. Memorandum Order

¶ 17 On May 5, 2016, the trial court entered a memorandum order granting the State leave to intervene and staying the defamation actions until the criminal prosecutions concluded. In a memorandum order, the trial court found that (1) the State has an interest in preventing plaintiff from using the defamation actions to circumvent the discovery rules that apply to the criminal cases (see *In re Marriage of Deal*, 740 N.W. 2d 755 (2007)); (2) "the subject matter of the civil and criminal cases directly overlap;" (3) "there is a substantial likelihood that the civil litigation is being used by plaintiff herein as a means to intimidate witnesses in the criminal cases;" (4) the interests of defendants, the public, and the court are served by a stay; (5) plaintiff will not be prejudiced by allowing the State to intervene and stay the proceedings, which will protect the strong public interest in the integrity of the criminal proceedings; and (6) entering the stay would result in the orderly administration of justice.

¶ 18 E. Motions to Reconsider

¶ 19 On May 23, 2016, plaintiff filed a motion to reconsider and a motion to certify questions for appellate review under Illinois Supreme Court Rule 308 (eff. Feb. 26, 2010). On May 31, 2016, plaintiff filed a motion for substitution of judge and a successive motion to reconsider. On June 1, 2016, plaintiff filed a successive motion to certify questions under Rule 308.

¶ 20 On June 8, 2016, more than 30 days after the memorandum order was entered and while all of his motions were pending, plaintiff filed a notice of interlocutory appeal under Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) in each of the defamation actions.

¶ 21 II. ANALYSIS

¶ 22 Plaintiff appeals from the memorandum order granting the State's petition to intervene and motion to stay the defamation proceedings. A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, and this duty exists regardless of whether either party has raised the issue. *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213 (2009).

¶ 23 Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) allows an appeal from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction." The memorandum order qualifies as an interlocutory order from which plaintiff had a right to appeal under Rule 307(a)(1). See *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 69-70 (2007) (a ruling on a motion to stay proceedings may be treated as a ruling on a request for a preliminary injunction, and this may form the basis for an interlocutory appeal as of right pursuant to Rule 307(a)(1)).

¶ 24 The memorandum order was entered on May 5, 2016, and plaintiff filed various motions attacking the order. Plaintiff filed the notices of appeal before the court could rule on his motions, but simply filing the notices does not constitute abandonment of the motions. See *People v. Willoughby*, 362 Ill. App. 3d 480, 483 (2005) (abandonment of posttrial motion requires a more affirmative indication than the mere filing of a notice of appeal).

¶ 25 Regardless of the filing of motions challenging an interlocutory order, an appeal brought under Rule 307(a)(1) must be perfected within 30 days from the entry of the interlocutory order

by filing a notice of appeal designated "Notice of Interlocutory Appeal" conforming substantially to the notice of appeal in other cases. Ill. S. Ct. R. 307(a) (eff. Feb. 26, 2010). A motion attacking an interlocutory order will not toll the running of the 30-day deadline for the filing of the notice of appeal. *Craine v. Bill Kay's Downers Grove Nissan*, 354 Ill. App. 3d 1023, 1026 (2005) (citing *Trophytime, Inc. v. Graham*, 73 Ill. App. 3d 335, 335 (1979)).

¶ 26 The memorandum order was entered on May 5, 2016, and plaintiff's notices of appeal were filed on June 8, 2016, which was more than 30 days later. However, Illinois Supreme Court Rule 12(b)(4) (eff. Jan. 4, 2013) provides that service is proved "in case of service by mail by a *pro se* petitioner from a correctional institution, by affidavit, or by certification as provided in section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109 (West 2014)) of the person who deposited the document in the institutional mail, stating the time and place of deposit and the complete address to which the document was to be delivered." Here, plaintiff provided certification under section 1-109 that he mailed a copy of the notices of appeal on June 3, 2016, which was within 30 days of the memorandum order. Thus, the notices of appeal are deemed to have been timely filed, and this court has jurisdiction to consider the appeals.

¶ 27 Turning to the memorandum order, section 2-408 of the Code of Civil Procedure recognizes that intervention may be either permissive or of right. 735 ILCS 5/2-408 (West 2014). Section 2-408(b), which allows permissive intervention, provides that "[u]pon timely application anyone may in the discretion of the court be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." The State's basis for permissive intervention is that the criminal prosecutions and the corresponding defamation actions share questions of law or fact. The decision to permit or deny intervention generally

rests within the discretion of the trial court. See, *e.g.*, *Maiter v. Chicago Board of Education*, 82 Ill. 2d 373, 382 (1981). "A court abuses its discretion only if it acts arbitrarily, without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law; or if no reasonable person would take the position adopted by the court." *Payne v. Hall*, 2013 IL App (1st) 113519, ¶ 12.

¶ 28 "A circuit court may stay proceedings as part of its inherent authority to control the disposition of cases before it." *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 68 (2007). Factors to be considered in ruling on a motion to stay include the orderly administration of justice and judicial economy. *Estate of Bass*, 375 Ill. App. 3d at 68. We will not disturb a circuit court's decision on a motion to stay unless that decision constituted an abuse of discretion. See *Aventine Renewable Energy, Inc. v. JP Morgan Securities, Inc*., 406 Ill. App. 3d 757, 760 (2010).

¶ 29 Among the various issues that plaintiff raises, he argues that the State's interest is speculative because the State failed to prove that plaintiff actually intimidated defendants or caused injury to them or to the State. Plaintiff cites no authority for the proposition that Allen, H.W., or the State must suffer actual intimidation or injury for the State to have an interest in the proceedings. To intervene, a party need not have a direct legal interest in the pending suit, but he must have an interest that is greater than the general public's so that he will directly gain or lose by the legal effect of a judgment in the suit. *Board of Trustees of the Village of Barrington Police Pension Fund v. Department of Insurance*, 211 Ill. App. 3d 698, 711 (1991). Here, the trial court found that plaintiff intended the defamation actions to intimidate Allen and H.W. and cited, as persuasive authority, the Minnesota Supreme Court's adherence to the "strong public policy against allowing a criminal defendant to circumvent the limited scope of discovery in the

criminal rules." *Deal*, 740 N.W. 2d at 760. The potential intimidation of Allen and H.W. would interfere with the State's interest in the criminal prosecutions.

¶ 30 Plaintiff also claims that the civil and criminal proceedings do not share a question of law or fact. In granting the petition to intervene and the motion for a stay, the trial court found that the subject matter of the civil and criminal proceedings "directly overlap." The State's petition alleged, and plaintiff does not dispute, that Allen and H.W. are victims in two criminal prosecutions against plaintiff. As the State points out, Allen was the alleged victim in the sexual assault in the jail cell, and the truthfulness of his testimony would serve as a complete defense to the defamation complaint. Similarly, H.W., who was 17 years old at the time, is the alleged victim in the child pornography case and a witness in the battery case.

¶ 31 Finally, plaintiff claims that the "main purpose" of the stay is to delay the litigation. The court found that a stay would serve the interests of defendants, the public's interest in the integrity of the criminal proceedings, and the orderly administration of justice, while not causing prejudice to plaintiff. The trial court allowed intervention and granted the stay based on the State's petition and plaintiff's response. Thus, the memorandum order is the only part of the record that could potentially shed light on the trial court's reasoning. Nothing in the memorandum order or anything else in the record suggests that the findings or the ultimate ruling amounts to an abuse of discretion.

¶ 32 Plaintiff claims that his motions to reconsider were improperly "ignored" by the trial court and the State responds that he abandoned them by filing the notices of appeal. As discussed, we have jurisdiction to consider the appeal under Rule 307(a)(1), and the filing of the notices of appeal, alone, do not constitute abandonment of the motions. However, our analysis of the memorandum order leading to the conclusion that the trial court did not err obviates the

need to address the motions to reconsider. We have considered plaintiff's remaining arguments and conclude that they lack merit.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the order of the circuit court of Lake County allowing the State to intervene and entering a stay in plaintiff's defamation actions.

¶ 35 Affirmed.