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2017 IL App (4th) 170244-U

NO. 4-17-0244

FILED

July 26, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

LARRY SALVATOR, SR., and MARCIA SALVATOR,)	Appeal from
Plaintiffs-Appellants,)	Circuit Court of
v.)	McLean County
CLEAVER-BROOKS, INC., a Division of AQUA-)	No. 16L20
CHEM, INC.,)	
Defendant-Appellee.)	Honorable
)	Rebecca S. Foley,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court did not abuse its discretion in staying all litigation pending the resolution of defendant’s appeal from a finding of friendly contempt.

¶ 2 In February 2016, plaintiffs, Larry Salvator, Sr., now deceased, and his wife, Marcia Salvator, filed a complaint against Cleaver-Brooks, Inc., a division of Aqua-Chem, Inc. (Cleaver-Brooks), and 42 other defendants for injuries caused by Larry Salvator, Sr.’s exposure to asbestos. In March 2017, the trial court stayed all litigation of plaintiffs’ complaint pending the resolution of Cleaver-Brooks’ appeal from a finding of friendly contempt. Plaintiffs appeal, arguing the court’s decision to stay all litigation was an abuse of its discretion. We disagree and affirm.

¶ 3 I. BACKGROUND

¶ 4

A. Complaint

¶ 5 In February 2016, plaintiffs filed a complaint against Cleaver-Brooks and 42 other defendants, alleging, among other theories, Larry Salvator, Sr., sustained injuries caused by the inhalation of asbestos fibers during his work in close proximity to boilers manufactured by Cleaver-Brooks. Due to the nature of Larry Salvator, Sr.'s injuries, plaintiffs sought and received an expedited discovery and trial schedule.

¶ 6

B. Plaintiffs' Second Request for Production of Discovery

¶ 7 In November 2016, plaintiffs served Cleaver-Brooks with a second request for production of documents. In part, plaintiffs requested Cleaver-Brooks to produce "[t]he index cards referenced by [Cleaver-Brooks' corporate representative] at his depositions that he says he uses to perform searches for boilers at job sites."

¶ 8

C. Cleaver-Brooks' Responses and Objections to Plaintiffs' Second Discovery Request

¶ 9 In December 2016, Cleaver-Brooks filed responses and objections to plaintiffs' second request for production of documents. Cleaver-Brooks raised the following general objection:

"Cleaver-Brooks objects to any [r]equest that relates to periods of time, geographical areas, or activities outside the scope of the allegations of the operative complaint as over broad, irrelevant, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Any [r]equest that is not limited in time and scope to the particular facts of the case, by definition,

calls for irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. It would also impose an unreasonable burden on Cleaver-Brooks to search out, review, organize and produce information and documents not related to any issue in the case. Further, requiring Cleaver-Brooks to produce information without limitation to the particular facts of the case improperly shifts [p]laintiff[s'] burden of proof to Cleaver-Brooks.”

It also raised the following specific objection to plaintiffs’ request for production of its index cards:

“Cleaver-Brooks objects that this [r]equest is overly broad in time and scope, *** and unduly burdensome and oppressive. Cleaver-Brooks further objects because this [r]equest does not specify with reasonable particularity the documents sought and seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence in above referenced matter. Subject to the foregoing and without waiver, Cleaver-Brooks states that there are over 90,000 index cards and they are too voluminous to produce. Cleaver-Brooks has agreed to make the index cards available for [p]laintiff[s'] inspection in an orderly fashion at a mutually agreeable date and time.”

The parties thereafter agreed plaintiffs would inspect the 90,000 index cards on January 10,

2017.

¶ 10

D. Inspection Agreement

¶ 11

On January 4, 2017, Cleaver-Brooks sent plaintiffs a proposed inspection agreement for plaintiffs' review and execution. Cleaver-Brooks alleged its index cards were a confidential customer list "not available to the public or to persons or entities other than the producing party and its affiliates, the disclosure of which would result in an identifiable, clearly defined and serious injury to [its] competitive and financial position." It requested plaintiffs to agree to the following inspection protocol:

"(a) The index cards shall not be taken out of order or removed from the drawer(s); (b) Plaintiff[s] shall not take notes or pictures of the index cards; (c) The use of cell phones shall not be permitted by [p]laintiff[s] in the inspection room; (d) Plaintiff[s] may designate individual index cards for copying by Cleaver-Brooks, at [p]laintiffs'[s] expense, by way of a tab on the index card. Plaintiff may designate for copying cards that relate to sites that may be at issue in pending or future claims brought against Cleaver-Brooks by [the law firm representing plaintiffs]. Should there be any disputes over relevance, those disputes shall be addressed in a [Rule] 201(k) conference prior to production; (e) Copies shall be made by Cleaver-Brooks at a rate of \$0.10 per page, which amount shall be paid by [p]laintiff[s]."

Cleaver-Brooks also requested plaintiffs to agree to the following confidentiality terms:

“The production of the relevant index cards will not be disclosed to anyone other than attorneys and other law firm personnel from the firm Wylder, Corwin, Kelly working on cases filed by the Wylder, Corwin, Kelly law firm (including, without limitation, paralegals and support staff) against Cleaver-Brooks, the plaintiffs, and any consultants and experts retained by the parties for the purposes of either assisting counsel or testifying in Wylder, Corwin, Kelly asbestos law suits against Cleaver[-]Brooks. The confidential documents and information contained therein will not be disclosed to other third persons.”

¶ 12 Plaintiffs refused to agree to the terms outlined in Cleaver-Brooks’ inspection agreement. Plaintiffs’ counsel indicated he would never agree to a one-time inspection but made it clear he would review only those index cards relating to plaintiffs’ case.

¶ 13 E. Cleaver-Brooks’ Motion for a Protective Order

¶ 14 On January 9, 2017, Cleaver-Brooks filed a motion for a protective order, which it amended on January 10, 2017. In its amended motion, Cleaver-Brooks argued the index cards “contain[ed] proprietary and trade secret information[,] including the names of [its] customers,” and requested the trial court to enter a protective order limiting the disclosure and use of any index cards it produces. Cleaver-Brooks also requested, in the interest of judicial economy and in an effort to streamline discovery and reduce costs, the court order the inspection be a one-time inspection and apply “to all pending and future claims” brought against it by the law firm representing plaintiffs.

¶ 15 F. Hearing on Cleaver-Brooks' Motion for a Protective Order

¶ 16 On January 12, 2017, the trial court held a hearing on Cleaver-Brooks' motion for a protective order. Initially, in reviewing the events that led to its motion, Cleaver-Brooks noted it previously indicated it would make the index cards available for inspection, "subject to the objections" made in its response to plaintiffs' second request for production of documents. Cleaver-Brooks argued, because plaintiffs refused to agree to its inspection agreement, a protective order was necessary to protect the proprietary and confidential information in the index cards from being disseminated to third parties, thereby causing it both business- and litigation-related economic and competitive harm. Cleaver-Brooks further argued, because the production of the index cards caused it to incur substantial costs and affected ongoing business, a one-time inspection should be ordered.

¶ 17 Following Cleaver-Brooks' argument, the trial court inquired as follows:

"My assumption, based on what I've read, is that Wylder, Corwin, Kelly will not receive a copy of all 90,000 [index cards]; is that true? They're going to go through and be marking those that they deem relevant and then those will be copied?"

To which Cleaver-Brooks responded, "Correct, your honor."

¶ 18 Plaintiffs argued, in part, Cleaver-Brooks' motion was "untimely" as the contents of the index cards had yet to be seen and its assertions were unverified. They assured the court they would not disseminate the customer lists to aid Cleaver-Brooks' business competitors. Plaintiffs also objected to a one-time inspection.

¶ 19 The trial court denied Cleaver-Brooks' motion for a protective order, finding (1)

Cleaver-Brooks failed to meet its burden to establish the records were trade secrets, and (2) Cleaver-Brooks' request for a one-time inspection was "premature" as it was uncertain whether the production of the index cards would become a routine discovery request.

¶ 20 G. Inspection

¶ 21 On January 18 and 19, 2017, Cleaver-Brooks allowed plaintiffs to inspect its 90,000 index cards at its facilities. Plaintiffs tabbed 5,077 index cards to be copied and turned over.

¶ 22 H. Cleaver-Brooks' Motion for a Continuance

¶ 23 On January 24, 2017, Cleaver-Brooks filed a motion to continue the February 6, 2017, trial setting. Cleaver-Brooks asserted, due to Larry Salvator, Sr.'s late disclosure of eight new jobsites during his January 16, 2017, deposition, it would be severely prejudiced if it was forced to proceed on the scheduled trial date as it needed to supplement or amend its prior discovery responses, fully investigate each jobsite and Larry Salvator, Sr.'s testimony, and present all information to its corporate representative and experts to allow them to render an informed opinion. It also argued it was still in the process of obtaining Larry Salvator, Sr.'s medical records and needed to review the 7,000 to 9,000 index cards plaintiffs tabbed during their inspection for relevance.

¶ 24 I. Plaintiffs' Motion To Compel

¶ 25 On January 26, 2017, plaintiffs filed a motion to compel Cleaver-Brooks "to produce" copies of the 5,077 index cards they had previously tabbed. Plaintiffs noted they did not understand Cleaver-Brooks' reference in its motion to continue to its need to review the index cards for relevance as "[t]he test for production of material in discovery is not that it be

deemed ‘relevant’ by defense counsel after being produced for inspection.”

¶ 26

J. January 27, 2017, Hearing

¶ 27

On January 27, 2017, the trial court held a hearing to address various discovery issues and Cleaver-Brooks’ motion to continue the February 6, 2017, trial date. After considering the various discovery issues, the court continued the trial to April 7, 2017. In doing so, the court stated:

“As an initial matter because this is a case involving a party with mesothelioma who is alive, he certainly is entitled to a priority setting and we’ve accomplished that. He was given that priority setting. I think the parties have worked very hard. There have been some road blocks in the way, but I think everybody tried to get on board and work very hard to get that accomplished.”

It also noted:

“While Mr. Salvator is certainly entitled to a priority [trial] setting, it cannot be to the detriment and prejudice of the defendants. They are entitled, and in fact, ethically obligated to fully and [z]ealously represent and defend their clients. This isn’t a simple type of case. This is a complex case.”

The court concluded:

“I do not think this case is ready based on discovery issues. We have unavailable trial counsel and other issues contributing. So for those reasons I will grant the various motions to continue the trial

Cleaver-Brooks' boilers, and to show the types of accessories found on different types of boilers and the maintenance needs of those parts. Plaintiffs also argued the index cards could be used to impeach Cleaver-Brooks' corporate representative should he attempt to minimize Cleaver-Brooks' involvement in asbestos-containing boilers. Plaintiffs maintained Cleaver-Brooks' refusal to produce copies of the tabbed index cards was in bad faith as an attempt at delaying trial until Larry Salvator, Sr., died.

¶ 32 Cleaver-Brooks noted, as required by the trial court, it allowed plaintiffs to review the contents of all 90,000 index cards. Cleaver-Brooks then reviewed the 5,077 index cards tabbed by plaintiffs and determined only 13 were relevant to plaintiffs' case. Cleaver-Brooks suggested plaintiffs went on a "fishing expedition" and developed a "CB hit list" based on the amount of tabbed index cards. It expressed fear the information would be disseminated across the country. Cleaver-Brooks requested the court deny plaintiff's motion to compel all 5,077 index cards.

¶ 33 The trial court granted plaintiffs' motion to compel, finding the tabbed index cards were relevant and potentially linked to discoverable information. The court anticipated the potential for a friendly contempt order, noting to plaintiffs' counsel, "we need to discuss the procedure from here because it may be a situation as in [*Manns v. Briell*, 349 Ill. App. 3d 358, 811 N.E.2d 349 (2004),] where they're going to refuse to comply and ask for a, apparently, contempt finding." Cleaver-Brooks responded first by asking the court to enter a confidentiality order with regard to the disclosure of information "to other plaintiff's firms or other people outside of their law firm," which plaintiffs objected to and the court denied. Cleaver-Brooks then asked for a Rule 304(a) finding, which plaintiffs also objected to and the court denied. The court

noted if Cleaver-Brooks intended to refuse to comply with the court's order, regardless of a proposed deadline to turn over all of the tabbed index cards, then it would "forge ahead with a friendly contempt finding" and a monetary fine to give it the opportunity to appeal. Cleaver-Brooks asked the court to enter a deadline that day so a contempt order could follow. Plaintiffs' counsel requested a short period to discuss with his clients and cocounsel whether they would continue to demand the production of the index cards or forego the discovery and proceed to trial because of Larry Salvator, Sr.'s health. In doing so, plaintiffs' counsel noted: "We have a number of cases involving Cleaver-Brooks, so this issue won't go away by any stretch. But we do have a man who is literally on his death bed." The court set a February 24, 2017, deadline to produce copies of the tabbed index cards and continued the hearing.

¶ 34 M. February 24, 2017, Hearing

¶ 35 During a February 24, 2017, hearing, Cleaver-Brooks indicated it was refusing to produce copies of the remaining tabbed index cards and requested the trial court to enter a friendly contempt order against it. Plaintiffs again argued Cleaver-Brooks' refusal to produce the copies of the remaining index cards was a bad-faith tactic to delay trial. During its argument, the court interrupted plaintiffs' counsel, explaining it would enter a contempt order only if plaintiffs requested such relief and still needed the remaining index cards:

"I'm going to stop you now because I'm only going to do that if that's the plaintiff[s'] request to do it. *** I think it's up to the plaintiff[s] to determine what type of relief they wish to seek if they want to ask for that finding to enforce it. They may not wish to seek the records at all."

Cleaver-Brooks suggested issues relating to the index cards were likely to be raised in different ways throughout the course of litigation. Cleaver-Brooks argued, to protect its due process rights, the issue had to be immediately appealed or plaintiffs' motion to compel should be withdrawn. Cleaver-Brooks assured the court its refusal to comply was in good faith because it believed the remaining index cards were not relevant. Plaintiffs indicated they were "not requesting any relief from the court at that time." Cleaver-Brooks maintained it was within the court's discretion to enter an order of friendly contempt without a request from plaintiffs' counsel. The court indicated it would not make a ruling that day and continued the matter.

¶ 36 N. February 27, 2017, Hearing

¶ 37 During a February 27, 2017, hearing, Cleaver-Brooks again requested the trial court enter an order of friendly contempt against it. Cleaver-Brooks maintained it had a good-faith basis to challenge the discovery order and the issue would likely continue to come up during litigation. Plaintiffs argued, in part, Cleaver-Brooks should not benefit from its own refusal to comply with a court order, and its request was in bad faith as it was for the purpose of delaying trial. Plaintiffs indicated they were going to ask the court "for relief" for Cleaver-Brooks' refusal to turn over the discovery, but not at that time.

¶ 38 The trial court found Cleaver-Brooks in "friendly contempt" for refusing to comply with its discovery order and imposed a \$1 fine. The court explained, "when a contemnor refuses to follow the court's order and does not hold the court in disdain or subject it to scorn, the proper procedure to test [its] order on appeal is for the contemnor to request the trial court to enter a citation of contempt." The court noted: "I do believe that [Cleaver-Brooks'] request is being made in good faith. I do not believe it's being made in an attempt to—for the sole purpose

outweighed the factors against granting the stay.

¶ 46 Plaintiffs argued Cleaver-Brooks was unlikely to succeed on appeal, as shown by the trial court's finding it was in contempt, the fact this case is distinguishable from *All Asbestos Litigation*, and the fact Cleaver-Brooks previously agreed to produce the index cards for inspection. Plaintiffs also argued, in part, any ongoing issues relating to the index cards "wouldn't occur for another month at least." Plaintiffs also noted they "fail[ed] to see why [they] can't ask [Cleaver-Brooks' corporate representative] about the index cards," which they found to be unrelated to the issue of Cleaver-Brooks providing photocopies of the index cards.

¶ 47 Following arguments, the trial court granted Cleaver-Brooks' motion to stay and stayed all litigation pending the resolution of Cleaver-Brooks' appeal. The court initially noted it was "within [its] discretion whether or not to stay the remainder of the proceedings." It then provided the following reasoning in granting a stay:

"While [Larry Salvator, Sr., is] entitled to an expedited trial in this case, that doesn't necessarily equate with an absolute right to have his case heard. And I'll try to be delicate; but if he were to pass, he doesn't necessarily have an absolute entitlement to have his case heard before that time. While we work very hard to do that, the [c]ourt has to balance other considerations, including due process rights of the other parties.

And here the issue that involves the relevance and the use of the index cards is not likely to end at this juncture. It will likely come up in the deposition of [Cleaver-Brooks'] corporate

representative. While arguably there's several questions, or many, that could be answered by [the corporate representative], the [c]ourt anticipates that this specific issue would come up, leading to objections, motions on the same issue, and ultimately a similar discovery order. The issue would likely come up with experts. There's been a [Rule] 237(b) notice issue requesting these cards and motions *in limine* throughout the course of the trial which is scheduled for trial on April 3rd.

So to the extent that if the case were to proceed, we would likely be encountering these same issues over and over. The case is also—the issue is also likely to come up in other cases, although that's not of important concern to the [c]ourt at this time.

Based on those facts, and considering judicial economy, in so far as that there would likely be additional appeals if we would not stay the case, the [c]ourt believes it is important to preserve the status quo at this time and to prevent prejudice and hardship to the parties.

And so for those reasons, the [c]ourt would grant the motion to stay.”

¶ 48 On March 11, 2017, Larry Salvator, Sr., died. On March 31, 2017, plaintiffs filed a notice of interlocutory appeal from the trial court's order granting Cleaver-Brooks' motion to stay.

¶ 49

II. ANALYSIS

¶ 50 In this interlocutory appeal, plaintiffs argue the trial court's decision to stay all litigation pending the resolution of Cleaver-Brooks' appeal was an abuse of its discretion. In support, plaintiffs assert Cleaver-Brooks' appeal, an appeal from a finding of friendly contempt for failing to turn over previously ordered discovery, was an improper basis to grant a stay because it (1) related to a proceeding collateral to the underlying case, (2) was clearly frivolous, and (3) was in bad faith and for the sole purpose of avoiding trial. Plaintiffs further assert the stay was improper as any delay is inordinate and excessively prejudicial to a plaintiff suffering from a terminal illness.

¶ 51 A stay "is preventive or protective and seeks to maintain the status quo pending appeal." *Stacke v. Bates*, 138 Ill. 2d 295, 309, 562 N.E.2d 192, 198 (1990). The party requesting a stay must make a "sufficient showing" the stay is justified. *TIG Insurance Co. v. Canel*, 389 Ill. App. 3d 366, 372, 906 N.E.2d 621, 627 (2009). "[I]n all cases, the movant, although not required to show a probability of success on the merits, must, nonetheless, present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay." *Stacke*, 138 Ill. 2d at 309, 562 N.E.2d at 198.

¶ 52 In determining whether to issue a stay, a trial court must "engage[] in a balancing process as to the rights of the parties, in which all elements bearing on the equitable nature of the relief sought should be considered." *Id.* at 308-09, 562 N.E.2d at 198. "There are numerous different factors which may be relevant when the court makes its determination and, by necessity, these factors will vary depending on the facts of the case." *Id.* at 305, 562 N.E.2d at 196. Some of those factors may include (1) "whether a stay is necessary to secure the fruits of

the appeal in the event the movant is successful,” (2) the movant’s likelihood of success on the merits, (3) the likelihood the respondent will suffer hardship, (4) the orderly administration of justice and judicial economy, and (5) the court’s inherent authority to control the disposition of the cases before it. See *id.* at 305-08, 562 N.E.2d at 196-97; *TIG Insurance Co.*, 389 Ill. App. 3d at 375, 906 N.E.2d at 629.

¶ 53 A trial court’s decision “to grant or deny a motion to stay will not be overturned unless the court abused its discretion.” *Guarantee Trust Life Insurance Co. v. Platinum Supplemental Insurance, Inc.*, 2016 IL App (1st) 161612, ¶ 35, 68 N.E.3d 481; see also *Sentry Insurance v. Continental Casualty Co.*, 2017 IL App (1st) 161785, ¶ 32, 74 N.E.3d 1110. “The standard of ‘abuse of discretion’ is the most deferential standard of review recognized by the law; a decision will be deemed an abuse of discretion only if the decision is ‘unreasonable and arbitrary or where no reasonable person would take the view adopted by the [trial] court.’ ” *Pekin Insurance Co. v. St. Paul Lutheran Church*, 2016 IL App (4th) 150966, ¶ 69 (quoting *Gulino v. Zurawski*, 2015 IL App (1st) 131587, ¶ 64, 43 N.E.3d 1102).

¶ 54 Initially, we must address plaintiffs’ suggestion this court may not have jurisdiction to review Cleaver-Brooks’ appeal, which, if true, would necessarily render the stay unwarranted. Plaintiffs highlight the trial court’s characterization of its contempt finding as an “order” rather than a “judgment.” Plaintiffs assert, if the court’s ruling was simply a run-of-the-mill sanction for violating a discovery order rather than a final judgment from a contempt proceeding, it would not be appealable. Regardless of how the trial court characterized its finding, this court looks to the substance of a finding to determine its appealability. See, *e.g.*, *Pedigo v. Youngblood*, 2015 IL App (4th) 140222, ¶¶ 13-18, 45 N.E.3d 281; *Doe v. Weinzweig*,

2015 IL App (1st) 133424-B, ¶¶ 38-40, 40 N.E.3d 351. It is undisputed the trial court found Cleaver-Brooks in “friendly” contempt and imposed a fine against it, thereby satisfying the requirements to make a contempt finding immediately appealable. See Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010); *Pedigo*, 2015 IL App (4th) 140222, ¶ 12, 45 N.E.3d 281. Additionally, Rule 304(b)(5) characterizes such a finding as an “order,” and our courts have found jurisdiction in a reviewing court from an “order” of friendly contempt. See Ill. S. Ct. R. 304(b)(5) (eff. Feb. 26, 2010) (A contempt finding permits a party to immediately appeal “[a]n order finding a person or entity in contempt of court which imposes a monetary or other penalty.”); *Harris v. One Hope United, Inc.*, 2015 IL 117200, ¶ 6, 28 N.E.3d 804 (noting the friendly contempt and the fine “order” were immediately appealable under Rule 304(b)(5)); *Tomczak v. Ingalls Memorial Hospital*, 359 Ill. App. 3d 448, 457, 834 N.E.2d 549, 557 (2005) (“In order to facilitate the interlocutory appeal of a trial court's discovery order, a party may move the [trial] court for the entry of a contempt order.”). We find we have jurisdiction to review Cleaver-Brooks’ appeal.

¶ 55 Plaintiffs assert Cleaver-Brooks’ appeal was an improper basis to grant a stay as it related to a proceeding collateral to the underlying case. In support, they contend a contempt proceeding, by definition, is a collateral proceeding to the underlying case. An appeal need only involve a “ ‘significant’ issue” to the underlying case to warrant a stay. See *Khan v. BDO Seidman, LLP*, 2012 IL App (4th) 120359, ¶ 74, 977 N.E.2d 1236. The trial court found the continued litigation would be beset with the parties’ disagreements about the production and use of the information from the index cards. Plaintiffs’ argument at the hearing on the motion to stay supported this finding. We find plaintiffs have failed to demonstrate the issue underlying Cleaver-Brooks’ appeal was collateral to the ongoing litigation. See *id.* (“[I]t is necessary only

that the two proceedings share a significant issue, in contrast to an issue collateral to the case at hand.”).

¶ 56 Plaintiffs assert Cleaver-Brooks’ appeal was an improper basis to grant a stay as it was clearly frivolous. Plaintiffs argue the notion Cleaver-Brooks could agree to produce the index cards for eventual production but not outright production “defies common sense.” Plaintiffs also distinguish the case law Cleaver-Brooks relied upon in support of its position for refusing to comply with the trial court’s discovery order. Again, although not required to show a probability of success on the merits, Cleaver-Brooks was required to “present a substantial case on the merits.” *Stacke*, 138 Ill. 2d at 309, 562 N.E.2d at 198; see also *Khan*, 2012 IL App (4th) 120359, ¶ 74, 977 N.E.2d 1236 (“Unless the appeal is clearly frivolous, the [trial] court should stay its proceedings for a reasonable length of time, until the appeal resolves the shared significant issue.”). Cleaver-Brooks, after producing its 90,000 index cards for inspection, refused to produce copies of 5,064 of the 5,077 index cards tabbed by plaintiffs on the belief they were irrelevant to the jobsites where Larry Salvator, Sr., previously worked. In support, Cleaver-Brooks relied, and continues to rely, on *All Asbestos Litigation*, 385 Ill. App. 3d at 390-92, 895 N.E.2d at 1158-60, which found the plaintiffs’ discovery request did not comply with the discovery rules and related limitations of a Cook County case management order where it sought a defendant’s sales information over a nearly 40-year period across the 102 counties in Illinois, even though the plaintiffs alleged exposure to asbestos in only 48 of the 102 counties. At this juncture, we find Cleaver-Brooks has presented a substantial case on the merits and argument sufficient to suggest its appeal is not clearly frivolous. We otherwise voice no opinion on the ultimate merits of Cleaver-Brooks’ appeal. See *TIG Insurance Co.*, 389 Ill. App. 3d at 372, 906

N.E.2d at 627 (“[A] reviewing court looks only to the sufficiency of the evidence, rather than decide any ‘controverted rights’ or merits of the case, in determining whether the [trial] court abused its discretion [in granting a stay].”).

¶ 57 Plaintiffs assert Cleaver-Brooks’ appeal was an improper basis to grant a stay as it was pursued in bad faith and for the sole purpose of delaying trial. In support, plaintiffs highlight Cleaver-Brooks’ “belated” relevance objection after having already produced the 90,000 index cards for inspection. First, we note plaintiffs did not raise this argument during the hearing on Cleaver-Brooks’ motion to stay. See *Vantage Hospitality Group, Inc. v. Q Ill Development, LLC*, 2016 IL App (4th) 160271, ¶ 49, 71 N.E.3d 1 (“It has long been the law of the State of Illinois that a party who fails to make an argument in the trial court forfeits the opportunity to do so on appeal.”). Forfeiture aside, the issue of Cleaver-Brooks’ intentions for seeking an order of friendly contempt was previously before the trial court. In granting Cleaver-Brooks’ request for friendly contempt, the court stated, “I do believe that [Cleaver-Brooks’] request is being made in good faith. I do not believe it’s being made in an attempt to—for the sole purpose of delaying the trial, to harass[,] or any of those other reasons.” We find plaintiffs have failed to demonstrate, contrary to the trial court’s finding, Cleaver-Brooks’ appeal was in bad faith and for the sole purpose of delaying trial.

¶ 58 Plaintiffs argue the stay was improper as any delay is inordinate and excessively prejudicial to a plaintiff suffering from a terminal illness. While a party’s illness certainly is a factor in deciding whether to grant or deny a stay, it is but one factor. See *Stacke*, 138 Ill. 2d at 308-09, 562 N.E.2d at 198. The trial court acknowledged Larry Salvator, Sr.’s health concerns and plaintiffs’ right to an expedited trial. It balanced those considerations with the interests of the

other parties and judicial economy. After weighing these factors, the court found a stay was warranted. We find the trial court's evaluation and the weight afforded to Larry Salvator, Sr.'s health was not unreasonable.

¶ 59 As a final matter, plaintiffs briefly suggest the trial court improperly stayed the litigation as to the other remaining defendants. The court found a stay of all litigation was appropriate in the interest of judicial economy, to preserve the status quo, to avoid continued disputes on issues relating to the index cards, and to prevent prejudice and hardship to the other parties. The record provided does not disclose the issues presented by the remaining defendants or, for that matter, identify the remaining defendants. Given the record presented, we find the court's decision to stay all proceedings pending Cleaver-Brooks' appeal was not unreasonable.

¶ 60 The record discloses the trial court carefully considered and weighed multiple relevant factors before deciding to stay all litigation pending the resolution of Cleaver-Brooks' appeal. Plaintiffs have failed to demonstrate that decision was an abuse of its discretion.

¶ 61 III. CONCLUSION

¶ 62 We affirm the trial court's judgment.

¶ 63 Affirmed.