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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

U.S. Law Shield of Pennsylvania, : 449 CD 2015
 Ex rel. Todd Hoover; and :
 John Bruno, :
 Plaintiffs-Appellees :
 v. :
 City of Harrisburg; Mayor Eric :
 Papenfuse; City Council :
 Members Wanda Williams, :
 Sandra Reid, Brad Koplinski, :
 Ben Alatt, Jeff Baltimore, :
 Susan Wilson, Shamaine :
 Daniels; and Chief of Police :
 Thomas Carter, :
 Defendants-Appellants :

Application to Stay Trial Court Proceedings

All Defendants-Appellants ask this Court to stay the trial court proceedings pending appeal:

Procedural History

1. On February 5th, Defendants-Appellants (collectively

“Harrisburg”) filed a motion to stay (ex. 1) pending this Court’s decision in *Leach v. Com.* (585 MD 2014) on whether Act 192 violates the single subject and original purpose rules of the Pennsylvania Constitution.

2. On February 25th, the Honorable Judge Andrew H. Dowling granted in part and decided in part Plaintiffs’ motion for a preliminary injunction, declining to decide the constitutionality of Act 192 or to wait until this Court does so. Opinion & Order (ex. 2) p. 3.

3. Harrisburg timely appealed from the partial grant of a preliminary injunction on March 26th.

4. On April 6th, Harrisburg filed preliminary objections to the amended complaint with the trial court as well as a motion to stay proceedings pending appeal (ex. 3).

5. Plaintiffs answered the preliminary objections on April 9th and responded to the motion to stay (ex. 4) on April 22nd.

6. Harrisburg filed a brief in support of a stay pending appeal (ex. 5) on May 1st.

7. The trial court denied the motion to stay later that day. Memorandum & Order (ex. 6).

8. For the preliminary objections, the trial court set a brief

deadline for both sides of today (May 11th) and scheduled oral argument for May 27th. Scheduling Order (ex. 7).

The possibility of duplicative proceedings justifies a stay.

9. This Court's decision on appeal will become the binding law of the case.

10. This Court's decision may dictate or influence the trial court's ruling on the preliminary objections.

11. Harrisburg will ask this Court to address the validity of Act 192, the scope of Harrisburg's authority under the Third Class City Code, and the scope of the Uniform Firearm Act's preemption provision.

12. How this Court rules on each issue could impact the trial court's ruling on preliminary objections and ultimately Plaintiffs' request for a permanent injunction.

13. If the trial court proceeds in the interim, it is likely that the parties will have to re-litigate the issues after this Court rules and increases the likelihood of a second appeal if the trial court rules on other matters without the benefit of this Court's ruling.

This Court has the power to stay proceedings.

14. Generally, an appeal prevents further trial court

proceedings. Pa.R.A.P. 1701(a).

15. Under certain circumstances, including the appeal of a preliminary injunction, the appeal does not prevent proceedings. Pa.R.A.P. 311(a)(4), (h).

16. Nevertheless, the trial court and this Court have discretion to do so.

17. As this Court has recognized, while a party appeals a preliminary injunction, the trial court has discretion to postpone further proceedings pending appeal. *Greater Nanticoke Area Educ. Ass'n v. Greater Nanticoke Area Sch. Dist.*, 938 A.2d 1177, 1183 (Pa. Commw. 2007) (“Although the trial court could have proceeded with the scheduled hearing, it was not required to do so.”) (citing 15 Standard Pa. Practice § 83.361 (2005 ed.)); *Lockett v. Blaine*, 850 A.2d 811, 819 (Pa. Commw. 2004) (inherent and statutory power to postpone proceedings).

18. “Section 912 of the Judicial Code empowers the courts, generally, to issue all lawful orders, including stays of proceedings.” *Stover v. W.C.A.B.*, 671 A.2d 1217, 1220 (Pa. Commw. 1996). *See* 42 Pa.C.S. §912 (“Every court of common pleas shall have power to issue,

under its judicial seal, every lawful writ and process to or to be served or enforced by system and related personnel as such courts have been heretofore authorized by law or usage to issue.”).¹

19. During an appeal, this Court has power to stay proceedings as well.

20. While an appeal is pending, this Court has all of the powers of the Common Pleas Court:

The Commonwealth Court shall have power to issue, under its judicial seal, every lawful writ and process necessary or suitable for the exercise of its jurisdiction ..., including such writs and process to or to be served or enforced by system and related personnel as the courts of common pleas are authorized by law or usage to issue. The court shall also have all powers of a court of record possessed by the courts of common pleas and all powers necessary or appropriate in aid of its appellate jurisdiction which are agreeable to the usages and principles of law.

42 Pa.C.S. §562. *See also* 42 Pa.C.S. §323 (“...every court shall have

¹ *See also Israelit v. Montgomery Cnty.*, 703 A.2d 722, 724 (Pa. Commw. 1997) (“Trial courts have the inherent power to stay proceedings in a case pending the outcome of another case, where the latter's result might resolve or render moot the stayed case.”); *In re Estate of Petro*, 694 A.2d 627, 631-32 (Pa. Super. 1997); *Singer v. Dong Sup Cha*, 550 A.2d 791, 793 (Pa. Super. 1988) (“the court has the inherent, equitable power to stay the proceedings in the second suit during the pendency of the prior suit...”).

power to make such rules and orders of court as the interest of justice or the business of the court may require.”) (emphasis added in all).²

21. The Rules of Appellate Procedure recognize this Court’s authority as well:

Where only a particular item, claim or assessment adjudged in the matter is involved in an appeal, ... the appeal ... shall operate to prevent the trial court ... from proceeding further with only such item, claim or assessment, unless otherwise ordered by the trial court or other government unit or by the appellate court or a judge thereof as necessary to preserve the rights of the appellant.

Pa.R.A.P. 1701(c) (emphasis added).

The trial court applied the wrong legal standard.

22. “A trial court possesses broad discretion to grant or deny a stay or place a matter in abeyance, and this Court will not interfere with this determination absent an abuse of discretion.” *In re Penn-*

² See also 42 Pa.C.S. § 761(c) (“The Commonwealth Court shall have original jurisdiction in cases of mandamus and prohibition to courts of inferior jurisdiction ... where such relief is ancillary to matters within its appellate jurisdiction ...”); 42 Pa.C.S. § 702(c) (“Except as otherwise prescribed by general rules, a petition for permission to appeal under this section shall not stay the proceedings before the lower court or other government unit, unless the lower court or other government unit or the appellate court or a judge thereof shall so order.”) (emphasis added); Pa. R.A.P. 1313 (same).

Delco Sch. Dist., 903 A.2d 600, 606-07 (Pa. Commw. 2006).

23. Here, the trial court applied the wrong legal standard, which is an abuse of discretion.

24. The abuse of discretion standard is well settled:

An abuse of discretion occurs where the trial court reaches a conclusion that overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or is the result of partiality, prejudice, bias, or ill will. To the degree the issue of whether the law has been misapplied involves a purely legal question, it is reviewed *de novo*.

Brady v. Urbas, -- A.3d --, 2015 WL 1332593, at *5 (Pa. Mar. 25, 2015)

(emphasis added).

25. Because the trial court misapplied the law, this Court reviews the matter *de novo*.

26. Citing *PUC v. Process Gas Consumers*, 467 A.2d 805 (Pa. 1983), the trial court held that the standard for staying proceedings mirrors the preliminary injunction standard (likelihood of success, irreparable harm, etc.).

27. But *Process Gas*, unlike the cases mentioned above, addresses the standard to stay an order, not to postpone proceedings.

Process Gas does not require the trial court to rule on preliminary

objections pending this appeal. Indeed, such a rule would prove unworkable as trial courts could simply delay ruling on matters pending appeal without actually issuing a stay order.

28. The *Process Gas* standard is particularly problematic for appellants seeking to stay proceedings during a preliminary injunction appeal as the trial court, in granting the injunction, has already decided that the appellant is not likely to prevail, the injunction will not irreparably harm the appellant, the appellee will suffer without the injunction, and the public interest favors the injunction. Under the *Process Gas* standard, an appellant could never obtain a stay of proceedings during a preliminary injunction appeal because the trial court would have to do an about-face on every aspect of its decision to grant the preliminary injunction.

29. The *Process Gas* standard only makes sense in its context: stays of orders pending appeal. The trial court abused its discretion by applying the wrong standard.

For these reasons, this Court should stay proceedings pending appeal.

Respectfully submitted,

Lavery Law

s/ Josh Autry

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Certificate of Service

I certify that on this date, I served a true and correct copy of this filing by this Court's electronic filing system to:

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Dated: May 11, 2015