

FILED

August 18 2015

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 15-0375

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 15-0375

THE CITY OF MISSOULA, a
Montana municipal corporation,

Plaintiff and Appellee,

v.

MOUNTAIN WATER COMPANY, a
Montana corporation, and CARLYLE
INFRASTRUCTURE PARTNERS,
LP, a Delaware limited partnership,

Defendants and Appellants.

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

THE EMPLOYEES OF MOUNTAIN
WATER COMPANY, (Shanna M.
Adams, Heather M. Best, Dennis M.
Bowman, Kathryn F. Datsopoulos,
Wayne K. Davis, Valarie M. Dowell,
Jerry E. Ellis, Greg A. Gullickson,
Bradley E. Hafar, Michelle Halley,
Douglas R. Harrison, Jack E. Heinz,
Josiah M. Hodge, Clay T. Jensen,
Kevin M. Johnson, Carla E. Jones,
Micky A. Kammerer, John A. Kappes,
Susan M. Lowery, Lee Macholz,
Brenda K. Maes, Jason R. Martin,
Logan M. McInnis, Ross D. Miller,
Beate G. Newman, Maureen L.
Nicholas, Michael L. Ogle, Travis Rice,
Eric M. Richards, Gerald L. Schindler,
Douglas J. Stephens, Sara S. Streeter,
Joseph C. Thul, Denise T. Tribble,
Patricia J. Wankier, Michael R.
Willey, Angela J. Yonce, and Craig M.
Yonce),

Intervenors and Appellants.

ORDER

Intervenors Employees of Mountain Water Company (Employees), by counsel, have filed a Motion for Relief from an order of the Fourth Judicial District Court, Missoula County, denying their motion for a stay of proceedings. Defendants Mountain Water Company and Carlyle Infrastructure Partners (Defendants), by counsel, have filed a similar motion. Both Employees and Defendants (collectively, Petitioners) complain that the District Court erred in denying their motion to stay trial of the valuation phase of this condemnation proceeding pending their appeal from the court's decision in the necessity phase. The City of Missoula (the City), by counsel, has filed memoranda in opposition to both motions. Petitioners seek relief from the District Court's order pursuant to M. R. App. P. 22(a) (Rule 22), which permits a party to seek relief in this Court from an order entered in the district court denying a motion for stay of proceedings.

District Court order denying stay of proceedings

The District Court entered its Findings of Fact, Conclusions of Law, and Preliminary Order of Condemnation, resolving the necessity phase of the condemnation proceedings, on June 15, 2015. Petitioners appeal the court's preliminary order of condemnation, and filed motions in the District Court requesting a stay of the valuation phase of the condemnation proceedings pending their appeal. In response, the District Court considered the arguments of the parties and applied the four-part test enunciated in *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113 (1987) for determining whether a stay should be granted.

First, the court considered whether the Petitioners had made a strong showing that they were likely to succeed on the merits of their appeal, and concluded they had not. Second, it addressed whether the Petitioners would be irreparably injured absent a stay. The court rejected Petitioners' concern about irreparable harm if the City were to take possession of the water system, noting that the City had not in fact applied to be put in possession of the water system, and therefore any potential for harm by virtue of the transfer of the system is at present remote and speculative. The court concluded that the Petitioners had not demonstrated they would be irreparably injured absent a stay.

Third, the court considered whether issuance of the stay would substantially injure the other parties interested in the proceeding. The court rejected Petitioners' argument that a stay would conserve resources of the parties and the judiciary, and observed that Petitioners had not identified any prospect of streamlining, narrowing, or consolidating the proceedings should the stay be granted. The court also noted that denial of a stay would not prevent Petitioners from pursuing their appeal.

Finally, the court considered where the public interest lies. Petitioners contend that it is unnecessary to expeditiously proceed with the valuation phase. The court disagreed, citing § 70-30-207, MCA, which imposes precise timelines for proceedings which follow the entry of a preliminary condemnation order, and reflects the Legislature's intent that condemnation matters be disposed of promptly. The court concluded that the delay that would be occasioned by a stay pending appeal would unnecessarily prolong resolution of the case and would not be in the public interest. The court therefore denied Petitioners' request for a stay, and scheduled further proceedings.

Employees' Arguments

In support of their request that this Court stay the valuation phase of the condemnation proceeding pending appeal, Employees argue that they will be irreparably harmed if and when they are forcibly transferred to the employment of the City, because they will lose post-retirement health benefits and pension and stock purchase options, and the City has refused to compensate or make them whole under eventual City ownership. They maintain that the District Court erred in not addressing this harm in the necessity phase of the proceedings. (This alleged error will presumably be addressed on appeal.) Employees rely on the affidavit of the Mountain Water Business Administration Manager Michelle Halley, who opines that a premature reorganization and transition to City ownership would force the Employees into City employment before all of their concerns are addressed through the appeal process and would cause administrative and operational burdens to all entities and parties concerned, especially if these cumbersome and costly operational burdens were undertaken in the near future, only to be later unwound as a

result of a reversal on appeal. In addition, Employees adopt by reference the other arguments raised by Defendants in their motion to this Court.

Defendants' Arguments

In their motion, Defendants argue that the District Court applied the incorrect standard in denying their motion for a stay. Defendants assert that the four factors set forth in *Hilton* are intended to apply to federal habeas corpus proceedings and not to the propriety of a stay during the pendency of a condemnation matter. Rather, they argue, § 70-30-312(2), MCA, which provides that the District Court may “grant a stay for a period of time and under conditions that the court considers proper” should govern. Defendants maintain that a stay should issue “whenever it is reasonably necessary to protect the appellant from serious injury in case of reversal.” *Nepstad v. E. Chicago Oil Ass’n.*, 96 Mont. 183, 190, 29 P.2d 643, 645 (1934).

Defendants’ argument in support of a stay is threefold. First, they argue that there is no exigency with respect to the valuation phase, and that there is a very real possibility that if the valuation phase goes forward now, there may be a practical change in ownership before resolution of their appeal. Second, they argue that certain value-related evidence was erroneously excluded from the trial of the necessity phase, and that remand of the necessity phase of the case may well be required, which should occur before the valuation phase of the case is conducted. Finally, they argue that because the water system in Missoula is currently operational and will continue to be so, there is no urgency to conclude the valuation phase of the case while their appeal is pending, and that the parties’ energy and attorney fees should be devoted to finalizing the necessity phase of the case before the valuation phase, if necessary, goes forward.

The City's Arguments

In response, the City urges us to reject Petitioners’ arguments. First, it maintains that the court did not err in applying the *Hilton* four-part test, as it has been applied by courts to a range of cases, and not just federal habeas cases.

Second, the City maintains that Petitioners have repeatedly attempted to delay these proceedings in violation of a legislative intent that condemnation proceedings go

forward expeditiously and without delay. The City argues that all of the alleged harms of which the Petitioners complain are at this point only theoretical, and will occur only if the City takes possession of the water system before this case is resolved. The City submits and the District Court observed that the appropriate time to consider such alleged injuries will be when and if the City does move to take possession of the water system before the appeal is resolved, which has not occurred.

In addition, the City complains that the issuance of a stay would substantially injure it as well as ratepayers. The City submits under seal the affidavit of the City's chief accounting officer Dale Bickell, who attests that for every month resolution of this case is delayed, the City stands to lose \$350,000 in cost savings to ratepayers. It also contends that it currently has access to favorable bond rates, and that even a 1% increase in these rates while the case is delayed could cause it to incur millions of dollars in increased interest. Accordingly, the City argues that Petitioners' alleged injuries are speculative and unripe, and that such complaints are outweighed by the concrete harm to the City and ratepayers if a stay of proceedings is granted.

Analysis

In their motions for relief from the District Court's refusal to grant a stay of proceedings, Petitioners have refrained from asserting that the District Court abused its discretion, and instead request that we grant their motions for a stay. The clear implication of Petitioners' motions is that we should conduct a de novo analysis of the propriety of a stay of proceedings. However, there is no question that Rule 22(2) calls upon this Court to *review* the actions of the District Court. ("On the grant or denial of a motion for relief under section (1)(a) of this rule, a motion for relief from the district court order may be filed in the supreme court" (Rule 22(2)(a)). There is further no question that a decision by the District Court to grant or deny a stay of proceedings in an eminent domain proceeding is a discretionary ruling. ("An appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte *may* grant a stay for a period of time and under conditions that the court considers proper." Section 70-30-312(2), MCA (emphasis added)). Similarly, this Court "*may*

grant, modify, or deny the relief requested” in a motion for relief from a district court order. Rule 22(3) (emphasis added). We have stated that discretionary trial court rulings are those “encompassing the power of choice among several courses of action, each of which is considered permissible.” *Steer, Inc. v. Dep’t. of Revenue*, 245 Mont. 470, 475, 803 P.2d 601, 603-604 (1990), quoting Aldisert, *The Judicial Process*, 1976, page 759. We observed in *Steer* that discretionary trial court rulings include those addressing post-trial motions, and that we will review such rulings for an abuse of discretion. *Steer*, 245 Mont. at 475, 803 P.2d at 603-04.

Since amending the Montana Rules of Appellate Procedure in 2007, this Court has not had occasion to state what standard of review will be applied by this Court to a decision of the district court granting or denying a stay of proceedings. Based upon the foregoing analysis, we conclude it is appropriate to review a decision of the district court granting or denying a motion for a stay of proceedings for an abuse of discretion.

As noted, Defendants argue that the District Court erred in applying the four-part *Hilton* test when considering their motion for a stay pending appeal. We disagree. The standards the Supreme Court applied in *Hilton* were the “general standards governing stays of civil judgments.” *Hilton*, 481 U.S. at 773, 107 S. Ct. at 2119. Therefore, we conclude the court did not err in applying the *Hilton* standards to Defendants’ request for a stay pending appeal. In addition, we will be guided by § 70-30-312(2), MCA, which provides that an appeal will not stay further proceedings except as the court on motion determines to be proper, and by considerations of whether good cause exists for the stay given the interests and concerns raised by the parties. We will also be guided by Rule 22(2)(a)(i), which requires that an appellant demonstrate good cause for the relief requested.

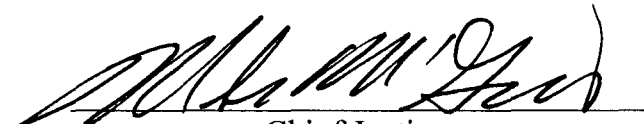
For the most part, the harms of which Petitioners complain are at present remote and speculative. As the District Court noted, such concerns may be addressed later should the need arise. Further, Petitioners have not identified any prospect of streamlining the proceedings should the stay be granted. The District Court also correctly observed that there is a legislative intent to dispose of condemnation matters as promptly

as possible, and this intent would be frustrated should the valuation phase of the case be stayed. We must also take into account the concerns raised by the City about the significant losses or expenses that could be occasioned by a delay. Finally, it bears noting that Petitioners' appeals from the Preliminary Order of Condemnation will go forward in this Court, whether or not there is a stay of proceedings. We accordingly conclude that good cause for a stay has not been established and that the District Court did not abuse its discretion in denying the motions for a stay of proceedings. However, recognizing the dynamics that may come into play as this case evolves at the District Court level, we will not foreclose petitions for further relief. Therefore,

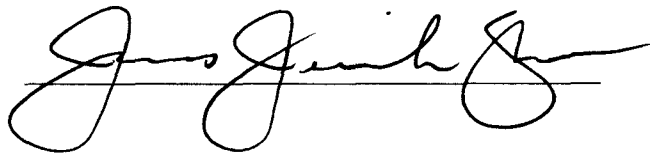
IT IS ORDERED that Petitioners' motions for relief from the order of the District Court denying their motions for a stay of proceedings are DENIED WITHOUT PREJUDICE.

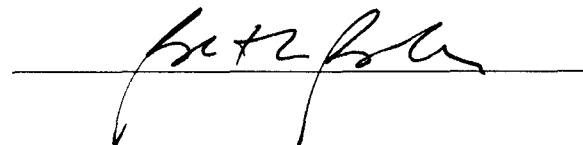
The Clerk of this Court shall provide notice of this Order to all counsel of record, and to the Honorable Karen Townsend, Fourth Judicial District Court.

DATED this 18 day of August, 2015.


Chief Justice


Patricia Cotter





Justices