

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Dr. Jane Doe, Mary Moe, First Unitarian
Society of Minneapolis, and Our Justice,

Plaintiffs,

vs.

State of Minnesota, Governor of
Minnesota, Attorney General of Minnesota,
Minnesota Commissioner of Health,
Minnesota Board of Medical Practice, and
Minnesota Board of Nursing,

Defendants.

Court File No.: 62-CV-19-3868

Case Type: Civil – Other

ORDER DENYING STAY

This matter came before the undersigned on January 31, 2022 upon Defendants' motion to stay the proceedings pending the appeal in *Dr. Jane Doe, et al. v. State of Minnesota, et al.*, File No. A22-0073. Solicitor General Liz Kramer and Alexander Hsu appeared on behalf of Defendants. Attorneys Jess Braverman, Melissa Shube, Amanda Allen, and Stephanie Toti appeared on behalf of Plaintiffs.

Based on the files, records, and proceedings herein, **IT IS HEREBY ORDERED:**

Defendants' motion to stay the proceedings pending the appeal is **DENIED.**

BY THE COURT:

Dated: April 4, 2022

THOMAS A. GILLIGAN, JR.
JUDGE OF DISTRICT COURT

MEMORANDUM

On January 18, 2022, Defendants filed an appeal of this court's November 22, 2021 Order denying in part and granting in part their motion for summary judgment. On January 24, 2022, Defendants filed a motion to stay the proceedings before this court pending appeal, pursuant to Minn. R. Civ. P. 62.03 and Minn. R. Civ. App. P. 108.02, subd. 1.

A review of the procedural history of this case is appropriate to contextualize the motion. This court issued its order on Defendants' motion to dismiss on June 25, 2020. That order addressed, in part, Defendants' challenge to each plaintiff's standing on each claim for relief. On April 20, 2021, Defendants filed a notice of motion and motion for summary judgment to address standing and other justiciability issues. At the August 24, 2021 hearing, in pertinent part, Defendants renewed their arguments opposing the standing of Plaintiff First Unitarian Society of Minneapolis ("FUS") on all its claims and of all plaintiffs' challenge to the statutory ban on advertising sexually transmitted infection treatment ("Advertising Ban"). On November 22, 2021, this court granted summary judgment solely on FUS' challenge to the Advertising Ban.

This court held a hearing on a second round of dispositive motions between the parties on December 20, 2021 and took the motions under advisement. It also held a hearing on the third and final round of dispositive motions between the parties on January 31, 2022. In the meantime, Defendants filed the appeal, which is at issue here, of the November 22, 2021 Order. Therefore, on January 31, 2022, the court also heard argument on Defendants' motion to stay the proceedings before this court pending appeal. The court took both motions under advisement.

In *Dr. Jane Doe, et al. v. State of Minnesota, et al.*, File No. A22-0073 (Minn. Ct. App. February 16, 2022), the court of appeals raised the question of whether it has jurisdiction over the appeal. On February 18, 2022, this court temporarily stayed the district court proceedings pending the resolution of that question. On March 16, 2022, the court of appeals issued an order (“March 16, 2022 Order”) accepting jurisdiction over the issues of whether (1) FUS “has standing to pursue the non-advertising claims” and (2) the remaining Plaintiffs “have standing to challenge the advertising claims.” On March 29, 2022, Defendants petitioned the Minnesota Supreme Court for review of the decision of the court of appeals.¹

Defendants’ January 24, 2022 motion to stay the proceedings in this court pending resolution of the appeal remains outstanding. This case is set for court trial on the three-week block beginning June 27, 2022. Having duly considered the March 16, 2022 Order, the court is prepared to address Defendants’ motion to stay.

Defendants contend this court does not have jurisdiction to proceed, and therefore must grant their motion to stay, because “the appeal impacts every claim asserted by Plaintiffs.” *See* Minn. R. Civ. App. P. 108.01, subd. 2 (permitting trial court’s jurisdiction “as to matters independent of, supplemental to, or collateral to the order or judgment appealed from”). Plaintiffs contend the court need not reconsider the questions of standing which are on appeal to dispose of the remaining claims on their merits. Plaintiffs further maintain a district court can retain jurisdiction even if an appeal ultimately moots orders issued during its pendency. *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 825 (Minn. 1984) (attorney’s fees); *In re*

¹ This Order and Memorandum assumes the supreme court will not change the issues on appeal. This decision is subject to change in the event of a different outcome from the supreme court.

Thulin, 660 N.W.2d 140, 143 (Minn. Ct. App. 2003) (permitting continuing commitment order during appeal of initial commitment, in light of “a different standard of proof and a new set of facts”).

To determine whether an issue is “independent of, supplemental to, or collateral to” the order appealed from, the court should ask whether it needs to “reconsider the merits of the issue on appeal to reach conclusions” about the new issue. *Id.* Additionally, a trial court order does not affect the issues on appeal “if it involves a new set of facts.” *Perry v. Perry*, 749 N.W.2d 399, 403 (Minn. Ct. App. 2008).

This court is not persuaded that the appeal divests it of jurisdiction merely because the appeal impacts every claim. Instead, the court must consider whether its decisions on the outstanding dispositive motions and at trial would affect its previous decisions regarding standing. *See* Minn. R. Civ. App. P. 108.01, subd. 2. Disposition of Plaintiffs’ claims on the merits involves consideration of the constitutionality of various laws governing abortion and reproductive health, while disposition of Defendants’ standing claims involved consideration of whether Plaintiffs had suffered injuries-in-fact. These considerations involved different sets of facts. The court’s forthcoming decisions on the dispositive motions and at trial will not require it to reconsider the merits of the standing analysis it already undertook. Because this court can proceed without affecting its decision in the first summary judgment order which are now on appeal, this court concludes it retains jurisdiction over the case.

Even when a district court retains jurisdiction pending an appeal, in its discretion, it “need not immediately exercise its jurisdiction to act” on a motion, particularly to “effectuate principles of judicial economy.” *Perry*, 749 N.W.2d at 403. Defendants contend that even if

the court retains jurisdiction, it should stay the case because (1) a stay enhances the effective administration of justice; (2) the appeal raises substantial legal questions; (3) a stay would not prejudice Plaintiffs; and (4) Defendants are likely to succeed on appeal. *See Webster v. Hennepin Cty.*, 891 N.W.2d 290, 293 (Minn. 2017). Plaintiffs contend Defendants have effectively forfeited their argument in favor of the effective administration of justice by waiting eighteen months from this court's initial denial of their standing arguments to appeal the issues. Plaintiffs do not dispute that the appeal raises substantial legal questions, but contend that factor weighs against the imposition of a stay. Finally, Plaintiffs dispute the contentions that a stay would not prejudice Plaintiffs and that Defendants are likely to succeed on appeal.

As this court sees it, there are three paths forward: (1) granting Defendants' request for a stay in its entirety; (2) proceeding absent the parties and claims on appeal, and addressing the outstanding parts of the case after the appeal is complete; and (3) denying Defendants' request for a stay, and proceeding with the entire case in its current form. These options are available irrespective of the outcome of the pending dispositive motions, and the claims, if any, which will remain.

This court is disinclined to grant Defendants' request for a stay in its entirety. This case is nearly three years old. Trial is imminent. Judicial economy does not favor a stay now for an appeal of the same jurisdictional and standing issues which were decided by this court in its June 25, 2020 Order. A stay at this time, after trifurcated motions for summary judgment have already been briefed and argued, and when trial is just a few months away, would also prejudice Plaintiffs. That factor does not favor a stay. This court also believes that it made

the right call on the jurisdictional and standing issues involved in the appeal. That factor does not favor a stay either.

Finally, it is undisputed that this case involves matters of great public importance, even beyond the interests of Plaintiffs, the likes of which have not been addressed by any Minnesota court since 1995. *Women of the State ex rel. Doe v. Gomez*, 542 N.W.2d 17 (Minn. 1995). In light of the import of this case, this court is reticent to stay it in its entirety pending resolution of the narrow issues on appeal—particularly because, as this court has already identified, the remaining issues are independent of those on appeal. This court will therefore deny Defendants’ motion to stay the proceedings in their entirety.

This court also concludes that the prospect of proceeding with this case absent the parties and claims on appeal is untenable. If this court were to proceed absent the parties and claims on appeal, and the appeal fails, and FUS or the Advertising Ban remain in the case, that would necessitate a fourth round of dispositive motions and second trial which would likely duplicate the evidence proffered in the first. This outcome is the antithesis of judicial economy.

The final option, which this court will adopt, is to deny Defendants’ request for a stay and proceed with the entire case. As previously discussed, cases cited by Plaintiffs suggest a case may move forward if the district court retains jurisdiction. *See Spaeth*, 344 N.W.2d at 825; *Thulin*, 660 N.W.2d at 143. In that case, the court would be empowered to issue orders despite the fact that they may ultimately be mooted by issues currently on appeal. *Spaeth*, 344 N.W.2d at 825; *Thulin*, 660 N.W.2d at 143. This court has already concluded that it has jurisdiction to

proceed. Proceeding on the remaining motions and to trial is the most economical solution this court has identified.

Although proceeding to trial would require presentation of evidence and the court's analysis of the Advertising Ban, which may ultimately be rendered moot if the appeal is successful, it would be more efficient than the alternative, which would be to re-try each claim in full. Likewise, if FUS participates at trial as a Plaintiff, and is later removed from the case, any judgment for or against would simply be rendered moot by the appeal. The lack of standing of one Plaintiff would not affect the claims of the remaining Plaintiffs. FUS or its members may be called as witnesses in any event; allowing FUS to participate as a Plaintiff would prevent the necessity for redundant testimony.

Moreover, navigation of parallel litigation at the district and appellate court levels will not pose a significant burden or prejudice to either party. Each side is represented by experienced, capable lawyers who are equipped to manage trial and appellate proceedings synchronously. Because the dispositive motions are now under advisement, the final hurdle for the parties to clear is trial to the court.

In sum, this court retains jurisdiction over the case. The case will proceed through resolution of the pending dispositive motions and court trial in the interest of judicial economy and the importance of the issues presented. This course forward does not unduly prejudice one side over the other. Nor would the remainder of Plaintiffs' claims be affected if the appeal is successful. For the foregoing reasons, Defendants' motion to stay the proceedings is denied.

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