

Nos. 13-12923, 13-12926, 13-12928

IN THE
United States Court of Appeals

FOR THE ELEVENTH CIRCUIT

JANE DOE NO. 1 AND JANE DOE NO. 2,

Plaintiffs-Appellees

v.

UNITED STATES OF AMERICA,

Defendant-Appellee

ROY BLACK ET AL.,

Intervenors-Appellants

**RENEWED MOTION FOR EXPEDITED RULING ON PENDING
MOTION FOR STAY OF DISTRICT COURT DISCOVERY ORDER**

Bradley J. Edwards
FARMER, JAFFEE, WEISSING
EDWARDS, FISTOS & LEHRMAN, P.L.
425 North Andrews Ave., Suite 2
Fort Lauderdale, FL 33301
(954) 524-2820
brad@pathtojustice.com

Paul G. Cassell
S. J. Quinney College of Law at
the University of Utah
332 S. 1400 E., Room 101
Salt Lake City, UT 84112
(801) 585-5202
cassellp@law.utah.edu

Attorneys for Plaintiffs-Appellees Jane Doe No.1 and Jane Doe No. 2

**RENEWED MOTION FOR EXPEDITED RULING ON MOTION FOR
STAY OF DISTRICT COURT DISCOVERY ORDER**

This case involves a district court discovery order directing the Government to produce certain correspondence to produce to two crime victims, appellees Jane Doe No. 1 and Jane Doe No. 2 (hereinafter “the victims”). The district court denied a stay of its order pending appeal, but agreed to “temporarily” stay further proceedings for ten days or until this Court had an opportunity to rule on any stay motion. On July 12, 2013, limited intervenors-appellants’ Roy Black, Jeffrey Epstein and Martin Weinberg (collectively referred to as “Epstein”) asked this Court to overturn the district court’s decision not to stay proceedings. As of today, Epstein’s stay motion has been pending before the Court for ten weeks – effectively staying the effect of the district court’s order. The victims now move this Court for an expedited ruling on Epstein’s motion to stay on or before September 27, 2013, as further delay in ruling would directly interfere with district court proceedings.

FACTUAL BACKGROUND

As the Court is aware, the district court has ordered the Government to produce to the victims correspondence between the U.S. Attorney’s Office and Epstein’s defense counsel connected with the victims’ action to enforce the Crime

Victim's Rights Act. On July 8, 2013, the district court denied Epstein's motion for a stay pending appeal. DE 206. The district court explained that the "granting of a motion to stay pending appeal is an extraordinary remedy granted only on a showing of a 'probable likelihood of success on the merits on appeal,' or upon a lesser showing of a 'substantial case on the merits when the balance of the equities weighs heavily in favor of granting the stay.'" DE 206 at 2 (*citing United States v. Hamilton*, 963 F.2d 322 (11th Cir. 1992) (internal quotations omitted)). Citing relevant caselaw, the district court found that Epstein had "neither demonstrated a probable likelihood of success on the merits on appeal . . . nor that the balance of equities weighs heavily in favor of granting a stay." DE 206 at 2-3. The District Court accordingly denied the stay. To give this Court an opportunity to review the issue, however, the district court allowed Epstein until July 15, 2013, to seek a stay from this Court. Contingent on such an application for a stay, the district court entered a "temporary" stay that "shall remain in effect pending the Eleventh Circuit's disposition of [Epstein's] application for [a] stay" before this Court. DE 206 at 3.

On July 12, 2013, Epstein filed a motion for this Court to overturn the district court's decision not to stay proceedings. The victims responded that same day, arguing against any stay and requesting a ruling on or before July 19, 2013, when the documents were to be produced.

This Court was unable to rule that rapidly and so on August 8, 2013, the victims filed a motion for an expedited ruling before August 16, 2013, to avoid inference with certain discovery pleadings that they had to file in the district court. The next day, August 9, Epstein filed his opposition to that motion, and on the next workday, Monday, August 12, 2013, the victims replied.

The next day, August 13, 2013, this Court denied the motion for an expedited ruling, noting that the victims had previously filed a motion to dismiss Epstein's appeal for lack of jurisdiction. This Court explained: "In light of the district court's temporary stay, this Court has followed its usual practice of deferring consideration and disposition of a non-emergency motion for stay pending appeal until after the Court has ruled on any motion to dismiss the appeal for lack of jurisdiction."

Five days later, on August 19, 2013, this Court ruled on the motion to dismiss, ruling it would be carried with the case. That same day, in light of that ruling on the motion to dismiss, the Clerk's Office presented Epstein's motion to stay to the merits panel handling that case. Epstein's motion to stay has now been before the motions panel for more than a month – and his motion to stay has been before the Court for ten weeks. The pendency of the motion before this Court has operated to give Epstein a ten-week stay of the district court's underlying order even though the district court has held he is not entitled to a stay.

While Epstein's stay motion has been pending before the Court, the parties have completed full briefing on the merits in this case. The last brief (Epstein's reply brief) was filed on September 13, 2013. Accordingly, the Court has before it all information that it needs to evaluate the merits of the case.

Meanwhile in the district court, the Government has indicated that on September 20, 2013, it will be filing a declaration from the U.S. Attorney connected to the correspondence at issue in this case. DE 236. The District Court has given the victims until Monday, September 30, 2013, to file a reply connected to that declaration. DE 237. The correspondence at issue is highly relevant to the victims September 30 filing.

The victims now move this Court for an expedited ruling on Epstein's motion to stay on or before Friday, September 27, 2013, as further delay in ruling would effectively extend the stay and prevent the victim from using the correspondence in their reply on September 30. This could necessitate further briefing and motions if this Court ultimately rules in victims' favor and affirms the district court's decision to give them access to the correspondence.

DISCUSSION

In their opposition to Epstein's motion for a stay, the victims have explained why a stay should not be granted. The victims will not discuss the merits of the stay motion here, as they seek relief only with regard to the timing of the ruling on

the motion. The victims request that the Court expedite a ruling on Epstein's motion to stay, ruling on or before September 27, 2013, when the victims must file additional pleadings in the district court in which the correspondence whose production has been stayed is directly relevant. If this Court has not ruled on Epstein's stay request by that time, then the victims will be deprived of the ability to use the correspondence as part of their response. If this Court were to later allow victims access to the correspondence, then the victims would have presumably file a new, supplemental pleading in the district court with the correspondence. The Government would, in turn, presumably be entitled to file a new, supplemental response – and the net effect would be to delay the ability of the district court to render a ruling on the discovery issue.

District court judges “play a special role in managing ongoing litigation. The district judge can better exercise [his or her] responsibility [to police prejudgment tactics of litigants] if the appellate courts do not repeatedly intervene to second-guess prejudgment rulings.” *Mohawk Industries, Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (internal citations omitted). The victims respectfully request that this Court rule on – and deny – Epstein's pending motion for a stay before September 27, 2013, so that the proceedings below will not be further delayed.

POSITION OF THE PARTIES

Epstein objects to the motion. The Government has advised the victims that it does not intend to participate in this appeal.

CONCLUSION

For all the foregoing reasons, the Court should expedite a decision on the pending motion to stay and rule on or before September 27, 2013.

DATED: September 20, 2013

Respectfully Submitted,



Paul G. Cassell
S.J. Quinney College of Law at the
University of Utah
332 S. 1400 E.
Salt Lake City, UT 84112
Telephone: 801-585-5202
E-Mail: cassellp@law.utah.edu

Bradley J. Edwards
FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN,
P.L.
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
Telephone (954) 524-2820
Facsimile (954) 524-2822
Florida Bar No.: 542075
E-mail: brad@pathtojustice.com

Attorneys for Jane Doe No. 1 and Jane Doe No. 2

CERTIFICATE OF SERVICE

The foregoing document was served on September 20, 2013, on the following using the Court's CM/ECF system:

Dexter Lee
A. Marie Villafaña
Assistant U.S. Attorneys
500 S. Australian Ave., Suite 400
West Palm Beach, FL 33401
(561) 820-8711
Fax: (561) 820-8777
E-mail: Dexter.Lee@usdoj.gov
E-mail: ann.marie.c.villafana@usdoj.gov
Attorneys for the Government

Roy Black, Esq.
Jackie Perczek, Esq.
Black, Srebnick, Kornspan & Stumpf, P.A.
201 South Biscayne Boulevard
Suite 1300
Miami, FL 33131
(305) 37106421
(305) 358-2006

Martin G. Weinberg
Martin G. Weinberg, PC
20 PARK PLZ STE 1000
Boston, MA 02116-4301
(617) 227-3700



Paul G. Cassell