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

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

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

INTRODUCTION

This case involves a discovery order concerning certain correspondence that the district court has ordered the Government to produce to two crime victims, appellees Jane Doe No. 1 and Jane Doe No. 2 (hereinafter "the victims"). The district court in this case denied a stay of its order pending appeal, but agreed to "temporarily" stay further proceedings 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") filed a motion for this Court to overturn the district court's decision not to stay proceedings. Appellees Jane Doe No. 1 and Jane Doe No. 2 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. The stay motion has now been pending before this Court for more than three weeks, preventing production of the correspondence and effectively giving Epstein a stay even though the district court has held he is not entitled to one. The victims now move this Court for an expedited ruling on Epstein's motion to stay before August 16, 2013, as further delay in ruling would directly interfere with district court proceedings.

FACTUAL BACKGROUND

This interlocutory appeal arises from a petition filed in the district court by two acknowledged crime victims, appellees Jane Doe No. 1 and Jane Doe No. 2. In their petition, they sought to enforce their rights under the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, in connection with federal sex offenses committed against them by Jeffrey Epstein. The facts are described at greater length in their currently-pending motion to dismiss (filed July 2, 2013) and in their previously-filed response to Epstein's motion for a stay (filed July 12, 2013). In brief, in a petition filed in 2008, the victims alleged that the Government violated its obligations under the CVRA to confer with them regarding a non-prosecution agreement (NPA) it negotiated with Jeffrey Epstein. Ultimately, after disposing of other preliminary issues, on June 19, 2013, the district court ordered the Government to begin producing discovery, including correspondence between Government prosecutors and Epstein's criminal defense attorneys. DE 190. It directed the Government to produce discovery no later than July 19, 2013 and established a briefing schedule for resolving future discovery issues. *Id.* at 3.

On June 27, 2013, Epstein and his attorneys filed notices of appeal from the district court's denial of their efforts to block release of the correspondence. DE's 194-96. On July 2, 2013, the victims filed in this Court a motion to dismiss

Epstein's interlocutory appeal, explaining that this Court lacked jurisdiction in light of *Mohawk Industries v. Carpenter*, 558 U.S. 100 (2009). That motion is also fully briefed and also remains pending.

On June 26, 2013, Epstein sought in the district court a stay of the district court's discovery order pending appeal. DE 193. Two days later, the victims filed an opposition to the stay. DE 198.

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 his motion for stay with this Court. The victims filed on opposition that same day. The victims also asked that Court to rule on or before July 19, 2013, as that was the day that the district court had ordered the correspondence to be produced. That motion to stay has now been pending before this Court for more than three weeks. The correspondence at issue has not been produced to the victims. As described below, further briefing for which the correspondence is highly relevant is due on August 16, 2013.

ARGUMENT

In their opposition to the motion for a stay, the victims have previously explained why a stay should not be granted. The victims had previously requested that this Court rule on or before July 19, 2013, so as not to delay production of the documents. The Court was unable to render a ruling by that time.

The victims now request that the Court expedite a ruling on the motion to stay, ruling before August 16, 2013, when the victims must file additional pleadings in the district court to which the correspondence is directly relevant. On August 16, 2013, the victims will be filing a court-ordered response to the Government's privilege log in this case. The Government filed a privilege log on July 19, 2013. While on that date the Government did not produce the correspondence at issue in this appeal, it did produce 13,468 pages of other

discovery in camera to the district court, asserting six different privileges it claimed applied to these documents. DE 212. The victims will respond to the assertion of privilege on August 16, 2013, consistent with district court orders. *See* DE 190 at 3; *see also* DE 218 at 9. That response will involve a number of factual issues as to which the correspondence is highly relevant. If this Court has not ruled on the stay request by that time, then the victims will be deprived of the ability to review and use the correspondence as part of their response. If this Court were to subsequently deny the stay, then the victims would have to review the correspondence at that time and presumably file a new, supplemental pleading in the district court. The Government would 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 – the pending motion for a stay before August 16, 2013, so that the proceedings below will not be delayed.

POSTION OF THE PARTIES

Epstein objects to the Court considering the motion for a stay without also considering the merits of the appeal. 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 before August 16, 2013.

DATED: August 8, 2013

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The foregoing document was served on August 8, 2013, on the following using the Court's CM/ECF system:

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