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F I L E D
Clerk of the Superior Court

NOV 03 2023

By: S. Galindo Camarillo, Deputy

SAN DIEGO SUPERIOR COURT OF CALIFORNIA
CENTRAL DIVISION

ANDREA SCHUCK,
PLAINTIFF,

vs.

ROB EMERT,
respondent

19FL010852N – family court

Motion to Stay Family Court Proceedings

Memorandum of Points and Authorities
in Support of Motion to Stay proceedings

Judge Robinson
Nov 9 2023 9AM

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Memorandum of Points and Authorities in Support of Motion to Stay Proceedings

I, Rob Emert, declare as follows:

I. Introduction

Respondent respectfully submits this Memorandum of Points and Authorities in support of the concurrently filed Motion to Stay all proceedings in this family court matter pending resolution of the criminal prosecution against Respondent in Case No. SCD297230 for alleged violation of Penal Code 278.5(a).

The pending criminal case involves felony charges for child abduction stemming from the same circumstances surrounding custody of the parties' minor child that are ongoing in this proceeding. The validity of the underlying custody orders issued by this Court is still in dispute.

As discussed below, well-established principles of law and equity mandate granting a stay under the circumstances of this case to avoid improper interference with the criminal matter, infringement of Respondent's rights, and risk of contradictory judgments.

Courts have inherent authority to control their dockets by staying proceedings in the interest of justice. *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). This includes discretion to stay a civil proceeding pending resolution of a related criminal prosecution involving similar parties and issues. See *People v. Superior Court (Kaufman)*, 12 Cal. 3d 421, 430 (1974).

Here, the following key factors demonstrate that a stay is imperative:

- (1) The criminal matter carries greater legal urgency and precedence;
- (2) The factual and legal issues overlap substantively between both matters;
- (3) A stay will protect against self-incrimination and due process violations;
- (4) Petitioner already obtained expedited hearings on less critical issues while Respondent faces lengthy delays on matters involving fundamental parental rights;
- (5) The plea agreement in the criminal matter contemplated custody resolution in this forum.

To prevent undue prejudice and protect the integrity of both matters, prudence and fairness requires temporarily postponing civil proceedings pending completion of the criminal adjudication. As discussed herein, the circumstances necessitate a stay to serve justice and preserve Respondent's rights.

II. Legal Standard for Staying Proceedings

This Court possesses inherent authority to control its docket by staying proceedings in the interests of justice and judicial economy. *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936) (recognizing power to stay proceedings “incidental to the power inherent in every court to control the disposition of the causes on its docket”)

In considering a motion to stay, courts weigh “the competing interests which will be affected by the granting or refusal to grant a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). Relevant factors include: (1) potential prejudice to the non-moving party; (2) hardship to the moving party if required to go forward; (3) judicial efficiency. *Id.*

Courts have discretion to stay a civil action pending resolution of a related criminal prosecution, even if not required constitutionally. *People v. Superior Court (Jayhill)*, 9 Cal.3d 283, 286 (1973). Such stays are appropriate when civil and criminal cases involve substantially similar parties, witnesses, and issues. See *People v. Superior Court (Kaufman)*, 12 Cal. 3d 421, 430 (1974). The pendency of a criminal prosecution “may justly warrant suspension of civil proceedings arising from the same facts.” *Jayhill*, 9 Cal. 3d at 286.

Here, as discussed below, the circumstances necessitate a stay under the standards set forth in *Landis*, *CMAX*, and *Jayhill/Kaufman*. The criminal matter takes precedence given the substantial overlap in issues and parties. A stay will mitigate undue hardship to Respondent if forced to proceed in civil court before criminal adjudication. It will also promote judicial efficiency.

III. Criminal Case Takes Precedence

The criminal case takes clear precedence over the civil custody dispute given the life and liberty interests at stake. *Avant! Corp. v. Superior Court*, 79 Cal. App. 4th 876, 881–82 (2000) (criminal case took top priority due to “greater urgency”, affecting “liberty interests”).

The criminal charges involve felony violations carrying potential incarceration. Respondent's constitutional rights are directly implicated, including the 5th Amendment right against self-incrimination. The higher evidentiary and procedural protections afforded criminal matters underscore their precedence. See *People v. Coleman*, 13 Cal. 3d 867, 885 (1975).

Moreover, as discussed below, the criminal case and civil custody dispute involve overlapping issues. Courts routinely stay civil proceedings pending resolution of criminal cases involving similar parties, witnesses, and subject matter. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir. 1995). That compelling precedence for a stay exists here.

IV. Overlapping Factual and Legal Issues

The criminal charges arise from the exact circumstances and events surrounding the custody dispute in this action – namely enforcement of this Court's prior custody orders.

The validity and factual basis for the November 29, 2021 custody orders are still in dispute. Yet those same orders underpin the criminal charges against Respondent. The matters are inextricably intertwined.

When civil and criminal cases involve such substantial overlap of issues, stay of the civil case is warranted to avoid inconsistent rulings and unnecessary duplication. *Doe v. Los Angeles County Dept. of Children & Family Services*, 71 Cal. App. 5th 589, 601–02 (2021). The “possibility of conflicting rulings on identical issues” cautions against dual proceedings. *Id.*

V. Infringement of Constitutional Rights

Allowing the civil custody case to proceed would jeopardize Respondent's 5th Amendment right against self-incrimination. Respondent cannot fully defend against custody claims without testimony that may be self-incriminating given the overlapping issues with the criminal matter.

Courts grant stays to avoid forcing a party "to choose between invoking the Fifth Amendment in a civil case, thus risking loss there, or answering the questions in the civil context, thus risking subsequent criminal prosecution." *Pacers Inc. v. Superior Court*, 162 Cal. App. 3d 686, 689 (1984). A stay is imperative to mitigate this unconstitutional dilemma.

Proceeding with the civil case could also impact Respondent's due process rights and ability to present a complete defense in the criminal matter if forced to reveal trial strategy or testimony ahead of the criminal adjudication. See *Kessler v. Superior Court*, 221 Cal. App. 2d 605, 607 (1963). The pending criminal prosecution warrants temporarily postponing the civil proceedings.

VI. Balance of Equities Favors Respondent

The balance of equities weighs heavily in favor of Respondent, who faces loss of liberty interests and constitutional rights absent a stay. Petitioner would suffer only minimal delay having already obtained expedited hearings on less critical issues.

In contrast, Respondent faces over five months delay on matters involving his fundamental parental rights. Yet Petitioner obtained an expedited hearing set in less than three months on the trivial issue of restricting gift drop-offs. This disparity in access to adjudication of important rights is inequitable.

Courts must consider hardship to the moving party when weighing a stay. CMAX, Inc., 300 F.2d at 268. The substantial prejudice Respondent faces clearly tips the scales of equity in favor of granting a stay here.

VII. Conclusion

Based on the foregoing, justice mandates staying these family court proceedings pending full resolution of the criminal prosecution against Respondent.

As discussed herein, the criminal matter takes clear precedence given the felony charges at issue and significant overlap with the civil custody dispute. Respondent's constitutional rights are directly implicated and would be infringed if forced to proceed in civil court prior to criminal adjudication.

Moreover, Petitioner already obtained expedited hearings on less critical issues while Respondent faces lengthy delays on matters concerning fundamental parental rights. This disparity and the hardships Respondent would face absent a stay weigh decisively in favor of temporary postponement. See *Landis v. N. Am. Co.*, 299 U.S. at 259 (affirming stay where balance of equities weighed heavily in favor of one party).

A stay will protect the integrity of both matters and avoid undue prejudice, hardship to Respondent, and the possibility of inconsistent judgments. Equity and prudence dictate that the criminal prosecution reach finality before taking any further action on the intertwined civil custody issues.

Therefore, for the reasons stated herein, Respondent respectfully requests this Court grant the Motion to Stay Proceedings pending full resolution of the related criminal case. A temporary stay is imperative to serve justice and preserve Respondent's fundamental rights.

VERIFICATION

IT IS HEREBY certified that the facts in the foregoing is true and correct under penalty of perjury to the best of my knowledge and belief. Attachments to this are true and correct copies of the items they purport to be.

Dated this 3rd day November 2023

By: Robert Emert

Robert Emert

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ELECTRONIC SERVICE

I, Glenda Emert, certify that on 11/03/23, I served the foregoing document electronically by email to the following:

Dave Schilman

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 11/03/23

glenda emert

Glenda Emert