

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO.: 08-CA-24573

ZENAIDA GONZALEZ,

Plaintiff,

vs.

CASEY ANTHONY,

Defendant.

PLAINTIFF'S REPLY TO DEFENDANT'S MOTION FOR STAY

Plaintiff, ZENAIDA GONZALEZ, by and through the undersigned attorney, files this her Reply to the Defendant's Motion for Stay, and would state the following:

There are two cases and two judges with very different jobs. The judge in the criminal case must protect the fairness of the criminal proceedings. The judge in the civil case must protect the fairness of the civil proceedings. He must look through the lens of what impact the criminal charges may have on the civil proceedings. There is no room for sympathy because a civil defendant has serious criminal problems. There is a two prong approach to be applied that deals with whether the extreme measure of staying proceedings is actually necessary based on the facts and, if so, assessing the likely length of stay realizing controlling precedent has held that a stay of nine (9) months was unreasonable under all circumstances, was a departure from the essential requirements of the law and constituted a gross abuse of discretion.

The initial question is whether the existence of criminal charges so overwhelms one's ability to defend THE CIVIL CASE, that the Plaintiff's right to pursue civil justice must be

trumped. That prong involves analyzing the impact that choosing to take the Fifth has on Casey Anthony's ability to defend the civil case and balance that against Zenaida Gonzalez's rights. We start with the proposition it is very unfair to tell someone who believes they have suffered a terrible wrong at the hands of another that they must wait to pursue justice because the person who harmed them has other problems. Such is particularly unfair when dealing with defamation, libel, or slander, because the harm is ongoing and a favorable verdict is sought to clear one's name. In order to consider the extreme measure of stay, invoking the Fifth Amendment would have to have a profound impact on the defense of this civil action. Under the facts presented, the choice to take the Fifth does not rise to the level necessary to impose the rare and unfair act of granting a stay of all proceedings. The only prejudice defense counsel could cite to was Casey Anthony potentially being compelled to answer interrogatory questions. Zenaida Gonzalez very much wants Casey Anthony to answer the one interrogatory that attaches a picture of herself and asks Casey Anthony to admit she is not the alleged kidnapper. Casey Anthony is the only person who claims to have ever seen this phantom nanny, thus she is the only one that could say with authority that is not her (George and Cindy Anthony say it is not our client but, while that is nice to hear, it is useless because they never saw any "Zanny the Nanny" and cannot possibly identify her one way or the other).

Nonetheless, the court has made it clear that a pivotal factor as to its decision on the stay hinges on whether the motion to compel interrogatory answers from Casey Anthony is perused. Under the circumstances, Zenaida Gonzalez elects to withdraw her Motion to Compel. Thus, Casey Anthony can point to no prejudice in defending this civil case and the stay should be denied. If she can adequately defend herself in the criminal case while opting to take the Fifth, and then she can do the same here in the civil case. Her defense is to say it was not this Zenaida

Gonzalez who she fingered for the kidnapping. She has been defending this case on those grounds while taking the Fifth so far and can continue to do so (for example: relying on the description given to police, the photo shown to her by police, etc). The only prejudice is to the plaintiff in blocking her discovery from Casey Anthony and that is a trade Zenaida Gonzalez is willing to make so she can proceed in her quest to clear her name and pursue justice for what was done to her.

Keep in mind, Casey Anthony has filed a counterclaim, at the same time she claims she pursues a stay. This is classic sword and shield maneuver which is not allowed by our courts.

The second prong drives home the impropriety of a stay under these circumstances. Klein v. The Royal Group, 524 So.2d 1061, (3rd DCA 1988) is controlling. It states, as to a nine (9) month stay,

"it appears that there comes a time when a stay becomes unreasonable under all circumstances. It appears that such a period had lapsed as to its reasonableness when the matter came on for hearing in the late fall of 1987 and therefore it was a departure from the essential requirements of the law or a gross abuse of discretion to continue same and we therefore reverse.

Here we are talking about a stay of much longer than nine (9) months under any good faith estimate. Attempting to utilize reporting procedures will not change the fact that the stay would be, from the inception, for an excessive period of time under the law. Therefore, there are no lawful grounds to stay. If granted, law would mandate the stay be lifted after a period of time while the criminal case was still pending. We would be back to square one in a lose-lose situation. The defendant would have gained nothing because we would be back litigating where we left off (with her asserting the Fifth), the plaintiff would have suffered unnecessary, unfair delay and loss of her constitutional right to access to the courts and the court would have a case

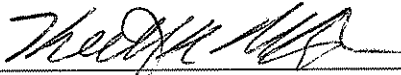
languish on its docket and will have gained nothing. When such is the almost certain outcome, it cannot be the wise nor legally correct path to take.

The court well knows the value of timeliness in litigation and what will be lost in the pursuit of justice should a stay be granted. The longer the case sits idle, the more memories fade, witnesses disappear, and documents become lost. Under the circumstances, the right thing to do is move forward, permitting the defendant to fully assert her Fifth Amendment rights and permitting Zenaida Gonzalez access to the courts.

For these reasons, ZENAIDA GONZALEZ respectfully asks the court to deny the Motion to Stay.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail this 9th day of September, 2009 to Jonathan Kasen, Esq., 633 S.E. 3rd Avenue, Suite #203, Ft. Lauderdale, FL 33301.



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