Opinion in Chambers

SUPREME COURT OF THE UNITED STATES

No. 10T0027

RAFELLUS *v.* PAPASBESTBOY

ON APPLICATION FOR A STAY

[January 11, 2021]

JUSTICE POWELL, Applications Justice.

Applicant Rafellus has asked me to stay the District Court for the District of Columbia's mandate suspending certain subsections of Fed. R. Civ. P. 5(d), which provides for certification of service requirements, pending the filing of a petition for a writ of certiorari. The application for a stay is accordingly denied.

The background for this application is fairly complex. As such, I do not go into vast detail here. Originally, Rafellus requested a stay of the proceedings below in order to appeal an order of the District Court denying default judgment to him. The District Court initially rejected the notice of appeal as non-conforming to its filing rules, to which Rafellus responded by citing Rule 5 of the Federal Rules of Civil Procedure. The District Court suspended Rule 5(d), and Rafellus moved for a stay while he filed a petition for a writ of certiorari to this court, which the District Court denied. Rafellus then filed this application with me. He asserts that the District Court illegally denied his request for a stay, and that per my duty as Applications Justice, I am obligated to issue a stay based on his alleged success on the traditional

four-factor stay test.[1]

An applicant seeking a stay of lower court proceedings pending the filing of a petition for a writ of certiorari must demonstrate a reasonable probability that the Court will grant certiorari, a fair prospect that the Court would then reverse the decision below, and that he is likely to irreparable harm if a stay is denied. *Maryland* v. *King*, 567 U. S. 1301, 1302 (2012) (Roberts, C. J., in chambers); *Hollingsworth* v. *Perry*, 558 U. S. 183, 190 (2010) (*per curiam*).

Here, I believe that Rafellus has succeeded on demonstrating that four justices will grant certiorari and that a fair prospect that the Court would reverse the decision of the District Court suspending Rule 5(d). The suspension of federal rules of procedure under Fed. R. Civ. P. 87, under which the District Court suspended parts of Rule 5(d), is "significant." Cf. *Monkey* v. *United States*, 9 U. S. 77, 78 (2020). As such, the District Court is required to give all parties "notice and opportunity to respond" when it suspends a rule. Fed. R. Civ. P. 87(b). From the record, I did not see such notice being afforded to Rafellus or Papasbestboy, and I believe that the suspension would be unwarranted. I am not convinced, however, that he has shown a likelihood of irreparable harm from denial of a stay. Rafellus claims that if a stay of the proceedings below were to be denied, a trial would take place in violation of the Seventh Amendment. This, however, is incorrect. The Seventh Amendment merely prevents against review of findings of fact by juries unless it is conducted "according to the rules

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[1]On these points, Rafellus is incorrect. Crafting a preliminary stay is an exercise of discretion and judgement, often dependent as much on the equities of a given case as the substance of the legal issues it presents. *British* v. *Ozzymen*, 3 U. S. 88, 90 (2017) (*per curiam*). As we've repeatedly held, "[a] stay is not a matter of right, even if irreparable injury might otherwise result." *Indiana State Police Pension Trust* v. *Chrysler, LLC*, 556 U. S. 960, 961 (2009) (quoting *Nken* v. *Holder*, 556 U. S. 418, 427 (2009)).

of the common law." U. S. Const., amend. VII. As such, no irreparable injury would occur, contrary to Rafellus' assertions.

The application for a stay pending the filing of a petition for a writ of certiorari is therefore denied.

It is so ordered.