

Stays of Trial Court Proceedings Pending Appeal

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It is a well-recognized principle of appellate law that merely filing a notice of appeal does not completely divest the trial court of jurisdiction and will not stay the enforcement of an order appealed.² Instead, the trial court “retains all jurisdiction [that] does not conflict with the jurisdiction of the appellate court,” including

jurisdiction that “would aid in the execution of the appealed judgment.”³ Without a stay of execution or enforcement of that order pending appeal, the judgment creditor, in the case of a money judgment, can execute on the judgment and any pending appeal will become moot.⁴ The same is true where the judgment is one for injunctive relief because “equity cannot enjoin that which has been accomplished.”⁵ Seeking a stay following final judgment is ordinarily not an issue when the judgment rendered is one that resolves all claims against all parties. The appealing party merely moves for a stay in the trial court under Civ.R. 62(B)⁶ and, if denied, can seek a stay in the appellate court under App.R. 7(A).⁷ If the order involves one where a supersedeas bond is required,⁸ the stay becomes effective when the bond is approved by the court.⁹

But what if your appeal involves a provisional remedy as defined by R.C. 2505.02(A)(3)¹⁰ that is rendered final and appealable under R.C. 2505.02(B)(4),¹¹ or is otherwise rendered final by statute such as an order granting or denying a motion to stay proceedings pending arbitration?¹² Rule 62(B) should still apply because these types of orders are “judgments” that can be enforced within the meaning of this rule even though they may not be money judgments or judgments for injunctive relief. To the extent, however, that the trial court retains jurisdiction not inconsistent with the reviewing court’s jurisdiction “to reverse, modify, or affirm the judgment,”¹³ the trial court is free to continue proceedings in its court that do not interfere with the appellate court’s jurisdiction.

We have successfully relied on this principle to ask a trial court to reconsider its decision to stay proceedings in a multiple party/multiple claim case where our motion for

summary judgment was pending when the plaintiff filed an appeal on an unrelated issue. And in other cases—especially involving appeals of orders denying a stay of proceedings to compel arbitration—we have relied on the trial court’s limited retained jurisdiction to argue that a stay of discovery is appropriate while an appeal of the order denying arbitration is pending precisely because proceeding with discovery interferes with the appellate court’s jurisdiction to reverse, modify, or affirm the order denying a stay to compel arbitration.

This is not to say that the trial court has always granted our motions to stay. Indeed, there are some trial judges that have routinely denied motions to stay proceedings while an appeal of an order denying a motion to compel arbitration, or any other interlocutory appealable order,¹⁴ is pending. But in those instances, the stay is then sought in the appellate court because we have satisfied App.R. 7(A)’s requirement that the trial court, by journal entry, has denied the stay.¹⁵ To date, requests made in the appellate court after the trial court has denied a stay have consistently been successful.

As a matter of practice then, don’t forget to seek a stay of discovery or other trial court proceedings when you appeal an order that is final and appealable but otherwise is made before final judgment on all claims against all parties. Because these types of orders ordinarily do not include a monetary judgment, you should be able to successfully argue, as we have, that no bond or other security is necessary. And Civ.R. 54(B) no-just-reason-for-delay certification is not necessary for either orders entered under R.C. 2711.02¹⁶ or for provisional remedies,¹⁷ so don’t be swayed by your opponent’s argument that 54(B) certification is necessary. It is not. On the flip side, if you find your case stayed by the trial court because of another party’s interlocutory appeal on an unrelated issue, ask the trial court to reconsider its decision to stay if you have a dispositive motion pending that has the potential to get you out of the case. It’s better than waiting months for an appeal to be resolved when that appeal doesn’t involve your client. Either way, Civ.R. 62(B) and App.R. 7(A) are powerful tools and should be used for your client’s maximum benefit.

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Endnotes

- ¹ The author thanks Marissa Ennis, an associate at Tucker Ellis LLP who has a keen eye for detail, for her editorial assistance.
- ² Painter & Pollis, *Ohio Appellate Practice*, § 1:16 (2014-2015 Ed.).
- ³ *Hagood v. Gail*, 105 Ohio App.3d 780, 784-85, 664 N.E.2d 1373 (11th Dist.1995).
- ⁴ *Id.* at 785.
- ⁵ *Broadway Properties, Inc. v. Crouch*, 114 Ohio App. 30, 38, 180 N.E.2d 162 (10th Dist.1961).
- ⁶ Civ.R. 62(B) provides:

When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond. The bond may be given at or after the time of filing the notice of appeal.
- ⁷ App.R. 7(A) requires that a stay first be sought in the trial court unless seeking a stay there “is not practicable, or that the trial court has, by journal entry, denied * * * the relief * * * requested.”
- ⁸ Civ.R. 62(C) provides that no bond or other security is required for certain appealing parties, such as a state or a political subdivision.
- ⁹ Civ.R. 62(B)
- ¹⁰ Provisional remedies include, but are not limited to, orders relating to ancillary proceedings such as preliminary injunction, attachment, discovery of privileged matters, suppression of evidence, prima facie showing under R.C. 2307.92, or findings under R.C. 2307.93.
- ¹¹ Even if the order satisfies the definition of a provisional remedy, it still must satisfy both prongs of R.C. 2505.02(B)(4) to be immediately appealable.
- ¹² See R.C. 2711.02(C).
- ¹³ *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626, 950 N.E.2d 149, ¶ 13.
- ¹⁴ Using the term “interlocutory appealable order” is actually a misnomer because orders granting or denying motions to stay proceedings to compel arbitration are considered final orders and immediately appealable under R.C. 2711.02(C), and provisional remedies may be final *appealable* orders if R.C. 2505.02(B)(4) is satisfied. The author uses the term “interlocutory appealable orders” merely to distinguish the *stage* of the proceedings where the appealable order is entered, not its precise legal effect.
- ¹⁵ See note 6.
- ¹⁶ See *Mynes v. Brooks*, 124 Ohio St.3d 13, 2009-Ohio-5946, 918 N.E.2d 511, syllabus (“R.C. 2711.02(C) permits a party to appeal a trial court order that grants or denies a stay of trial pending arbitration even when the order makes no determination pursuant to Civ.R. 54(B).”).
- ¹⁷ See *State ex rel. Butler Cty. Children Servs. Bd. v. Sage*, 95 Ohio St.3d 23, 25, 764 N.E.2d 1027 (2002) (explaining that an entry granting a provisional remedy “did not need to comply with Civ.R. 54(B) to constitute a final appealable order”).

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