

IN THE SUPREME COURT OF THE STATE OF DELAWARE

H. BEATTY CHADWICK,)
) No. 44, 2004
 Plaintiff Below,)
 Appellant,) Court Below: Superior Court
) of the State of Delaware in
 v.) and for New Castle County
)
 METRO CORP., a Pennsylvania) C.A. No. 02-11-115
 corporation, publisher of)
 Philadelphia Magazine,)
 CHRISTOPHER MCDUGALL,)
 and BARBARA CHADWICK aka)
 BARBARA APPLGATE,)
)
 Defendants Below,)
 Appellees.)

Submitted: July 14, 2004
Decided: August 12, 2004

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices.

ORDER

This 12th day of August 2004, upon consideration of the briefs and oral argument of the parties, it appears to the Court as follows:

(1) H. Beatty Chadwick appeals the dismissal with prejudice of his complaint for defamation, invasion of privacy, and conspiracy to injure his reputation against publisher Metro Corp., author Christopher McDougall, and Chadwick's ex-wife, Barbara Chadwick a/k/a Barbara Applegate.

(2) In 1992, Barbara Applegate filed for divorce in the Pennsylvania Court of Common Pleas. During the divorce proceedings, Chadwick represented to the court that he had transferred \$2,502,000 of the couple's marital assets to an overseas account to satisfy a debt. The trial judge did not accept his explanation and eventually ordered Chadwick, *inter alia*, to return the entire sum to a court administered account. Chadwick refused to comply with the July 22, 1994 order. The trial judge found him in civil contempt.

(3) In September 1994, Chadwick fled to Delaware to evade capture and incarceration. He was arrested in Philadelphia in April 1995, and remains incarcerated in Pennsylvania pursuant to the civil contempt order. Chadwick has repeatedly challenged the contempt order and sought release from jail. The resulting decisions consistently upheld the finding of contempt and have repeatedly reminded Chadwick of the fact that he remains incarcerated by his own will and actions.¹ In short, Chadwick "holds the keys to the jailhouse" because the Pennsylvania Court has concluded that he is able to comply with the civil contempt order, but refuses to do so.

(4) Metro published a series of articles in *Philadelphia Magazine* detailing the circumstances surrounding Chadwick's divorce and incarceration.

¹ See, e.g., *Chadwick v. Janecka*, 2002 WL 12292 at *7 n.2, *Chadwick v. Janecka*, 312 F.3d 597, 613 (3d Cir. 2002), *cert. denied*, 538 U.S. 1000 (2003).

The first article, published in February 1995, included allegations by Applegate that Chadwick physically and mentally abused her during their marriage. In June 1995, Metro published a follow-up article describing the details of Chadwick's arrest at a Philadelphia dental office. Metro published a third article in January 1996. Later that year, Chadwick sued Metro and Lisa DePaulo, the author of the articles, for defamation in a Pennsylvania court. The Pennsylvania court has since deferred the suit until Chadwick complies with the July 1994 civil contempt order.

(5) In December 2001, *Philadelphia Magazine* published an article updating the status of Chadwick's divorce and incarceration that contained many of the factual statements included in the earlier articles. In November 2002, Chadwick sued publisher Metro, author Christopher McDougall, and ex-wife Barbara Applegate for, *inter alia*, defamation in the Delaware Superior Court.

(6) In February 2003, the trial judge granted motions to dismiss the claims against McDougall and Applegate for lack of personal jurisdiction. Metro moved to stay the Delaware suit pending resolution of Chadwick's substantially similar, first-filed Pennsylvania suit. The trial judge stayed the suit against Metro in February 2003, and ordered a report on the status of the Pennsylvania motion in six months. Chadwick immediately filed a motion for reconsideration and a motion for entry of a final judgment or, in the alternative, for certification of interlocutory appeal. The trial judge denied both motions and this Court denied

Chadwick's motion for an interlocutory appeal. On October 16, 2003, Metro filed a motion to dismiss and following argument in January 2004, the trial judge dismissed the complaint. Chadwick appeals the January 23, 2004 order dismissing Metro, and the February 24, 2003 orders dismissing Applegate and McDougall for lack of personal jurisdiction.

(7) After careful review, we are satisfied that the trial judge acted appropriately within his discretion by dismissing Chadwick's Delaware complaint in favor of the first-filed Pennsylvania suit. The *McWane* doctrine permits a Delaware judge *to dismiss or stay* an action in favor of a first-filed action pending in another jurisdiction.² Our courts generally do not consider a motion to dismiss under traditional *forum non conveniens* analysis when a similar action is pending elsewhere.³ Rather, we apply the *McWane* factors to determine whether the later-filed action should be *stayed or dismissed*. Under *McWane* and its progeny, a judge, in the exercise of his or her discretion, may stay or dismiss a later-filed suit where a first-filed suit is pending in a court capable of administering prompt and complete justice, and involves substantially similar parties and issues.⁴

(8) In the matter *sub judice*, the first-filed Pennsylvania suit is pending in

² *McWane Cast Iron Pipe Corp. v. McDowell-Wellman Eng'g Co.*, 263 A.2d 281, 283 (Del. 1970).

³ *Id.* at 284 (“We reaffirm...the application of the established rules of *forum non conveniens* where (1) no other action is pending elsewhere between the same parties involving the same issues, or (2) such other pending action was filed subsequently to the Delaware action.”).

⁴ *Id.* at 283; *Dura Pharms., Inc., v. Scandipharm, Inc.*, 713 A.2d 925, 930 (Del. Ch. 1998).

a competent, capable court although it has been stayed until Chadwick complies with the civil contempt order. We recognize that the Pennsylvania courts believe that Chadwick is fully capable of compliance. Chadwick, while arguing otherwise, nonetheless has chosen not to do so.

(9) Further, it is clear that the Pennsylvania and Delaware suits involve substantially similar parties and issues. In Delaware, under the *McWane* doctrine, a duplicative action that is substantially or functionally identical to an earlier suit may be dismissed or stayed.⁵ In both the Pennsylvania and Delaware actions, Chadwick alleges injury to his reputation, resulting from statements by Applegate published in Metro's *Philadelphia Magazine*. Chadwick insists that the two actions are dissimilar because different people authored the 2001 article and the three earlier articles. The 2001 article, however, merely constituted an update on the earlier articles regarding Chadwick's incarceration. The 2001 article contained virtually all of the allegedly defamatory statements previously published in the 1995 and 1996 articles. Further, it is clear that the articles arise out of a "common

⁵ See, e.g., *Dura Pharms.*, 713 A.2d at 930 ("Thus, there is certainly a close enough identity of issues...to implicate the *McWane* comity analysis."); *AT&T Corp. v. Prime Sec. Distributions, Inc.*, 1996 WL 633300 at *2 (Del. Ch. Oct. 24, 1996) ("To grant a stay, it is not required that the parties and issues in both actions be identical. Substantial or functional identity is sufficient."); *Schnell v. Porta Sys. Corp.*, 1994 WL 148276 at *4 (Del. Ch. Apr. 12, 1994) (stating that "all claims arising from a common nucleus of operative facts [should] be brought at the same time whenever possible").

nucleus of operative facts,”⁶ involving Applegate’s claims of physical and emotional abuse and Chadwick’s non-compliance with the civil contempt order of the Pennsylvania court. Both the Pennsylvania and Delaware suits allege that the Applegate statements are defamatory. Accordingly, Chadwick’s functionally identical claims may be fully adjudicated by Pennsylvania when Chadwick complies with the civil contempt order.

(10) We find the trial judge’s decision to dismiss rather than extend the stay for an additional, potentially lengthy time, appropriately supported by the ends of judicial efficiency.⁷ No party to this action is a Delaware citizen. In fact, it appears that even the collective ties of all parties to Delaware are tenuous at best. Chadwick’s choice of Delaware as a forum for this lawsuit seems predicated on the fact that a Pennsylvania court will not allow him to proceed, for reasons previously stated, with a functionally identical suit. For Delaware to allow Chadwick to proceed in our courts under these particular circumstances would be, in effect, to subvert the civil contempt order pending in Pennsylvania.

(11) From the outset, the trial judge expressed concern over presiding over this, a potentially “lifelong case.” The trial judge made it clear to the parties’ that

⁶ *Dura Pharms.*, 713 A.2d at 930.

⁷ *McWane*, 263 A.2d at 283 (“Judicial efficiency encourages confining litigation to the forum where the parties first commence the action when a prior, pending action in another jurisdiction involves the same parties and issues.”); *E.I. du Pont de Nemours & Co. v. Cigna Prop. & Casualty Co.*, Del. Ch., C.A. No. 12386, Allen, C. (Jul. 17, 1992)

he was “concerned about how quickly things are done.” Later, he expressed some uncertainty about how this matter would proceed, stating, “having cases that are lasting for years is not a good thing for a judge, how do I deal with that?” In deference to the potential merits of the suit, the trial judge granted a stay and ordered the parties to report on the status of the matter after six-months. *Eleven months later*, the trial judge granted Metro’s motion to dismiss, explaining:

It’s difficult for the – for our system – it’s difficult for me to envision a situation where the resources of this Court and the money that – of this state should be utilized to benefit someone whose only connection to the state is a fugitive status.⁸

We have stayed the matter for a period of time hoping that – that Mr. Chadwick would comply with those orders and allow that case to proceed. It hasn’t. It appears that Mr. Chadwick is satisfied to live the remaining years if his life incarcerated. And it would be unfair to the Defendant to allow the action to be stayed forever, waiting for Mr. Chadwick’s – either to come to his senses or die.⁹

We are convinced that the trial judge acted appropriately within his inherent authority to manage his own trial docket, and consistently with the reasonable expectations of the litigants when he dismissed Chadwick’s suit. At some point, it became clear to the trial judge that the later-filed Delaware suit was likely an end run by Chadwick. Our trial courts should rightfully deny sanctuary to the purpose evident at the heart of Chadwick’s suit: to subvert the effect of a lawful

⁸ Trial Transcript on Motion to Dismiss (January 20, 2004) at pg. 11.

⁹ *Id.* at pp.19-20.

Pennsylvania civil contempt order. Our Delaware trial judges are renown for their temperament and prudence; our trial courts for their efficiency and fairness of procedure. The trial judge here acted patiently and ultimately decisively when he stayed and then dismissed the complaint against Metro. His actions reflect reasonable exercise of judicial discretion.

(12) Chadwick also appeals the dismissal of his complaints against McDougall and Applegate. We review *de novo* a trial judge’s decision to dismiss a defendant for lack of personal jurisdiction.¹⁰ Delaware courts apply a two-step analysis to determine whether the court has *in personam* jurisdiction over a non-resident defendant. The court must first consider whether the long-arm statute applies, and then evaluate whether exercise of jurisdiction would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Chadwick alleges that McDougall and Applegate are subject to personal jurisdiction under 10 *Del. C.* § 3104 (c)(3), the section of the long-arm statute that grants jurisdiction if a defendant “causes tortious injury in the State by an act or omission in this State.”¹¹ We find that neither McDougall nor Applegate committed a tortious act or omission in Delaware. McDougall is a Pennsylvania resident with virtually no contacts to Delaware. He conducted his interview with

¹⁰ *Hercules, Inc. v. Leu Trust & Banking, Ltd.*, 611 A.2d 476, 481 (Del. 1992), *cert. dismissed*, 507 U.S. 1025 (1993).

¹¹ 10 *Del. C.* § 3104 (c)(3) (2004).

Applegate over the telephone from his house in Pennsylvania to Applegate's residence in Maine. McDougall wrote and edited the article in Pennsylvania. Applegate is a resident of Maine and has never lived in Delaware. Her contact to Delaware has generally been limited to her travels on I-95. Based on these facts, the trial judge properly dismissed McDougall and Applegate from the litigation because Delaware lacked personal jurisdiction over them.

Accordingly, we AFFIRM the Superior Court's judgments that dismissed the complaints against Metro, McDougall, and Applegate.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice