

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION**

RICKEY JOHNSON

CIVIL ACTION NO. 09-0055

VERSUS

JUDGE S. MAURICE HICKS, JR.

STATE OF LOUISIANA, ET AL.

MAGISTRATE JUDGE HORNSBY

MEMORANDUM ORDER

Before the Court is a Magistrate Appeal (Record Document 103) filed by the DA Defendants. The DA Defendants appeal Magistrate Judge Hornsby's Memorandum Order of September 9, 2010, which denied their Motion to Stay (Record Document 92). The DA Defendants contend that such order was clearly erroneous and contrary to law on multiple grounds: (1) the possibility that a parallel case might settle is not an appropriate measure of whether a stay is appropriate; (2) it was error for the Magistrate Judge not to find that stay was appropriate; and (3) the Magistrate Judge should have given greater weight to the decision of Judge Engelhardt of the Eastern District who granted a stay under similar circumstances. See id. Plaintiff opposes the Magistrate Appeal. See Record Document 106.

The decision by a magistrate judge on a motion to stay is a non-dispositive matter. This action is not listed in 28 U.S.C. § 636(b)(1)(A) as one of the dispositive motions (often referred to as the "excepted motions") that a magistrate judge may not conclusively decide. Magistrate Judge Hornsby's Memorandum Order is not a recommendation to the district court; rather, it is an order from the magistrate judge on a non-dispositive matter that requires the district court to uphold the ruling unless it is clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); see also Castillo v. Frank, 70 F.3d 382, 385 (5th Cir.

1995); Perales v. Casillas, 950 F.2d 1066, 1070 (5th Cir.1992). This Court will review the Magistrate Judge's legal conclusions de novo, and will review the factual findings for clear error. See Choate v. State Farm Lloyds, No. 03-CV-2111, 2005 WL 1109432, *1 (N.D.Tex. May 5, 2005).

Based on the showing made in the Magistrate Appeal, the Court finds that Magistrate Judge Hornsby's Memorandum Order (Record Document 101) denying the DA Defendants' Motion to Stay was not clearly erroneous or contrary to law. As noted by the Magistrate Judge in his ruling *and* the DA Defendants in their appeal, district courts enjoy broad discretion in determining whether to issue a stay. See Wedgeworth v. Fibreboard Corp., 706 F.2d 541, 545 (5th Cir. 1983). Here, the Magistrate Judge did not exercise unbounded discretion, but rather weighed competing interests and concluded "that in the circumstances of this case a stay is not the best exercise of the court's discretion." Record Document 101 at 2. Specific considerations cited by Magistrate Judge Hornsby included the uncertainty of when a decision would issue in the Thompson case; the possibility that Thompson would settle prior to the United States Supreme Court rendering its decision; the undersigned's order limiting discovery in this case; and Plaintiff's claim against the crime lab director which will not be impacted by the outcome of Thompson. See id. at 1-2. Magistrate Judge Hornsby also stated that the trial date in this case would be set with an eye toward having the benefit of any Thompson decision by the time of trial. See id. at 2-3.

Further, a review of the record does not suggest that extraordinary expense or undue prejudice would result to the DA Defendants from going forward with a scheduling conference and discovery in this matter. The DA Defendants have also failed to present binding precedent that the possibility that a parallel case might settle is not an appropriate

measure of whether a stay is warranted and/or that Magistrate Judge Hornsby should have given greater weight to the decision of Judge Engelhardt of the Eastern District.

Based on the foregoing, the Court finds that the record establishes that the Magistrate Judge properly considered the claims involved in this case along with all of the competing considerations. His conclusion that a stay was not the best exercise of the court's discretion is supported by the record and was neither clearly erroneous nor contrary to law.

Accordingly,

IT IS ORDERED that Magistrate Judge Hornsby's Memorandum Order of September 9, 2010 (Record Document 101) is **AFFIRMED** and the Motion to Stay (Record Document 92) is **DENIED**.

THUS DONE AND SIGNED, at Shreveport, Louisiana, this 26th day of October, 2010.



S. MAURICE HICKS, JR.
UNITED STATES DISTRICT JUDGE