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NOT TO BE PUBLISHED OPINION

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RENDERED: SEPTEMBER 20, 2012
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2012-SC-000263-MR

WILLIS L. WILSON — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2011-CA-001967-OA
FAYETTE CIRCUIT COURT NO. 10-CI-00313

JAMES D. ISHMAEL, JR., JUDGE, FAYETTE CIRCUIT COURT, 22ND JUDICIAL DISTRICT — APPELLEE

AND

LOGAN ASKEW, IN HIS INDIVIDUAL CAPACITY AND IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF LAW OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT; LESLYE BOWMAN, IN HER INDIVIDUAL CAPACITY AND IN HER OFFICIAL CAPACITY AS DIRECTOR OF LITIGATION IN THE DEPARTMENT OF LAW OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT; AND LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT — REAL PARTIES IN INTEREST

MEMORANDUM OPINION OF THE COURT

REVERSING

The Appellant Willis L. Wilson asks this Court to reverse the Court of Appeals' decision denying a writ of mandamus directing the Fayette Circuit Court to vacate a stay of proceedings as to several of the underlying claims. Because Mr. Wilson has shown entitlement to the writ, the Court of Appeals' order is reversed and this case is remanded with orders to enter the requested writ of mandamus.

I. Background

Mr. Wilson was an attorney with the Lexington-Fayette Urban County Government (LFUCG) from 1993 to 2009. He was employed under the LFUCG's Classified Civil Service Plan, a type of merit employment. In July 2009, the LFUCG's Division of Law filed charges seeking to dismiss him from his employment for "inefficiency and insubordination." A six-hour hearing on the charges was held in December 2009 before the LFUCG's Civil Service Commission. After the hearing, the Commission issued an "Opinion/Order" in which it "unanimously sustain[ed] the termination of W.L. Wilson."

Mr. Wilson appealed the decision by filing a five-count civil complaint in the Fayette Circuit Court under KRS 67A.290. The complaint named the LFUCG; Logan Askew, the Commissioner of Law for the LFUCG; and Leslye Bowman, the Director of Litigation in the LFUCG's Department of Law. The first count of the complaint set out Mr. Wilson's appeal of the Commission's decision.

The other four counts laid out civil causes of action for damages and other relief. Count II presented a claim for money damages for a due process violation under the Kentucky Constitution based on the LFUCG's refusal to provide a pre-termination hearing before filing the charges against Mr. Wilson, and the Commission's refusal to allow Mr. Wilson to put on all his proof before voting to uphold his termination. Count III sought a declaration of rights that Mr. Wilson's suspension without pay was unlawful and an injunction to restore his pay and benefits. Count IV sought money damages from the individual defendants for a violation of Kentucky's Civil Rights Act, KRS Chapter 344,

based on discrimination against Mr. Wilson because of sex. Count V sought damages under KRS 446.070 against the individual defendants for violating KRS 522.020 and .030, the statutes proscribing official misconduct.

After filing an answer to the complaint, the LFUCG moved to dismiss Counts II to V of Mr. Wilson's complaint, arguing that those portions of the complaint were not ripe for judicial resolution because they depended on the outcome of the appeal of the Civil Service Commission's decision in Count I. In its reply to Mr. Wilson's response, the LFUCG alternatively asked that Counts II to V be stayed until the appeal was resolved.

The trial court granted the alternative relief. On March 8, 2010, the trial court entered an order stating in part: "Counts II through V of Plaintiff's Complaint will be held in abeyance with all discovery relating to those counts stayed pending this Court's resolution of Count I of Plaintiff's Complaint." The order included no opinion explaining the decision.

Having not had a chance to reply to the alternative argument in writing, Mr. Wilson moved to amend, alter, or vacate the order. The trial court denied this relief in September 2010 with an order substantially similar to the one entered in March.

On October 25, 2011, more than a year after the trial court's last order was entered, Mr. Wilson filed a petition for a writ of mandamus at the Court of Appeals. In the petition, Mr. Wilson asked that the trial court be compelled to vacate its orders and to lift the stay of discovery and abeyance of Counts II to V of his complaint. In his petition, he relied heavily on *Estate of Cline v. Weddle*, 250 S.W.3d 330 (Ky. 2008), which granted a writ because the trial court had

indefinitely stayed a case, including staying discovery, "without articulating any basis" or a "pressing need." *Id.* at 337.

The Court of Appeals denied the writ. It distinguished *Weddle* from Mr. Wilson's case, holding that the claims in this case were not ripe because the KRS 67A.290 appeal had not been resolved, and noting that the stay in this case is not of indeterminate duration. The court also stated "that Wilson's trial strategies contributed delays in the adjudication of his civil service appeal," though it did not state which strategies had resulted in the delays or how they had done so.

Mr. Wilson now appeals to this Court as a matter of right. *See* CR 76.36(7)(a) ("An appeal may be taken to the Supreme Court as a matter of right from a judgment or final order in any proceeding originating in the Court of Appeals."); Ky. Const. § 115 ("In all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another court ... ."). He has not asked this Court for intermediate relief under Civil Rule 76.36(4).

II. Analysis

As in every writ case, the main issue is whether the petitioner has established that remedy by way of an extraordinary writ is even available. The test for determining whether a writ is available was most succinctly stated as follows:

> A writ of prohibition *may* be granted upon a showing that (1) the lower court is proceeding or is about to proceed outside of its jurisdiction and there is no remedy through an application to an intermediate court; or (2) that the lower court is acting or is about to act erroneously, although within its jurisdiction, and there exists no adequate remedy by appeal or otherwise and great

> injustice and irreparable injury will result if the petition is not granted.

Hoskins v. Maricle, 150 S.W.3d 1, 10 (Ky. 2004). This statement lays out what we have described as two classes of writs, one addressing claims that the lower court is proceeding without jurisdiction and one addressing claims of mere legal error. Mr. Wilson does not claim the trial court acted without jurisdiction and instead seeks the writ under the second class.

In arguing that he meets the two prerequisites for that class—no adequate remedy by appeal, and great and irreparable injury—Mr. Wilson again claims that his case is factually similar to *Estate of Cline v. Weddle*, 250 S.W.3d 330 (Ky. 2008). He claims that like *Weddle*, his claims have been stayed for an indefinite period and without sufficient reason.

The litigation in *Weddle* involved a pair of wrongful death actions against a psychiatric treatment facility from which a teenaged patient fled to a busy road where she was struck by two cars and killed. *Id.* at 332. Six months after her death, a wrongful death action was filed against the facility alleging negligence. *Id.* Six months after that filing, a second wrongful death suit was filed against the facility. *Id.* The second suit also named several other defendants, who had been revealed in discovery. *Id.* The second suit alleged several causes of action in addition to the negligence claim, including fraud, conspiracy, and intentional infliction of emotional distress. The second suit also asked to pierce the corporate veil of the facility and sought punitive damages. *Id.*

The estate sought to consolidate the two cases, but the trial court denied the motion. *Id.* Later, the trial court, on its own motion, halted discovery in the second suit, *id.*, and held the case "in abeyance pending further orders and pending further action in [the Estate's first-filed case]," *id.* at 337 (quoting trial court's order, alteration in original). The reason for this was not clear, though this Court noted it was "prompted possibly by the Estate's motion for leave to file an amended complaint to add more parties to the second lawsuit." *Id.* at 332.

This Court ultimately granted the writ, noting that "we are constrained by our own precedent following long-standing United States Supreme Court precedent." *Id.* at 336. The precedent in question was *Rehm v. Clayton*, 132 S.W.3d 864 (Ky. 2004), which relied on *Landis v. North American Co.*, 299 U.S. 248 (1936). In *Rehm*, the trial court stayed discovery and a scheduled trial on a products liability claim that had originally been included with a premises liability claim against the same defendant. The premises liability claim had been dismissed at the summary judgment stage and was being appealed. The stay was to be in effect "pending the outcome of the appeal." *Rehm*, 132 S.W.3d at 866. *Rehm* noted "that a 'stay is immoderate and hence unlawful unless so framed in its inception that its force will be spent within reasonable limits,' and that a trial court abuses its discretion by ordering 'a stay of indefinite duration in the absence of a pressing need.'" *Id.* at 869 (quoting *Landis*, 299 U.S. at 257, 255) (footnote citations omitted). *Rehm* held that writs are available in such cases because "a discovery stay as extensive as the one ordered by the trial court is likely to cause irreparable injury to the Appellants for which no

adequate remedy by appeal exists." *Id.* at 867. The injury results from delay, which could lead to lost witnesses or evidence, and faded memories. *Id.*

In *Weddle*, the Court held that the stay had "no definite terminus." 250 S.W.3d at 337. As a result, it was injurious, and thus writ worthy, in the same way as *Rehm*. *See id.* ("And we have found the deleterious effects of the passage of time during a stay to be an 'irreparable injury with no adequate remedy by appeal' in *Rehm*."). The trial court in *Weddle* had apparently sought to "stay[] the second action pending 'completion' of the first action," but this Court read that to be "an ambiguous term[,] which might mean trial or might mean end of any appeal, either of which might take years to complete." *Id.* The Court also held that a trial court "abuses its discretion by ordering an indefinite stay in a pending case without a clear showing of a 'pressing need.'" *Id.* (quoting *Rehm*, 132 S.W.3d at 869).

So the two questions that must be answered in determining whether Mr. Wilson should get a writ of mandamus are whether the trial court's order imposed a stay of indefinite duration and, if so, whether the trial court articulated a pressing need for the stay. This Court concludes that the stay was indeterminate and no pressing need for such a stay had been identified.

The Court of Appeals held that the stay was not of indeterminate duration, presumably because it would end once Count I of the complaint was resolved. Such a stay, while unlikely to be forever, is no more definite than the stays in *Rehm* and *Weddle*. In *Rehm*, the case was stayed only while the appeal, which was already at the Court of Appeals, was pending. And in *Weddle*, the Court noted that the indeterminacy of the stay resulted from the

fact that the first case could take years to reach its end, whether that was simply once trial was over or any appeals were taken and completed. Here, resolution of Count I could take years to resolve. Indeed, by the time the writ action was filed, the matter had been pending for at least 18 months. Thus, this Court concludes that the trial court's stay, as measured by the standard in *Rehm* and *Weddle*, was indeterminate.

Of course, such stays are not automatically forbidden. As noted in *Weddle*, trial courts have the inherent power to stay proceedings as part of docket management. *Weddle*, 250 S.W.3d at 337. But that power is limited and must be exercised with sound discretion. *Id.* To avoid abusing its discretion, a trial court must identify a "pressing need." *Rehm*, 132 S.W.3d at 869; *Weddle*, 250 S.W.3d at 337. Here, as in *Weddle*, the trial court's order identified *no* reason for the stay, much less a pressing need for it. *See Weddle*, 250 S.W.3d at 332 ("The trial court had issued the stay order on its own motion and for an indeterminate duration without articulating any urgently important need for placing the case in limbo."); *id.* at 337 ("We find no indication in the instant case that the trial court balanced the parties' interests and determined that some 'pressing need' warranted the stay. Arnold argues that the trial court must have ordered the stay in order to resolve any underlying negligence claims before proceeding to the issue of whether to pierce the corporate veil. But we can find no indication on the record that the trial court's issuance of the stay was based on this ground. Rather, the trial court issued the indefinite stay without articulating any basis. In fact, because the trial court issued the stay order on its own motion, the defendants themselves had not advanced any

'pressing need' for such a stay, yet, the potential for losing valuable evidence exists with discovery stayed."). Thus, as in *Weddle*, this Court must conclude that the trial court abused its discretion by indefinitely staying Counts II to V of Mr. Wilson's complaint.

The Appellees urge the Court to adopt the additional reasoning offered by the Court of Appeals to distinguish this case from *Weddle* and *Rehm*, namely that Mr. Wilson's additional claims were not yet ripe, since they depended on or could be rendered moot by the outcome of his civil service appeal. There is some appeal to this idea, especially since some of the other counts, Count III in particular, appear simply to replicate the claims that constitute the challenge to the civil service commission's decision. Worse still, at least some of the claims for damages (e.g., Count II) do not even appear viable under the law of this Commonwealth. *See St. Luke Hosp., Inc. v. Straub*, 354 S.W.3d 529, 536 (Ky. 2011) (disallowing claim for money damages for alleged violation of due process provisions of Kentucky Constitution). But the proper approach in such circumstances is to dismiss the claims, not place them in abeyance. A dismissal could allow such claims to be appealed immediately, assuming the trial court "released" them by including the "no just reason for delay" language in its order. *See Watson v. Best Financial Services, Inc.*, 245 S.W.3d 722, 726 (Ky. 2008). Those claims could then be resolved in the ordinary appellate course and, assuming Mr. Wilson won on appeal, remanded to the trial court to continue. While that process would delay discovery, such is always the case for such dismissals.

Moreover, the Appellees' argument that the case is not ripe is weakened by the fact that KRS 67A.290 expressly provides "the enforcement of the judgment of the civil service commission *shall not* be suspended pending appeal." KRS 67.290(1) (emphasis added). In other words, any dismissal ordered by the commission is in effect while the appeal is pending. Although the Appellees are correct that the outcome of the appeal could ultimately nullify the commission's decision, the statute fixes the moment that legal injury occurs and thus any cause of action accrues at the time of the commission's judgment. At that point, the Appellant is not permitted to return to his job and effectively has the status of a terminated employee.

Additionally, it is not at all clear, as the Court of Appeals held, that the last two counts, which allege a Civil Rights Act violation and ask for damages under KRS 446.070 for other statutory violations, depend entirely on the outcome of the civil service appeal. The civil service process does not appear to look into whether an employee was discriminated against or whether supervisors engaged in actionable misconduct. Thus, it is theoretically possible that the civil service decision could be affirmed on narrow, technical grounds, yet Appellant could still have viable causes of action for discrimination or misconduct. These claims thus appear to be independent causes of action.

Even assuming the additional claims depend on the appeal of the commission's decision, the Civil Rules specifically allow dependent claims to be joined with matured claims. *See* CR 18.02 ("Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action ....."). The only limit in that rule is

that "the court shall grant relief in that action only in accordance with the relative substantive rights of the parties." *Id.* But that does not mean that the trial court should suspend discovery on the dependent claims indefinitely without a compelling need, as discussed above.

The Appellees also argue that the rule requiring exhaustion of administrative remedies before a party may resort to the courts of law mandated that the trial court abstain from proceeding on the other claims until the appeal of the administrative proceeding was complete. The exhaustion-of-administrative-remedies rule is well-established in our law: "[W]here an administrative remedy is provided by the statute, relief must be sought from the administrative body and this remedy exhausted before the courts will take hold. The procedure usually is quite simple. Ordinarily the exhaustion of that remedy is a jurisdictional prerequisite to resort to the courts." *Goodwin v. City of Louisville*, 309 Ky. 11, 14, 215 S.W.2d 557, 559 (1948).

But the Appellees seek an expansion of that rule, which requires only that a party engage in all statutorily prescribed proceedings before turning to the courts. Judicial review or appeal in a court of law of the administrative proceedings is not part of the administrative process or "remedies" contemplated by the rule. Once such an appeal moves to a court, any dependant or related claims may also be joined as part of the case at law.

Moreover, even the exhaustion rule is not without exceptions. For example, as noted in *Goodwin*, "direct judicial relief is held available *without* exhaustion of administrative remedies where the statute is charged to be void on its face, or where the complaint raises an issue of jurisdiction as a mere

legal question, not dependent upon disputed facts, so that an administrative denial of the relief sought would be clearly arbitrary." *Id.* (emphasis added). The exhaustion rule exists so that jurisdiction of the circuit court does not overlap with that of an administrative agency, which usually is the sole judge of the facts (and thus is owed deference by the courts). Arguably, some of the claims Mr. Wilson brought could never have been brought before the civil service commission, either as claims for damages or defenses against the dismissal, because the commission is charged in this context only with deciding whether the employee committed an act that would allow dismissal, suspension, or reduction in grade or pay.[1] *See* KRS 67A.280(1) (allowing such adverse employment actions for "inefficiency, misconduct, insubordination, or violation of law involving moral turpitude"); KRS 67A.280(3) (noting that the hearing "shall be limited to the issues presented by the written charges, provided, however, that the charges may be amended prior to trial"). Thus, to the extent that Mr. Wilson's complaint alleges claims that could not be brought before the commission, the exhaustion rule would have no applicability.

Finally, the Appellees argue that Mr. Wilson's alleged fault in delaying this process at the trial court, as found by the Court of Appeals, justifies the stay. First, it is not even clear that Mr. Wilson is at fault. Any delay appears to have resulted from the time it took to produce a transcript of the Civil Service Commission's hearing, which was not certified until January 2011. As Mr.

[1] The civil service commission does have other duties that do not apply to this case. For example, "[t]he civil service commission shall make and enforce culture-fair rules, not inconsistent with the provisions of KRS 67A.220 to 67A.310, or the comprehensive plan or the ordinance of the urban-county government, for examinations and registrations therefor." KRS 67A.230(4). The commission is also charged with determining whether job applicants are qualified. *See* KRS 67A.250.

Wilson notes, preparation and confirmation of the accuracy of such a transcript can be a time-consuming process. But even if Mr. Wilson, or his counsel, bears some fault for the delay, this claim is a non sequitur. The delay in finishing the transcript for the appeal has nothing to do with whether any other claims joined with that appeal should be abated or whether the discovery process for those claims should be stayed.

Ultimately, as long as a court has jurisdiction over a civil claim, it should allow that claim to proceed in the ordinary course under the Civil Rules absent some compelling reason. Staying discovery at an early stage presents substantial danger to the administration of justice and the search for truth. In an ordinary case, a defendant's wish to avoid the burden of the discovery process is "outweighed by the plaintiff's interest in going forward with discovery because of the possibility of extensive delay resulting in witnesses' becoming unavailable or unable to remember, evidence being lost or destroyed, and physical conditions changing." *Weddle*, 250 S.W.3d at 336–37. This is not to say that any delay or even an indefinite delay is always impermissible. Rather, the burden on a party seeking such a delay is to "make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else." *Rehm*, 132 S.W.3d at 869 (quoting *Landis*, 299 U.S. at 255); *see also id.* ("while an 'individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted,' ... a 'stay is immoderate and hence unlawful unless so

framed in its inception that its force will be spent within reasonable limits'" (quoting *Landis*, 299 U.S. at 256, 257)).

Even when a court feels compelled to delay a case or part of a case because of a pressing need, it "must then balance interests favoring a stay against interests frustrated by the action." *Id.* (quoting *Cherokee Nation of Oklahoma v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997)). Ultimately, "[o]verarching this balancing is the court's paramount obligation to exercise jurisdiction timely in cases properly before it." *Id.* (quoting *Cherokee Nation of Oklahoma,* 124 F.3d at 1416.).

If the trial court does not engage in this difficult balancing when ordering the stay of a civil case, then it necessarily abuses its discretion. The harm in such cases is irreparable injury with no adequate remedy by appeal.

III. Conclusion

Mr. Wilson has shown that the trial court erred in indefinitely staying the four other counts of his complaint pending resolution of Count I, i.e., the appeal of his civil service hearing. He has also shown that he is entitled to a writ commanding the circuit court to vacate its stay and allow his case to proceed. Thus, the order of the Court of Appeals is reversed and this case is remanded to that court with orders to issue a writ of mandamus consistent with this opinion.

All sitting. All concur.

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