

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

The Estate of NICOLE BENNETT,)
KEVIN BENNETT, Individually and)
as Administrator for the Estate, and as)
next friend and Guardian ad Litem for)
LAUREN BENNETT, EMILY)
BENNETT, and ALLIE BENNETT,)
minors,)
Plaintiffs,)

v.

C.A. No. N13C-04-194 ALR

REV. DANNY TICE, Individually and)
as Pastor of BAY SHORE)
COMMUNITY CHURCH; BAY SHORE)
COMMUNITY CHURCH, INC., a)
Delaware Corporation and MATTHEW)
BURTON,)
Defendants.)

**On Motion for a Stay of Discovery by Defendants Rev. Danny Tice,
Bay Shore Community Church, and Bay Shore Community Church, Inc.’s**

FINDINGS IN SUPPORT OF BENCH RULING DENYING MOTION FOR STAY

Defendants Reverend Danny Tice, Bay Shore Community Church, and Bay Shore Community Church, Inc. (“Moving Defendants”) have requested that the Court impose a stay of discovery in this civil litigation. Plaintiffs oppose imposition of a stay. The Court held a hearing on March 12, 2013. The Court DENIED the Motion of Stay of Discovery.

The Court makes the following findings in support of its bench ruling:

1. This civil litigation arises out of the alleged kidnapping, rape and murder of Nicole Bennett, a volunteer at Bay Shore Community Church, on or about June 14,

2012. Plaintiffs allege that the crimes were committed by Defendant Matthew Burton who was an employee of Bay Shore Community Church. In the Complaint, Moving Defendants are alleged to have violated certain common law duties to Plaintiffs, including negligent hiring, retention, and supervision of Burton.

2. Burton was convicted in Delaware for Failing to Register as a Tier I Sex Offender in Delaware. After the conviction entered, Burton was extradited to Maryland in August 2012 for charges of First Degree Murder and Rape. Those Maryland charges subsequently were declared *Nolle Prosequi*. Burton was indicted in Delaware for Rape and First Degree Murder charges on August 19, 2013. Burton has challenged extradition to Delaware, and his appeal of the extradition order is pending.

3. This civil action has been pending since April 2013. In addition to the Motion for Stay of Discovery, Moving Defendants also filed a Motion to Dismiss, a Motion for Summary Judgment, an Application for Certification of an Interlocutory Appeal and a Motion for Protective Order. All motions have been denied.

4. The Court “has the inherent power to stay proceedings in control of its docket after balancing the competing interests.”¹ The Court has broad discretionary power to exercise its judgment when balancing competing interests and

¹ *Ins. Co. of N. Am. v. Steigler*, 300 A.2d 16, 18 (Del. Super. 1972), *aff’d*, 306 A.2d 742 (Del. 1973).

considering time and effort for the court, counsel and litigants.² The Court may grant a stay where forwarding a proceeding would threaten the constitutional rights of any party.³ The moving party has the burden of showing how that party's constitutional rights will be violated.⁴

5. Moving Defendants contend that a stay is appropriate because the facts at issue in this civil lawsuit and the facts that will be resolved in connection with the State of Delaware's criminal prosecution are indistinguishable. This is incorrect. The questions of liability of the Moving Defendants to the Plaintiffs in this lawsuit will not be at issue in the criminal case.

6. Moving Defendants conceded that they have no standing to raise concerns about Burton's Fifth Amendment rights against self-incrimination. Moving Defendants are correct that they do not have standing. Moreover, even if Burton raised these concerns himself – which he has not – Delaware jurisprudence does not support a blanket stay on the grounds that one party may assert the right against self-incrimination in response to certain specific questions.⁵

7. Moving Defendants further contend that the interests of judicial economy support the granting of a stay because Burton may be acquitted of the pending

² *Id.* (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)).

³ *Id.* at 17.

⁴ *See Steigler*, 300 A.2d at 18 (denying the defendant's motion for a stay because he "ha[d] not met his burden of showing his constitutional rights will be violated if [the] proceedings [were] not stayed.").

⁵ *Id.*

charges in Delaware. However, acquittal for failure of proof beyond a reasonable doubt does not preclude civil liability established by a preponderance of the evidence.

8. Plaintiffs have an interest in prompt resolution of this civil lawsuit. Moving Defendants seek a stay “until the criminal matter against Matthew Burton has been decided.”⁶ It is not known when Burton’s challenge to extradition will be resolved. Moreover, it is not clear at what point Moving Defendants would consider the Burton criminal case “decided.” For example, is it decided after trial? If convicted at trial, is it decided after sentencing? Is it considered decided only after the direct appeal? Or would all postconviction proceedings have to be resolved before the criminal case is “decided.”

9. The Court finds that a stay of this civil lawsuit is not in the interest of justice. Balancing of the competing interests militates strongly in favor of prompt resolution of Plaintiffs’ claims and defenses claimed by Defendants. As the *Stiegler* court ruled, “any other result would unduly prejudice an innocent party who in good faith pursues a cause of action.”⁷

⁶ Motion for Stay of Discovery, ¶ 8.

⁷ *Stiegler*, 300 A.2d at 19.

NOW, THEREFORE, for the reasons enumerated here and those stated on the record on March 13, 2014, Motion to Stay Discovery is DENIED.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli