

Judge Francis Connolly

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

PETER HUXMANN, individually and on)
behalf of all those similarly situated,)

Plaintiff,)

v.)

MINNEAPOLIS PARK AND)
RECREATION BOARD,)
BOARD,)

Defendant.)

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF’S MOTION
FOR STAY OF PROCEEDINGS**

Case No. 27-CV-07-7807

TO: HON. FRANCIS CONNOLLY, HENNEPIN COUNTY DISTRICT COURT, C-1657
HENNEPIN COUNTY GOVERNMENT CENTER, 300 SOUTH SIXTH STREET,
MINNEAPOLIS, MN 55487.

Plaintiff, through the undersigned attorney, submits this memorandum of law in support of his motion to stay proceedings during the pendency of his appeal from the denial of his motion for a temporary injunction.

Plaintiff’s appeal was commenced by mail on July 24, 2007. By letter faxed and mailed to the court and counsel on July 30, 2007, plaintiff’s attorney requested a stay of proceedings pursuant to Minn. R. Civ. P. 62.02 and Minn. R. Civ. App. P. 108.01, subd.

1, *to wit*:

An appeal from the denial of my client’s motion for a temporary injunction was commenced on July 24, 2007. Pursuant to Minn. R. Civ. P. 62.02 and Minn. R. App. P. 108.01, subd. 1, I write to apply for an order (i) enjoining the construction of a previously misrepresented *bicycle-only* path from Ulysses Street to Stinson Boulevard and (ii) staying proceedings during the pendency of the appeal. Your Honor’s expressly revealed predisposition as to the issue of discretionary immunity will be reviewed on the pending appeal as one part of my client’s affirmative, objective showing of cause for Your Honor’s removal. Where Your Honor has held that discretionary immunity “will” apply in this case, it would be a miscarriage of justice for Your Honor to insist on over defendants’

summary judgment motion while Your Honor's ability to fairly judge that motion is under review. Consequently, in the interest of justice and the conservation of judicial resources, I respectfully request the issuance of an order enjoining the construction of the Ulysses-to-Stinson bicycle-only path and staying proceedings during the pendency of the appeal.

In an August 2, 2007 letter to counsel, Judge Connolly responded as follows:

I have received Mr. Stanbury's letter of July 30, 2007. As all parties are aware, the Defendant has scheduled a summary Judgment motion for August 30, 2007 at 8:30 a.m. Mr. Stanbury is requesting the Court stay the proceedings pending an appeal of the Court's Order denying a motion for ii temporary injunction pursuant to Rule 62 of the Rules of Civil Procedure and Rule 108 of the Rules of Civil Appellate Procedure. Mr. Stanbury must bring a formal motion for such a stay and the Court will hear that motion on the same day. This will be considered a nondispositive motion and Plaintiff and Defendant must file and serve their papers in accordance with the timelines set forth in the General Rules of Practice. All parties should be prepared to discuss whether a bond or other conditions as provided by the Rules should be imposed if the Court grants such a stay. The Court also will hear arguments on the summary judgment motion at that time as well in case the Court decides not to grant the stay.

Plaintiff's response in opposition to defendants' summary judgment motion must be served and filed by August 21, 2007. The court's intention to hear the instant motion and the summary motion at the same time is an unwarranted and prejudicial interference with plaintiff's rights as set out in Minn. R. Civ. App. P. 108.01, which provides in pertinent part:

An application to approve a supersedeas bond, or for a stay on other terms, shall be made in the first instance to the trial court. **Upon motion, the appellate court may review the trial court's determination as to whether a stay is appropriate and the terms of any stay.** (Emphasis added.)

Defendant's summary judgment motion is one part of the proceedings which plaintiff has sought to stay inasmuch as Judge Connolly has decided that motion in advance by holding that discretionary immunity will apply in this case. It would be unfair to say the least for Judge Connolly to hear that motion before plaintiff's attempt to obtain a stay of proceedings has been allowed to run its course, and that attempt will

not have run its course until plaintiff, if necessary, has the opportunity to obtain a review of this court's determination as to plaintiff's instant motion. Accordingly, plaintiff moves the court for an indefinite continuance of the hearing of defendant's summary judgment motion while plaintiff's attempt to obtain a stay of proceedings is underway in this court and, if necessary, in the court of appeals.

A stay of proceedings during the pendency of plaintiff's appeal is warranted because plaintiff will be irreparable harmed if the present traditional sidewalk is torn up and replaced with a 10' bicycle-only path, whereas there is no evidence before the court that shows that defendant will be harmed, financially or otherwise, by a postponement of the construction of such a path from Ulysses Street to Stinson Boulevard. The court does not know if a bid was accepted nor what the terms of any such bid are, and a stay of proceedings will have no effect on the ability of defendant to carry through with the reconstruction of the path and bridge between 37th and Ulysses since that is a separate and distinct project with separate and distinct funding. There thus are no grounds on which to base the imposition of a bond.


CONCLUSION

For the foregoing reasons, plaintiff respectfully requests an order (i) enjoining the construction of a previously misrepresented *bicycle-only* path from Ulysses Street to Stinson Boulevard and (ii) staying proceedings during the pendency of the appeal, including the hearing of defendant's pending motion for summary judgment.

Respectfully submitted,

STANBURY LAW FIRM P.A.

Dated: August 16, 2007.



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