

IN THE SUPREME COURT OF OHIO

DANIEL N. LAVIN, Executor

Plaintiff-Appellee,

v.

PAUL HERVEY, *et al.*

Defendants-Appellants.

CASE NO. 2015 - 1648

APPELLATE CASE NO. 2015 CA 00021

TRIAL COURT CASE NO. 221652

**MOTION FOR STAY OF JUDGMENT  
PENDING APPEAL**

**MOTION TO WAIVE POSTING OF  
SUPERSEDEAS BOND**

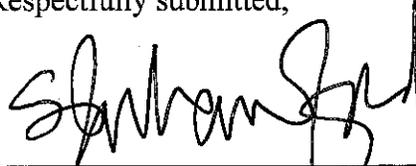
Now come the Appellants, by and through Counsel, and hereby respectfully requests that this Honorable Court grant a stay of judgment pending the outcome of this appeal pursuant to S.Ct.Prac.R. 4.01. For cause, the Appellants state that they were sued on September 15, 2014, by the Appellee in a concealment action in Stark County Probate Court brought under ORC §2109.50. The Appellants filed an answer and a jury demand, but the Probate Court has not set the matter for trial. However, the Probate Court did order the Appellants to turn over confidential client correspondence and has now ordered that correspondence turned over to the Appellee. That order of the Probate Court dated January 21, 2015, is the subject of this appeal. The Court of Appeals did not rule on the underlying issue of the conflict between ethical duties and statutory rights, instead deferring a decision until after the lower court trial. The instant appeal followed.

The trial court denied a stay, but the Court of Appeals granted a stay of the lower court's judgment without bond. (See attached.) The trial court has set a pre-trial in this matter for October 21, 2015, at 10:30 a.m. It has never set a trial date. A stay is important to protect the client's confidentiality pending a ruling from this Court on the ultimate issue. Otherwise, the

trial court may order the release of records to the Appellee, at which time the Appellee may dismiss the concealment suit and make the appeal moot.

WHEREFORE, the Appellants requests that their motion for stay be granted without the posting of bond.

Respectfully submitted,

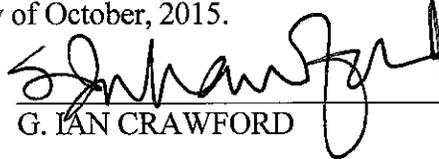


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G. IAN CRAWFORD, REG. NO. 0019243  
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116 CLEVELAND AVE. NW, SUITE 800  
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**PROOF OF SERVICE**

A copy of the foregoing was served by electronically and/or hand-delivery upon Attorney Scott Zurakowski, for Appellee, this 21st day of October, 2015.



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G. IAN CRAWFORD

NANCY S. REINBOLD  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

15 MAR 11 PM 4:26

FIFTH APPELLATE DISTRICT

DANIEL N. LAVIN, EXECUTOR

Plaintiff - Appellee

-vs-

PAUL HERVEY, ET AL.

Defendants-Appellants

Case No. 2015CA00021

JUDGMENT ENTRY

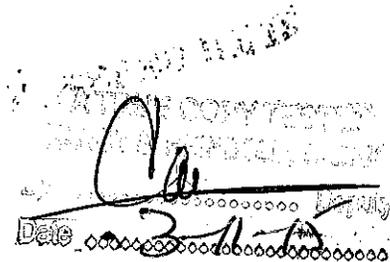
This matter comes before the Court upon Appellants' "Motion for Stay of Judgment Pending Appeal." Appellee has filed a response in opposition. Upon consideration, the motion is granted. The trial court's entry being appealed is stayed until further order of this Court or until this Court issues a decision in this case whichever occurs first.

MOTION GRANTED.

IT IS SO ORDERED.

  
JUDGE

  
JUDGE

  
Date .....

**IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO  
PROBATE DIVISION**

**DANIEL N. LAVIN, EXECUTOR OF THE  
ESTATE OF MARTHA K. LOTTMAN,  
DECEASED** )

CASE NO.: 221652

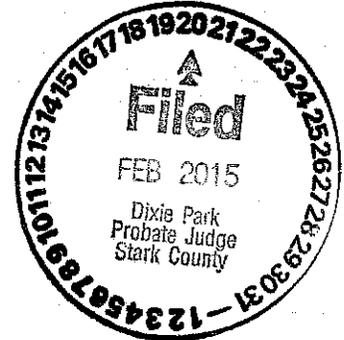
Plaintiff )

JUDGE DIXIE PARK

v. )

**PAUL B. HERVEY, ESQ., ET AL.,** )

Defendant )



**JUDGMENT ENTRY**

This matter came before the Court on the Defendants' February 10, 2015 Motion to Stay Pending Appellate Proceedings. Defendants have appealed the Court's January 21, 2015 Judgment Entry and moved to stay the matter pending appeal. Defendants did not file a supersedeas bond, nor have they requested a waiver of bond.

Pursuant to R.C. §2505.09, R.C. §2505.10, and Civ.R. 62(B), the Court finds that a supersedeas bond is required before a matter can be stayed pending appeal. WHEREFORE, it is

hereby **ORDERED, ADJUDGED AND DECREED** that Defendant's Motion to Stay Pending Appellate Proceedings is **DENIED**.

**IT IS SO ORDERED.**

**FEB 20 2015**

Date

*Dixie Park*

**NOTICE TO CLERK** JUDGE DIXIE PARK

It is ORDERED that the foregoing judgement entry shall be served on all parties of record within 3 days after docketing of this entry and the service shall be noted on the docket.

*Dixie Park*

HON. DIXIE PARK  
Probate Judge