

IN THE SUPREME COURT OF OHIO

DANIEL N. LAVIN, Executor

Appellee,

v.

PAUL HERVEY, *et al.*

Appellants.

CASE NO. 2015 – 1648

APPELLATE CASE NO. 2015 CA 00021

TRIAL COURT CASE NO. 221652

**APPELLANTS' MOTION FOR STAY
OF JUDGMENT PENDING APPEAL
WITH 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 since this case was opened, the Stark County Probate Court has set this case for trial on the underlying concealment action for February 18, 2016. The Appellants previously filed a motion to stay without the posting of bond, which was denied by this Court on December 2, 2015. In response to the motion, the Appellee claimed that a bond was necessary because the documents were "vitaly important for tax purposes." However, on December 7 and 8, 2015, the Appellee was deposed. At that time, he admitted that (a) the estate's federal tax return had been filed and (b) he had received no notice from anyone that the return would be audited, was incomplete, or that additional tax was owed. There was only the possibility of an audit. Moreover, the Appellee could express no specific need for the subject legal files other than his opinion that he must come into control of all estate assets as a duty to the estate and/or probate court.

At the center of the action is whether the Defendants have concealed property of the estate by holding on to the Decedent's legal file subject to a ruling on the application of

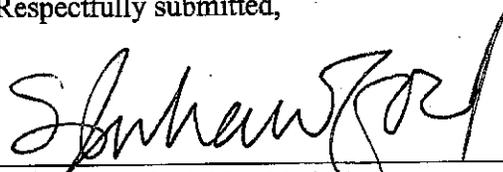
confidentiality principles per Rule of Professional Conduct 1.16. The Appellee admitted in his deposition that there is no evidence that the Appellants are in possession of or have concealed any other assets that could be considered possessions of the estate.

As stated in the memorandum in support of jurisdiction, the Appellants believe there is a conflict between the statutory waiver of immunity by an executor and a client's right to confidentiality in one's legal affairs. No court has ruled on this issue. The trial court has only ruled that most of the documents in the Appellants' possession are not protected by attorney-client privilege, etc. In effect, by proceeding with an adjudicatory hearing, Appellee is trying to pierce the Decedent's right of confidentiality before the issue is ruled upon in this Court.

The Court of Appeals did not require a bond in granting a stay. The documents at issue were given to the Probate Court for in camera inspection and, to the best information of Appellants, are now in the possession of the Court of Appeals.

The Appellants has attempted to post a nominal bond of \$100 with this Court. They have been informed by the Clerk of Courts that there is no mechanism for the posting of bond with this Court. The Appellants stand ready to post said bond with this Court or a lower court as instructed as a condition of receiving the requested and necessary stay.

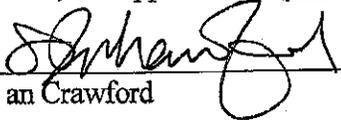
Respectfully submitted,



G. Ian Crawford, No. 0019243
CRAWFORD LOWRY, L.L.C.
116 Cleveland Ave. NW, Suite 800
Canton, OH 44702
P 330-452-6773 / F 330-452-2014
icrawford@crawford-lowry.com

PROOF OF SERVICE

A copy of the foregoing was served by hand-delivery and/or electronic transmission upon Attorney Scott Zurakowski, szurakowski@kwgd.com, for Appellee, this 7th day of January, 2016.



G. an Crawford

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

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

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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

APPEALS DIVISION
COURT OF APPEALS FOR STARK COUNTY, OHIO
Date 

