


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SHAWN SILBER,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
NADIA KRALL, DISTRICT JUDGE,
Respondents,
and,
FRANCOIS ALVANDI,
Real Party in Interest.

No. 85936-COA

FILED

MAR 06 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION IN PART

This original petition for a writ of mandamus challenges a district court order denying a motion to stay civil proceedings against petitioner Shawn Silber pending parallel criminal proceedings. On January 18, 2023, we directed real party in interest Francois Alvandi to file an answer, with which direction he timely complied. Silber has filed a reply.¹ Having considered the parties' arguments and supporting documents, we grant the petition in part.

When parallel civil and criminal proceedings concerning the same activities exist, district courts must balance the interests of the accused, who is afforded certain protections against self-incrimination in

¹Silber's motion for a one-day extension of time to file the reply is granted; the reply was filed on February 8, 2023.

the criminal proceeding, with the interests of the plaintiff and the search for the truth in the civil proceedings. *Aspen Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 635, 641, 289 P.3d 201, 205 (2012). Often, although not always, this balance leads to a stay of the civil proceedings until the criminal matter has concluded. *Id.* Determining whether to grant a stay in such a situation is “fact-intensive” and “highly nuanced.” *Id.* at 642, 289 P.3d at 206 (quoting, in second clause, *Microfinancial, Inc. v. Premier Holidays Int’l*, 385 F.3d 72, 78 (1st Cir. 2004)). In so deciding, the supreme court has directed district courts to analyze the following nonexhaustive list of factors: the extent to which the accused’s Fifth Amendment rights are implicated, the litigation interest of and potential prejudice to the plaintiff, the burden the proceedings may impose on the accused, the court’s convenience and efficient use of judicial resources, and the interests of nonparties and the public. *Id.* at 642-43, 289 P.3d at 206.

In its order denying Silber’s motion to stay the civil proceedings, the district court summarily stated that these factors weighed against a stay, noting that there had not been a probable cause hearing in the criminal case and none was scheduled until March 1, 2023, that the criminal case—as is typical with criminal cases—could “go on for years,” and that Alvandi needed to conduct discovery with respect to the other civil-case defendant. The court also noted that Silber could invoke the Fifth Amendment in the civil case. While these findings identify some of the interests at play, the order contains no analysis weighing those interests against each other or any further explanation of the decision to deny a stay, despite the nuanced factual circumstances the factors are intended to draw out and the fact that Alvandi’s complaint against Silber for fraud, conspiracy, and conversion arises from the exact same occurrence as the

criminal charges. *See id.* at 643, 289 P.3d at 206-07 (recognizing that the extent of parallel cases' overlap is a threshold issue because it measures the risk of self-incrimination). And while we may presume that the district court properly considered the interests and factors not identified in its order, *see id.* at 643 n.1, 289 P.3d at 206 n.1; NRAP 21(a)(4) (detailing petitioner's burden to include all parts of the record necessary for this court's review), we hesitate to do so when the order fails to reflect any balancing of interests and appears to place much emphasis on the status of the criminal proceeding and the speculative length of such proceedings in general. While relevant, *see id.* at 644, 289 P.3d at 207, the status of the criminal matter, even if that matter is in its infancy and such cases typically take a long time to resolve, does not necessarily favor the plaintiff in a civil case. *See King v. Olympic Pipeline Co.*, 16 P.3d 45, 56 (Wash. Ct. App. 2000), *as amended on reconsideration* (Feb. 14, 2001) (noting potential benefits that could result from staying a civil case until conclusion of a parallel criminal case). Rather, the district court must undertake a careful review of the competing interests in each particular case.


Here, the civil case has been stayed nearly since the inception of the criminal matter, with the exception of a brief period after the challenged order was issued and the initial stay was lifted, and the March 1 probable cause hearing date the court ostensibly was most concerned about has since passed. In this instance, we believe that reevaluation of the stay motion in light of the current circumstances is warranted. *See Brock v. Tolkow*, 109 F.R.D. 116, 121 (E.D.N.Y. 1985) (recognizing that courts may reconsider and modify their stay orders upon a change in circumstances that would so warrant); *see generally Aspen Fin.*

Servs., 128 Nev. at 639, 289 P.3d at 204 (describing when writ relief is warranted). Accordingly, we

ORDER the petition GRANTED IN PART and DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to reevaluate the motion for stay in light of this order and the current circumstances of this case. All further relief requested in the petition is denied.


_____. C.J.
Gibbons


_____. J.
Bulla


_____. J.
Westbrook

cc: Hon. Nadia Krall, District Judge
Sgro & Roger
Alan J. Buttell & Associates
Eighth District Court Clerk