

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LESLIE PELZER,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 07-0038
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

Stengel, J.

May 7, 2007

This is a civil rights case involving the police shooting and death of Raymond Pelzer on April 27, 2006. Defendants have moved the court to stay proceedings pending the completion of ongoing investigations by the District Attorneys Office and the Philadelphia Police Department Internal Affairs Division. For the reasons discussed below, I will deny the motion to stay.

I. BACKGROUND¹

On April 27, 2006, at approximately 5:18 p.m., Raymond Pelzer, a twenty-five year old African-American male, was standing at the corner of Millick and Market Streets in Philadelphia, Pennsylvania with two other individuals. City of Philadelphia Police Officers Whitmore and Soto detained the three individuals and asked for their

¹ The facts are taken from the complaint and defendant's motion to stay and are accepted as true for the purposes of this motion.

identification. Pelzer handed over his identification but fled the scene on foot after the officers returned his id. Pelzer was not a fleeing felon nor was he a physical threat to himself, the police, or the citizens of Philadelphia.

Officer Whitmore contacted the Police Department and reported that Pelzer had fled the scene. Defendant Police Officer Marvin Burton, along with officers Bundy and Curet, pursued Pelzer and cornered him in an alley on 51 North Salford Street. Without provocation, justification, or cause, Burton shot Pelzer in his left chest. Pelzer was not armed. Pelzer was pronounced dead at 5:53 p.m. at the University of Pennsylvania hospital. On his death certification, a gunshot wound to the chest was listed as the cause of death.

Sylvester Johnson became Police Commissioner in 2002. In the five years prior to his tenure, Philadelphia had an average of five fatal police shootings per year. Since 2002, the average number of fatal police shootings has doubled to eleven per year. In 2006, city police officers were already responsible for eleven fatal shootings by April. Pelzer's death was a direct and proximate result of the city's policies, customs, and practices regarding the police department, for which Commissioner Johnson is responsible.

Leslie Pelzer, the mother of Raymond Pelzer and administratrix of his estate, filed suit on January 4, 2007 against the City of Philadelphia, Police Officer Marvin Burton, and City of Philadelphia Police Commissioner Sylvester Johnson (collectively

“defendants”) for (1) excessive force in violation of the Fourth Amendment against defendant Burton; (2) battery and assault against defendant Burton; (3) Section 1983 failure to train and deprivation of constitutional rights against the City of Philadelphia and Commissioner Johnson; (4) state law claims for wrongful death and survival against all defendants.

On March 20, 2007, defendants moved to stay the case pending the ongoing investigations. Defendants assert that the events underlying the suit are subject to two ongoing and “open”² investigations by the District Attorney’s Office and the Internal Affairs Division (“IAD”). Pelzer responded in opposition on March 27, 2007.

II. STANDARD FOR A MOTION TO STAY

Staying a case is an extraordinary measure. Dawson v. Dodd, No. 99-2644, 1999 U.S. Dist. LEXIS 9181, at *4 (E.D. Pa. June 17, 1999) (citing United States v. Breyer, 41 F.3d 884, 893 (3d Cir. 1994)). “A Court has broad discretion to stay proceedings incident to its power to control its docket, however, a party seeking a stay bears the burden of establishing that it is needed.” DiPalma v. Medical Mavin, No. 95-8094, 1998 U.S. Dist. LEXIS 1375, at *2 (E.D. Pa. Feb. 9, 1998) (citing Clinton v. Jones, 520 U.S. 681 (1997)). The power to issue a stay is incidental to the court’s power to manage its docket. Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc., 87 F.R.D. 53, 55 (E.D. Pa. 1980) (citing Landis v. North American Co., 299 U.S. 248, 254-55 (1936)). Criminal

² Defendant’s use of quotes to describe the investigations as “open” is puzzling. Defendants provide no details on the investigations or predictions on when they will conclude.

defendants have no generalized due process rights to stay proceedings in a related civil action. DiPalma, 1998 U.S. Dist. LEXIS 1375 at *3 (citing DeVita v. Sills, 422 F.2d 1172, 1181 (3d Cir. 1970))

To decide whether to stay a civil case pending the resolution of a related criminal case, courts should consider the following factors: “(1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay; (2) the burden which any particular aspect of the proceedings may impose on defendants; (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation.” Golden Quality Ice Cream Co., 87 F.R.D. at 56.

III. DISCUSSION

Defendants assert that if their internal investigations reveal any wrongdoing, the District Attorney’s office may file criminal charges and therefore this civil lawsuit raises Fifth Amendment concerns that premature disclosure of investigative information related to potential criminal charges could jeopardize future prosecutions. They also argue that the ongoing investigations will clarify the issues in the civil case and that civil discovery will be duplicative of its ongoing investigation. All of these concerns, for the reasons discussed below, are too speculative to support the extraordinary remedy of a stay.

Defendants argue that an IAD investigation is analogous to a pending criminal

case. Other courts who have considered the issue disagree. One court has distinguished criminal prosecutions from criminal investigations by noting that “[i]f no indictment has been returned and no known investigation is underway, the case for a stay...no matter at whose instance, is far weaker. A criminal action may never commence. The civil plaintiff may be substantially affected by the delays involved in waiting for the criminal action to commence....”. Saunders v. City of Philadelphia, No. 97-3251, 1997 U.S. Dist. LEXIS 10078, at *9-10 (E.D. Pa. July 11, 1997). Courts have been unwilling to stay civil cases alleging police misconduct even if criminal proceedings have commenced or are imminent. See id.³; Anthony v. City of Philadelphia, No. 00-5905, 2001 U.S. Dist. LEXIS 1176 (E.D. Pa. Feb. 9, 2001) (denying defendants’ motion to stay plaintiff’s civil rights case arising from plaintiff’s arrest, even though the case arose from the same set of facts as a pending criminal prosecution of the plaintiff); Dawson, 1999 U.S. Dist. LEXIS 9181 (denying defendants’ motion to stay pending a request for the District Attorney to file criminal charges).

The application of the five factors explicated in Golden Quality Ice Cream Co. and used to determine when a civil case should be stayed pending the resolution of a related criminal case also weigh in favor of denying the motion. As to the first factor, the plaintiff has a great interest in proceeding expeditiously and further delay will risk faded

³ Although the court in Saunders ultimately granted defendants’ motion for a stay, it did so on distinguishable grounds, specifically, concerns that the plaintiff in the civil case would use discovery to further his pending criminal case. 1997 U.S. Dist. LEXIS 10078, at *16-18. This is not an issue in this case because the plaintiff, Leslie Pelzer, has no potential criminal liability in her son’s death. However, before granting the stay, the Saunders court dismissed many of the same arguments defendants make here, such as Fifth Amendment “concerns.”

recollections of relevant witnesses.

In contrast, the burden on defendants and the benefit of staying the case is speculative. The Fifth Amendment concerns cited by defendants are premature. Only one individual defendant, Officer Burton, faces criminal prosecution, since the City of Philadelphia and Commissioner Sylvester can not be held criminally liable for Pelzer's death. The Fifth Amendment privilege against self-incrimination is personal to the defendant. Saunders, 1997 U.S. Dist. LEXIS 10078, at *11. This privilege can only be invoked in response to particular questions that would tend to incriminate an individual. DiPalma, 1998 U.S. Dist. LEXIS 1375, at *5. Yet, there is no indication from defendant Burton that he intends to utilize the privilege. Defendants also suggest that a stay will clarify issues and avoid duplicitous civil discovery. These concerns fail to meet the high standard required for a stay.

The burdens on the court and on non-parties are not factors in this case. Finally, the public interest in deterring civil rights abuses weighs in favor of denying the stay. Anthony, 2001 U.S. Dist. LEXIS 1176, at *6 (citing Owen v. City of Independence, 445 U.S. 622 (1980)). Therefore, the court will deny the motion to stay.⁴

IV. CONCLUSION

For the reasons discussed above, I will deny the motion to stay without prejudice. An appropriate order follows.

⁴ Defendants can refile the motion to stay when and if criminal charges are filed against defendant Burton.

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v.	:	
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CITY OF PHILADELPHIA, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 7th day of May, 2007, upon consideration of Defendants' Motion to Stay (Document No. 6) and plaintiff's response thereto, it is hereby **ORDERED** that the motion is **DENIED without prejudice**. Defendants are further **ORDERED** to file an answer to plaintiff's complaint within thirty days of this order.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.