

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

CYNTHIA DAWSON	:	
Plaintiff,	:	
	:	CIVIL ACTION
	:	
v.	:	NO: 99-CV-2644
	:	
KIRK DODD, BADGE NO. 1762,	:	
CHRISTOPHER DIPASQUALE,	:	
BADGE NO. 4971, JOHN MOUZON,	:	
BADGE NO. 5293, DAVE THOMAS,	:	
BADGE NO., 9958, SCOTT WALLACE, :	:	
BADGE NO. 3434,	:	
THE CITY OF PHILADELPHIA,	:	
Defendants.	:	

ORDER

Defendant Police Officers Christopher DiPasquale and Kirk Dodd move this Court to place the above-captioned case in civil suspense pending the outcome of an anticipated state court motion to compel the District Attorney of Philadelphia to file criminal charges against Officer DiPasquale. Plaintiff, Cynthia Dawson, filed a timely response objecting to the Defendants' motion. For the reasons that follow, the motion will be denied without prejudice to renew at a later date.

I. BACKGROUND

On October 1, 1998, Philadelphia Police Officer Christopher DiPasquale shot and fatally wounded Donta Dawson. Shortly after the shooting, the Philadelphia District Attorney's office charged Officer DiPasquale with voluntary and involuntary manslaughter. Those charges were subsequently dismissed at Officer DiPasquale's preliminary hearing in Philadelphia Municipal Court. Later, authorities rearrested Officer DiPasquale and charged him with the same

crimes. After a hearing held in the Philadelphia Court of Common Pleas, charges against Officer DiPasquale were again dismissed.

Cynthia Dawson, the mother of Donta Dawson, subsequently commenced this civil rights action in the Court of Common Pleas of Philadelphia County, seeking relief, pursuant to 42 U.S.C. §§1983 and 1988, for the actions of certain named Philadelphia Police Officers on the night of Donta Dawson's death. After the plaintiff commenced this civil action, a group of elected officials from the Pennsylvania Legislature and Philadelphia City government petitioned the Philadelphia Court of Common Pleas to compel the District Attorney's office to charge Officer DiPasquale with the murder of Donta Dawson. Judge Peter Rogers of the Philadelphia Court of Common Pleas dismissed the petition, finding that the parties improperly filed their moving papers. Because they believe that the private citizen's will again move to have Officer DiPasquale charged with the murder of Donta Dawson, Defendants DiPasquale and Dodd now move this court to stay the civil action pending the resolution of the private citizen's complaint or for at least six months, whichever is sooner.

II. DISCUSSION

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with the economy of time and effort for itself, for counsel, and for litigants." Gold v. Johns-Manville Sales Corp., 723 F.2d 1068, 1077 (3d Cir.1983)(quoting Landis v. North American Co., 299 U.S. 248, 254-55, 57 S.Ct. 163, 166 (1936)). A stay is an extraordinary measure and calls for a court to exercise judgment and weigh competing interests. United States v. Breyer, 41 F.3d 884, 893 (3d Cir.1994). In determining whether to stay civil proceedings, a court may weigh the following interests: "(1) the burden on

the defendant; (2) the interest of the plaintiff in proceeding expeditiously with the civil action as balanced against the prejudice to the plaintiff from delay; (3) the convenience to the courts; (4) the interest of persons not parties to the civil litigation; and (5) the public interest.” Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc., 87 F.R.D. 53, 56 (E.D.Pa.1980). In this case, the Court will balance the interests of the respective parties using the first three factors of Golden since they appear to be most relevant in determining whether the defendants request for a stay of proceedings should be granted.

A. THE BURDEN ON THE DEFENDANTS

Defendants DiPasquale and Dodd argue that they will be placed in precarious positions if the civil case moves forward while they await the outcome of the private petition to charge Officer DiPasquale with murder. Specifically, both officers argue that it would be unduly burdensome to participate in the prosecutor’s investigation of a complex set of criminal charges against Officer DiPasquale while confronted with the necessity of developing a defense to the civil action at bar.

In addition, Officer DiPasquale argues that he will undoubtedly invoke his Fifth Amendment privilege against self - incrimination in his defense of this civil cause of action. Consequently, if forced to move forward with the civil litigation while the threat of criminal prosecution still exists, his invocation of the Fifth Amendment will allow the court or jury to draw an adverse inference against him. He concludes therefore, that the burden of having adverse inferences drawn against him significantly outweighs any possibility of prejudice the plaintiff might sustain if the court grants the requested six month stay of proceedings.

While the Court recognizes that participating in simultaneous criminal and civil trials

could be burdensome for these defendants, it is obvious that the burdens associated with litigating simultaneous civil and criminal cases are inapplicable here because there are no current criminal charges pending against either defendant. Defendants Dodd and DiPasquale merely speculate that murder charges “may” be brought against officer DiPasquale “if” the private citizens complaint is successful. (Pl.’s Mem. in Opp. of Stay of Proceedings at 2).

Moreover, the remedy of delaying this civil action for six months does not provide Officer DiPasquale with protection from the adverse inferences that may be drawn if he invokes the protection of the Fifth Amendment. In Pennsylvania, the charges of murder and involuntary manslaughter carry no statute of limitations. See 42 Pa.C.S. §5551. Therefore, evidence obtained in this civil action may, in fact, be used against Officer DiPasquale in later criminal proceedings whether the private criminal complaint is successfully filed or not. Consequently, Officer DiPasquale must decide whether the benefits of invoking the Fifth Amendment outweigh the risk of any adverse inferences that may be drawn therefrom, even if the criminal complaint is unsuccessful. Taking these factors into consideration, it appears that the defendants burden in moving forward with this cause of action is presently minimal and may only increase if the private complaint actually leads the district attorney to file criminal charges against Officer DiPasquale.

B. THE PLAINTIFF’S INTEREST IN MOVING FORWARD WITH THE CIVIL ACTION AND THE POTENTIAL PREJUDICE THAT MAY RESULT FROM A SIX MONTH DELAY.

It is important to note at the outset that a plaintiff enjoys the right to pursue her case and to vindicate her claim expeditiously. Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc., at 56. Delay of a case may cause a plaintiff to suffer prejudice

in that the passage of time can lead to fading memories and the death or relocation of relevant witnesses. Id. The Court recognizes that the events forming the basis of this civil suit took place nearly eight months ago and further delay could possibly lead to loss of relevant witnesses and/or their recollection of the events surrounding the death of Donta Dawson. Therefore, notwithstanding the defendants' belief that a delay of six months is warranted, the potential for prejudice to the plaintiff's case is readily apparent. On balance, it appears that the plaintiff's interest in pursuing this case expeditiously outweighs the speculative burdens of Defendants Dodd and DiPasquale.

C. THE CONVENIENCE TO THE COURTS

The Court has a responsibility to control the disposition of the cases on its docket with economy of time and effort for all actors including itself. Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc., at 57. Defendants seek a six month stay of the proceedings pending the outcome of a criminal case that has not yet been filed. While the Court has not yet set a trial schedule for this case, it does not believe that judicial economy of time and effort is best served by placing a case in civil suspense based upon the mere possibility that a related criminal case may be brought against one of the defendants.

IV. CONCLUSION

After consideration of the foregoing factors, the motion to place this case in civil suspense pending the outcome of the private complaint against officer DiPasquale will be denied without prejudice to renew at a later date if criminal charges are subsequently filed against Officer DiPasquale. An appropriate Order follows.

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THE CITY OF PHILADELPHIA,	:	
Defendants.	:	

ORDER

AND NOW, this 16th day of June 1999, upon consideration of the Motion of Defendants, Christopher DiPasquale and Kirk Dodd to Place the Case in Civil Suspense, and Plaintiff, Cynthia Dawson's response thereto, IT IS HEREBY ORDERED that said Motion is DENIED WITHOUT PREJUDICE to renew at a later date if criminal charges are subsequently filed against Officer Christopher DiPasquale.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.