

STATE OF NORTH CAROLINA
IREDELL COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS 2599

RAY LACKEY ENTERPRISES, INC.
d/b/a VILLAGE INN PIZZA PARLOR,

Plaintiff,

v.

VILLAGE INN LAKESIDE, INC., and
VILLAGE INN OF JONESVILLE, INC.,

Defendants.

**ORDER ON MOTION FOR STAY
AND IN THE ALTERNATIVE FOR
EXTENSION OF TIME**

1. **THIS MATTER** is before the Court upon Defendants Village Inn Lakeside, Inc., and Village Inn of Jonesville, Inc.’s (“Defendants”) Motion for Stay and in the Alternative for Extension of Time (the “Motion”) in the above-captioned case.

2. Defendants’ Motion asks the Court to stay its preliminary injunction order (“P.I. Order”), entered April 2, 2015, and its order holding Defendants in civil contempt (“Contempt Order”), entered January 29, 2016, such that Defendants may postpone purging themselves of contempt until the resolution of all appeals of the appealed Contempt Order. In the alternative, Defendants request an extension for Defendants to comply with the Contempt Order’s purge condition. The Contempt Order set in place a purge provision and ordered the imprisonment of Elizabeth Lackey Miller (“Ms. Miller”) to occur forty-five (45) days after the finding of civil contempt.

3. Defendants timely filed a notice of appeal of the Contempt Order on February 16, 2016. The Court, by order dated March 1, 2016, concluded that while Defendants had the right to immediately appeal the Contempt Order, N.C. Gen. Stat. § 1-294 did not otherwise prevent the Court from proceeding to consider the merits of the parties’ claims and counterclaims.

4. N.C. Gen. Stat. § 1-294 divests the Court of jurisdiction to proceed “upon the judgment appealed from, or upon the matter embraced therein.” Because Defendants had the right to immediately appeal the Contempt Order and did so timely, the Court lacks jurisdiction to enforce the Contempt Order during the pendency of the appeal. *See Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 582, 273 S.E.2d 247, 259 (1981) (holding that “the [trial] court lost jurisdiction to take further action on the contempt matter” when defendant perfected an appeal of the contempt order); *Guerrier v. Guerrier*, 155 N.C. App. 154, 159, 574 S.E.2d 69, 72 (2002) (noting this general rule by emphasizing the explicit statutory exception in child support cases allowing for enforcement of contempt orders pending appeal). Following this principle, the Court believes that it cannot order Ms. Miller’s imprisonment for civil contempt during the pendency of the appeal, and the Court therefore views a stay of the Contempt Order as needlessly duplicative.

5. As for the P.I. Order, Defendants have not perfected an appeal of that order. The appeal of the Contempt Order is limited to determining whether competent evidence supports the Court’s factual findings and whether these findings support the Court’s legal conclusions. *Ge Betz, Inc. v. Conrad*, 231 N.C. App. 214, 247, 752 S.E.2d 634, 657 (2013). Thus, the validity of the P.I. Order is not appropriately at issue in the Defendants’ appeal of the Contempt Order. If the Supreme Court should reverse this Court’s Order on the Motion to Enforce Settlement Agreement, the P.I. Order would presumably be extinguished as a result and the Court could no longer hold Defendants in civil contempt. N.C. Gen. Stat. § 5A-21(a)(1) (“Failure to comply with an order of a court is a continuing civil contempt as long as . . . [t]he order remains in force.”). Therefore, the Court concludes that the potential outcome of the appeal does not necessitate a stay of the P.I. Order.

6. It follows that Defendants could be held in contempt again for failure to comply with the P.I. Order during the appeal of the Contempt Order, in which instance Defendants would likely appeal and enforcement would be stayed until the various appeals were resolved. The Court does not find Defendants' concerns over the continued impact of the P.I. Order persuasive, however, because "taking an appeal does not authorize a violation of the order. One who willfully violated an order does so at his peril. If the order is upheld by the appellate court, the violation may be inquired into when the case is remanded to the [trial] court." *Beall v. Beall*, 290 N.C. 669, 680, 228 S.E.2d 407, 413–14 (1976) (quoting *Joyner v. Joyner*, 256 N.C. 588, 591, 124 S.E.2d 724, 727 (1962)). Although *Beall* and *Joyner* both involved appeals of the underlying orders rather than contempt orders, the Court finds the reasoning in each case persuasive. Having already found the Defendants in civil contempt of the P.I. Order, the Court is not inclined now to stay that order and invite further noncompliance. The Court therefore concludes that a stay of the P.I. Order, which remains in force to protect Plaintiff's rights and is not on appeal, would be inappropriate.

7. In light of the foregoing, Defendants have not demonstrated that a stay is necessary during the pendency of their appeal.

8. **WHEREFORE**, the Court hereby **DENIES** Defendants' Motion. As stated above, the Court believes that it cannot enforce the Contempt Order's imprisonment order during the pendency of the appeal, and the P.I. Order, which is not on appeal, shall remain in full force and effect.

SO ORDERED, this the 3th day of March, 2016.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Special Superior Court Judge
for Complex Business Cases