2025 IL App (5th) 241238-U

NO. 5-24-1238

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MITCHELL FERREE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Crawford County.
	)	
v.	)	No. 24-LA-1
	)	
MIDWEST TRANSPORT, INC.,	)	
	)	
Defendant-Appellant	)	Honorable
	)	Michael M. Strange,
(First Merchants Bank, Intervenor).	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Presiding Justice McHaney and Justice Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order lifting the stay is affirmed where defendant failed to show the trial court abused its discretion.

¶ 2 Defendant, Midwest Transport, Inc., appeals the trial court's November 13, 2024, order granting plaintiff's motion for reconsideration and lifting the stay placed on September 13, 2024. Midwest argues that the trial court's reconsideration order contravened core principles of judicial economy and the need to ensure orderly administration of justice. For the following reasons, we affirm the trial court's order.

¶ 3 I. BACKGROUND

¶ 4 On February 23, 2024, plaintiff, Mitchell Ferree, filed a complaint against defendant, Midwest Transport, Inc. Therein, Ferree alleged that Midwest president, Michael Correll, executed a promissory note to Ferree on December 17, 2021, in connection with Ferree selling Midwest all of his stock. The total agreed purchase price was $10 million. Pursuant to the agreement, $2.5 million was paid on January 1, 2022, and similar amounts were to be paid each January in 2023, 2024, and 2025. A subsequent agreement dated January 20, 2023, reduced the Midwest payment to $2.2 million in 2023 incorporating amounts due from Ferree to Midwest on a different loan. Midwest issued the $2.2 million payment to Ferree in January 2023; however no $2.2 million payment was issued in January 2024. Instead, on January 22, 2024, Midwest sent correspondence to Ferree stating that the 2024 payment had been delayed "due to market conditions beyond the control of" Midwest. Ferree's complaint alleged breach of contract related to the 2024 payment and anticipatory breach of contract related to the January 2025 payment. Attached to the complaint was Ferree's affidavit, the original December 2021 promissory note, email correspondence regarding the amendments to the promissory note, and a copy of the January 22, 2024, correspondence from Joy Wernz, Midwest's chief executive officer, stating it was "delaying the payment." On May 9, 2024, Midwest answered the complaint admitting or claiming insufficient information for most of the allegations. It denied the allegations that Midwest intended to delay the payment and Ferree's claim for anticipatory breach of contract.

¶ 5 On May 17, 2024, Ferree moved for summary judgment, noting that Midwest's answer "admits the existence of the Promissory Note, admits the mutual agreement entered on January 20, 2023, modifying the terms of repayment, admits it failed to make payment in January 2024, and admits that it owes Plaintiff" the sum of $2.2 million. Ferree further argued that any claims of a

"lack of information" in the answer should be deemed admitted due to the failure of Midwest to include an affidavit to support the claim of a lack of information as required by section 2-610(b) of the Code of Civil Procedure (735 ILCS 5/2-610(b) (West 2022)). The motion for summary judgment was supported by Ferree's updated affidavit that indicated he still had not received the 2024 payment.

¶ 6 On the same day, Ferree also filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137(a) (eff. Jan. 1, 2018) against Midwest and its attorneys. The motion alleged bad faith pleading due to Midwest's claims of a lack of information related to documents prepared by their own representative and amounts not being "due and owing" stemming from the same documents.

¶ 7 On June 17, 2024, Midwest filed a response in opposition to Ferree's motion for summary judgment and the motion for sanctions. The response argued that Ferree failed to provide sufficient evidence to support his motion for summary judgment and further argued the lawsuit was premature because there was no acceleration clause in the agreement. As to the motion for sanctions, Midwest argued that its response was not in bad faith and Ferree provided no authority to support its claim that the responses were defective.

¶ 8 On June 21, 2024, First Merchants Bank (FMB) filed a petition to intervene alleging that it was a secured creditor of Midwest. It further alleged that it held a first-priority security interest pursuant to a UCC-1 Financing Statement in all of Midwest's personal property that secured over $60 million in loans, which were in default. The petition was supported by an affidavit by David Hunt, first vice president of FMB, copies of the credit and security agreement signed by Midwest and FMB, the UCC statement, a deposit account control agreement, and a June 3, 2024, "Notice

of Sole Control." The petition also requested, in the alternative, a determination of priority as to Midwest's assets, which was also attached to the petition.

¶ 9 On June 24, 2024, Midwest moved for a substitution of judge as a matter of right. The order was granted on June 26, 2024, and the case was reassigned to Judge Michael M. Strange. The motion for summary judgment was set for hearing on September 10, 2024.

¶ 10 On September 10, 2024, Midwest filed a motion to stay the proceedings. Midwest alleged that on September 6, 2024, FMB initiated a different case (Crawford County case 24-LA-12) naming Midwest as a party defendant and on September 9, 2024, that court entered an "Agreed Order Appointing Receiver" (Receivership Order). Midwest's motion to stay argued, pursuant to paragraph 6(ii) of the Receivership Order, that "all other persons and entities who have notice of this Order, other than Plaintiff: *** except by leave of Court, shall be enjoined, restrained, stayed, and prohibited from (a) commencing, prosecuting, continuing or enforcing any suit or proceeding against or affecting Defendant ***." The motion further relied on paragraph 14 of the Receivership Order that stated all "parties in interest *** hereby are, jointly and severally, enjoined and stayed from commencing or continuing any action at law or suit or proceeding in equity *** to obtain any judgment or enforce any judgment or other claim against the Receivership Assets ***." A copy of the agreed order, executed by Judge Matthew J. Hartrich on September 9, 2024, was attached to the motion and included both Midwest and L. & I. Trucking Company, Inc., as defendants. According to the docket sheet in the current case, a hearing was held on the motion to stay on September 10, 2024, and the trial court granted the motion over Ferree's objection.[1]

¶ 11 A written order granting the stay by Judge Michael Strange was filed on September 13, 2024. The order noted the Receivership Order entered in 24-LA-12 and stated:

[1]No copy of the September 10, 2024, hearing transcript is contained in the record on appeal.

> "Due to the foregoing, and in the interests of judicial economy and the orderly administration of justice, this Court determines that this litigation—Case No. 2024 LA 1—should be, and is hereby, stayed until a final order is rendered in the Receivership proceedings now taking place under Case No. 2024 LA 12."

¶ 12 On September 13, 2024, Ferree moved to vacate the order, arguing that the matter was set for summary judgment hearing and, moments before that hearing, Midwest filed a motion to stay the proceedings. He argued that the trial court "made a ruling staying the proceedings that day to afford [Ferree] the opportunity to file a motion for relief from stay." He further argued that Midwest's counsel tendered the order signed and filed by Judge Strange on September 13, 2024, *ex parte*. Ferree claimed Midwest's actions were solely to influence the judge in the receivership proceeding, and said action was a violation of the rules of professional conduct and further evidence of Midwest's bad faith and attempt to delay Ferree's litigation.

¶ 13 Ferree also filed a motion for relief from the stay, arguing that the Receivership Order was "one creditor conspiring and colluding with a debtor in an attempt to stop other creditors from proceeding and continuing with suit." The motion noted that Ferree was not a party in the receivership case, was not given notice prior to the filing, and was denied equal protection and due process by the entry of the order.

¶ 14 The motion to vacate the order was heard by Judge Strange on October 9, 2024. The trial court denied the motion to vacate, and, in a docket entry of the same date, wrote, "The Stay will remain in place per Order in 24-LA-12, however, the Court vacates the order as entered so that [plaintiff's attorney] may raise any objections as to how the Order is inconsistent with the Court's ruling."

¶ 15 On October 16, 2024, Ferree moved for reconsideration and rehearing of the motion to stay. The motion argued that the prior decision, which was based on the Receivership Order, was contrary to law, citing numerous cases that held an appointment of a receiver did not stay pending litigation. It further argued, when addressing the procedural history, that Ferree did not receive a copy of the motion to stay until 1 hour and 45 minutes prior to the scheduled hearing on the motion for summary judgment, the court did not even have a copy of the pleading at the time of the hearing, counsel for FMB—who was not even a party to the proceedings—was allowed to present argument, the proceeding was stayed with no legal authority offered during the argument, and Ferree was prejudiced because he was not allowed to move forward with his motion for summary judgment. Attached to the pleading were cases in support of Ferree's position holding that appointment of a receiver did not stay pending litigation.

¶ 16 On October 24, 2024, Midwest objected to the motion for reconsideration based on Ferree's failure to intervene in case No. 24-LA-12, which granted the Receivership Order and remained in effect. It further argued that the judge in the receivership proceeding was justified in entering the Receivership Order. The response also argued that the cases cited by Ferree were either inapplicable or distinguishable from the matter at hand.

¶ 17 The parties presented argument on the motion to reconsider on October 28, 2024. At that time, Ferree's counsel argued that the trial court's prior decision was based on the Midwest and FMB agreement to have a receiver appointed. However, case law established that the appointment of a receiver did not stay pending litigation. He argued that Ferree did not receive the motion to stay until less than two hours prior to the previously scheduled motion for summary judgment and the court did not even have a copy of the motion when the summary judgment motion was called. Ferree argued that the court granted the stay despite the motion to stay was not properly noticed,

the motion was heard over Ferree's objection, and no authority was cited for the stay. Ferree argued that the appointment of a receiver did not enjoin, restrain, or prohibit other creditors from prosecuting its case or reducing a claim to judgment. He further explained the rationale, based on the difference between the *in rem* proceeding of receiverships and the *in personam* jurisdiction involving claims prior to judgment. His argument included citation to, and explanation of, *Mercantile Insurance Co. v. Jaynes*, 87 Ill. 199 (1877), *Toledo, Wabash & Western Ry. Co. v. Beggs*, 85 Ill. 80 (1877), *Riehle v. Margolies*, 279 U.S. 218 (1929), *Digital Media Solutions, LLC v. South University of Ohio, LLC*, 59 F.4th 772 (6th Cir. 2023), *Coit Independence Joint Venture v. Federal Savings & Loan Insurance Corp.*, 489 U.S. 561 (1989), *Chicago Title & Trust v. Fox Theatres Corp.*, 69 F.2d 60 (2d Cir. 1934), *Morris v. Jones*, 329 U.S. 545 (1947), and *Turczak v. First American Bank*, 2013 IL App (1st) 121964.

¶ 18 In response, Midwest requested affirmation of the stay relying on the receivership order issued by Judge Hartrich on September 9, 2024. It advised that Judge Hartrich declined to hear any arguments on the receivership order because Ferree needed to first intervene in that case. It further advised that no motion for intervention was ever filed and therefore the stay remained in place. With respect to the issues raised by Ferree, Midwest counsel agreed that appointment of a receiver was an equitable proceeding and therefore was "governed by, to a large extent, the discretion of the Court and what the Court finds to be equitable in that circumstance." It cited *People ex rel. Brady v. La Salle Street Trust & Savings Bank*, 195 Ill. App. 336 (1915), and *Vasa North Atlantic Insurance Co. v. Selcke*, 261 Ill. App. 3d 626 (1994), which addressed factors that should be considered regarding the appointment of a receiver that included the orderly administration of justice and judicial economy. Based on those factors, Midwest argued that a stay of action by creditors was appropriate, and the current stay should remain in place. It argued that

the company was no longer in business and was essentially insolvent based on the receiver's inventory revealing $99 million in liabilities and $5 million in assets, with FMB having a secured interest in all of the assets. It stated that the post office canceled its contract with Midwest, 90 percent of Midwest's business was with the post office, and the "company was not coming back." It argued that the factors pointed in favor of having a receiver and keeping the receivership in place so the court could address all the claims of the competing creditors, stating that judicial economy favored keeping the stay in place, especially when there were 393 creditors. It argued that if the court lifted the stay, it opened the door for those creditors to file multiple lawsuits, which was contrary to judicial economy. With regard to Ferree's cited authority, Midwest argued that they were either inapplicable because they dealt with federal receiverships or did not address the factors. Finally, it argued that Ferree incurred no prejudice by not being able to proceed with his case because he could intervene in the receivership case and make his claim like any other creditor.

¶ 19 Ferree responded that Midwest cited no authority to support the imposition of the stay. He argued that the receivership was equity jurisdiction and regardless of federal or state law, it was based on common law equity procedures. He again addressed the difference between the *in rem* and *in personam* proceedings and stated that other creditors were pursuing or planning to pursue litigation against Midwest. He further cited *People ex rel. Scott v. Pintozzi*, 50 Ill. 2d 115 (1971), as support for general law about the appointment of a receiver. Ferree further argued that he was prejudiced because the purpose of the stay was to prevent Ferree from reducing his claim to judgment and becoming a judgment creditor. Ferree claimed the receivership case favored only one creditor and distinguished the case law relied on by Midwest.

¶ 20 Thereafter, the court allowed the FMB's counsel to argue. FMB argued that the bank filed its claim, based on a promissory note, within the receivership case and all others could do the same.

FMB disputed the accuracy of characterizing the other case as a receivership case. It argued that Ferree could intervene but had not. It also addressed the same factors considered in *Vasa* and *La Salle Trust & Savings Bank* and argued that judicial economy required the stay to remain in place.

¶ 21 Ferree responded by arguing that Midwest's list of creditors included the states of Idaho, Indiana, Iowa, and Kansas based on Midwest's failure to file taxes and claimed those states would not "intervene" in the Crawford County case. Ferree argued that the only case stayed by the receivership was his case and, based on the law provided, Ferree believed the court should lift the stay and allow the *in personam* case to proceed and be reduced to judgment.

¶ 22 The court stated it would take the matter under advisement. It then set the matter for hearing on November 13, 2024, at which time the court would issue its ruling.

¶ 23 On November 13, 2024, the trial court wrote a docket entry granting Ferree's motion for reconsideration and lifting the stay. Midwest prepared a bystander report for the November 13, 2024, hearing. The report indicated that counsel for Midwest, Ferree, FMB, and the court-appointed receiver appeared. No court reporter was present, and no electronic recording was made. It stated the hearing was approximately five minutes. During that time, the court called the matter to hearing, stated it previously took the matter under advisement, "reviewed the caselaw submitted by the litigants," and "ruled that he was ordering the stay previously imposed on this proceeding to be lifted." Midwest timely filed an interlocutory appeal pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017).

¶ 24 II. ANALYSIS

¶ 25 On appeal, Midwest argues that lifting the stay contravened the core principles of judicial economy, undermined the orderly administration of justice, that two courts could not issue

inconsistent decisions, and therefore the order was an abuse of the trial court's discretion. In response, Ferree provided a separate statement of facts and argued that Midwest's actions were merely repeated attempts to delay Ferree from reducing his claim to judgment. He further argued the legal history regarding appointments of receivers and cited case law stating that the appointment of a receiver did not prohibit other creditors of a defendant in receivership from commencing, prosecuting, or continuing with a cause of action to reduce his claim to judgment. Ferree further argued that Midwest failed to present a portion of its appellate argument to the circuit court, *i.e.*, that two courts could not act inconsistently, and therefore, that argument was forfeited. In reply, Midwest argued that Ferree's case law did not resolve whether the trial court abused its discretion in lifting the stay, that the federal authorities were distinguishable and nonbinding, principles of forfeiture were inapplicable, and that Ferree could not rely on facts outside of the appellate record.

¶ 26 A. The Record on Review

¶ 27 We first address Midwest's argument that Ferree relied on facts outside the record. The record on appeal for an interlocutory appeal is governed by Illinois Supreme Court Rule 328 (eff. July 1, 2017). See Ill. S. Ct. R. 307(a) (eff. Nov. 1, 2017). Rule 328 states:

> "Any party seeking relief from the reviewing court before the record on appeal is filed shall file an application or petition with an appropriate supporting record containing enough of the trial court record to show an appealable order or judgment, a timely filed and served notice of appeal (if required for appellate jurisdiction), and any other matter necessary to the application made. The supporting record must be authenticated by the certificate of the clerk of the trial

court or by the affidavit of the attorney or party filing it." Ill. S. Ct. R. 328 (eff. July 1, 2017).

Additionally, Rule 329 addresses supplementation of the record on appeal and provides the possible avenues available to the parties. Ill. S. Ct. R. 329 (eff. July 1, 2017).

¶ 28 Here, the record on appeal contains various pleadings filed in the above-referenced case, the transcript from the October 28, 2024, motion for reconsideration hearing, a bystander report for the November 13, 2024, hearing, and various pleadings from the receivership case. Midwest's reply brief contends that Ferree's responsive brief relies on facts outside the record. The contention is based on filings in the receivership case. Notably, Midwest's supporting record contains a "Motion for Relief From the Stay Under Agreed Order Appointing Receiver Entered September 9, 2024" filed by Ferree in the receivership case on September 13, 2024.[2] Midwest's initial brief referred to this document stating, "This Honorable Court should take note that Ferree affirmatively submitted himself to the jurisdiction of the Circuit Court presiding over Case No.: 2024 LA 12 by seeking stay relief therein." It argued that said action bound Ferree "to follow the orders rendered by said tribunal—even if he earnestly believed them to be in error" and if he disagreed with the order, "he was free to initiate appeal" but could not collaterally attack the decision. Ferree's responsive brief claimed this argument was never presented to the trial court and that Midwest's statements were "attempts to mislead this court." In support of the latter claim, Ferree contended that Midwest, FMB, and the attorney for the receiver acted in concert in the receivership proceeding to successfully argue that Ferree lacked standing to seek the requested relief. Ferree

[2]This document was attached to Ferree's September 16, 2024, motion to vacate the order to stay proceedings filed in the instant matter.

further stated that due to that argument, his motion for relief from the stay was stricken and necessitated the filing of the motion for reconsideration in the instant matter.

¶ 29 Ferree's motion to vacate the order to stay proceedings in the receivership case is properly included in Midwest's supporting record. The subsequent pleadings, arguments, and/or any order striking Ferree's pleading in the receivership case are not included in the supporting record and no stipulation to include those pleadings was presented to this court as required by Rule 329. "A party may generally not rely on matters outside the record to support its position on appeal." *Keener v. City of Herrin*, 235 Ill. 2d 338, 346 (2009). Accordingly, Ferree's reliance on those documents was unwarranted. *Id.*

¶ 30 While Ferree's receivership motion is properly included in the record, our review of the hearing transcript reveals that Midwest's current argument related to that motion was not presented to the trial court. "Generally, arguments not raised in the circuit court are forfeited and cannot be raised for the first time on appeal." *Gunnison Commons, LLC v. Alvarez*, 2024 IL App (1st) 232176, ¶ 23. For these reasons, this court will not consider Midwest's argument regarding collateral attacks or Ferree's responsive argument related to the subsequently filed pleadings in the receivership case.

¶ 31 B. Lifting the Stay

¶ 32 Our review of a trial court's decision to stay, or lift a stay, depends on "the nature of the question presented to the trial court." *Household Finance Corp. III v. Buber*, 351 Ill. App. 3d 550, 553 (2004) (citing *LAS, Inc. v. Mini-Tankers, USA*, 342 Ill. App. 3d 997, 1001 (2003)). If there were no disputed facts and the court issued a decision as a matter of law, the ruling is reviewed *de novo*. *Id.* However, typically, the standard of review is whether the trial court abused its discretion. *Id.* (citing *Schroeder Murchie Laya Associates, Ltd. v. 1000 West Lofts, LLC*, 319 Ill.

App. 3d 1089, 1092 (2001)). "An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court." (Internal quotation marks omitted.) *Rowsey v. Breitman*, 2024 IL App (4th) 230742, ¶ 51. Here, both parties request review under the abuse of discretion standard.

¶ 33 Midwest claims that the trial court's decision to lift the stay was an abuse of discretion because the court's decision undermined principles of judicial economy. While that may be true, the basis of the trial court's ruling is unclear. A bystander report issued for the hearing during which the court issued its ruling stated that the trial court "reviewed the caselaw submitted by the litigants" and "ruled that he was ordering the stay previously imposed on this proceeding to be lifted." Notably, case law related to factors for consideration in granting receiverships that included judicial economy and the legal effect of a receivership was submitted to the trial court; however, the bystander report provides no basis for the trial court's decision.

¶ 34 As stated by the Illinois Supreme Court:

> "[S]ince there was no record to show the reasons given by the trial court for denying the motion to vacate, the appellate court had to presume that the trial court acted in conformity with the law and ruled properly after considering the motion. The appellate court's affirmation was proper. From the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984).

¶ 35 Here, while the parties agree there was no transcript due to the lack of any court reporter or electronic recording, the bystander report fails to provide the basis of the trial court's decision. We reviewed the case law submitted by the parties. We cannot state with certainty whether the

trial court's decision was based on its review of the factors set forth in Midwest's case law or if it relied on the case law related to receiverships submitted by Ferree. Without an articulated basis, this court cannot find the trial court abused its discretion. *Id.* Accordingly, this court can only presume the trial court's decision "was in conformity with law and had a sufficient factual basis" (see *id.* at 391-92) and affirm the trial court's order lifting the stay.

¶ 36 III. CONCLUSION

¶ 37 For the above-stated reasons, we affirm the trial court's judgment.

¶ 38 Affirmed.