

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

CMI, INC.,

Appellant,

vs.

Case No. 2007-AP-10721 NC

JOHN FABIAN, ET AL., CATHERINE
MARSH, SARA PENNEY, MORLEY
PARENT, KENNETH A. BAKER, ET AL.,
STATE OF FLORIDA,

Appellees.

**ORDER ON APPELLANT'S EMERGENCY MOTION FOR REVIEW
OF ORDER DENYING REQUEST FOR STAY**

This cause is before the Court on Appellant's Emergency Motion for Review of Order Denying Request for Stay filed on December 11, 2007, pursuant to Rule 9.310(f) Fla. R. App. P. The Court has reviewed the motion, the court file, and is otherwise advised in the premises.

The Appellant seeks review of an order entered in *State of Florida v. Kenneth Arnold Baker, et al.*, Case No. 2005-MM-2364 SC, on December 7, 2007, that denied Appellant's request to stay the accrual of civil contempt fines imposed by the County Court's order of October 5, 2007.¹ A lower tribunal uses two principle considerations in determining whether to enter a stay: the likelihood of irreparable harm if the stay is not granted and the likelihood of success on the merits by the party seeking the stay. *See*

¹ An appeal from the County Court's order of civil contempt was filed with this Court as Case No. 2007-AP-12538 NC. This Court's order of November 26, 2007, subsequently consolidated that appeal with four other pending appeals into this present case styled as *CMI, INC. v. JOHN FABIAN, ET AL., CATHERINE MARSH, SARA PENNEY, MORLEY PARENT, KENNETH A. BAKER, ET AL., STATE OF FLORIDA*, Case No. 2007-AP-10721 NC.

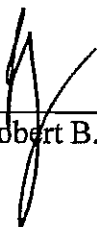
Tampa Sports Authority v. Johnston, 914 So. 2d 1076, 1079 (Fla. 2d DCA 2005)(citing *Mitchell v. State*, 911 So. 2d 1211, 1219 (Fla. 2005)). The determination of whether to stay the effect of an order rests within the discretion of the lower tribunal and an order denying a stay is subject to review by the abuse of discretion standard. See *Mariner Health Care of Nashville, Inc. v. Baker*, 739 So. 2d 608, 609 (Fla. 1st DCA 1999). A reviewing court applies a reasonableness test to determine whether an abuse of discretion has occurred; if reasonable people could differ as to the propriety of the lower tribunal's ruling, then the abuse of discretion standard has not been met. See *Allstate Ins. Co. v. Wiley*, 954 So. 2d 1273, 1275 (Fla. 2d DCA 2007).

In denying Appellant's motion the County Court cited Appellant's failure to demonstrate a likelihood of success on the merits of its appeal. After consideration of the rationale set forth on the standing and jurisdictional issues, the Court finds that the County Court did not act unreasonably in denying the Appellant's motion.

It further appears to the Court that the second prong of the applicable test—the likelihood of irreparable harm if the stay is not granted—is problematic for Appellant as well. The purported injury here is the daily accrual of coercive civil fines while this appeal is pending. Appellant has not made payment of the accrued fines into the registry of the Court and, therefore, its "injury" is only a paper one. Even if Appellant had paid accrued fines (or commences payment in the future), the injury cannot properly be deemed "irreparable" because the total fine is easily determined and capable of repayment in the event Appellant ultimately prevails on appeal. It is, therefore,

ORDERED AND ADJUDGED that the Order Denying Request for Stay entered
by the County Court on December 7, 2007, in Case No. 2005-MM-2364 SC is
AFFIRMED.

DONE AND ORDERED in chambers in Sarasota County, Florida, this 3 day
of JANUARY, 2008.



Robert B. Bennett, Jr., Circuit Judge

cc: Michael S. Taaffe, Esq.
Robert N. Harrison, Esq.
Cliff Ramey, Esq., ASA