



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-02802-REB-MEH

JEREMY C. MYERS

Plaintiff,

v.

BRIAN KOOPMAN, Detective in the Loveland, Colorado Police Department, in his
individual capacity;

Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT KOOPMAN'S MOTION FOR STAY
(DOCKET #143, FILED 06/29/2011)

COME NOW Plaintiff, by and through his Attorney Randall R. Meyers, and respectfully requests this Court deny the Defendant's Motion to Stay (discovery) (CM/ECF Docket # 143, filed 06/29/2011). For his Response, Plaintiff states as follows:

1. The Court, in its Order Concerning Defendants' Motion to Dismiss (CM/ECF Docket # 140, filed June 17, 2011) denied Defendant Koopman absolute prosecutorial immunity and lifted the stay of discovery.
2. As a basis for this request for a stay, Defendant cites an intent to file an interlocutory appeal and cites, in support, *Stewart v. Donges*, 915 F.2d 572, 575 and N.3 (10th Cir.1990). Defendant quotes only a *portion* of the ruling that he feels is most supportive of his request.

3. In so doing, defendant seeks to expand the *Donges* case far beyond its intended reach. The ruling in *Donges* more narrowly defines the District Court's scope of authority when an appeal is filed than that advanced by the defendant.

4. The divestiture of control that *Donges* speaks of only applies to "those aspects of the case involved in the appeal".

5. Although characterized only as a Motion for Stay, what defendant is seeking to stay is discovery. Clearly, defendant's appeal has nothing to do with discovery and, hence, is not within the purview of *Donges*.

6. The full quote of footnote 3 in *Donges*:

The district court only retains jurisdiction over tangential matters such as determining "the propriety and amount of attorney's fees," (citation omitted), and performing "certain ministerial functions in aid of the appeal, such as correcting clerical mistakes in the record, approving appeal bonds, and issuing stays or injunctions pending the appeal." C. Wright, A. Miller, E. Cooper & E. Gressman, 16 Federal Practice and Procedure, § 3949 at 359 (1977).

7. Of course, the authority to issue a stay must necessarily encompass the authority to deny a stay.

8. It would be remiss of Plaintiff to not point out that it is implausible to assume this case can proceed without discovery. Magistrate Judge Michael Hegarty concurred in his RECOMMENDATION to the District Court (CM/ECF Docket # 145, filed 06/30/2011), recommending an opportunity for the parties to conduct "meaningful" discovery. This case was filed in December, 2009. Further stays as to discovery will not serve to advance the interests of any party or the Court.

WHEREFORE, Plaintiff respectfully requests the Court deny Defendant's Motion for Stay, and for any further relief the Court deems just and proper.

DATED the 19th day of July, 2011.

RANDALL R. MEYERS:

s/ Randall Meyers
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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 19th day of July 2011, I electronically filed the foregoing Response to Defendant's Motion to Stay with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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And I hereby certify that I have mailed or served the document or paper to the following non CM/ECF participants in the manner indicated by the non-participants name:

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