

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
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ORDER

October 20, 2017

Before

WILLIAM J. BAUER, *Circuit Judge*
DANIEL A. MANION, *Circuit Judge*
ILANA DIAMOND ROVNER, *Circuit Judge*

No. 17-2991	CITY OF CHICAGO, Plaintiff - Appellee v. JEFFERSON B. SESSIONS III, Attorney General of the United States, Defendant - Appellant
Originating Case Information:	
District Court No: 1:17-cv-05720 Northern District of Illinois, Eastern Division District Judge Harry D. Leinenweber	

The following are before the court:

- 1. MOTION TO SUSPEND BRIEFING ON AND CONSIDERATION OF DEFENDANT-APPELLANT'S MOTION FOR PARTIAL STAY PENDING APPEAL**, filed on October 16, 2017, by counsel for the appellee.
- 2. DEFENDANT-APPELLANT'S OPPOSITION TO PLAINTIFF-APPELLEE'S MOTION TO STAY BRIEFING ON AND CONSIDERATION OF DEFENDANT-APPELLANT'S MOTION FOR A PARTIAL STAY PENDING APPEAL**, filed on October 18, 2017, by counsel for the appellee.

On September 15, 2017, the district court entered an order granting in part and denying in part the City of Chicago's request for a preliminary injunction. The order enjoined imposition of notice and access conditions on the Edward Byrne Memorial Justice Assistance Grant program and applied the injunction nationwide. The Attorney General appealed on September 26 and asked this court to stay the nationwide application of the district court's order. On October 13 the City asked the district court to partially reconsider its preliminary injunction order and enjoin the imposition of a third grant condition requiring it to certify compliance with 8 U.S.C. § 1373. The City then asked us to suspend proceedings in this court, arguing that its motion to reconsider deprives this court of jurisdiction over the Attorney General's appeal.

Federal Rule of Appellate Procedure 4(a)(4)(B)(i) says, "If a party files a notice of appeal after the court announces or enters a judgment--but before it disposes of any motion listed in Rule 4(a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered." The list in Rule 4(a)(4)(A) includes a motion to alter or amend the judgment under Rule 59. The City of Chicago filed its motion to reconsider within 28 days after entry of the district court's preliminary injunction order, making it a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). In *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 403 (1982), the Supreme Court said that "a premature notice of appeal 'shall have no effect' . . . In short it is as if no notice of appeal were filed at all. And if no notice of appeal is filed at all, the Court of Appeals lacks jurisdiction to act." *Griggs* quoted an earlier version of Rule 4(a)(4) that required dismissal of a premature appeal; under the current version of the rule a court of appeals may stay an appeal until the motion to reconsider is decided, but the appellate court lacks jurisdiction until the notice of appeal becomes effective. See *Katerinos v. U.S. Dep't of Treasury*, 368 F.3d 733, 738 (7th Cir. 2004).

The Attorney General concedes that the City's motion to reconsider is one filed under Rule 59(e), but argues that this court retains jurisdiction because the motion to reconsider does not pertain to the grant of injunctive relief that is the subject of his appeal. The Attorney General argues that the district court's ruling on the City's motion to reconsider the denial of injunctive relief on the § 1373 condition will have no effect on this court's review of the portion of the district court's order granting injunctive relief on the notice and access conditions. But a "judgment" as defined in Federal Rule of Civil Procedure 54(a) includes "any order from which an appeal lies." The City of Chicago has filed a motion to alter or amend the same judgment that the Attorney General seeks to appeal. To prevent two courts from having power to modify the same judgment, Rule 4(a)(4)(B)(i) renders a notice of appeal ineffective until the motion to reconsider the judgment is resolved. See *Square D Co. v. Fastrak Softworks, Inc.*, 107 F.3d 448, 450 (7th Cir. 1997) (dismissing appeal from grant of preliminary injunction as premature because motion to reconsider pending in district court); *F.E.L. Publications, Ltd. v. Catholic Bishop of Chicago*, 739 F.2d 284, 284 (7th Cir. 1984) (per curiam) (dismissing appeal where motion to

reconsider addressed copyright claim and notice of appeal addressed different parts of judgment). The Attorney General also argues that it is significant that the motion to reconsider was filed by the party that prevailed on its request for injunctive relief rather than the party that appealed. But Rule 4(a)(4)(A) says that the filing of a designated motion extends "the time for appeal for *all* parties" (emphasis added) and thus the notice of appeal has no effect even if not filed by the appealing party. *See Haas v. Tulsa Police Dept. ex rel. City of Tulsa*, 58 Fed. Appx. 429 (10th Cir. 2003).

Under the clear language of Rule 4(a)(4)(B)(i), the Attorney General's appeal does not take effect until the motion to reconsider is resolved. Accordingly, **IT IS ORDERED** that the City of Chicago's motion is **GRANTED** and proceedings in this court are **SUSPENDED** until the district court resolves the City's motion for reconsideration. The parties shall file a status report with this court within two days after the district court resolves the City's motion to reconsider.