

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

STATE OF TEXAS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 9:01-CV-299
	§	
ALABAMA-COUSHATTA TRIBE	§	
OF TEXAS, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**ORDER ON MOTION TO STAY PENDING APPEAL**

Pursuant to 28 U.S.C. § 636(c), the consent of the parties, and order of the District Court, this case is assigned to the undersigned United States Magistrate Judge for all proceedings, including trial and entry of judgment. On February 6, 2018, the Court issued a Memorandum Opinion and Order in which the undersigned held that the Tribe’s Restoration Act, 25 U.S.C. § 731, *et seq.*, governs gaming on the Alabama-Coushatta Tribe of Texas’ (“the Tribe”) lands. *See Memorandum Opinion and Order* (doc. #129). The same day, the Tribe filed its *Notice of Appeal* (doc. #130) of the Court’s opinion and order, as well as a *Motion to Stay* (doc. #131) the Court’s ruling pending appeal.

The Court conducted a telephonic status conference on February 21, 2018, to hear brief arguments regarding the procedural posture of this case and outstanding issues. The Court has also reviewed the parties’ briefs related to the Tribe’s motion to stay.

In the interest of judicial economy, the Court finds it appropriate to stay the Court’s ruling and cancel the evidentiary hearing on the contempt issues currently set before the undersigned pending the United States Court of Appeals for the Fifth Circuit’s ultimate determination of the

Tribe's interlocutory appeal. 28 U.S.C. § 1292(a) provides for the appeal of "interlocutory orders of the district courts of the United States. . .refusing to dissolve or modify injunctions." *See* 28 U.S.C.A. § 1292(a)(1)(West 2018). This provision applies to orders that explicitly grant, continue, modify, refuse or dissolve injunctions or that refuse to dissolve or modify injunctions, as well as to those that have the practical effect of doing so. *See Thomas ex rel. D.M.T. v. School Bd., St. Martin Parish*, 756 F.3d 380, 385 (5th Cir. 2014)(citing *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84, 101 S. Ct. 993, 67 L.Ed.2d 59 (1981); *Hatten-Gonzales v. Hyde*, 579 F.3d 1159, 1167 (10th Cir. 2009); *McCoy v. La. State Bd. of Educ.*, 345 F.2d 720, 721 (5th Cir. 1965)(per curiam)). There is no disputing that the Court's memorandum opinion and order (doc. #129) specifically denied the Tribe's motion for relief from the Court's 2002 permanent injunction. This constitutes a refusal to dissolve or modify the injunction as requested by the Tribe.

The Tribe requests that the Court stay its order and this case pending final disposition of the Tribe's appeal. In support, it argues that the issues presented by its appeal have "patent substantial merit" and that the balance of the equities are heavily tilted in its favor. *See Motion to Stay*, at p. 13.

As the Tribe referenced on the record at the status conference, Federal Rule of Appellate Procedure 8 requires that a party seeking a stay of a district court's order pending appeal must first file a motion to stay the judgment or order with the district court. *See* FED. R. APP. P. 8(a)(1)(A); *see also* FED. R. CIV. P. 62(c)(giving the district court the discretion to suspend an injunctive order pending appeal). "A stay is not a matter of right, even if irreparable injury might otherwise result." *Patino v. City of Pasadena*, 229 F. Supp. 3d 582, 585 (S.D. Tex. 2017)(quoting *Ind. State Police Pension Trust v. Chrysler, LLC*, 556 U.S. 960, 961, 129 S. Ct. 2275, 173 L.Ed.2d 1285 (2009)).

It is instead an exercise of judicial discretion, and the party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. *Id.*

A court decides whether to grant a stay pending appeal based on the following factors: ““(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.”” *Id.* at 585-86. Quoting *Chafin v. Chafin*, 568 U.S. 165, 133 S. Ct. 1017, 1027, 185 L.Ed.2d 1 (2013); *see also Moore v. Tangipahoa Parish Sch. Bd.*, 507 F. App’x. 389, 392 (5th Cir. 2013)(per curiam) (quoting *Hilton v. Braunskill*, 481 U.S.770, 776, 107 S. Ct. 2113, 95 L.Ed.2d 724 (1987)). The first two factors of the standard are the most critical. *Id.* Quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009).

The movant need not always show a probability of success on the merits. *Id.* Quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981). Instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balances of the equities weighs heavily in favor of granting the stay. *Id.* Quoting *Ruiz*, at 565; *see also Nken*, 556 U.S. at 434.

The Court’s 26-page memorandum opinion and order establishes that the circumstances of this case presents a “serious legal question.” The Court will not rehash the complex issues here but summarily notes that the ultimate determination implicates (1) the application of two federal statutes, the Restoration Act or IGRA; and (2) whether the Tribe’s gaming is entitled to *Chevron* deference and subject to the authority of the NIGC or the State of Texas. The Court incorporates its memorandum opinion and order herein in support of the conclusion that this proceeding involves a serious legal question. The Tribe has also advanced a number of legitimate legal

arguments which – although declined by this Court – are sufficient to at least present a substantial argument on the merits on appeal.

The Court next finds that the Tribe has established that the balance of the equities tilt in its favor in considering whether to issue a stay pending appeal. The Tribe has submitted evidence showing that its entertainment facility Naskila currently employs 318 individuals, 87 of whom are tribal members. *See Exhibit A to Motion to Stay* (doc. #131-1). The Tribe also points to evidence indicating that if the Court orders Naskila closed, these individuals will lose their employment and that the local economy cannot supply comparable employment to those affected. *See Exhibits B and C to Motion to Stay*. The evidence also points to residual effects, including impact on the local economy through a drop in consumer spending and a potential strain on social services due to a large increase of local unemployment. *See id.*

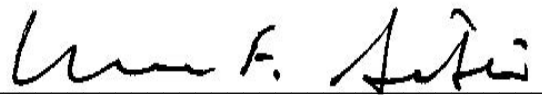
The Court has considered the arguments of both parties and finds that the Tribe has carried its burden in establishing that a stay pending appeal is appropriate, given the serious legal issues at stake and equitable considerations regarding the Tribe's circumstances. The undersigned also finds it in the best interest of judicial economy to stay any evidentiary or contempt proceeding at this time. The Court's legal determinations are now subject to the Fifth Circuit's jurisdiction on interlocutory appeal. The ultimate outcome of the appeal will certainly affect the temporal parameters of any evidentiary or contempt hearing. The outcome could also affect the purpose and necessity of an evidentiary hearing. For these reasons, the Court **ORDERS** that

The Tribe's Motion to Stay Pending Appeal (doc. #131) is **GRANTED**. The final pretrial conference and bench trial currently set before the undersigned on February 28, 2018, for determination of the evidentiary contempt issues are **CANCELLED** at this time, without prejudice to reset at a later date after the resolution of the appellate process.

The Court **ORDERS** that all other pending motions are **TERMINATED** for administrative and statistical purposes only while the interlocutory appeal is pending, without prejudice to reinstate as pending at a later date.

It is so ordered.

**SIGNED this the 24th day of February, 2018.**

A handwritten signature in black ink, appearing to read "Keith F. Giblin", written over a horizontal line.

KEITH F. GIBLIN

UNITED STATES MAGISTRATE JUDGE