

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

BOBBY KITCHEON and CANDANCE
REAM, individually, and SQUIRREL
CHOPS, LLC, a Washington limited
liability company,

Respondents,

v.

CITY OF SEATTLE, WASHINGTON, a
municipal corporation,

Petitioner.

No. 85583-2-I

COMMISSIONER'S RULING
ON MOTION TO STAY

The City of Seattle seeks a stay of enforcement of the trial court's July 13, 2023 order and all trial court proceedings pending resolution of its motion for discretionary review, and, if review is granted, resolution of its appeal. For the reasons below, a temporary stay is granted to allow this Court to evaluate the motion for discretionary review.

Bobby Kitcheon, Candance Ream, and Squirrel Chops, LLC, (collectively "Kitcheon") filed a complaint challenging the constitutionality of the City's administrative rules establishing a process for removing certain "homeless encampments" from public property. They assert facial and as-applied constitutional challenges; Kitcheon and Ream also assert conversion claims.

On July 13, 2023, after considering cross-motions for summary judgment, the trial court entered a 32-page order partially granting and partially denying each party's summary judgment motion.

Among other arguments, the City contends that the trial court improperly evaluated Kitcheon's constitutional facial invalidity claim regarding the term "obstruction," which is defined in the challenged rules, and concluded that the term is facially invalid as it does not sufficiently distinguish a "true" or "actual" obstruction from a "non-obstruction." As for the as-applied challenges and conversion claims, for which the trial court denied summary judgment, the City argues that the July 13 order frames the issues remaining for trial to include analysis of whether the City would be liable for improper removal of "non-obstructions" rather than "true" or "actual obstructions." The City argues the trial court's partial resolution of the facial challenge against the City is now inextricably intertwined with its analysis of the as-applied challenge remaining for trial, such that a successful appeal after trial will require a second trial.

Under RAP 8.3, this Court has authority to issue orders, including a stay of trial court proceedings, "to insure effective and equitable review." RAP 8.3. Such relief generally requires a showing (1) that the appeal raises a debatable issue and (2) that the harm without a stay outweighs the harm that would result from it. In balancing the parties' relative harm, this Court considers whether the requested relief is necessary to maintain the status quo and preserve the fruits of a successful appeal in light of the equities of the situation. See Purser v. Rahm, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985).

As to a debatable issue for appeal, despite Kitcheon's disagreement, I agree that the City has cited applicable authority and presented a significant dispute as to the interpretation of certain case law appearing to present at least a debatable issue as to whether the trial court correctly analyzed the facial constitutional challenge to the rules.

As for the balance of harms, Kitcheon does not directly dispute the City's argument that the trial court's conclusion on partial facial invalidity of the rules will directly affect the trial, but argues that that possibility weighs against a stay because this Court should allow the trial court to develop a full record at trial without "artificially sever[ing] parts of the case for discretionary review." Kitcheon also identifies a significant harm in allowing any delay of the trial whatsoever, in light of nearly four-year history of the case and real burdens on the plaintiffs in this matter who have and may be unhoused, have difficulty in maintaining communications with counsel, and have waited so long to have their claims resolved.

These matters at issue in this case are very serious and important. And both sides have identified significant harms. Because the City's argument that any trial conducted before resolution of its challenge to the July 13 order may very well have to be repeated appears legitimate at this point, a temporary stay to allow the parties to complete briefing on the motion for discretionary review and to allow this Court to fully evaluate the motion is justified.

Accordingly, any enforcement of the trial court's July 13, 2023 order and further proceedings in the trial court in this matter are hereby stayed pending further ruling or order by this Court.

No. 85583-2-1/4

Respondents should file an answer to the City's motion for discretionary review by or before August 11, 2023; the City should file a reply by August 15, 2023.

Jennifer D. Koh, Commissioner