

IN THE SUPREME COURT OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,
Petitioner on Review,

v.

NATALIA NEAL,
Defendant-Respondent,
Respondent on Review.

Court of Appeals
A169261

S068512

ORDER DENYING REVIEW

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
8/26/2021 11:10 AM

c: Trevor Robins
Natalia Alexandrovna Neal

jr

ORDER DENYING REVIEW

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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EXHIBIT "A"
Page 1 of 1

IN THE SUPREME COURT OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,
Petitioner on Review,

v.

NATALIA NEAL,
Defendant-Respondent,
Respondent on Review.

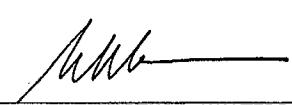
Court of Appeals
A169261

S068512

ORDER DENYING PETITION FOR RECONSIDERATION

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.


MARTHA L. WALTERS
CHIEF JUSTICE, SUPREME COURT
11/4/2021 9:52 AM

c: Trevor Robins
Natalia Alexandrovna Neal

jr

ORDER DENYING PETITION FOR RECONSIDERATION

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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EXHIBIT "B"
Page 1 of 1

IN THE COURT OF APPEALS OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,

v.

NATALIA NEAL,
Defendant-Respondent.

Clackamas County Circuit Court No. 18CV02117

Court of Appeals No. A169261

**ORDER GRANTING TEMPORARY INJUNCTION AND REFERRING DISPUTE TO
APPELLATE SETTLEMENT CONFERENCE PROGRAM**

Plaintiff moves for reconsideration of the court's order denying her previous motion to stay in this case, and requests an order enjoining further proceedings in *Natalia Neal v. Sharon Neal*, Clackamas County Circuit Court No. 18LT15887, a forcible entry and detainer action that concerns the same real property and residence as this action.

Plaintiff has made at least a preliminary showing of a reasonable likelihood of prevailing in this appeal and ultimately prevailing in the action if this court reverses and remands for further proceedings. Plaintiff also has made a preliminary showing that, absent injunctive relief, she likely will be irreparably harmed by being evicted from the property and residence that she and her late husband purchased and in which she has lived for many years.

The motion for reconsideration is granted and proceedings in *Natalia Neal v. Sharon Neal*, Clackamas County Circuit Court No. 18LT15887, are enjoined temporarily, pending defendant having the opportunity to file a response to plaintiff's motion and further order of this court.

The court refers this dispute to the court's Appellate Settlement Conference Program. Normally, a referral to the Settlement Conference Program would result in the appeal being held in abeyance. However, the court grants partial relief from abeyance for the purpose of ruling on plaintiff's motion after defendant files a response.

James W. Nass

JAMES W. NASS
APPELLATE COMMISSIONER
12/3/2018 9:56 AM

c: Sharon Neal Clackamas County Circuit Court, case number 18CV02117
J Ryan Adams Clackamas County Circuit Court, case number 18LT15887
Genevieve Evarts, ASCP Director

ej

**ORDER GRANTING TEMPORARY INJUNCTION AND REFERRING DISPUTE TO APPELLATE
SETTLEMENT CONFERENCE PROGRAM**

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

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EXHIBIT "C"
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IN THE COURT OF APPEALS OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,

v.

NATALIA NEAL,
Defendant-Respondent.

Clackamas County Circuit Court No. 18CV02117

Court of Appeals No. A169261

ORDER GRANTING STAY

By order dated December 26, 2019, the court reactivated this appeal from abeyance, including reactivating appellant's motion, under ORS 19.360(1), for review of the trial court's order denying plaintiff's motion to stay. Respondent has filed her objection to the motion. The court having considered the parties' filings, for the reasons set forth below, on review of the trial court's denial of the motion to stay, the court concludes that it is appropriate to grant a stay in this case pending appeal.

Appellant appeals the trial court's general judgment dismissing this case with prejudice. At the time she filed her notice of appeal, she also moved to stay the judgment of dismissal. Although the court generally would deny a motion to stay a judgment of dismissal, in this case, the court observed in its November 8, 2018, order granting temporary stay, that, here, it appears that staying the judgment "will revitalize a preliminary injunction issued earlier by the trial court in the case." Under the terms of that preliminary injunction, "neither party shall convey, transfer, sell, offer to sell, encumber, or leave to another party the property commonly known as 17700 SE Forest Hill Drive, Damascus, Oregon 97089 [(the Forest Hill property)]." (Capitalization and boldface omitted.)

In an order dated November 8, 2018, the court temporarily stayed the judgment of dismissal, remanded the motion to stay to the trial court for a ruling, and stated that, if the trial court denied a stay and appellant timely sought review of that decision under ORS 19.360, the "temporary stay will remain in effect pending" resolution of appellant's motion in this court. The trial court ultimately denied appellant's motion for a stay pending appeal, explaining that, in its view, appellant had failed to make a showing that she was likely to prevail on appeal. See ORS 19.350(3)(a). Appellant moves, under ORS 19.360(1) for review of the trial court's decision denying a stay.¹ As noted, respondent opposes a stay.

¹ Soon after appellant filed her motion under ORS 19.360, the court entered an order holding the appeal in abeyance pending disposition of bankruptcy proceedings involving petitioner. On December 26, 2019, the court reactivated the appeal after having been informed that the bankruptcy court entered an order granting relief from stay.

ORDER GRANTING STAY

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
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The court reviews the trial court's decision denying a stay *de novo* on the record made before the trial court. And, in determining whether a stay should be granted, the court considers, in addition to any other factors the court considers important, (1) the likelihood that appellant will prevail on appeal; (2) whether the appeal is taken in good faith and not for the purpose of delay; (3) whether there is any support for the appeal in law or in fact; and (4) the nature of harm to the appellant, to other parties, to other persons and to the public that will likely result from the grant or denial of a stay.

Appellant's complaint in this case concerned entitlement to the Forest Hill property. In the underlying action, appellant sought to compel respondent to convey legal title to the property to appellant pursuant to an alleged agreement between the parties. The complaint included claims for, among other things, specific performance, quiet title, resulting trust, rescission, constructive trust, and breach of fiduciary duty. Before entry of the judgment of dismissal, respondent had moved for summary judgment on appellant's claims and the trial court had issued a letter opinion denying summary judgment as to all claims except one part of one claim, concluding that genuine issues of material fact precluded summary judgment.

The judgment of dismissal at issue on appeal did not result from the trial court's consideration of the merits of appellant's claims. Instead, the trial court dismissed the action because plaintiff had failed to pay sanctions in the amount of \$2,490 and otherwise failed to follow orders of the trial court. If she were to prevail on appeal, she would obtain a remand to the trial court so that her case could be considered and disposed of on the merits.

Appellant asserts that she is likely to prevail on appeal; in her view, the trial court failed to comply with the requirements that must be followed before a court sanctions a party by dismissing a case with prejudice. In *Lang v. Rogue Valley Medical Center*, 361 Or 487, 395 P3d 563 (2017), the Supreme Court considered circumstances where a trial court dismissed the plaintiff's action because it found that counsel had willfully failed to comply with court orders. In that case, which involved dismissal under ORCP 54 B for failure to comply with court orders, the court stated that a court may dismiss an action for failure to comply with court orders if the failure was "willful, in bad faith, or reflected a similar degree of fault and explained that, "before a court dismisses an action for failing to comply with one of its orders, it must consider whether a lesser sanction will suffice and explain why it concluded that dismissal was the appropriate sanction." *Id.* at 501. At a minimum, the "record must disclose why the court concluded that a lesser sanction would not be sufficient." *Id.* According to appellant, the court was required to, but did not, make findings of fact or give explanation regarding willfulness, bad faith, or why the sanction of dismissal with prejudice was just. In light of those arguments, in an order dated December 3, 2018, this court observed that appellant had made a preliminary showing of a reasonable likelihood of prevailing on appeal. In considering whether a stay should be granted pending appeal, given that there is some likelihood that appellant will prevail in arguing that the trial court erred in dismissing her case as a sanction, the court concludes that this factor weighs in favor of granting a stay.

ORDER GRANTING STAY

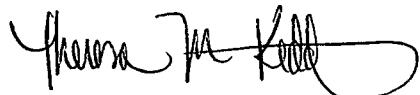
REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

Respondent, for her part, emphasizes that, in her view, the appeal is not taken in good faith but, instead, for the purpose of delay. In support of that view, respondent points out that appellant has filed numerous cases against her and that, in light of that myriad litigation, the trial court appointed a single judge to oversee all cases involving appellant and, in a letter, that judge expressed concern about "fraud on the court, which can ultimately create a risk of criminality and criminal proceedings against" appellant. The court is cognizant of the many cases involving appellant, and the trial court's view that appellant had repeatedly failed to comply with court orders. Nonetheless, given the court's view that there is some likelihood that appellant may prevail on appeal and the fact that, in the trial court's view, there were issues of fact precluding summary judgment on the merits of nearly all appellant's claims, the court declines to conclude that this appeal is taken in bad faith.

Respondent next asserts that a stay should not be granted because appellant has filed multiple other appeals that "were not supported by facts or in law." Respondent points out that a number of appeals filed by appellant have been dismissed or affirmed by this court without opinion. Although respondent is correct that a number of other appeals by appellant have been so disposed of, that does not support a determination that there is no support for *this appeal* in fact or in law. Indeed, appellant has provided some case law that, in her view, supports her position that the court erred in dismissing her case as a sanction. And given how the courts have viewed such dismissals in the past, the court concludes that there is some support in fact and law for this appeal.

Finally, the court concludes that the possibility of harm supports granting a stay. In particular, the subject matter of the underlying case is centered on which of the parties is entitled to ownership of the Forest Hill property. A stay would keep in place pending appeal the trial court's requirement that neither party convey, transfer, sell, offer to sell, encumber, or leave to another party that property. On the other hand, denial of a stay would appear to leave respondent free to dispose of the property, which would cause irreparable harm to appellant in the event she were to prevail on appeal and ultimately prevail in the action.

In light of all of those circumstances, the court is persuaded that it is appropriate to grant a stay. The general judgment of dismissal is, therefore, stayed pending disposition of the appeal or further order of the court. This order has the effect of reinstating, pending appeal, the trial court's order that "neither party shall convey, transfer, sell, offer to sell, encumber, or leave to another party the property commonly known as 17700 SE Forest Hill Drive, Damascus, Oregon 97089."



THERESA M. KIDD
APPELLATE COMMISSIONER
1/17/2020 8:40 AM

c: Sharon Neal
Natalia Alexandrovna Neal
Clackamas County Trial Court Administrator

ej

ORDER GRANTING STAY

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563

IN THE COURT OF APPEALS OF THE STATE OF OREGON

SHARON NEAL,
Plaintiff-Appellant,

v.

NATALIA NEAL,
Defendant-Respondent.

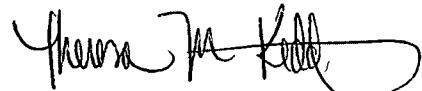
Clackamas County Circuit Court No. 18CV02117

Court of Appeals No. A169261

ORDER STAYING ISSUANCE OF APPELLATE JUDGMENT

Appellant moves to stay issuance of the appellate judgment pending the filing and disposition of appellant's petition for writ of certiorari in the United States Supreme Court. Respondent objects, asserting that the appellate judgment should issue immediately. The motion is granted, and the appellate judgment is stayed pursuant to ORAP 14.10.

Pursuant to ORAP 14.10(2), the stay will automatically terminate in 90 days unless (1) the court extends the stay for good cause shown or (2) appellant files a notice within the period of the stay that she has filed a petition for writ of certiorari with the United States Supreme Court, in which case the stay will continue until final disposition by the United States Supreme Court.



Theresa M. Kidd
APPELLATE COMMISSIONER
11/15/2021 10:27 AM

c: Trevor Robins
Natalia Alexandrovna Neal

ej

EXHIBIT "D"
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ORDER STAYING ISSUANCE OF APPELLATE JUDGMENT

REPLIES SHOULD BE DIRECTED TO: State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street, Salem, OR 97301-2563