

DAVID L. STUMP, GRETCHEN STUMP, FOR THEMSELVES  
AND AS GUARDIANS FOR THEIR MINOR CHILDREN,  
SAMANTHA STUMP AND COURTNEY STUMP, Plaintiffs,  
v. NORMA B. MCQUAIT, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Civil Action - Law, No. 2007-1525

*Servicemembers Civil Relief Act; Motion to stay litigation*

1. A party may request a stay in any civil action where that party is in the military service as defined by The Servicemembers Civil Relief Act.
2. A party is not entitled to a stay under the Act simply by virtue of the fact that she is married to a servicemember.
3. A defendant in a civil action who is married to a servicemember but who is not herself in the military is not entitled to a stay where she failed to show that her servicemember-husband may be distracted from his military duties because of the litigation and failed to show significant logistical or financial hardships to the family resulting from her need to defend against the suit.
4. Where neither the defendant nor the court could predict how long the defendant's servicemember-husband would be subject to military service, it would be unfair and possibly prejudicial to the plaintiffs to grant an indefinite stay.

Appearances:

Stephen D. Kulla, Esq., *Counsel for Plaintiffs*

Todd B. Narvol, Esq., *Counsel for Defendant*

OPINION

Herman, J., October 5, 2007

Background

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This case arises from a motor vehicle accident which took place on October 8, 2006. The plaintiffs allege the defendant operated her car in a negligent manner, causing personal injuries to Gretchen Stump and her two children. Husband David Stump brings a claim of loss of consortium.

The defendant filed a petition to stay these proceedings pursuant to the Servicemembers Civil Relief Act ("the Act"), 50 Appendix U.S.C. §501 et seq.[1] According to her petition, her husband is a Sergeant First Class with a military police battalion stationed in Hawaii. They have three children who are 1, 5, and 11 years old. Mr. McQuait is expected to be stationed in Iraq beginning in October of this year, leaving the defendant to take care of their children on her own in Hawaii.[2]

The defendant acknowledges in her petition that she was driving a vehicle which was involved in the accident but maintains that having to defend herself against this suit at this time will cause financial and logistical hardships for her and her family. She argues the court should grant the stay because although she herself is not a member of the armed services, the Act is designed to enable soldiers such as her husband to devote all their energies to military service by ensuring they are not distracted by personal matters at home, such as a lawsuit against their spouse, while serving this country. The defendant seeks a stay until 90 days after her principal residence is re-established in the continental United States or 90 days after her husband leaves the service, whichever occurs earlier.

The court issued a rule on the plaintiffs to file an answer to the petition in 20 days and stayed the proceedings until a ruling could be made. The plaintiffs answered the petition. The defendant filed a brief in support of her petition. The plaintiffs did not file a responsive brief. It is the court's understanding that both parties want the matter decided based on the current record.[3]

### Discussion

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The purpose of the Servicemembers Civil Relief Act is:

to provide for, strengthen, and expedite the national defense through protection extended by this Act to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation and to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

§502(1) and (2). To that end, a party may request a stay in any civil action in which the "plaintiff or defendant at the time of filing an application under this section is in military service." §522(a)(1). "Military service" is defined in section 511(2) as:

- (A) In the case of a servicemember who is a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard-
  - (i) active duty as defined in section 101(d)(1) of title 10, United States Code, and
  - (ii) in the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds;
- (B) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; and
- (C) any period during which a servicemember is absent from duty on account of sickness, wounds, leave or other lawful cause.

Mr. McQuait clearly is neither a plaintiff nor a defendant in this negligence action. The defendant alone is a party and there is no specific language in the Act to indicate she as the spouse of a service member is entitled to a stay as her husband might be if he were a party.

The defendant asks the court to note that prior to the 2003 amendments, section 511(1) specifically stated the Act applied only to service members and "no others." However, when the Act was amended, the words "no others" were removed from the definition of military service. This, she contends, implies that spouses of service members might now be considered entitled to the same status, benefits and protections as service members. We disagree. The removal of the "no others" language does not implicitly entitle spouses of service members to the benefits and protections of the Act and indeed the defendant does not cite to relevant binding precedent to support her argument. She does cite Lazarski v. Archdiocese of Philadelphia, 926 A.2d 459 (Pa.Super. 2007) for the proposition that "the provisions of the

Act are to be liberally construed and applied in a broad spirit of gratitude towards service personnel." Id. at 468. Although we do not dispute this general proposition, this by itself does not meaningfully advance her argument that she is entitled to the same benefits and protections as her husband would be if he were a party to this suit.

The defendant is also not entitled to a stay under the proposition that her husband may be affected by this litigation because it would distract him from his military duties. She has not shown any special or extraordinary hardship to her or her husband from having to defend herself against this suit. She is represented by counsel in Pennsylvania and is able to communicate with them through mail, fax, phone and email and she is clearly able to sign and return to her counsel any documents needed for her defense. Her travel to Pennsylvania may not even be necessary to take her deposition because this could be accomplished by telephone or video. This will avoid any logistical or financial obstacles or hardships in terms of taking her away from the children or having to pay a caregiver to tend to them. It may also be less expensive than travel and lodging costs associated with in-person discovery. If significant logistical or financial hardships do arise, the court will consider any reasonable accommodations to offset those but at this juncture we are constrained to conclude Mr. McQuait's military service does not justify placing a complete and indefinite stay on the plaintiffs' suit.

The defendant maintains her husband is a material witness in this litigation and his deployment will prevent him from testifying on her behalf. However, there is nothing before us to indicate Mr. McQuait would be a material witness. The plaintiffs do not aver in their complaint that he was at the accident scene and it is difficult to see how he could be instrumental in his wife's defense. We also disagree Mr. McQuait has an interest in this case which rises to the level of requiring a stay simply because he is a co-insured under the automobile policy at play and a verdict against the defendant may cause the McQuaits' insurance costs to rise. This is likewise true with regard to the contention that a verdict against the defendant will negatively affect Mr. McQuait's ability to focus on his duties out of concern for the verdict's financial impact on his family. This concern is premature and speculative insofar as there has been no verdict against the defendant yet, and indeed this may never come to pass. Such concern does not at this point justify imposing a complete and indefinite stay in these proceedings.

Finally the defendant argues that a stay would not cause prejudice to the plaintiffs because the statute of limitations has already been tolled, they are not dependent upon a potential award in order to obtain any necessary medical care, and the witnesses' memories of the accident are not at risk of fading. Obviously the plaintiffs disagree as to these latter two points and indeed the court notes that such information is simply not available at this time. Specifically, the court does not know anything about the plaintiffs' financial resources, what medical treatment Mrs. Stump and the two children are currently receiving and whether their recollections of the accident will be affected by a stay of indeterminate length. As to this last point, neither party nor the court can predict when the defendant will be able to re-establish her principal residence within the continental United States or when her husband will be released from military duty. The stay requested by the defendant would leave this litigation unresolved for an indeterminate period of time and this may very well prejudice the plaintiffs.

The defendant has not demonstrated she is entitled to a stay pursuant to the Act.

#### ORDER OF COURT

Now this 5th day of October 2007, the Court hereby denies the defendant's petition to stay this litigation.

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[1] This Act was previously called the Soldiers' and Sailors' Civil Relief Act before it was amended effective December 19, 2003.

[2] The sheriff was initially unable to serve the complaint at the defendant's alleged principal residence in Chambersburg because she was by that time living in Hawaii with her husband who is in the United States Army. The complaint was eventually served on the defendant at 156 Pulu Circle, Wahiawa, Hawaii on July 6, 2007.

[3] The defendant's Praecipe for Determination indicates a desire for oral argument. However, counsel for the defendant informed the court by phone that the matter could be decided based on the record as it stands.