

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**RITA and PAM JERNIGAN and
BECCA and TARA AUSTIN**

PLAINTIFFS

v.

Case No. 4:13-cv-00410 KGB

**LARRY CRANE, in his official capacity as
Circuit and County Clerk for Pulaski County,
Arkansas, and his successors in interest;
LESLIE RUTLEDGE, in her official capacity
as Attorney General for the State of Arkansas,
and her successors in interest; LARRY WALTHER,
in his official capacity as Director of
the Arkansas Department of Finance and
Administration, and his successors in interest;
and GEORGE HOPKINS, in his official
capacity as Executive Director of the Arkansas
Teacher Retirement System, and his
successors in interest**

DEFENDANTS

ORDER

Before the Court is plaintiffs' expedited motion to vacate stay of judgment (Dkt. No. 53), to which separate defendants Leslie Rutledge, Larry Walther, and George Hopkins in their official capacities¹ ("Separate Defendants") have responded (Dkt. No. 58). Plaintiffs request that this Court vacate the stay of its judgment entered on November 25, 2014 (Dkt. No. 41). For the following reasons, the Court denies plaintiffs' request.

In its November 25, 2014, Opinion and Order and accompanying Judgment (Dkt. Nos. 40, 41), this Court granted injunctive relief but stayed its execution pending the final disposition

¹ Leslie Rutledge replaced Dustin McDaniel as the Arkansas Attorney General on January 13, 2015. The Governor of Arkansas announced on January 9, 2015, that Larry Walther would replace Richard Weiss as the Director of the Arkansas Department of Finance and Administration. Pursuant to Federal Rule of Civil Procedure 25(d), Ms. Rutledge and Mr. Walther are automatically substituted for Mr. McDaniel and Mr. Hopkins, respectively, as parties in this action.

of any appeal to the Eighth Circuit Court of Appeals. Separate Defendants filed a notice of appeal of this Court's November 24, 2014, Opinion and Order on December 23, 2014. Separate Defendants' notice of appeal did not specify which part of the Opinion and Order was being appealed. On January 7, 2015, the Eighth Circuit docketed Separate Defendants' notice of appeal in the Court of Appeals as *Jernigan, et al. v. McDaniel, et al.*, No. 15-1022 (*see* Dkt. No. 50). Furthermore, on February 3, 2015, the Eighth Circuit granted a motion to expedite the appeal of a similar case, *Rosenbrahn v. Daugaard*, No. 15-1186, and expressed its intent to set argument on the appeal of *Jernigan* along with the appeals in *Rosenbrahn* and *Lawson v. State of Missouri*, No. 14-3779.

First the Court must consider whether it retains jurisdiction to rule on plaintiffs' motion to vacate stay of judgment. As a general rule, "a federal district court and a federal court of appeals should not attempt to assert jurisdiction over a case simultaneously. The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *see Rosenbrahn v. Daugaard*, No. 4:14-cv-04081-KES, Dkt. No. 68 (D.S.D. Mar. 2, 2015); *see also Liddell by Liddell v. Bd. of Educ. of City of St. Louis*, 73 F.3d 819, 822-23 (8th Cir. 1996) (finding that the order appealed required no further action by the district court and thus did not warrant exception to the divestiture rule); *cf. Nunley v. Bowersox*, No. 99-8001-CV-DGK, 2014 WL 970079 (W.D. Mo. Mar. 12, 2014) (finding that the court lacked jurisdiction to rule on a motion to vacate the court's prior stay because the issue was on appeal).

Plaintiffs argue that this Court has jurisdiction under Federal Rule of Appellate Procedure 8(a) and Federal Rule of Civil Procedure 62(d), citing, among other cases, *Betts v. Coltes*, 449 F.

Supp. 751, 753-54 (D. Haw. 1978). Federal Rule of Appellate Procedure 8(a) states that “[a] party must ordinarily move first in the district court for . . . a stay of the judgment or order of a district court pending appeal.” Federal Rule of Civil Procedure 62 governs the issuance of stays by the district court. While these rules provide an exception to the general rule and allow a district court, in limited circumstances, to exercise jurisdiction over a case while appeal is pending, those circumstances are usually limited to preserving the *status quo* while an appeal is pending. See 11 Charles Alan Wright et al., *Fed. Practice & Proc. Civil* § 2904 (3d ed.). It is not clear that vacating the stay here would be a preservation of the *status quo*. With that said, the court in *Betts* apparently read the advisory committee’s notes of Federal Rule of Appellate Procedure 8 regarding *supersedeas* bonds and the history of that Rule as suggesting that a district court has “jurisdiction to modify the stay order if it deems such modification warranted.” 449 F. Supp. at 754. The Court notes that *Betts* is not controlling and that, unlike here, the district court in *Betts* apparently did not issue a stay of its award of attorney’s fees until after the defendant had already perfected an appeal of the award, meaning the stay could not have been before the appellate court.

Raising another exception to the general rule, plaintiffs cite cases stating that a district court retains jurisdiction over “collateral matters” and to enforce orders when the “same issues are not simultaneously before the district court and appellate court.” *FutureFuel Chem. Co. v. Lonza, Inc.*, 756 F.3d 641, 648 (8th Cir. 2014); *U.S. v. Queen*, 433 F.3d 1076, 1077-78 (8th Cir. 2006) (“[A] notice of appeal only divests the lower court of jurisdiction over aspects of the case that are the subject of the appeal.”); see *State ex rel. Nixon v. Coeur D’Alene Tribe*, 164 F.3d 1102, 1106 (8th Cir. 1999) (“Once a notice of appeal is filed, the district court is divested of jurisdiction over *matters on appeal*.” (emphasis added)). Defendants respond that the collateral

matters exception does not apply here because, “while an appeal is pending, the district court may not reexamine or supplement the order being appealed.” *See State ex rel. Nixon*, 164 F.3d at 1106. The Court notes that whether the collateral matters exception applies here is a close question, likely turning on how broadly the Court defines “order being appealed” and similar language used by the Eighth Circuit in prior cases examining this issue. Here, the Court views the stay as intertwined with the merits of the injunction and is not convinced that the collateral matters exception applies.

Regardless, to the extent the Court has jurisdiction, it denies plaintiffs’ motion. In considering the merits of plaintiffs’ motion, this Court applies the same standard as the Court of Appeals. *See Rosenbrahn*, No. 4:14-cv-04081-KES, Dkt. No. 68, at 2 (citing 11 Charles Alan Wright et al., *Fed. Practice & Proc. Civil* § 2904 (3d ed.)). In *Lawson*, a same-sex marriage case that has facts similar to this case and that is consolidated with this case on appeal, the Eighth Circuit declined to vacate the district court’s stay of its judgment. Further, the Supreme Court’s refusal to impose a stay on other federal district court decisions does not compel this Court to vacate the stay in this case. Therefore, the Court denies plaintiffs’ expedited motion to vacate stay of judgment (Dkt. No. 53).

It is so ordered on this 4th day of March, 2015.

A handwritten signature in black ink, appearing to read "Kristine G. Baker", written over a horizontal line.

Kristine G. Baker
United States District Judge