

NO. CV 03 0523933S : SUPERIOR COURT
AUTOTOTE ENTERPRISES, INC. : JUDICIAL DISTRICT
: OF NEW BRITAIN
v. :
STATE OF CONNECTICUT, DIVISION
OF SPECIAL REVENUE : JULY 28, 2004

MEMORANDUM OF DECISION ON STATE'S
MOTION FOR A STAY PENDING APPEAL

The defendant, division of special revenue (Division), pursuant to Practice Book § 61-12, seeks a stay pending appeal of this court's July 1, 2004 decision that the moratorium contained in General Statutes § 12-571a does not prohibit the plaintiff, Autotote Enterprises, Inc. (Autotote), from advertising its telephone betting service during or in connection with its off-track betting program.

In considering whether or not to grant a stay pending an appeal, the court is to apply a balancing of the equities test as approved in Griffin Hospital v. Commission on Hospitals & Health Care, 196 Conn. 451, 456, 493 A.2d 229 (1985). This balancing of the equities test “weighs the equities and balances the harm that may be suffered by the Appellant as the result of the enforcement of the Agency order or the decision, pending the appeal, against the public harm that may result from delaying the effectiveness of the Order or Decision.” (Internal quotation marks omitted.) *Id.*, 456. Simply put, we are called upon to balance the harm which may be caused to one party or the other. *Id.*, 457.

The Division, citing Griffin Hospital, *supra*, 458-59, argues that in balancing the equities, the court must consider: (1) the likelihood that the appellant will prevail upon appeal; (2) whether irreparable injury will be suffered by not granting the stay; and (3) whether the public interest will be affected. (Defendant’s Memorandum in Support of Motion for Stay, dated July 12, 2004, p. 2.) We note that trial court judges are vested with a “large measure of discretion . . . in terminating or granting stays” *Id.*, 459.

The Division’s argument on balancing of the equities centers on the harm that would come to the public by allowing the plaintiff to promote gambling in the “intimacy” of one’s own home. The Division points out in its brief in support of this motion that exposing problem gamblers to the plaintiff’s promotion of gambling could cause “serious risk of personal catastrophe for susceptible individuals.” (Defendant’s Memorandum, dated July 12, 2004, p. 3.) The issue of problem gambling and the proliferation of gambling in this state may be of general concern to the public but it is not pertinent in resolving the issue here.

Autotote, following the court’s decision on July 1, 2004, advertised off-track betting accounts during the live broadcast of races on cable television. Autotote purchased its air time from Comcast, a cable television company. Through testimony

taken during a hearing on this motion, it appears that Autotote has received a limited response to its advertising in combination with the showing of live races on television. Although Autotote may lose some financial gain from the granting of this stay, we do not view the loss as substantial. We also recognize, as the Division contends, that there is nothing to preclude Autotote from independently advertising the purchase of off-track betting accounts during the pendency of this appeal, even if the court were to grant the Division's motion for stay.

On balance, we see no irretrievable loss to the plaintiff in granting the Division's motion for a stay of this court's decision pending appeal. Although we do not agree with the Division that it will likely prevail on appeal or that the public's interest will be seriously affected, considering the equities in this matter, we see no substantial harm to Autotote in granting the Division's motion for a stay.

Accordingly, the Division's motion for a stay pending appeal is granted.

Arnold W. Aronson
Judge Trial Referee