

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
CASE NO. 2011-CA-000232

AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.

APPELLANT

v.

EDWARD BENNETT, ET AL.

APPELLEES

Appeal from Fayette Circuit Court
No. 09-CI-05292

**RESPONSE IN OPPOSITION TO APPELLANT'S
MOTION FOR LEAVE TO FILE A REPLY**

I. INTRODUCTION

Appellant American Saddlebred Horse Association (“ASHA”) moved this Court on March 17, 2011 to stay the Fayette Circuit Court’s ruling pending appeal pursuant to CR 65.08(2). Appellees Edward R. Bennett, Carl T. Fischer, Jr., Kris Knight, Tom Ferrebee, Simon Fredericks, M.D., and Lynn W. Via (collectively the “Members”) filed their opposition to that motion on March 25, 2011. The Members argued that the circuit court was correct in denying ASHA’s request for a stay pending appeal, and ASHA has not met the high standard required to reverse that decision. ASHA now asks this Court for leave to file an unauthorized reply. However, ASHA was required to include all of its arguments in its original motion for a stay, and there is no justification for allowing ASHA to file a reply.

II. ARGUMENT

ASHA failed to cite any authority supporting its motion for leave to file a reply.¹ That is because there is no such authority. The general rule in appellate motion practice is that each

¹ ASHA simply states that it wishes to file a reply “to ensure this Court has a complete and accurate record. . . .” (ASHA’s Mot. For Leave at 1.) Of course, ASHA had the opportunity to present as much of the record as it deemed necessary in its initial motion. See CR 65.08(4).

party has but one opportunity to tender a written document supporting their position. *See* CR 76.34(1), (2). The Kentucky Rules of Civil Procedure (“Rules”) make limited exceptions to that general rule by allowing reply briefs to be filed in specific situations. For example, CR 76.12(1) expressly provides appellants with the right to file a reply brief on the merits before the matter is submitted to the court for final disposition. That rule also permits either party to move the court for leave to file additional briefs. Another appellate rule expressly permits a reply in support of a motion for discretionary review, but only if requested by the court. CR 76.20(5). Similarly, in cases involving a review of decisions made by the Workers’ Compensation Board, replies may only be filed if the court grants leave. CR 76.25(6).

The Rules do not authorize a reply in support of a motion for a stay pursuant to CR 65.08(2), nor do they permit a party to request leave to file a reply. CR 65.08(5) only permits a response to the motion for stay, and then CR 65.08(6) expressly states that “[t]he motion and any responses shall be submitted to a panel of the Court for decision.” The rule does not recognize any opportunity for a reply to be filed – with or without leave of this Court.

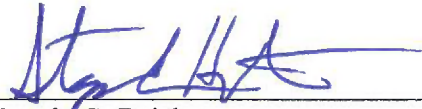
Here, ASHA filed a motion for a stay pursuant to CR 65.08(2). The Members filed a response in opposition to that motion as authorized by CR 65.08(5). Pursuant to CR 65.08(6), ASHA’s motion and the Members’ response shall be submitted to the panel for a decision. That is precisely how ASHA’s motion has been processed by this Court to date. The online “Court of Appeals Docket Information” page relating to this case notes that ASHA’s motion for stay was “scheduled for following steps” on March 28, 2011. *See* http://apps.courts.ky.gov/Appeals/COA_Dockets.shtm (enter Case No. 2011-CA-000232). That was three days after the Members’ response was docketed. The motion for stay was “scheduled

for following steps” by this Court on March 28, 2011 because the motion was fully ripe for presentation to the panel, and there is no authority for ASHA to file a reply.

III. CONCLUSION

Therefore, this Court should deny ASHA’s motion for leave to file a reply.

Respectfully submitted,



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April 7, 2011.

CERTIFICATE OF SERVICE

A copy of the foregoing document was served via First Class United States Mail, postage prepaid, to the following on the 7th day of April, 2011:

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