

**IN THE ARKANSAS SUPREME COURT**

**BAYER CROPSCIENCE, L.P.**

**APPELLANT**

**v.**

**No. CV 21-250**

**ARKANSAS STATE PLANT BOARD, *et al***

**APPELLEES**

**EMERGENCY MOTION TO STAY CIRCUIT COURT PROCEEDING  
FOR LACK OF JURISDICTION**

COME NOW the Appellees/Intervenors FarmVoice, Inc., Timothy Pirani, Adam Henard, and Jarred Hopper, by and through the undersigned Counsel, and for their Motion to Stay Circuit Court Proceedings for Lack of Jurisdiction, state as follows:

1. Once the record is lodged in the appellate court, the trial court no longer exercises jurisdiction over the parties and the subject matter in controversy.” *Box v. J.B. Hunt Transp., Inc.*, 2019 Ark. App. 334, at 11, 578 S.W.3d 719, 725. The only exception is for “matters that are independent of, or collateral or supplemental to, the matters on appeal.” *Id.* at 12, 578 S.W.3d at 725.

2. The circuit court is moving forward with a June 10 hearing on Plaintiff Appellees’ motion for a preliminary injunction. But there are already two pending appeals in this case, and they both involve issues related to the preliminary-

injunction motion. Both involve matters that are necessarily and directly related to the preliminary-injunction hearing and the motion. This motion to stay asks the Court to stay the June 10 hearing and any announcement of a ruling on the motion for preliminary injunction until the appeal is concluded.

3. The first appeal is Case No. CV-21-242. In that appeal, the Arkansas State Plant Board challenges the circuit court's temporary restraining order (TRO), which found that (a) Plaintiffs were likely to suffer irreparable harm if the Board's rule allowing spraying of low-volatility dicamba herbicides through June 30 were to remain in place, (b) Plaintiffs were likely to succeed on the merits of their claim that the rule was improper, (c) the public interest supports prohibiting spraying of the herbicides, and (d) the harm of spraying the herbicides outweighs the harm of not spraying them. (1RP 537, 557, 608) (TRO, order extending TRO, notice of appeal). The preliminary-injunction motion and hearing will involve those same four issues:

- *Irreparable Harm.* To prevail on their motion for preliminary injunction, Plaintiffs must show irreparable harm. *Thurston v. Safe Surgery Ark.*, 2021 Ark. 55, at 11–12, 619 S.W.3d 1.
- *Likely success on the merits.* Plaintiffs must also show likely success on the merits to obtain a preliminary injunction. *Id.* at 11–12, 619 S.W.3d 1.

- *Public interest.* The Arkansas Supreme Court has said that the public interest may be a factor in issuing a preliminary injunction. *See United Food & Commer. Workers Int'l Union v. Wal-Mart Stores, Inc.*, 2014 Ark. 517, at 5, 451 S.W.3d 584, 586–87.
- *Harm Weighing.* The Arkansas Supreme Court has also said that the weighing of harm between parties and others is also a preliminary-injunction factor. *Id.*

Therefore, the hearing on the preliminary-injunction motion is necessarily and directly involved in the matter under review in the Board's appeal.

4. The second appeal is Case No. 21-250. In that appeal, Bayer CropScience LP (Bayer) challenges the circuit court's denial of Bayer's motion to intervene. (2RP 38, 54) (order, notice of appeal). Bayer sought to intervene, among other reasons, to defend its low-volatility dicamba herbicide against Plaintiffs' allegations that the herbicide would cause irreparable harm and that it is in the public interest to halt use of that herbicide. (1RP 573, 593) (motion to intervene, brief in support). Thus, Bayer's appeal also involves matters that are necessarily and directly related to the preliminary-injunction hearing and motion. *See Richardson v. Rogers*, 329 Ark. 402, 404–05, 947 S.W.2d 778, 779–80 (1997) (intervenor's claims and underlying merits of case are not merely collateral).

5. Given that two appeals from the underlying case are docketed in this Court, the Court has jurisdiction to stay proceedings below that the circuit court is without jurisdiction to undertake. *See, e.g.*, Ark. R. App. P.–Civ. 8.

6. The bond requirements of Arkansas Rule of Appellate Procedure–Civil 8(c) do not apply here. Those requirements apply when the circuit court has awarded an appellee “costs and damages.” Ark. R. App. P.–Civ. 8(c)(1). Thus, “the bond shall be to the effect that appellant shall pay to appellee all *costs and damages that shall be affirmed* against appellant on appeal; or if appellant fails to prosecute the appeal to a final conclusion, or if such appeal shall for any cause be dismissed, that appellant shall *satisfy and perform the judgment, decree, or order* of the circuit court.” *Id.* (emphases added). Because the circuit court has not awarded any “costs and damages” and there is no judgment, decree, or order to “satisfy and perform,” no bond is required for a stay.

**WHEREFORE**, Appellees/Intervenors FarmVoice, Inc., Timothy Pirani, Adam Henard, and Jarred Hopper, respectfully request that the Court stay the June 10<sup>th</sup> hearing and any announcement of a ruling on the motion for preliminary injunction until the Appeal is concluded.

Respectfully submitted, this 7<sup>th</sup> day of June, 2021.

FarmVoice, Inc., Timothy Pirani,  
Adam Henard, and Jarred Hopper

Intervenors/Appellees

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**CERTIFICATE OF SERVICE**

I hereby certify a copy of the foregoing was provided to Counsel of Record  
by e-filing this 7<sup>th</sup> day of June, 2021.

/s/ Grant Ballard  
J. Grant Ballard, # 2011185