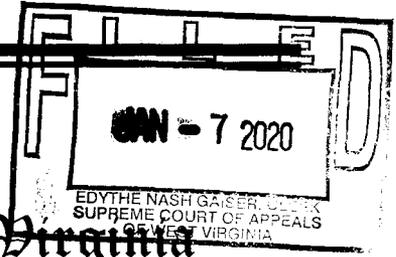


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No. 19-0743



IN THE

Supreme Court of Appeals of West Virginia

NORTHSTAR ENERGY CORPORATION,

Petitioner (Defendant),

v.

RILEY NATURAL GAS COMPANY,

Respondent (Plaintiff).

ON APPEAL FROM THE
CIRCUIT COURT OF HARRISON COUNTY
BUSINESS COURT DIVISION

Civil Action No. 15-C-405-3
(Honorable Paul T. Farrell)

BRIEF OF RESPONDENT

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I. STATEMENT OF THE CASE

A. Factual background

For the purposes of the instant petition, Respondent, Riley Natural Gas Company (“RNG”), incorporates the factual background as more fully set forth in its “Brief of Respondent” filed in Case Number 19-0535, which was consolidated with this appeal by Order entered on October 31, 2019. Although Petitioner, Northstar Energy Corporation (“Northstar”)¹ repeats its assertion that it is unable to post an appeal bond because “the Petitioner was no longer in business,”² as RNG noted in its prior response brief, public documents of which the Court may take judicial notice³ confirm that Northstar remains engaged in the business of natural gas production. A search for the term “Northstar Energy Corporation” as “Operator Name” in the West Virginia Division of Environmental Protection’s online Oil and Gas Well Search database⁴ reveals that Northstar is the current operator for 130 wells, 103 of which are active wells. Of these 103 active wells, all list production during the most recent years information is available in 2017 and 2018.⁵ Similarly, a search for the same term in the West Virginia Secretary of State’s Business Organization Search reveals that Northstar has been in business continually since 1995.⁶

B. Procedural history

For the purposes of the instant petition, RNG accepts Northstar’s recitation of the procedural history of this case.

¹ (Appendix Record (“AR”) 35 ¶ 6.)

² (Pet’r’s Br. at 6, 9, 11.)

³ (See W. VA. R. EVID. 201(c)(2) (“The court must take judicial notice if a party requests it and the court is supplied with the necessary information.”) and (d) (“The court may take judicial notice at any stage of the proceeding.”).)

⁴ (<https://apps.dep.wv.gov/oog/wellsearch/wellsearch.cfm>.)

⁵ (*Id.*)

⁶ (<http://apps.sos.wv.gov/business/corporations/>.)

II. SUMMARY OF THE ARGUMENT

The issue presented in the instant petition is simple: The Circuit Court was correct in requiring Northstar to post an appeal bond in the amount of the judgment. In spite of Northstar's invocations of the appearance of "justice," West Virginia law has permitted appeal bonds for more than a century. Accordingly, the Circuit Court did not deprive Northstar of its right to appeal or of its Due Process or Equal Protection rights by requiring Northstar to post an appeal bond. The appeal bond does not foreclose Northstar's opportunity to be heard, and, beyond self-serving assertions, Northstar has not demonstrated its financial inability to pay.

In addition, the Circuit Court did not abuse its discretion by requiring Northstar to post an appeal bond in the amount of the judgment. First, RNG vigorously disputed Northstar's petition in Case Number 19-0535, making a strong showing that the Circuit Court's grant of summary judgment should be upheld on appeal. Second, RNG will be irreparably harmed if Northstar is not required to take steps to make RNG whole. Contrary to its assertion, Northstar will not be irreparably harmed if it is required to post the appeal bond because, as noted above, Northstar still appears to be operating as a business. Third, given Northstar's flimsy assertions as to its financial status, there is more than the danger of mere delay to RNG if Northstar is not required to secure its judgment. Fourth, the appeal bond does not pose a threat to public interests, as such bonds routinely are employed in commercial litigation. In any event, Northstar has benefitted from the stay of execution pursuant to West Virginia Rule of Civil Procedure 62(i) and should therefore be estopped from challenging its validity.

Finally, the Circuit Court did not exceed its jurisdiction by requiring Northstar to post an appeal bond because the Rules of Appellate Procedure expressly contemplate that either the Circuit Court or this Court may impose a bond requirement. Moreover, when a court requires a bond, the appeal does not take effect until such bond has been given, and the appeal bond is

tangential to the judgment on appeal. For these reasons, the appeal bond ordered in this case is proper, Northstar's petition should be denied, and Northstar should be required to post the bond as a condition to continuing to pursue these appeals.

III. STATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary in this case because the facts and legal arguments are adequately presented in the briefs and record and oral argument would not significantly aid the decisional process. W. Va. R. App. P. 18(a)(4).

If the Court determines that oral argument is necessary, argument under West Virginia Rule of Appellate Procedure 19 is appropriate because the appeal involves assignments of error in the application of settled law, and the appeal is appropriate for disposition by memorandum decision under West Virginia Rule of Appellate Procedure 21.

IV. ARGUMENT

A. The governing standard on appeal.

“Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute,” the Court applies “a *de novo* standard of review.”⁷ “When this Court reviews challenges to the findings and conclusions of the circuit court, a two-prong deferential standard of review is applied. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court’s underlying factual findings

⁷ Syl. pt. 1, *Sol. One Mortg., LLC v. Helton*, 216 W. Va. 740, 613 S.E.2d 601 (2005); Syl. pt. 2, *Lawson v. Hash & Benford*, 209 W.Va. 230, 545 S.E.2d 290 (2001); Syl. pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995). *Cf.* Syl. pt. 4, *Keesecker v. Bird*, 200 W.Va. 667, 490 S.E.2d 754, 758 (1997) (“An interpretation of the *West Virginia Rules of Civil Procedure* presents a question of law subject to a *de novo* review.”).

under a clearly erroneous standard.”⁸

Applying even a *de novo* standard, the Circuit Court correctly stayed the judgment and correctly conditioned Northstar’s appeal on a bond in the amount of \$5,538,351.37.

B. The Circuit Court did not deprive Northstar of its right to appeal or of its Due Process or Equal Protection rights by requiring Northstar to post an appeal bond.

The Circuit Court did not deprive Northstar of its right to appeal or of its Due Process or Equal Protection rights by requiring Northstar to post an appeal bond in the amount of the judgment. West Virginia Code Section 58-5-14(a) provides in pertinent part as follows:

When required by the court, an appeal shall not take effect until bond is given by the appellants or petitioners, or one of them, or some other person, in a penalty to be fixed by the court or judge by or in which the appeal is allowed or entered with condition: If a supersedeas be awarded, to abide by and perform the judgment and to pay to the opposite party, and to any person injured, all such costs and damages as they, or either of them, may incur or sustain by reason of said appeal, in case such judgment, or such part, be affirmed, or the appeal be dismissed, and also, to pay all damages, costs and fees, which may be awarded against or incurred by the appellant or petitioners⁹

In *State ex rel. Shenandoah Valley National Bank v. Hiatt*,¹⁰ this Court recognized that Section 58-5-14 traces its origins to the Virginia Code of 1849, which was adopted by the West Virginia Constitution of 1863.¹¹ West Virginia law, therefore, has recognized the validity of appeal bonds since the State’s inception. Notwithstanding their long history, this Court has not

⁸ Syl. pt. 1, *In re T. M.*, 835 S.E.2d 132 (W. Va. 2019); Syl. pt. 1, *In re S. W.*, 236 W. Va. 309, 779 S.E.2d 577 (2015); Syl., *McCormick v. Allstate Ins. Co.*, 197 W. Va. 415, 475 S.E.2d 507 (1996).

⁹ W. VA. CODE § 58-5-14(a).

¹⁰ 127 W. Va. 381, 32 S.E.2d 869, 871–72 (1945).

¹¹ *Id.*

had occasion to analyze the purposes for appeal or supersedeas bonds.¹² Nevertheless, the United States District Court for the Southern District of West Virginia has recognized that “[t]he purpose of the supersedeas bond is to preserve the status quo during the pendency of an appeal. The supersedeas bond ‘protects the winning party from the possibility of loss resulting from the delay in execution.’”¹³ Contrary to Northstar’s lofty invocations of “justice,” appeal bonds are an established fixture of our court system and have been so for more than a century.

Northstar’s reliance on *Boddie v. Connecticut*¹⁴ is misplaced for several reasons. In *Boddie*, the Supreme Court invalidated cost requirements that prevented the indigent appellants from obtaining divorces.¹⁵ The appellants’ inability to pay for even modest court fees and notice requirements was undisputed, and such costs served as an outright bar to the appellants’ ability to seek judicial relief, which was the only recourse to end their marriages.¹⁶ Moreover, the due process rights at issue in *Boddie* were paramount because, as the Court recognized, “marriage involves interests of basic importance in our society.”¹⁷ Critically, *Boddie* makes no mention of appeal bonds or their validity.

¹² The terms “appeal bond” and “supersedeas bond” are used interchangeably in this brief. *Compare Bond*, Black’s Law Dictionary (11th ed. 2019) (defining an “appeal bond” as “a bond required as a condition to bringing an appeal or staying execution of the judgment appealed from”), *with id.* (defining a “supersedeas bond” as “an appellant’s bond to stay execution on a judgment during the pendency of the appeal”).

¹³ *Holland v. Law*, 35 F. Supp. 2d 505, 506 (S.D. W. Va. 1999) (quoting *Schreiber v. Kellogg*, 839 F. Supp. 1157, 1159 (E.D. Pa. 1993)). *See also Huff Energy Fund, L.P. v. Longview Energy Co.*, 510 S.W.3d 479, 486 (Tex. Ct. App. 2014) (“The goal in setting a supersedeas bond is to require an amount that will adequately protect the judgment-creditor against any loss or damage occasioned by the appeal.”).

¹⁴ 401 U.S. 371 (1971).

¹⁵ *Id.* at 380–81.

¹⁶ *Id.* at 372 (“[N]o allotment that could be budgeted for the expense to gain access to the courts in order to obtain a divorce.”).

¹⁷ *Id.* at 376.

Northstar's reliance on *Rosier v. Rosier*¹⁸ is similarly specious. The appellant in *Rosier* sought an appeal of a custody decision erroneously based on a report from a public assistance agency.¹⁹ Among other arguments, the appellee asserted that the appellant failed to post a timely appeal bond.²⁰ Again, the fact that the appellant was indigent under West Virginia Code Section 59-2-1 was undisputed.²¹ Notably, the Court seized upon the fact that the appellee had admitted that he had suffered no prejudice based on the appellant's failure to follow certain other procedural requirements.²² For that reason, the Court declined to consider the appellant's failure to post an appeal bond.²³

Unlike *Boddie* and *Rosier*, which were predicated on the most intimate building blocks of our societal foundation, the judgment in the parties' underlying breach of contract case does not implicate fundamental marital or parental rights. Rather, this commercial litigation bears all the hallmarks of the risks attendant with the freedom to contract, which generally shirks government intervention. In addition, West Virginia Code Section 59-2-1, which was discussed in *Rosier*, manifestly does not apply to a corporation such as Northstar, which is not a "natural person."²⁴ Northstar therefore cites no legal authority supporting its position that an allegedly

¹⁸ 162 W. Va. 902, 253 S.E.2d 553 (1979).

¹⁹ *Id.* at 903–04, 253 S.E.2d at 554.

²⁰ *Id.* at 904, 253 S.E.2d at 554.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ See W. VA. CODE § 59-2-1(a) ("A *natural person* who is financially unable to pay the fees or costs attendant to the commencement, prosecution or defense of any civil action or proceeding, or an appeal therein, is permitted to proceed without prepayment in any court of this state, after filing with the court an affidavit that he or she is financially unable to pay the fees or costs or give security therefor."(emphasis added)); see also W. VA. CODE § 56-4-63 (stating that "[a]ny corporation may appear, plead or answer by attorney in any action, suit or proceeding for the same

insolvent business entity should be relieved from posting an appeal bond. Moreover, beyond self-serving assertions, which RNG vigorously disputes and this Court may discredit,²⁵ Northstar has not demonstrated its financial inability to secure the appeal bond. For these reasons, the Circuit Court did not foreclose Northstar's right to appeal or deprive its Due Process or Equal Protection rights by requiring Northstar to post an appeal bond in the amount of the judgment. Accordingly, Northstar's petition should be denied.

C. The Circuit Court did not abuse its discretion by requiring Northstar to post an appeal bond.

The Circuit Court did not abuse its discretion by requiring Northstar to post an appeal bond in the amount of the judgment, even though Northstar did not request a stay of execution. In dicta, this Court has recognized that, generally, "an abuse of discretion occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed but the circuit court makes a serious mistake in weighing them."²⁶

The same arguments which serve as the basis of Northstar's instant petition were fully briefed in its response to RNG's motion to require an appeal bond.²⁷ Having considered the parties' briefing on this issue, the Circuit Court construed RNG's request that Northstar be required

purposes, in the same manner and form and to the same extent and effect *as if it were a natural person*," which implies that a corporation is not otherwise a "natural person" (emphasis added)).

²⁵ See *Troy Co. v. Griffith*, No. 12-0521, 2013 WL 2149856, at *3 (W. Va. May 17, 2013) (affirming dismissal of an appeal based on appellant's failure to post appeal bond and rejecting appellant's argument that the appellee had committed waiver where "[t]he only evidence in the appellate record on this issue is a self-serving affidavit signed by petitioner's general manager *after* the appeal was filed in circuit court").

²⁶ *Gentry v. Mangum*, 195 W. Va. 512, 520 n.6, 466 S.E.2d 171, 179 n.6 (1995).

²⁷ (See A.R. at 124–26 (arguing that Northstar is financially unable to post the bond and did not request a stay).)

to post an appeal bond as a motion pursuant to West Virginia Rule of Civil Procedure 62(i) “for a stay of proceedings to enforce or execute on the judgment in this action until a final adjudication of [Northstar’s] proposed appeal” to this Court.²⁸

West Virginia Rule of Civil Procedure 62(i) provides:

On motion and on such conditions for the security of the adverse party as are proper, the court may stay the issuance of execution upon a judgment and any other proceedings for its enforcement for such reasonable time, to be specified by the court in the stay order, as will enable the moving party to present to an appellate court a petition for appeal from the judgment.²⁹

Contrary to Northstar’s assertion, the Circuit Court did not abuse its discretion by improperly finding that *Northstar* sought a stay of the proceedings. Rather, the Circuit Court’s order patently acknowledges that it construed RNG’s request “as a motion of *Plaintiff* [RNG]. . . for a stay of proceedings.”³⁰ The Circuit Court thus embraced the overarching purpose of appeal bonds – to protect the winning party from the risk of loss – and correctly granted RNG’s request based on the reasons set forth in its motion and “*for the protection of Plaintiff’s interests . . .*”³¹ Moreover, requiring Northstar to post an appeal bond in the amount of the judgment, which is well below the statutory cap as provided in West Virginia Code Section 58-5-14, is not unreasonable.³²

²⁸ (A.R. at 4.)

²⁹ W. VA. R. CIV. P. 62(i); *see also* W. VA. R. APP. P. 28(c) (“In civil cases the relief available in the circuit court or the Supreme Court under this rule may be conditioned upon the filing of a bond or other appropriate security in the circuit court, in such amount and upon such conditions as the court granting the stay feels is proper for the protection of the adverse party. The provisions of West Virginia Code § 58-5-14, are applicable. Such bond shall be filed within such time as provided by the circuit court or this Court. Failure to execute such bond may be grounds for the dismissal of the appeal.”).

³⁰ (A.R. at 4 (emphasis added).)

³¹ (*Id.* (emphasis added).)

³² W. VA. CODE § 58-5-14(b) (“[A]n appeal bond required by a court in accordance with this section may not exceed the amount of the total judgment, which includes the actual judgment, plus costs, interest and fees: Provided, That for all verdicts returned or judgments rendered on or after

Accordingly, the Circuit Court did not ignore a material factor, rely on an improper factor, or mistakenly weigh any factors in its assessment that Northstar should be required to post a bond covering the amount of the judgment as a condition of its appeal in order to protect RNG's interests.

Even if this Court were to adopt the factors governing a stay pending appeal applied under Federal Rule of Civil Procedure 62 as set forth in *United States v. O'Shea*,³³ those factors strongly support RNG's position – not Northstar's. First, RNG vigorously disputed Northstar's petition in Case Number 19-0535. For the reasons set forth more fully in its response brief in Case Number 19-0535, RNG has made a strong showing that the Circuit Court's grant of summary judgment should be upheld on appeal. Second, RNG would be irreparably harmed in the absence of a stay if Northstar is not required to take steps to make RNG whole by securing its judgment. On the contrary, Northstar will not be irreparably harmed if it is required to post the appeal bond because, as noted above, Northstar still owns revenue-generating assets and still appears to be operating as a business.³⁴ Third, given Northstar's flimsy assertions as to its financial status, there is more than the danger of mere delay to RNG if Northstar is not required to secure its judgment. The specter that Northstar may take steps to render itself judgment proof in the absence of an appeal bond looms large over the instant petition. Finally, the appeal bond does not pose a threat

July 1, 2007, two thousand seven, in which the judgment exceeds \$50 million, the court shall require an appeal bond of no more than \$50 million.”).

³³ No. 5:12-CV-04075, 2015 WL 1822848, at *2 (S.D. W. Va. Apr. 21, 2015) (“The factors generally considered with respect to a stay pending appeal are: ‘(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’” (citations omitted)).

³⁴ (See notes 4–6 and accompanying text *supra*.)

to public interests, as such bonds routinely are employed in commercial litigation and are designed to protect the parties involved.³⁵

In any event, Northstar has benefitted from the stay of execution pursuant to West Virginia Rule of Civil Procedure 62(i) and would benefit from the resultant supersedeas bond. Appeal bonds are particularly beneficial to commercial litigants. Just as appeal bonds protect plaintiffs from the risk that a defendant may file for bankruptcy or otherwise become insolvent during the pendency of an appeal, defendants also are afforded protections should recouping a judgment paid to a plaintiff following a meritorious appeal later prove impossible. Although there may be some cost to Northstar associated with posting the appeal bond, such costs are comparatively modest compared to the benefits to all parties involved – including Northstar. Northstar should therefore be estopped from challenging the validity of the requirement for it to post the appeal bond.³⁶ For these reasons, Northstar’s petition should be denied.

³⁵ Often, such cases involve astronomical monetary judgments. *See, e.g., In re the Exxon Valdez*, 296 F. Supp. 2d 1071, 1082 (D. Alaska 2004) (noting that Exxon sought and obtained a stay of execution on the judgment for punitive damages by posting a supersedeas bond in the amount of \$6.75 billion), *vacated and remanded sub nom. In re Exxon Valdez*, 472 F.3d 600 (9th Cir. 2006), *opinion amended and superseded on denial of reh’g*, 490 F.3d 1066 (9th Cir. 2007), *vacated sub nom. Exxon Shipping Co. v. Baker*, 554 U.S. 471, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008), and *vacated sub nom. In re Exxon Valdez*, 490 F.3d 1066 (9th Cir. 2007), and *vacated sub nom. Exxon Shipping Co. v. Baker*, 554 U.S. 471, 128 S. Ct. 2605, 171 L. Ed. 2d 570 (2008); *Price v. Philip Morris, Inc.*, No. 00-L-112, 2003 WL 22597608 (Ill. Cir. Ct. 2003) (requiring \$12 billion appeal bond, which was later reduced to \$6.8 billion), *rev’d*, 848 N.E.2d 1 (Ill. 2005), *reh’g denied*, 846 N.E.2d 597 (Ill. 2006); *Texaco, Inc. v. Pennzoil Co.*, 729 S.W.2d 768 (Tex. Ct. App. 1987) (resulting in a bond in the amount of the \$10.5 billion judgment), *cert. denied*, 485 U.S. 994 (1988), *superseded by rule as recognized in Isern v. Ninth Court of Appeals*, 925 S.W.2d 604 (Tex. 1996) (discussing alternate methods of security in appeals from money judgments following Texaco’s bankruptcy).

³⁶ *Cf. Syl. pt. 3, Baltimore & O.R. Co. v. Vanderwarker*, 19 W. Va. 265 (1882) (“If a party has enjoyed the benefit of a supersedeas-bond, though it was executed by his attorney at law alone, when the law required it to be executed with security, in a proceeding to enforce the debt, after the appeal had been dismissed, he is estopped from alleging, that the supersedeas-bond was invalid.”).

D. The Circuit Court did not exceed its jurisdiction by requiring Northstar to post an appeal bond.

The Circuit Court did not exceed its jurisdiction by ordering Northstar to post an appeal bond. Even though the Circuit Court entered its order granting RNG's motion to require an appeal bond after Northstar filed its notice of appeal, the Circuit Court was not divested of its authority to enter such an order because, when a court requires a bond, the appeal does not take effect until such bond has been given.³⁷ Moreover, contrary to Northstar's assertion, this Court has long recognized that circuit courts retain jurisdiction over certain matters – even during the pendency of an appeal: “[I]t is well settled that the authority and jurisdiction of the [circuit] court, and its duty in the premises to loan out and preserve the funds and property so brought under its control, is unaffected by the pendency of the cause in an appellate court.”³⁸

Although West Virginia does not have a case directly on point, Rule 28(c) of the West Virginia Rules of Appellate Procedure expressly contemplates that either this Court or a circuit court may impose a bond requirement upon an appellant.³⁹ Moreover, other courts have recognized that a trial court retains jurisdiction to dispose of matters related to appeal bonds.⁴⁰

³⁷ See W. VA. CODE § 58-5-14(a) (“When required by the court, *an appeal shall not take effect until bond is given by the appellants . . .*” (emphasis added)).

³⁸ *Jacobs v. Jacobs*, 100 W. Va. 612, 131 S.E. 455, 460 (1926).

³⁹ W. VA. R. APP. P. 28(c) (“In civil cases the relief available in the circuit court or the Supreme Court under this rule may be conditioned upon the filing of a bond or other appropriate security in the circuit court, in such amount and upon such conditions as the court granting the stay feels is proper for the protection of the adverse party. The provisions of West Virginia Code § 58-5-14, are applicable. *Such bond shall be filed within such time as provided by the circuit court or this Court.* Failure to execute such bond may be grounds for the dismissal of the appeal.” (emphasis added)).

⁴⁰ See *State ex rel. Von Hauger v. Criminal Ct. of Marion Cty., Div. One*, 247 N.E.2d 87, 90 (Ind. 1969) (“[T]he matter of fixing appeal bond is a matter of succeeding jurisdiction wherein the jurisdiction is lodged first with the Trial Court where it remains from the date of conviction to the perfecting of the appeal in this Court.”); *Sayyah v. Doumani*, 521 So. 2d 715, 716 (La. Ct. App. 1988) (“We have previously noted that the trial court retains jurisdiction to test the solvency of the

Likewise, the circuit court's decision to require an appeal bond has no bearing on the subject matter of the appeal filed in Case Number 19-0535 because it does not interfere with this Court's ability to uphold or reverse the grant of summary judgment to RNG in the parties' underlying breach of contract case.⁴¹ Placing a condition on Northstar's appeal, as provided in West Virginia Code Section 58-5-14, does not exceed the Circuit Court's jurisdiction, just as it does not affect this Court's jurisdiction to determine the ultimate disposition of the judgment in this case. Accordingly, Northstar's petition should be denied.

V. CONCLUSION

The Circuit Court was correct in ordering Northstar to post an appeal bond in the amount of the judgment. Its decision to do so did not foreclose Northstar's opportunity to be heard in this forum or otherwise deprive Northstar of its Due Process or Equal Protection rights.⁴² Further, the Circuit Court did not abuse its discretion by directing Northstar to post an appeal bond and, because such bonds greatly benefit litigants, Northstar should be estopped from challenging its validity. Finally, the Circuit Court did not exceed its jurisdiction by requiring Northstar to post an appeal bond, which is tangential to this Court's evaluation and ultimate disposition of the merits of this case. Accordingly, RNG respectfully requests that the Court DENY Petitioner's petition

surety and to consider objections to the form, substance and sufficiency of the appeal bond by appropriate hearing and receipt of evidence. Accordingly, we have no jurisdiction to consider the objections to the bond.”).

⁴¹ See *Howard v. Catholic Soc. Serv. of Cuyahoga Cty., Inc.*, 637 N.E.2d 890, 895 (Ohio 1994) (“When a case has been appealed, the trial court retains all jurisdiction not inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment.”); *People v. Stewart*, 55 P.3d 107, 126 (Colo. 2002) (“A trial court retains jurisdiction to act on matters that are not relative to and do not affect the judgment on appeal. . . . Accordingly, we hold that no limited remand was necessary for the trial court to consider [appellant’s] application for an appeal bond after he filed a direct appeal.”).

⁴² Indeed, inasmuch as Northstar has pursued this appeal (and that in Case No. 19-0535) without posting the ordered appeal bond, this non-payment inures to RNG’s detriment.

and require that Northstar post the ordered appeal bond as a condition to continuing to pursue these appeals.

RESPONDENT,

By Counsel

A handwritten signature in black ink, appearing to read "Shawn A. Morgan", is written over a horizontal line.

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