

IN THE SUPREME COURT OF FLORIDA

Case No. SC16-1852
CONSOLIDATED
L. T. Case No. 2D16-1328

JOHN DOE, et al.,

Petitioners

vs.

STATE OF FLORIDA,

Respondent.

DISCRETIONARY REVIEW (VIA CERTIFIED QUESTION) OF A DECISION
OF THE SECOND DISTRICT COURT OF APPEAL

APPLICATION FOR CONSTITUTIONAL STAY WRIT

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Petitioners hereby apply for a stay of the trial court practice of "presiding" over Baker Act trials remotely by video from Chambers at the Lee County Courthouse while the patient, the attorneys and witnesses are present together with the bailiff and court reporter at the nearby local hospitals. The issue is pending final review by this Court in above-captioned case, which seeks an answer to the question certified to it by the Second District Court of Appeal:

DOES A JUDICIAL OFFICER HAVE AN
EXISTING INDISPUTABLE LEGAL DUTY
TO PRESIDE OVER SECTION 394.467
HEARINGS IN PERSON?

Jurisdiction

This Court has jurisdiction to stay any activity necessary to aid its ultimate jurisdiction. *See* Article V, Section 3(b)(7), Fla. Const., and *Couse v. State*, 209 So.2d 865, 867 (Fla. 1968).

Need for Stay

While this Court's stay powers are much broader than a trial court's injunctive powers, it may be useful to consider the traditional injunction criteria as a guide, because, even under that more-restrictive standard, a stay is warranted. The traditional criteria are: likelihood of irreparable harm, unavailability of other remedies, substantial likelihood of success on the merits, and consideration of the

public interest. *See, for example, Milin v. Northwest Florida Land, L.C.*, 870 So.2d 135 (Fla. 1st DCA 2003).

Irreparable harm. Clearly patients in Lee County are compelled to experience a trial like no other – no other place and no other class of litigants. As Petitioners have shown, and all of the panel judges below have strongly stated, this unique local practice is wrong on several levels. Conversely, harm to the Respondent if the stay is improvidently entered is negligible. Respondent simply turns off the TV screen and drives the very few miles to the local hospitals. The *status quo ante* is preserved. In this case, “*ante*” refers to the preceding centuries.

Other remedies unavailable. Respondent’s use of “private e-mails” has circumvented certiorari relief. While Petitioners have argued that mandamus is an available remedy, only this Court’s emergency rule-making and supervisory powers are sure to provide available relief. Clearly, because of the time and study that accompanies a rule change, a petition for a clarifying rule change is not an efficacious remedy for these patients.

Likelihood of success. Petitioners have presented a compelling case for relief either via mandamus or pursuant to this Court’s supervisory powers, but no better evidence of the likelihood of success on the merits can be found than the language employed by the judges of the Second District Court of Appeal in their various opinions in the case under review. Certainly this Court should give great weight to

opinions that include the following comments: problematic, unwarranted, of questionable wisdom, ill-advised, unfair, highly inappropriate, and rightly deserving of admonition.

Public Interest. Most certainly the public interest is on the side of Petitioners. The public interest favors equal treatment for all, dignified treatment for the mentally ill, minimum exposure to civil rights complaints, and continuation of centuries-old legal traditions that have stood the test of time. There is no public interest impacted by turning off the TV screens and return to the status quo.

Conclusion

For all of the above reasons Petitioners pray that this Court will exercise its constitutional prerogative and order the Lee County trial court to cease conducting Baker Act trials remotely and order it to the status quo until this Court finally decides the captioned cause.

Certificate of Service

I HEREBY CERTIFY that Petitioners' Initial Brief was e-filed with the Court and copies e-served to Ms. Caroline Elizabeth Johnson Levine, AAG at Caroline.JohnsonLevine@myfloridalegal.com on this 15th day of November 2016.

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