IN THE SUPREME COURT OF FLORIDA

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

JOHN DOE, et al.,

Petitioners

vs.

STATE OF FLORIDA,

Respondent.

PETITIONERS' MOTION FOR REVIEW OF A DENIAL OF STAY AND RENEWED APPLICATION FOR CONSTITUTIONAL STAY WRIT

Introduction

Petitioners move this Court pursuant to rule 9.310(f), Fla. R. App. P. for an order reviewing and reversing the decision of the Second District Court of Appeal denying Petitioners' Application for Constitutional Stay Writ referred to it by this Court. Alternatively, Petitioners renew their Application for Constitutional Stay Writ filed originally with this Court on Nov. 15, 2016.

Procedural Background

1. On November 15, 2016, Petitioners filed their Application for Constitutional Stay Writ contemporaneously with their Initial Brief in this action: a question certified by the Second District Court of Appeal as of great public interest, to wit:

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

2. This Court treated the Application for Constitutional Stay Writ as a motion for stay pending review; and accordingly, transferred the Application to the lower court for consideration. On November 21, 2016, the Second District Court of Appeal also treated the Application for Constitutional Stay Writ as a motion to stay and DENIED it. [Order attached as Appendix A].

3. Petitioners seek review of that order; or alternatively, renew their original Application for Constitutional Stay Writ with the following supporting legal argument.

Legal Background

Predictably, the Second District Court of Appeal treated Petitioners' Application for Constitutional Stay Writ as a motion to stay its mandate and

denied it. In light of its majority opinion in *Doe v. State*, Case No. 2D16-1328, 2016 WL 5407617, decided Sept. 28, 2016, the Second District could not have been expected to do otherwise.

But on review, this Court can exercise its constitutional responsibilities for "administrative supervision of all courts," and for the adoption of "rules for the practice and procedure in all courts" or its "all writs" power and thereby restore to the people of Lee County the long-standing court practice that they have a right to continue to expect. *See* Art V, Secs. 2(a) and 3(b)(7), Fla. Const.

This Court's authority to order the Lee County mental health court judge and magistrates to return to their decades-old practice of actually appearing in person for the trials at which they are assigned to preside could not be more clear.

First, this Court has clear jurisdiction over the underlying litigation brought here by certification from the Second District. This Constitutional Stay Writ is clearly ancillary to that jurisdiction and is necessary for the complete exercise of this Court's ultimate jurisdiction.

Even though the Lee County practice received the unanimous disapproval of the Second District's judges in the case under review, the practice continues and has, or will, generate needless appeals. Additionally,

as explained in Petitioners' Initial Brief, each new mentally challenged patient that is subjected to trial via video is being denied rights secured by our constitutions and by implementing civil rights statutes and regulations. These potential civil rights claims can be forestalled by the simple expedient of returning to the *status quo ante.*

Likelihood of success on the merits. This Court's constitutional stay powers do not depend on a successful outcome, or even on an actual pending case, but in this case, both are present. *See Couse v. Canal Authority,* 209 So.2d 865 (Fla. 1968) and *Petit v. Adams,* 211 So.2d 565 (Fla. 1968). *See generally,* Anstead, Kogan, Hall & Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, Nova L. R. Spring 2005; and Griffin, *The Constitutional Stay Writ,* 29 U. Fla. L. Rev. 229 (1977). In *Petit,* even though this Court finally determined that it lacked jurisdiction, it ordered the Dade County Canvassing Board to preserve evidence pending review. *Id.* p. 566.

In the pending case, this Court may answer the certified question affirmatively in an opinion that relies on any or all of the following rationales:

I. Rule 2.530, of the Florida Rules of Judicial Administration together with its comment, is clear and it creates a clear legal right

enforceable by all litigants. By expressly listing the three circumstances in which a judicial officer may conduct the proceedings without the consent of the parties, the rule necessarily prohibits the use of communication equipment in other situations that are not listed, including Baker Act trials.

II. The "clear legal right" necessary for mandamus relief can be found in black letter law, but also in decades-old unwritten legal traditions that have guided our courts for generations. Which is to say that, even though there is no written rule or statute requiring a judge to be physically present, when Florida's citizens, including Baker Act patients, enter a courtroom for their trial, they have a clear legal right to see a judicial officer presiding over their trial from a prominent place in a courtroom as they have since statehood.

III. Florida's citizens and lawyers have a right to expect that governance within a judicial circuit will be accomplished by Local Rules or Administrative Orders as prescribed in the constitution and rules of judicial administration. Both local rules and administrative orders are reviewable pursuant to standards much

less restrictive that the Second District's overly narrow mandamus standards. Accordingly, a Judicial Assistant's e-mail on a governance issue substituting for a chief judge's administrative order is therefore a nullity.

IV. Alternatively, in this case the Judicial Assistant's e-mail is the functional equivalent of an administrative order, and is therefore reviewable as an order. This Court may apply the certiorari standard of a substantial departure from the essential requirements of law, and not the Second District's more restrictive mandamus standard, and nullify the e-mail/administrative order.

V. Finally, this Court's jurisdiction over this matter is clear. Having acquired jurisdiction, it may simply apply its exclusive constitutional duty of administrative supervision of all courts and its separate duty to adopt rules for the practice and procedure in all courts. In doing so this Court may answer the certified question affirmatively without deciding the scope of mandamus relief as restricted by the Second District, or the legal effect of a Judicial Assistant's e-mail.

Conclusion

Because Petitioners are likely to prevail on the merits, and because the Lee County practice received the unanimous disapproval of the Second District panel, and because this Court has plenary authority to right this wrong, and because the condemned practice continues weekly, this Court should grant Petitioners' Application for Constitutional Stay Writ and require the Lee County judicial officers to personally appear at Baker Act trials now and until a final opinion is entered.

Certificate of Service

I HEREBY CERTIFY that the original of this Motion for Stay and Renewed Application for Constitutional Stay Writ was e-filed with the Court and copies served by automatic e-service on Ms. Caroline Elizabeth Johnson Levine, AAG, attorney for Respondent at Caroline.JonsonLevine@myfloridalegal.com; and to Mr. Peter P. Sleasman, Esq., attorney for amicus curiae at PeterS@DisabilityRightsFlorida.org; and to the Hon. Kathleen Ann Smith, Public Defender, Twentieth Judicial Circuit at Kathleens@pd.cjis.20.org on this 28th day of November, 2016.

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

November 21, 2016

CASE NO.: 2D16-1328
L.T. No. : 16MH378

John Doe v. State Of Florida

Appellant / Petitioner(s), Appellee / Respondent(s).

FILED
JOHN A. TOMASINO
NOV 23 2016
CLERK, SUPREME COURT
BY

BY ORDER OF THE COURT:

The petitioner's application for constitutional stay writ, treated as a motion to stay, is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Served:

Gary H. Bass, A.P.D.
Kathleen A. Smith, P.D.
Linda Doggett, Clerk
John Tomasino, Clerk
Attorney General
Caroline Johnson Levine, A.A.G.
Honorable H. Andrew Swett
Robert A. Young, A.P.D
Heather Sutton - Lewis, Esq.
Stephen B. Russell, S.A.

td

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel
Clerk

APPENDIX A