

IN THE SUPREME COURT OF FLORIDA

Case No.: SC19-PENDING

BRENT A. DODGEN,

Petitioner,

v.

KAITLYN P. GRIJALVA,

Respondent

\_\_\_\_\_ /

**PETITIONER’S EMERGENCY MOTION TO REVIEW ORDER  
DENYING STAY, AND MOTION TO STAY**

Petitioner BRENT A. DODGEN, by and through undersigned counsel and pursuant to Florida Rule of Appellate Procedure 9.310, moves this Court to: (1) review the Fourth District Court of Appeal’s Orders (a) denying Petitioner’s Motion to Review Order Denying Stay, and Motion to Stay [6/26/19] and (b) denying Petitioner’s Time-Sensitive Motion for Rehearing of Order Denying Stay [7/8/19] and (2) stay the underlying case pending review in this Court. In support of this Motion, Petitioner states as follows:

1. ***This motion is filed on an emergency basis because trial in this matter begins tomorrow, July 9, 2019. Absent a stay, the Petitioner will be forced to turn over the subject discovery, and will be unable to seek review of the certified***

RECEIVED, 07/08/2019 11:20:26 AM, Clerk, Supreme Court

*question of great importance issued by the Fourth District Court of Appeal as arguably the matter will be considered moot.*

2. In this personal injury case arising out of an auto accident, Respondent sought discovery from Petitioner concerning the financial relationship between Petitioner's experts and (a) Petitioner's law firm and (b) Petitioner's insurance carrier.

3. Petitioner objected and moved for a protective order, which the trial court denied. (App. 003).

4. Petitioner timely petitioned the Fourth District Court of Appeal for a writ of certiorari on this discovery issue.

5. On the same day that Petitioner filed his Petition, he moved the trial court for entry of a stay pending appeal. (App. 004-11). Petitioner fully incorporates by reference the arguments contained in that motion herein.

6. Petitioner's motion was heard on May 7, 2019, and granted in part:

Granted in part. The only issues stayed are those addressed in Defendant's petition (that have not been withdrawn). The stay is temporary and the Court will hold a Status Conference on June 4 to address lifting the stay. . . . Trial will commence on June 10, 2019.

(App. 012).

7. During calendar call on May 17, 2019, the parties agreed to roll the case over to the June 14, 2019 docket for the trial period commencing June 24, 2019 through July 19, 2019. (App. 013).

8. However, the trial court sua sponte cancelled the June 4, 2019 status conference.

9. Unsure of the status of the stay, Petitioner filed a Motion for Clarification and Renewed Motion for Stay Pending Appeal on May 28, 2019. (App. 015-020). Petitioner requested that the trial court stay the matter pending resolution of the petition for writ of certiorari. (App. 019). Petitioner fully incorporates by reference the arguments contained in that motion herein.

10. One day later, the Fourth District Court of Appeal entered the following Order:

ORDERED that Brent Dodgen's April 9, 2019 petition for writ of certiorari is denied. *See Dhanraj v. Garcia*, 44 Fla. L. Weekly D785 (Fla. 5th DCA March 22, 2019); *Younkin v. Blackwelder*, 44 Fla. L. Weekly D549 (Fla. 5th DCA Feb. 22, 2019), *rev. granted*, No. SC19-385, 2019 WL 2180625 (Fla. May 21, 2019).

An opinion will follow.

(App. 053).

11. No mandate followed that Order; therefore, there was no final judgment and the trial court had no obligation to compel production of the discovery. Nicholson v. Ariko, 565 So. 2d 843, 844 (Fla. 5th DCA 1990).

12. Nevertheless, Respondent then moved to compel compliance with the March 28, 2019 Order subject to the petition based on the Order denying the Petition. (App. 054-58).

13. On June 13, 2019, the trial court heard Petitioner’s Motion for Clarification and Renewed Motion to Stay.

- a. Petitioner requested that the stay be maintained until the Fourth District Court of Appeal issued the opinion as indicated in the Order denying the Petition.
- b. Petitioner re-raised its arguments in seeking the stay initially.
- c. Petitioner argued that lifting the stay and forcing Petitioner to turn over the discovery would prevent him from petitioning the Florida Supreme Court to review the “opinion [that] will follow.”

(App. 077-80).

14. Respondent argued that the trial court lacked jurisdiction to stay the case given that this appeal had been resolved. (App. 079-80). The trial court appeared to agree: “Well, the writ of cert was denied, so it’s no longer in the Fourth. And I think that if there was - - if they would’ve had a concern about this case going forward, I believe that they would’ve written something in their order. So, respectfully, the renewed motion to stay is denied.” (App. 080-81).

15. The trial court entered a written order denying the motion to stay on June 14, 2019. (App. 059-60). The trial court ordered that Petitioner produce the subject discovery by July 3, 2019. (App. 187). The trial court also ordered that the “case will be set for trial # 1 on July 9, 2019 . . .” (App. 058).

16. The trial court’s rationale for denying the motion to stay was erroneous on all scores. It ruled:

Well, the writ of cert was denied, so it's no longer in the Fourth. And I think that if there was - - if they would've had a concern about this case going forward, I believe that they would've written something in their order. So, respectfully, the renewed motion to stay is denied.

(App. 081).

17. The Fourth District Court of Appeal, at that time, maintained jurisdiction over the matter. At that time, no mandate had been issued, and the Fourth District Court of Appeal expressly wrote that an opinion would follow. See Nicholson, 565 So. 2d at 844; Miyasato, 805 So. 2d at 824.

18. On June 18, 2019, Petitioner moved the Fourth District Court of Appeal to review the trial court's order denying the stay, and to enter a stay pending review.

(App. 206-215).

19. On June 26, 2019, the Fourth District Court of Appeal Court issued an opinion in this case certifying the following question of great importance:

WHETHER THE DECISION IN *WORLEY V. CENTRAL FLORIDA YOUNG MEN'S CHRISTIAN ASS'N.*, 228 SO. 3D 18 (FLA. 2017), SHOULD BE APPLIED TO PROTECT A DEFENDANT'S INSURER THAT IS NOT A PARTY TO THE LITIGATION FROM HAVING TO DISCLOSE ITS FINANCIAL RELATIONSHIP WITH EXPERTS RETAINED FOR PURPOSES OF LITIGATION, INCLUDING THOSE THAT PERFORM COMPREHENSIVE MEDICAL EXAMINATIONS UNDER FLORIDA RULE OF CIVIL PROCEDURE 1.360?

Dodgen v. Grijalva, No. 4D19-1010, 2019 Fla. App. LEXIS 10060, \*4-5 (Fla. 4th DCA June 26, 2019). (App. 216-219). This is similar to a certified question of great importance already accepted by this Court in Younkin v. Blackwelder, 44 Fla. L.

Weekly D549 (Fla. 5th DCA February 22, 2019) (review accepted May 21, 2019). However, the certified question in the instant case addresses discovery seeking information from the non-party insurance company.

20. That same day, the Fourth District also denied Petitioner's Motion to Review Order Denying Stay, and Motion to Stay. (App. 220). Two days later, Petitioner filed a Motion for Rehearing of Order Denying Stay, which was denied on July 8, 2019. (App. 221-224).

21. On July 2, 2019, Petitioner filed a Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court pursuant to Florida Rules of Appellate Procedure 9.030(a)(2)(A)(v), and 9.120 and Florida Constitution, Article V, Section 3(b)(4). (App. 225-230).

22. Today, on July 8, 2019 – *just one day before trial is to begin in this case* – the Fourth District denied Petitioner's motion for rehearing of the order denying the stay. (App. 231).

23. This case should be stayed pending review in this Court to: (a) to maintain the status quo, (b) because Petitioner has a strong likelihood of success on appeal, and (c) because denying a stay will irreparably harm the Petitioner by requiring production of the very documents sought to be protected. See generally State ex rel. Price v. McCord, 380 So. 2d 1037, 1038 (Fla. 1980) (explaining reasons for granting a stay pending appellate review). See also Hirsch v. Hirsch, 309 So. 2d

47, 50 (Fla. 3d DCA 1975) (explaining stay should be granted if any subsequent proceedings in the trial court could interfere with the jurisdiction of the appellate court); Waltham A. Condo. Ass'n v. Vill. Mgmt., Inc., 330 So. 2d 227, 229 (Fla. 4th DCA 1976) (“When the appellate court acquires jurisdiction of a cause, no order of the trial court can legally impair or interfere with the power of the appellate court to make its jurisdiction in the premises effective.”).

24. Petitioner believes that the likelihood of this Court accepting jurisdiction and prevailing is great. This Court has already protected this discovery on the plaintiff’s side of the case and will likely either overrule that prior ruling or equally protect it here. This Court has an interest in equal application of the law so as to not deny any party equal protection, due process, and access to courts. And, crucially, this Court has already accepted jurisdiction on the following similar question of great public importance involving discovery directed to a defense law firm. Younkin v. Blackwelder, 44 Fla. L. Weekly D549, (Fla. 5th DCA Feb. 22, 2019). See Younkin v. Blackwelder, No. SC19-385, 2019 Fla. LEXIS 800 (Fla. May 21, 2019).

25. A stay of this case is essential until this Court has had an opportunity to review and (hopefully) to answer the certified question posed by the Fourth District Court of Appeal.

26. This will ensure and preserve Petitioner’s right to meaningful review

and relief in this Court. In the absence of a stay, Petitioner will suffer irreparable harm and ultimately a denial of due process.

27. As outlined above, Petitioner has availed himself of many remedies recognizable under Florida law to stay compliance with the discovery order giving rise to this Petition, and to secure its right under the Florida Constitution to access to the courts. See Edwards v. Poe, 189 So. 2d 220, 221 (Fla. 2d DCA 1966) (“Appeals to the Supreme Court and the District Courts of Appeal are constitutionally guaranteed rights in this State.”) (internal citations and quotations omitted). See also Art. I, § 21, Fla. Const.

28. To that last point, Respondent is seeking sanctions against Petitioner in the trial court concerning this discovery despite Petitioner’s constitutional right to petition this Court to consider this question of great public importance. (App. 232-240; 241-253).

29. Indeed, Petitioner may be denied the opportunity to be heard by this Court and will be forced to comply with the trial court’s ruling requiring Petitioner to provide the subject discovery.

30. If a stay is not granted, and Petitioner is forced to turn over the subject discovery, Petitioner will be irreparably harmed. The cat will be out of the bag. See TheStreet.com Inc. v. Carroll, 20 So. 3d 947, 949 (Fla. 4th DCA 2009) (“First, we find that the material and irreparable harm element of certiorari has been



demonstrated by virtue of the privilege being asserted, such that this would be ‘cat out of the bag’ irreparable harm.”).

31. Furthermore, once the discovery is provided, the issue on appeal may be moot, and the Petitioner may be without any relief.

32. As now Chief Justice Charles T. Canady wrote in a dissenting opinion:

In rejecting the stipulated dismissal, the Court is requiring that the parties litigate a case that has been settled, is no longer in controversy, and has not been perfected for consideration by this Court. The respondent who has settled this case will now be required to expend resources to prepare an answer brief. And the petitioner, who may no longer be represented by counsel, is directed to file a reply brief.

Although the issues underlying this litigation may be issues of great importance, it is no more proper for the Court to compel the parties to litigate those issues after they have jointly filed a notice of dismissal than it would be for the Court to compel a party to file a petition for discretionary review. The parties to this proceeding have rights. They should not be dragged into litigating a matter that is no longer in controversy between them simply because this Court determines that an issue needs to be decided.

**Under the Florida Constitution, this Court does not have the power to reach out and grab cases that we deem worthy of our attention.**

Pino v. Bank of N.Y. 76 So. 3d 927, 931 (Fla. 2011) (Canady, J., dissenting) (emphasis added). Accord Grant v. Citizens Bank, N.A., 263 So. 3d 156, 159 (Fla. 5th DCA 2018 (Eisnaugle, J. concurring in part and dissenting in part) (“As such, this portion of the majority’s opinion goes beyond resolving the controversy between the parties and is in the nature of an advisory opinion. . . . We should not bend principles of [judicial] restraint in the name of correcting an errant decision.”).

33. Petitioner respectfully contends that the Fourth District Court of Appeal abused its discretion in denying Petitioner's request for a stay because, in doing so, it infringes upon the jurisdiction of this Court to decide the question of great public importance by potentially mooting the issue.

34. Accordingly, this Court should stay this case pending review of the certified question to ensure meaningful appellate review by this Court and protect Petitioner's constitutional right to access the courts.

WHEREFORE, Petitioner BRENT A. DODGEN respectfully requests that this Court stay the underlying matter pending resolution of this case in this Court.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a copy of the foregoing was uploaded and served in the E-PORTAL to: **Brett M. Rosen, Esq.**, Goldberg & Rosen, P.A., 1111 Brickell Avenue, Suite 2180, Miami, Florida 33131 ([pleadings@goldbergandrosen.com](mailto:pleadings@goldbergandrosen.com); [bmr@goldbergandrosen.com](mailto:bmr@goldbergandrosen.com)); **Marc Schechter, Esq.**, Robinson Pecaro & Mier, P.A., 501 Shotgun Road, Suite 404, Sunrise, FL 33326 ([mschechter@lawdrive.com](mailto:mschechter@lawdrive.com); [kirsten@lawdrive.com](mailto:kirsten@lawdrive.com)); **Douglas Eaton, Esq.**, Eaton & Wolk, P.L., 2665 So. Bayshore Drive, Suite 609, Miami, FL 33133 ([deaton@eatonwolk.com](mailto:deaton@eatonwolk.com); [cgarci@eatonwolk.com](mailto:cgarci@eatonwolk.com)); this day 8<sup>th</sup> of July, 2019.

**BOYD & JENERETTE, PA**

*/s/ Kansas R. Gooden*

---

**KANSAS R. GOODEN**

Florida Bar No.: 58707

[kgooden@boydjen.com](mailto:kgooden@boydjen.com)

201 N. Hogan Street, Suite 400

Jacksonville, Florida 32202

Tel: (904) 353-6241

Fax: (904) 493-5658

**KEVIN D. FRANZ**

Florida Bar No. 15243

[kfranz@boydjen.com](mailto:kfranz@boydjen.com)

1001 Yamato Road, Suite 102

Boca Raton, FL 33431

Tel: (954) 622-0093

Fax: (954) 622-0095

**Attorneys for Petitioner Brent A. Dodgen**