

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC19-1118

BRENT A. DODGEN,

Petitioner,

v.

KAITLYN P. GRIJALVA,

Respondent.

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**RESPONDENT'S MOTION FOR LIMITED RELIEF FROM STAY**

COMES NOW the Respondent, Kaitlyn Grijalva, by and through undersigned counsel, and moves this Court for limited relief from the stay entered July 8, 2019, and as grounds therefore states:

This is a Petition for Certiorari seeking review of the trial court's order compelling certain financial discovery from Defendant's insurer, Allstate Insurance Company, pursuant to *Allstate v. Boecher*, 733 So. 2d 993 (Fla. 1999). When this Court accepted jurisdiction of this matter pursuant to the Fourth District's certified question, it entered a stay of this case at the trial court level. Plaintiff below seeks limited relief from the stay so that she can complete discovery unrelated to the discovery under review. This limited relief will promote judicial economy by avoiding unnecessary delay in reaching the trial of this case once this Court has issued its opinion.

### **Procedural History**

Defendant sought to stay this case at the trial level at the same time he filed his Petition for Certiorari in the Fourth District Court of Appeals. (App.4-11)<sup>1</sup> On May 7, 2019, the trial court entered an order granting a stay, but *only* with respect to the discovery addressed in the Defendant's Petition to the Fourth District Court of Appeals. (App.12) The trial court allowed the rest of the case to proceed. On May 29, 2019, the Fourth District denied the Defendant's Petition for Writ of Certiorari. (App.53) The Defendant nevertheless sought to maintain the stay pending the issuance of the opinion that was referenced in the denial. (App.77-80)

The trial court denied Defendant's renewed motion to stay. (App.59-60) Defendant sought review of this denial in the Fourth District Court of Appeals and requested that the Fourth District enter a stay pending the issuance of its opinion. (App.206-215)

On June 26, 2019, the Fourth District issued its opinion certifying a question of great importance to this Court. (App.216-219) However, at the same time, the Fourth District denied the Defendant's motion to stay. (App.220) Defendant sought rehearing of that denial, which the Fourth District denied on July 8, 2019.

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<sup>1</sup> The appendix references here are to the Appendix attached to the Petitioner's July 8, 2019 Emergency Motion to Stay in this Court.

On the same day, Defendant sought emergency review of that denial from this Court. This Court responded the same day, entering an order staying all proceedings in the Fourth District and in the trial court.

The outcome of this appeal will have no impact on any other issue in this case. Accordingly, Plaintiff now seeks relief from this stay only for the limited purpose of completing discovery so that this case will be ready for trial as soon as this Court issues its opinion. Without such relief, the Plaintiff will be forced to wait, potentially for a year or longer, while briefing is completed, oral argument occurs, and this Court deliberates and issues its opinion. Then, once the opinion is issued and the stay is lifted at the trial level, Plaintiff will still need to complete discovery before proceeding to trial. In the interest of judicial efficiency, this time on appeal could be put to far better use by allowing the parties to complete discovery so that the case will be ready for trial immediately upon its return to the trial court. Denial of this relief will result in further delay of a case that has been pending since 2016.

WHEREFORE, Respondent respectfully request that this Court enter an Order granting limited relief from the stay to allow the parties to conduct discovery unrelated to the discovery on appeal.

### **Memorandum of Law**

We respectfully submit that an order similar to the trial court's initial order

granting a stay in this case would protect the interests of the Defendant, the jurisdiction of this Court, and the interests of the Plaintiff in having her day in court without unnecessary delay. The Court's current order protects the first two interests but prejudices the Plaintiff in her ability to reach trial in as timely a manner as possible.

As this Court noted in *QBE Ins. Corp. v. Chalfonte Condo. Apartment Ass'n, Inc.*, 94 So. 3d 541, 555 (Fla. 2012), "the purpose of an appellate stay is to maintain the status quo in the lower tribunal while an appeal proceeds." As the Defendant explained in his motion to stay, there are two actions that could potentially render the Defendant's Petition before this Court moot: First, if the trial court compelled the Defendant to produce the discovery at issue and second, if the case proceeded to a verdict. Under Plaintiff's request for relief, neither outcome is a possibility.

Typically, in an interlocutory appeal such as this one, the trial court may "proceed with further judicial proceedings, even as to the subject matter on appeal, unless it is shown that subsequent proceedings in the trial court interfere with the power of the appellate to make its jurisdiction effective." *Hirsch v. Hirsch*, 309 So. 2d 47, 50 (Fla. 3d DCA 1975). This means that trial court "may not alter, amend, rescind or act in such a way with respect to its previous ruling or order as will frustrate the exercise of the appellate court's jurisdiction or render

moot its labors.” *Waltham A. Condo. Ass'n v. Vill. Mgmt., Inc.*, 330 So. 2d 227, 233 (Fla. 4th DCA 1976).

In *Waltham*, the court noted that the “granting of a supersedeas in interlocutory appeals is not automatic.” If it is granted, it generally “suspends the jurisdiction of the lower court to make any order tending towards an extension or enforcement of the order appealed; the lower court may otherwise proceed in the cause.” *Waltham A. Condo. Ass'n v. Vill. Mgmt., Inc.*, at 234.

There is no reason that these general principles should not be applicable to the instant case. The stay in this case should prevent the Defendant from having to provide the discovery at issue and should protect the jurisdiction of this Court to resolve the issue on appeal. It should not, however, work a prejudice on the Plaintiff by unnecessarily delaying her ability to get to trial once the appeal is resolved. The relief requested by the Plaintiff protects the interests of the Defendant, this Court, and the Plaintiff while promoting judicial efficiency. *See e.g. Shoemaker v. State Farm Mut. Auto. Ins. Co.*, 890 So. 2d 1195, 1197 (Fla. 5th DCA 2005). There is simply no reasonable argument against it.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail this 30th day of January 2020, to: **KANSAS R. GOODEN, ESQ.**, Boyd & Jenerette, P.A., *Attorneys for Petitioner*, 201 North

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Respectfully submitted,

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