

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC19-1118

BRENT A. DODGEN,

Petitioner,

v.

KAITLYN P. GRIJALVA,

Respondent.

_____ /

**RESPONDENT'S OPPOSITION TO
PETITIONER'S EMERGENCY MOTION TO STAY**

Respondent, Kaitlyn Grijalva, by and through undersigned counsel, files her opposition to Petitioner's Motion for Rehearing. Respondent states as follows:

1. This Court should decline Petitioner's request to stay.
2. The Fourth District has denied certiorari relief, and has twice denied Petitioner's requests to stay production of the standard discovery of the financial relationship between a insurer and its retained experts. This discovery has been available to Plaintiffs since 1999, pursuant to *Allstate Insurance Co. v. Boecher*, 733 So. 2d 993 (Fla. 1999) This Court should not intervene.
3. The Petitioner here is seeking to prejudice the plaintiff by delaying her trial on the slim chance that this Court might accept jurisdiction to address a discovery question that has been settled law for twenty years based on a case,

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Worley v. Cent. Florida Young Men's Christian, Etc., 228 So. 3d 18,23 (Fla. 2017), that explicitly disclaims any applicability to *Boecher* because “the relationship between a law firm and a plaintiff’s treating physician is not analogous to the relationship between a party and its retained expert.”

4. Despite this clear statement, Petitioner still contends that *Worley*, a case based on the application of attorney client privilege, has somehow changed the law with respect to the ability to obtain discovery as to parties’ financial relationship with their retained experts.

5. Unless this Court now plans to simply ignore its own precedent, there is no basis to accept the certified question in this case. It has already been answered. And because there is no basis to accept jurisdiction, there is certainly no basis to stay the underlying case.

6. Additionally, Florida courts have repeatedly held that orders compelling discovery of this type do not rise to the level of irreparable harm necessary to invoke a Court’s certiorari jurisdiction. As explained by this Court:

First, we do not believe the harm that may result from discovery of a litigant's finances is the type of “irreparable harm” contemplated by the standard of review for certiorari. In certiorari proceedings, an order may be quashed only for certain fundamental errors....

Thus, not *every* erroneous discovery order creates certiorari jurisdiction in an appellate court....

We recognize that discovery of certain types of information may reasonably cause material injury of an irreparable nature.

Illustrative is “cat out of the bag” material that could be used by an unscrupulous litigant to injure another person or party outside the context of the litigation. [Citations omitted]

We cannot characterize the information requested here in this same vein. We are not dealing with material protected by any privilege. Nor can we say petitioner's privacy interest rises to the level of trade secrets, work product, or information about a confidential informant. We cannot view the harm suffered by this disclosure as significantly greater than that which might occur through discovery in any case in which it is ultimately determined that the complaint should have been dismissed.

Martin-Johnson, Inc. v. Savage, 509 So. 2d 1097, 1099 (Fla. 1987).

7. In *Morgan, Colling & Gilbert, P.A. v. Pope*, 798 So. 2d 1 (Fla. 2d DCA 2001), the Court reviewed a trial order compelling the production of documents detailing the payment's made by the firm to the subject expert. In dismissing the petition for lack of jurisdiction, the Court stated:

In considering a petition for certiorari the reviewing court's first duty is to assess whether the petitioner has made a prima facie showing that the order creates irreparable harm. If the petitioner does not make such a showing, the court lacks jurisdiction and will dismiss the petition. Here, we find that discovery of the financial relationship between the attorneys and the expert witnesses does not create irreparable harm. If an error is made at trial concerning the admissibility or use of that information, there can be adequate redress through a plenary appeal.

Furthermore, the discovery the respondents seek does not impinge a fundamental right, nor does it invade a privilege. The circuit court ordered the information to be compiled in redacted form, so that no privileged attorney-client information will be revealed. The kind of material sought is the same type of information that must be reported to the federal government for income tax purposes, so its disclosure is not fundamentally harmful. Thus, we have

concluded that the harm of which Morgan Colling complains is not the type of irreparable damage reviewable by certiorari. *Martin-Johnson*, 509 So. 2d at 1099.

...
The petition is dismissed for lack of jurisdiction.

Morgan, Colling & Gilbert, P.A. at 3-4 (some citations omitted). The same rationale applies to the instant discovery request. If an error is made at trial concerning the admissibility or use of this *Boecher* discovery, there Petitioner will have adequate redress through a plenary appeal.

8. There is simply no reason to deprive this Plaintiff of the discovery she is entitled to, and no reason to deprive her of her trial date.

WHEREFORE, Respondent, Kaitlyn Grijalva, respectfully requests this Court deny Petitioner's motion to stay.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail this 8th day of July 2019, to: **KANSAS R. GOODEN, ESQ.**, Boyd & Jenerette, P.A., *Attorneys for Petitioner*, 201 North Hogan Street, Suite 400, Jacksonville, FL 32202; kgooden@boydjen.com; **MARC SCHECHTER, ESQ.**, Robinson Pecaro & Mier, P.A., *Attorneys for Defendant/Petitioner*, 501 Shotgun Road, Suite 404, Sunrise, FL 33326; mschechter@lawdrive.com; kristen@lawdrive.com; **BRETT M. ROSEN, ESQ.**, Goldberg & Rosen, P.A., *Attorneys for Plaintiff/Respondent*, 1111 Brickell Ave., Suite 2180, Miami, FL 33131; pleadings@goldbergandrosen.com; bmr@goldbergandrosen.com.

Respectfully submitted,

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