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IN THE SUPREME COURT OF FLORIDA

Case No.: SC19-1118

BRENT A. DODGEN,

Petitioner,

v.

KAITLYN P. GRIJALVA,

Respondent

________________________________/

PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENT'S MOTION FOR LIMITED RELIEF FROM STAY

Petitioner BRENT A. DODGEN, by and through undersigned counsel, files this Response in Opposition to Respondent's Motion for Limited Relief from Stay, and states:

1. This Court should deny the Respondent's motion and reject the Respondent's attempts to undo this Court's July 8, 2019 Order granting Petitioner's Emergency Motion to Review Order Denying Stay, and Motion to Stay.

2. A stay is essential to ensure the Petitioner's right to seek appellate review, to stay the status quo, and to avoid inconsistent rulings and piecemeal appeals.

3. Respondent asserts that lifting the stay solely for the limited ability to "complete discovery unrelated to the discovery under review" will "promote judicial

economy by avoiding unnecessary delay in reaching the trial of this case once this Court has issued its opinion."

4. Nevertheless, Respondent is incorrect. The requested relief will have no impact on the trial date or Respondent's ability to conduct and complete discovery.

5. Further, the requested relief will only promote unnecessary litigation and create possible unknown piecemeal appeals and inconsistent rulings on issues before this Court.

6. To that end, Respondent has largely ignored the trial court's initial stay order and this Court's Order staying all trial proceedings. The Respondent's actions have already disrupted the judicial economy and caused unnecessary litigation. Granting Respondent's requested relief will only allow history to repeat itself.

7. Thus, the Respondent's motion should be denied.

I. PROCEDURAL HISTORY RELATED TO (1) THE TRIAL COURT'S STAY ORDER AND (2) THIS COURT'S STAY ORDER

A. Respondent already attempted to circumvent the Trial Court's Stay Order and seek this discovery through other means.

While this case was pending before the Fourth District Court of Appeal, the trial court granted a partial stay. Appx. 003. The order provided:

> 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 The only issues stayed are those addressed in Defendant's petition (that have not been withdrawn).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.

Appx 003.

Two weeks later—*and while that stay order was in place*—Respondent attempted to circumvent that order when she filed a Notice of Taking Deposition Duces Tecum of the Records Custodian for Dr. Richard Kishner, one of Petitioner's compulsory medical examiners. Appx 004-006. Petitioner objected to the Notice because, *inter alia*, it expressly requested the Records Custodian to produce documents subject to the stay. To wit:

> 14. Any/all documents reflecting money paid to you by those representing the defense in this case for your expert services for 2015, 2016, 2017, 2018, and 2019.
>
> 15. Any/all documents reflecting money paid to you by Allstate in this case for your expert services for 2015, 2016, 2017, 2018, and 2019.

Appx. 007-011.

Petitioner attached the trial court's stay order to his objections to reflect that Respondent was attempting to circumvent the ruling. Appx. 013. Respondent subsequently cancelled the deposition. Appx. 014.

Based on this history, if Respondent's relief is granted, there is no guarantee that she will not attempt to circumvent any limitations on discovery.

B. Respondent has ignored this Court's Stay Order and tried to conduct discovery and proceed with litigation.

This Court's Stay Order entered on <u>July 8, 2019</u> is clear. It states:

> Petitioner's motion to stay proceedings below filed in the above cause is granted and proceedings in the Fourth District Court of Appeal and in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, are hereby stayed pending disposition of the petition for review filed herein.

Order, 7/8/2019.

This Court also entered an Order on July 9, 2019 staying proceedings "in this Court . . . pending disposition of *Steven Younkin v. Nathan Blackwelder,* Case No. SC19-385, which is pending in this Court." *Order, 7/9/2019.* On October 1, 2019, this Court lifted "[t]he stay imposed in this Court's order on July 9, 2019," accepted jurisdiction of this case, and provided a briefing schedule. *Order, 10/1/19.* (emphasis added).

It is quite clear – especially in light of Respondent's Motion for Limited Relief From Stay – that Respondent understands that the July 8, 2019 stay order remains in place. Nevertheless, Respondent has continually ignored this Court's July 8, 2019 stay order by attempting to proceed with litigation in the trial court.

For example, a mere *two days* after this Court's July 8, 2019 stay order, Respondent served a Proposal for Settlement on Petitioner and filed her Notice of Service Proposal for Settlement in the trial court. Appx. 015. And, on October 1, 2019, Respondent served another Proposal for Settlement on Petitioner and filed a Notice of Service Proposal for Settlement. Appx. 016.

Next, on November 20, 2019, Respondent attempted to engage in the very discovery it is *asking* this Court to allow. She filed a Notice of Production from Non-Party seeking records from "Records Custodian/ Alliance CAS, LLC." Appx. 017. While Petitioner recognized this Court's Stay Order, he had no choice but to file a written objection. Appx. 018-023. Petitioner objected because "the case has been stayed by Order dated July 8, 2019, in which the Florida Supreme Court granted Petitioner/Defendant's Motion to Stay proceedings in the lower courts. See Order dated July 8, 2019 attached as Exhibit 'A.'" Appx. 018.

Not only did Respondent not withdraw her notices, she noticed "Defendant's Objection to Plaintiff's Notice of Production from Non-Party" for a hearing before the trial court. App. 024, 025. Respondent then cancelled the hearing an re-noticed it two additional times before ultimately cancelling it again. App. 026, 027. Petitioner was required to prepare for this hearing three separate times. On these occasions, Petitioner was also required to secure court reporters and provide materials to the trial court advising that the case was stayed by this Court.

Thus, Respondent's actions—in contravention of this Court's Stay Order—have *already* caused unnecessary litigation in the trial court and wasted judicial resources. Respondent should be estopped from arguing that judicial resources will be saved should this Court lift the stay in the limited manner requested.

II. GRANTING RESPONDENT'S REQUESTED RELIEF WILL DISRUPT THE STATUS QUO AND WILL NOT DELAY TRIAL.

A. Maintaining the current stay will not delay trial.

Respondent claims that allowing discovery as to issues not related to this appeal will allow the case to "be ready for trial as soon as this Court issues its opinion." That is inaccurate.

Once this Court issues an opinion, and the stay is ultimately lifted, the trial court will issue an order resetting trial. See e.g. Appx. 028-029. Per that order, "[t]he pretrial procedures contained in the original trial order shall remain in effect and all time limits should be adjusted to the new trial date." Appx. 028.

The trial court's Uniform Trial Order provides that all discovery must be completed no later than 30 days before calendar call. Appx 031. Respondent will have the exact same amount of time to conduct and complete discovery once the trial court resets trial as it does today. Thus, Respondent's concerns about completion of discovery and delaying trial are unfounded.

B. Granting Respondent's requested relief will disrupt the status quo.

Respondent's prior attempts to seek discovery have already disrupted the status quo and wasted judicial resources. Granting Respondent's requested relief could *only* create more litigation in the trial court and waste judicial resources.

As outlined above, Respondent's actions *during* the trial court's stay order and this Court's stay order have already created more litigation. At this moment,

zero judicial resources in the trial court below are being used. However, if the stay is lifted as to all discovery not subject to this appeal, it is completely unknown what judicial recourses may be expended.

It is simply impossible to know what future "limited" discovery would or would not impact the issues currently before this Court. The parties themselves may very well have different views on that issue, and Respondent has not outlined any specifics through her Motion to give this Court direction. Such differing views would require the trial court to resolve the dispute—thus, creating more litigation and wasting scarce judicial resources.

Indeed, Respondent is essentially asking this Court to enter an order in the dark. It should decline to do so.

For example, Respondent may seek to depose the non-party insurer of the Petitioner or serve it with a Notice of Production from Nonparty. Or, Respondent could seek to depose Petitioner's non-party expert witness. Or, as previously attempted, Respondent may seek to depose the experts' records custodians (in circumvention of Rules 1.280(5)(A)(i),(ii)) to discover information related to the issues before this Court.[1]

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[1] Florida Rule 1.280 outlines the permissible discovery into expert opinions, providing in pertinent part:

> Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and

Respondent may claim she intends only to ask questions or seek documents relevant to the issues in the trial court (whatever they may be). However, certain questions or document requests Respondent *believes* relevant and non-privileged may certainly impact the issues in this appeal.

If that occurred, Respondent would be forced to seek a protective order from the trial court, which may result in a ruling that interferes with the jurisdiction of this court. Hirsch v. Hirsch, 309 So. 2d 47, 50 (Fla. 3d DCA 1975) (explaining a 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

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> acquired or developed in anticipation of litigation or for trial, may be obtained **only** as follows:
>
> > By **interrogatories** a party may require any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
> >
> > Any person disclosed by interrogatories or otherwise as a person expected to be called as an **expert witness** at trial may be **deposed** in accordance with rule 1.390 without motion or order of court.

Fla. R. Civ. P. 1.280(5)(A)(i),(ii) (emphasis added).

interfere with the power of the appellate court to make its jurisdiction in the premises effective.").

An adverse discovery-related ruling touching upon the issues in this appeal would force the Petitioner to petition the appellate court once again, and this cycle (possibly culminating in another invocation of this Court's jurisdiction) would restart. Granting Respondent's limited relief could certainly result in additional piecemeal appeals. The only certainty is if this Court denies Respondent's Motion. In that event, the status quo is maintained. There is simply no reason to disturb it.

III. GRANTING RESPONDENT'S REQUESTED RELIEF IN *THIS* CASE WILL HAVE FAR-REACHING IMPLICATIONS IN OTHER CASES CURRENTLY BEFORE THIS COURT.

Finally, it is important to point out that an order granting Respondent's relief in *this* case will have far-reaching implications in many other cases.

This Court has accepted review in this case and Younkin. Younkin v. Blackwelder, 44 Fla. L. Weekly D549, 2019 Fla. App. LEXIS 2612 (Fla. 5th DCA Feb. 22, 2019) rev. accepted, Case No. SC19-385, 2019 Fla. LEXIS 800 (Fla. May 21, 2019). There are at least ten other cases pending before this Court and marked as tagged. See Dhanraj v. Garcia, SC19-610; Salber v. Frye, SC19-982; Menendez v. Bellezza, SC19-944; Rosenthal v. Badillo, SC19-1241; Levitan v. Razouri, SC19-1279; Balle v. Hernandez, SC19-1577; Angeles-Delgado v. Benitez, SC19-1600;

Villalobos v. Martinez, SC19-1795; Tortorella-Andrews v. Delvecchio, SC20-42; Barnes v. Sanabria, SC20-111.

Most of these cases have either been stayed by agreement or court order. Should the stay in this case be partially lifted, Respondents in the aforementioned cases will likely move for the same relief. The problems outlined above with granting Respondent's requested relief in this case will then multiply and possibly result in inconsistent rulings on discovery issues interrelated with the issues before this Court in this case and in Younkin. See InPhyNet Constr. Servs. v. Matthews, 196 So. 3d 449, 463 (Fla. 4th DCA 2016) (recognizing that denial of a stay of the entire proceedings may lead to inconsistent rulings amounting to irreparable harm.).

Keeping the stay in place as to all proceedings below is necessary to maintain the status quo and avoid inconsistent rulings in this case and the others before this Court.

WHEREFORE PETITIONER BRENT A. DODGEN respectfully requests that this Court deny Respondent's Motion for Limited Relief from Stay.

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; bmr@goldbergandrosen.com); Marc **Schechter, Esq.,** Robinson Pecaro & Mier, P.A., 501 Shotgun Road, Suite 404, Sunrise, FL 33326 (mschechter@lawdrive.com; kirsten@lawdrive.com); **Douglas Eaton, Esq.**, Eaton & Wolk, P.L., 2665 So. Bayshore Drive, Suite 609, Miami, FL 33133 (deaton@eatonwolk.com; cgarcia@eatonwolk.com); **Jason Gonzalez, Esq., Amber Stoner Nunnally, Esq**., Shutts & Bowen, LLP, 215 S. Monroe St. Suite 804, Tallahassee, FL 32301, jasongonzalez@shutts.com, anunnally@shutts.com; **William W. Large, Esq**., Florida Justice Reform Institute, 210 S. Monroe St., Tallahassee, FL 32301, william@fljustice.org; **Bryan S. Gowdy**, **Esq.,** Florida Justice Association, 865 May Street, Jacksonville, FL 32204, bgowdy@appellate-firm.com, filings@appellate-firm.com, **Patrick A. Brennan, Esq.**, HD Law Partners, P.A., P.O. Box 23567, Tampa, Florida, 33623, brennan@hdlawpartners.com, maizo@hdlawpartners.com, **John Hamilton, Esq.,** Law Office of John Hamilton of Tampa, P.A., P.O. Box 1299, San Antonio, Florida, 33576, jhamlawyer@gmail.com, this day 11th of February, 2020.

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