

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Case No.: CRC-1400216FAES

v.

Division: 1

CURTIS J. REEVES,
Defendant.
SPN: 683538

EMERGENCY MOTION TO STAY
ORDER GRANTING STATE'S MOTION TO COMPEL

Defendant, CURTIS J. REEVES, by and through the undersigned counsel, and pursuant to Florida Rule of Appellate Procedure 9.310, moves this Honorable Court for an order staying further proceedings on the State's Motion to Compel and, as good cause, shows:

I. PROCEDURAL HISTORY

1. On August 7, 2015, the State filed a Motion to Compel the Filing of Original Deposition Transcripts and to Regulate Discovery, wherein it sought an order from the trial court requiring privately retained counsel for the Defendant to file with the Clerk of Court copies of any deposition transcripts ordered by Mr. Reeves.

2. On August 7, 2015, Mr. Reeves filed his Response to the State's Motion, wherein he argued that the administrative order relied upon by the State did not and could not apply to him. Specifically, Mr. Reeves argued that, because the intent of the administrative order is to control the use of public funds in taking depositions and ordering transcripts, the order does not apply to him because no public funds were expended in his taking or ordering transcripts.

3. When considering the applicability of the administrative order, it is important to note that, when promulgated in 1999, the judicial system was funded by the county. Accordingly,

the administrative order references that its purpose is to provide “copies of depositions and other transcripts in criminal proceedings at a reasonable rate when the cost is paid with county funds.” However, as of 2004, the burden of funding the judicial system has been shifted to the state and, therefore, the administrative order has been rendered obsolete. *See Lewis v. Leon County*, 73 So.3d 151, 154 (Fla. 2011).

4. In his Response, Mr. Reeves argued further that, if he were compelled to file all the deposition transcripts he would face a serious and substantial risk of irreparable harm in being deprived of a fair trial by an impartial jury.

5. To be clear, the Second District has already found that this case “has become a matter of public interest.” *See Reeves v. Nocco*, 141 So. 3d 775, 777 (Fla. 2d DCA 2014). In fact, this case has received so much publicity that the Clerk of Court has created a website dedicated to providing public access to the filings - www.curtisreevestrial.com. Mr. Reeves’ case has been covered by every major media outlet, at the local, state, national, and international level, including Bay News 9, ABC, NBC, CBS, Fox, BCC, CNN, Al Jazeera, Suncoast News, the Tampa Tribune, the Tampa Bay Times, the Daily Mail (U.K.), the Christian Science Monitor, USA Today, the New York Post, the New York Times, the Washington Times, the L.A. Times, the Huffington Post and Time.com.

6. On August 10, 2015, following a hearing, this court orally granted the motion to the extent that it ordered Mr. Reeves to file the transcripts. However, the court specifically denied the State’s request to impose a timeframe for filing, finding that the administrative order did not state a timeframe. The written order was rendered on August 26, 2015.

7. On August 26, 2015, the State filed a second motion, entitled Motion to Compel the Immediate Filing of Original Deposition Transcripts and to Regulate Discovery, which was heard

the same day. At this hearing, this court reiterated its agreement with Mr. Reeves' argument, stating

And there is clear indication that it is meant for government attorneys. And, again, that is why I felt it was more appropriate for the chief judge to entertain a request to alleviate the requirement or do away with them as he sees fit in this case.

See Transcript, August 26, 2015, p. 38.

8. Despite these findings, this court inexplicably retreated from its ruling that the transcripts did not need to be filed within a specific timeframe and, instead, ruled that the State could move the administrative judge for specific transcripts on a case by case basis and that, if approved, Mr. Reeves would have to file the transcripts within 30 days.

9. On September 1, 2015, the State filed a third motion, entitled Motion to Compel the Filing of Specific Defense Discovery Deposition Transcripts with the Pasco County Clerk of Court, which was set for hearing on September 22, 2015 before the administrative judge – the Honorable Shawn Crane.

10. On September 8, 2015, this court *sua sponte* and without giving Mr. Reeves an opportunity to be heard, again changed its ruling and entered an Order Granting State's Motion to Compel, wherein it ordered that "all of the depositions that have been transcribed in this case be filed forthright, in keeping with the rules of discovery and the customary practice in this circuit."

II. ARGUMENT AND MEMORANDUM OF LAW

This court has violated Mr. Reeves' right to a fair trial by an impartial jury by ordering him to file a copy of all deposition transcripts he orders in compliance with an administrative order that does not apply to him. The order is reviewable by petition for writ of certiorari, which Mr. Reeves intends on pursuing. *See* Florida Rule of Appellate Procedure 9.030(b) (2) (A).

Florida Rule of Appellate Procedure 9.310 allows a party to maintain the status quo during

an interlocutory appeal, such as a petition for writ of certiorari. Specifically 9.310(a) provides, in pertinent part

. . . a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both.

The purpose of setting a bond is to protect the party in whose favor a monetary judgment was entered in the event the judgment is affirmed on appeal. *Pabian v. Pabian*, 469 So.2d 189, 191 (Fla. 4th DCA 1985). As such, in this case, where the judgment is not of a monetary nature, a bond is not appropriate. Instead, a reasonable condition would be that the petition for writ of certiorari to review the order at issue be filed within a reasonable timeframe.¹

The authority of a circuit court to grant a stay is incredibly broad. *See e.g. Air Comfort Mechanical, Inc. v. Simmons*, 252 So.2d 285 (Fla. 2d DCA 1971). In considering whether to grant a stay, a circuit court should consider whether the denial of a stay would result in a waste of judicial resources and party labor and money. *See Mann v. Brantley*, 732 So. 2d 1090, 1091 (Fla. 4th DCA 1998) (trial court abused its discretion in refusing to stay lower court proceedings pending interlocutory appeal where further proceedings would be a waste of effort if the appellate court reversed the trial court's order). In this case, given the volume of the deposition transcripts, requiring Mr. Reeves to immediately file the transcripts would result in a waste of Mr. Reeves' labor and money if the Second District quashes the order.

Other factors to be considered in ruling on a motion to stay include the moving party's likelihood of success on the merits and the likelihood of harm should a stay not be granted. *See Perez v. Perez*, 769 So. 2d 389, 391 (Fla. 3d DCA 1999).

¹ The 30 day time-frame imposed by Florida Rule of Appellate Procedure 9.100(c).

As to the likelihood of success on the merits, it is clear that this court departed from the essential requirements of the law in finding that the administrative order applied to Mr. Reeves. When applying the rules of statutory construction to the administrative order, it is clear that the intent of the administrative order is to control the use of public funds in taking depositions and ordering transcripts and to also minimize the costs of duplicating those transcripts by sharing in their production. *See E.A.R. v. State*, 4 So.3d 614 (Fla. 2009)(finding that [t]he doctrine of *in pari materia* is a principle of statutory construction that requires that rules relating to the same subject or object be construed together to harmonize the rules and to give effect to the intent of the rule). Because Mr. Reeves has privately retained counsel, no public funds are being expended in his taking of depositions or obtaining transcripts and, as such, the administrative order does not and cannot apply to him.

Likewise, the harm in filing the transcripts is so irreparable that it cannot be remedied on appeal following the final judgment. If filed with the clerk of court, the transcripts would become public records available for public access. *See Lewis v. State*, 958 So.2d 1027, 1028 (Fla. 5th DCA 2007) (“transcripts fit within the broad definition of ‘public records’ found in section 119.011 (11)”). This would undeniably jeopardize Mr. Reeves’ right to a fair trial under the fifth and fourteenth amendments, the right to a trial by an impartial jury under the sixth amendment, and his privacy rights under the first amendment. The Florida Supreme Court has specifically noted that the harm from pre-trial public access to criminal deposition transcripts cannot be properly remedied or avoided with protective orders. *See Palm Beach Newspapers, Inc. v. Burk*, 504 So.2d 378, 383 (Fla. 1987). This is especially so in a case like Mr. Reeves, which has received extensive media coverage. In *Burk*, the Court found that

. . . public access to discovery information at the moment it is first discovered

presents unacceptable hazards to other constitutional rights because of uncertainty as to the nature and content of the information. The purpose of depositions is to develop evidence by discovering what potential witnesses may know about the subject of the trial. It is not possible beforehand to know with any degree of certainty what information will be discovered. In this respect, a deposition proceeding is unlike a pretrial suppression hearing or a preliminary hearing on probable cause where the parties and the court know beforehand what will be discussed. Thus, it is not feasible for a potential witness, for example, to seek a protective order in advance of the deposition and it is too late to do so if the information becomes public knowledge. The often irrelevant and inadmissible evidence discovered during a deposition has the substantial potential of hazarding the right to a fair trial, the privacy rights of both parties and non-parties, and the right to a trial in the venue of the alleged crime. Aside from the impracticability of seeking protective orders beforehand, seeking such orders “would necessitate burdensome evidentiary findings and could lead to time consuming interlocutory appeals.” The effect such a procedure would have on the speedy trial rights of the accused and public is obvious. Moreover, it would not serve the purpose of criminal discovery assisting in the trial or resolution of criminal charges and would carry us even farther from the central aim of a criminal trial trying the accused fairly.

Burke, 504 So.2d at 383 (internal citations omitted). The Court went on to note

Because counsel should be unfettered to explore all matters and depose all witnesses which may be of use in his case, the process by which such information is gathered must be as free from chilling influences as possible. Providing access to unfiled depositions under the guise of chapter 119 or our commitment to opening the judicial process would not only present serious constitutional concerns for both the accused and innocent third parties, it would also undermine effective advocacy, as counsel may be inhibited from asking certain questions fearing that damaging or prejudicial information may be published before trial.

Burke, 504 So.2d at 384.

Finally, the granting of this requested stay will not prejudice the State. In the event that Mr. Reeves is unsuccessful in seeking certiorari review, the stay would be lifted and Mr. Reeves would be required to immediately comply with the order that he file the transcripts with the Clerk of Court.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to the Office of the State Attorney, P.O. Box 5028, Clearwater, FL 33758-5028, on this, 10th day of September, 2015.

Respectfully submitted,



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