Supreme Court of Ohio Clerk of Court - Filed February 02, 2015 - Case No. 2015-0173

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, et rel. AYMAN DAHMAN, MD and MARY JO ALVERSON, CNM 6900 Pearl Road, Suite 300 Middleburg Hts., OH 44130 Relators vs. THE HONORABLE BRIAN J. CORRIGAN Courtroom 22-A Cuyahoga County Common Pleas Court 1200 Ontario Street Cleveland, OH 44113 THE HONORABLE JOHN J. RUSSO Courtroom 16-D Cuyahoga County Common Pleas Court 1200 Ontario Street Cleveland, OH 44113 Respondents	)	CASE NO. _____

MOTION OF RELATORS FOR EMERGENCY STAY AND EXPEDITED ALTERNATIVE WRIT

Respectfully submitted,

s/Douglas G. Leak

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MOTION FOR EMERGENCY STAY AND EXPEDITED ALTERNATIVE WRIT

NOW COME Relators Ayman Dahman, MD and Mary Jo Alverson, CNM ("Relators") pursuant to S.Ct.Prac.R. XIV, Section 4 and request an emergency stay of Respondent Judges Brian J. Corrigan and John J. Russo exercising judicial and/or quasi-judicial power to improperly allow the transfer/assignment of *Hastings, et al. v. Southwest General Health Center, et al.*, Cuyahoga County Common Pleas Court Case No. 785788 in direct violation of Rule 36 of the Rules of Superintendence for the Courts of Ohio. Respondent Judges Corrigan and Russo should be ordered to stay their respect Orders of January 30, 2015 transferring/assigning this case for a jury trial before Visiting Judge Greene. A stay of the improper transfer/assignment of the case is legally justified and, more importantly, is in the interests of justice. This Motion is more fully supported in the attached Memorandum.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Relators Ayman Dahman, MD and Mary Jo Alverson, CNM ("Relators") seek a Writ of Prohibition and Alternative Writ against Respondents, The Honorable Brian J. Corrigan, Cuyahoga County Common Pleas Court, in his official capacity as the presiding Judge ("Judge Corrigan") in Hastings, et al. v. Southwest General Health Center, et al., Cuyahoga County Common Pleas Court Case No. 785788, and Administrative Judge, John J. Russo ("Judge Russo"). This writ involves the order of January 30, 2015 transferring this case for a jury trial directly to visiting judge Lillian Greene in violation of Rule 36 of the Rules of Superintendence for the Courts of Ohio, which explicitly mandates the assignment of cases to judges by lot, i.e. randomly.

Although a system has been in place for years in Cuyahoga County to allow for visiting judges to handle trials when the responsible judge is unavailable, Cuyahoga County does not have any local rules that provides guidance as to how the assignments take place and to assure that the transfer system to a visiting judge preserves the absolute requirement of "random assignment" per Rule 36 of the Rules of Superintendence. As such, the longstanding practice has been that assignments to an alternative judge be by agreement of all parties – an express waiver of the parties' entitlement to a randomly assigned trial judge. In the event that the parties could not agree to waive their right to having the randomly assigned judge handle the trial, then the trial is continued to a date on which the presiding judge is available.

Relators expressed their objection to the transfer of the trial of this case from Judge Brian Corrigan to Judge Lillian Greene, in violation of Superintendence Rule 36. Over

Objection, Relators have been ordered to appear for trial before Judge Lillian E. Greene, on Monday, February 2, 2015.

Relators' Alternative Writ seeks an emergency stay preventing the jury trial scheduled for February 2, 2015 from proceeding until the Writ of Prohibition is resolved . Relators state that absent the granting of the Alternative Writ now sought, if the trial proceeds on February 2, 2015, it would be to Relators' detriment and in violation of Rule 36 for which Relators have no adequate remedy at law. The Affidavit in Support of Anna M. Carulas, Esq. is attached to this Complaint for Writ of Prohibition and Alternative Writ.

II. STATEMENT OF CASE AND FACTS

This original action stems from a medical malpractice action brought by Austin Hastings, a minor, by and through his parents, natural guardians and next friends, Michelle and Brian Hastings, against Relators Dr. Dahman and Ms. Alverson, among others. The underlying medical malpractice action involves the alleged birth injury suffered by Austin Hastings at the time of his delivery.

On June 26, 2012, the Hastings filed a Complaint for medical malpractice against Relators and other defendants in Hastings, et al. v. Southwest General Health Center, et al., Cuyahoga County Common Pleas Court Case No. 785788. On October 17, 2012, Relators filed an Answer denying all of the Hastings' allegations of negligence.

On June 25, 2014, Respondent Judge Corrigan scheduled the case for a jury trial to commence on February 2, 2015. At the final pre-trial of January 15, 2015, Respondent Corrigan advised counsel that the trial would likely be handled by a visiting judge, although the identity of the judges or the process for selection was not provided.

Thereafter, on January 22, 2015, counsel received an email from Respondent Corrigan's office advising of the two options for visiting judges in February, and there was a response by

Relators' counsel as to which selection would be agreeable. Over the subsequent week, there was an expectation on the part of all counsel that the case was scheduled to be transferred to Judge William Coyne for trial, per agreement of all parties. (In fact, on January 27, 2015, a discussion took place between all counsel that they were agreeable to Judge William Coyne.)

On January 29, 2015, Respondent Corrigan's office informed all counsel that she was informed that "there has been a change in the visiting judge schedule for February. The judges are Judge Coyne and Judge Lillian Greene." Respondent Corrigan's office in the same correspondence, told all counsel that she had been told that "because Judge Greene has seniority and your case is first on the list, she [Judge Greene] will be hearing your case on Monday [February 2, 2015]." There was no explanation as to the identity of the list or any rule, policy, guideline, etc. as to the basis of saying that "because Judge Greene has seniority and your case is first on the list, she will be hearing your case on Monday."

In response to this notification, on the same day, January 29, 2015, counsel for Relators informed Respondent Corrigan's office of her client's objection to this assignment in violation of Superintendence Rule 36, which requires that their trial be conducted by a randomly assigned judge. Further dialogue took place as to a possible compromise to Respondent Corrigan handling the trial, if all counsel could agree to the presumed, alternative "non-randomly assigned visiting judge" -- specifically Judge Coyne.

On January 30, 2015, a conference call took place between all counsel of record and Administrative Judge, Respondent Russo. Relators' counsel advised the Court that they did not consent to the transfer of the case as indicated was the new plan, as the assignment did not comply with Superintendence Rule 36. In response, Respondent Russo inquired if the parties would agree to try the case before visiting Judge William Coyne. While counsel for Relators and counsel for co-

defendants would agree to such an assignment, counsel for Plaintiffs would not agree and instead insisted that the case be tried per "the seniority list" and proceed before Visiting Judge Lillian Greene.

In response, Respondent Russo advised the parties that he would be compelling them to appear before Judge Lillian Greene for trial on Monday, February 2, 2015, but that the parties could come down that afternoon at 4:30 pm and place their positions on the record. Shortly thereafter, Respondent Russo's office called back and indicated there would not be a hearing that afternoon, but that the parties should appear before Judge Lillian Greene on Monday morning, February 2, 2015.

Thereafter, on January 30, 2015, Respondent Judge Corrigan issued an Order referring the case to Respondent Judge Russo for reassignment to a visiting judge for trial. Further, on January 30, 2015, Respondent Russo issued a separate Order transferring the case to Visiting Judge Greene for trial. In his Order of January 30, 2015, Respondent Russo references no rule, policy, guideline, etc. as to the basis for transferring the case to Visiting Judge Greene.

Thereafter, on January 30, 2015, Relators filed a Notice of Objection to Re-Assignment of Trial Judge and Intention to File Writ of Prohibition.

III. LAW AND ARGUMENT

An alternative writ operates as a stay of the judicial or quasi-judicial act sought to be prohibited. *Green v. Kubicki*, 120 Ohio St.3d 1521, 2009-Ohio-698. "After the time for filing an answer to the complaint or motion to dismiss, the Supreme Court will either dismiss the case or issue an alternative or a peremptory writ, if a writ has not already been issued." St.Ct.Prac.R. X(5). Although this Court "generally wait[s] for a response before rending this determination . . . under S.Ct.Prac.R. XIV(4), a party may request emergency relief." *State ex*

rel. Stern v. Mascio (1998), 81 Ohio St.3d 297,298, 691 N.E.2d 253. It is then a matter of discretion whether a "case merits an expedited determination." *Id.*

Because of the unique circumstances of this case in which Respondent Judges Corrigan and Russo have ordered Relators to proceed to a jury trial with a visiting judge in violation of Rule 36 and in the absence of a local rule, this Honorable Court should act immediately to restrain Respondents from unlawfully exercising judicial or quasi-judicial jurisdiction by allowing the transfer/assignment on February 2, 2015. The stay and expedited alternative writ should be granted while this Honorable Court adjudicates Relators' Writ of Prohibition. As more fully set forth in Relators' Complaint for Writ of Prohibition, Respondents Judge Corrigan and Russo lack the jurisdiction and/or authority to proceed with the transfer/assignment to a visiting judge.

Relators present a strong case for their Writ of Prohibition and, therefore, this Honorable Court should grant a stay and an expedited Alternative Writ.

Respectfully submitted,

s/Douglas G. Leak

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PROOF OF SERVICE

A copy of the foregoing was served February 1, 2015 via e-mail to:

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