

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

ROBERT L. VAZZO and DAVID H.  
PICKUP,

Plaintiffs,

v.

Case No: 8:17-cv-2896-T-36AAS

CITY OF TAMPA, FLORIDA,

Defendant.

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**ORDER**

This cause comes before the Court upon the parties' Joint Motion to Stay Discovery and Scheduling of Trial Deadlines Pending Final Resolution of Plaintiffs' Motion for Preliminary Injunction (the "Motion to Stay") (Doc. 49). The Motion to Stay seeks to delay discovery, filing a case management report, and scheduling any deadlines in this action until the complete resolution of Plaintiffs' Motion for Preliminary Injunction, including all possible appellate review. For the reasons discussed below, the Court will **DENY** the Motion to Stay.

**I. Background**

Plaintiff Robert L. Vazzo and Plaintiff David H. Pickup ("Plaintiffs"), licensed marriage and family therapists, initiated this action against the City of Tampa ("City" or "Defendant") on December 4, 2017. Doc. 1, ¶¶ 14-15. Plaintiffs' seven-count Complaint (Doc. 1) alleges that City Ordinance 2017-47 (the "Ordinance"), which prohibits licensed professional counselors from practicing conversion therapy on minors, violates Plaintiffs' and Plaintiffs' clients' First Amendment rights under the United States Constitution as well as Plaintiffs' and Plaintiffs' clients' rights under the Florida Constitution and Florida Patient's Bill of Rights and Responsibilities. *Id.*, ¶¶ 22-28, 112-214. Plaintiffs seek preliminary and permanent injunctive relief against the City, as

well as a declaratory judgment declaring the Ordinance unconstitutional under the United States Constitution and Florida Constitution. *Id.*, ¶¶ 10-12. Plaintiffs filed a Motion for Preliminary Injunction (Doc. 3) on the same date they filed the Complaint.<sup>1</sup>

On the same date Plaintiffs initiated this action and filed their Motion for Preliminary Injunction, the Court entered a Related Case Order and Notice (Doc. 4) designating the case as a Track Two case and directing the parties to comply with the requirements established in Local Rule 3.05, United States District Court, Middle District of Florida (“Local Rules”) for Track Two cases. Doc. 4. In accordance with the Federal Rules of Civil Procedure and the Local Rules, the Order directed the parties to hold a case management conference within 60 days after service of the Complaint for the purpose of preparing the required case management report, due within 14 days of the parties’ conference. Doc. 4; Local Rule 3.05(c)(2)(B). The parties were directed to utilize the case management report form attached to the Order. Doc. 4.

The City was served with the Complaint on December 5, 2017. Doc. 7. On February 6, 2018, the day after the 60-day deadline to conduct a case management conference, Plaintiffs filed an Unopposed Motion to Conduct Case Management Meeting of Parties Telephonically and Request for Expedited Consideration (Doc. 46).<sup>2</sup> Magistrate Judge Sansone granted the Motion to Conduct Case Management Meeting of Parties Telephonically. Doc. 47. The parties conducted a case management conference on February 9, 2018, four days after the deadline in which to do so.

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<sup>1</sup> The Court referred the Motion for Preliminary Injunction to Magistrate Judge Sansone for report and recommendation. Doc. 8. On January 12, 2018, the City filed a Motion to Dismiss Plaintiffs’ Complaint (Doc. 22), which the Court also referred to Magistrate Judge Sansone for report and recommendation. Doc. 35. Magistrate Judge Sansone scheduled a hearing on the Motion for Preliminary Injunction and Motion to Dismiss for June 7, 2018, the date the parties indicated is the soonest that works for all of them. Doc. 59.

<sup>2</sup> Plaintiffs alleged that they had “tentatively scheduled a telephonic meet and confer” for February 9, 2018. Doc. 46, ¶ 7. However, Plaintiffs did not seek an extension of time to hold the case management conference or file the case management report.

See Doc. 49. On February 20, 2018, three days before the 14-day deadline<sup>3</sup> to file a case management report, the parties filed the Motion to Stay (Doc. 49).

In their Motion to Stay, the parties allege that they expect the resolution of the pending Motion for Preliminary Injunction will substantially alter the scope of discovery or help frame discovery, and “may significantly impact and alter the course and conduct of this litigation”. Doc. 49, ¶ 2. The parties further allege that they expect the party adversely affected by the ruling on the Motion for Preliminary Injunction to seek interlocutory appeal and exhaust all appellate remedies, including petition for certiorari review by the Supreme Court. *Id.*, ¶ 3. The parties state that scheduling deadlines in this case should be delayed “given the lengthy” appellate process to come. *Id.*, ¶¶ 4-5. The parties therefore “propose to submit a case management report within thirty (30) days of the final resolution of Plaintiffs’ Motion for Preliminary Injunction, including any appeals, if taken by either party and any review that may be sought from the United States Supreme Court.” *Id.*, ¶ 7. As of the date of this Order, no case management report has been filed.

## II. Legal Standard

### A. Stay

The Court has broad discretion to stay proceedings as incidental to its power to control its own docket. See *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *Chrysler Int’l Corp. v. Chemaly*, 280 F.3d 1358, 1360 (11th Cir. 2002). District courts have “inherent power not governed by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Castle v. Appalachian Technical College*, 430 Fed. Appx. 840, 841 (11th Cir. 2011) (internal quotations omitted) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)). A decision to stay is left to the discretion of the district court, see

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<sup>3</sup> Had the parties timely conducted a case management conference by February 5, 2018, the 14-day deadline to file a case management report would have been, at the latest, February 19, 2018.

*Clinton*, 520 U.S. at 706, and the party seeking the stay has the burden of demonstrating why a stay should issue. *See Postel Indus., Inc. v. Abrams Grp. Constr., L.L.C.*, No. 11-cv-1179-Orl-28DAB, 2013 WL 1881560, at \*4 (M.D. Fla. Mar. 29, 2013).

Motions to stay discovery may be granted pursuant to Rule 26(c), Fed. R. Civ. P. if there is a showing of good cause and reasonableness. *Radenhausen v. U.S. Coast Guard*, No. 3:13-cv-268-J-39JRK, 2014 WL 12634274, at \*1 (M.D. Fla. Jan. 13, 2014). However, motions to stay discovery are disfavored as they “can create case management problems which impede the Court’s responsibility to expedite discovery and cause unnecessary litigation expenses and problems.” *Feldman v. Flood*, 176 F.R.D 651, 652 (M.D. Fla. 1997). Accordingly, a stay of all discovery pending resolution of a motion is rarely appropriate unless resolution of the motion would dispose of the entire case. *Id.* “The Court inevitably must balance the harm produced by a delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery.” *Id.* When such are the circumstances, a court may take a “preliminary peek” at the motion to see if it appears to be “clearly meritorious and truly case dispositive.” *Radenhausen*, 2014 WL 12634274, at \*1 (internal quotations and citations omitted).

#### *B. Case Management Report*

Local Rule<sup>4</sup> 3.05 prescribes the case management procedure to be followed in the Middle District of Florida. A case management report “affords the parties an opportunity to provide input into the drafting of [the Court’s] Case Management and Scheduling Order” and “provides a framework for [the] Court to efficiently resolve disputes.” *Malibu Media, LLC v. Weaver*, No. 8:14-CV-1580-T-33TBM, 2016 WL 7666168, at \*1 (M.D. Fla. Feb. 6, 2016); *Roper v. Bd. of Cnty. Comm’n. of Brevard Cnty.*, No. 6:06-cv-1551-Orl-19JGG, 2007 WL 4336170, at \*6 (M.D. Fla.

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<sup>4</sup> The Local Rules, promulgated pursuant to the authority of 28 U.S.C. § 2071, apply to proceedings in this Court and supplement and complement the Federal Rules of Civil Procedure and other controlling statutes and rules of Court. Local Rule 1.1 (a), (b).

Dec. 7, 2007). With respect to Track Two cases, Local Rule 3.05(c)(2)(B) provides that “[c]ounsel and any unrepresented party shall meet within 60 days after service of the complaint upon any defendant . . . for the purpose of preparing and filing a Case Management Report . . . .” Local Rule 3.05(c)(2)(B) further provides that the “Case Management Report must be filed within 14 days after the meeting.” The Case Management Report shall include: the dates and times of the meeting of the parties, a discovery plan, a final date for the filing of all motions, including motions for leave to file third party claims or join other parties, a statement concerning the intent of the parties regarding arbitration and mediation, dates by which the parties will be ready for a final pretrial conference and trial, and the signature of all counsel and all unrepresented parties either in a single document or duplicate originals. Local Rule 3.05(c)(2)(C)(i)-(viii).

### **III. Discussion**

In this case, the parties seek not only to stay discovery but also to stay the (past due) deadline to present a case management report. Doc. 49, ¶¶ 5, 7.<sup>5</sup> Accordingly, it appears the parties also request a stay of all matters that should be addressed in the case management report, including deadlines for motions to amend pleadings, deadlines to add parties, and required mediation.<sup>6</sup> In effect, then, the parties seek either to stay the case in nearly all respects pending full disposition of the Motion for Preliminary Injunction or to stay proceedings before this Court for a year or more<sup>7</sup>

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<sup>5</sup> The parties appear to refer to the case management report and “scheduling of trial deadlines” interchangeably. Doc. 49 (requesting stay of “scheduling of trial deadlines” in heading, introduction, and paragraph four; requesting stay of case management report in paragraphs five and seven and in the wherefore clause). However, a case management report involves more than “scheduling of trial deadlines.” *See supra* Part II.

<sup>6</sup> Absent arbitration or a Court order to the contrary, the parties in every case will participate in Court-annexed mediation. Doc. 3, p. 18; Local Rule 9.01-9.05.

<sup>7</sup> The parties seek to stay discovery and stay the filing of a case management report through all possible appeals of an order on Plaintiffs’ Motion for Preliminary Injunction. Such potential appellate remedies may include objections to the Report and Recommendation, appeal from the District Court to the Eleventh Circuit, and petition of certiorari review by the Supreme Court. The parties acknowledge the “lengthy process” of such appeals. Doc. 49, ¶ 4.

(albeit without discovery) unfettered by certain deadlines or other requirements. Neither option is feasible in this case.

*A. Stay of Discovery*

The parties proclaim that this Court “has inherent authority to stay discovery pending resolution of Plaintiffs’ Motion for Preliminary Injunction”, but none of the four cases cited by the parties actually support this specific declaration. Doc. 49, ¶ 6. Rather, the cases cited support the parties’ arguments only inasmuch as they set forth the general principle that a district court has inherent authority to stay proceedings and/or discovery, and that the same may be appropriate in certain circumstances. Three cases cited by the parties, *Landis v. North American Co.*, 299 U.S. 248 (1936), *Nelson v. Grooms*, 307 F.2d 76 (5th Cir. 1962), and *Lisa, S.A. v. Mayorga*, 232 F. Supp. 2d 1325 (S.D. Fla. 2002) all address the power of a court to stay proceedings pending the resolution of a separate but related action. That issue—whether a stay is warranted pending the outcome of some other action—is not currently before the Court.

The only other case cited by the parties deals with a stay of proceedings pending the resolution of proper venue. *University of South Florida Research Foundation Inc. v. Fujifilm Medical Systems U.S.A., Inc.*, Nos. 8:16-cv-1194-MSS-TGW, 8:16-cv-3106-MSS-TGW, 8:16-cv-3107-MSS-TGW, 8:16-cv-3109-MSS-TGW, 8:16-cv-3110-MSS-TGW, 2017 WL 4155344, at \*1 (M.D. Fla. Aug. 29, 2017). There, a determination of proper venue would affect whether the case proceeded before the court. *Id. Compare id., Verrier v. Perrino*, No: 2:14-cv-744-FtM-29CM, 2016 WL 3655295, at \*2 (M.D. Fla. July 8, 2016) (granting 30-day stay of discovery when a meritorious motion to dismiss was pending before the Court), and *Skytruck Co., LLC v. Sikorsky Aircraft Corp.*, No. 2:09-CV-267-FtM-36SPC, 2010 WL 11475483, at \*2 (M.D. Fla. Oct. 28, 2010) (declining to lift stay of discovery granted where pending motions may dispose of entire case), with *Williams v. Educ. Credit Mgmt. Corp.*, No. 8:14-cv-1254-T-36TBM, 2015

WL 493767, at \*2 (M.D. Fla. Jan. 14, 2015) (denying motions to stay discovery pending ruling on motion to dismiss because it appeared case would proceed regardless of any order addressing the motion to dismiss).

Here, the Court need not take a “preliminary peek” at the Motion for Preliminary Injunction to determine whether it is truly case dispositive. “The purpose of ... a preliminary injunction is ‘merely to preserve the relative positions of the parties until a trial on the merits can be held.’” *U.S. v. Lambert*, 695 F.2d 536, 539-40 (11th Cir. 1983) (quoting *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)). Moreover, the parties acknowledge that the Motion for Preliminary Injunction is not case dispositive. Doc. 49, ¶ 2 (“[T]he [p]arties agreed that resolution of [Plaintiffs’ Motion for Preliminary Injunction], including any appeals taken by either party, may substantially alter the scope of discovery or otherwise help frame any discovery, and may significantly impact and alter the conduct of this litigation, including shaping the First Amendment and statutory questions presented in this action.”). *See also* Doc. 1, ¶¶ 10-12 (seeking permanent injunctive relief and declaratory judgment in addition to preliminary injunction).

The harm produced by the delay outweighs any temporary elimination of the parties’ resources and expenses toward discovery. The parties’ argument that discovery should be stayed because the appeal(s) process may help frame discovery or alter the course of litigation is unpersuasive at this juncture given that no order has issued on the Motion for Preliminary Injunction and no appeal can yet be taken. Further, even after all appeals are exhausted, a final determination of the Motion for Preliminary Injunction will not resolve the entirety of the case. Because discovery will most likely need to be conducted at some point in this litigation, it is unclear how waiting months or years to begin obtaining evidence that is available now would benefit the parties or further orderly or expeditious disposition of this case.

The parties have not shown good cause or reasonableness to stay discovery, and the Court is concerned delaying discovery will create undue case management problems. Accordingly, to the extent the Motion to Stay seeks to stay discovery, the same will be denied.

*B. Stay of Case Management Report*

For the same reasons explained above, the Court will also deny the parties' Motion to Stay to the extent it seeks to delay filing a case management report. The parties provide no legal authority to support the request that the Court stay the case management report for such a "lengthy" period of time. Doc. 49, ¶ 4. To the extent the parties seek to stay proceedings while an appeal is pending, the parties may file a new motion at the appropriate time. However, given that a hearing on the Motion for Preliminary Injunction before the Magistrate Judge is not scheduled until June, the parties are a minimum of two months away from any such appeal. *See* Doc. 59.

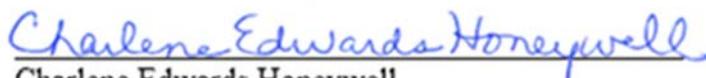
It is also possible the parties misunderstand the scope and purpose of a case management report. To the extent the parties are under the impression that any deadlines suggested in the case management report and established in the Court's case management and scheduling order are entirely inflexible, they are incorrect. *See supra* Part II; *Roper*, 2007 WL 4336170, at \*6 (internal citations omitted) (rejecting plaintiffs' argument that they should not be required to enter into a "binding" case management report until they have identified all of the proper defendants and explaining the court's ability to amend the case management and scheduling order). Should an aspect of the proceedings significantly change the course of this litigation as the parties suggest, the parties may move the Court at that time for an amendment of deadlines and other requirements.

Accordingly, it is now

**ORDERED:**

1. The Joint Motion to Stay Discovery and Scheduling of Trial Deadlines Pending Final Resolution of Plaintiffs' Motion for Preliminary Injunction (Doc. 49) is **DENIED**.
2. Plaintiffs shall file a Case Management Report within **SEVEN (7) DAYS** from the date of this Order.

**DONE AND ORDERED** at Tampa, Florida on April 11, 2018.

  
Charlene Edwards Honeywell  
United States District Judge

Copies to:  
Counsel of Record